PLAINTIFF'S EXHIBIT

UC-3005

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April 1, 1981

BY HAND

Mr. Thorne Auchter
Assistant Secretary for Occupational
Safety and Health
Department of Labor
200 Constitution Avenue, N.W.
Room S2315
Washington, D.C. 20210

Dear Mr. Auchter:

On behalf of the Asbestos Information Association/ North America (AIA/NA), I would like to thank you and Mr. Cowan for meeting with us. Based on our discussion at our March 12 meeting, as amplified by this letter, we urge you to give high priority to implementing revised OSHA regulations concerning asbestos that are reasonable, cost-effective, and meaningful to protection of worker health.

In this letter, I would like first to describe in broad terms the harmful regulatory climate fostered by the government in recent years. Then I will present the major elements of a solution to alleviate such injury in the future, while still incorporating the necessary protection for the health of workers in asbestos operations. Following this general overview, a more detailed description of past government actions is provided to demonstrate why AIA/NA believes the regulatory solutions advanced here should be an important priority of the new Administration.

A General Overview of Asbestos Regulation and a Proposed Solution for the Future.

Perhaps as much as any major industry, the asbestos industry has suffered in recent years from the uncertainty created by government threats of increasingly strict regulatory

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measures. New capital investment in, and marketplace sales of, asbestos-containing products have been severely depressed by the extreme adversarial stance against asbestos taken by government regulators, as well as being affected by adverse economic conditions. Although most users of asbestos-containing products have been able to meet the current OSHA asbestos standard, they have actively pursued a costly search for substitute products not knowing whether further regulations might be promulgated that would severely impact their use of asbestos products.

Since 1973, shortly after the first OSHA asbestos standard went into effect, annual U.S. asbestos fiber consumption, a good barometer of asbestos industry status, has dropped from 795,000 to 369,000 tons. In but one segment of the industry, asbestos-cement pipe, four manufacturing plants have been closed within the past three years, causing loss of jobs for nearly 900 employees.

The damage to the markets for asbestos products is due in no small measure to the existence of pending OSHA proposals and NIOSH recommendations, which, if they were ever implemented, would make it impossible for virtually all of the domestic asbestos industry to operate. These proposals and recommendations reflect the adversarial and medically unjustified stance against the asbestos industry of government officials in recent years. This is best exemplified by a statement by the former head of NIOSH, Dr. Robbins, who appeared at AIA/NA's annual Industry-Government Conference in late 1979 and told us:

> [T]here should be a national public health policy in favor of eradicating and removing asbestos fiber from the human environment . . . . [That] is certainly my position as the head of NIOSH and something I am advocating at this point within government policy-making.

This adversarial approach toward asbestos has not been limited to OSHA and NIOSH. Major initiatives against asbestos use have been proposed by both EPA and the CPSC, premised on the same rationale as expressed in the statement above -- namely, that all exposures to asbestos should be viewed with great alarm and eliminated. The government has spent more than $30 million on outside contracts, not to mention countless hours of staff time and effort, in recent years to study asbestos and asbestos-containing products.

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In addition, various arms of the Department of Health and Human Services have financed major publicity campaigns against asbestos.

The asbestos industry has been grievously injured by these many government attacks, none of them -- despite all the funds and time that have been spent -- based on administrative findings that asbestos, as used in this country today, poses an unreasonable risk. AIA/NA believes firmly that were the medical evidence fairly assessed by the government, the absence of unreasonable risk would become clear, the need for more stringent reductions in workplace exposures in order to protect worker health would be demonstrated not to exist, and the fears now being raised about general population risks would be quieted.

Our firm belief that the medical evidence does not support the stringent restrictions that have been proposed in the past four years has not, however, prevented the asbestos industry from continuing its own programs to reduce asbestos exposure wherever meaningful reductions can be feasibly achieved. Most manufacturers, for example, already provide their employees with workplaces where exposures are well below the mandated OSHA standard. Industry has discontinued production of most friable products that can more readily release asbestos fibers. The vast majority of products now manufactured contain asbestos fibers that are locked-in or encapsulated, thus greatly diminishing the possibility of release of any respirable fibers. Further, industry has developed and actively promoted the use of work practices, particularly in the construction industry, in order to reduce even further the potential release of respirable asbestos fibers.

All of these industry actions reflect our view that unnecessary asbestos exposures should be avoided. However, the continued economic viability of even the products that can be produced and used in a safe manner requires termination of outstanding threats of further draconian government regulation. Until these threats are eliminated, great uncertainty will continue to impair the industry's ability to plan for the future and market its products.

Much of the current plight of the asbestos industry could be alleviated if the new Administration refrains from the prior adversarial attitude of the government and, instead, works cooperatively with industry and other interested parties to:

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(1) Reject formally pending NIOSH recommendations and withdraw the outstanding OSHA proposal;

(2) Amend the existing OSHA asbestos standard to provide more cost-effective requirements, especially for the construction industry where a work practices approach would provide more meaningful worker protection in a more cost-effective manner; and

(3) Ensure co-ordinated efforts among all agencies to end unsubstantiated attacks on asbestos.

The following more detailed description of the regulatory environment in which the asbestos industry has been forced to operate in recent years should make clear why we propose these changes in the existing and proposed OSHA standards, as well as a co-ordinated government approach to asbestos regulation.

Threatened Stricter OSHA Regulation.

The asbestos industry has operated under the highly pubicized threat of new OSHA regulations for more than five years. Asbestos was the first substance regulated by OSHA. A 12 fibers/cc exposure limit was established in 1971 and has been progressively reduced to 2 fibers/cc. Nonetheless, in 1975, OSHA proposed a further reduction to .5 fibers/cc. In both 1976 and 1980, in highly publicized and often-cited reports, NIOSH proposed further reductions to .1 fibers/cc.

Such further reductions in the workplace standard would be extremely costly to industry and the American consumer. Estimates of the annual cost of meeting a .5 fibers standard run from $300 million to $4 billion.1/ A .1 fiber standard could mean the demise of the U.S. asbestos industry since such levels cannot be monitored consistently, much less achieved at less than prohibitive costs. Such a low permissible level would be the strictest anywhere in the

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1/ We understand that OSHA has received up-dated cost estimates for a new asbestos standard from its economic consultants at the Research Triangle Institute (RTI). Despite our Freedom of Information Act request, the previous Administration refused to share this RTI report with AIA/NA.

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world and would seriously impair the domestic industry's ability to compete with asbestos processors overseas. Imposition of such costs cannot be justified in light of the absence of meaningful scientific evidence of a significant hazard to worker health at the current OSHA standard.

Counterproductive Requirements in the Existing OSHA Standard.

Because the existing standard is so impractical, OSHA has never been able to enforce it strictly in the construction industry, which uses the bulk of the country's asbestos-containing products. The standard's engineering control, exposure monitoring, medical surveillance and recordkeeping requirements are burdensome, costly and, in the end, counterproductive for an industry characterized by non-fixed worksites, transient firms, high employee turnover, and only intermittent exposures. As the cost estimates referred to above demonstrate, much of the hundreds of millions, if not billions, of dollars that would have to be expended to meet stricter OSHA standards would be imposed on the construction industry.

Although OSHA indicated in 1975 that it would issue a separate proposal for asbestos in the construction industry, no such proposal has ever been issued. Continuing fears that the OSHA engineering control, monitoring and medical surveillance requirements may someday be imposed on the construction industry have deterred sales of asbestos-containing products in this market. At the same time, the unenforceability of the existing standard in the construction industry has created a situation where OSHA is unable to take effective steps to protect worker health. The only way to alleviate this situation is to revise the existing asbestos standard as it applies to the construction industry.

The Government's Campaign Against Asbestos.

Over and above the pending OSHA proposal and problems with the existing OSHA standard as it applies to the construction industry, the asbestos industry has suffered more generally from an unprecedented campaign against the use of asbestos products. In addition to the 1975 OSHA proposal and the NIOSH recommendations, both EPA and the CPSC in 1979 issued advanced notices of proposed rulemaking

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that indicated each agency was considering bans on all asbestos use in their respective areas of jurisdiction. Such bans could conceivably cover all use of asbestos in the American economy.

Beyond these regulation-related government activities, numerous government agencies have engaged in non-regulatory activities that have severely harmed the asbestos industry. Although there have never been on-the-record findings by any government agency that current asbestos use poses an unreasonable risk, millions of dollars have been spent through, for example, the Department of Health, Education and Welfare's 1978-1979 Public Awareness program, to frighten the public about the supposed health hazards of asbestos. This publicity campaign has repeatedly utilized extremely high estimates of the number of former asbestos workers who could develop cancer, even though the unpublished 1978 paper from which such claims originated has been repudiated by its own authors.2/ Reference was once again made to these discredited estimates when OSHA and NIOSH sponsored a press conference to announce the April 1980 OSHA recommendation to reduce permissible exposure levels to .1 fibers. Moreover, the types of pronouncements quoted above from a NIOSH official on his desire to eliminate all asbestos use have not been atypical of pronouncements from officials of other government agencies.

Similarly, NIOSH has actively promoted publicity about inspections where it has recommended termination of asbestos use even when it has not detected any significant amounts of asbestos fibers being released in the workplace. After one NIOSH inspection report where only one of several measurements detected airborne asbestos and even that measurement was far below the OSHA permissible level,3/ a nuclear plant contractor was forced to terminate asbestos use to prevent a threatened worker walk-out. Termination of asbestos

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2/ For a critique of the paper, "Estimates of the Fraction of Cancer in the United States Related to Occupational Factors," by a respected and independent scientific expert, see R. Peto, "Distorting the Epidemiology of Cancer," 284 Nature 297 (March 27, 1980).

3/ Health Hazard Evaluation Determination Report HE-79-136-668, Shoreham Nuclear Power Plant, Shoreham, Long Island, New York (Feb. 1980).

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use was also recommended in yet another NIOSH report on a facility that had an asbestos table top although no asbestos fibers were detected in the work environment.4/

This combination of pending government proposals, million-dollar publicity campaigns, extra-regulatory government activities, and speeches and articles by individual government employees has had a clear and pronounced impact on the environment in which asbestos companies must plan for the future and market their products.

A Solution to the Asbestos Regulatory Problem.

The asbestos industry requires immediate relief from over-zealous government regulation. To this end, we propose a joint government-industry program to:

(1) Reject the pending NIOSH recommendations and withdraw the outstanding OSHA proposal for stricter workplace exposure controls. We are prepared to submit evidence that existing regulations already provide a workplace that poses no significant hazard and that further draconian reductions in workplace exposure are not necessary.

(2) Implement workable standards, especially for the construction industry. AIA/NA suggested to OSHA and its Construction Advisory Committee last year a program requiring use of approved work practices when working with asbestos-containing products.5/ Such work practices reduce worker exposures to a safe level. Thus, our proposal would eliminate the need for costly engineering controls, monitoring and medical surveillance. We recommend that the AIA/NA proposal for revisions in the asbestos standard as it applies

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4/ Health Hazard Evaluation Determination Report 79-144-672, Quoizel, Inc., Hauppauge, New York (March 1980).

5/ We have already supplied Mr. Cowan with a copy of our proposal, "Recommended Standard for Occupational Asbestos Exposure in Construction and Other Non-Fixed Operations" (Feb. 7, 1980). Our recommendations for reliance on approved work practices in lieu of unnecessary ancillary requirements (such as monitoring) was endorsed by the OSHA Advisory Committee.

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to the construction industry be promptly considered by a reconstituted National Advisory Committee on Occupational Safety and Health, which might well find the concept a useful model for other OSHA standards as well. In addition, use of personal protection measures, and consideration of a trigger level below which medical surveillance would not be required, should be considered for all asbestos operations.

(3) Institute a co-ordinated plan for government regulation of asbestos. As the preceding discussion of the many government agencies who have contributed to the uncertainty and marketplace problems of the asbestos industry demonstrates, resolution of outstanding issues about the OSHA standard will not of itself be sufficient to reassure the public that asbestos can be used safely. We believe a concentrated effort is needed to co-ordinate asbestos regulation, particularly between OSHA and EPA, as many of the issues both agencies have been considering are integrally intertwined.

Implementation of these proposed OSHA regulatory actions and development of a co-ordinated government program for asbestos regulation would remove the cloud now hanging over the industry. At the same time, such a program would provide more meaningful protection of worker health. AIA/NA and its member companies stand ready and willing to work with you to seek its adoption.

Very truly yours,

J. A. Dougherty

T. A. Dougherty
President

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