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Whistleblower's JM Eagle claims bolstered

By Clare Goldsberry

Published: March 19th, 2010

A second amended complaint by the law firm for whistleblower John Hendrix, a former employee at pipe extruder JM Eagle, contains documents from JM Eagle gathered in the investigation, which was conducted under seal, along with statements from four high-level managers that support Hendrix's statements that JM Eagle made false claims about pipe it produced primarily for municipal water and sewer applications. JM Eagle officials have bitterly denied the allegations, as reported earlier [here](#).

Mary Inman, lead attorney in the case being handled by Phillips and Cohen, said in a telephone interview that the real issue isn't necessarily that of bursting pipes. "You won't necessarily see widespread failures currently, but under a false claims charge, the entities don't have to show they've had catastrophic failures," said Inman. "This is a fraud case, so the entities need to show that JM Eagle knew at the time they were selling the product that it wasn't compliant to the standards required of the pipe. JM Eagle represented that the pipe would last from 50 to 100 years, when in fact the pipe has a diminished life span. Had the entities that purchased the pipe known this, they wouldn't have bought the pipe."

Inman notes that they have a "fair number of test results" on the pipe in question, "but not all of them." The second amended complaint states that in manufacturing the pipe in question, JM Eagle used "old extruders" (30 years old), on which they placed new high-output dies to maintain accelerated production. "JM's lower-quality PVC compound required more process time and the older extruders were not able to work the PVC compound enough for the high-output die," therefore diminishing the "tensile strength of the pipe produced by this combination" of processing circumstances, which allowed JM to make pipe more quickly and with less processing, according to the complaint.

The complaint also states that JM used "lower viscosity resin" (0.88) instead of a resin with a 0.92 viscosity, and replaced two primary classes of ingredients in its J-M 90 pipe (resin plus additives such as wax and stabilizers) with cheaper, inferior-grade brands. The use of the lower viscosity resin allowed JM to increase its production rates and output.

Officials with the Calleguas Municipal Water District in Thousand Oaks, CA said that several miles of 16-inch diameter PVC water pipe installed in 1993-1994 began breaking, with the first break in 1999. At first that really didn't raise any questions, explained Susan Mulligan, manager of engineering, in a telephone interview. "We repaired it and went on. Then we had another break in 2002, then another in 2005," Mulligan said. "At that point it was becoming an annual event in that same section of pipe. We sent the pipe samples to a lab to have it tested, and indeed it did not meet the material specs it should have."

Mulligan noted that the PVC pipe purchased from JM Eagle was represented to have a life span of 50 to 100 years.

Final work was completed in 2009 with a "pipe splitting" project in which HDPE pipe was pulled through the bad PVC pipe. Over the years, the Calleguas Municipal Water District spent about a million dollars in road repairs, and another \$3 million on the pipe-splitting project. The district did not purchase the HDPE pipe from JM Eagle, but chose another vendor instead.

Don Kendall, general manager of the Calleguas Municipal Water District, said that the district's engineering staff is very professional, "and they actually wrote papers about this problem and presented them at conferences to bring the focus of attention" on the problem to other water districts. "We wanted to raise concerns about the material specs of the pipe people were buying," he noted.

"We build infrastructure and pipelines, and have a long positive history in doing this, so we were surprised at these problems, but it eventually led to more analysis on our part that helped us get to the root of this," said Kendall. "No one likes a water main break, as it causes a lot of problems with closed roads, and doesn't make anyone look good."

The Calleguas Municipal Water District was contacted by Mary Inman of Phillips & Cohen about a year ago or so, and joined the suit.

The second amended complaint included statements from other JM Eagle employees, including Brian Wang, a former manager of three JM plants, who acknowledged in a statement that in order to increase profits, JM forced plant managers to speed up the extruders.

K.C. Yang, JM's corporate quality control supervisor at the time, said JM management began using cheaper compound ingredients from a company called Luxco. After JM began using cheaper ingredients, JM could no longer meet the UL standard 1285, the requirement for pipe with 7000 psi.

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Another former employee, John Negode, former quality control supervisor at JM's McNary, OR plant, acknowledged the changes in the materials, and that they caused test failures. "JM management did everything on the cheap," he stated in the complaint.

Inman noted that while it's too early in litigation to know of the extent of the actual pipe failures, they have enough anecdotal evidence to prove that pipes are failing within 10 years. "[JM Eagle] only warrants their pipe for one year, so when it falls out of warranty the water and sewer districts don't make a claim on it," said Inman. "Test results show, however, that they were below required tensile strength. Calleguas, which has to replace nearly all of its water system pipes, has test results proving that the pipe fell below tensile strength requirements." Inman said that JM's answers to the complaint are due May 10. —Clare Goldsberry

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