

Robert Hatten

From: Robert Hatten
Sent: Wednesday, July 14, 2004 8:36 PM
To: 'john.maddox@rivhs.com'
Cc: Donald Patten; Hugh McCormick
Subject: 12-22-2003 - Application of the asbestos standard and labeling requirements to

Here is the latest comment from the gov't on the need to put warnings on gaskets. Apparently Galock's witness tried to get the gov't to help Galock's defense but it backfired.



U.S. Department of Labor
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Standard Interpretations

12/22/2003 - Application of the asbestos standard and labeling requirements to gaskets or packings containing >1% asbestos.

[Standard Interpretations - Table of Contents](#)

• **Standard Number:** 1910.1001; 1910.1001(k)(8)(vi); 1910.1001(j)(6)(i)

December 22, 2003

Frederick W. Boelter, CIH, PE
Boelter & Yates, Inc.
Environmental Engineers & Scientists
1300 Higgins Road
Suite 301
Park Ridge, IL 60068-5772

Dear Mr. Boelter:

Thank you for your March 14 letter to the Occupational Safety and Health Administration's (OSHA's) Directorate of Enforcement Programs. You have a question regarding the labeling of gaskets and packings containing >1% asbestos. This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question not delineated within your original correspondence. Your paraphrased scenario and question and our reply are below.

Scenario: You have conducted a study of asbestos exposures resulting from the removal and replacement of asbestos-containing gaskets and packings.

Question: Given your findings, are gaskets and packings containing >1% asbestos exempt from labeling on the basis of 29 CFR 1926.1101(k)(8)(vi)(A) or 29 CFR 1910.1001(j)(6)(i)?

Reply: No, your findings cannot be used to exempt the mentioned gaskets and packings from labeling because these provisions are directed toward the manufacturers of the

6/12/2006

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gaskets and packings. Please note that labels do not have to be affixed to the gaskets and packings or their containers if: "[a]sbestos fibers have been modified by a bonding agent, coating, binder, or other material provided that the **manufacturer** can demonstrate that, during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the permissible exposure limit (PEL) and/or excursion limit will be released" (emphasis added). Moreover, the manufacturer must provide the demonstration for each specific model, type, or make of gasket or packing that the manufacturer wishes to have exempted from labeling.

Furthermore, it is our opinion that your data do not demonstrate that the gaskets you examined possess the physical property that these provisions require in order to qualify for exemption from labeling. Your data show that a person can be exposed to an 8-hour time-weighted average (TWA) asbestos air concentration of 0.035 fibers/cubic centimeter (f/cc) when using a flat blade scraper over a period of 8 hours to clean off the residue left behind by 8 removed gaskets. Your data also show that a person can be exposed to an 8-hour TWA asbestos air concentration of 0.052 f/cc when making 8 new gaskets over a period of 8 hours with a ball peen hammer. Consequently, if the same person does both tasks, the combined exposure would likely be greater. It is a reasonably foreseeable occurrence for a person to perform the same tasks in regard to 10 gaskets instead of 8 gaskets in an 8-hour period. In that event, a person could be exposed to an 8-hour TWA asbestos air concentration that could exceed the 8-hour TWA PEL of 0.1 f/cc.

Please realize that even if a manufacturer were successful in demonstrating that one or more of the models, types, or makes of gaskets or packings that it manufactures qualifies under these provisions for exemption from labeling, the gaskets or packings would still be covered by OSHA's asbestos standards.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you need further assistance, please contact the Office of Health Enforcement at (202) 693-2190.

Sincerely,

Richard E. Fairfax, Director
Directorate of Enforcement Programs

 [Standard Interpretations - Table of Contents](#)

 [Back to Top](#)

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6/12/2006

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