

Appeals Panel Overturns Ban On Asbestos

Court Reverses EPA Rules Ending Remaining Uses Of Carcinogen by 1997

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WASHINGTON — The beleaguered asbestos industry won a major court victory overturning a federal ban on products that still use the cancer-causing material, such as automobile brakes and construction materials.

A federal appeals panel in New Orleans soundly rejected a 1989 regulation by the Environmental Protection Agency that aimed to eliminate almost all remaining uses of asbestos in the U.S. by 1997.

The ruling reopens a debate over the high costs of eliminating the last uses of the fibrous natural material, which is blamed for 3,000 to 12,000 deaths annually. Largely because of the higher costs of substitutes, the regulations were expected to cost the industry and consumers \$460 million to \$800 million.

The decision is for now a boon to U.S. companies that still manufacture replacement brakes, asbestos-cement pipe and construction materials such as asbestos coatings, shingles and paper products. Another beneficiary is Canada, the second-largest producer of asbestos after the Soviet Union, which protested the EPA regulation for banning its asbestos exports to the U.S.

Asbestos use has been sharply curtailed since the 1970s after its harmful health effects were discovered. The EPA adopted its sweeping ban on most remaining products to prevent an estimated 200 more cancer deaths over a 13-year period, primarily among workers exposed to fibers from such items as worn brake shoes and asbestos-cement pipes.

The appeals court, though, concluded, "The EPA has presented insufficient evidence to justify its asbestos ban," which the agency had worked on for 10 years.

The court didn't challenge the EPA's scientific basis that asbestos poses a health risk; the mineral is blamed for lung cancer and other incurable respiratory diseases among miners and insulation workers. But it ruled the EPA didn't prove its case that asbestos products still on the market pose unreasonable risks and faulted the agency for failing to consider less economically burdensome steps to reduce health risks from the asbestos products, short of a total ban.

"The opinion doesn't vindicate asbestos," said Linda Fisher, EPA assistant administrator. She said the agency is considering whether to appeal the ruling, to beef up its analysis to satisfy shortcomings cited by the appeals court or to revamp its regulation.

But the ruling, providing rare good news for the asbestos industry, renewed manufacturers' hopes that a total ban can be avoided in favor of tougher workplace and installation restrictions that would keep the products on the market.

A portion of the asbestos ban is already in effect, but the ruling comes in time to temporarily stave off a 1993 ban on asbestos friction products, including brakes on new cars, and most industrial gaskets. The last batch of products would be banned by 1996, with distribution illegal after 1997, and includes replacement brakes, asbestos-cement pipe used mainly for water and sewer lines, coatings, paper products and shingle.

The court also bolstered the industry's stance that the costs of banning certain products are excessive compared with the health benefits. It singled out estimates that banning asbestos pipe will save three lives over 13 years, at a cost of about \$128 million to \$227 million, or about \$43 million to \$76 million for each life saved.

"EPA, in its zeal to ban any and all asbestos products, basically ignored the cost side" of the Toxic Substances Control Act, which specifically requires a balancing of costs and benefits, the court wrote.

ly bound in today's products, as well 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 comment on the ruling or

THE WALL STREET JOURNAL TUESDAY, OCTOBER 1, 1991