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The MARLEY Company
Inter-Office Correspondence

To: Tom Kroehle
MCTC - Mission

From: Terry A. Hart
Corporate Safety Manager
Date: 9/19/89
RF # 89-141

Subject: EPA Asbestos Enforcement

cc: Gary Wilson, MCTC - Mission
Mike Vessels, MCTC - Mission
Tom Burchett, Marley Corporate
Bob Best, Marley Corporate
Bob Wrobel, Marley Corporate

Gary Wilson

Tom -

I was reviewing the latest releases of "Environmental Reporter" and the "Air and Water Pollution Control" newsletter when I noticed the attached articles. I feel it's important that you be aware that the EPA is beefing up its enforcement of the NESHAP requirements.

We need to evaluate our asbestos removal procedures thoroughly to be sure we meet the "no visible emissions" requirement. This is for your information.

Regards,

Terry

Terry A. Hart

TAH:ls

GARY

We understand each other I believe:

1.) Be clear in quote what we do asbestos — define friable, etc

2.) Obey the law really

3) Keep MCT of/documents from to dump site — card name is source.

on our procedures

Tom K 10/17

MARDEP000407

wastes may be there as required under NEPA, and under federal and state hazardous waste and water pollution control regulations. However, according to preliminary data, PCBs are present in one area at 77.1 parts per million. Soil contaminated with more than 50 ppm must be disposed of in an approved facility, the agency said.

FHWA's lack of ground water and storm water data limits EPA's evaluation of the project subject to the National Pollutant Discharge Elimination System under the Clean Water Act, the agency said.

"Though we acknowledge that the project may have inherent benefits, we remain concerned about the review process that directly or indirectly shortcuts the requirements of NEPA," the agency said.

Comments On Draft Statements

EPA said it needs more information on noise and wetlands mitigation plans, and water quality and fishery impacts from the Federal Highway Administration in its plan for U.S. 30/Columbia River Highway improvements, Columbia County, Ore. (D-FHW-L40170-OR).

EPA said it has no objections to the Department of Energy's plan to decommission eight surplus plutonium production reactors at DOE's Hanford facility, Richland, Wash. (D-DOE-L00003-WA).

EPA said the U.S. Army Corps of Engineers' plan for Sandstone Dam and Reservoir construction, Savery Creek, Carbon County, Wyo., does not comply with the National Environmental Policy Act or the Clean Water Act and could result in damage to the aquatic ecosystem (DS-COE-J28017-WY).

Comments On Final Statements

EPA asked FHWA to further clarify its alternative analysis, land use plans, water quality impacts, and secondary uses in its plan for the Danville Expressway completion, U.S. 58 to U.S. 29, Pittsylvania County, Va. (F-FHW-D40219-VA).

EPA said it has no objections to FHWA's plans for U.S. 67 bypass construction in Johnson County, Texas (F-FHW-G40119-TX).

EPA said it was not necessary to review the Bureau of Land Management's final EIS for geothermal wellfield development and power plant construction and operation, Inyo National Forest, Mono County, Calif. (F-BLM-K01006-CA).

EPA said FHWA must commit to plans in its draft EIS to mitigate all wetlands and endangered species impacts for State Route 76, Oceanside, Calif. (F-FHW-K40063-CA).

For more information, contact the EPA Office of Federal Activities at (202) 382-5076.

ENFORCEMENT

Civil Enforcement

EPA FILES 13 ASBESTOS NESHAP LAWSUITS, ANNOUNCES NEW ENFORCEMENT POLICY ADOPTION

Thirteen lawsuits in 11 states were filed by the Justice Department on behalf of the Environmental Protection Agency Aug. 22 in a "coast-to-coast effort" to signal improved enforcement of federal asbestos regulations for buildings that are being renovated or demolished.

EPA also announced that it has adopted a new policy for enforcing asbestos regulations that establishes fines as much as five times higher than those previously imposed on violators.

In addition, EPA said it used for the first time its discretionary authority to bar two abatement contractors with records of serious asbestos violations from receiving any federal funds.

The series of civil enforcement suits filed by EPA and the Department of Justice named as defendants 34 institutions, companies, and individuals, including the New York City Board of Education. The defendants were charged with asbestos violations dating back to 1984.

The cases alleged violations of the federal asbestos standard established under the Clean Air Act's National Emissions Standards for Hazardous Air Pollutants. The asbestos NESHAP requires EPA or designated state or local authorities to be notified of all renovation or demolition jobs involving asbestos. Proper work practices—including wetting and bagging asbestos to prevent exposure—must be followed whenever more than a minimum amount of the substance is involved.

The asbestos NESHAP also sets rules for proper transport and disposal of asbestos materials removed from a building. Both contractors and building owners are responsible for complying with the asbestos NESHAP.

EPA estimated that more than 100,000 renovation and demolition jobs involving asbestos are undertaken in the United States every year. As many as half of these projects violate the asbestos NESHAP, the agency said.

Agency officials have acknowledged that, faced with overwhelming numbers of projects covered by the rules, it has done a poor job of enforcing the asbestos NESHAP. An EPA inspector general's report completed last year concluded that the agency had poor oversight of delegated activities, inadequate inspections, and penalties that were "almost nonexistent because of a generally lax attitude toward penalizing violators" of the NESHAP.

1988 Hearing Focuses On Enforcement

The inspector general's report was presented during a June 1988 oversight hearing by the House Government Operations Subcommittee on Environment, Energy and Natural Resources. The subcommittee chairman, Rep. Michael L. Synar (D-Okla), said EPA lacked the resources and staff to enforce the asbestos rules or oversee state and local agencies with enforcement powers. Synar presented EPA documents showing there were only 48 part-time EPA inspectors to enforce NESHAP rules and only 53 full-time and 538 part-time state inspectors. The number of inspectors was slated to increase modestly this year.

EPA officials said at the hearing and subsequently that they would seek changes in the agency's enforcement and penalty policies to improve NESHAP compliance. Among the results of these moves were the enforcement cases and the new enforcement policy announced Aug. 22.

The enforcement cases involve some of the larger or more widely reported asbestos-release incidents that have occurred in the last few years. Cases were filed in nearly all of EPA's 10 regions.

Among the defendants was the New York City Board of Education, which was cited for more than 80 renovation projects that took place from 1984 to 1987 allegedly without notifying authorities as required by the asbestos NESHAP (*U.S. v. New York City Board of Education*, DC ENY).

In another case, EPA charged defendants that were allegedly responsible for asbestos insulation that dropped from the

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sky of San Jose, Calif., when wine tanks were removed from a winery by helicopter (*U.S. v. Brown*, DC NCalif).

The other cases filed involve asbestos removal at schools, government buildings, or privately owned buildings. They are:

- *U.S. v. Marine Associates Inc.* (DC EPa);
- *U.S. v. G & Erie Associates* (DC EPa);
- *U.S. v. Wayne Insulation Co.* (DC EVa);
- *U.S. v. Kimmins Environmental Services* (DC MFla);
- *U.S. v. Illinois Asbestos Control Inc.* (DC NIll);
- *U.S. v. N.E. Walsh Construction* (DC NOhio);
- *U.S. v. B & B Wrecking and Excavating Co.* (DC NOhio);
- *U.S. v. AA Mactal Construction Co.* (DC Kan);
- *U.S. v. MPM Contractors* (DC Kan);
- *U.S. v. Cal Neva Lodge Inc.* (DC Nev); and
- *U.S. v. Savage Enterprises Inc.* (DC WWash).

EPA used the filings to highlight the changes it said it will make in its enforcement policy. Because of low compliance with the NESHAP, EPA said the agency, state and local authorities, and the Justice Department have made a "concentrated commitment to initiate judicial enforcement against violators."

Enforcement authorities have developed a system for reviewing renovation and demolition jobs throughout the country by reviewing license applications, bid requests, and landfill records. The number of NESHAP inspections have increased from 8,133 in 1985 to 20,275 in 1988, EPA said. The number of civil enforcement actions initiated by state and federal authorities grew to 106 in 1988 from 49 in 1985. Several criminal cases have also been filed against NESHAP violators, the agency said.

Terrell E. Hunt, associate enforcement counsel for air programs in EPA's enforcement office, told BNA Aug. 23 that the enforcement initiative was not motivated by past criticism of the asbestos enforcement program. He said that the program has been successful for some time.

Hunt said that the suits, combined with the new penalty policy, will increase deterrence and make limited agency resources go farther. "The costs of mismanaging asbestos wastes just went up," Hunt said, adding that landlords and building owners will be held responsible, along with contractors, when removal actions do not adhere to EPA reporting and asbestos handling regulations.

In addition, each violation of a management practice constitutes its own violation now, whereas multiple violations were often treated as one offense in the past, according to Hunt. Penalties will add up much faster using this approach, he said.

A highlight of the new enforcement policy is an increase in the minimum amount of fines that will be sought from NESHAP violators. The Air Act authorizes fines of up to $25,000 per violation per day, but actual assessments have been far lower. EPA said it would begin to assess fines based on costs avoided by violators in refusing to follow the stringent NESHAP requirements for asbestos removal and disposal.

Previously the agency had used a "rule of thumb" of $4 per square foot or linear foot to estimate the costs avoided by NESHAP violators in improper removal jobs. The agency will now calculate fines based on $20 per foot of asbestos materials involved, EPA said. The new figure was arrived at through surveys and interviews in the abatement industry, EPA indicated. The agency said penalties will also take into account such other factors as the "gravity" of the offense in terms of environmental damage and the previous compliance history of the defendant.

EPA also said it is going ahead with a previously announced policy to place serious NESHAP offenders on a list of facilities and companies barred from receiving federal contracts or money provided by a federal grant or loan. The agency has discretionary authority under the Air Act to use this listing procedure for civil violators of the asbestos rules. Those convicted of criminal violations are automatically listed.

Enforcement

EPA, DOJ ENFORCEMENT AT MARINE SHALE UNDER INVESTIGATION BY HOUSE SUBCOMMITTEE

The federal government's enforcement of environmental laws at Marine Shale Processors Inc., will be the subject of hearings of the House Government Operations Subcommittee on Environment, Energy, and Natural Resources, a subcommittee aide told BNA Aug. 21.

Another government source told BNA Aug. 22 that the subcommittee has written Department of Justice officials asking them to explain how the Environmental Protection Agency and DOJ handled a recent investigation and prosecution of Marine Shale. The subcommittee seeks to compare the Marine Shale case with other criminal investigations in EPA's Region VI since 1985, according to the source.

The letter also expressed dissatisfaction with a DOJ response to an earlier request for information on the investigation and prosecution of the case, the source added.

A staff aide to the subcommittee said hearings will be held in the autumn concerning EPA's enforcement and oversight at the Amelia, La., hazardous waste processing facility. The aide confirmed that the subcommittee had sent a letter to DOJ asking for information about EPA's and DOJ's respective roles in investigating and prosecuting Marine Shale. The aide would not explain the contents of the subcommittee's most recent request for information from DOJ on the Marine Shale investigation.

However, the government source provided BNA with background and details of the letter. The source indicated that Rep. Michael L. Synar (D-Okla), chairman of the subcommittee, sent DOJ the letter because questions in an earlier request for information went largely unanswered.

July Letter's Response Insufficient

The government source said the subcommittee sent a letter to DOJ in early July asking officials to explain what DOJ and EPA were doing to resolve an ongoing dispute over Marine Shale's operations, which were alleged to be in violation of the Resource Conservation and Recovery Act and other environmental laws. The letter also asked the department to explain what civil enforcement actions had occurred during the three-year criminal investigation of the company, according to the source.

DOJ responded by sending the subcommittee a copy of the press release and the plea agreement entered July 24 and a letter explaining that DOJ felt the agreement was an appropriate resolution of the criminal investigation, the source said. Synar objected to the response and then sent DOJ the second letter to clarify its request.

That letter asked the department to justify how it has handled criminal matters in EPA Region VI since 1985 for the purpose of seeing how DOJ and EPA conducted the criminal prosecution of Marine Shale as compared to other investigations, according to the government source. The letter asked DOJ to explain its case management in the region and chided the department for not properly responding to the earlier letter, the source said.

ana, struck an unmarked wreck and discharged oil.

After the barge's owner refused responsibility for the discharge, the United States removed the oil and sued for cleanup costs in the federal district court. The suit was filed against Hollywood Marine, the barge that carried the oil, and the firm West of England, which was financially responsibility for the barge. The federal district court held the owner liable, finding that the tug's non-negligent decision to navigate outside the channel was a contributing cause of the oil discharge and that the defendants had failed to prove that the discharge was caused solely by the act or omission of a third party. The district court also found the defendants jointly, severally, and solely liable to the United States for the cleanup plus prejudgment interest at a rate of nine percent.

On appeal, the defendants argued that while the Clean Water Act is a strict liability statute, there are four liability exceptions: an act of God, act of war, negligence of the part of the United States Government, or an act or omission of a third party. Merely proving that the barge and tug were non-negligent satisfied the liability exception, the defendants maintained. On that point the court agreed that if a defendant can establish the existence of one of the four exceptions, it will be exempt from liability. However, the court said, the statute does not state that a showing of non-negligence on the part of the discharger will suffice to invoke the exception and absolve the owner and operators from liability. Moreover, the tug's non-negligence does not constitute a third party within the meaning of the the act.

Evaluating the language of the act in this situation, the court concluded that if an owner or operator is at fault, then it may not successfully claim a liability exception. The language does not state or even imply the reverse, the court maintained.

The defendants argued that such a conclusion is the same as saying that a vessel under way always will be liable because its choice to navigate will always be a contributing cause. The court said no. Choosing to navigate is not the only factor involved in the case, the court said. The choice made was not simply a choice to navigate, but a choice to navigate outside a maintained, marked channel.

Out At The Plant

Asbestos Enforcement

Renovators, demolishers, landlords, and owners of buildings contaminated with asbestos take heed: EPA announced Aug. 22 a new enforcement policy intended to stop violators of the asbestos regulations under the Clean Air Act's National Emission Standards for Hazardous Air Pollutants.

The NESHAP outlines control requirements to follow when removing asbestos from structures to prevent visible emissions. Control techniques include continuously spraying the exposed area with water or the use of a baghouse. The standard also requires air pollution control officials to be notified of a demolition or renovation project that involves asbestos.

The new enforcement policy will result in fines of up to five times the amount previously imposed, EPA said. Instead of the previous of fine of $4 per square foot of asbestos involved, EPA said it will now fine violators $20 per square foot. The gravity of the offense also will be considered and each violation of a management practice will be considered separately, instead of lumped together. Building owners and landlords may also be held responsible when notification requirements are not followed, the agency said.

Furthermore, EPA announced it will place serious offenders on a list of facilities barred from receiving federal grant and loan monies, a practice currently done following criminal cases.

The announcement to get tough with violators came on the heels of an EPA inspector general's report that concluded the NESHAP's enforcement was less than adequate. On the day the stricter enforcement policy was announced, 13 lawsuits in 11 states were filed by EPA and the Justice Department for violations of the NESHAP, some of which dated back to 1984.

Fuel

Leaded Gas Alternative

Responding to the need in Southern California to clear the smog created by tailpipe exhaust, ARCO introduced Sept. 1 a fuel to replace leaded gasoline. Called EC (Emission Control)-1, the lead-free gasoline is intended for vehicles that do not have catalytic convertors, specifically pre-1975 cars and pre-1980 trucks. The fuel contains methyl tertiary butyl ether and has 1 percent oxygen by weight. Compared to leaded gasoline, EC-1 emits less carbon monoxide. The fuel also contains one-third less olefins and aromatics, 50 percent less benzene, and 80 percent less sulfur.

ARCO, the South Coast Air Quality Management District, and the California Air Resources Board predicted that if all users of leaded gasoline switch to the new fuel, about 350 tons of pollutants that are spewed into the air every day would be removed. That would be equivalent to removing 20 percent or more than 300,000 vehicles that burn leaded gasoline.

Development of EC-1 was ARCO's first phase in the search for cleaner-burning fuels, according to Lodwrick M. Cook, ARCO's chairman and chief executive. The second phase will be the development of a gasoline to reduce emissions from newer cars.

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