

## Attorney Predicts Carpet Industry Documents Will Be "Smoking Gun"

The carpet industry recently won a major battle over chemical emissions when a federal judge dismissed a suit brought by a family that claimed their carpets caused respiratory problems, forcing them to move out of their home and eventually sell the residence at a loss. The family was seeking damages against Shaw Industries, the nation's largest carpet manufacturer.

However, the lawyer who represented the family in the suit is now seeking "declassification" of confidential carpet industry documents that he says will show manufacturers knew of problems caused by carpet emissions and hid the information from the US Congress, the US Environmental Protection Agency (EPA), and the public. He says the documents also show that the industry manipulated the Carpet Policy Dialogue instituted by the EPA in the late 1980s and early 1990s.

At the same time, the US Consumer Product Safety Commission (CPSC) continues to "stone-wall" a report from carpet emission studies it commissioned over three years ago. For the third time in a year, the commission has rejected a Freedom of Information Act (FOIA) request from *IEQS* seeking release of the publicly funded research project. The CPSC claims that the documents are part of a "law enforcement" action, but officials won't elaborate on what that entails. (See page 4 for story on CPSC action.)

### Court Ruling

The case against Shaw Industries — which was later dismissed — was filed by a Pennsylvania family of four who claimed that they suffered wheezing, coughing, dizziness, and shortness of breath after installing carpeting in 1993. Although the family had the house tested by an industrial hygienist, the judge, acting on a motion by Shaw, ruled that the testing method was not "good science" and dismissed the case.

David G. Concannon of Kohn, Swift, and Graf (Philadelphia, Pennsylvania), the lawyer who represented the family, tells *IEQS* that the judge accepted the industry arguments at face value.

According to Concannon, the industrial hygienist tested the home extensively for various environmental pollutants. When all other causes had been ruled out, and after the family had moved, he tested for various airborne chemicals and detected significant levels in carpeted areas. After the carpet had been removed, the chemical concentrations dropped threefold. Concannon says that Shaw Industries challenged this method and argued that the only acceptable method to establish the pollution contribution of the carpets would be to take samples on the day of installation and submit them to a laboratory for analysis in a small environmental chamber. The attorney says this creates a threshold so high that it would be impossible for anyone to meet it. "There are three major problems with this approach," Concannon tells *IEQS*.

- No one realizes on the day of installation that the carpets are emitting harmful contaminants;
- There are only two labs that do this type of work, and they both do significant business with the carpet industry; and
- The cost of the tests would be about \$7,000, far above what the average homeowner is willing to spend on speculation.

Concannon says that because the industrial hygienist in the case hadn't followed this method, he wasn't allowed to testify. The judge further ruled that because the physician treating the family had relied on the information from the industrial hygienist, he wouldn't be allowed to testify either. Without their expert testimony, the family had no case, causing the judge to dismiss the complaint.

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### Confidential Documents

In addition to appealing the case, Concannon says he has petitioned the court to release several thousand carpet industry documents that were subpoenaed for the lawsuit, but which were designated as "confidential." While he couldn't discuss the exact contents of those documents because of their confidential designation, Concannon told **IEQS** that papers filed in court in support of his motion say the documents would show:

- What the carpet manufacturers knew about the health effects from carpet emissions and when they knew it;
- Numerous complaints from consumers about adverse health reactions to carpets;
- What carpet manufacturers did and — more important — did not do in response to those complaints;
- What is incorrect about what the carpet industry has told the US Congress;
- What the industry did to circumvent the EPA's Carpet Policy Dialogue; and
- Studies that have been done by the carpet industry's own labs.

Concannon says the bulk of the documents involve the source of chemical emissions from carpets and summarize hundreds of complaints of illnesses attributable to carpets. In court documents filed in support of his motion, he says Shaw and the Carpet and Rug Institute (CRI) received these complaints shortly before and shortly after the manufacture of the carpets that were the basis of his lawsuit against Shaw. His argument reads, in part:

The fact that Shaw received several hundred indoor air quality complaints in an 18 month period, and that some of Shaw's employees considered some of these complaints to be valid, is a legitimate issue of public concern.

### Some Documents Released

While Concannon is seeking the release of 3,000-4,000 documents he says will be "similar to the tobacco documents" that revealed a massive coverup by the tobacco industry, some of the documents were released this past summer. **IEQS** has reviewed a few of these and while we found no "smoking gun," the documents do indicate a cynical attitude toward the issue on the part of some participants. In some documents the authors write about how to "spin" the issue,

rather than address the EPA's concerns, while others talk about how to manipulate the Carpet Policy Dialogue.

One particularly revealing 1993 document from a university-related research institution urges the industry to use the institution's facilities for carpet emissions research, as this would allow the industry to suppress results for a long time simply by not giving final approval to the results. The communication reads, in part:

The work done ... will not be placed in the library until it becomes a final report. The sponsor controls that eventuality. A draft report or draft final can be held for a very extended period of time. Such reports are not placed in the library or elsewhere until a project is accepted as final and the project is closed out.

What's more remarkable is that the document from the research institution to the Carpet and Rug Institute (CRI) is urging the CRI to do emissions testing and bases its arguments on reports that CRI has decided not to do any. The passage reads, in part: "[A CRI official] indicated that the industry's legal advice is, in effect, suggesting that no carpet emissions research be done. Further that no data be generated."

This runs counter to statements by CRI officials since carpets became a cause of concern in **IAQ**. These officials have always said or implied that they were trying to get to the bottom of the emissions problem. **IEQS** can't recall them ever saying that they had been told by their lawyers to cease research and generating data.

### "Run the Course"

Another document, dated February 1994, contains an interesting passage:

Carpet and **IAQ** as related to chemical emissions has run its course as far as mitigation of the issue goes; nothing we can do henceforth can reverse the situation, it is essentially a housekeeping chore from here on. There are still several more research steps but these are political rather than scientific.

At the time this was written, the EPA was supposedly in the midst of a two-part workshop with the industry and researchers to look into carpet emissions and their potential toxicity. This flowed directly from the studies by Anderson Laboratories and others and the EPA's inability to replicate the studies. The first part of the

## CPSC Continues Secrecy over Carpet Emissions Research

The US Consumer Product Safety Commission (CPSC), for the third time in two years, has rejected an *IEQS* Freedom of Information Act (FOIA) request for data from carpet emission research conducted in 1994 and 1995 by Air Quality Sciences, Inc. (AQS — Atlanta, Georgia) under contract to the CPSC. The commission, as it did in the past, cites "law enforcement purposes" as the reason for withholding the documents from the public record.

*IEQS*, as it turns out, isn't the only one trying to get a look at the research data. David Concannon, a lawyer representing a family that said it suffered adverse health effects from carpet emissions, also tried without success to subpoena the documents to use in his unsuccessful lawsuit (see story on page 2). He was rebuffed for the same reason. We have also been in contact with members of Congress who have also tried fruitlessly to obtain the data.

The CPSC won't elaborate on why the documents are considered "law enforcement" records, but has intimated that it is perhaps because the commission is considering regulating carpet emissions (see *Indoor Air Quality Update [IAQU]*, November 1996). However, we have seen no move toward regulation, in particular publication of a "notice to regulate," which must precede the rule-making process.

The CPSC's communication to *IEQS* claims an exemption from the FOIA under Exemption 7(A), which, according to the commission:

... provides for the withholding from disclosure records or information compiled for law enforcement records, to the extent that the production of such

law enforcement records or information could reasonably be expected to interfere with enforcement proceedings. We have determined that the disclosure of these minutes contained in our law enforcement investigatory records would be contrary to the public interest. It would not be in the public interest to disclose the materials because disclosure would prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The 1994 contract between CPSC and AQS called for the laboratory to characterize carpet emissions and perform sensory irritation tests. According to the contract, AQS agreed to finish the study and submit a final report by mid-1995. We have been trying since then to get a copy of the report.

For the CPSC to invoke the "law enforcement" provision raises interesting possibilities. While the commission has led us to believe it is considering regulation, it's curious that it hasn't filed notice of the intention to regulate. Another possibility is legal action against players in the carpet industry, but that would be pure speculation and would seem to require more evidence than a research report could provide.

For more information on the contract, CPSC-C-94-1122, *Sensory and Pulmonary Irritation Studies of Carpet System Materials and their Constituent Chemicals*, contact CPSC, Office of the Secretary, Freedom of Information Division, 4340 East West Highway, Room 502, Bethesda, MD 20814-4408; (301) 504-0785, Fax: (301) 504-0127; E-mail: cpsc-os@cpsc.gov.

workshop was held in the fall of 1993 to discuss the agenda for future research. The second part was supposed to be held in the spring of 1994.

While a firm date was not set for the second part, the proposed date continued to slip and the idea of the workshop faded. EPA officials questioned by *IEQS* at the time didn't know when it would take place. It never did. The same memo also outlines a life-cycle approach to dealing with such issues and warns industry officials that while the concern over emissions is nearing the end with the public and the media, officials should prepare to deal with the next concern — which it correctly identifies as biocontaminants. However, instead of discussing whether to do research on biocontaminants, the memo urges officials simply to find ways to "defuse the coming adverse publicity."

The life cycle of public concern, according to the memo, has the following pattern:

... issues such as this arise in rhetorical questions, move into the scientific community and simmer there for a year or so, as interest develops and rudimentary research typically raises questions. Results of this research become known to a few parties; in this case the medical community. Short articles about the research tend to generate more interest and other researchers acquire funding, and it moves into the technical/shelter press. About this point, the crusaders enter, and the media onslaught begins.

### Pattern Emerging

Certainly, the carpet industry documents we have seen so far provide no "smoking gun" on the order of the tobacco documents. Those documents show that the tobacco industry

knew for years that its products, despite its denials, were carcinogenic and the industry had conspired not only to conceal, but to lie about, that information.

The documents that have been released to the public are selective — so we can only speculate on what is in those that are still classified as confidential. Still, what we have seen is a disturbing pattern. At a time when carpet industry officials and trade association spokespersons were assuring us that they were trying to "get to the bottom" of the carpet emissions question, the documents we have seen indicate some people were concerned more with media manipulation.

Even more disturbing is the memo from a respected research institution begging the carpet industry to allow the university to assist in delaying, if not concealing, research data with potentially serious public health implications. Not only does this involve significant issues of research ethics, but calls into question the stance of so-called independent researchers.

The documents we have seen also shed a negative light on the results of the much-heralded Carpet Policy Dialogue. They indicate that the authors of the memos mentioned above viewed these proceedings as a political battle to be won or lost, and not as an honest and open dialogue over the role of carpets in indoor air with a view toward making them more acceptable. In fact, one document uses that exact language: "Meeting at EPA was total success; [name deleted] and I got the exact language we needed in the

Dialogue document, with full agreement of the entire plenary. [Name deleted] lost."

With this sort of language, which speaks more of political maneuvering than scientific inquiry, it's hard to view the industry as trying to "get to the bottom" of anything. If the industry, acting on legal advice, suspended all research into carpet emissions, this would give lie to their assurances that they were working hard to ensure that their products are safe.

### Intense Interest

Concannon says the case has generated intense interest from numerous parties, all seeking access to the disputed documents. In a memorandum filed with the federal court in Pennsylvania, Concannon reports:

Additionally, during the course of this litigation, plaintiffs' counsel have been inundated with request for access to Shaw's documents from a variety of non-parties, including private litigants, consumer protection groups, government officials, non-profit medical research institutions, and members of the media.

Concannon claims that this interest argues against any claims to keep the documents classified as confidential.

### For More Information

For more information, contact Atty. David Concannon, Kohn, Swift and Graf, 2400 One Reading Center, 1101 Market Street, Philadelphia, PA 19107-2924; (215) 238-1700, Fax: (215) 238-1968.

## Practical Research Briefs

### Emission Controls Help Reduce CO Exposure from Floor Burnishers

Propane-powered floor burnishers may be a potent source of carbon monoxide (CO) emissions, leading some researchers to recommend avoiding the machines in favor of electric-powered models. However, an industrial hygienist from the University of Arizona determined that adding emission controls and CO alarms can significantly reduce the risks associated with propane burnishers. Frank R. Demer from the university's Department of Risk Management and Safety presented a poster session on his findings at the American Industrial Hygiene Conference and Exposition

(AIHCE) in Dallas, Texas, last May and subsequently shared a more extensive study with **IEQS**. Demer did an earlier study on the potential emission danger from similar machines. In order to study the effect of emission controls, Demer used six 27-inch propane-powered floor burnishers with 2-cycle, 16-horsepower, V-Twin engines. The emission controls consisted of catalytic mufflers designed to measure the exhaust gases' oxygen content and automatically adjust the air/fuel mixture to burn fuel efficiently. If the device cannot maintain acceptable