

Motor & Equipment Manufacturers Association

1030 15th Street, NW Suite 500 East Washington, DC 20005
Tel 202.393.6362 Fax 202.737.3742 E-mail info@mema.org



September 1, 2016

The Honorable Jim Jones (7101M)
Assistant Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
[By email to jones.james@epa.gov](mailto:jones.james@epa.gov)

RE: Request to Designate Asbestos as a High-Priority Substance Under TSCA § 6 Due to Use in Brake Friction Materials

Dear Assistant Administrator Jones:

The Motor & Equipment Manufacturers Association (MEMA)¹ urges EPA to designate asbestos as one of the first ten high-priority substances under section 6(b)(2)(A) of the Toxic Substances Control Act (TSCA) as amended² due to its continued use in imported brakes and brake components. Since MEMA members do not import asbestos-containing brakes or brake components, this request is not submitted as a manufacturer request for a risk evaluation under section 6(b)(4)(C)(ii). The continued importation of asbestos-containing brakes and brake component material presents an unreasonable risk to the health of American workers, particularly those who install and repair brakes containing asbestos, and to the general public, particularly do-it-yourselfers (DIYers) who replace their own brakes.

Criteria for High-Priority Chemicals

Under TSCA section 6(b)(1)(B)(i), a high-priority substance is one that EPA has concluded “may present an unreasonable risk of injury to health ... because of a potential hazard and a potential route of exposure under the conditions of use.” As explained below, EPA has already determined that the manufacture (including import) or processing of asbestos for use in brakes and brake components presents an unreasonable risk of injury to human health. Asbestos thus qualifies as a high priority substance.

¹ MEMA represents more than 1,000 companies that manufacture motor vehicle systems and parts for use in the light and heavy-duty vehicle original equipment and aftermarket industries. MEMA membership includes manufacturers of brake systems, brake components and brake friction materials. MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA).

² Amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA), Pub. L. 114-182 (June 22, 2016).



Under section 6(b)(2)(D)(i), in designating high-priority substances, EPA must give preference to chemicals that are listed in the 2014 TSCA Work Plan update, are known human carcinogens, and have high acute and chronic toxicity. Asbestos meets all of these requirements: it is on the 2014 TSCA Work Plan update, and it is a known human carcinogen with acute and chronic toxicity from inhalation exposures. Thus, EPA must give preference to asbestos as a high-priority substance.

EPA Has Already Found That Asbestos in Brakes Poses an Unreasonable Risk

In 1989, EPA “concluded that the continued commercial manufacture, import, processing, and distribution in commerce of [brakes, brake components, and other] products identified in this rule poses an unreasonable risk of injury to human health under section 6 of TSCA.”³ EPA banned (after a phase-out period) the manufacture or import of “industrial asbestos friction products,” “asbestos-containing disc brake pads for light-, medium- and heavy-weight vehicles, and drum brake linings,” and “brake blocks” in original equipment or aftermarket replacement parts.⁴ EPA based this ban on the high level of individual risk from the exposure over “the entire life cycles of each of the banned asbestos-containing products.”⁵ The 1989 asbestos rulemaking identified workers and DIYers as two potentially exposed or susceptible subpopulations.

EPA noted in the 1989 rule that workers involved in the installation, repair, removal, and disposal of the banned products “are exposed to a serious lifetime asbestos exposure risk, despite OSHA’s relatively low workplace PEL.”⁶ EPA observed that “the effectiveness of the brake repair control measures in reducing overall exposures depends heavily on the knowledge and conscientiousness of the user,” and that “smaller establishments repairing brakes less frequently are less likely to invest in these relatively expensive devices [HEPA vacuum enclosures].”⁷ EPA found that “the structure of the brake repair ... [industry], in which numerous, small businesses are the norm, will also make enforcement of [OSHA’s excursion limit] difficult.”⁸

EPA also found that consumers, particularly DIYers, are at risk from asbestos in brakes and brake components. It found that “consumers face a potential hazard as they install, use, repair, and dispose of these products.”⁹ Specifically, it found:

Outside of the work environment, most of the U.S. population is exposed to asbestos that is released during the life cycle of asbestos products. Some of these people are consumers who are exposed to asbestos as they install, use, repair, remove, and

³ 54 Fed. Reg. 29460, 29461 (July 12, 1989).

⁴ Former 40 C.F.R. § 763.165, 54 Fed. Reg. at 29510.

⁵ 54 Fed. Reg. at 29467.

⁶ Id.

⁷ Id. at 29475.

⁸ Id.

⁹ Id. at 29472.

dispose of asbestos products that they have purchased, such as ... automotive brakes. Others are exposed to asbestos released into the ambient air during the manufacture, installation, use, repair, and disposal of asbestos products.¹⁰

Unfortunately, a broad ban on products containing asbestos was never implemented. Before the phase-out dates, a court of appeals invalidated these and most other provisions of EPA's asbestos standard.¹¹ The court based its ruling on EPA's difficulty in balancing costs and benefits, and in meeting the "least burdensome" language formerly in section 6. Thus, today there is no federal ban on the manufacture, importation, processing, distribution, use, or disposal of asbestos-containing brakes and brake components. With the recent statutory changes, however, EPA would not have to meet the same statutory requirements as proved decisive in *Corrosion Proof Fittings*.

Asbestos Is Still in Some Imported Brakes and Brake Components

The 1991 court decision found that "[f]or these original equipment brakes, it appears that manufacturers already have developed safe substitutes for asbestos, considering that nearly all new vehicles come with non-asbestos disc brakes, with non-asbestos drum brakes apparently soon to follow."¹² The court was concerned about the availability of substitutes for aftermarket brakes and brake components. As would be anticipated, brake manufacturers have found acceptable substitutes since the court's decision.

U.S. brake friction materials manufacturers initiated the phase-out of asbestos in the late 1980s after a consensus developed on the toxicity of asbestos. As of January 2015, the phase-out of asbestos and other constituents¹³ in motor vehicle brake friction material was completed, thanks to laws in California and the State of Washington.¹⁴ These laws, passed in 2010, require brake friction material manufacturers to reduce asbestos in all brake friction material sold in the states to a trace amount - 0.10 percent by weight - by January 1, 2014 and January 1, 2015, respectively. As a result, the California and Washington laws effectively drove an industry *de facto* standard, leading brake friction material manufacturers to change all of their U.S. product lines to comply with those laws.

This *de facto* standard was solidified further when MEMA, the Brake Manufacturers Council,¹⁵ and multiple other industry stakeholders, including the vehicle manufacturers, signed a Memorandum of Understanding (MOU) with the U.S. Environmental Protection

¹⁰ Id. at 29476-77.

¹¹ *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991).

¹² Id. at 1224-25 (citation omitted).

¹³ Other constituents include mercury, lead, cadmium, and chromium-6 salts.

¹⁴ California Health and Safety Code, Division 20, Chapter 6.5, Article 13.5 (California SB 346); State of Washington Chapter 70.285 RCW (Washington SB 6557). Washington has issued final regulations, Wash. Admin. Code Chap. 173-901 (2012). California expects to finalize its regulations by the end of 2016.

¹⁵ A product council of Automotive Aftermarket Suppliers Association, a division of MEMA.

Agency.¹⁶ Under the MOU, stakeholders agreed to phase out the use of asbestos, along with other constituents, in brake friction material to no more than 0.10 percent by weight in brakes sold anywhere in the U.S. by January 2015.¹⁷

Although the California and Washington laws and the MOU allow trace amounts of asbestos in brake friction materials, U.S. brake manufacturers do not use any asbestos at all when manufacturing brake friction materials.

Nevertheless, some imported brakes and brake components continue to contain asbestos. In 2015, the Department of Commerce released a report stating that approximately \$2.2 million in brake friction materials containing asbestos was imported into the U.S. in 2013.¹⁸ According to the report, China and Canada are the largest suppliers of U.S. imports of brake friction materials containing asbestos. Similar numbers on brake friction materials containing asbestos can be found in the U.S. Geological Survey's 2013 and 2014 Yearbook on Asbestos.¹⁹ These reports are based on the Harmonized Tariff Schedule codes. While brake friction material containing asbestos was just over 1 percent of total imported brake friction material in 2013, the low-cost asbestos from these offshore suppliers pose an unreasonable risk to workers and consumers, as EPA found 25 years ago.

Not only are brake friction materials containing asbestos still allowed to be imported, these products are not required to be labeled as containing asbestos. Brake pads and linings use composite materials, making it difficult to determine exactly what goes into them. As a result, the continued supply of asbestos-containing friction material presents a risk of exposure to mechanics and DIYers who install or work with these products and may be unaware that they are being exposed to asbestos. Without EPA taking a definitive all-encompassing action on asbestos in brakes, U.S. workers and the public will remain at risk.

Conclusion

EPA must ensure that, within 180 days of TSCA enactment, initial risk evaluations are being conducted on 10 high-priority chemicals drawn from the 2014 TSCA Work Plan.²⁰ MEMA urges EPA to designate asbestos as an initial high-priority chemical and include brake friction materials in the scope of the risk evaluation. Given EPA's commitment to

¹⁶ Memorandum of Understanding on Copper Mitigation in Watersheds and Waterways between U.S. EPA and MEMA, Automotive Aftermarket Suppliers Association, Brake Manufacturers Council, Heavy Duty Manufacturers Association, Auto Care Association, Alliance of Automobile Association, Association of Global Automakers, Truck and Engine Manufacturers Association, and Environmental Council of the States, January 21, 2015.

¹⁷ The main objective of these laws and the MOU was to phase out the use of copper in brake friction materials.

¹⁸ This report was submitted to Congress, but was not published or posted on the internet. A copy of the report is included as an attachment. In 2015, 2013 import data was the most recent full year available.

¹⁹ U.S. Department of the Interior. Geological Survey. *2014 Minerals Yearbook: Asbestos*. By Robert L. Virta and Daniel M. Flanagan. <http://minerals.usgs.gov/minerals/pubs/commodity/asbestos/myb1-2014-asbes.pdf>

²⁰ TSCA Section 6(b)(2)(A).



eliminating risk of injury to human health from asbestos exposure, this issue should be a priority for EPA.

Thank you for consideration of this request. Please do not hesitate to contact Laurie Holmes, Senior Director, Environmental Policy, with any questions.

Sincerely,

A handwritten signature in black ink that reads "Ann Wilson". The signature is written in a cursive, flowing style.

Ann Wilson
Senior Vice President, Government Affairs