PLAINTIFF'S EXHIBIT

UC-3533

UG 149-2

UNION CARBIDE

INTERNAL CORRESPONDENCE

METALS DIVISION

P. O. BOX 579 · 4625 ROYAL AVE., NIAGARA FALLS, NEW YORK 14302

To (Name) Mr. J. L. Myers
Division UCC - Metals
Location Niagara Falls, NY

Date April 30, 1979
Originating Dept. "Calidria" Asbestos
Answering letter date
Subject DOT

Copy to Messrs.
~~E. D. Shortsleeve~~/R. W. Rebholz
W. B. DeAtley
W. G. Kahler, II
T. R. Alexander

The attached AIA/NA information on the recent DOT regulations may be of interest to you.

H. B. Rhodes
Harrison B. Rhodes

/rmm
Attachment

UCC 009222

ASBESTOS INFORMATION ASSOCIATION
NORTH AMERICA
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Arlington, Virginia 22202 • (703) 979-1150

RECEIVED
APR 27 1979
UCC-CALIDRIA
NIAGARA FALLS, N.Y.

23 April 1979

Memorandum For: MEMBERS

Subject: Clarification of DOT revision of final rule on asbestos

The recent revision (Federal Register 3/29/79) of the DOT final rule on transportation of asbestos has led to questions of interpretation. In consultation with our contact at DOT, I have gotten clarification of these issues. The questions and corresponding DOT interpretation thereon are set out below.

1. Does the Department of Transportation have jurisdiction over purely intrastate shipments (e.g. covering 5 miles from rail depot to plant)?

Answer: Yes. Jurisdiction can be maintained on the basis of the interstate character of the business or the interstate nature of the greater shipment route (i.e. from ultimate orgin to final destination).

2. Must shipments of bagged commerical asbestos over short distances in company owned, open flatbed trucks be palletized and unitized (e.g. shrink wrapped)?

Answer: Yes. The fact of ownership of the transport vehicle excuses palletizing and unitizing only in the case of closed freight containers, motor vehicles or rail cars.

3. What is the meaning of the term "exclusive" in the following provision of the revised regulation (Sec. 173.1090 (d)(2))? "Bags and other non-rigid packagings in closed freight containers, motor vehicles or rail cars that are loaded by and for the exclusive use of the consignor and unloaded by the consignee."

Answer: During any one shipment, bags of commercial asbestos may not be commingled with other cargo within a freight container, motor vehicle or rail car.

Note - A company may apply for an exemption from any of the provisions of this final rule (see Sec. 107.103, copy enclosed). The rule goes into effect August 20, 1979.

Union Carbide trial exhibit UC-3533: H. B. Rhodes to J. L. Myers Forwarding AIA/NA Memorandum on DOT Asbest... Published by AsbestosClaims.Law
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Subpart B—Exemptions

§ 107.101 Purpose and scope.

This subpart prescribes procedures by which persons who are subject to the requirements of this subchapter, Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 64 or Part 146 may obtain administrative relief therefrom on the basis of equivalent levels of safety or levels of safety consistent with the public interest and the policy of the Hazardous Materials Transportation Act.

§ 107.103 Application for exemption.

(a) Any person who is subject to the requirements of this subchapter, Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 64 or Part 146 may apply to the Director, OHMO, for an exemption from those requirements.

(b) Each application filed under this section for an exemption must—

(1) Be submitted in triplicate to: Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590, Attention: Exemptions Branch;

(2) Set forth the text or substance of the regulation from which the exemption is sought;

(3) State the name, address, and telephone number of the applicant;

(4) Include a detailed description of the proposal, including when appropriate, drawings, plans, calculations, procedures, test results, previous exemptions, approvals or permits, a list of specification containers, if any, to be used, a list of modified specification containers, if any, to be used, and a description of the modifications, and any other supporting information;

(5) State the chemical name, common name, hazard classification, form, quantity, properties, and characteristics of the material covered by the proposal, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture;

(6) Describe all relevant shipping and accident experience;

(7) Specify the proposed mode of transportation, identify any increased risks that are likely to result if the exemption is granted, and specify the safety control measures which the applicant considers necessary or appropriate to compensate for those increased risks;

(8) Specify the proposed duration or describe the proposed schedule of events for which the exemption is sought;

(9) State why the applicant believes the proposal including any safety control measures specified by the applicant will achieve a level of safety which—

(i) Is at least equal to that specified in the regulation from which the exemption is sought, or

(ii) If the regulations do not contain a specified level of safety, will be consistent with the public interest and will adequately protect against the risks to life and property which are inherent in the transportation of hazardous materials in commerce;

(10) If the applicant seeks to have the application processed on a priority basis, set forth the supporting facts and reasons and

(11) If the applicant is not a resident of the United States, include a designation of a permanent resident of the United States as his agent for service of process in accordance with § 107.7.

(c) Unless the Director, OHMO, finds that there is good reason for priority processing of an application, each application is processed in the order in which it is received. To permit timely consideration, an application should be submitted at least 120 days before the requested effective date.

(d) If the applicant wishes to claim confidential treatment for any information contained in the application, the procedures set forth in § 107.5 apply.

[40 FR 48470, Oct. 15, 1975, as amended by Amdt. 107-2, 41 FR 7509, Feb. 19, 1976]

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