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September 14, 1992

FEDERAL EXPRESS

The Honorable Charles A. James
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
10th & Constitution, N.W.
Room 3107
Washington, D.C. 20530

Re: Request for Business Review Letter: Collection
Procedure for Asphalt Industry Advancement Program

Dear Mr. James:

This firm represents the Colorado Asphalt Producers Association ("CAPA"), an industry association of 65 members involved in the business of asphalt cement for the construction of roads and highways in the State of Colorado. We have been requested, on behalf of CAPA and its members, to seek a business review letter from the Department of Justice Antitrust Division with regard to a proposed method of collecting an assessment over a five-year period for an asphalt industry enhancement program. A pro rata assessment would be collected by asphalt refineries and blenders and remitted to CAPA based upon the volume of purchases by each member, as more fully set forth herein.

I. BACKGROUND

CAPA was formed in 1982 to promote the interests of the asphalt industry. A copy of the articles of incorporation and current bylaws of the association are enclosed as Exhibits A and B. Assessments against members have traditionally been made based upon tonnage of Hot Mix Asphalt produced in the State of Colorado plus a flat dues of \$1,000.00. Currently the assessment is .015 per ton for the first 50,000 tons produced, .0125 for the next 50,000 tons and .01 for tonnage over 100,000 tons. CAPA has always taken steps to assure that the amount of each member's assessment remains confidential and that purchase information is not disseminated among the members.

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In recent years, asphalt producers have experienced a serious competitive disadvantage to concrete producers in the construction of roads and highways in the State of Colorado. In great part this has been a result of the asphalt producers' need for sufficient funds to engage in research and development of a better asphalt product and to educate the public, and particularly governmental entities, with regard to the significant advantages of asphalt cement. For example, the Federal Highway Administration thru the American Association of State Highway Transportation Officials has almost completed a five year study (due March, 1993) called ~~Strategic-Research-Highway Program which has new technologies, new~~ testing methods and new construction requirements. All must be field tested, comparison data gathered and the information disseminated to producers, cities and counties as well as state and federal transportation personnel. CAPA asphalt producers as well as other asphalt producers must do the field testing and the comparison data gathering to refine this work so a quality product is produced for these entities from this new research.

II. THE PROGRAM TO BE REVIEWED

CAPA desires to collect a higher assessment from its members over the next five years in order to (a) hire a full-time marketing person for the asphalt cement industry; (b) engage in widespread marketing and educational efforts to promote the use of asphalt cement; (c) initiate the establishment of a Flexible Pavement Chair at the University of Colorado, Denver Campus to educate engineers and consultants in the new technologies, methods and properties of asphalt;¹ (d) complete the testing tasks set forth above; (e) extend and enhance the certified tester technician program by increasing times and adding new testing procedures for the new equipment, and (f) establish further research and development efforts in order to enhance asphalt's competitive position.

CAPA intends to provide that the Asphalt Refineries and Asphalt Blenders from whom members purchase asphalt cement (AC) or polymers will collect the assessment. The purpose of having the refiners collect and remit the assessment is to assure accuracy and fairness in the collection of the assessment. A cents-per-ton assessment on the purchase of asphalt cement (AC) or polymers will be held by the Asphalt Refineries or Asphalt Blenders and remitted to CAPA no less frequently than monthly and not later than the twentieth of the following month. CAPA will also give each of its members the option of remitting the assessment directly to CAPA

¹At the present time the closest universities offering these courses are the University of Nevada at Reno, the University of Texas at Austin, in the west and the University of Maryland and the University of Pennsylvania in the East.

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based upon its own calculation of its tonnage purchases. Non-members may also participate in the program.

CAPA and its members have agreed to adhere to the following limitations and conditions on the program:

1. Utilization of the Asphalt Refineries or Asphalt Blenders to collect on an invoice by invoice basis an assessment for tonnage purchases to be remitted to CAPA will be voluntary. CAPA will accept a direct payment of the authorized assessment.
2. Asphalt producers may continue to be participants in the AIAP program without paying annual dues to CAPA.
3. The benefits of the research and development program which the AIAP will pursue will be available to all CAPA members whether they participate in the AIAP program or not and indeed will be available to all asphalt producers in the State of Colorado whether they are CAPA members or participate in the AIAP Program;
4. The producer members of CAPA who participate in the program whereby the Asphalt Refineries or Asphalt Blenders collect the assessment have not agreed and will not agree to uniformly add the CAPA assessment to bids or invoices which they provide to purchasers of asphalt cement (AC) or polymers for the construction of roads and highways. The disclosure to a competitor of whether those charges will be excluded or included is strictly prohibited. Each member is to independently determine how it will treat the CAPA assessment;
5. Each participating producer member of CAPA will unilaterally apprise each Asphalt Refinery or Asphalt Blender from whom it makes tonnage purchases of asphalt cement or polymer whether or not that company is authorized to make collection of the CAPA assessment (a copy of the proposed letter to refiners is enclosed);
6. The CAPA assessment will be utilized for the sole purpose of industry enhancement although a certain allocated portion of the assessment may be utilized to pay a percentage of the overhead of the CAPA administrative office, including rent and the time

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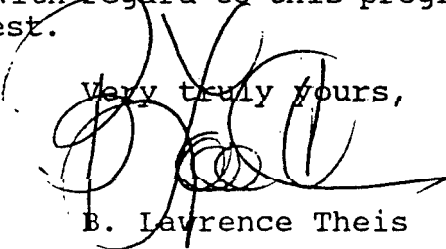
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of the administrator and other personnel which is devoted specifically to the AIAP program;

7. The withdrawal of any CAPA member from the AIAP program, after the original 5 years, or the failure by any CAPA member to utilize the Asphalt Refineries or Asphalt Blenders collection program by using their own tabulation instead, will not result in loss of membership to the member who will continue in good standing during the time that regular assessments are paid; and
8. The assessment against each participating member will be fair and uniform and will not be used to stabilize prices or price levels, by, for example, making adjustments for competitive situations that involve non-members.

CAPA intends to initiate the program in early 1993. If you desire any further information with regard to this program, we will be happy to furnish it on request.

Very truly yours,



B. Lawrence Theis

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