

 A/C Pipe
Producers Association

Internal Correspondence

TO Public Affairs Committee
International Affairs Committee

FROM

J. F. Welch, Director, Public Affairs

DATE November 10, 1981

SUBJECT

Regulatory Affairs, Field Problems and Asbestos Research Report

ACTION REQUIRED: Review for information

Enclosed is the Regulatory Affairs, Field Problems and Asbestos Research Report for the period August 15 through October 30, 1981. As with previous mailings, sheets are provided only for those agencies or field problems for which new information is available.

If you have any questions, please do not hesitate to call.

JFW/ajb

Enclosure

cc: A. Kahn, Esq.
N. Rahn, Esq.
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copies to: Public Affairs Committee

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EPA-Asbestos in Schools

April - May, 1981

According to EPA Regulatory Agenda published 4-27-81, the Agency has concluded that further EPA regulatory action is not necessary because identification of asbestos hazards will provide school districts with sufficient information to initiate corrective action. Federal Register notice on same scheduled for 5-81.

June - July, 1981

EPA will soon release a revised risk assessment on the hazards of asbestos-containing materials in schools. Kirkland & Ellis' risk assessment specialist, Dr. Kenny Crump, will review and submit comments on behalf of the industry.

August - October, 1981

The final rule has been drafted by the Office of Toxic Substances and forwarded to the EPA Administrator for approval. It is understood that a risk assessment will not be published with the final rulemaking. It is likely that the rule will advise schools to continue voluntary corrective action; certain reporting requirements may be imposed.

EPA-ANPRM on Asbestos

January - March, 1981

AIA/NA, AACPP and Kirkland & Ellis and EPA engaged in discussions regarding the possibility of a negotiated regulation for the Section 6 rulemaking. Product labeling emerged as a major issue of concern by EPA and after industry discussions, Tim Hardy (K&E) and Rich Guimond (EPA) were designated to work towards compromise language for product labels.

April - May, 1981

Discussions continued, including topics specific to A/C pipe (see JCJ correspondence to Board of Directors, May 7, 1981).

EPA Regulatory Agenda of 4-27-81 indicated that the notice of proposed rulemaking has been rescheduled for 4-82 with final rulemaking tentatively scheduled for 6-83. These deadlines were established in the absence of a confirmed EPA Administrator, so they are subject to review and modification.

June - July, 1981

According to a June 30, 1981 regulatory calendar published by the Agency, a Notice of Proposed Rulemaking is scheduled for "Spring, 1982." Kirkland & Ellis reported that Office of Toxic Substances officials consider exposures during manufacturing and installation of A/C pipe to be of much greater importance than asbestos in drinking water.

A draft report on substitutes for A/C pipe, prepared by GCA Corporation, is being reviewed for comment by Staff and member companies.

EPA proposed warning label designs and language for asbestos-containing products, including A/C pipe. The language cautions that the product contains asbestos and that recommended work practices should be followed.

To be responsive to EPA information requests during negotiation discussions, Staff and Kirkland & Ellis will prepare position papers on (a) current asbestos exposure levels in A/C pipe plants and the technical feasibility of reduction, and (b) data on frequency of field operations on A/C pipe, particularly use of the abrasive disc saw.

August - October, 1981

A memorandum has been prepared by the Acting Director, Chemical Control Division recommending that a revised ANPRM be issued. The new ANPRM would state:

- EPA-industry discussions over the past six months have been constructive. EPA has moved away from ban alternatives and industry has backed off a "no regulation needed" stance.

EPA-ANPRM on Asbestos

- The current ANPRM, issued October, 1979, is outdated and does not reflect current regulatory thinking or new developments related to asbestos.
- A new ANPRM would help coordinate EPA's regulatory efforts under other statutes.
- A joint EPA-OSHA ANPRM is necessary for the government to regulate asbestos effectively.

It is unlikely that the revised ANPRM would be published in 1981.

AACPP Staff submitted comments on the GCA Corporation Report, "Asbestos Substitute Performance Analysis - Section 4, Asbestos Cement Pipe." Staff is working with Kirkland & Ellis in the preparation of position papers on control technologies and worker exposures during A/C pipe manufacturing and installation.

EPA, Staff, AIA/NA and Kirkland & Ellis are in the final stages of resolving warning label designs and language for asbestos containing products, including A/C pipe.

EPA - Section 8(a)

Letters objecting to the Section 8(a) reporting requirements were sent to James Miller (Office of Management and Budget) and Walt Barber (Acting Administrator, EPA). Barber declined to postpone receipt of comments and to re-evaluate proposal.

April - May, 1981

Kirkland & Ellis prepared and submitted comments on behalf of the asbestos industry. Comments argued that proposed rules sought far more information than would be valuable to EPA in rulemaking, sought more information than EPA is authorized to obtain under TSCA and that EPA inadequately assessed the problems posed by the proposal. Seventy-five other comments, primarily from corporate entities, also were submitted to the docket.

Arthur D. Little, Inc. continues to aggregate information for the AIA/NA data collection program. Approximately two-thirds of companies are expected to respond, including all A/C pipe manufacturers.

EPA Regulatory Agenda of 4-27-81 indicated that the timetable for promulgation of final rules are expected to be October, 1981.

August - October, 1981

The Office of Toxic Substances has completed its review of comments submitted to the rulemaking docket. Revisions to the reporting form also have been finished. It is not known when the proposed final rule will be issued.

EPA-Interim Primary Drinking Water
Standards

March 31, 1980

AACPP Staff met with the Director of Criteria and Standards on March 21, 1980. He indicated that a final decision on corrosion control requirements would be made within two to three weeks. AACPP action still pending outcome of re-promulgated standards.

April - May, 1980

At an EPA symposium, the Director of Criteria and Standards, Office of Drinking Water, announced that the Agency would not establish a maximum contaminant level (MCL) for corrosivity in the Primary Drinking Water Standards. Further, he indicated that there would not be a standard issued for a minimum hardness level. The final rules are expected to be proposed by mid-June, 1980. AACPP action will be predicated on the outcome and anticipated impact of the final standards. It is not expected that asbestos monitoring will be included in the monitoring requirements for corrosion products.

June 31, 1980

The technical amendments were not issued in June, as previously projected by the Office of Drinking Water. A July or August promulgation date is expected.

July 31, 1980

No change in status.

August 31, 1980

Amendments were promulgated on August 27, 1980. See JFW correspondence "EPA - Amendments to the National Interim Primary Drinking Water Regulations," August 29, 1980 for detailed analysis. There will be no federally-enforced standard for corrosivity of drinking water.

September 30, 1980

No change in status.

August - October , 1981

Dr. Joseph A. Cotruvo, Director, Criteria and Standards, Office of Drinking Water, reported at AACPP's Washington Workshop VI that the National Academy of Sciences (NAS), supported by an EPA contract, was reorganizing the Committee on Safe Drinking Water. The Committee will reassess the scientific evidence relating to asbestos and other selected water contaminants for revision of the Interim Primary Drinking Water Regulations

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EPA-Interim Primary Drinking Water
Standards

(amended). It is not likely that the Committee will issue its findings until mid or late 1983.

EPA-Hazardous Waste Regulations

October 31, 1980

The regulations have been challenged by the Environmental Defense Fund and forty major industry groups. Challenges have been filed in the U.S. Court of Appeals for the District of Columbia.

The National Solid Waste Management Association also petitioned EPA to amend the regulations so as to require generators and transporters of small quantities of hazardous waste to comply with the manifest, packaging, labeling and recordkeeping requirements of Parts 262 and 263.

November-December, 1980

The Office of Solid Waste temporarily deleted asbestos as a hazardous waste subject to the regulations of RCRA. The delisting was published in the Federal Register on November 25, 1980 (see JFW correspondence, EPA-Hazardous Waste Management Regulations, December 4, 1980).

January - March, 1981

RCRA Sections 3001, 3002, 3003, 3004, (40 CFR Parts 122-124, 260-267) are being reviewed by the Vice President's Task Force on Regulatory Relief to determine whether they should be revised.

April - May, 1981

No change in status.

August - October, 1981

The EPA Office of Air Quality Planning and Standards plans to delete the current National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements for asbestos waste disposal "in deference to regulation of asbestos ... under the authority of the Resource Conservation and Recovery Act (RCRA) of 1976." Industry opposes this action because of the extensive record keeping requirements of RCRA.

EPA soon will propose a "uniform manifest system" and an "annual survey" to reduce paperwork burden. The "mixture rule" is being reviewed in the context of definition of hazardous wastes. Regulations for issuing permits to hazardous waste land disposal facilities may be proposed by late 1982 or early 1983.

OSHA-Cancer Policy

April - May, 1981

No change in status.

June - July, 1981

Assistant Secretary of Labor (OSHA), Thorne Auchter, stated recently that the cancer policy is "on the back burner now and probably will be raised up to the front burner by the end of the year."

OSHA itself joined with industry groups challenging the rule to obtain a delay in judicial review proceedings.

August - October, 1981

The policy is scheduled for review and completion by 1983. OSHA also is reassessing the need/desirability of issuing "priority lists" of substances which might be regulated under the policy. The Administration expects to address this and other issues (including whether negative findings of carcinogenicity should be considered in classifying and regulating substances) when the policy record is reopened via an advanced notice of proposed rulemaking in late 1982.

It is rumored that former Director of Health Standards, Bailus Walker, has engaged in a consultant agreement to recommend options for a revised carcinogen policy.

OSHA-Asbestos Standard

November-December, 1980

The agency's latest regulatory calendar indicates that June, 1981 is the target date for promulgation of a revised asbestos standard. Kirkland & Ellis have proposed a new strategy for the rulemaking. It would be based on arguing that scientific evidence supports safety of a 2.0 f./cc. standard, but conceding that industry can meet a stricter level staged by sector. It would also incorporate "work practices" approach to regulating asbestos exposures in the construction industry.

January - March, 1981

No change in status.

April - May, 1981

The Department of Labor's semi-annual Regulatory Agenda, published April 28, 1981, listed revisions to the asbestos standard as a regulation "under consideration, for which a general notice of proposed rulemaking has not yet been issued." The agenda stated that "Revisions may or may not include changes to the permissible exposure limit and provisions for medical surveillance, monitoring, etc. A regulatory impact analysis will be prepared." Publication of an advanced notice of proposed rulemaking was set for October, 1981 with the caveat that "this action is currently under policy review."

June - July, 1981

OSHA officials say no more than the asbestos standard is currently under careful review and any revisions will conform with Executive Order 12291 on regulatory reform.

August - October, 1981

Frank Frodyma, Chief, Office of Policy Analysis, reported at the AIA/NA Industry/Government Conference that the standard was a high priority for the agency. However, a new Director of Health Standards has not been named and Staff understands that no work currently is underway with respect to revising the standard.

In a rulemaking timetable submitted to the U.S. Court of Appeals for the District of Columbia, OSHA advised the Court that agency resources would focus first on reconsideration of ten existing standards including asbestos. The document stated that assessment of the need for a more stringent standard would take at least two years.

Province of Ontario

June - July, 1981

The Ministry of Labour announced a meeting would be held on September 22, 1981, at which time it would present an analysis of comments submitted and its proposed amendments for the Advisory Council on Occupational Health and Occupational Safety.

August - October, 1981

On September 22, 1981, the Occupational Health and Safety Division, Ontario Ministry of Labour, recommended that regulations on asbestos be revised to a time weighted average (TWA) exposure limit of 0.2 f/cc for crocidolite, 0.5 f/cc for amosite and 1.0 f/cc for chrysotile. Peak exposure concentrations would be 1.0 f/cc for crocidolite, 2.5 f/cc for amosite and 5.0 f/cc for chrysotile. "Constructors" and employers on construction projects would be exempt from the revised standards.

Province of Ontario-Royal Commission

April - May, 1981

No change in status.

June - July, 1981

On June 11, 1981, the Royal Commission began hearing testimony by expert witnesses on the health effects and measurement of asbestos. These are formal public hearings during which Commission counsel and parties granted legal standing, including Kirkland & Ellis, will conduct examination and cross examination of witnesses. The hearings are expected to continue into August.

August - October, 1981

The Commission continued public hearings throughout the summer. Two additional hearings are scheduled for October 23 and November 13, 1981. Kirkland & Ellis is preparing a summary brief of the hearings.

Connecticut - Policy to Control A/C Pipe

August - October, 1981

It is not clear whether the Commissioner of Health Services will accept industry's withdrawal of the petition for declaratory ruling. Special counsel's contacts with the Commissioner's office indicate that "several options" are being reviewed. The Connecticut Fund for the Environment is said not to oppose withdrawal of the petition.

STATE: New Jersey

CITY: Ocean County (Toms River, Little Egg Harbor, Point Pleasant Beach, Brick Township and others)

DESCRIPTION:

The November 26, 1980 issue of the biweekly newspaper, Ocean County Reporter contained fourteen articles on A/C pipe and health. Typical title: "Asbestos Water Pipe May Be Deathly Time Bomb". Continuing publicity created public outcry against use of A/C pipe as well as causing State Senator to consider proposing legislation to ban A/C pipe in New Jersey.

STATUS:

November-December, 1980

AACPP coordinating appropriate action with member companies and Lewis & Gilman.

January - March, 1981

See JFW correspondence, Field Problem - Ocean County, New Jersey, January 12, 1981, and Field Problem - State of New Jersey, February 5, 1981, and other information transmittals.

Staff and special counsel met with State Senator Russo, and provided evidence supporting safety of A/C pipe. No legislation anticipated. Department of Environmental Protection (DEP) placed "on the back burner" possible regulatory controls for new and existing uses of A/C pipe.

April - May, 1981

DEP and EPA will take 40 asbestos in drinking water samples in Egg Harbor and other municipalities throughout the State.

August - October, 1981

The October 24, 1981 issue of Ocean County Reporter ran two articles "Still Concerned? Here's What To Do" and "Position Report" on the issue of asbestos in drinking water. No AACPP response is planned.

STATE: Pennsylvania

CITY: Blairsville

DESCRIPTION:

A citizens' group, The Blairsville Committee for Safe Drinking Water, met with the Blairsville Water Authority on September 9, 1981 to protest the use of A/C pipe in a 16 inch transmission main. The group contacted EPA (Gordon Robeck - Municipal Environmental Research Laboratory) and the University of Pittsburgh School of Public Health for information on the health hazards of ingested asbestos.

The Johns-Manville territory manager presented the "A/C Pipe and Drinking Water" audio-visual program but the presentation was received with considerable skepticism. The Water Board asked its consulting engineer to investigate the issue of asbestos in water supply and report its findings to the Board.

STATUS:

August - October, 1981

J-M reports that the problem continues to receive local press coverage. A petition signed by 1600 residents was submitted to the Board in protest to the hook up of the A/C pipeline. Gordon Robeck (EPA-MERL) declined to comment on the matter and recommended that EPA Region 3 (Philadelphia) be contacted for information.

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Crivitz, Wisconsin

June - July, 1981

Staff and counsel met with Village defense counsel and are assisting in taking of asbestos counts, selection/preparation of expert witnesses and independent analysis of San Francisco Bay area epidemiology study.

August - October, 1981

On August 24, 1981, the court ruled that there were not significant levels of asbestos fiber in Crivitz's drinking water system. The plaintiffs' complaint was dismissed.

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Weston, Wisconsin

August - October, 1981

Johns-Manville has requested AACPP to participate in pending litigation between it and the City. AACPP counsel will prepare a memorandum outlining defense options.

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