PLAINTIFF'S EXHIBIT
UC-4144

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Date: November 7, 1975

Originating Dept.: "Calidria" Asbestos

Answering letter date:

Subject: Revised EPA Asbestos Regulations - October 14, 1975

The revised EPA regulations were finally promulgated on October 14, 1975. The main changes made involved two areas; (1) demolition and renovation operations and (2) the handling of asbestos containing wastes. The first has no real impact on our business and will not be considered here. The second can have a very large effect on our sales and marketing efforts and the main problems are outlined. It may be desirable to discuss these points at the November 11 meeting in New York.

As you know, we pushed EPA very hard to get reasonable regulations on bag and waste disposal for our multiplicity of small customers. We succeeded in getting the outright prohibition on bag incineration removed but the rest of the regulations, as far as they effect us, are about as originally proposed.

The original regulations of April 6, 1973, the minor changes of May 3, 1974, and the extensive changes just made are compared paragraph by paragraph in the attached document. The April 6 version is on the left on each page. Only the paragraphs that have been changed are shown in the other two columns to make it easier to identify exactly what has occurred. All sections of the April 6, 1973 regulations that have not been changed still apply.

Referring to page 25 of the attachment, §61.22(j), waste disposal regulates the disposal of asbestos-containing wastes generated during the particular manufacturing, fabrication, demolition, and renovation operations specified as covered by the standard. Basically, it extends the no visible emission (NVE) concept to all operations dealing with asbestos-containing waste and also requires that such waste be deposited at sites operated in accordance with §61.25. The one who generates the waste appears to be responsible for its proper disposal.

With these basic principles laid down, the paragraph goes on to provide three alternative ways that the operator can use to comply:

1. Treat the waste with water and ship it to the site in a properly labelled leak-tight container.

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2. Process into nonfriable shapes. No label is required here.

3. Other methods approved by the administrator.

The NVE requirement must be met during the processing of the waste to put it in the nondusty condition.

§61.25 covering Waste Disposal Sites (see pages 29-31) follows very much the same pattern. The NVE wording is invoked to apply "where asbestos-containing waste material has been desposited." It is not clear whether this applies to just the portion of a larger dump where the asbestos material may be deposited or to the entire dump. Warning signs and fences are also required unless a natural barrier, acceptable to the administrator, is present.

Again, three exceptions are provided:

1. Cover the asbestos-containing waste with at least 6" of compacted dirt at the end of each operating day.

2. Cover the asbestos-containing waste with an approved, resinous dust suppressant at the end of each operating day.

3. Other emission control methods approved by the administrator.

If the landfill procedure is followed, neither the signs nor the fences are required. Basically, this dirt covering is standard sanitary landfill procedure. EPA apparently did not want to require signs and fences around a multiplicity of existing sanitary landfill operations because a minor portion of asbestos waste was dumped therein. They are still needed, however, where the resinous binder is used. Crankcase oil is specifically excluded as an acceptable dust suppression agent.

The main compliance problem for our customers under these two paragraphs appears to be the disposal of the empty asbestos bags. Other wastes are possible but quantities are expected to be small. Incineration is allowed as an accepted method as long as the NVE criteria is met. If we could develop a bag-product combination that was free of visible asbestos after dumping, we might be able to argue that its disposal did not involve asbestos waste. Barring this, the situation appears to be as listed below. Advice of counsel on the correctness of this understanding of the regulations is urgently needed.

1. The customer deposits the empty bags in a large plastic bag and puts a warning label on it as per OSHA requirements.

2. The plastic bag is collected with other waste and transported to a dump. If there are other nonasbestos materials in the load which generate dust, there is a violation of the NVE requirement. If there is no dust visible, things are satisfactory so far.

3. The plastic bag must be deposited in the dump without visible emissions, at least from the adjacent region of the dump. The dump must be fenced and have warning signs.

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4. If the dump happens to be a sanitary landfill operation, the fences and warning signs are not required. It is not clear whether the NVE criteria is still required as specified in §61.22 (j)(1) for deposition of waste or has been superseded by §61.25(e).

5. If the customer elects to render the waste dustless with water or even make it nonfriable, which is not particularly easy with empty bags, he seems to be all right only until the material is in the dump. The dump must still have the signs and fences unless it is a sanitary landfill operation.

If this analysis is correct, the only viable approach for the customer who is not fortunate enough to have access to a sanitary landfill operation seems to be to collect his bags and periodically bury them himself. The salability of this approach at many locations seems dubious but it should be better than changing the operation of the entire dump.

The problem seems to arise from the position stated by EPA in the preamble to the revised regulations that suitable sites are increasing in number and it was appropriate to require that the asbestos-containing waste be required to go to these sites. We do not have the facts at hand but it is extremely unlikely that there will be any reasonable coincidence between these landfill sites and the points where asbestos-containing waste is generated. Our great multiplicity of small customers certainly presents a unique problem.

The problem just outlined was emphasized to EPA in written and oral presentations while the proposed revisions were under consideration. A combination of two approaches was suggested to overcome it; (1) limit the regulations on waste disposal to friable asbestos-containing waste and (2) put a limit on the quantity of such waste a dump could handle and still not be covered by the complex, large dump regulations. There was extensive precedent for both of these concepts in the "Demolition and Renovation" sections of the regulations. EPA did not accept these suggestions and we are left with our RG-244 and future RG-600 business in jeopardy. It is suggested that we get our facts in order and our position organized and meet again with EPA. They seem to have some administrative flexibility and it is also possible that we have not interpreted the regulations correctly.

In addition to these paragraphs, there are regulations for asbestos mill waste disposal (including baghouse fines) and for inactive waste disposal sites formerly operated by mills, manufacturing operations, and fabrication that are covered by the present regulations. They are quite similar to those already described. They appear to follow the original proposals quite closely and it is understood that no major compliance problems are anticipated at King City.

Finally, a new reporting requirement relative to waste disposal for the sources covered has been added. The details of their waste disposal must be submitted to EPA within 90 days. The wording on the definition of who must register as a "source" is sufficiently grey in the original regulations so that most of our customers have elected not to register. The new waste disposal requirements make this much less ambiguous and a user would appear to risk a willful violation charge if he continues to ignore the EPA. This adds to the

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need to get some sort of position worked out with EPA. As stated previously, if our Law Department agrees that this interpretation is correct, then Action Plan is clearly needed.

H. B. Rhodes

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HBR:cjb
Attachment

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Federal Register

TUESDAY, OCTOBER 14, 1975



PART V: COMPARISON OF APRIL 6, 1973, MAY 3, 1974, AND OCTOBER 14, 1975 REGULATIONS AND REVISIONS.

11/6/75
H. B. Rhodes

ENVIRONMENTAL PROTECTION AGENCY

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