GL-149-2

PLAINTIFF'S EXHIBIT

UC-3522

UNION CARBIDE

INTERNAL CORRESPONDENCE

METALS DIVISION • P. O. BOX 579 • 4625 ROYAL AVE., NIAGARA FALLS, NEW YORK 143(

To (Name)	Mr. J. L. Myers	Date	January 17, 1979
Division	UCC - Metals		
Location	Niagara Falls, NY	Originating Dept.	"Calidria" Asbestos
		Answering letter date	
Copy to	Messrs.	Subject	DOT Docket HM-180
	T. R. Alexander - NYO-6th Fl.		
	S. Hoffman - NYO-46th Fl.		
	W. G. Kahler - NYO-6th Fl.		
	E. W. Shortridge- King City		
	E. W. Kantz-Niagara/R. G. Beverly-Grand Junction		

As a part of the preparation of a petition for consideration for the above-noted DOT regulation, our group has been asked to address the following items:

1. The reason Union Carbide did not respond as a company to the DOT proposal of March 2, 1978 but are now raising serious objections to the resulting regulations.

2. The reason it is impractical for Union Carbide to use the dust and siftproof bags that are now widely used by other asbestos producers.

3. A detailed breakdown of our present shipment methods by product type and volume.

4. Incremental costs which we can identify in complying or trying to comply with the new regulations.

This letter presents the information relating to Item 1, the lack of a specific Union Carbide response to the proposal.

The changes made by the DOT in moving from the proposal to the regulation are provided for reference in Attachment 1. The additions are identified by underlining and the deletions by parentheses.

The proposal (and the regulation) permits shipment in rigid, airtight, packagings. It was understood that the hopper cars used to transport pellets were covered by this definition and could continue to be used. Comments were not needed.

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ACL Doc 18266 · Page 1 of 4 asbestosclaims.law/library/18266/1

The proposal also permitted shipments in bags in closed freight containers, motor vehicles, or rail cars as long as the bags were loaded by the consignor and unloaded by the consignee. No specifications were placed on the bags that could be used.

A majority of our product is shipped in closed transport, loaded by the consignor and unloaded by the consignee and would thus comply with the requirements. A significant minority, however, is moved out of warehouses in trucks, which are frequently open and often in LTL lots, which may be transshipped and/or unloaded by other than the consignee.

The Asbestos Information Association/North America, of which we are a member, addressed both of these issues in their response as follows:

"III - Shipment in Uncovered Vehicles

Shipments from warehouses are typically less than truckload, i.e. from a few bags to a few pallets. Although the total tonnage is a relatively modest percentage of the total U.S. usage, it is estimated that 500-1000 businesses, many of them small, are serviced in this manner. Examples include manufacturers of caulks, adhesives, sealants, mastics, reinforced plastics and high-performance specialty industrial coatings. In these cases, asbestos is used to provide unique properties to a product. Although bagged asbestos may move in closed trucks in inter-city shipments, a substantial amount is transported in open vehicles. In this situation, the pallets normally are or should be covered with plastic film.

The DOT concern seems to be the need to avoid airborne asbestos emissions to the environment from the moving vehicle. This can and is being achieved in open vehicles today. Prohibition of their use is not needed or justified."

"V - Loading by Consignor, Unloading by Consignee

The meaning of the requirement that bags shipped in closed transport be loaded by the consignor and unloaded by the consignee is not clear. Does this mean that transport company employees cannot load, unload, or transship? If so, such a restriction would seriously impact on the small user. Present asbestos packaging satisfies the statutory requirement of 'no unreasonable risk'. An added restriction is unnecessary."

In retrospect, we could have been more emphatic and explicit. In any case, the problems, including unpalletized shipments, were covered in the response and at that time we did not have anything significant to add.

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ACL Doc 18266 · Page 2 of 4 asbestosclaims.law/library/18266/2

The parts of the regulation which provide the most difficulty are the new requirements in Paragraph 173.1090, (d), (2), which were not present in the proposal. These are:

1. Bags must be dust and siftproof.

2. Non-rigid packagings containing asbestos must be palletized and unitized.

The polyethylene shrink film now used on our valve-pack bags was intended to achieve a tight package but as a practical matter, a significant percent of the bags, particularly if the wrapping is several month old, can leak a small amount of asbestos during shipment. Dust measurements made during the loading and unloading of shipments packed in this manner, however, show airborne asbestos concentrations that are consistently within the allowable OSHA limits. Although we believe that the release is so small that it does not present an unreasonable risk to health or the environment during shipment, the bags would not be acceptable for shipment under the present regulation and we do not know of any practicable way to make them acceptable in the short term.

Our overseas shipments are usually in bags that are hand stacked in containers. The new requirement of "palletized and unitized", may be capable of achievement but it adds materially to the cost and does not improve the quality of the shipments.

Finally, in Parts 174, 175, 176, and 177 the words ". . . prevent occupational exposure to asbestos" were changed to ". . . minimize occupational exposure to asbestos." The basis for this change which was accepted by the DOT was covered in the AIA/NA presentation.

H. B. Rhodes/rmm

Harrison B. Rhodes

/rmm
Attachment

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ACL Doc 18266 · Page 3 of 4 asbestosclaims.law/library/18266/3

ATTACHMENT I

CHANGES IN DOT DOCKET HM-160
BETWEEN PROPOSAL AND FINAL RULE

PART 172 - HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

§172.10 [Amended]

1. In §172.101, the Hazardous Materials Table would be amended by adding a new entry, immediately following "Arsine," to read as follows:

No change in table.

PART 173 - SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. §173.1090 would be added to read as follows:

§173.1090 Asbestos.

(a) Asbestos includes any of the following hydrated mineral silicates: chrysolite, crocidolite, amosite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos, and every product containing any of these minerals.

(b) Commercial asbestos is any material or product containing asbestos that has commercial value because of its asbestos content.

[(b)] (c) Asbestos which is immersed or fixed in a natural or artificial binder material (such as cement, plastic, asphalt, resins or mineral ore) and manufactured products containing asbestos or any materials or products whose commercial value is not dependent on their asbestos content, are not subject to the requirements of this sub-chapter.

[(c)] (d) Commercial asbestos must be offered for transportation and transported in-

(1) Rigid, airtight packagings such as metal or fiber drums, portable tanks, or

(2) Bags (when in closed freigt containers, motor vehicles, or rail cars, that are loaded by the consignor and unloaded by the consignee.) and other non-rigid packagings that are dust and sift proof. When transported by other than a private carrier by highway, bags and other non-rigid packagings containing asbestos must be palletized and unitized by methods such as shrink-wrapping in plastic film or wrapping in fiberboard secured by strapping.

PART 174 - CARRIAGE BY RAIL

3. A subpart M Heading is added immediately following §174.812 to read as follows:

Subpart M - Detailed Requirements for Other Regulated Materials

4. Section 174.840 is added to read as follows:

§174.840 Special loading and handling requirements for asbestos.

Asbestos must be loaded, handled, and unloaded, and any asbestos contamination of rail cars removed, in a manner that will (prevent) minimize occupational exposure to airborne asbestos particles released incident to transportation. (See §173.1090 of this sub-chapter.)

Same changes as shown for Part 174 were also made in Parts 175, 176, and 177.

Additions shown by underlining.
Deletions by parenthesis.

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ACL Doc 18266 · Page 4 of 4 asbestosclaims.law/library/18266/4