UC 1370-2

INTERNAL CORRESPONDENCE

Strategic Plan
asbestos

METALS DIVISION

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

PLAINTIFF'S EXHIBIT
UC-3586

To (Name) Messrs.
Division W. G. Alesio
Location G. R. Bailey
R. E. Byrne, Jr.
R. L. Folkman
J. T. Kelly
R. J. Klotzbach
Copy to O. J. Malacarne
J. L. Myers
R. W. Rebholz
~~P. J. Shortsleeve~~
J. J. Sibley

Date April 1, 1980

Originating Dept. "Calidria" Asbestos

Answering letter date

Subject Status of Asbestos Regulatory Matters

The text and figures for the presentation on asbestos regulatory matters given at the SPU Meeting on March 28, 1980 are enclosed as requested. Suggested changes for the page on asbestos health effects in the SPU management presentation (page 10) are also included.

H. B. Rhodes

Harrison B. Rhodes

/rmm
Enc.

UCC 008086

ASBESTOS HEALTH EFFECTS

- MAIN EFFECTS OF ASBESTOS EXPOSURE

  ASBESTOSIS

  Result of very high <u>past</u> exposures.

  LUNG CANCER

  Mainly from interaction with smoking. (Non-smoking asbestos worker has little or no excess risk of lung cancer.)

  MESOTHELIOMA

  This cancer can result from low exposures and is not smoking related.

- LATENT PERIOD VARIES FROM ABOUT 15-50 YEARS.

- PRESENT REGULATORY ACTIONS AIMED AT REDUCING RISK OF LUNG CANCER AND MESOTHELIOMA

- THE EXTENT OF CANCER RISK AT VERY LOW EXPOSURES IS ESTIMATED, NOT MEASURED DIRECTLY.

  Definitive scientific answers will probably not be forthcoming in the near future.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 2 of 28 asbestosclaims.law/library/18321/2

STATUS OF ASBESTOS REGULATORY MATTERS

MARCH 1980

Presented to the Asbestos SPU Committee
March 28, 1980

H. B. Rhodes
Union Carbide Corporation
Metals Division
Niagara Falls, New York

UCC 008088

Published by AsbestosClaims.Law
asbestosclaims.law/library/18321/3

TABLE OF CONTENTS

Section	Page
BACKGROUND	1
REGULATORY ACTIONS IN PROGRESS	2
General Regulatory Situation	2
EPA Rulemaking - Commercial and Industrial Use of Asbestos Fibers	4
Issuance of an ANPRM	4
Next Actions by EPA	5
CPSC Rulemaking - ANPRM, Consumer Products Containing Asbestos	6
EPA - Rulemaking Under RECRA	7
OSHA Rulemaking	8
Legislative and State Activities	10
WHERE WILL THIS ROUND OF REGULATIONS STOP?	10
KEY ASSUMPTIONS	11
FOREIGN REGULATIONS	12
FIGURES	14

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory… Published by AsbestosClaims.Law
ACL Doc 18321 · Page 4 of 28 **asbestosclaims.law/library/18321/4**

STATUS OF ASBESTOS REGULATORY MATTERS
MARCH 1980

BACKGROUND

During our asbestos SPU discussion about nine months ago we settled on the following key assumptions:

1. No widespread bans on mandatory substitutions.
2. No significant impact due to "retroactive" legislation.
3. OSHA TLV no more restrictive than 1 fiber/cc TWA.
4. Other regulations (EPA, CPSC, DOT, etc.) not significantly more stringent than now.

Up to that time there had been sporadic outbursts of publicity such as the Califano report and the hair dryer scare. By and large, however, the agencies were taking the approach that the extensive occupational and environmental regulations already in place for asbestos provided reasonable protection. It was more appropriate to direct their resources to substances which were not regulated. There were some straws in the wind, however, that suggested that asbestos might be in for a new round of action, so a number of more stringent assumptions were included in the analysis.

Over the past nine months a series of new publications has appeared. These include:

1. An up date by Berry, et. al. of the famous Rochdale cohort that indicated significant risk at exposures of 0.3-1.3 fibers/cc.
2. A reanalysis of the Patterson factory workers by Seidman, Selikoff, et. al. that showed serious risks after high exposures for a period as short as nine months.
3. A reanalysis of the asbestos insulation workers cohort by Selikoff suggested that there was a small increase in the risk of lung cancer to non-smoking asbestos workers.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 5 of 28 asbestosclaims.law/library/18321/5

4. A report by the very prestigious British Parlimentary Commission (Simpson Report) that recommended occupational standards of 1 fiber/cc for chrysotile, 0.5 fiber/cc for amosite, and 0.2 fibers/cc for crocidolite. Further use of crocidolite was also banned.

All of these publications have significant scientific flaws but they provided "new information" upon which pressure for renewed action could be generated. We do not know exactly what caused things to "gel" at the agencies but OSHA, EPA, and CPSC are now moving forward on significant new regulatory programs.

REGULATORY ACTIONS IN PROGRESS

General Regulatory Situation

In the examination of the regulatory situation today, it is important to understand that asbestos is only a small part of a much larger regulatory scene. OSHA has been in action since about 1970, has promulgated lots of safety standards, but only about half a dozen health standards. If their Generic Carcinogen Standard survives court challenge, they will be in a position to enact 10-20 new standards per year.

The EPA has promulgated a substantial number of standards but these are small compared to the regulatory structure that will be in place soon as a result of TSCA, RECRA, and the 1977 Amendments to the Clean Air and Clean Water Acts. Unfortunately, EPA has elected to use asbestos as a trial horse for the definition of their regulatory powers under several of these Acts, so it becomes a precedent setter. Our fight for reasonable and realistic regulation is important not only to the asbestos business, but to all of Union Carbide's businesses where a substance classified as a carcinogen is involved.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 6 of 28 asbestosclaims.law/library/18321/6

Over the past several years the Federal regulatory agencies have responded to pressure from various sources, particularly the Executive Branch of the government, to avoid overlapping regulations and to develop a common regulatory approach within the limits set by their different statutory authorities. Considerable progress has been made and it is useful to outline the approach that has evolved since it is common to the several initiatives that need to be examined here.

The favorite item on regulatory agendas today is carcinogens (asbestos is generally regarded as a human carcinogen). Once a material has been demonstrated to be a carcinogen, a series of clichés are applied as follows:

1. There is a cancer epidemic in progress in the United States. Immediate regulatory action is imperative. (The "Chicken Little" syndrome.)
2. No safe level for a carcinogen has been demonstrated. (Any exposure greater than zero, regardless of how small, results in some risk to somebody, somewhere.)
3. Any use of a carcinogen for which a suitable, less hazardous substitute exists presents an unreasonable risk. It should be banned. (There is no consideration of how small the risk may be in the absolute sense.)
4. The urgency of the problem justifies the use of generic regulatory actions or pro forma regulations.

Attention is directed to Item 3 in the list which is particularly relevant to our business. Our main emphasis has been high technology substitutes for non-asbestos materials.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 7 of 28 asbestosclaims.law/library/18321/7

EPA Rulemaking - Commercial and Industrial Use of Asbestos Fibers

Issuance of ANPRM

This action has potentially the greatest impact on the asbestos industry of any regulatory action now under way. The EPA filed an Advanced Notice of Proposed Rulemaking (ANPRM) under TSCA which generally followed the scenario just outlined on October 20, 1979. This ANPRM stated their reasons why the rulemaking was needed, asked for the voluntary submission of a tremendous amount of information, and listed the regulatory options they have under consideration. These were:

1. Outright ban in the fairly near future of all uses where they deem suitable substitutes are available.
2. Limits on total usages in the U.S. Steadily decreased with time to virtual ban.
3. Ban started in 1985 and fully in place in 1990. Only exceptions are essential uses meeting three criteria. (No reasonable way to get an exception.) Burden of proof on user.

The EPA used an innovative "cradle-to-grave" approach similar to that used to ban PCB's as the basis for the ANPRM. In this approach the risks at each step in the "life cycle" of the substance is examined, i.e. mining, milling, transportation, product manufacture, product use, and final disposal are added together. If the cumulative risk is judged to be "unreasonable" the EPA takes the position that all except absolutely essential uses should be banned. They have already made a tentative conclusion that an unreasonable risk situation exists for asbestos and this is reflected in the proposed regulatory alternatives.

The Asbestos Information Association/North America submitted an industry response (endorsed by UCC) on February 17, 1980. It was basically a legal brief disputing the EPA conclusions and the approach used. It made the

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 8 of 28 asbestosclaims.law/library/18321/8

following points:

1. No "reasonable basis" exists to conclude that asbestos presents an "unreasonable risk" of injury to health or the environment.
2. Statutory requirements for such a finding were delineated in detail.
3. Even if a proper "unreasonable risk" finding can be made, EPA must by statute apply the "least burdensome" regulatory alternatives, not the most burdensome.
4. The problem of confidentiality of information must be resolved prior to any broad submission of data.

Next Actions by EPA

Since the flood of information requested voluntarily did not occur, the EPA is now moving to force its submission. The Toxic Substances Control Act gives EPA the authority (under Section 8) to promulgate general orders to require that certain types of information must be submitted. Section 8(a) includes exposure data but focuses mainly on commercial information. Such things as manufacturing and sales volumes and dollar values, customer lists including tonages sold, and information on substitutes are included. Section 8(d) primarily involves health and safety studies.

General Orders under Section 8 must go through the proposed rule, public comment, final rule steps. They are subject to review in the courts.

A Section 8(a) proposed order which covered a large number of chemicals, but did not include asbestos, was issued recently by the EPA. It's potential impact on UCC is being examined by the appropriate people. A specific order for asbestos is in preparation and is expected out in the next several months. The AIA/NA is cooperating in the evaluation of the proposed reporting form. A

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory...
ACL Doc 18321 · Page 9 of 28
Published by AsbestosClaims.Law
asbestosclaims.law/library/18321/9

final rule on asbestos does not seem likely before the last quarter of 1980 and could be delayed longer if litigation is involved.

The EPA proposed a rule for certain chemicals under Section 8(a) about two years ago. It was withdrawn following litigation. A new proposal was made last fall which included asbestos among a myriad of other substances. The Chemical Manufacturers Association responded to this latest proposal on February 29 with a very extensive legal brief. It is expected that litigation may follow if substantial changes are not made by the EPA. The AIA/NA could not identify any issues unique to asbestos so they did not participate in responding. Here, too, it seems doubtful if a final rule will be settled before the last quarter of 1980.

The EPA also has two contractors making exposure measurements and contacting companies to provide the kind of information requested in the ANPRM. Frequently the contacts are by phone requesting on-the-spot answers to specific questions. The answers are written up and become part of the public record. Senior EPA officials are also calling on individual large companies and providing misleading information as to the extent of the data other companies are submitting. We are following the approach that all requests for information must be in writing. All responses will be written and be approved by the apropriate persons in UCC before submission.

It is obvious that this is going to be a long and expensive battle with little likelihood of regulations in place before the end of 1981. Industry litigation is a distinct possibility. Some sort of compliance period after the regulations are in place can reasonably be expected.

CPSC Rulemaking - ANPRM Consumer Products Containing Asbestos

The EPA and CPSC have worked out an interagency agreement which divides up the responsibility for the massive asbestos efforts under way. On this basis the CPSC also issued an ANPRM on October 17, 1979 that followed much the

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 10 of 28 asbestosclaims.law/library/18321/10

same rationale described previously and included releases by both use and misuse as a basis for bans.

The AIA/NA responded on February 17, 1980 with a legal brief containing the following main points:

1. The CPSC does not have statutory authority to regulate many of the products listed in the ANPRM.
2. The Act does not sanction the banning of any product merely on the grounds that it emits a substance that is harmful at some high dose and can be termed "non-essential."
3. There is no basis for action against asbestos under the Federal Hazardous Substance Act.
4. Detailed infomation will not be supplied until confidentiality problems are resolved.

The CPSC also has statutory powers to require the submission of information. They too are preparing a general order which does not have to go through the full rulemaking process. A draft has been reviewed and the request appears to have been reduced to a small number of products which are clearly in their jurisdiction. It will put an extreme burden on small appliance manufacturers. We will obviously have to continue to fight in this area, but it appears that CPSC is leaving the major share of the action to EPA.

EPA - Rulemaking Under RECRA

As you are all probably aware, the EPA is well along in the implementation of "cradle-to-grave" control of hazardous wastes. The costs for this elaborate system will obviously be covered by fees from the operation involved. The approach includes the following elements:

1. All generators of hazardous waste must register.
2. All hazardous waste must be transported only by an appropriately licensed carrier.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 11 of 28 asbestosclaims.law/library/18321/11

3. All hazardous waste must be deposited only at a disposal site licensed to handle it.
4. The waste must be accompanied by a three part manifest with each part properly filled out by the generator, hauler, and disposal site operator, respectively.

About a year and a half ago when the subject first came up at EPA, the AIA/NA made them aware that they needed a specific and limited definition of "asbestos" or this kind of regulation would shut down the face of the earth. It was also pointed out that asbestos emissions and disposal were already extensively regulated under NESHAPS. The combination of these reasons convinced them that they should leave asbestos out of the initial round of RECRA regulations.

We have learned recently that this decision is under review. It is being watched closely and could be a sleeper. Inclusion of asbestos in this kind of regulation could have a very large impact on asbestos users.

OSHA Rulemaking

Asbestos was the first material regulated by OSHA. The industry has been subject to a standard since December 1971. At the present time, this standard permits an 8-hour time-weighted average exposure of 2 fiber/cc >5μ with short time exposures of 10 fiber/cc >5μ.

There was a flurry of activity in 1975 when OSHA proposed that the level be lowered to 0.5 fiber/cc >5μ. About a year later NIOSH suggested that the limit should be 0.1 fiber/cc >5μ based on analystical limitations, not health considerations.

Until recently OSHA has been more interested in working on their Generic Carcinogen and other Standards than in spending time on asbestos which was

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 12 of 28 asbestosclaims.law/library/18321/12

already regulated. The four publications mentioned earlier and the danger of being upstaged and preempted by other agencies has changed this position. They have had a substantial task group working for about the last 6 months looking at regulatory alternatives for asbestos. A subcommittee has also been studying the special problems of the construction industry. Rumors of an immediate Emergency Temporary Standard that were strong about three months ago have faded out but such a move is not beyond the realm of possibility. They also have a contractor who is updating an earlier study to provide a regulatory analysis by August 30 of this year. It is reasonable to assume that a new proposed rule would accompany the regulatory analysis so that publication would be some time in the last quarter of 1980 at the earliest.

It is obviously difficult to be sure what OSHA will propose, particularly before the Supreme Court rules on the benzene case. It is my guess that the format will generally follow that of the Generic Carcinogen Standard with an allowable TWA in the range of 0.1-0.3 fibers/cc. OSHA is also likely to make their first move on mandatory substitution. This should be an interesting exercise because their statutory authority in this area is extremely weak if it exists at all. There may also be some special provisions in the monitoring and medical surveillance requirements for the construction industry.

It is even more difficult to predict what any final regulation will look like following the hearings and court challenge if it occurs. It is my opinion that the industry can make a very strong case against any regulation lower than about 0.5 fibers/cc and will back this up in court. As the level moves upward towards 1 fiber/cc, the situation becomes grayer. It does not appear that any final regulations will be in place before mid 1980. Some period of time to achieve compliance can also be expected.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 13 of 28 asbestosclaims.law/library/18321/13

Legislative and State Activities

In the interests of time it will only be noted that the danger of "retroactive guilt by association" legislation seems to be greatly reduced. There has been sporadic state activity largely directed at asbestos-cement pipe in drinking water use. These do not presently appear to present anywhere near the threat we are facing from EPA and OSHA.

WHERE WILL THIS ROUND OF REGULATIONS STOP?

This is obviously the key question and it is equally obvious that no-one knows the answer. We can only balance factors and opinions and make a judgment.

It is quite clear, first of all, from the regulatory time tables that we are in for several more years of turmoil. This could be even longer if, as is likely, substantive legal challenges are undertaken.

When the industry became aware about nine months ago of the regulatory initiatives it faced, the conclusion was reached that we were up against a crusade where reason and facts were unlikely to prevail. It was highly likely that the courts were the only possible source of relief.

On this basis the AIA/NA hired the Washington law firm of Kirkland and Ellis as special counsel to coordinate and guide our actions with the Federal regulatory agencies. K&E has wide experience in this area and is the American Petroleum Institute's counsel in the OSHA benzene case. The AIA/NA membership has tripled their annual dues from $300,000 to about $1,000,000 to cover the added costs.[1] The AIA/NA is also optimistic that the Canadian mining companies generally are not members, will contribute $350,000 more to the effort.

The Executive Committee of the AIA/NA had a very serious discussion at their last meeting on the question of whether we were in a position such that we might

(1) UCC as a small mining and milling operation pays the minimum dues. This was increased from $2000 to $6000 per year.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 14 of 28 asbestosclaims.law/library/18321/14

win the battle to obtain liveable regulations in the next several years but lose the war because there were no more customers left. (This may be the most critical problem in our own situation.) The decision was made, however, that the AIA/NA had no choice but to keep up the best fight it could to obtain reasonable regulations to protect the workers, the users of asbestos products, and the general public.

The other area of intagibles that needs to be weighed is the overall regulatory picture. Asbestos may be the bellwether but it is only a small part of the regulatory structure that is being developed.

There is clearly concern today in Congress, in a substantial share of the general public, and even in some unions, that the country is grossly over-regulated. This feeling has manifested itself in the recent Congressional action to limit the FTC authority, the Schweikert Bill to limit OSHA inspections, and a number of bills to allow Congressional veto of regulatory actions. There is also the impact of regulations on energy and inflation that is receiving wide publicity. Finally, even allowing for bureaucratic inertia, the upcoming election can have a significant impact on the regulatory climate.

KEY ASSUMPTIONS

Based on the foregoing facts and generalities, it is suggested that several revisions should be made in the key assumptions of May 1979 that were shown previously. It appears that it is important to include the time element in our considerations. It is suggested that we plan on a period of uncertainty regarding final regulations of 1-3 years followed by several more years to come into compliance. An assumption covering this should be added.

Concerning bans and substitutes, our products are largely in bound form so releases of asbestos are small. There are generally readily available substitutes, however. It seems doubtful that no bans or mandatory substitutions at all will result from the large scale regulatory actions in progress.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 15 of 28 asbestosclaims.law/library/18321/15

Some moderate factor to account for this in our sales projection should be included.

The assumption of no significant impact from "retroactive" legislation still looks reasonable.

The OSHA conclusions were given earlier. A 0.5 fiber/cc TWA appears to be a realistic assumption. Promulgation will not be sooner than the first quarter of 1981 and effective date could be a year or more later.

The same reasoning used re widespread bans also applies to other regulations. The most likely changes appear to be a numerical ambient air standard and inclusion under the RECRA provisions. This, too, is probably one-two years away.

FOREIGN REGULATIONS

The foregoing discussion has been confined to the situation in the United States. Since about half of our asbestos is now sold overseas a brief comment on foreign regulatory matters is appropriate.

The situation regarding asbestos varies considerably from country to country. In general the adversary position between government and industry is much less extreme than in the U.S. and the public image of business is better. Public interest groups and the media are a significant factor, but do not appear to be as strong as they are in this country. There is also the impression that in the large, most advanced countries, the governmental authorities regard the approaches advocated in the U.S. as much too extreme.

The U.S. regulatory agencies have recently set up regular meetings and information exchange arrangements with their counterparts in the EEC countries. This will facilitate the proliferation of the U.S. approach and the general industry opinion is that Europe will tend to follow the U.S. Based on past observations it seems that the large, heavily industrialized countries such as

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 16 of 28 asbestosclaims.law/library/18321/16

The U.K., Germany, France, Italy, and possibly Japan may end up with more moderate regulations and the smaller, highly socialized countries such as Scandinavia, Holland, and Belgium may go the ban route. The main point is that regulatory matters in most of the countries where our foreign customers are located are moving more slowly and regulations may in a substantial number of cases end up to be less severe than those in the U.S.

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 17 of 28 **asbestosclaims.law/library/18321/17**

KEY ASSUMPTIONS - LEGISLATIVE AND REGULATORY IMPACTS ON THE ASBESTOS SPU

1. No widespread bans or mandatory substitutions.

2. No significant impact due to "retroactive" legislation.

3. OSHA TLV no more restrictive than 1 fiber/cc TWA.

4. Other regulations (EPA, CPSC, DOT, etc.) not significantly more stringent than now.

FIGURE 1

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 18 of 28 **asbestosclaims.law/library/18321/18**

NEW PUBLICATIONS RELATING THE HEALTH HAZARDS OF ASBESTOS EXPOSURE

1. BERRY - 0.3 - 1.25 FIBERS/CC PRESENT A SIGNIFICANT HAZARD.
2. SEIDMAN - 9 MONTH EXPOSURES AT HIGH LEVEL VERY HAZARDOUS.
3. SIMPSON REPORT
   - A. 1 FIBER/CC CHRYSOTILE
   - B. 0.5 FIBER/CC AMOSITE
   - C. 0.2 FIBER/CC (BAN ON NEW USES) CROCIDOLITE
4. SELIKOFF - NON-SMOKING ASBESTOS WORKERS AT EXCESS RISK OF LUNG CANCER.

FIGURE 2

UCC 008104

REGULATION BY CLICHE

1. WE HAVE A CANCER EPIDEMIC IN PROGRESS. IMMEDIATE REGULATORY ACTION IS IMPERATIVE.

2. NO SAFE LEVEL FOR A CARCINOGEN HAS BEEN DEMONSTRATED. (ANY EXPOSURE GREATER THAN ZERO, REGARDLESS OF HOW SMALL, RESULTS IN SOME RISK TO SOMEBODY, SOMEWHERE.)

3. ANY USE OF A CARCINOGEN FOR WHICH A SUITABLE, LESS HAZARDOUS SUBSTITUTE EXISTS PRESENTS AN UNREASONABLE RISK. IT SHOULD BE BANNED.

4. THE URGENCY OF THE PROBLEM JUSTIFIES THE USE OF GENERIC REGULATORY ACTIONS OR PRO FORMA REGULATIONS.

FIGURE 3

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 20 of 28 **asbestosclaims.law/library/18321/20**

EPA - ADVANCED NOTICE OF PROPOSED RULEMAKING COMMERCIAL AND INDUSTRIAL USE OF ASBESTOS FIBERS - OCTOBER 20, 1979

1. OUTLINES REASONS FOR THE REGULATION (CANCER EPIDEMIC).

2. ASKS FOR VOLUNTARY SUBMISSION OF A TREMENDOUS AMOUNT OF INFORMATION.

3. STATES REGULATORY OPTIONS UNDER CONSIDERATION:

   A. OUTRIGHT BAN IN FAIRLY NEAR FUTURE, ALL USES WHERE THEY DEEM SUITABLE SUBSTITUTES ARE AVAILABLE.

   B. LIMITS ON TOTAL USAGE IN THE U.S. STEADILY DECREASED WITH TIME TO VIRTUAL BAN.

   C. BAN STARTING IN 1985 AND FULLY IN PLACE IN 1990. ONLY EXCEPTIONS ARE ESSENTIAL USES MEETING THREE CRITERIA. NO REASONABLE WAY TO GET AN EXCEPTION. BURDEN OF PROOF ON USER.

FIGURE 4

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 21 of 28 asbestosclaims.law/library/18321/21

AIA/NA RESPONSE TO THE EPA ANPRM

1. NO "REASONABLE BASIS" EXISTS TO CONCLUDE THAT ASBESTOS PRESENTS AN "UNREASONABLE RISK" OF INJURY TO HEALTH OR THE ENVIRONMENT.

2. STATUTORY REQUIREMENTS FOR SUCH A FINDING WERE DELINEATED IN DETAIL.

3. EVEN IF A PROPER "UNREASONABLE RISK" FINDING CAN BE MADE, EPA MUST BY STATUTE APPLY THE "LEAST BURDENSOME" REGULATORY ALTERNATIVES, NOT THE MOST BURDENSOME.

4. THE PROBLEM OF CONFIDENTIALITY OF INFORMATION MUST BE RESOLVED PRIOR TO ANY BROAD SUBMISSION OF DATA.

FIGURE 5

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 22 of 28 **asbestosclaims.law/library/18321/22**

NEXT ACTIONS BY EPA

1. Evaluate ANPRM Responses.

2. General Order under Section 8(a) of TSCA to require submission of information on:

   A. Production and sales volumes and costs.
   B. Identification of customers.
   C. Information on substitutes for asbestos.
   D. Exposure information.
   E. Controls used and costs thereof.

   Status

   I. In preparation for asbestos. Proposal expected in next several months.

   II. Final rule - towards end of 1980.

3. General Order under Section 8(d) of TSCA to require submission of health and safety studies.

   Status

   I. Proposal issued and responses made on February 29, 1980.

   II. Much broader than asbestos.

   III. Under heavy attack by CMA.

   IV. Issue date, litigation?

4. Contractor's studies of industry structure, substitutes, exposures, economics.

   Status

   Under way - Completion not before end of year.

CONCLUSIONS

1. This is going to be a long and expensive battle with little likelihood of regulations in place before the end of 1981.

2. Industry litigation is a distinct possibility.

3. Some sort of compliance period after the regulations are in place can reasonably be expected.

FIGURE 6

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 23 of 28 asbestosclaims.law/library/18321/23

CPSC ANPRM CONSUMER PRODUCTS

CONTAINING ASBESTOS - OCTOBER 17, 1980

1. Issued on October 17, 1980.

   A. Inter-agency agreement with EPA.

   B. Same general rationale and pattern.

2. AIA/NA Response - February 17, 1980

   A. The CPSC does not have statutory authority to regulate many of the products listed in the ANPRM.

   B. The Act does not sanction the banning of any product merely on the grounds that it emits a substance that is harmful at some high dose and can be termed "non-essential".

   C. There is no basis for action against asbestos under the Federal Hazardous Substance Act.

   D. Detailed information will not be supplied until confidentiality problems are resolved.

3. Further actions by CPSC.

   A. Evaluate ANPRM response.

   B. Issue General Order for Submission of information

      Status

      Expected in next couple of months.

CONCLUSIONS

1. Lesser impact than EPA.

2. Timing will probably be coordinated and, therefore, similar.

3. Need to be monitored and dealt with as CPSC moves.

UCC 008109

FIGURE 7

EPA HAZARDOUS WASTE REGULATIONS UNDER RECRA

1. REGULATIONS WITH THE FOLLOWING REQUIREMENTS ARE NEARING IMPLEMENTATION:

   A. ALL GENERATORS OF HAZARDOUS WASTE MUST REGISTER.

   B. ALL HAZARDOUS WASTE MUST BE TRANSPORTED ONLY BY AN APPROPRIATELY LICENSED CARRIER.

   C. ALL HAZARDOUS WASTE MUST BE DEPOSITED ONLY AT A DISPOSAL SITE LICENSED TO HANDLE IT.

   D. THE WASTE MUST BE ACCOMPANIED BY A THREE PART MANIFEST WITH EACH PART PROPERLY FILLED OUT BY THE GENERATOR, HAULER, AND DISPOSAL SITE OPERATOR RESPECTIVELY.

2. AT PRESENT ASBESTOS IS NOT INCLUDED AS A HAZARDOUS WASTE. REGULATED UNDER NESHAPS INSTEAD.

3. UNDER RECONSIDERATION.

CONCLUSION

COULD BE A SLEEPER WITH VERY LARGE IMPACT ON CUSTOMERS.

FIGURE 8

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 25 of 28 asbestosclaims.law/library/18321/25

OSHA REGULATORY ACTIVITIES

1. BACKGROUND
   - A. EMERGENCY STANDARD DECEMBER 1971; FINAL 1972; MODEST CHANGES.
   - B. PROPOSAL ON OCTOBER 9, 1975. 0.5 FIBERS/CC (GENERAL INDUSTRY ONLY)
   - C. NIOSH 0.1 FIBERS/CC BASED ON ANALYTICAL LIMITATIONS.
2. PRESENT ACTIONS
   - A. TASK GROUP STUDYING OPTIONS.
   - B. CONTRACTOR PREPARING REGULATORY ANALYSIS REQUIRED BY E.O. 12044. COMPLETION DATE, AUGUST 1980.
3. OPTIONS
   - A. EMERGENCY TEMPORARY STANDARD.
   - B. PROPOSAL NO EARLIER THAN AUGUST.
4. PROPOSED RULES [GUESS]
   - A. FORMAT LIKE GENERIC CARCINOGEN RULES.
   - B. 0.1 - 0.3 FIBER/CC >5 d TWA.
   - C. MANDATORY SUBSTITUTION INCLUDED.
   - D. POSSIBLY SOME SPECIAL CONSIDERATION FOR CONSTRUCTION RE MONITORING AND MEDICAL SURVEILLANCE.
5. CONCLUSIONS
   - A. VERY STRONG CASE AGAINST ANY LEVEL BELOW 0.5 FIBERS/CC.
   - B. INDUSTRY WILL GO TO COURT IF NECESSARY.
   - C. MANDATORY SUBSTITUTION REQUIREMENTS WILL NOT BE SUSTAINED IN COURT.
   - D. TIMING - MIDDLE OF 1981.

FIGURE 9

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 26 of 28 asbestosclaims.law/library/18321/26

WHERE WILL THIS ROUND OF REGULATIONS STOP?

1. ONE - THREE MORE YEARS OF TURMOIL, POSSIBLY LONGER IF LITIGATION RESULTS.
2. WILL THERE STILL BE ANY CUSTOMERS?
3. AIA/MA DECISIONS:
    A. LIKELY TO HAVE TO GO TO COURT.
    B. HIRED KIRKLAND AND ELLIS AS SPECIAL COUNSEL. (~$700,000 BUDGET FOR 1980)
4. REGULATORY CLIMATE:
    A. CONGRESS, SOME PARTS OF THE GENERAL PUBLIC, EVEN SOME UNIONS, CONCERNED THAT THE COUNTRY IS GROSSLY OVERREGULATED.
        1. FTC AUTHORITY LIMITED.
        2. SCHWEIKERT BILL.
        3. BILLS TO ALLOW CONGRESSIONAL VETO OF REGULATORY ACTIONS.
    B. IMPACT OF ENERGY AND INFLATION.
    C. UPCOMING ELECTION.

FIGURE 10

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 27 of 28 asbestosclaims.law/library/18321/27

KEY ASSUMPTIONS - LEGISLATIVE AND REGULATORY IMPACTS ON THE ASBESTOS SPU

MAY 1980

1. NO WIDESPREAD BANS ON MANDATORY SUBSTITUTIONS.

2. NO SIGNIFICANT IMPACT DUE TO "RETROACTIVE" LEGISLATION.

3. OSHA TLV NO MORE RESTRICTIVE THAN 1 FIBER/CC TWA.

4. OTHER REGULATIONS (EPA, CPSC, DOT, ETC.) NOT SIGNIFICANTLY MORE STRINGENT THAN NOW.

SUGGESTED REVISIONS

MARCH 1980

1. ONE - THREE YEARS, POSSIBLY LONGER, OF UNSETTLED REGULATIONS.

2. NO SIGNIFICANT IMPACT DUE TO "RETROACTIVE" LEGISLATION.

3. MODERATE IMPACT OF BANS AND MANDATORY SUBSTITUTIONS.

4. OSHA NO MORE RESTRICTIVE THAN 0.5 FIBER/CC TWA.
   (NO SOONER THAN FIRST QUARTER OF 1981, COULD BE A YEAR OR MORE LATER.)

5. NUMERICAL AMBIENT AIR STANDARD AND MORE RESTRICTIVE WASTE DISPOSAL UNDER RECRA. (1 - 2 YEARS AWAY.)

FIGURE 11

Union Carbide trial exhibit UC-3586: H. B. Rhodes to Asbestos SPU Distribution on Status of Asbestos Regulatory... Published by AsbestosClaims.Law
ACL Doc 18321 · Page 28 of 28 asbestosclaims.law/library/18321/28