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CONSUMER PRODUCT SAFETY COMMISSION

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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Donald L. Dovel, Compliance Officer
Chicago Area Office

DATE: 21 MAY 1975

FROM : Alan H. Schoem, Attorney, OGC

THRU: Margaret A. Freeston
Acting Assistant General Counsel

SUBJECT: Jurisdiction Over Blown-in Fiberglass Insulation

By memorandum dated December 11, 1974, you inquired as to the Commission's jurisdiction over blown-in fiberglass insulation. This response discusses jurisdiction under both the Federal Hazardous Substances Act and the Consumer Product Safety Act.

FHSA

Jurisdiction over blown-in insulation under the FHSA depends on whether the product is a "hazardous substance" and whether it is intended or packaged in a form suitable for use in the household.

In order to be considered a hazardous substance, a substance must meet two requirements. First, it must be toxic, corrosive, an irritant, a strong sensitizer, flammable or combustible, or generate pressure through decomposition, heat or other means. (Those terms are defined in sections 2(g) - 2(l) of the FHSA, 15 U.S.C. 1261(g) - (l).) Secondly, it must be a substance which --

> may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children (H.R. Rep. 1081), 86th Cong., 2d Sess. 6).

The phrase "reasonably foreseeable handling or use" includes customary or reasonably foreseeable accidental handling or use, not only by the purchaser or intended user

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of the product, but by all others in the household, including children (16 CFR 1500.4(c)(7) (iv)).

Jurisdiction by the Commission under the FHSA is further dependent on the substance being intended or packaged in a form suitable for use in the household. The phrase, "hazardous substance intended or packaged in a form suitable for use in the household" is defined in FHSA regulations appearing at 16 CFR 1500.3(c)(1)(i), as meaning:

> "any hazardous substance, whether or not packaged, that under any customary or reasonably foreseeable condition of purchase, storage, or use may be brought into or around a house, apartment or other place where people dwell...."

One purpose of the FHSA is to reduce or eliminate injury presented by customary or reasonably foreseeable accidential handling or use of a substance by the purchaser of the product as well as by others in the household. In the circumstances described in your memorandum and accompanying materials, it appears that the individuals who actually install the insulation are the ones subjected to the alleged hazard. Although the blown-in insulation may be a hazardous substance intended or packaged in a form suitable for use in the household, the alleged risk of injury does not appear to be to members of the household or due to the products presence or use in the household. Thus, in the circumstances described in your memorandum, and in view of the purposes of the FHSA, the CPSC would not appear to have jurisdiction to regulate blown-in insulation under the FHSA. Of course, if during the installation of the insulation or once the insulation was installed in a home it then posed a hazard to a household and was a "hazardous substance," the Commission would appear to have jurisdiction to regulate the hazard posed by the product.

<u>CPSA</u>

Jurisdiction over blown-in insulation under the CPSA is dependent on the product being a "consumer product." The term "consumer product" is defined in section 3(a)(1) of

the Act as any product sold to or used, consumed or enjoyed by consumers in or around a household or residence, a school, in recreation or otherwise.

If blown-in insulation is a consumer product, the Commission would have authority to regulate it under the CPSA if it presents an unreasonable risk of injury, a substantial hazard or an imminent hazard to consumers, and the risk of injury arises from the [personal] use, enjoyment or consumption of the product by a consumer. Regulation under the CPSA is further dependent on a determination that a risk of injury associated with the product could not be eliminated or reduced to a sufficient extent by action taken under the FHSA. In the situation presented in your memorandum and accompanying material, it does not appear that consumers are exposed to any hazard that may be associated with blown-in insulation, at least during its installation. If, however, blown-in insulation while being installed or after installation presents an unreasonable risk of injury to consumers, it would appear that the Commission would have the authority to regulate that product under the CPSA.

In previous advisory opinions (see number 94) our Office has stated that products customarily used by employees exclusively within the scope of their employment would not be consumer products. Thus, blown-in insulation installed only within the scope of employment would not appear to be a consumer product as far as any risk of injury presented by the product to the installer is concerned. Rather, any risk of injury presented to the installer might be subject to regulation by OSHA.

While the views expressed in this memorandum are based on the most current interpretation of the law by this Office, they could be subsequently changed or superseded by the Commission.

FEDERAL TRADE COMMISSION
Chicago Regional Office

m 1437
East Monroe Street
cago, Illinois 60603
e Code 312 353-4423

December 9, 1974

Mr. Sam Hart, Director
Consumer Product Safety Commission
One North Wacker Drive
Chicago, Illinois 60606

Re: [redacted] Insulation P01

Dear Mr. Hart:

As part of our regional advertising monitoring program, we noted the attached advertisement for blown-in [redacted] insulation. The specific ad was placed by [redacted], offering to install in unfloored attics, blown-in [redacted] insulation; the ad appeared in The Chicago Tribune, Saturday, [redacted], Section 2, page 5.

As you know, [redacted] dust is a skin irritant to many people and presents a considerable hazard upon inhalation. Since this represents a direct consumer hazard, we are forwarding this matter to your attention for whatever action you may deem advisable.

Yours truly,

FEDERAL TRADE COMMISSION

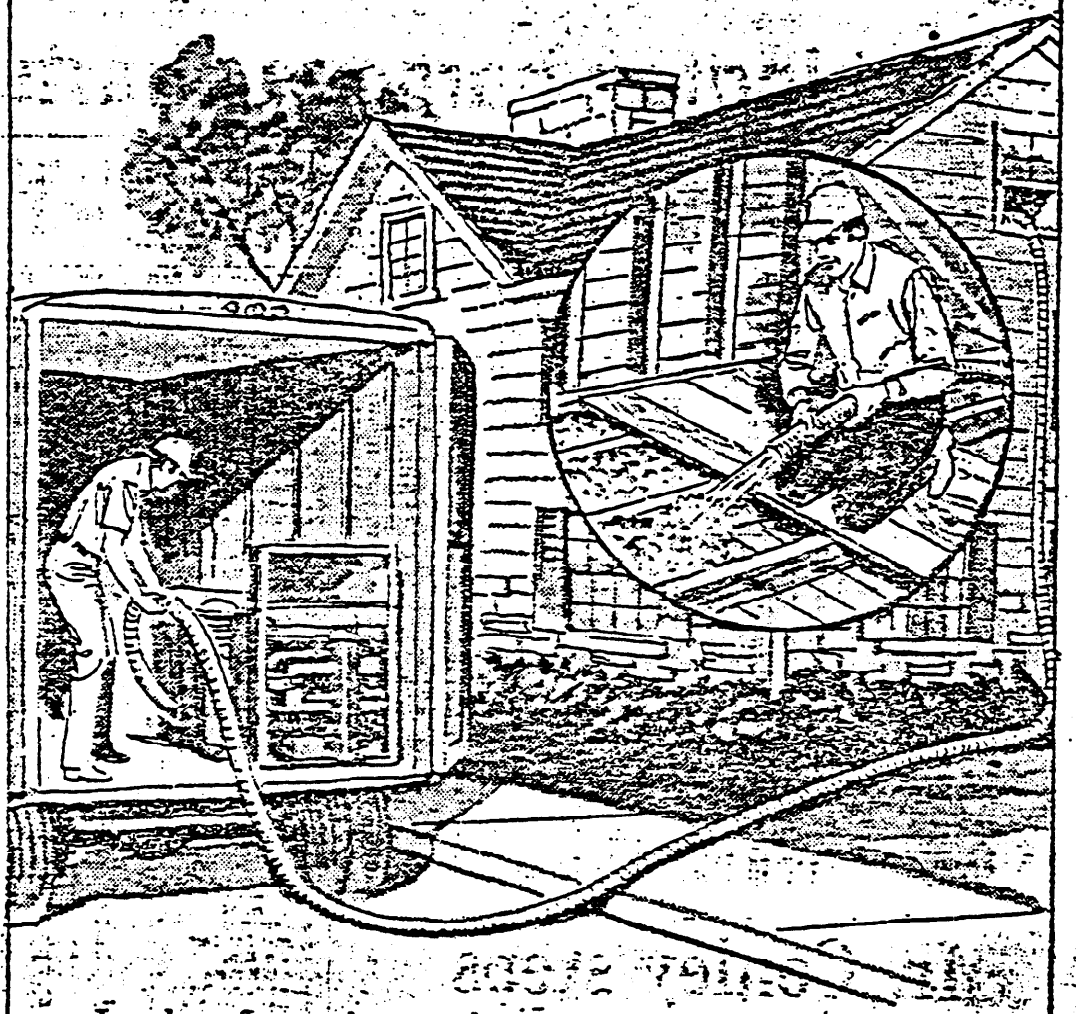
Louis L. Lerner

Louis L. Lerner
Consumer Protection Specialist
Chicago Regional Office

LL:mct
Enclosure

Check Your Attic . . .

[redacted] Blown-in [redacted] Insulation Can Help Reduce Heating Costs



Insulate for savings on heating expenses! Let [redacted] Authorized Installers professionally blow-in [redacted] insulation into every part of your attic. Visit or phone the Building Materials and Plumbing Departments at your nearby [redacted] for a FREE estimate.

INSTALLATION GUARANTEE

If defects should appear in installation workmanship within one year of installation, [redacted] will, upon notice from you, cause such defects to be corrected at no additional cost.

Installed Price in Unfloored Attic

21.50

Per 100 sq. ft. 4-inches Thick

[redacted]