



The Risks of Asbestos Removal

by Michael C. Loulakis and Jeffrey G. Gilmore

The health hazards posed by air-borne asbestos particles have been well publicized and clearly documented in recent years. The victims of asbestos-related ailments have primarily targeted the manufacturers of asbestos products in product-liability litigation. The liability has led to the ultimate bankruptcy of many asbestos manufacturers.

New regulations and legal rulings, however, also target building owners and contractors as liable parties. Current efforts to remove asbestos from both public and private build-

contract with Geppert; 3) It would be unfair to permit the United States to bring the action since the buildings were being demolished as a result of U.S. trade policies.

The Environmental Protection Agency argued the following:

The stationary source in this case is the demolition or renovation operation. The demolition or renovation contractor would clearly be an owner or operator, by "operating" the stationary source. The facility owner or operator, by purchasing the services of the demolition or

decision, the purpose of the asbestos regulation is to make sure that buildings containing asbestos are demolished in a way that minimizes the release of asbestos dust into the air. Consequently, the regulations create obligations for both the building owner and the operator of the demolition project.

Any persons, including "responsible corporate officers," who fail to observe the Clean Air Act, may face both civil and criminal penalties. To avoid such liability, the responsible parties must take appropriate safety measures—including monitoring work areas and using adequate equipment.

Contractors should also be familiar with "contractual-indemnification provisions." These permit a general contractor to seek recovery from a subcontractor who has created the dangerous conditions (or an owner to recover from the general contractor responsible for such conditions).

Before engaging in projects where they may encounter hazardous materials, all parties should consult their lawyers to evaluate any applicable regulations. They should also find out what protections their insurance carrier can offer them. ■

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ings expose workers to the same health hazards they faced while manufacturing or installing it.

Federal, state, and local health officials have developed standards for limiting the exposure to asbestos in the construction industry. This article will not describe all the regulations affecting the construction industry, but will illustrate the potential liability for building owners and contractors.

A recent Pennsylvania case, *United States v. Geppert Brothers, Inc.*, United States District Court for the Eastern District of Pennsylvania, No. 85-1338, demonstrates the far-reaching impact of asbestos-related regulations. In the Geppert case, decided in June of this year, the court held that both the owner of a sugar refinery and the demolition contractor who took it down could be liable for violating the Clean Air Act restrictions on asbestos emissions.

Geppert Brothers, Inc., contracted to demolish buildings at two sites, including the Amstar Sugar Refinery. Upon completion of the demolition work, the U.S. Environmental Protection Agency (EPA) brought a civil action against Geppert and Amstar, alleging that they failed to comply with regulations of the Clean Air Act that control the release of asbestos.

The regulations require that the "owner or operator of a demolition or renovation operation" at a facility containing specified amounts of asbestos notify the EPA of the planned demolition and follow specified work practices in removing the asbestos.

In challenging the complaint, Amstar used the following defenses:

1) Amstar was not an "owner or operator" of the demolition operation; 2) Amstar did not own the building being demolished, due to its

renovation contractor, acquires ownership and control of the operation and would, therefore, be the "owner" for purposes of this standard. Therefore, the standard applies to both the contractor and the facility owner or operator.

Additionally, the court noted that a "facility" is defined in the regulations as "any institutional, commercial, or industrial structure, installation, or building (excluding apartment buildings having no more

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than four dwelling units)." Accordingly, the court held that the regulations apply to both the owner of the building being demolished and the operator of the demolition operation. Moreover, the court stated:

Interpreting the asbestos regulations to apply to the owner of a building being demolished also furthers the purposes of the Clean Air Act by insuring that owners of property act responsibly in disposing of their buildings. The regulations prevent the owner of a building from avoiding liability for hazardous substances present in a building by merely contracting with another party to demolish the building.

As demonstrated by the court's