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F-20d

KIRKLAND & ELLIS (AIA/AI)
OPTS 62036 Asbestos Ban
F. 20d FILE

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August 6, 1986

By Hand

Mr. David L. Dull
Deputy Director
Chemical Control Division
United States Environmental
Protection Agency
401 M Street, S.W.
513 East Tower
Washington, D.C. 20460

Dear Mr. Dull:

On behalf of our clients, the Asbestos Information Association/North America ("AIA/NA") and the Asbestos Institute ("AI"), this letter responds to your letter of July 30, 1986.

In your letter, EPA requested that our expert witnesses respond to certain questions in writing. AIA/NA and AI doubt whether EPA can compel answers to such questions without a subpoena. We find no such authority in your regulations.

AIA/NA and AI also dispute the Agency's authority to hold open the legislative hearing pending receipt of a reply from AIA/NA's and AI's expert witnesses. The hearing panel submitted these questions after all persons had testified. Moreover, you are posing questions to persons who, in accord with Agency rules, did not participate in the hearings. Under your apparent interpretation of the rules, the legislative hearing could continue indefinitely and might never end. Neither TSCA nor the Agency's rules contemplate such a result.

Nonetheless, AIA/NA and AI recognize the Agency's authority to extend deadlines for receipt of cross-examination requests (40 C.F.R. § 750.8(e)). In the spirit of cooperation with your efforts, therefore, we have provided each of our

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witnesses with the relevant questions posed by your letter. One week, however, is not a feasible response time since two of our experts reside outside the United States and another is on vacation. We will respond as promptly as possible, in no event later than August 21.

Since we guarantee a response by that date, we suggest that you issue another hearing notice designating August 28, one week after you will have received the response from our expert witnesses, as the deadline for filing cross-examination requests. Such notice would dispel any uncertainty over the deadline and facilitate planning by all parties.

Finally, we remind you of the following matters that remain open:

1. At the legislative hearing, you agreed to put in writing all requests for documents from the AIA/NA and AI panel members. We have not received such a request.
2. Your letter of July 29 included a list of persons who worked on various background documents. Because you failed to identify the roles played by those persons, we are still unable to identify EPA's experts. We request that you remedy this deficiency by providing us, at a minimum, with a curriculum vitae for each person specified in your list and a description of his or her role in the preparation of the document in question.
3. We again ask that you identify the author of Docket Entry B2-9, USEPA, OTS, Revised Exposure Levels from Asbestos-Containing Products (Oct. 1, 1985).
4. As of this writing -- eight working days after the end of the oral testimony -- we understand that transcripts have only recently become available in the EPA docket office. We expect that you will make the entire verbatim transcript available to the public as soon as possible.

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5. We have accepted by phone your offer of July 29 to review copies of draft background documents. AIA/NA and AI suggest you make the same offer to all hearing participants. We understand that you are collecting these documents, and ask that you make them available at the earliest practicable date.

In closing, I note that AIA/NA and AI have received your August 1 letter announcing revised procedural rules. We will respond to your letter at the appropriate time when our formal cross-examination request is submitted. In the meanwhile, I trust that EPA will resolve expeditiously the various pending matters addressed in this letter.

Sincerely,

Edward W. Warren P.C./rup

Edward W. Warren, P.C.

Counsel for The Asbestos
Information Association/
North America and Asbestos
Institute

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cc: Alan Carpien
Docket Office