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Court Rejects OSHA Standard EPA Fines N.H. Schools For Asbestos Violation

By Cass Peterson
Washington Post Staff Writer

The Environmental Protection Agency, in a strategic show of force against the nation's school systems, has fined a New Hampshire school district \$24,000 for allegedly failing to report asbestos in its buildings.

The EPA, essentially conceding that its two-year experiment in voluntary cleanups has failed, accused the Goffstown, N.H., district of falsely certifying last June that its 10 buildings were free of friable, or flaking, asbestos.

According to EPA officials in Boston, a subsequent inspection found flaking asbestos insulation around pipes in a high school and two elementary schools.

Meanwhile, the government lost ground on another front in the battle against the fibrous mineral, which has been firmly linked to lung cancer and other ailments in humans. A federal district court in New Orleans last week threw out an Occupational Safety and Health Administration emergency standard that was intended to reduce worker exposure to asbestos immediately.

The ruling is likely to force additional delays in OSHA's effort to come up with a tougher permanent standard.

The New Hampshire penalty marks the first time the EPA has used its enforcement powers under a 1982 rule that required school districts to inspect their buildings and report any asbestos to parents and school employees. The EPA didn't make removal of the asbestos mandatory, assuming that pressure from teachers and parents would be sufficient to force action.

To the EPA's chagrin, the voluntary approach has proved to be a dud. Recent agency surveys have found that two-thirds of the school districts either did not conduct inspections or did not report or keep records on the asbestos they found.

As a result, EPA Administrator William D. Ruckelshaus is considering tougher, mandatory rules to

control asbestos in schools and other public buildings.

The target of the agency's first penalty, meanwhile, indignantly contended yesterday that it was unfairly singled out for punishment.

"This matter could have been taken care of by a phone call," said Goffstown Superintendent Antonio Paradis, who noted that the district already had spent \$54,000 to remove asbestos insulation from a classroom ceiling. "We understand they just intended to make an example of us."

Regional EPA administrator Michael Deland acknowledged that the intent was "to put all other school systems in New England on notice."

"We've issued numerous notices of noncompliance. Now we're looking at those school districts to see which have not taken steps to comply," he said. "We would hope that the action at Goffstown would speed up compliance by the others."

Paradis, who said the district would appeal, insisted that officials were not required to tell parents about asbestos in the Goffstown schools because the substance is "inert" and therefore not dangerous.

He said, "We have conflicting information as to what is friable, what is not friable, what is dangerous and what is not."

Deland said the district's interpretation of the rules "is incorrect." But he acknowledged that the EPA has no power to force Goffstown to remove or seal its asbestos, even if the fine sticks.

"We would hope that responsible parents and educators would recognize that this is a health hazard and would take steps," he said.

A slightly disgruntled Paradis said yesterday, "I would think that a local agency and a federal one could settle this face to face. Now we have all these parents calling."

The suit charges the companies with negligence, strict tort liability, breach of implied and express warranties, fraud and misrepresentation, nuisance and conspiracy. It also alleges that the defendants acted in concert and according to an insufficient industrywide standard in the manufacture and distribution of asbestos products.

Even if the school district is not able to identify all of the asbestos products in the schools or their manufacturers, marketers, sellers, distributors or promoters, the suit says the defendants should still be held liable.

A number of similar actions have been brought by school districts, including one by the Los Angeles Unified School District and one on behalf of all school districts in the United States.

Named in the Cleveland suit are Armstrong World Industries Inc. of Lancaster, Pa.; AC&S Inc., also of Lancaster; The Celotex Corp., a unit of Jim Walter Corp. of Tampa, Fla.; Corvax-Ted Products Corp. of Mountaintop, Pa.; Combustion Engineering Inc. of Stamford, Conn.; Eagle-Picher Industries Inc. of Cincinnati; Fibreboard Corp., a unit of Louisiana-Pacific Corp. of Portland, Ore.; The Flintkote Co. of Stamford, Conn.; Forty-Eight Insulations Inc. of Aurora, Ill.; and GAF Corp. of New York. Also, Garlock Inc. of Longview, Texas; W.B. Grace & Co. Inc. of New York; Keene Corp. and Keene Building Products Corp., units of Barrco Corp. of New York; National Gypsum Co. of Dallas; Nicotek Inc. of Ambler, Pa.; Owens-Corning Fiberglas Corp. of Toledo, Ohio; Owens-Illinois Inc., also of Toledo; Pfister Inc. of New York; Pittsburgh Corning Corp. of Pittsburgh; H.K. Porter Co. Inc., also of Pittsburgh; Southern Textile Corp., a Porter subsidiary; and Raymark Industries Inc. of Trumbull, Conn.

Also, Rock Wool Manufacturing Co. of Leeds, Ala.; Spraycraft Corp. of Sparks, Nev.; Standard Asbestos Manufacturing & Insulating Co. of Kansas City, Mo.; United States Gypsum Co. of Chicago; and United States Mineral Products Co. of Stanhope, N.J.

A spokesman for one of the defendants said last week that the company had not received a copy of the complaint and could not comment.

School board sues asbestos firms

By STEPHEN TARNOFF

CLEVELAND—The Cleveland Board of Education is the latest among a growing list of school districts and local governments to sue asbestos producers and marketers over asbestos found in municipal buildings.

In a 10-count complaint filed Feb. 15 in Cuyahoga County Court of Common Pleas, the Board of Education makes numerous allegations of disregard for health and safety by the companies stemming from the installation of asbestos products in the city's schools.

The suit, which names 28 companies, seeks \$20 million in actual and \$20 million in punitive damages.

Among the allegations contained in the suit are that the defendants:

- Failed to properly investigate or test the health impact on those who would foreseeably come into contact with the materials.
- Failed to properly design insulation and acoustical materials by substituting materials safer than asbestos.
- Failed to provide the Board of Education with proper, adequate and correct warnings concerning the health risks associated with asbestos products.

Because of these failures, the board estimates it will have to spend \$20 million for detection, analysis, abatement and removal of asbestos to restore buildings to a safe and reasonable condition, the complaint says.

AAA-B BUSINESS INSURANCE
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