

## Appeals Court Strikes Down Major Parts of Federal Asbestos Ban

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WASHINGTON, Oct. 21 — A Federal appeals court in New Orleans today struck down major parts of a far-reaching ban by the Environmental Protection Agency on asbestos products, ruling that the agency had not adequately considered alternative regulation short of the prohibition.

The ruling upheld the provisions of the agency's 1989 phaseout of asbestos use that are already in effect but sent provisions that would have taken effect in 1993 and 1996 back to the agency for more proceedings.

The decision was issued by the United States Court of Appeals for the Fifth Circuit, which has handled previous asbestos cases.

Asbestos, a durable, heat-resistant mineral once widely used in building and consumer products, insulation and heat-bearing components, is a carcinogen that is also believed to be responsible for debilitating lung ailments in those who inhale its fibers. Many of the diseases associated with loose asbestos fibers do not develop until two or three decades after exposure, experts say.

### Continued Use in Brakes

The asbestos industry said today's ruling clears the way to continue using the material in automobile parts like brakes and clutch facings and in other products subjected to friction. Asbestos would have been banned from those products in 1993, and additional uses would have been ruled out in 1996.

Robert J. Pigg, president of the Asbestos Information Association/North America, an industry group, welcomed the ruling as a "critical step in the right direction." It was "a vindication" of industry efforts to promote the controlled and safe uses of asbestos, he said.

"We have known for many years that asbestos can be safely and securely bound in today's products, as long as carefully controlled manufacturing and installation processes are employed," Mr. Pigg said. "We are glad to see the court agrees that the evidence supports this view."

The environmental agency had no immediate comment on the ruling or

whether it would appeal. Agency officials and lawyers were examining the appeals court documents, said Gwenn Brown, an E.P.A. spokeswoman.

The agency had proposed a gradual phaseout of asbestos over seven years that would have eliminated 84 percent of the material's uses in domestic products. Because of growing concerns about asbestos's safety, use of the material had declined to 85,000 metric tons at the beginning of the ban in 1989 from 560,000 metric tons in 1979. Current consumption of asbestos, most of which is imported from Canada, is about 40,000 tons, according to industry figures.

The first stage of the ban, which took effect in 1990 and was upheld by the appeals court, prohibited new uses of asbestos, banned imported asbestos products and ended use of the material in roofing and flooring felt, sheeting and tile, and clothing.

A second stage, which was thrown out by the court ruling, would have stopped asbestos use in products like brake drum linings, automotive transmission components, gaskets and other friction parts in 1993. And finally, in 1996, the rules would have barred production and use of roof coatings, brake blocks, paper, pipe and shingles made with asbestos.

Joining the asbestos industry in opposing the ban in court were the governments of Canada and the Province of Quebec, which argued that the material could be mined and used safely under controlled conditions.

### Improper Procedures

Writing for the unanimous three-member court, Judge Jerry E. Smith said the E.P.A. had violated procedures of the Toxic Substances Control Act of 1976 when it drafted the asbestos ban in 1989. He said the agency failed to follow provisions of that law and previous court rulings requiring that "before it impose a ban on a

product it first evaluate and then reject the less burdensome alternatives laid out for it by Congress."

The panel said the agency also erred when it adopted estimates of what level of exposure to asbestos is dangerous after the public comment period on its proposal had expired, thereby depriving opponents a chance to challenge the figures.

"Finally, the E.P.A. failed to provide a reasonable basis for the purported benefits of its proposed rule by refusing to evaluate the toxicity of likely substitute products that will be used to replace asbestos goods," Judge Smith wrote.

Officials of groups representing people injured by past exposure to asbestos said the ruling would not stop the decline in its use. But the officials worried that the ruling could set a

precedent for industry to challenge regulation of other toxic substances by claiming it did not get a fair chance to comment on pending rules.

"This ruling may slow down the phasing out of asbestos and asbestos products in the United States, but it won't stop it," said Mary Vogel, executive director of the Asbestos Victims Special Fund Trust, of Philadelphia, a not-for-profit group set up as part of the bankruptcy of the Manville Corporation, once the nation's biggest asbestos producer. "If the E.P.A. won't ban asbestos in the U.S., market forces will."