PLAINTIFF'S EXHIBIT

UC-5128

UNION CARBIDE

Calidria ASBESTOS

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

May 27, 1977

Mr. D. Merrill
Kelly-Moore Paint Company, Inc.
1015 Commercial Street
San Carlos, CA 94070

Dear Mr. Merrill:

You are no doubt aware of recent action by the Consumer Product Safety Commission (CPSC) to propose a ban on consumer use of asbestos-containing taping, spackling and joint-sealing compounds. Their action was instigated by a petition filed on 7/15/76 by the National Resources Defense Council (NRDC).

The CPSC voted on 5/2/77 to take action on the petition via the "Proposal and Hearing" procedure. This involves the following steps and would probably take a minimum of six months:

1. Publish the proposed regulation.
2. Accept written comments.
3. Schedule and hold a public hearing.
4. Publish a final regulation.

KMX 01963

Although the CPSC has no jurisdiction over the manufacture and sale of products for commercial use, the proposed ban, depending on its wording and interpretation, could inadvertently affect the packaging and sale of products intended for industrial users. It is our understanding that the usual commercial packaging, 5-gallon pails of ready-mix and 25-pound bags of dry-mix, are stocked by some retail outlets, such as lumber yards. It is highly probable that these products could be purchased and used by a "do-it-yourself" consumer. The CPSC, in prior actions, has taken an ultra-conservative approach that any product which can be obtained by a consumer is a "consumer product" and would be covered by their regulations. This is the type of question which could be discussed and resolved at a public hearing.

The CPSC also has the power to implement an immediate ban on a product and to order its recall to prevent further distribution to consumers. Although we do not expect this to happen, the NRDC and other activist groups are continuing to press for this type of action; and the CPSC can vote at any time to change their action plans. There is, at the present time, little or no counter-pressure from industry; and this is the main reason for our letter to you. Enclosed is a copy of information sent to the CPSC last September by the Asbestos Information Association. This information was developed by Dr. H. B. Rhodes of our asbestos group.

As you can see from the contents of the enclosure, we do not believe that the use of asbestos in spackling and similar compounds presents a significant hazard to the consumer. However, we do not feel that it would be prudent to oppose a ban on asbestos-containing compounds in "consumer-type" packaging, i.e., 1-5 pounds or 1-4 quarts. The consumer does not need the high-performace products (containing asbestos) which are required by commercial applicators, and the "protection" of your products for commercial use is much more important.

Also enclosed is a copy of our letter recently sent to members of the Consumer Product Safety Commission. We felt that it was appropriate to take this action before asking you to become involved. If you are concerned about the possibility of an inadvertent and perhaps immediate ban on your asbestos-filled products, even though they are intended for commercial use, we suggest the following action:

1. Review the enclosure to determine the facts about the issue.

2. Express your concern to the CPSC, including the following points:

   A. The effect on your commercial products which could result from a ban on consumer products.

   B. Your preference for the proposal/hearing procedure rather than any immediate action which is unnecessary and could have a severe deleterious effect on your business.

   C. A hearing is necessary to properly air the potentially harmful consequences of any CPSC action.

   D. Suggest, if you concur, that your products be labeled with the regular OSHA asbestos warning plus "For Commercial Use Only." This would be based on the assumption that such products would then be exempt from CPSC regulations.

Your comments, opinions, etc. should be expressed directly to:

Mr. S. John Byington, Chairman
Consumer Product Safety Commission
1750 K Street, N.W.
Washington, DC 20036

Please be assured that Union Carbide will take an active part in a hearing or in any other phase of the CPSC procedure where such action is appropriate and necessary to assist our customers. Please let us know if you require additional information or wish to discuss this matter in more detail.

Very truly yours,

John L. Myers

John L. Myers
Marketing Manager

KMX 01964

/cjb
Enclosures

P.S. It is obviously at your discretion, but we would appreciate receiving copies of correspondence between your company and the CPSC.