INTERNAL CORRESPONDENCE

MINING AND METALS DIVISION • P. O. BOX 579, NIAGARA FALLS, NEW YORK 14302

PLAINTIFF'S EXHIBIT
UC-2971

To (Name) Mr. J. L. Myers
Division Mining & Metals
Location Niagara Falls, NY

Date May 21, 1973

Originating Dept. "Calidria" Asbestos

Answering letter date

Copy to Mr. R. E. Byrne
Mr. P. J. Morgan
Mr. W. C. Thurber

Subject Interpretation of EPA Regulations

The compilation of our comments and questions on the new EPA asbestos regulations is attached. These regulations have the stated objective of controlling asbestos emissions from major sources and appear to be written in this context. Accordingly, they contain extensive provisions for registration of new and existing sources, permission to construct and modify sources, etc.

A great majority of our customers, however, are obviously not major sources of asbestos emissions. If required to become involved with this mass of regulation, they could well switch to alternative materials, possibly of unknown toxic properties. It could also become very difficult to find any new asbestos users. It is obviously important that we obtain an interpretation and clarification of these regulations in order to assess their impact on our business.

The attached compilation contains a variety of questions generated at Niagara Falls. Some require a simple confirmation that we understand a point in the regulation correctly. Others request a legal interpretation of certain sections. We also need to work out which items are really vague and which, if any, of these need to be brought to the attention of the AIA and/or the EPA.

It is suggested that our legal counsel review these questions and that we try to meet with Bill Thurber and them while we are in New York on May 24. We can then decide what to do next, keeping in mind that we are promising customers some type of recommendation before the July 5 deadline.

Because of the activity in certain states to essentially ban asbestos and products containing asbestos, we should maintain heavy pressure on AIA to encourage all state and local governments to adopt the EPA standards. Our customers are more keenly aware of local authorities and we must have answers as soon as possible.

H. B. Rhodes By JLM

H. B. Rhodes

JLM/HBR/cjb
Attachment

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Comments and Questions on the EPA Regulations - April 6, 1973

(Compiled by H. B. Rhodes)

1. The introductory section contains several statements concerning asbestos toxicology and several statements on the OSHA regulations that are open to considerable question. These include:

   a. P-8820, bottom of column 1: The statement on the relationship between asbestos and mesothelioma seems considerably stronger than the facts warrant.

   b. P-8822, middle column, §2: Ceramic wool, mineral wool, and fiberglass are given a clean bill of health. Silica is a target hazard of OSHA.

   c. P-8821, middle of second column: Says OSHA regulations require dust collection on tools which produce asbestos dust. OSHA (p.11320, second column, middle) says, "if exposure limits are exceeded."

   d. P-8821, middle of first column: Says OSHA requires waste disposal in sealed bags. OSHA (p.11321, bottom of third column) says, "if exposure limits are exceeded."

   Unfortunately, things which appear in print tend to be accepted as correct. In my opinion, a little low-key missionary work with the EPA on toxicology could be useful. If they wish to misquote the OSHA regulations, it really isn't up to us to correct them.

2. §61.15 "Availability of Information." (Also P-8826, column 2, middle.)

   Emission data, records, reports or information other than trade secrets obtained by the administrator will be available to the public.

   Trade secrets (§61.15) are methods or processes entitled to protection.

   Item B-3, Appendix A (Compliance) Status Information "requires that a monthly average of hazardous material entering the process be given.

   This seems to mean that a company's production figures are available to the public. Is there a definition of "trade secrets" available that will clarify this?

3. §61.02(d) "Commenced"

   The definition contains the words "a continuous program of construction or modification..."

   a. Are we correct in saying that a potential new user of asbestos may run intermittent tests, even for extended periods, as long as he has not made a commitment to use asbestos continuously?

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b. In a broader sense, how should "continuously" be construed? Has a man who formerly used no asbestos, who changes his operation so that he dumps three bags of asbestos once in an eight-hour shift, undertaken "a continuous program of modification?" If not, what about 40 bags dumped in 35 minutes once in an eight-hour shift? What about the same operation once a shift for three shifts a day?

The foregoing questions may sound a little trite but the avowed purpose of the regulations is to control major emissions and the word "continuous" is conspicuous in this definition. We have a number of important customers, most notably the polyester manufacturers who dump intermittently, who are obviously not major sources, and who we could easily lose if made to register. A tight definition of "continuous" would be most helpful.

4. §61.02(j) "Modification"

This definition includes the element of "...increases the amount of hazardous air pollutant emitted....or which results in the emission of any hazardous air pollutant not previously emitted."

If a new asbestos user operates so that he does not emit asbestos, has he made a modification? Note that the word "any" appears in the definition which is in the "General Provisions" section and may not yet be limited by the "visible emission" concept in Subpart B on asbestos.

5. §61.02(p) "Stationary Source"

The definition includes the words "...emits or may emit..." Since all new and existing sources are required to register, it is essential to know how these words should be interpreted.

Two different editions of Webster's dictionary give the following definitions for "may:"

(1) "Shall, Must - used in law where the sense, purpose, or policy requires this interpretation."

(2) "Shall, Must - used esp. in deeds, contracts, and statues."

If this connotation is used for "may" in the source definition, it would appear that the "building, structure, facility or installation" must actually emit or be expected to actually emit (if new) before it becomes a "Stationary Source" under the law. Obviously, we need advice on this.

There is another complication to consider. The "Stationary Source" definition is in the "General Provisions" section of the regulations and applies to all designated hazardous air pollutants. For asbestos, no emission tests are prescribed and "Visible Emissions" to the "outside air" are prohibited. If "emit" is taken to mean the prohibited act, the meaning is clear. If, however, it means any asbestos fiber, whatsoever, it would be hard to argue that absolutely no fiber entered the air even when visible emissions are absent. In view of their statements regarding control of major emission sources, the "visible emissions" version seems more likely.

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The problem here can be summarized in the following two questions:

a. Does a "Stationary Source" which clearly falls under the categories specified but does not even have any asbestos on the premises have to at least register?

b. Does a "Stationary Source" which clearly falls under the categories specified and does use asbestos but does not make any visible emissions to the outside air have to register?

6. §61.06 "Determination of Construction or Modifications"

Upon written application, the administrator will make a determination as to whether intended actions will constitute a construction or modification.

Is there any obligation in the act for an owner or operator to obtain such a determination? It would seem to me that this would hinge on the breadth of the definition of "Source."

7. §61.10 "Source Reporting"

The source report requires the type of hazardous pollutants "emitted." Does this imply that if none are emitted, it is not a source?

Note also that the design capacity must be included and apparently becomes public information.

8. §61.12 "Emission Tests and Monitoring"

References Appendix B which does not contain any asbestos tests. Are we correct in assuming that no tests are required?

9. §61.21 "Definitions"

The sequence of definitions suggests that they set out to define "particulate asbestos material" as finely-divided free asbestos fiber but went astray. Support for this view comes from the introductory section, P-8821 near the top of the third column. Thus:

> "The existence of particulate asbestos material in a gas stream vented to the atmosphere can be determined by collecting a sample on a filter and analyzing it by microscopy techniques."

Microscope techniques, as just described, will only detect free fiber not that contained in "granules" of plastic or other binder. Furthermore, if dust generated from "any material containing asbestos" was intended to be covered, there would be no need to examine the gas stream at all.

The present wording seems to cover dust from any material containing asbestos whether or not any free fiber is present. Is this interpretation correct?

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If correct, it also would appear that there is nothing to lose and a great deal to gain by pursuing this with EPA in an effort to get it altered to cover free fiber only.

10. §61.22 "Emission Standard" - Part C

a. This indicates that visible emissions are permitted if the prescribed air cleaning equipment (61.23) is used. Is this correct?

b. The word asbestos does not appear in the manufacturing designations. In some cases they are traditional asbestos products which are clear-cut. In other cases there is room for confusion. Thus:

(1) In C-1, they probably mean asbestos textile materials where asbestos itself is the main fiber or ingredient.

(2) In C-5, they could mean asbestos paper which is a standard product or regular paper containing a small amount of asbestos as at Boise Cascade. A definition here is needed. The same comments apply to millboard and felt.

c. In a broader sense, we need some guidance on what is meant by "manufacturing" as apposed to compounding. The dictionary has the elements of starting with raw materials for manufacturing and the combination of parts for compounding. The difference, however, is not really clear cut.

It appears that a polyester manufacturer who "cooks" the resin from basic raw materials and then adds the RG-244 would have to be considered a manufacturer. On the other hand, a company which takes the finished resin (clear, no mineral additives) and adds asbestos, limestone, and pigment to produce a gel coat, might be enough different to be considered a compounder.

This may not be a worthwhile line of attack but we do have a lot of small-to-medium compounders who do not particularly care to register.

11. §61.22(e) "Spraying"

This paragraph obviously applies only to spraying for insulation and fireproofing. It does, however, appear to contain some contradictions that need clarification.

a. The first sentence says that no visible emissions are permitted from spraying of materials containing more than 1% asbestos except if the air cleaning option of paragraph 61.23 is taken. The next sentence says that such spray-on material shall contain less than 1% asbestos.

These appear to be mutually exclusive, i.e., if spray-on materials cannot contain more than 1% asbestos, why is there a regulation for what is required when more than 1% is used? Does this mean that those greater than

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1% are considered as a source whereas those with less than 1% are exempt? Are visible emissions permissible from asbestos materials containing less than 1% asbestos? Can this be carried a step further to show that visible emissions from plants containing less than 1% asbestos are permissible? Note also that paragraph e (1) exempts such sources from certain prior written approval but adds a 20-day prior notice for "Any owner or operator who intends to spray asbestos materials to insulate pipe..." No distinction is made as to the percent asbestos contained. In the preamble, P-8821, third column, they describe "very small quantities of asbestos" as "less than 1%" and indicate that this level is not objectionable.

HBR:cjb
Mining & Metals Division
Niagara Falls, New York
5/21/73

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