

FILE NAME: RT Vanderbilt (RTV)

DATE: 1978 July 18

DOC#: RTV114

DOCUMENT DESCRIPTION: Letter from RTV to Quebec Asbestos Mining Association RE Caution Labels

R. T. VANDERBILT COMPANY, INC.
30 WINFIELD STREET
NORWALK, CONNECTICUT 06855

CABLE ADDRESS
"BILTVAN" NORWALK, CONNECTICUT
TWX 710-468-8840
(203) 863-1400

July 18, 1978

Mr. Marcel Cossette
Quebec Asbestos Mining Association
University of Sherbrooke, P.Q.
Sherbrooke, QUEBEC J1K 2R1

Dear Mr. Cossette:

It has come to my attention that the requirement for caution labels as stated in paragraph 5.3.1. of the 12th draft of the ASTM E-34 Standard for Occupational Exposure to Asbestos is unworkable as written.

The wording "caution labels should be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers," could be interpreted by the courts, in the absence of any qualifying minimum concentration of asbestos fibers in the product, to mean any concentration above zero. Such an interpretation was taken by the courts in the case GAF Corporation v. OSAHRC and Dunlop (No. 76-1028) in relation to the OSHA asbestos standard requirements for medical exams for exposed employees. The court ruled that "concentrations of asbestos", as stated in the regulation, meant any concentration of asbestos above zero.

Obviously, a similar interpretation of "containing asbestos fibers" for purposes of labeling, would mean that the asbestos warning label would be required on mineral product containers where the concentration of asbestos was in the parts per million range. The possibility that this might happen is supported by a recent finding, through Freedom of Information Requests, of a recommendation by the OSHA Solicitor's office that talcs containing any amount of asbestos be labeled with the official Asbestos Warning Label.

It has been argued that the OSHA requirements for labeling products containing asbestos, which uses essentially the same language as the ASTM draft standard, might be interpreted to mean that only products containing sufficient asbestos "so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the prescribed exposure limits" be labeled. Naturally it would be unreasonable to believe that a product containing, for example, 0.1% asbestos could release more than 2 fibers/c.c. under normal conditions of use. But as long as the language of the standard remains vague or unspecific, the courts, in their efforts to favor the protection of the employee, might easily adopt an attitude similar to that applied in the GAF case.

However, the GAF case points out the need for precise terms in regulations of importance to human life. Circuit Judge MacKinnon, in his concurring opinion in the GAF case criticizes the regulation:

29 C.F.R. §1910.1001(b)(1) and (2) (1976). The prescribed standards in these regulations were: "five fibers, longer than 5 micrometers, per cubic centimeter of air," and after July 7, 1976, "two fibers." These standards inform the nation's employers precisely what degree of exposure is permitted and what exposure is excessive, but the regulation requiring medical examinations is almost completely deficient in this respect.

What number of fibers, of what length, per what volume of air will constitute a "concentration" is nowhere stated or even hinted at—and like the regulation, the court's opinion leaves the matter completely to conjecture. This is particularly unsettling

to law abiding citizens when the agency is dealing with tremendously minute quantities of infinitesimally small particles. It makes compulsory law enforcement difficult and it lessens the likelihood of voluntary compliance with the law, a result devoutly to be wished. The first requirement for uniform and voluntary compliance with the law is a clear understandable statement of what conduct is required and this regulation falls woefully short of that minimal requirement.

Regulations that have the great importance that this regulation has to human life should be written in more precise terms—so people of ordinary understanding can determine what course of conduct is being required of them. What one person might consider to constitute a "concentration" will differ greatly from the interpretation that another would give to that term; and what one person today might regard *not* to constitute a concentration might be considered tomorrow, on the basis of hindsight as medical knowledge increases, to come within that term.¹

I believe, however, that the Occupational Safety and Health Review Commission should clarify the regulation governing medical examinations so as to give other persons subject to the regulation reasonable notice of some measurable quantity of airborne asbestos the Commission intends to trigger the medical examination requirement. Merely to state that all employers must provide medical examinations whenever their employees are exposed to "concentrations" of asbestos fibers does not provide an ascertainable standard for those who wish to comply with the law.

For the above reasons we believe the language of paragraph 5.3.1. concerning caution labels should read:

CRMC-MAD-000323

Caution labels should be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing more than 1 percent asbestos on a dry weight basis or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 5.1 will be released.

This is the same exclusion allowed in the EPA National Emission Standard for Asbestos (Federal Register 38, 8829 April 6, 1973), for spraying, which reads:

(e) Spraying: There shall be no visible emissions to the outside air from spray-on application of materials containing more than 1 percent asbestos, on a dry weight basis, used to isolate

Furthermore, the practice of setting exclusion levels for regulated materials has been followed by OSHA in the case of the 14 carcinogens (29CFR 1910.1003 through 1910.1016) wherein exclusion levels of 0.1 and 1.0 percent were allowed for various carcinogenic chemicals before the regulation applied, and more recently in the case of the OSHA benzene standard (29CFR 1910.1028) wherein there is no warning label requirement for mixtures containing 0.5 percent benzene (0.1 percent after June 27, 1981).

The practice of choosing exclusion levels for regulated materials could be considered as an effort by OSHA and other regulating agencies to now recognize "feasibility" in the development of standards. It would not be feasible to analyze all silicate mineral mixtures for any asbestos content, yet a requirement to label talcs or any other silicate minerals assemblages such as pyrophyllite, kaolin, montmorillonite, etc. containing any asbestos would obligate the producers of many non-beneficiated mineral products to maintain an extremely costly program of trace analysis.

In addition to feasibility, the agencies are also questioning the necessity of stringent regulation in areas such as label requirements. The exception to labeling in the OSHA standard for materials containing asbestos that has been modified with a binder, etc., is evidence of a recognition that only trace amount of asbestos will be released by the normal handling of these products. If only trace amounts of asbestos can be released from a non-modified mixture containing a low percentage of asbestos, then there is similarly no need to label or regulate the mixture.

In a final consideration of the need to stipulate a concentration of asbestos in a mineral product mixture below which no warning label would be required the state of the art of asbestos detection and counting should be recognized. Despite some published reports that concentrations of asbestos below 1 percent can be detected with accuracy, it remains that the accurate identification and quantitative determina-

CRMC-MAD-000324

tion of some of the amphibole varieties of asbestos in an unknown mixture is difficult below 5 percent and almost impossible below 2 percent by weight concentration. This coupled with the present unresolved controversy over the definition of an asbestos fiber favors the setting of a minimum asbestos concentration for purposes of labeling requirements in the ASTM draft standard for asbestos.

I would be pleased to discuss this matter further at our next meeting of E-34 committee.

Sincerely,

R. T. VANDERBILT COMPANY, INC.

Allan M. Harvey

Allan M. Harvey, Manager
Technical Development Department

AMH:lsm

CRMC-MAD-000325