UNION CARBIDE

INTERNAL CORRESPONDENCE

II, E, 9

PLAINTIFF'S EXHIBIT

UC-234

MINING AND METALS DIVISION

4625 ROYAL AVE., P. O. BOX 579, NIAGARA FALLS, NEW YORK 14

To (Name) Mr. P. J. Morgan
Division Law Dept.
Location 47th Floor
270 Park Avenue
New York, NY 10017

Date December 31, 1974

Originating Dept. - ~~XXXXXXXXXXXXXXXXXX~~ "Calidria" Asbestos

Answering letter date

Copy to R. E. Byrne, Jr.
J. L. Myers
W. C. Thurber

Subject Recent Incidents - OSHA Inspections of "Calidria" Customers

Dear Pat:

Over the past two months five separate instances at widely scattered locations have been reported to us where OSHA inspectors appear to have been overzealous in their interpretation and enforcement of the regulations. Details as I have them to date are in Attachment I.

Typically, our customers have said that when the inspector found asbestos on the property a fine was threatened unless it was removed and/or the user was told that if he wanted to continue to use asbestos he must meet all the protective clothing, changehouse, and similar requirements that actually only come into effect if the allowable limits are exceeded. All this was done without the inspector measuring the dust level.

The customers' reaction is generally that he would rather "switch than fight", particularly when faced with the complex, and expensive complience requirements stated by the inspector. Usually, but not always, there is also an emotional reaction that the government inspector has wide discretion under the law and if they argue with him on asbestos he can cause a lot of trouble in other areas.

In addition to these cases, there have been several others over the last year upon which we hoped were isolated instances and let drop. In general the customers involved are moderate size, but unfortunately are frequently those using the top of the line product, RG-244. We feel that it is important to our business to do something <u>now</u> to discourage this type of illegal action by OSHA before it becomes more widespread. This is obviously a very sensitive area from considerations of the law, our dealings with government regulatory agencies, and our dealings with our customers. The purpose of this letter is to make you aware of the current situation and request your advice and counsel. I will be out of the office until January 13 and will call you then. Hopefully we can get the appropriate people together shortly thereafter and arrive at a course of action. In preparation for this, a possible course of action has been outlined for consideration (Attachment II). The field representatives who deal with these customers have also been requested to try to obtain, on a low key basis, some more specific information.

RECEIVED
JAN 2 1975
UCC-CALIDRIA

Regards,

H. B. Rhodes

H. B. Rhodes

A08613

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Attachment I

I Columbia Products, Newberry, SC

The field report is shown below:

NY TLX 12-20-74 212-867-4155
H B RHODES NIAGARA FALLS NX - PLS RELAY 710-524-1664

SPOKE WITH THE PLANT MANAGER AT COLUMBIA PRODUCTS IN NEWBERRY SC TODAY RE THEIR OSHA INSPECTION. OSHA WAS IN AND INITIALLY SAW THE 244 AND WERE READY TO FINE THEM $1000 FOR HAVING IT ON HAND. HAMMOND THE P.M. THEN WHIPPED OUT OUR DUST COUNT SHOWING THEM TO BE BELOW THE LEVEL AND THE INSPECTOR BACKED DOWN SLIGHTLY. HE THEN PUT A SAMPLER OF HIS OWN AN ONE OF THEIR OPERATORS AND RAN IT FOR 8 HOURS. HE REPORTED BACK LATER TO THEM THAT HIS RESULTS ALSO SHOWED THEY WERE BELOW THE LEVELS. HOWEVER THEY WERE CITED $160 FOR IMPROPER BAG DISPOSAL \WHICH THEY AGREE WAS SO\ SOME FIBER ON THE FLOOR AND NOT HAVING MEDICAL EXAMS AND RECORDS. THEY WERE ADVISED THAT IF THEY PLANNED ON CONTINUING TO USE 244 THAT THE MEDICAL REQUIREMENT HAD TO BE SATISFIED. IN FIGURING OUT THE EXAM AND RECORD KEEPING COST THE EXPENSE OF USING A PALLET A MONTH OF 244 WOULD NOT JUSTIFY IT SO THEY HAVE GONE BACK TO CABOSIL EVEN THOUGH THEY WOULD RATHER USE 244. TOLD HAMMOND THAT AS FAR AS I COULD TELL THE INSPECTOR WAS CORRECT IN THE CITATIONS HE ISSUED AND THAT MEDICAL EXAMS WERE A REQUIREMENT. IF THIS IS GOING TO BECOME A TYPICAL CASE I THINK WE SHOULD TRY AND COME UP WITH SOME KIND OF COUNTER ACTION TO COMBAT IT AS IN THIS CASE I COULD NOT REALLY BLAME COLUMBIA FOR NOT USING 244 AND GOING BACK TO x.

REGARDS JACK WALSH ATL

R + D METALS NF

UNI CARBIDE NY
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HBR Comment:

Regarding the waste disposal citation, our data for other locations suggest that they probably were not in violation. No way to tell for sure without the details of the citation.

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II. Beetle Plastics

REPORT OF CALL

Calidria ASBESTOS

: for T. P. Norris
W. C. Thurber ✓
J. E. Walsh
KC-File
NF-File

UNION CARBIDE CORPORATION
P.O. Box 579 Niagara Falls, N.Y. 14302

) HB Rhode
w/ cc to me
pls handle
JLM
12/23/74

By G. L. Dickson

Date 11/20/74

Full Name Beetle Plastics 198 Airport Rd. Address Falls River, MA (617) 677-9464 Mfrs. of	Interviewed Joe Desjardins - P.A. Mr. Demoranville - General Manager (telecon)

OBJECTIVE

Called at the request of J. E. Walsh.

BSERVATIONS

Beetle Plastics had been using RG-244 purchased from Allied Resin until inspected recently by an OSHA hygenist. Apparently this woman told them that they could not use asbestos unless they gave medicals every month, provided special clothing, ~~used respirators~~, etc.. Because of this they have stopped using RG-244 although they prefer it to pyrogenic silica.

ACTION

Joe asked for a complete package from us which would detail exactly what was required on their part. I promised to send information but would prefer a visit with them, along with one of our toxicology experts. If what Joe told me is true we had better have a confrontation with this OSHA representative or else we will lose even more sales in this area.

JLM Can we discuss in the near future.

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typed 12/2/74
mlv

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DEC 4 1974

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III Reichhold Chemical

Calidria ASBESTOS

UNION CARBIDE

THE DISCOVERY COMPANY

UNION CARBIDE CORPORATION • MINING & METALS DIVISION • P.O. BOX 579 • NIAGARA FALLS, N. Y. 14302 • TEL: 716-278-3376

December 16, 1974

Mr. John Dereich
Reichhold Chemical, Inc.
Sterling Division
1954 Ohio River Blvd.
Sewickly, PA 15143

Dear Mr. Dereich:

At your request, a sample of "Calidria" Asbestos RG-244 has been sent to your attention. The enclosed literature and pricing information is for your files.

The information you relayed to us, saying in effect, that according to OSHA if you continued to use asbestos products you would be fined $10,000 is simply not true. OSHA has issued a regulation (copy enclosed) which governs the levels of airborne asbestos fiber allowed. In a manufacturing situation such as yours, it is very unusual to find asbestos levels in excess of these limits. One provision of the regulations is that a fiber count must be taken in order to establish that the regulation has not been violated. For the past three years we have offered this service to our customers on a no-charge basis. Upon completion of your evaluation of the technical merits of RG-244, if you desire to put it in as a production item we would be pleased to come to your plant and conduct an airborne asbestos fiber count.

Please let us know if we can be of any further assistance. Simple complete the enclosed card or contact Mr. G. L. Dickson, Manager, Eastern Region Sales and Technical Services at the above address.

We appreciate your interest in our products and we look forward to serving you.

Very truly yours,

E. J. Kleber
Customer Service Representative

cc: Mr. G. L. Dickson

A08616

Enc.
/ds

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REPORT OF CALL

IV Standard Paint & Varnish

Calidria asbestos

: for T. P. Norris
W. C. Thurber
J. E. Walsh
KC-File
NF-File

UNION CARBIDE CORPORATION
P.O. Box 579 Niagara Falls, N.Y. 14302

By H. B. Rhodes ✓

Date 11/13/74

Full Name Standard Paint & Varnish Harvey, LA Address Mfrs. of Epoxy Marine Paints	Interviewed Mr. Fred Kinsler - Technical Director (Telecon)

OBJECTIVE

Return customer's telephone call at his request.

OBSERVATIONS

Walked into a real beauty here. Mr. Kinsler was in the process of having an OSHA inspection and he wanted me to get on the phone to "explain the OSHA asbestos regulations to the inspector."

I talked at some length with the inspector Steve Herron who sounded quite young. He wanted to know whether RG-244 was asbestos and I could only admit that it was. He wanted to know about dust levels on handling and particularly around warehouse locations with emphasis on the need for signs.

Told him we had monitored 10-15 dumping situations for RG-244 usually without special ventilation and were generally well below the limit, usually around 1-2 fibers/cc. We had not monitored warehouse activities to any extent but the bags were polyethylene overwrapped. Also that RG-244 tended to give airborne dust counts 1/2 to 1/3 those of conventional asbestos in comparable handling situations. His comment was that he would note this in his report but I don't think he really bought it. They will probably get a citation for no signs.

I finished up with a short conversation with Fred Kinsler. He seemed to have calmed down somewhat and requested me send him another copy of our dust count report since he could not locate his.

ACTION

JEW Follow up with Fred in a week or so to prevent further panic. The size of our problem here will depend on the OSHA report.

HBR Send copy of dust counts. (Done 11/14/74)

A08617

HBR Comment:

Standard Paint & Varnish were citied for not having signs and a number of other picky items. They say they will contest the citations.

A08618

V. Baker and Taylor, Texas

The information below was received verbally from Montello. A Baker and Taylor drilling rig was inspected by OSHA. He found a broken step (for which he issued a citation) and asbestos on location. He did not take any air samples. He told them that if they used asbestos they must:

1. Put up warning signs where the asbestos is stored and on the rig where it is used.

2. Provide the men with special clothing.

3. Notify the laundry where the special clothing is sent so they could also put up signs.

4. Be faced with heavy fines if they didn't comply.

Baker and Taylors current position is:

1. They will provide details to Wyatt when he makes a personal visit.

2. They do not want to be party to any litigation.

3. There will be no more Supervisbestos used on Baker and Taylor rigs until the "Mickey Mousing" is straightened up.

VI. Added Note to Mr. Morgan

The sign posting requirement noted in IV and V seems to be a favorite of the inspectors these days, some cases in ridiculous extremes.

The regulations says that signs must be posted "... where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in paragraph (b) ..."

It concludes, "Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers."

The intent of the paragraph is clearly to protect the unsuspecting worker form entering areas where he can be exposed to concentrations over the allowable limits. At least some of the inspectors are taking it to mean any place asbestos is present, regardless of the chance that the limits will be exceeded. Your comments are solicited.

A08619

Attachment II

Possible Action on OSHA "Overenforcement" Question

The course listed below could be followed by Union Carbide Corp. acting alone or via AIA/NA if they chose to spearhead it. The AIA/NA route seems to have more potential clout if it can be moved forward rapidly enough.

1. Assemble the facts now on hand plus whatever others are available from AIA/NA members and set up a meeting with the senior OSHA enforcement people in Washington.

2. Take a low key position with OSHA that these are isolated incidents but are becoming numerous enough to cause real concern. Ask them the question what should be one about it. Our objective would be to have them put out a clarifying directive to the field enforcement offices.

3. We could instead go to the field offices but I suspect would only be referred back to Washington.

Added Note:

It becomes evident on reviewing what facts we now have on these incidents that there are really two types of problem:

1. Where the inspector makes threats or misleads the user on what he must do to comply.

2. Where there is a reasonable difference of opinion such as the sign posting situation and may be actual citations to contend with.

We need to decide how to handle both situations.

A08620

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