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PLAINTIFF'S EXHIBIT

BOND-320

To R.P.M

MEDINA, O

Attention JULIUS NEMETH

- [ ] For action by you
- [ ] For your approval
- [x] For your information
- [ ] Per our conversation
- [ ] Please return
- [ ] For your file
- [ ] Your comments, please
- [ ] Per your request

- [ ] Please sign original and ________ copies and return to J & H
- [ ] Please sign and return copy to J & H

- [ ] Please issue policy with ________ copies.

Subject ASBESTOS

Remarks

Thank you

Date

3575A-

Julius

We believe the enclosure will be of interest to you. If additional information would be helpful, please let us know.

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BON - 01958

Home Power Tools

► Home Workshop Power Tools. Project objective: To provide the CPSC with technical support for the development of a briefing package for the CPSC commissioners on portable electric circular saws and chain saws.

Progress during quarter: The project has been reactivated following an inactive period due to CPSC priorities. The funding and technical status of the project has been revised to reflect current CPSC priorities. During the quarter, a revised project plan was prepared by NBS and accepted by the CPSC. The project as now constituted consists of three primary tasks and is a joint effort between the human factors section, product systems analysis division, and the product safety engineering section of the product engineering division.

The three tasks are:

(1) Development of a "Potential for Injury Analysis" methodology for portable electric circular saws.

(2) Development of an approach for addressing chain saw hazards.

(3) Review and evaluation of existing standards, regulations, and safety-related research for portable electric circular saws and chain saws.

Future plans: Work will continue on each of the three specified tasks as negotiated with the CPSC.

General Policy

CPSC PROBLEMS WITH JUSTICE CONTINUE DESPITE AMENDMENTS TO SAFETY STATUTE

Despite the 1976 legislative amendments to the Consumer Product Safety Commission's enabling statute that expanded the agency's power to prosecute its own cases, the problems the commission has been having with the Department of Justice over handling CPSC cases continue.

According to a letter from CPSC General Counsel Theodore J. Garrish to the director of the President's Government reorganization project, there are several areas in the DOJ-CPSC relationship that are of "most serious" concern.

The amendments to the Consumer Product Safety Act, Garrish wrote, somewhat expanded the agency's power to represent itself in courts, but in practice, "the commission has been unable to represent itself" in any cases except those involving imminently hazardous products.

In its dealing with DOJ, Garrish said, the CPSC often finds that "the Justice Department attorneys insist, over the objections of the commission, to emphasize procedural arguments over substantive arguments." Sometimes, he added, DOJ lawyers "stress or argue positions which are contrary or unacceptable to the commission."

According to Garrish, CPSC attorneys must spend a great deal of time briefing their DOJ colleagues about the facts and law involved in the CPSC cases, although they are more than competent to represent the safety agency in any litigation matters that may arise.

Attorney-Client Relationship

Another area of concern, Garrish said, has been the failure of DOJ attorneys "to adopt a true attorney-client relationship towards the commission." In practice, this has meant that on several occasions, the DOJ resisted adopting the same position in a lawsuit as the commission did, and, on one occasion, the commission was criticized by a federal appeals court for failure to appeal a lower court ruling, even though CPSC urged "high Justice Department officials" to appeal, but was turned down.

Garrish also said that the DOJ continues to refuse prosecution of CPSC cases because it considers them insignificant, and refuses to enter into the litigation process until an action has been filed, creating for the commission "added burdens in trying to defend against the issuance of temporary restraining orders where the time to compile a defense is very limited."

For these reasons, Garrish said, "the commission strongly feels that it should have its own litigation authority."

To resolve problems between the commission and the DOJ, Garrish recommended the signing of an agreement by the two agencies delineating their respective responsibilities in minor matters, and the appointment of an arbiter to resolve major disputes between the agencies.

Hazardous Substances

ECONOMIC IMPACT OF ASBESTOS BAN SEEN HIGH, WHILE BENEFITS ARE SLIGHT

The economic impact of a proposed ban on consumer products containing respirable free form asbestos was estimated to be substantial, while the probable benefits likely to result are considered very slight, according to a study prepared by the staff of the Consumer Product Safety Commission.

The economic analysis division of the CPSC in a November 17 report states that the total price effect of the ban as it applies to patching compounds may be about $10-$60 million, depending on the extent of reformulating necessary and the ability of producers to pass on cost increases.

Costs expected from the ban on asbestos in artificial emberizing materials include $25,000 in price increases due to use of substitutes for asbestos and $20,000 for the cost of voluntarily recalling banned products.

The study notes that to the extent that contractors and their employees and consumers are no longer exposed to free asbestos in patching compounds, the ban may have beneficial effects on the public health. The extent of these benefits is not know, but is expected to be fairly small, the report said.

The economic report states that if the ban is promulgated so as to cover only intentional addition of asbestos or asbestos-containing tremolytic talc or other raw materials to patching compounds, thereby permitting inadvertent asbestos contamination to be present, patching compound production by many firms will be continued.

Most products now on the market would have to be reformulated to comply with the ban and significant disruption of inventoried products in distribution would occur. The production and sale of some compounds would be continued without reformulation and without disruption of distribution of channel inventories, the analysis stated.

Other Alternatives

Other alternatives, such as setting a minimal contamination level, or prohibiting the presence of asbestos altogether would have substantially greater adverse effects.

The analysis also pointed out that many manufacturers which do not have extensive technical reformulation capabilities may discontinue patching compound production temporarily or permanently. Some manufacturers have claimed that they may go out of business if the ban is promulgated. The report said there may be particularly serious effects on the cost structure and competitive posture of small businesses.

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Costs associated with reformulation, raw materials procurement, production processes, inventory obsolescence and repurchase, and product testing may increase the average cost of producing patching compounds.

In professional uses of patching compounds, the aggregate labor cost of drywall finishing may increase for the first year by as much as $50-$125 million, according to the staff report. The effective date chosen for the ban and the way in which professional use of the product is treated will have a significant impact on the magnitude of these costs and on the degree of disruption in the construction industry. In the short run, near maximum adverse effects would accompany the proposed 30-day effective date and prohibition of the use of asbestos-containing compounds by professionals.

In addition, the report notes that the utility derived from the product by consumers and drywall contractors may be adversely affected; many substitute formulations are expected to have poorer performance qualities than those containing asbestos. This is likely to be noticed more by professional applicators; most consumers, who are typically infrequent and unskilled users of the product, will probably perceive no significant difference in performance, the analysis said.

Emberizing Material

The cost to the manufacturer of producing some emberizing material mixtures may increase as a result of the use of substitutes for asbestos. This may lead to slight increases in the average price of separately sold emberizing kits. This price effect is expected to total less than $25,000 in the year following the promulgation of the ban, the report said. No effect on the overall price level of gas logs is expected, whether they are frosted, unfrosted, or packaged with emberizing kits.

Some manufacturers, distributors, and retailers have incurred, and will for a period of time continue to incur, costs associated with the voluntary recall of potentially banned products. These costs may total up to $20,000 for some firms.

The report said the utility derived from the product may be adversely affected. Available substitutes for asbestos are said to be generally inferior in simulating the effect of glowing embers. No effect on the heating ability or efficiency of gas logs will occur as a result of the proposed ban, according to the economic analysis staff.

Some health benefits may accrue to consumers and workers engaged in emberizing material production, the reports concluded, but the extent of these benefits is not known, and is expected to be slight.

Industry Profile

The report presents a profile of the patching compound industry that indicates that small businesses will be hardest hit by the proposed ban. The three largest producers in the industry (Georgia-Pacific, National Gypsum, and United States Gypsum) already appear to have eliminated asbestos from their formulations, so the costs associated with reformulation necessitated by the ban will be incurred primarily by the other producers, most of which are small businesses. These firms do not have asbestos-free compounds, and they lack the technical research capability that the industry leaders have used to develop asbestos-free formulations.

The largest producer, according to the CPSC, reportedly spent over $1 million over a period of years to develop its asbestos-free formula. Some of the larger firms said they would be willing to license their formulations to other businesses, but the cost for such licensing has not yet been determined.

All firms, large and small, will incur testing costs, the CPSC report noted. Producers, distributors, and retailers of patching compounds may also have to incur costs associated with the disposal or recall of products in inventory, and to a lesser extent, the recall of some merchandise in the hands of consumers and professional contractors. Though repurchase is not required under a Section 8 ban, this will probably occur to the extent that banned products can be identified and either returned physically for refund or credit, or disposed of after credit is claimed.

The CPSC estimates manufacturers' current finished goods inventories at about $10 million, or about one month's production. In general, the report said, the shorter the effective date, the greater the adverse effect on retail inventories will be.

Even in the construction industry, the hardest hit will be the small businesses. Small manufacturers may be disproportionately affected by the ban, the report noted, because they are the firms without extensive reformulation capabilities. Similarly, the ban may have an adverse effect on drywall finishing contractors, including possible temporary reductions in employment, if drywall finishing cannot be completed due to regional materials shortages. This could lead to overall construction delays.

The CPSC estimates that consumers would have to pay an increase in price of about 20 to 60 cents per gallon of patching compound, and the overall increase in price to be paid by the American public could run as high as $60 million.

As far as benefits to consumers are concerned, the report noted that the proposed ban could result in a longer life for consumers who are heavy users of the product. For very infrequent users, little benefit is expected to accrue. The report stated that the primary health benefits of the proposed ban would accrue to drywall contractors, who work with the product every day.

Auto Safety

BUS MANUFACTURER SEEKS EXEMPTION FOR BRAKE-RELATED NONCOMPLIANCES

A special exemption from motor vehicle safety defect notification and remedy requirements is being sought by Motor Coach Industries, Pembina, North Dakota, for 922 buses whose service brake warning signal and brake release times do not comply with federal standards, the National Highway Traffic Safety Administration announced on November 21.

According to the safety agency, Government tests of an MC-8 Coach revealed that the service brake warning signal required under Motor Vehicle Safety Standard No. 121, Air Brake Systems (Reference File, 901:0845) to come on when the service brake reservoir system is below 60 pounds per square inch actually functioned only at pressures of 56.5 psi and below.

Additionally, the tests disclosed that the brake release time of an MCI bus was 0.64 seconds, rather that 0.55 seconds as required under the air brake standard.

MCI contends that those matters are inconsequential as they relate to safety because it is "usual" for an air pressure gauge to have a setting to tolerance of plus or minus 5 psi and because the brake release time differential of the vehicle and the requirement does not affect "safety in any manner that we can foresee in our experience."

BON - 01960

December 6, 1977

Mr. Ron Glowacki
JOHNSON & HIGGINS OF OHIO, INC.
1530 Hanna Bldg.
Cleveland, OH 44115

Dear Ron:

Thanks for a copy of the article from Bureau of National Affairs on the subject of the "Economic Impact of Asbestos Ban".

As written, this report would indicate about a 180 degree turnabout from the approach that has been used to date, and it will be interesting to see exactly what happens when they finally publish--presumably, by the 12th of December. Thanks for forwarding.

Cordially yours,

BONDEX INTERNATIONAL, INC.

Julius K. Nemeth

JKN/zjh