

FILE NAME: RT Vanderbilt (RTV)

DATE: 1977

DOC#: RTV208

DOCUMENT DESCRIPTION: Newspaper Articles About Dangers of Asbestos

Ruling spreads burden of loss on ban of Tris

WASHINGTON — A federal judge ruled yesterday that the Consumer Product Safety Commission acted "arbitrarily and capriciously" in banning only the sale of children's nightwear treated with the flame-retarding chemical Tris.

U.S. District Judge George Hart said the ban should also apply to the use of the chemical itself — a suspected cancer-causing agent — and to any fabric, yarn or fiber containing Tris which is used or intended for use in children's wearing apparel.

"The ban should apply whether the fabric, yarn, or fiber is cut, uncut or already incorporated in children's apparel," Judge Hart said. He gave the commission 10 days to comply with his order. Failure to do so would result in an injunction against the ban, he said.

The effect of the judge's order is to spread the burden of loss caused by the commission's April 8 order which recalled from store shelves all children's nightwear treated with Tris.

Representatives of the nation's \$400 million sleepwear industry charged that the ban unfairly penalized their companies with an estimated \$200 million loss in revenues and a loss of thousands of jobs.

Hart agreed but he left open the question to what extent all parties — chemical firms, textile and apparel manufacturers and retailers — should share liability.

3 products with asbestos declared hazardous

WASHINGTON Post
WASHINGTON — The U.S. Consumer Product Safety Commission yesterday declared that three consumer products containing cancer-causing asbestos are a hazard to the public. Commission members could not agree, however, on the best way to ban their sale, thus allowing the goods to remain available on sale until further action is taken.

The commission also directed its staff to begin work on determining the extent and nature of asbestos in consumer products, a move that could lead to a more general sweeping ban on its use.

The commission action comes 20 months after public health findings that some plaster patching, spackling compounds contain high levels of asbestos and 18 months after a citizen reported that artificial fireplace ashes containing asbestos were being sold.

Both were ruled hazardous yesterday by the commission as was any tremolitic talc containing asbestos. The talc is used in putties and spackling compounds. All three substances were brought before the commission for action by citizens or outside groups, despite an April 1976 commission staff memo calling for immediate action

toward a sweeping ban on many asbestos-containing consumer goods.

With one commissioner absent, the commission split 2-2 on the best way to end the sale of the three products. Two commissioners favored a quick ban under the Hazardous Substances Act with provisions for dealers to repurchase goods from consumers. The two other commissioners favored action under the Consumer Product Safety Act, a more time-consuming step taking perhaps months before a ban takes effect. They said this would stand more rigidly in the face of legal challenges.

The artificial ash used in gas burning fireplaces can be removed, experts say, but care should be taken not to stir up dust. Dr. Robert Sawyer of Yale University recommends wetting the ash down with a mixture of water and some detergent. A sprayer can be used to apply the mixture. Allow it to sit for a while and then scoop it into a plastic bag, close the bag and put it out with other trash.

Spackling compounds already applied should be left alone — do not sand or disturb it, he said. Painting can help to reduce asbestos exposure.

Consumer Agency Votes to Ban Asbestos In Spackling, Other Wall-Patching Mixes

By a WALL STREET JOURNAL Staff Reporter
WASHINGTON—The Consumer Product Safety Commission voted to ban the use of asbestos in spackling and other wall-patching compounds.

It also voted to ban asbestos, which it said is a proven cancer-causing agent, in imitation logs and ashes used in gas-burning fireplaces.

And it ordered its staff to study whether it should ban asbestos in other products, such as brake linings, wallboard, floor tiles, textured paints and modeling clay.

The commission split two-to-two on whether the banned spackling and gas logs should be recalled and if refunds should be ordered. This issue could be resolved next week when the fifth commissioner, Lawrence Kusher, returns from vacation.

Asbestos is used in spackling compounds as a binder to prevent them from cracking when they dry. However, spackling manufacturers have been replacing asbestos with other minerals over the past several years, and today about half of the wall-patching mixtures on the market don't contain asbestos.

Asbestos "is probably one of the most well-documented toxic substances around,"

said commissioner David Pittle. "You don't have to look at the rats just look at the people."

The agency's actions came in response to petitions from public-interest groups and a private citizen.

The Natural Resources Defense Council asked the commission to ban spackling compounds containing asbestos, saying consumers were being exposed to asbestos when the material was being applied to patch walls or being sanded. The health research group, a Ralph Nader organization, separately petitioned the agency to ban the use of tremolite talc, a form of asbestos, in spackling compounds. Both petitions were approved by four-to-zero votes.

Rachel Scott, a freelance writer from Overland, Kans., who currently works for the Environmental Defense Fund, asked the commission to ban gas logs made with asbestos. The asbestos glows in the gas flame to simulate burning embers.

The Natural Resources Defense Council also asked the commission to ban other consumer products that contain asbestos. The commission turned that question over to its staff and told it to report back soon.

Judge Orders Cost Of Tris Refunds Spread To All Makers

By a WALL STREET JOURNAL Staff Reporter
WASHINGTON—A federal judge ordered the government to spread the cost of refunds for garments treated with the controversial flame retardant Tris.

In a victory for apparel makers, U.S. District Judge George Hart told the Consumer Product Safety Commission that it couldn't require children's garment manufacturers to bear the sole cost of refunds that it ordered be paid to consumers who return children's garments treated with Tris which has been linked to cancer. He gave the agency 10 days to come up with a new order that would spread the financial burden of the refunds among all companies involved in the manufacture of the clothing, the fabric, the yarn and the flame retardant itself.

The ruling came in a suit filed by the American Apparel Manufacturers Association, which sought to protect children's sleepwear manufacturers from the financial consequences of the commission's order.

Judge Hart said that the commission acted "arbitrarily and capriciously" when it issued its partial recall and refund order earlier this month. The commission ruling said that "manufacturers" would ultimately be responsible for paying the refunds, but it wasn't more specific.

The commission doesn't plan to appeal the order. The judge's order appears to meet the strenuous objections of the apparel industry which feared irreparable harm if the commission's refund order wasn't modified. Many of these concerns were voiced earlier in the day before Congress.

In hearings before a House small business subcommittee, many apparel makers described their economic problems if the Tris order was to stand.

One manufacturing official, Anthony Williams, vice president of August F. Nielson Co., Allentown, Pa., said he has already closed the company's two factories, idling 120 workers, and leaving only 10 people to receive Tris-treated goods being returned by retailers.

Still another, Jack Brownstein, president of Waterbury Garment Corp., Waterbury, Conn., said that unless there's a change in the commission order, "I'll close the plant in short order. I'll go out of business."

Rep. John Breckinridge (D, Ky.), committee chairman, called the ruling an "unconscionable act."

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R P M MINA

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HAVE NOT YET SEEN OFFICIAL CPSC RULING BUT LATEST NEWSPAPER
ARTICLE ONLY ADDS TO CONFUSION. TREMOLITE TALC A FACTOR. PLEASE
ADVISE CHANGEOVER DATE TO NON TREMOLITE TALC AND SO WE DONT MISS ANY
A LIST OF ALL OUR PRODUCTS CONTAINING AXK TALC. ALSO TONS RIVER CHAM
CHANGEOVER DATE AND NAME OF OUR PRESENT TALC. WE ARE DXX ADVISING
TONS RIVER TO REFER ALL ASBESTOS INQUIRIES TO THIS OFFICE. DELAY IN
BAN MAY OR MAYNOT HELP? HOW LONG HAS BAICH CODER BEEN IN OPERATION?
ALSO HAVE OUR ASBESTOS FREE FORMULAS BEEN USING TREMOLITE TALC?

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