PLAINTIFF'S EXHIBIT

CAP-604



*Recurring Hazard*

# Cleanup at New England Asbestos Dump Shows Costs Can Offset Health Factors

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HUDSON, N.H.—On the outskirts of this semirural hamlet near the Massachusetts border is a triangular, 3.5-acre plot of land mired in legal quicksand.

Back in 1969, the owner of the property, real estate agent Anthony Matarazzo, wanted to enhance the parcel by filling in its marshy sections and a deep gully that ran along its flank. At about the same time, Johns-Manville Corp. was looking for sites on which to dump waste from its asbestos-products plant in neighboring Nashua. And so it wasn't long before the company began trucking asbestos, mixed with cement onto Mr. Matarazzo's property. All told, somewhere between 27,000 and 40,000 tons of the asbestos tailings wound up on Mr. Matarazzo's land.

Mr. Matarazzo has come to regret that long-ago improvement project. Though no asbestos has been dumped on his land since 1974, the ill-effects of the powdery, highly durable mineral have since become widely known. Three years ago, the government designated the site, and six other residential and commercial properties in the Nashua area, as asbestos-contaminated "health hazards" that must be made safe. The Environmental Protection Agency has been burying the exposed asbestos, but it is wrangling with local landowners and the company over who will pay the bill.

Similar pockets of asbestos contamination are scattered about the country. Up until the late 1960s, there were more than two dozen major asbestos manufacturers and some 300 companies that used asbestos in their products. Many have gone out of business, or have discontinued asbestos work. But over the years all of them disposed of thousands of tons of hazardous waste, and very little of it is accounted for.

## Environmental Time Bomb

In the Hudson-Nashua area, the problem is too obvious to overlook. But the abatement effort here and the controversy it has sparked suggest the frustrations of trying to defuse an environmental time bomb planted decades ago—especially when short-term financial considerations tend to outweigh long-term health concerns.

The cleanup task here is stickier than most. For Johns-Manville, now known as Manville Corp. and based in Denver, filed last year for protection under Chapter 11 of the Bankruptcy Code. Under Chapter 11, a company continues to operate while shielded from creditor lawsuits or other litigation.

In a 1981 suit filed in U.S. District Court in Concord, N.H., the EPA named both Manville and the property owners as responsible for cleaning up the hazardous sites. Then, last June, the agency decided to go ahead with the work itself, while temporarily setting aside the question of liability. The $750,000 it has earmarked for the job comes from the $1.6 billion federal "Superfund" created to clean up the nation's worst toxic-waste dumps.

By law, however the government must recover any Superfund money it spends. Manville's bankruptcy proceedings make it an unlikely candidate to repay the government in the foreseeable future. Thus, landowners fear that federal officials may try to collect from them.

Some have tried to keep EPA officials off their land until they obtained a written release that they wouldn't be held accountable for the cleanup expense. The EPA, while refusing to provide such a release, indicates that it probably won't press claims against the individual landowners.

"Our main target is Manville, and we'll probably wait for it to come out of Chapter 11," says Philip Boxell, a lawyer with the EPA's regional office in Boston, which has jurisdiction here.

## Property Owners Wary

Such pronouncements have done little to allay the fears of local property owners. For one thing, the cost of cleaning up their land is a trifling fraction of Manville's total pending liability for asbestos-related damage suits. The company maintained at the time of its Chapter 11 filing that such suits would wipe out its then $2 billion assets by the end of the century. Meanwhile, Manville has flourished under Chapter 11. It is trying to shed its asbestos operations, and its earnings for the first half of 1983 were $45.7 million, compared with a loss of $19.9 million in the year-earlier period. So far, the court has granted Manville six extensions for submitting its formal reorganization plan under Chapter 11. The current deadline is Thursday.

With the complex proceedings likely to drag on for years, local landowners face a protracted period of financial uncertainty. Meanwhile, they have a more immediate worry. The EPA insists that the deeds of the properties it is cleaning up be amended to reflect the presence of asbestos. But landowners fear that if the EPA prevails, property values will plummet. Such a precedent could also affect anyone in the nation whose property contains a known asbestos dump.

Manville, which once boasted of being the largest asbestos company in the Western world, has manufactured products containing the mineral at its Nashua plant for over 75 years. Up until 1974, when the EPA began requiring asbestos companies to dump waste in regulated landfills, it disposed of asbestos tailings at an indeterminate number of sites in and around Nashua, apparently with the consent of the property owners.

## 'Built on Asbestos'

"Half of Hudson is built on asbestos," says William G. Pointer, the owner of land on which asbestos was dumped. "It was good solid fill," he adds. "I asked for it—we all did—and anyone who says he didn't is lying."

But Mr. Matarazzo asserts that Manville gin cleaning up their land. They were holding out for written assurances that they wouldn't be billed for the work, which in Mr. Bursey's case will cost an estimated $250,000. But late last month, the agency obtained a court injunction against the pair to gain access to their land. Mr. Bursey vows to appeal the court order.

Even property owners who have allowed the EPA to clean up their land did so with trepidation. "If they ever come back after me for a dime, I'll fight them," Mr. Pointer says.

Nor has Manville been receptive to the EPA's presence in the area. The company argues that the agency's insistence that the asbestos be covered by 30 inches of gravel, loam and vegetation is excessive. It maintains that a six-inch cover of clean soil plus vegetation is sufficient.

In a recent letter to the EPA, S. Wyatt McCallie, Manville's associate corporate counsel, stated that the company would "vigorously resist any attempt by the government to foist onto the company these bloated costs due to the agency's inability to deal with this problem in an appropriate and cost-effective manner." Mr. Boxell, the EPA lawyer, says the 30-inch cover was suggested by the Army Corps of Engineers after it studied the local topography.

Once the asbestos is covered up, the EPA doesn't want it forgotten. If it succeeds in having deeds amended to reflect the presence of asbestos, owners worry that their land will be difficult to sell. But the EPA wants to change only the deeds of property it has cited as hazardous, a policy some residents call discriminatory. "It's the most unfair thing you've ever heard," Mr. Matarazzo complains. "There are hundreds—perhaps thousands—of asbestos dumps in this area. Why single us out?"

The EPA replies that it is responsible only for sites where exposed asbestos was found. "We want to prevent future users from causing harm by digging up the stuff," says Barbara Elkus, chief of the compliance branch of EPA's Superfund enforcement program.

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But Mr. Matarazzo asserts that Manville told him it was dumping clean fill on his land. "That's why I let them do it," he says. "Now that we know what it is, they have to get it out."

Manville replies that all dumping was done in compliance with state and federal regulations in effect at the time.

The precise amount of asbestos dumped in these parts isn't known, but it is substantial. Manville admits that its plant generates as much as 30 tons of such waste per day, and that more than double that amount was produced in years past, when the plant operated round-the-clock. In addition to the seven "hazardous" sites identified by the EPA, the company has disclosed 38 locations in the area where dumping occurred between 1960 and 1975. Prior to 1960, outside contractors trucked it away—where, Manville says it doesn't know.

The EPA, tipped off by local residents, recently learned of six additional sites containing asbestos. Merrill Hohman, an EPA official in the Boston regional office, says no one knows how many more may surface. "We hope citizens will come forward with information," he adds, "because it is important for future generations."

Inhalation of asbestos particles has been linked to various cancers, including those of the lung, throat and rectum. Asbestos is also blamed for asbestosis, an emphysema-like disease that causes scarring of the lungs and impaired breathing.

So far, residents of this community appear unscathed by the presence of asbestos in their midst. Pulmonary experts at Nashua's two major hospitals say the only diagnosed cases of asbestosis in the area have been work-related. But Ruth Haughton, director of community relations at Memorial Hospital, cautions: "That doesn't mean we won't have any, because it takes years for the disease to appear." In most cases, asbestos-related diseases manifest themselves 25 to 40 years after exposure.

### A Fluke of Geography

The people here may have been spared by a fluke of geography. The marshy land on which the asbestos was dumped has tended to contain the asbestos dust. Over the years, most asbestos sites have become covered with soil and vegetation; thus they passed muster when the EPA tested for hazardous substances.

But exposed asbestos on the hazardous sites has given Hudson a bad name. "The asbestos scare has affected our business," says Thomas Baker, owner of a gas station on Central Avenue, a main thoroughfare that some have dubbed "Asbestos Alley." Four of the open sites—including one on which Mr. Baker's gas station sits—were found along that avenue, as were scores of buried dumps. "Everytime there is a story about asbestos, business declines," Mr. Baker says. "People won't get out of their cars when they come here. They're afraid they're going to catch some awful disease."

The situation is more critical for Arthur Bursey, whose restaurant is situated on land containing the largest open asbestos dump in the area. He says business at the seafood drive-in has fallen off sharply.

"The old-timers laugh about it," Mr. Bursey says of his patrons' reaction to the asbestos on his property. "But environmentally conscious people stay clean out of the place. They think they're going to get the plague by coming in here."

Nonetheless, Mr. Bursey and Mr. Matarazzo had both refused to let the EPA be-

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