

CRITICAL QUESTIONS FOR THE OMB REVIEW
OF EPA'S ASBESTOS RULE

The following are critical questions that should be considered by OMB in reviewing EPA's asbestos ban/phase out proposal under Executive Order 12291. In each instance, we have provided a short answer and references to attached material from the EPA record.

A. Asbestos Products Other than Friction Materials

1. Do the EPA-estimated costs and benefits support a finding that asbestos products (other than friction materials) pose an "unreasonable risk" under Section 6 of TSCA?

A: No. Under TSCA, "unreasonable risk" requires a weighing of costs and benefits. EPA's Regulatory Impact Assessment (RIA) estimates costs per cancer avoided for bans or phase outs of all asbestos products. For non-friction asbestos products, these cost per cancer avoided ratios invariably range in the tens or hundreds of millions of dollars.

For example, under a scenario that assumes no further reduction in asbestos sales without regulation and discounting only costs and not benefits, the RIA estimates costs per cancer avoided of an immediate ban for asbestos/cement pipe, asbestos/cement shingles, and roof coatings to be \$62, \$102, and \$82 million, respectively. If sales continue to decline at recent rates, the costs per cancer avoided increase to \$72, \$117 and \$86 million. Even higher cost benefits ratios are calculated if these products are banned in 1992 or 1997 respectively, assuming costs and benefits are discounted equally. See Tab A, RIA excerpts.

2. Do the estimated costs and benefits for non-friction asbestos products justify either banning or phasing out such products?

A: No. For EPA to ban or phase out non-friction asbestos products having such low cost effectiveness ratios would be unprecedented in the history of U.S. health and safety regulatory agencies. See Tab B, testimony of Dr. Robert Crandall, at pp. 34-41.

3. Of what significance in assessing relative costs and benefits is the timing of costs incurred and benefits achieved?

A: The fact that the supposed benefits of banning or phasing out asbestos will, in most instances, not occur until the middle of the next century, while the costs will be borne immediately, is a very important issue not properly considered by EPA's RIA. The RIA first presents cost effectiveness ratios for specific products without taking into account (discounting) the timing of benefits. To the extent the timing of benefits is considered at all, the RIA discounts only from the time of exposure and not from the time when the expected disease occurs.

At AIA's request, EPA estimated cost effectiveness ratios, discounting from the time of disease rather than exposure. See Tab C. When benefits are properly discounted in this manner, the resulting cost benefit ratios are even higher than the ratios contained in Tab A.

4. Under Section 6(a) of TSCA, EPA is required to select the "least burdensome alternative" for reducing any unreasonable risks. Are bans or product phase outs the "least burdensome" remedy that address supposedly "unreasonable risk" for asbestos products no longer being manufactured in or imported into the U.S.?

A: No. Many of the products EPA assesses in the RIA (e.g., asbestos flooring, roofing felts, asbestos/cement sheet, pipeline wrap) are no longer manufactured or imported. For these products, a less burdensome regulatory alternative would be to issue a TSCA Section 5 Significant New Use Rule (SNUR). The issuance of a SNUR would assure that no marketing or importation occurs in the U.S. until after EPA is given an opportunity to assess risks and benefits in light of then-existent facts. See Tab D, AIA/NA Rulemaking Comments on this issue.

5. Apart from the general considerations noted above, it is imperative that EPA correctly assess the true costs and benefits of banning or phasing out specific asbestos products. Has EPA, in fact, done this?

A: No. Record evidence about many of the specific asbestos products cast considerable doubt on EPA's

assessments of costs and benefits. For example, EPA's assessment of the costs of banning asbestos/cement pipe are based on comparative prices of polyvinyl chloride (PVC) pipe that have increased significantly since EPA collected cost data, thus increasing the relative cost disadvantage of PVC pipe. See Tab E, testimony of Lloyd Ambler. Similarly, in assessing the availability of alternatives to non-asbestos gaskets, EPA focuses exclusively on development of such alternatives in automobile manufacture. In so doing, EPA misses totally the absence of any alternatives -- at any price -- for asbestos gaskets in high temperature manufacturing processes. See Tab E, testimony of David Moser.

6. EPA is currently in the last stages of finalizing a revision of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) under the Clean Air Act. Has EPA adequately assessed the likely reductions in asbestos exposures from manufacturing plants once tighter standards are imposed under the new asbestos NESHAP?

A: No. EPA's RIA contains no evaluation of the effect which its proposed, and soon to be finalized, NESHAP will have on plant asbestos emissions. AIA has specifically called this issue to EPA's attention. See Tab F, AIA/NA letter to Lee Thomas, June 30, 1988.

B. Asbestos Friction Products

7. EPA's RIA indicates that banning asbestos friction products is considerably more cost effective than banning the other products noted above. Questions, however, have been raised throughout EPA's rulemaking about the safety of non-asbestos brakes. Has EPA adequately addressed these safety risks in its cost/benefit assessment?

A: No. In light of its acknowledged lack of expertise on brake engineering and safety, EPA commissioned the American Society of Mechanical Engineers (ASME) to assess the availability and efficacy of non-asbestos brakes. The ASME Report (Tab G) concluded that an EPA-mandated substitution of non-asbestos brakes for original equipment "may have unexpected failure mechanisms."

The ASME report expresses even greater concern about the safety of non-asbestos replacements for asbestos in the brake aftermarket. It finds

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aftermarket replacement "may have an adverse effect on vehicle brake balance and controllability," that "would lead to a potentially serious customer safety risk."

The safety risks of non-asbestos brakes, both in original equipment and the brake aftermarket, must be assessed under TSCA's "unreasonable risk" standard. EPA's RIA is wholly silent on this issue even though these added safety risks, in the context of 50,000 traffic fatalities annually, could dwarf any health benefits of eliminating asbestos. See Tab B, Crandall testimony at p. 32.

8. In addition to these safety risks, asbestos braking materials will be replaced by other fibrous materials that have their own potential health risks. Has EPA adequately assessed the health risks of exposure to substitute non-asbestos fibers?

A: No. EPA's experts on fiber risks have indicated that: (a) the medical studies of workers exposed to asbestos in friction product work indicate less risk than the EPA assumes in its potency calculation for asbestos (Tab H, p. 310); and (b) that the Agency cannot determine whether the risks of exposure to other fibers are more or less than the risks of exposure to asbestos (Tab H, p. 343). Yet, the RIA assumes that non-asbestos fibers present zero risk, a conclusion that is contrary to the testimony of EPA's own experts on the subject.

9. In light of the foregoing, has EPA adequately assessed less burdensome remedies to banning or phasing out asbestos use in brakes?

A: Included in the EPA record are numerous studies by the National Institute on Occupational Safety and Health (NIOSH) (including Tab I) finding that proper work practices greatly reduce exposure of brake mechanics in replacing asbestos brakes. These reductions of up to 97% of current asbestos exposures are feasible and more cost effective than bans. See EPA's RIA Sensitivity Analysis, Tab J.

The benefits of these additional exposure reductions are not considered in EPA's RIA even though OSHA is required by the recent Court of Appeals remand, Building Construction Trades Dept., AFL-CIO v. Brock, 838 F.2d. 1258, 1272-73 (D.C. Cir. 1988), to conduct a further rulemaking on this issue. See Tab K.

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