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April 11, 1973

Hon. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Waterside Mall, Room 1101
401 M Street, S. W.
Washington, D. C. 20460

Petition for Reconsideration and Amendment of the Environmental Protection Agency's Emission Standard for Asbestos

Dear Mr. Ruckelshaus:

We congratulate you on the recent issuance of emission standards for the hazardous air pollutants asbestos, mercury and beryllium. 38 Fed. Reg. 8820 (April 6, 1973) While these long-overdue regulations should produce a vast improvement over present conditions, there are still several matters which concern us and which, we believe, require reconsideration and amendment by the Environmental Protection Agency if the public is to receive the protection which it deserves and which the law plainly requires.

In particular, we are concerned about several provisions in the asbestos dust standard which seem to have been seriously compromised since that standard was first proposed on December 7, 1971. 36 Fed. Reg. 23239 1/ In most instances, there is no adequate explanation in your statement accompanying the new standard to justify these compromises. These include:

1/ Since we are still reviewing the beryllium and mercury emission standards, we have restricted this petition to the standard for asbestos.

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1) The exemption from regulation by EPA of all asbestos mines and mine roads, dumps and storage areas near asbestos mills, asbestos fabrication operations, and disposal of asbestos collected during demolition;

2) The permission for continued use of spraying materials containing up to 1% asbestos; and

3) The unnecessary insertion of the term "friable" throughout the demolition regulations, §61.22(d).

The following is a more detailed discussion of these issues:

1. EPA's proposed regulations in December 1971 would have prohibited visual emissions from asbestos mines and mine roads, from dumps and storage areas near asbestos mills, from all asbestos fabrication operations, and from disposal of asbestos collected during demolition. The final regulations omit all such restrictions on the assumption that measures taken to comply with the regulations of other federal agencies, particularly the Occupational Safety and Health Administration's (OSHA), 29 C.F.R. 1910.23a, will prevent these sources of asbestos dust from contaminating the air of the surrounding environment. This assumption, however, is no more than wishful thinking by EPA and produces a serious "regulatory gap" among those federal agencies with authority to regulate asbestos, a gap which can only be detrimental to the public health.

Both OSHA and the Bureau of Mines have issued standards for the protection of workers against occupational exposure to asbestos. 2/ These standards are based on a totally different concept than the EPA emission standard and, hence, cannot be equated or compared in any meaningful way. They depend almost

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2/ The OSHA standard is under legal attack by both unions and environmentalists (Civil Action No. 72-1713, D.C. Cir., filed July 29, 1972), and OSHA itself is contemplating revision of the standard.

entirely on self-monitoring and voluntary compliance by employers with a threshold limit value (TLV) established by the American Conference of Governmental Industrial Hygienists, an industry-oriented group. The TLV for asbestos is 5 fibers greater than 5 microns in length per cubic centimeter of air (5 fibers/cc), averaged over an eight hour period. 3/ Various measures for achieving these levels may be required, including supplying workers with respirators and protective clothing. And temporary variances may be granted in the event the numerical standard cannot be met.

This presents several problems. First, the medical community does not agree that the ACGIH standard of 5 fibers/cc provides adequate protection against the increased risk of contracting cancer from breathing asbestos fibers. Certainly there is no agreement that such a level would provide, in the language of section 112 of the Clean Air Act, "an ample margin of safety to protect the public health," particularly from the danger of asbestos-induced cancers such as mesothelioma. You yourself rejected the ACGIH/OSHA fiber-count approach, "because of the impossibility at this time of prescribing and enforcing allowable numerical concentrations or mass emission limitations known to provide an ample margin of safety." 38 Fed. Reg. 8820.

Your statement accompanying the standards cites the gradient of effects observed ranging from those in workers with direct occupational exposure to those caused by residence in the neighborhood of asbestos sources. It is then stated that this gradient "suggests that there are levels of asbestos exposure that will not be associated with any detectable risk". This is surely an unjustified conclusion. All such a gradient suggests is that greater exposure entails greater risk. To assume that a more complete definition of the dose-response curve would show that the risk would reach zero while exposure was still greater than zero is based on no more than speculation.

Thus, even if the 5 fibers/cc levels were enforced by other federal agencies, there is no guarantee that persons living, working, or playing in the vicinity of the asbestos operations exempted by the EPA regulations will be afforded the degree of health protection mandated by section 112(b)

3/ By July 1, 1976, OSHA will require employers to meet a more stringent standard of 2 fibers/cc.

(1)(B) of the Act. 4/ Compliance with occupational standards promulgated under other statutes will not automatically result in compliance with the rigorous standards required by section 112(b)(1)(B), which says that the Administrator "shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant." (emphasis added)

Second, the Administrator has no inherent power to enforce standards promulgated by other federal agencies. Since there is no guarantee that these other agencies will enforce their standards (and to the extent that they do not), EPA's abandonment of its regulatory responsibilities to sister agencies could result in continued risk to the health of persons in the vicinity of the exempted asbestos operations. In particular, where compliance with the occupational asbestos standards is achieved through respirators, or where temporary variances are granted, there will be no one acting to protect the public health from asbestos dust emissions. Our concern is not based merely on speculation. The history of compliance with pre-existing occupational standards for asbestos dust is abyssmal. And, although OSHA has designated asbestos a "target" health hazard, OSHA has only about 50 trained hygienists capable of enforcing its standard, and their responsibilities extend to all workplace hazards throughout the nation, not just asbestos.

Finally, the EPA standard does not require monitoring, even periodically, to determine whether exempted asbestos operations are in compliance with other agency regulations and whether they are contaminating the adjacent community environment. Thus EPA has not only relinquished its regulatory authority to other agencies, it has precluded itself from even knowing,

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4/ For example, EPA's conclusion that storage areas and dump sites at asbestos mills will not be major sources of asbestos emissions ignores documented cases of mesothelioma in persons playing on asbestos dumps in their youth, as well as studies showing that persons living near shipyards, near major asbestos manufacturing facilities in urban areas where asbestos is used for construction purposes, have asbestos bodies (fibrous lumps) in their lungs when autopsied.

on the basis of actual monitoring, whether the exempted operations are continuing to be major sources of asbestos emissions. Without such data there is no plausible basis to conclude that these exempted operations will not be major sources of asbestos dust.

In short, we see no basis in either law or logic for EPA's abandonment of its regulatory authority to OSHA. Construction and demolition sites are also regulated under the Occupational Safety and Health Act, but EPA has developed overlapping and more stringent regulations where these operations are involved. The failure to do so with respect to asbestos mining and milling operations, fabrication operations, and disposal of asbestos wastes from demolition sites cannot be justified merely by a selective reference to the OSHA asbestos standards.

Therefore, we request you to amend the standard to include regulation of these sources of asbestos.

2. Another area of great concern is EPA's treatment of asbestos spraying materials. As originally proposed, the EPA standard would have prohibited the spraying of any product which contains asbestos on any portion of a building or in any area directly open to the atmosphere. And it would have required all other spraying of asbestos-containing products to be equipped with fabric filters with an air-to-cloth ratio of 20:1.

The final regulations permit up to 1% asbestos to be intentionally added to spray products used for insulating or fireproof buildings, structures, pipes and conduits. They also relax the requirements for asbestos-containing products sprayed for all other purposes, such as on machinery and in asbestos fabrications operations.

The justifications offered for this weakening of the standard for asbestos spraying are suspicious. All manufacturers of spray insulation materials, except one, have agreed that a "no-asbestos" standard is feasible, and they have taken responsible steps to comply with such a standard by substituting materials or using other control technology. This has resulted in asbestos-free spray products being currently available

on the market. Only one company, W.R. Grace, the largest manufacturer of spray-insulation products in this country, has consistently resisted the no-asbestos standard. The 1% exemption appears to be tailored specifically to meet the needs and desires of that company, and to keep the door open for continued use of spray products containing asbestos. Such favoritism is inconsistent with fairness in the application of the law as well as with protection of the public health. Exemptions from public health standards should not be made on the basis of how big the manufacturer is; and when they are made, for good cause, they should be made openly as a matter of public record.

Although there is no conceivable justification for permitting even small amounts of asbestos to be added intentionally to spray materials, permitting trace amounts of asbestos which occur naturally in substances used for spray materials could possibly be justified if there were: (1) no available alternatives and (2) the public health would not arguably be compromised. But neither of these conditions prevail. Asbestos free spray products are now on the market. What is more important, however, is that even 1% of the materials sprayed at major construction projects can result in a substantial amount of asbestos fibers entering the atmosphere. For example, in New York City, where major construction projects are commonplace, there is a blanket prohibition against any spray products containing even trace amounts of asbestos.

It is inconsistent and irresponsible for EPA, on the one hand, to state that evidence is insufficient to establish a safe exposure level for asbestos dust due to the absence of a clear dose-response relationship, and, on the other hand, to rely on the same inadequate evidence for the proposition that 1% asbestos spray products will not endanger the public health. This is particularly true where comparable asbestos-free products are available as substitutes.

Therefore, we request that §61.22(e) of the regulations be amended to prohibit the continued use of spraying materials containing asbestos.

3. Our final request concerns the use of the term "friable", which now appears repeatedly in the demolition regulations of the final standard, but which did not appear in the proposed standard. The word "friable" has a techni-

cal meaning in the asbestos industry and, if used in the EPA standard, it should be clearly defined so there will be no room for argument over its meaning in this context. However, we see no reason for inserting the term friable at all, because all material containing asbestos should be treated with utmost care, particularly during demolition.

Asbestos manufacturers claim that 85 to 90 percent of all asbestos used is non-friable or "locked in" and cannot erode, which would effectively remove much of it from the requirements of section 61.22(d) on demolition. For example, under industry definitions, the asbestos in cement shingles or plasterboard is non-friable, yet in demolition it is sure to break apart and cause asbestos dust to be released to the air. It is not clear whether the references to "friable asbestos debris" in sections 61.22(d)(2)(i) and (iii) would include such materials. We think they clearly should include such materials, though it would be preferable to delete the term friable wherever it appears in these regulations.

Therefore, we request that the term "friable" be deleted from the asbestos standard or, in the alternative, that it be defined to include all materials containing asbestos which may break apart during normal use or demolition.

We look forward to your earliest prompt reply to this petition, as any decision whether to test the adequacy of these standards in court must be made within 30 days from the date of promulgation of the standard, as provided by section 307 of the Clean Air Act.

Sincerely,

Scott H. Lang
Washington Counsel

Lucile F. Adamson, Ph.D.
Staff Scientist

Albert Fritsch, Ph.D.
Center for Science in
the Public Interest