FOLLOW UP 11/18/74

MEMORANDUM

PLAINTIFF'S EXHIBIT

UC-3500

June 27, 1974

I discussed our strategy on the proposed New York State legislation on asbestos, copy attached, with Don Ackerman, who works for Kent Webb. This bill was not read out of Committee during the 1974 session of the Assembly and if it is to be acted upon by future assemblies, it must be re-introduced when the Legislature meets again. Ackerman indicated that if the Assembly, which currently has a narrow Republican majority, achieves a Democratic majority in the November elections, then the chairmanships of the various committees will be assigned to Democratic legislators and the chances of this bill reaching the floor (assuming that it is re-introduced) are substantially greater. Further, if the governorship changes hands, then any possibility of a veto would be eliminated.

I agreed to follow up with Ackerman soon after the 1974 elections so that we could plan an appropriate strategy on this matter.

WCThurber/es

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UNION CARBIDE

Mr. J. L. Myers
Niagara Falls

April 17, 1974

Mr. R. H. Mereness

Attached for your information is a copy of proposed legislation introduced into the Assembly of the New York State Legislature and referred to the Committee on Labor. Our current intelligence on this proposed asbestos regulation is that it will not come out of Committee and, therefore, our current strategy should be to maintain a low profile, taking no action at the moment. If we detect a change in the climate and it appears likely that the bill will be referred out of Committee then we will take appropriate action, both on our own part and perhaps through the good offices of certain major customers with operations in New York State.

You will note that this proposed legislation is poorly written, ambiguous, fraught with typographical errors and much more stringent than the present Federal OSHA Standard. If it is necessary to assume a more activist position, we probably should argue on the grounds that it is incompatible with the existing federal regulations.

I will keep you apprised on this matter.

W. C. Thurber

WCT:es
Attachment

UCC 009049

STATE OF NEW YORK

11298

IN ASSEMBLY

March 5, 1974

Introduced by Mr. OLIVIERI—read once and referred to the Committee on Labor

AN ACT

To amend the labor law, in relation to occupational exposure to asbestos

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The labor law is hereby amended by adding thereto a new article, to be article twenty-four, to read as follows:

ARTICLE 24

OCCUPATIONAL EXPOSURE TO ASBESTOS

Section 850. Tests.

851. Medical surveillance.

852. Requirements.

853. Monitoring and record keeping requirements.

854. Labeling.

855. Personal protective equipment and clothing.

856. Hazard apprisal.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

UCC 009050

§ 850. Tests. 1. Occupational exposure to airborne asbestos dust shall be controlled so that no worker shall be exposed to more than 1.0 asbestos fibers per cubic centimeter of air based on a count of fibers greater than five micrometers in length, determined as a time-weighted average exposure for an eight hour work day, and no peak concentration of asbestos to which workers are exposed shall exceed 2.0 fibers cubic centimeter based on count of fibers greater than five micrometers in length, as determined by a minimum sampling time of fifteen minutes.

2. Procedures for sampling, calibration of equipment, and analysis of absestos samples shall be as provided in Appendix I of the Asbestos Health Code.

3. This standard is to become effective ninety days after promulgation as a standard.

§ 851. Medical surveillance. 1. Medical surveillance is required for all workers who are exposed to asbestos as part of their work environment. For purposes of this requirement the term "exposed to asbestos" will be interpreted as referring to time-weighted average exposures above .5 fiber/cubic centimeter or peak exposures above five fibers. Medical management shall include recommendations as to job placement, improved work practices, cessation of smoking, and specific therapy for asbestos-related disease or its complications.

2. Required components of a medical surveillance program shall include quarterly measurments of pulmonary function (forced vital capacity) (FVC), and forced expiratory volume for one second (FEV), and of quarterly chest roentgenograms (postero-anterior

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14 x 17 inches). Additional medical requirement components shall include a history to describe smoking habits and details on past exposures to asbestos and other dusts and to determine presence or absence of pulmonary, cardiovascular, and gastrointestinal symptoms, and a physical examination, with special attention to pulmonary rales, clubbing of fingers, and other signs related to cardiopulmonary systems.

3. Chest roentgenograms and pulmonary function tests will be performed at the employer's expense, at least every six months on all employees exposed to asbestos. These tests will be made quarterly to individuals:

(a) who have a history of five more years of employment involving exposure to asbestos; or

(b) who show roentgenographic findings (such as small opacities, pleural plaques, pleural thickening, pleural calcification) which suggest or indicate pneumoconiosis or other reactions to asbestos; or

(c) who have changes in pulmonary function which indicate restrictive or obstructive lung disease. Preplacement medical examinations and medical examinations on the termination of employment of asbestos exposed workers are also required.

§ 852. Requirements. The following are work related requirements:

1. asbestos cement, mortar, coatings, grout, and plaster shall be mixed in closed bags or other containers;

2. asbestos waste and scrap shall be collected and disposed of in sealed bags or other containers;

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3. all cleanup of asbestos dust shall be performed by vacuum cleaners or wet cleaning methods. No dry sweeping shall be performed;

4. in any operations, involving dust, factory personnel must wear respirators;

5. all tools used must be used in conjunction with a high-volume exhaust system that draws dust into a baghouse.

§ 853. Monitoring and record keeping requirements. Employers are required to maintain records of environmental exposure to asbestos based upon the following environmental sampling and recordkeeping schedule. Personal exposure samples will be collected at least annually by specific maximum-risk work operations from a number of employees. The first sampling period will be completed within one hundred eighty days of the date this standard goes into effect. These selected samples will be collected and evaluated as both time-weighted and peak concentration values.

§ 854. Labeling. 1. A warning label for asbestos shall be used.

2. Numerical designations indicate the following:

(a) 4=Health hazard (color code, blue). Inhalation may cause asbestosis, pleural or peritoneal mesothelioma, or lung cancer.

(b) 0=Fire hazard (color code, red). Asbestos is nonflammable and has negligible vapor pressure, volatility, flash point, and explosive limits.

§ 855. Personal protective equipment and clothing. 1. (a) For the purpose of determining the class of respirator to be used, the employer shall measure the atmospheric concentration of airborne asbestos in the workplace when the initial application for variance

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is made and thereafter whenever process, worksite, climate or control changes occur which are likely to affect the asbestos concentration. The employer shall test for respirator fit and/or make asbestos measurements within the respiratory inlet covering to insure that no worker is being exposed to asbestos in excess of the standard either because of improper respirator selection or fit.

(b) As noted above, the use of respirators and protective clothing can be decided on the basis of either time-weighted average or peak concentrations. For determining usage or compliance, the peak concentration of two fibers per cubic centimeter is established.

(c) For any industrial plant using asbestos or products containing asbestos, a type C positive-pressure supplied air respirator approved under the provisions of 30 CFR 12 (Bureau of Mines Schedule 19B) shall be used.

(d) The employer shall establish a respirator program in accordance with the requirements of the "American National Standard for Respiratory Protection Z88.2—1969".

2. (a) The employer shall provide each employee subject to exposure in a variance area with coveralls or similar full body protective clothing and hat, which shall be worn during the working hours in areas where there is exposure to asbestos dust.

(b) The employer shall provide for maintenance and laundering of the soiled protective clothing, which shall be stored, transported and disposed of in sealed non-reusable containers marked "Asbestos-contaminated clothing" in easy-to-read letters.

(c) Protective clothing shall be vacuumed before removed. Clothes shall not be cleaned by blowing dust from the clothing or shaking.

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(d) If laundering is to be done by a private contractor, the employer shall inform the contractor of the potentially harmful effects of exposure to asbestos dust and of safe practices required in the laundering of the asbestos-soiled work clothes, and the private contractor must maintain a separate room for laundering work clothes exposed to asbestos and must follow same procedures as factory for protection of workers from asbestos.

§ 856. Hazard apprisal. Each employee exposed to asbestos shall be apprised of all hazards, relevant symptoms, and proper conditions and precautions concerning use or exposure. Each exposed worker shall be informed of the information which is applicable to a specific product or material containing five percent or more asbestos. The information shall be kept on file and readily accessible to the worker at all places of employment where asbestos materials are manufactured or used in unit processes and operations. It is required that this information be provided for asbestos processes and operations where the asbestos content is less than five percent.

§ 2. Article twenty-four and section eight hundred fifty-five of such law are hereby renumbered to be article forty and section one thousand, respectively.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.

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