PLAINTIFF'S EXHIBIT

UC-3842

UNION CARBIDE CORPORATION
CORPORATE DISTRIBUTION
270 PARK AVENUE, NEW YORK, N. Y. 10017

July 23, 1979

Materials Transportation Bureau
US Department of Transportation
2100 Second Street, SW
Washington, DC 20590

SUBJECT: Docket No. HM-160
Transportation of Asbestos

Gentlemen:

On March 29, 1979, the Materials Transportation Bureau published in the Federal Register (44 F.R. 18673) a revision of Amendment No. 173-23 regarding the transportation of asbestos, as published on December 4, 1978, (43 F.R. 56664).

Union Carbide Corporation is engaged, among other things, in the production, sale and distribution of chrysotile asbestos and ships an aggregate of over 30,000 tons per year of such material for use in various applications. Although a substantial portion of Union Carbide's shipments of asbestos is made in bulk, an equally substantial portion requires packaging in bags.

As revised, §173.1090 (d) (2) and (3) contemplate the use of bags or other non-rigid packagings. In each case, however, the revised section appears to assume that shipments in bags can always be made in fairly large quantities. Thus, subparagraph (2) permits the use of bags in closed vehicles which are assigned for the "exclusive use" of the consignor. Obviously it would in most circumstances be exceedingly uneconomical for any consignor to operate, or contract for the exclusive use of, a vehicle to transport a shipment of only a few bags of asbestos.

Similarly, subparagraph (3) requires that bags be palletized and unitized. Ordinarily, in commercial sales of asbestos, shipment quantities are sufficient to economically and practically accommodate that requirement. In many cases, however, distributors must ship quantities of only a few bags to meet customer requirements or limitations. Additionally, in the case of sample shipments, only a single bag may be involved.

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It is normally impractical, however, for distributors to maintain supplies of pallets of various sizes to accommodate shipments of varying numbers of bags. It is also impractical for distributors or manufacturers to acquire and maintain equipment capable of unitizing pallet loads of widely divergent dimensions.

In the oil drilling industry, for example, customers tend to order asbestos in relatively small quantities. It is also customary, for reasons explained in the enclosed letter from one of Union Carbide's distributors, for such customers to return one or more bags (as "overages") for credit. It would not be realistic to expect oil drillers, frequently at remote locations, to have available either the required pallets or unitizing equipment.

It is respectfully suggested, therefore, that the regulations be further revised to permit shipments of asbestos in dust and sift proof bags which are protected in transit by enclosure in a sufficiently strong outside packaging. Such a revision would make possible the shipment of one or more bags with protection against leakage of asbestos during transportation at least equal to that afforded by palletizing and unitizing.

If the Bureau agrees with the foregoing suggestion, it would appear to be most simply accomplished by revising the initial portion of §173.1090(d) (3) to read as follows:

> (3) Bags or other non-rigid packagings which are dust and sift proof and which are (i) enclosed in a rigid outside fiberboard or wooden packaging, or (ii) palletized and unitized....

In order to assure continuity of movement without excessive interruption, it is requested that the foregoing revision be published to become effective on August 20, 1979, simultaneously with the previously revised §173.1090, or as soon thereafter as possible.

In connection with the currently scheduled effective date of August 20, 1979, Union Carbide is concerned with certain packages of asbestos presently in the possession of distributors located primarily in the eastern portion of the United States. Although such materials are palletized, they do not entirely conform with the new requirements of §173.1090(d) (3) and, therefore, could not lawfully be shipped after August 20, 1979. Since it is unlikely that all such inventory could be finally disposed of before August 20, 1979, it would be necessary, prior to that date, to return at least a portion thereof to Union Carbide's facility at King City, California for repackaging in accordance with the new regulations.

Aside from the additional costs which such a movement would generate, it appears incongruous to require the transcontinental transportation of asbestos in non-conforming packaging, even though such transportation would be lawful prior to August 20. If, on the other hand, such materials were allowed sufficient time to be shipped the relatively short distances from eastern distributors to final destinations, such unnecessary transcontinental movement could be avoided.

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