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UNION CARBIDE

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

PLAINTIFF'S EXHIBIT UC-569

May 27, 1977

Mr. Murl Self
Proko Company
1910 Wall Street
Dallas, TX 75215

Dear Mr. Self:

You are no doubt aware of recent action by the Consumer Product Safety Commission (CPSC) to propose a ban on consumer use of asbestos-containing taping, spackling and joint-sealing compounds. Their action was instigated by a petition filed on 7/15/76 by the National Resources Defense Council (NRDC).

The CPSC voted on 5/2/77 to take action on the petition via the "Proposal and Hearing" procedure. This involves the following steps and would probably take a minimum of six months:

1. Publish the proposed regulation.

2. Accept written comments.

3. Schedule and hold a public hearing.

4. Publish a final regulation.

Although the CPSC has no jurisdiction over the manufacture and sale of products for commercial use, the proposed ban, depending on its wording and interpretation, could inadvertently affect the packaging and sale of products intended for industrial users. It is our understanding that the usual commercial packaging, 5-gallon pails of ready-mix and 25-pound bags of dry-mix, are stocked by some retail outlets, such as lumber yards. It is highly probable that these products could be purchased and used by a "do-it-yourself" consumer. The CPSC, in prior actions, has taken an ultra-conservative approach that any product which can be obtained by a consumer is a "consumer product" and would be covered by their regulations. This is the type of question which could be discussed and resolved at a public hearing.

The CPSC also has the power to implement an immediate ban on a product and to order its recall to prevent further distribution to consumers. Although we do not expect this to happen, the NRDC and other activist groups are continuing to press for this type of action; and the CPSC can vote at any time to change their action plans. There is, at the present time, little or no counter-pressure from industry; and this is the main reason for our letter to you. Enclosed is a copy of information sent to the CPSC last September by the Asbestos Information Association. This information was developed by Dr. H. B. Rhodes of our asbestos group.

As you can see from the contents of the enclosure, we do not believe that the use of asbestos in spackling and similar compounds presents a significant hazard to the consumer. However, we do not feel that it would be prudent to oppose a ban on asbestos-containing compounds in "consumer-type" packaging, i.e., 1-5 pounds or 1-4 quarts. The consumer does not need the high-performace products (containing asbestos) which are required by commercial applicators, and the "protection" of your products for commercial use is much more important.

Also enclosed is a copy of our letter recently sent to members of the Consumer Product Safety Commission. We felt that it was appropriate to take this action before asking you to become involved. If you are concerned about the possibility of an inadvertent and perhaps immediate ban on your asbestos-filled products, even though they are intended for commercial use, we suggest the following action:

1. Review the enclosure to determine the facts about the issue.

2. Express your concern to the CPSC, including the following points:

   A. The effect on your commercial products which could result from a ban on consumer products.

   B. Your preference for the proposal/hearing procedure rather than any immediate action which is unnecessary and could have a severe deleterious effect on your business.

   C. A hearing is necessary to properly air the potentially harmful consequences of any CPSC action.

   D. Suggest, if you concur, that your products be labeled with the regular OSHA asbestos warning plus "For Commercial Use Only." This would be based on the assumption that such products would then be exempt from CPSC regulations.

Your comments, opinions, etc. should be expressed directly to:

Mr. S. John Byington, Chairman
Consumer Product Safety Commission
1750 K Street, N.W.
Washington, DC 20036

Please be assured that Union Carbide will take an active part in a hearing or in any other phase of the CPSC procedure where such action is appropriate and necessary to assist our customers. Please let us know if you require additional information or wish to discuss this matter in more detail.

Very truly yours,

John L. Myers

John L. Myers
Marketing Manager

/cjb
Enclosures

P.S. It is obviously at your discretion, but we would appreciate receiving copies of correspondence between your company and the CPSC.

UNION CARBIDE CORPORATION

270 PARK AVENUE

NEW YORK, N.Y. 10017

A. S. Hart
Vice-President

May 26, 1977

The Honorable
S. John Byington
Chairman
Consumer Product Safety Commission
1111 18th Street, N.W.
Washington, D.C. 20207

Dear Mr. Chairman:

This letter is in regard to potential action by the Consumer Product Safety Commission on the second petition by the Natural Resources Defense Council to effect an immediate ban on certain asbestos-containing spackling and tape joint compounds to prevent their further use by consumers.

Union Carbide is engaged in the mining and milling of asbestos ore at a plant in California and markets asbestos for use in numerous applications including tape joint compounds.

We are not opposed to a ban on the consumer use of the products in question, even though we do not believe that the use of asbestos in these products presents a significant health hazard. What we are proposing is that a ban be implemented through Section 8 of the Consumer Product Safety Act, so that the Commission will have access to the full implications of its ruling.

To supplement this request, we call your attention to the communication the Asbestos Information Association sent to you on September 1, 1976. Our concern is two-fold:

1. An immediate ban, especially if coupled with a product call-back, would cause an unnecessary hardship for our customers who manufacture spackling compounds.

2. The wording and/or interpretation of your ruling could inadvertently inhibit or prohibit the use of asbestos-containing tape joint compounds by commercial applicators.

"Ready-Mix" (pre-wetted) tape joint compounds for commercial as contrasted to consumer use are normally packaged in 5-gallon pails (62.5 pounds) or in 50-pound polyethylene bags in cardboard boxes. "Dry-Mix" compounds are packaged in 25-pound bags which yield about 50 pounds of compound when water is added. These packages contain enough material to finish the drywall in three rooms and are normally marketed through wholesale channels to commercial applicators. This quantity of material is substantially greater than required for normal consumer use. However, some building supply outlets stock these packages for small contractors and they would, therefore, be available to a "consumer." If these commercial packages are judged to be "...packaged in a form suitable for use in the household," the ban requested by the NRDC will, in effect, apply to the commercial as well as the consumer market.

Asbestos-free spackling and tape joint compounds have proved to be technically inferior and a ban on the package sizes mentioned above, which are targeted for commercial users, would destroy the market.

In summary, we feel that because of the relatively insignificant consumer hazard and the potential deleterious effect on the commercial market, we respectfully recommend that you implement a ban on the products in question via Section 8, the "proposal and hearing" procedure. This would provide industry with the opportunity to contribute information on the size and value of the consumer market and to respond concerning what effect your rulemaking could have on the commercial market.

We would be glad to work with you on the wording of your proposal to limit or negate its effect on the commercial market for asbestos-containing tape joint compounds.

Sincerely,

(Original signed by)

A. S. Hart

CC: Commissioners Pittle, Franklin, Kushner and Garrett
Messrs. Kapps, Garrish and Hobby

ASBESTOS INFORMATION ASSOCIATION
NORTH AMERICA
1835 K Street, N.W., Washington, D.C. 20006 • (202) 223-4885

1 September 1976

Mr. S. John Byington
Chairman
Consumer Product Safety Commission
1750 K Street, N.W.
Washington, D. C. 20036

Re: Petition of Natural Resources Defense Council, Inc.,and the Consumers Union of U.S.A., Inc., for the Promulgation of a Rule Declaring Certain Patching Compounds to be Banned Hazardous Substances

Dear Chairman Byington:

The Asbestos Information Association/North America, an incorporated, non-profit organization of firms and corporations engaged in the manufacture or processing of asbestos-containing products and in the mining and milling of asbestos fiber, desires to comment on the petition to the Commission submitted July 15, 1976 by the Natural Resources Defense Council, Inc. and the Consumers Union of U.S.A., Inc. The petitioners seek an order by the Commission to ban patching compounds containing asbestos by declaring such compounds to be hazardous products.

Comments contained in the attachment have been prepared following consultation with member companies of the Association and other expert sources of information.

We are pleased to have this opportunity to present our comments and to advise that, if desired, we are prepared to further address this matter with you or members of your staff.

We wish to inform you that Ms. Shacter of the Commission staff has been highly efficient and responsive to her public interest charge in the conduct of business with this Association. We commend to your attention her professionalism and pleasant demeanor.

Sincerely yours,

R. H. Mereness
Executive Director

Enclosure

ASBESTOS INFORMATION ASSOCIATION
NORTH AMERICA
1835 K Street, N.W., Washington, D.C. 20006 • (202) 223-4885

Response to Consumer Product Safety Commission on petition by Natural Resources Defense Council, Inc. and Consumers Union of U.S.A., Inc. for the Promulgation of Rule Declaring Certain Patching Compounds to be Banned Hazardous Substances, dated July 15, 1976.

30 August 1976