

REGULATORY REPORT

Good Riddance?

Worries over asbestos and health hazards have moved out of mines and factories and into everyday life, and again the Environmental Protection Agency is inhaling a controversy.

BY MARGARET E. KRIZ

On July 6, the Environmental Protection Agency (EPA) began a seven-year phaseout of nearly all uses of asbestos, ending what EPA administrator William K. Reilly called "a terrible legacy of dead, dying and crippled" persons. By 1996, all but a handful of products containing the natural fiber will be eliminated from commerce in the United States.

That year will also mark another environmental milestone: the 20th anniversary of the Toxic Substances Control Act (TSCA), perhaps the least known environmental law, which Congress designed to curtail uses of hazardous materials, particularly asbestos.

EPA's 20-year route to final action against asbestos is remarkable in light of the long-standing body of evidence demonstrating the devastating effects of asbestos on human health. As early as the turn of the century, exposure to the long, thin fibers was linked to respiratory diseases

(asbestosis) and later to a host of other ailments, notably cancer. Even the industry's education group in Arlington, Va., the Asbestos Information Association, puts a disclaimer on its brochure, saying it "recognizes the health problems associated with excessive exposure to asbestos dust."

"For EPA to have so much trouble regulating asbestos, which is a known human carcinogen, really gives pause

about how they're going to fare with anything that doesn't have as good a data base in terms of human deaths," said Jacqueline M. Warren, a lawyer for the Natural Resources Defense Council Inc. (NRDC).

Despite the material's killer qualities, federal regulators have been slow to ban the ubiquitous substance because of its important industrial uses. "The simplest answer to why it took so long to regulate is that asbestos has played a very important role in our economy," EPA's Reilly said in an interview.

Once dubbed the "miracle fiber," asbestos is durable, heat-resistant and almost indestructible. It has been used in car brakes, thermal insulation, building materials, paper products and other everyday and specialized products.

"Having asbestos in our braking system, for example, through the years has given us the transportation system that has cars that can stop from 60 miles an hour pretty fast," said Charles L. Elkins,

who is director of EPA's toxic substances office.

Under TSCA (pronounced "toasca"), EPA must measure health risks against the social benefits of any substance it is considering restricting. In the case of asbestos, that tricky and often subjective risk-benefit analysis has left a legacy of intergovernmental wrangling, multi-million-dollar lawsuits and international controversy that continues today.

By the time EPA got around to banning asbestos, though, staff members could document that the government action would prevent only 200 cancer deaths over the next 13 years. The estimates were low because it is hard to prove that asbestos has caused illnesses outside of a workplace and because EPA is regulating a dying industry. Only two U.S. mines still extract asbestos; 95 per cent of the 85,000 tons of the fiber used domestically in 1987 (the latest data available) came from Canada. Many U.S. firms stopped using asbestos as it became clear that a ban was coming.

What is more daunting to many businesses, however, is the increase in million-dollar product-liability lawsuits filed by workers suffering from exposure to carcinogens.

Despite its long gestation period, EPA's action is significant because it finally breaks the cycle of asbestos exposures, which can occur when the substance is mined, when products are made and when those products fall



The risky, expensive process of asbestos removal is largely unregulated.

ST 0706306



EPA toxics office director Charles L. Elkins. Asbestos ban was preceded by multiple studies.

apart, according to Irving J. Selikoff, a physician at the Mount Sinai Medical Center in New York City whose pioneering research helped document the health hazards of asbestos.

"If there were a way of preventing exposure to asbestos fibers, then it wouldn't be a problem," Selikoff said. "It can be mined safely; you could put on a space suit, for example. But the problem is how do you use it and, once it's used, how are you going to keep an eye on it?"

How to handle the asbestos already in use is a question EPA is still pondering. With asbestos products being phased out, the worst exposures will no longer be in the workplace where asbestos products are made or used but in schools and office and apartment buildings. And though special asbestos disposal requirements are in place, critics say they are too lenient and confusing to those who must adhere to them.

In the past five years, manufacturers of asbestos products have been hit with lawsuits filed by thousands of school districts and building owners facing the expensive job of removing crumbling, dangerous asbestos from their premises. In 1986, Congress required school districts to inspect their buildings for crumbling asbestos and develop plans to limit exposures or remove the substance. But no regulations apply to the nation's office and apartment buildings, an estimated 733,000 of which contain crumbling asbestos, according to EPA studies. And the government has steadfastly refused to go out on a legal

limb and establish standards spelling out safe methods of removing asbestos from the many types of affected buildings.

EPA is being pressured by Congress, unions and environmental groups to take definitive action on asbestos in buildings. And building owners are pushing the government to develop standards for safe removal. As worries about asbestos have moved out of the mines and factories and into the public's everyday life, EPA again finds itself inhaling a controversy.

POLITICAL FOOTBALL

EPA's Elkins likes to describe the asbestos ban and phaseout regulation as a "gold-plated" rule. After years of procedural, technical and political delays, Elkins said, he was determined to sail the rule through the regulatory review process of the Office of Management and Budget (OMB) with flying colors, no matter how many studies he needed.

"I can't tell you how many years extra were built into the process, how many millions of dollars extra in studies," he said. "But I would say if we were to take the same gold-plating approach in the future, it's not in the public interest. We should be able to take a little bit more risk that we're not making the right decision, because for every day you don't make the decision, you are subjecting people to risk. And that's hard to include in the equation" to determine whether asbestos should be controlled. "The American taxpayer can't afford it," he added.

Elkins had ample reason to be wary of OMB. Asbestos has been a political football for the environmental agency, the budget office and Congress for years. The congressional authors of TSCA specifically cited asbestos as an example of a hazardous material that should be regulated under that law. But they also built in some safeguards. Aside from the federal pesticides law, which many specialists see as primarily agricultural, TSCA is the only environmental law that requires EPA to assess both the hazards and the benefits of substances on which it is considering controls. "This law is filled with checks and balances to make sure that due process is carried out and you don't have arbitrary decisions," Elkins said.

Those safeguards have tangled EPA scientists and attorneys in continuing disputes among themselves and with outside parties over how to measure the social benefits of a chemical. "Congress in its wisdom has left the agency this very sticky wicket," said B.G. Pigg, president

of the Asbestos Information Association. "I have not seen any detailed criteria for what is an unreasonable risk. There is no human activity that is free of risk."

The agency first announced its intention to regulate asbestos in 1979 under the Carter Administration. Reagan Administration appointees, however, assigned more weight to the fiber's marketplace benefits and gave less emphasis to efforts for a ban. The ban effort didn't reemerge until EPA administrator Anne McGill Burford left the agency under fire in 1983.

By 1985, agency officials were ready to propose strong asbestos controls, only to be shot down by OMB officials who insisted that EPA hand over its asbestos efforts to other agencies with overlapping jurisdictions, asserting that such referral was required under their interpretation of the law. Outraged environmentalists quickly dubbed OMB's rationale "the chewing gum theory of TSCA," having jokingly reasoned that the budget office found the requirements when they pried open two stuck pages of the statute book.

Congress was not amused. House Energy and Commerce Committee chairman John D. Dingell, D-Mich., held heated hearings in which EPA officials were blasted for acquiescing to OMB pressure. Dingell also unsuccessfully sought to thwart OMB by eliminating funds for its regulatory review office.

Nor did tensions ease when EPA finally proposed an asbestos ban in January 1986. Shortly after the proposal was issued, a budget office official was accused of promising Canadian government representatives that he would block a final ban on asbestos products. Canada, the world's largest miner of asbestos, opposes the ban.

EPA spent the next three years battling the industry's challenges to agency scientific and economic data and answering questions from the budget office. "Many of the [OMB regulatory review specialists] are economists," Elkins said. "And a ban is inherently upsetting to an economist, because we're telling the marketplace it can't even have this product."

For all of EPA's thoroughness, the ban continues to be attacked. Environmentalists criticized the slow pace in which asbestos products will be phased off the market. "The rule, to me, doesn't begin to have any impact until the second phase in 1993," the NRDC's Warren said.

Asbestos manufacturers said the rule is too costly and that asbestos substitutes are no safer. Pigg of the asbestos association said, "That is a real problem—does the substitute work as well as asbestos?" And as far as health is concerned, he said, some adverse health effects in substitutes have already been demonstrated in studies using laboratory animals.

The Canadian government argued that

ST0706307

the ban will cause unemployment in that country, which could then worsen if other countries follow the U.S. lead.

OMB, too, is due for more criticism. Congress, in considering reauthorization of the Paperwork Reduction Act, is examining the asbestos episode and other examples of alleged budget office interference in the government's handling of health and safety issues. Recent Bush Administration promises that OMB will not delay health and safety rules have left Congress unconvinced. Congressional sources said Members are considering everything from imposing stricter timetables on OMB reviews of agency actions to barring OMB from commenting on an agency proposal until after it has been published. "OMB has to be made more accountable," a House staff member said.

THE PERILS OF REMOVAL

Days after EPA announced the fruits of the asbestos ban rule making that had taken 10 years, agency staff members met with environmentalists, real estate representatives and asbestos industry officials to try to reach agreement on how to handle asbestos still present in buildings around the country.

Asbestos was widely used to insulate buildings erected in the 1950s and 1960s because of its fire-retardant qualities. Its benefits were thought to be so great that some community building codes required asbestos insulation. It wasn't until the 1970s that EPA outlawed the use of many asbestos-containing insulation products.

Today the asbestos once thought to be a safety measure in school, office and apartment buildings has become a health threat as it begins to crumble, releasing fibers into the air. A 1988 EPA study estimated that 20 per cent of the nation's more than 3.6 million government and commercial buildings contain crumbling asbestos. And the federal government has been at a loss over how to handle the problem.

In the late 1970s, EPA encouraged school districts to voluntarily inspect their buildings and remove asbestos. But in response, districts either ignored the agency or tore asbestos materials out of their buildings haphazardly. A 1985 EPA survey estimated that as much as 75 per cent of all school asbestos cleanup work was being done improperly.

"I was particularly alarmed by a photograph showing teenage boys in cutoff jeans ripping asbestos off walls and pipes in a New Jersey school, releasing clouds of asbestos dust with nothing to protect them from breathing it or keep it from contaminating the entire building," said Rep. James I. Florio, D-N.J., who serves on the Energy and Commerce Subcommittee on Transportation and Hazardous Materials and is his party's nomi-

nee for governor, in a May speech on asbestos problems.

EPA, however, was unwilling to mitigate those problems, despite lawsuits filed against it by the Service Employees International Union, which represents building janitors. Finally, Congress in 1986 required school districts to inspect for asbestos and suggested that EPA create guidelines for minimizing asbestos exposure during cleanup. By early July of this year, 80 per cent of the schools had taken at least preliminary steps to begin that task; 20 per cent had not been heard from.

Today, Florio, who actively supported the school asbestos law, would like to extend it to government and commercial buildings. In May, he proposed a bill to require government buildings to be inspected and crumbling asbestos to be cleaned up. Commercial buildings would have to be inspected. The bill also would force EPA to establish safety standards for the few existing asbestos-removal companies.

So far, EPA officials have declined to require inspection and control actions in office and apartment buildings or to set safe asbestos-removal standards, arguing that asbestos problems are different at each location. In fact, many buildings contain asbestos that is still in good condition and that should not be removed, according to EPA officials.

But some in Congress and in environmental groups worry that asbestos removal is endangering building occupants. A June article in *The New England Journal of Medicine* noted "an increase in the asbestos concentrations in the air after fibers are removed from buildings—a phenomenon that is due to disturbance of fibers and improper containment during the removal process."

The asbestos rules requiring school cleanups have had some thundering legal repercussions. Thousands of school districts have filed suit trying to force asbestos manufacturers to pay removal costs. In the past two years, mortgage bankers have begun requiring office and apartment building owners to conduct environmental audits to check for potential time bombs such as crumbling asbestos. And in some cases, building owners are being advised to remove the substance. Those building owners, in turn, have followed the schools' lead in seeking to recover costs from the asbestos industry.

"There are some mortgage bankers that have said they're not willing to lend on properties that contain asbestos," said Lloyd A. Fox, chief executive officer of Environ-

mental Management Group Inc., an Atlanta consulting firm. He said that some buildings' values have declined by 5-15 per cent because of asbestos. John F. Welch, president of the Safe Buildings Alliance, a Washington association of building product firms, countered that "Class A" properties "aren't suffering any material erosion in their value."

EPA's asbestos ban is the government's first step in taking the hazardous substance out of the nation's industrial life cycle, but it is not destined to be its last. Asbestos will likely dog the government and the courts for decades. For one thing, the deaths continue—Mount Sinai's Selikoff estimated that 10,000 excess deaths continue to occur each year as a result of high asbestos exposures that occurred decades ago.

What today's exposure will mean in 20 years is debatable. "There are scientists who say there is a threshold" amount of asbestos exposure that won't cause illness, the asbestos association's Pigg said. "There has to be. You can never ban asbestos from the face of the earth. Even if there's not a threshold, with minimal exposure you would have to live to 140 for there to be a manifestation of the disease."

But EPA officials, not prepared to dismiss the pernicious history of asbestos, are casting a wary eye. As Reilly said, "I still fear where it goes [when asbestos is removed from buildings], whether it really is disposed of in a place where we can trust that it's been put to rest and it won't come back again in the future." □



Asbestos association president B.G. Pigg
There is no human activity free of risk.

ST0706308

-over-