

PLAINTIFF'S EXHIBIT

CAP-1371

Tuesday
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Asbestos
Export
Notification

Part III

Environmental
Protection Agency

Asbestos Export Notification

CAPCO JEN 0013069

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 707****[TSH-FRL-1981-5; OPTS 120001C]****Asbestos Export Notification****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Statement of clarification.

SUMMARY: The purpose of this statement is to clarify the reporting responsibilities of persons exporting asbestos or mixtures containing asbestos. Under section 12(b) of the Toxic Substances Control Act (TSCA), exports of bulk asbestos must be reported. Also, mixtures containing asbestos must be reported if the mixture is in an amorphous form or if the mixture's shape must be fundamentally changed before use.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office, Office of Pesticides and Toxic Substances (TS-799), Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460, Toll free: (800-424-9065), Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404)

SUPPLEMENTARY INFORMATION:**I. Background**

Final regulations interpreting the requirements of section 12(b) of the Toxic Substances Control Act were published in the Federal Register of December 16, 1980 (45 FR 82844). These regulations require that any person who exports certain regulated chemical substances or mixtures must notify the Administrator of the first annual export to a country. Exports of a substance as a bulk chemical or mixture must be reported if that substance is subject to one or more of the following TSCA rules, actions, or orders:

1. A final rule requiring submission of test data under section 4 or 5(b).
2. An order issued under section 5.
3. A proposed or final rule under section 5 or 6.
4. A pending or final court action under section 5 or 7.

To date, the following chemical substances are subject to section 12(b) export reporting requirements: polychlorinated biphenyls (PCBs), fully halogenated chlorofluoroalkanes (CFCs), 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD or dioxin), N-methanesulfonyl-p-toluenesulfonamide, and asbestos.

The provisions of section 12(b) of TSCA are self-implementing, i.e., not

requiring that specific regulations for reporting be promulgated. However, as an aid to affected exporters, EPA issued interim guidance published in the Federal Register of June 7, 1978 (43 FR 24818) for submitting notice of export of CFCs and PCBs—the only two substances regulated at that time. EPA proposed a rule published in the Federal Register of October 2, 1979 (44 FR 56856) to interpret the requirements of section 12(b) and to immediately supersede the interim guidance. While these interim actions were proceeding, only PCBs and CFCs were subject to export reporting. However, by the time the final rule was promulgated, three more substances, including asbestos, had become subject to reporting.

II. EPA Received Inquiries Regarding Asbestos Exports

After promulgation of the final section 12(b) regulations, the Agency received requests for clarification of the requirements for reporting exports of asbestos. The final section 12(b) regulations require reporting of a chemical if it is exported as the "substance" (e.g., asbestos in bulk form) or as part of a mixture. The regulations set no minimum percentage cut-off for the substance as part of a mixture. However, reporting is required only if the substance is known to be present in the mixture. In other words, a person should not test exported mixtures to see if they contain asbestos as an impurity (e.g., to determine whether vermiculite, talc, or water in a mixture contain asbestos fibers as an impurity). Also, one is not required to report exports of articles containing the substance in question unless specifically so required in the underlying section 4, 5, 6, or 7 action. The Agency did not require submission of export notices for asbestos-containing articles in the proposed section 6 rule.

On January 12, 1980, EPA staff met with representatives of the Asbestos Information Association of North America (AIA), an organization that represents many of the largest U.S. and Canadian producers of asbestos and asbestos products. AIA stated that it was relatively easy to identify bulk shipments of asbestos. However, companies trying to report asbestos exports found it difficult to distinguish between a reportable asbestos-containing mixture and a non-reportable asbestos-containing article. In order to respond to this concern of the asbestos industry, the Agency decided to publish this statement of clarification. Also, in the meeting and in subsequent communications, AIA requested an exemption from section 12(b) for

asbestos exports. This issue will be discussed later in this notice.

III. Statement of Clarification

The Agency considers the following types of asbestos exports to be reportable:

(1) Bulk shipments of asbestos including raw spinnable fibers and slivers. This includes, but is not limited to, asbestos commodities exported under Bureau of Census Schedule B numbers 518.1115 (asbestos, not manufactured, asbestos crudes, fibers, and stucco) and 518.1125 (asbestos sand and refuse).

(2) An asbestos-containing mixture that is amorphous, i.e., the mixture assumes the shape of its container (e.g., asbestos-reinforced plastic pellets, asbestos-containing paints, and bags of dry asbestos-cement mix).

(3) An asbestos-containing mixture that is formed to a shape that must be fundamentally changed before use.

For purposes of section 12(b) export notification only, the Agency will not require reporting of asbestos-containing mixtures of which the fundamental form is unlikely to change during further processing or end use. For example, asbestos paper by the roll will generally be cut or trimmed for installation, but will retain the same basic form. Other examples of non-reportable asbestos-containing mixtures include asbestos-cement pipe, brake linings, sheet gasketing, unfinished asbestos textiles, and floor tiling. EPA is not requiring these mixtures to be reported because exporters will not know in all cases what the nature or extent of the next processing step will be for such products.

Exporters should follow the above guidelines and apply them to their individual situations. Exporters are encouraged to contact the Agency concerning questions about applying the guidelines to any material to be exported. These guidelines are intended for the purpose of interpreting TSCA section 12(b) requirements for asbestos only. They should not be taken as definitional precedent for other TSCA purposes.

IV. Request for Exemption

As mentioned above, the Asbestos Information Association requested that asbestos be exempted from section 12(b) export reporting.

First, AIA expressed its belief that asbestos should not have been made subject to export reporting based on the proposed section 6 Asbestos-Containing Materials in Schools Rule (45 FR 78970). According to AIA, this proposed rule

bears no relation to the asbestos export trade.

Second, of the 160 countries in the world, AIA identified over 100 countries to which asbestos and asbestos products were exported in 1980. AIA estimated that as many as 575 companies may be involved in the asbestos export trade. As an alternative to section 12(b) reporting, AIA proposed that EPA send a blanket notice to all nations regarding asbestos. Such notice they contend would satisfy the requirements of section 12(b) and lift a regulatory burden from the industry.

EPA studied AIA's request, but concluded that it cannot exempt asbestos from the requirements of section 12(b). First, asbestos is the subject of a proposed section 6 rule. The statutory language of section 12(b) clearly requires reporting of exports of a substance covered by, among other actions, a proposed TSCA section 6 regulation. It is true that the proposed rule covers only one situation (friable asbestos in schools) in which asbestos is used. However, basic to the proposed rulemaking is the fact that EPA has

made a finding that asbestos may present a risk to a human health in the use considered. Thus, the Agency is bound by section 12(b) to notify foreign governments of its action with respect to this substance.

Second, EPA authority to exempt chemicals from reporting just because of an anticipated high volume of reports is very questionable. There is also the question of whether such action would be fair to other industries affected by section 12(b) now or in the future. For example, section 12(b) reports received in 1980 show that CFCs were exported to at least 80 countries. Leaving aside the legal questions, where would the Agency draw the line for determining how many countries justify an exemption to section 12(b)?

Furthermore, the alternative of a blanket notice to all foreign governments would not carry out the intent of Congress. The Agency interprets section 12(b) to require a link of the notice to foreign governments to the fact of actual export or firm intent to export. A blanket notice to all countries regarding asbestos exports would not

carry the message that the country may be actually affected by exports.

V. Reconsideration of Section 12(b) Procedures

In addition to the requests of AIA that are addressed by this notice, the Agency has received a petition from the Chemical Manufacturers Association for changes in section 12(b) procedures. Also, representatives of the Synthetic Organic Chemical Manufacturers Association requested a meeting with Agency staff at which these procedures were discussed. A number of alternative approaches have been suggested to the Agency by these groups for changing the way that section 12(b) is implemented. We are examining these approaches in light of our experience to date and the language of the statute. The Agency will consider revisions to the present procedures based on this examination.

Dated: June 30, 1981.

Edwin H. Clark, II,
Acting Assistant Administrator for Pesticides and Toxic Substances.

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