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Is 1980 an Appropriate End Date for Asbestos Use?

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In the construction industry, we use certain years as the end date in determining if a building was constructed with asbestos containing materials. In New York State, the Department of Labor, which regulates asbestos abatement, uses the year 1974. While the federal government, under the Occupational Safety and Health Administration (OSHA) regulation 1926.1101 (k) (1), requires building owners, of buildings built no later than 1980, presume surfacing materials, thermal system insulation, roofing materials, and floor tiles contain asbestos. Owners are required to handle these building materials as asbestos containing materials (ACM) until a certified asbestos inspector takes samples of the materials, in accordance with the Environmental Protection Agency Asbestos Hazard Emergency Response Act (EPA AHERA), and the samples verify the materials do not contain asbestos. However, are 1974/1980 appropriate dates to use in making a determination whether building materials can contain asbestos?

The federal agency with the responsibility for banning asbestos is the Environmental Protection Agency (EPA). This agency, under the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), banned the use of asbestos for sprayed-on application of fireproofing and insulating in 1973 and for decorating purposes in 1978. In 1975 EPA's NESHAPS regulation also banned the installation of pre-formed (molded) asbestos block insulation on boilers and hot water tanks and the wet-applied and pre-formed (molded) asbestos pipe insulation. Since two of these bans did not go into effect until after 1974, the New York State end of use date is not appropriate and the construction industry should not use it to determine buildings that contain asbestos. Under a separate regulation, the Toxic Substances Control Act (TSCA), EPA tried to ban and phaseout the use of asbestos in 1989. In 1991 the "Asbestos Ban and Phaseout Rule," as the rule became known as, was vacated and remanded by the U.S. Fifth Circuit Court of Appeals. In 1993 EPA stated that corrugated paper, rollboard, commercial paper, specialty paper, flooring felt, and new uses of asbestos were still subject to the ban. Vacating the "Asbestos Ban and Phaseout Rule" meant that asbestos-cement corrugated sheet, asbestos-cement flat sheet, asbestos clothing, pipeline wrap, roofing felt, vinyl-asbestos floor tile, asbestos-cement shingle, millboard, asbestos-cement pipe, automatic transmission components, clutch facings, friction materials, disc brake pads, drum brake linings, brake blocks, gaskets, non-roofing coatings, and roof coatings are not banned and could still be used in buildings. In addition, the website www.mesthelioma.com by Early, Ludwick, Sweeney & Strauss, product liability and toxic tort attorneys, lists the end date for the manufacture of various products with asbestos. This list includes the following building materials made after 1980; floor tiles (1984), ceiling panels (1981), siding (1983), plasticrylic panels (early 1980's), corrugated asbestos paper (1981), joint compound (1980's) and sheet vinyl products (1983). Based on this information, 1980 is not an appropriate end date for asbestos use.

Is there an appropriate end date for asbestos use in buildings? Recent headlines indicate the answer to this question is no. These headlines indicate that some current building materials are contaminated with asbestos or still contain asbestos sufficiently enough for the materials to be considered asbestos containing materials. For example, the Asbestos Disease Awareness Organization reported in November, 2007 that they sampled a number of current building materials and determined that DAP's "33" window glazing and "crack shot" spackling paste and Gardner's leak stopper roof patch all contained asbestos. DAP's "33" window glazing was purchased at Home Depot and Lowes for the purpose of the study and contained 2.6%

tremolite, and 0.13% chrysotile asbestos (2.73% total asbestos). DAP's "crack shot" spackling paste was also purchased at Home Depot and Lowes and contained 0.98% tremolite, and 0.066% chrysotile asbestos (1.05% total asbestos). Gardner's "leak stopper roof patch," along with other products by Gardner, is listed with the National Institute of Health as known asbestos containing material on the open market and contained 11% chrysotile asbestos. In addition, the New York Times reported in July 20, 2001 that W. R. Grace & Company's Monokote fireproofing spray product (used into the late 1980's) was contaminated with tremolite asbestos. The Seattle Post-Intelligencer reported on February 8, 2005 that seven of W. R. Grace & Company's current or former executives were indicted on federal charges that they knowingly put their workers and the public in danger through exposure to vermiculite ore contaminated with tremolite asbestos from it's mine in Libby, Montana. In 1990 W. R. Grace & Company closed the mine but the ore was used as attic and wall insulation, wallboard, and fireproofing into the early 1990's. The asbestos content in these materials can be as high as 2%. In research conducted by EPA on vermiculite attic insulation in 2001 and 2002, found homeowners that used the attic could be exposed to airborne asbestos fibers.

Since there is no total ban on the use of asbestos in building materials, it means that 1974 or 1980 are not appropriate cut off dates on the use of asbestos in building materials. It also means that the construction industry should be very careful when working on buildings after these dates because it is very likely that an asbestos inspection or survey was not done on the building materials. Building owners, banks, facility managers, general contractors, and subcontractors should not think that because the regulations do not require an inspection that there is no chance for a violation or liability. OSHA requires that employers inform their workers of all the potential hazards at a project (job) site. Should materials that were not inspected turn out to be asbestos containing and the exposure exceeds the permissible exposure limit (0.1 fibers per cubic centimeter based on an eight hour time weighted average) or the excursion limit (1.0 fibers per cubic centimeter over thirty minutes) the employer would be in violation of the OSHA asbestos regulation. No matter the construction date of the building. The building owner could then face third party litigation from the workers if they develop a disease from such an exposure. It is very important to realize that although the asbestos regulations do not require asbestos inspections after 1980, the installation of asbestos containing materials into buildings continues to this day.

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