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April 27, 1977

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

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MAY 27 1977
UCC-CALIDRIA

Re: HP76-18

Dear Chairman Byington:

We are writing to urge that the Commission grant our petition HP76-18 (July 15, 1976) which requests the Commission to declare consumer patching compounds containing asbestos to be banned hazardous substances and, in doing so, that the Commission proceed pursuant to § 2(q)(2) of the Federal Hazardous Substances Act, and find such products to present an "imminent hazard" to the public health and publish an order declaring such products banned hazardous substances pending the completion of rulemaking proceedings. In addition, we are taking this opportunity to provide the Commission with additional information concerning other consumer products containing asbestos which present a hazard to the public health.

I. Patching Compounds Containing Asbestos Present an Imminent Hazard to the Public Health

Section 2(q)(2) of the Federal Hazardous Substance Act provides in part:

> . . . if the [Commission] finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, [it] may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be deemed to be a 'banned hazardous substance' pending the completion of proceedings relating to the issuance of such regulations. (Emphasis added.)

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PLAINTIFF'S EXHIBIT
UC-1602

As you are aware, as soon as such an imminent hazard order is issued, the automatic repurchase provisions of § 15 of the Federal Hazardous Substances Act 1/ become effective and the product is taken "out of commerce" pending the completion of rulemaking proceedings.

"Imminent hazard" has been defined by regulation: 2/

> . . . [A]n imminent hazard to the public health is considered to exist when the evidence is sufficient to show that a product or practice, posing a significant threat of danger to health, creates a public health situation (1) that should be corrected immediately to prevent injury and (2) that should not be permitted to continue while a hearing or other formal proceeding is being held. The 'imminent hazard' may be declared at any point in the chain of events which may ultimately result in harm to the public health. The occurrence of the final anticipated injury is not essential to establish that an 'imminent hazard' of such occurrence exists. . . .

1/ Section 15 provides in part:

> (a) In the case of any article or substance sold by its manufacturer, distributor, or dealer which is a banned hazardous substance (whether or not it was such at the time of its sale), such article or substance shall, in accordance with regulations of the Secretary, be repurchased as follows:
>
> (1) The manufacturer of any such article or substance shall repurchase it from the person to whom he sold it, and shall --
>
> (A) refund that person the purchase price paid for such article or substance. . .
>
> (2) The distributor of any such article or substance shall repurchase it from the person to whom he sold it, and shall --
>
> (A) refund that person the purchase price paid for such article or substance. . .
>
> (3) In the case of any such article or substance sold at retain by a dealer, if the person who purchased it from the dealer returns it to him, the dealer shall refund the purchaser the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return.

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2/ 21 CFR § 3.73 (1976). This Food and Drug Administration

(footnote continued on next page)

> In exercising [its] judgment on whether an 'imminent hazard' exists, the [Commission] will consider the number of injuries anticipated and the nature, severity, and duration of the anticipated injury.

Patching compounds containing asbestos are products which pose such an "imminent hazard" and should immediately be removed from the marketplace.

The serious hazards to the public health caused by consumer use of patching compounds containing asbestos are summarized in our petition.3/ Briefly, use of these products exposes consumers to a substantial increase in the risk of lung cancer and mesothelioma. Mesothelioma is an always fatal malignancy of the pleura and peritoneum, membranes which enclose the lungs and abdomen. As presented in our petition, even very brief exposures to asbestos fibers such as those experienced by consumers of patching compounds have been shown to substantially increase the risk of cancer. The recent medical literature states that tissue can be permanently damaged by low exposure to a carcinogenic agent in a very brief time span, although it is followed by a long time span for the growth and clinical manifestation of the tumor.4/

(footnote 2 continued)
regulation is applicable to the Federal Hazardous Substance Act provision. See § 30(e)(2) of the Consumer Product Safety Act.

3/ See also attached Memorandum to Corn, M., Assistant Secretary of Labor, Occupational Safety and Health Administration, from Finklea, J., Director, National Institute for Occupational Safety and Health (December 15, 1976) concerning occupational exposure to asbestos. Dr. Finklea, in urging that the occupational standard for asbestos exposure be reduced to one-twentieth of its current level, stated: "Because it is not possible yet to specify a safe exposure level for asbestos, only a ban on its use can insure complete protection against this mineral's carcinogenic effect." Page 2.

4/ U. Saffiotti, "Validation of Short-Term Bioassays as Predictive Screens for Chemical Carcinogens," in Screening Tests in Chemical Carcinogenesis (IARC Scientific Publications No. 12) (Montesano R., Bartsch H., and Tomatis L., ed.) 1976, at 5.

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Thus, even though lung cancer and mesothelioma often do not appear until 20 to 30 years after exposure, the "significant threat of danger to health" occurs at the time of exposure, which is at the time of use in this case. Thousands of containers of patching compounds containing asbestos are now in homes and on the retailers' shelves;5/ thousands more are at producers and distributors. It may take up to two or three years to complete rulemaking proceedings, during which time these products would continue to be sold, exposing hundreds of thousands of consumers to the increased risks of lung cancer and mesothelioma.

Clearly then patching compounds containing asbestos "create[] a public health situation (1) that should be corrected immediately to prevent injury and (2) that should not be permitted to continue while a hearing or other formal proceeding is being held." We therefore urge the Commission, in granting our petition, to act quickly to protect the public health by proceeding pursuant to § 2(q)(2) of the FHSA and issuing a notice of recall and repurchase pending rulemaking proceedings.

II. Other Asbestos-Containing Consumer Products

In our July 15, 1976, letter to you, we requested the Commission to examine other consumer products for asbestos content and declare those products which present a significant health risk to be banned hazardous products. The product-specific information provided below is based on data obtained from our recent hardware store survey and from government and industry sources; it supplements that supplied to you by the Federal Trade Commission. We wish to call your attention to many of the more hazardous asbestos-containing consumer products on the market. These include: emberized logs and fake fireplace ash, children's modeling clay compounds, textured paints, wallboard and asbestos cement sheet panel products, vinyl asbestos flooring, brake shoes and linings, and asbestos cement powders.

As provided in Ms. Rachel Scott's petition of November 14, 1975, emberized logs and fake ash for gas fireplaces contain large quantities of asbestos. This asbestos is generally kept airborne due to air currents and physical prodding. Asbestos fibers are extremely small, and once suspended fall very slowly through the air:

5/ Patching compounds containing asbestos have a very long shelf life and may remain on the market for years following wholesale distribution. In commenting on this, Mr. Michael Helton, U.S. Gypsum Company attorney, informed us that he had recently seen a 1967 package of U.S. Gypsum patching compound (telephone communication, March 1976).

Union Carbide trial exhibit UC-1602: Natural Resources Defense Council (R. I. Compton and B. L. Castleman) to C... Published by AsbestosClaims.Law
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approximately one foot per hour. As reported in our petition, airborne asbestos is taken into the lungs of consumers where it lodges and causes damage which may lead to cancer. In 1975, consumers purchased $7 million worth of gas fire logs according to the National Retail Hardware Association. Unfortunately, there is no breakdown available on the quantity of asbestos-containing emberized logs and ash. We urge the Commission to grant Ms. Scott's request for a ban on the sale of asbestos-containing emberized logs and fake fireplace ash.

Children's modeling clay compounds and papier mache still contain asbestos, in spite of some industry effort to discourage such use. In 1973 investigators at the Mt. Sinai School of Medicine found that a shipment of 250,000 pounds of modeling clay compound purchased by New York schools in the school year 1971-72 contained more than 50 percent asbestos.6/ Of six papier mache products examined, three contained asbestos. In September 1976, Mt. Sinai researchers informed us that other modeling compounds containing as much as 50 percent asbestos were being sold.7/ Canada has acted to remove this hazard. In mid-1976 the Canadian Hazardous Products Act was amended to prohibit the importation, advertising, and sale of playthings which may release asbestos and of modeling materials which contain asbestos.8/ We urge the Commission to follow Canada's lead and move quickly to ban the use of asbestos in children's modeling clay and other playthings.

Asbestos is also widely used in textured and other paints. We do not have sales figures for texturized paints, or asbestos use figures for paint manufacturers; however, in June 1976, Consumer Reports reported that six of twenty-one textured paints examined by them contained asbestos. Of these six, five were sold in powder form, use of which results in a greater release of asbestos fibers. Union Carbide was granted a U.S. patent (#3,947,286) for asbestos in a latex paint on March 30, 1976. These products can be produced without asbestos. Those containing asbestos should be banned from the marketplace.

6/ A. Rohl, et al. "Asbestos in Strange Places; Children's Arts and Crafts Materials, Paper Products" First Annual Report to the National Institute of Environmental Health Sciences. (Environmental Sciences Laboratory, Mt. Sinai School of Medicine) July 1, 1974, at 56.

7/ Arthur Langer, Ph.D., Mt. Sinai School of Medicine, private communication (September 1976).

8/ "Through the Environmental Maze," Asbestos, p. 42 (January 1977).

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Asbestos is also widely used in stove panels and wallboards. No warning labels are on most of these products. The consumer is exposed to asbestos inhalation from sawing and handling9/ the panels and wallboards. Asbestos is also being used in plastic boards having a wood grain "effect" (U.S. Patent #3,954,555 assigned to National Gypsum Company, May 4, 1976). Asbestos cement sheet products are used in home construction. More than 95 thousand tons of asbestos were used in these products in 1974. Industry sources report that levels of asbestos exposure from sawing asbestos-containing boards and panels far exceed U.S. occupational standards for peak allowable exposure.10/

Vinyl asbestos and asphalt asbestos flooring are one of the most widely sold asbestos-containing consumer products. Asbestos is also used in flooring backings and adhesives. According to the Bureau of Mines, 153 thousand tons of asbestos were used in flooring products in the U.S. in 1974. Asbestos used in these products is released into the air whenever the consumer sands or scrapes the tiles or the old adhesive. In this way, an entire home can become contaminated with airborne asbestos. The medical literature reports that a man developed malignant mesothelioma after years of sanding such tiles in the course of his work.11/ We urge the Commission to ban the use of asbestos in flooring backings and adhesives and to require labels on asbestos-containing flooring which warn consumers not to sand the flooring.

Brake shoes and linings contain asbestos, which may become airborne from grinding and wear. Accumulated dust in brake parts has been estimated to contain 11 percent of all asbestos released by brake wear. Warning information on appropriate handling and care of brakes and brake linings should be provided at the time of sale. For example, accumulated dust should be removed by vacuum or wet brushing, not air blowing or dry brushing. Grinding should only be done at facilities that have grinding wheels equipped with local exhaust ventilation to a dust capture device.

9/ Grant Wilson advertises that its TYREX GENERAL PURPOSE ASBESTOS BOARD "can be cut, sawed, nailed, screwed, scored, drilled, and punched. Use in homes, utility rooms, basement, attic, kitchen, garage, shop."

10/ M. Trosper, "Third Annual Industry Government Conference, September 8-9, 1976" Proceedings, Asbestos Information Association of North America, pp. 109-115.

11/ Murphy, et al., Am.Rev.Resp.Dis. 104:576-580 (1971).

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Pure asbestos "powder" and powdered asbestos cement boiler insulation are sold to consumers by hardware retailers. Mixing of these products for use results in the release of extremely large quantities of asbestos which may remain airborne for hours. Sale of these products to consumers for home use should be banned.

As recommended above, the Commission should take early action to regulate the use of these particularly hazardous consumer products containing asbestos. Such action will also protect thousands of construction workers from very high-level exposures to asbestos and complement the efforts of the Occupational Safety and Health Administration. In addition, we urge the Commission to undertake a comprehensive study of all consumer products containing asbestos and regulate those which release asbestos into the air. One means of analyzing commercial use would be by tracing the sales of asbestos from the manufacturers. Johns-Manville, the largest U.S. producer of asbestos, sells 98% of its asbestos to manufacturers of products which contain asbestos.12/ The remaining 2% is sold to distributors.

This study could be initiated through a review of asbestos producers' sales records to determine the distributors and purchasers who manufacture consumer products containing asbestos. The Commission could then issue to these "purchasers" a formal request for the names, quantity, amount of asbestos used, end use, and distribution of all consumer products which contain asbestos. This information would then provide the basis for Commission action to regulate those consumer products which present an unreasonable hazard to the public health.

12/ Ed Fenner, Vice President, Johns-Manville, private communication (January 1977).

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Thank you once again for your consideration. We look forward to an early solution to the problem of consumer exposure to asbesto

Sincerely,

Ruby I. Compton

Ruby I. Compton, Esq.

Barry I. Castleman

Barry I. Castleman, M.S.E.

attachment

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