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Current Report

(7 YR. PHASE-OUT)

General Policy

OMB BLOCKS ASBESTOS-BAN FINAL RULE;
DECISION LEFT TO BUSH TEAM, ELKINS SAYS

The Reagan administration's Office of Management and Budget has blocked a ban on the future use of asbestos in nearly all products by refusing to sign an Environmental Protection Agency final rule that would phase out asbestos use over a seven-year period, a high-level EPA official said Jan. 18.

Charles Elkins, director of EPA's Office of Toxic Substances, indicated the move would leave it up to the incoming Bush administration to decide what to do with the long-standing agency proposal to ban asbestos use. "The next administration could open it up" for changes, he said.

Elkins said EPA sent its final asbestos-ban rule to OMB for approval Dec. 16, 1988. A 30-day review period expired this week, but OMB still has not signed off on the rule, Elkins said. He suggested it was unlikely that the final rule would be issued until a new EPA administrator is confirmed by the Senate.

Elkins made the comments during a briefing on a number of agency issues for reporters at EPA headquarters.

William K. Reilly, President Bush's designee to head EPA, recently was briefed by EPA staff members for about two hours on the asbestos-ban rule and other toxic substances issues, Elkins said.

The agency indicated in November 1988 that work on the asbestos-ban rule was a top priority and that EPA hoped to issue a final rule before outgoing Administrator Lee M. Thomas left office (12 CRR 1141).

The toxic substances chief said EPA staff members met "extensively" over the last month to review technical issues related to the asbestos-ban rule.

EPA proposed to issue the rule under Section 6 of the Toxic Substances Control Act. TSCA authorizes EPA to control substances that pose an unreasonable risk to public health and the environment. But the law also requires the agency to consider a range of issues, such as economic effects and availability of substitutes, when regulating a substance.

Staff members, Elkins said, worked through all the technical issues. A decision on the rule now hinges on "conversations between OMB and EPA at a higher level" of authority, Elkins said.

He indicated that OMB's objections to the rule may be more fundamental than technical. "It's a very aggressive rule. It costs money," Elkins said.

Final Rule Changed From 1986 Proposal

Elkins said changes have been made in the final asbestos-ban rule from a proposed rule issued by the agency in January 1986.

The proposed rule would ban immediately the use of asbestos in five types of products: roofing felts; flooring felts and felt-backed sheet flooring; vinyl-asbestos floor tile; asbestos clothing; and asbestos/cement pipe. All other uses of asbestos, such as asbestos in automobile and truck brakes, would be phased-out over a 10-year period (9 CRR 1435, 1453).

According to Elkins, the final rule would cut the phase-out period to seven years because three years have passed since the agency issued the proposal.

EPA's final rule would eventually ban 95 percent of the asbestos now used in products, rather than banning all use of asbestos as originally proposed, Elkins said.

Asbestos would be banned in nearly all products, but its use still would be allowed in liners for missiles used by the military and the space program. Also, asbestos still could be used in "arc chutes" which are devices used to direct an electrical charge, Elkins said.

Asbestos would be banned in all consumer items, according to Elkins.

Use of asbestos in building materials already is controlled under EPA rules issued under the Clean Air Act.

EPA first announced it was exploring the use of TSCA to reduce health risks from exposure to asbestos in 1979. In the nearly 10 years since, the agency has received strong opposition to its asbestos-control efforts from producers and industries that use asbestos in their products.

GAO Study On Chemical Testing Rules

Turning to other toxic substance office issues, Elkins said the General Accounting Office is investigating EPA's chemical testing program under Section 4 of TSCA. Rep. Michael Synar (D-Okla.) requested the report, according to the GTS chief.

GAO is examining the Interagency Testing Committee—a group of scientists from a number of federal agencies who recommend to the EPA administrator chemicals for which they believe testing data is needed. The congressional investigative agency will look into how the ITC functions; how the ITC makes its recommendations; plus EPA's responses to the ITC suggestions and whether they are timely and substantially correct, Elkins said.

The report may be finished in the spring, Elkins said, adding that he has instructed OTS staff members to be open and cooperative with GAO workers.

"These GAO studies should give the Congress what's really happening, as opposed to anecdotal information or anything I could deliver in five or 10 minutes at a congressional hearing," Elkins said. "I hope [the report] will lead to some very constructive dialogue between us and Congress."

Elkins said Thomas was scheduled to decide whether to issue a draft proposed rule under TSCA for genetically engineered microorganisms before leaving office Jan. 20. When asked if Thomas would sign the proposal, made public in December 1988, Elkins said, "It could be. It's unlikely" (12 CRR 1340).

The OTS head predicted the agency will issue a final rule to require cradle-to-grave manifesting and tracking of polychlorinated biphenyls by June or July. EPA proposed the rule in September 1988 (12 CRR 876, 949).

Chemical Emissions Inventory

Turning to EPA's toxic chemical emissions inventory program under Section 313 of the Emergency Planning and Community Right-To-Know Act, Elkins said the agency is checking the quality of the data it has received so far. EPA