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UNION CARBIDE

INTERNAL CORRESPONDENCE

PLAINTIFF'S EXHIBIT
UC-901

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METALS DIVISION

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Copy to Messrs. R. E. Byrne, Jr.
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Date April 7, 1977

Originating Dept. "Calidria" Asbestos

Answering letter date

Subject Status of Spraying Legislation - State of California

The attached memorandum is intended to bring you up-to-date on the subject noted. I am well aware that you are already familiar with much of the historical material but it was included to make the memorandum useful for limited distribution to the most interested parties within the immediate asbestos "family." Specifically, this would include, but not necessarily be limited to, such persons as Mereness, Gabrielson, Fenner, Mortonson (Flintkote), Norris, Harrisons and Crosfield, and Earl Shortridge. It may also have value with Carboline, Bill Krebbs (General Motors), Tremco, and other customers who are involved with sprayable products used in California. Any such distribution to customers would, obviously, be through our sales representatives.

I have tried to describe the situation accurately and frankly without "insulting" anyone. Any comments or suggestions you may have on the content, ideas, or use of this memorandum will be appreciated.

H. B. Rhodes

HBR:cjb
Attachment

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CONFIDENTIAL

MEMORANDUM

STATUS OF SPRAYING LEGISLATION - STATE OF CALIFORNIA - MARCH 1977

INTRODUCTION

On May 9, 1974 Senator Milton Marks introduced a bill into the California legislature that proposed to ban all spraying of asbestos-containing materials upon buildings and structures in the State of California effective July 1, 1976. The bill was prepared at the urging of the insulation workers' union and was intended to stop the spraying of unbound asbestos building insulation. It should be noted that such spraying was already prohibited by the Federal EPA Asbestos Regulations of April 6, 1973. Although this was pointed out to Senator Marks, there were political pressures to move ahead with the bill and it was passed with a modification to exempt cold cut-back asphalt roof coatings.

ACTIVITIES DURING 1975 AND 1976

Substantial efforts to have the bill modified or amended were made during 1975 by three companies:

1. Riverside Cement where principal interest was a portland cement based plaster that contained about 0.5% asbestos. This plaster moves to the field dry in bags and is mixed with water and sprayed on location.

2. Textured Coatings of America (TCA) whose principal interest was a line of alkyd-based exterior and interior, factory-mixed sprayed maintenance and decorative coatings. Asbestos content was about 5%. TCA is a UCC customer.

3. Union Carbide Corporation with some spraying data on roof coatings supplied by Flintkote. This started out to be an AIA/NA effort but as it proceeded it was handled largely in the name of Union Carbide. The UCC interests included, in addition to the Textured Coatings products, laminating resins, a variety of alkyd and epoxy-based maintenance and decorative coatings, and field-mixed wall and ceiling texture coatings.

The UCC effort was directed at having Senator Marks introduce amendments for wetted products made up with permanent binders. Legislative contact was through the California Manufacturers' Association.

Senator Marks involved Dr. Selikoff as his adviser. Dr. Selikoff raised all sorts of questions, not so much about spraying but about weathering of the sprayed products and asbestos released during demolition. The international union officials in Washington also got into the act. Several talks with Selikoff appeared to answer his questions but he continued to generate more questions faster than answers could be provided and nothing was really resolved.

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The details of the activities of TCA and Riverside Cement during this period are not know. TCA came very close to getting an exemption bill through in the closing hours of the legislative sessions but a communications gap caused it to fail.

The 1976 efforts of these three companies were much better coordinated although there was considerable friction between TCA and Riverside Cement. At the suggestion of Mr. Eddie Story of the California State Insulation Workers Union, both TCA and Riverside hired the Union consultant, Dr. Clark Cooper, to test their products for asbestos release. Mr. Story was willing to accept Dr. Cooper's findings and not oppose the changes if Dr. Cooper felt they would not allow hazardous conditions. In this way involvement with the International Union and Dr. Selikoff was avoided.

Dr. Cooper's organization collected samples during sanding and wire brushing of the two products. Demolition was simulated by crushing pieces of structures that had been coated with the materials with a hammer. His conclusion was that the materials presented no significant hazard. He also reviewed the data submitted by Union Carbide and did not find any problems with the applications covered except where the products were dry-mixed on the field. This necessitated dropping the efforts to include wall and ceiling texture paints in the amendments.

On the basis of this evidence, Senator Marks agreed to introduce amendments to the original bill. The bill, however, immediately ran into opposition from Dr. Parkinson, the Chief of the Occupational Health Section of the California Department of Health. His opposition was based on the philosophy that there was no safe level for asbestos and any change in the law that permitted more asbestos to be used in any form was bad, i.e., the zero exposure, zero risk approach. Fortunately, Dr. Parkinson's stature and credibility with the legislature was not good and he had not been particularly diplomatic in his past dealings with them. In spite of this, his position carried considerable weight. A great deal of effort, including a change in the sponsorship of the bill to Senator Presley and a shift in committees in the Assembly, was needed to get the compromise bill attached passed and to persuade Governor Brown to sign it. Strong support from the local labor unions involved was an important factor here. It should be noted that the July 1, 1978 cutoff for the exemptions was a very reluctantly accepted provision but was the only way the bill could be gotten out of the Senate Committee.

CURRENT ACTIVITIES (Late 1976, early 1977)

During the assembly committee hearings, the Chairman, Jack Fenton, was extremely critical of the Department of Health for opposing the bill on philosophical grounds and criticizing the industry-provided data without any of their own. His committee stated that they would ramrod the collection of appropriate data by the DOH and noted that if there was no real hazard, there was no reason for the 1978 cutoff in exemptions. Mr. Fenton, a democrat, considers himself the patron saint and guiding light of Cal/OSHA and is also one of their strongest critics. He is a powerful legislator and it is extremely doubtful if any bill affecting OSHA could be passed over his opposition.

Following the committee hearings Cal/OSHA set up a program to collect the required data. Textured Coatings, Riverside Cement, and UCC were contacted to provide test locations where Cal/OSHA could collect airborne samples. Although UCC (and Flintkote) provided sites, emphasis was placed on the Textured Coatings and Riverside Cement products. In this work the spraying

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step was largely ignored. Tests were run during the removal of coatings or the paint from plaster by sandblasting. As might be expected, some significant release of free asbestos fibers under this type of distruction of the coating was found.

The insistance on sandblasting as an appropriate testing procedure has sparked a serious controversy between TCA and Cal/OSHA. There are certain regulations in California that prohibit or severely limit the use of dry sandblasting. The exact nature of these has not yet been resolved. The adversary position that it has created with Cal/OSHA, however, has caused Riverside Cement to disassociate itself from TCA entirely. UCC who has been directly connected with TCA has an image problem by association.

It is also important to point out that the original opponent in the Health Department, Dr. Parkinson, has been replaced by the former Director of the Los Angeles Region of Cal/OSHA, Mr. James Heacock. Mr. Heacock is an industrial hygienist with many years of service for the state. Secondhand reports indicate that he is strongly dedicated to the protection of the worker, as is appropriate for his position, but is not a "zero-risk, zero-exposure" crusader like his predecessor. He continues to take the position, however, that he will oppose any changes in the spraying legislation that can result in excessive asbestos exposure regardless of the point in the use where the exposure might occur. He also feels that the industry data presented at the 1976 hearings were not properly representative of commercial situations and as such was midleading. Cal/OSHA must collect their own data.

ALTERNATIVE APPROACHES

Faced with this situation, which is certainly improved with the departure of Dr. Parkinson but is still difficult, the following alternative approaches can be considered:

1. Take the position that the legislation addressed only the spraying operation and amendments to it should be examined only on the basis of this step. It can be argued that subsequent renovation and demolition operations are strictly covered by OSHA and EPA regulations that apply regardless of how the asbestos containing material is applied. It is discriminatory to single out spraying for special, more stringent, regulations unless special hazards of the act itself warrant such individual treatment. It is also inappropriate for Cal/OSHA to argue that a procedure should be prohibited because subsequent, illegal acts, could treat it in a manner to cause a hazard.

2. Examine carefully what commercial handling practices are legal and what are normally used throughout the "life" of a product from manufacture to final demolition. Assist the California Department of Health in obtaining measurements on the various exposure levels that can occur with each product and reformulate or abandon products which appear to cause problems. This would have to be done on a product-by-product basis for all or at least a substantial number of products. Hopefully, legislation could be passed to remove the 1978 cutoff for those products that prove to have a reasonably clean bill of health.

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Actually, at this point in time the two approaches are more complementary than mutually exclusive. Some missionary work on number 1 can be carried out while active pursuit of number 2 is in progress. It is Union Carbide's intent to follow this combined approach. It must be emphasized that action on alternative 1 has to be very low key or it could jeopardize the cooperation of the Health Department which is essential for success by this route. A hard push on number 1 should be considered as a last resort.

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The people of the State of California do enact as follows:

SECTION 1. Section 25910 of the Health and Safety Code is amended to read:

25910. (a) Except as provided in subdivision (b), no person, on or after July 1, 1975, shall cause or permit the spraying of any substance containing more than one-half of 1 percent asbestos in or upon a building or other structure during its construction, alteration, or repair. Except as provided in subdivision (b), no person, on or after July 1, 1976, shall cause or permit the spraying of any substance containing any amount of asbestos in or upon a building or other structure during its construction, alteration, or repair.

~~(b) Cold process cutback asphalt roof coatings, portland~~ *(b) Portland* cement plaster containing less than one-half of 1 percent asbestos, and exterior and interior coatings and laminating resins containing encapsulated asbestos fibers bound within the finished product from manufacture through application, shall be exempt from the provisions of this chapter *until July 1, 1978. Cold process cutback asphalt roof coatings shall be exempt from the provisions of this chapter.*

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that the changes made by this act may take effect prior to July 1, 1976, and at the earliest opportunity during the construction season, it is necessary that this act take immediate effect.

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