BCC: J. L. Myers
R. L. Schult
W. C. Thurber
File

5/9/77 copy: T. P. Norris

Filtrol ASBESTOS

UNION CARBIDE CORPORATION • METALS DIVISION • P. O. BOX 579 • NIAGARA FALLS, N.Y. 14302 • TEL: 716-278-3376

PLAINTIFF'S EXHIBIT
UC-4979

May 6, 1977

Mr. E. L. Aasen
Head of Corporate Purchasing
Georgia-Pacific Corporation
900 S.W. Fifth Avenue
Portland, OR 97204

Dear Mr. Aasen:

This is in response to your request to Mr. R. E. Byrne, Jr. for information on recent actions by the Consumer Product Safety Commission regarding the use of asbestos in spackling compounds. On July 15, 1976, National Resources Defense Council, Inc. petitioned the CPSC to ban consumer taping, spackling and joint sealing compounds containing asbestos as hazardous substances. After considerable review and several meetings, the Commission voted on April 28, 1977 that this petition should be granted. At the meeting, however, the Commission split 2-2 on whether to move via the proposal and hearing procedure under the Consumer Product Safety Act or implement an immediate ban under the Toxic Substances Control Act.

On May 2, 1977, the fifth Commissioner, Lawrence M. Kushner who was not present at the April 28 meeting, voted for the CPSC hearing route and this procedure is now in progress. In this approach the CPSC will publish a proposed regulation. There will be a time for written comments and a public hearing where testimony can be presented. It is expected that this process will take at least six months. Since the Commission has already voted in favor of the ban the burden of proof is on those who oppose this position. Union Carbide does not believe that such a ban is appropriate and plans to present this case at the hearings.

It is also important to realize that the CPSC only has the power to regulate the manufacture, distribution and sale of products which present "unreasonable risks of injury" to the consuming public. A "consumer product" is defined as "any product, or component part, which affects interstate commerce and is customarily produced or distributed for sale (1) to a consumer for use in or around a household or residence, or (2) for the personal use, consumption, or enjoyment of a consumer..."

The CPSC does not have jurisdiction over products which are manufactured and sold for commercial use. The impact of any ban or restriction that may be promulgated would depend on an interpretation as to whether the 5 gallon pail or 25 lb. bag (dry compound) that are used to package product for commercial users falls under the definition of "customarily produced or distributed for sale (1) to a consumer". It is our understanding that such

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SGP 0021256

Union Carbide trial exhibit UC-4979: Harrison B. Rhodes to E. L. Aasen (Georgia-Pacific) on CPSC Action Regardin... Published by AsbestosClaims.Law
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products can, to a limited extent, be purchased by consumers in some lumber yards and retail distribution outlets. This question will have to be resolved at the hearings.

It has also been reported in the press that the National Resources Defense Council plans to file suit pressing for an immediate ban under the Toxic Substances Control Act. In the event they do, it seems unlikely that the Commission having once considered and rejected this approach, will return to it.

In summary, the CPSC has voted to move towards a ban of asbestos-containing taping, spackling and joint sealing compounds for sale to consumers. This hearing procedure now in progress may or may not result in the promulgation of such a ban. Any action taken will effect material manufactured and sold to commercial users only to the extent that the packaging and sale of such products is judged to cause them to enter the consumer market. It is anticipated that it will be at least six months before any final regulations are promulgated.

Very truly yours,

Harrison B. Rhodes

Harrison B. Rhodes
Technology Manager

HBR:dal

CC: Mr. R. E. Byrne, Jr.

SGP 002125