



Organization Resources
Counselors, Inc.

Memorandum

August 8, 1989

PLAINTIFF'S
EXHIBIT
AL-975

To: ORC Asbestos Task Force

From: Rebecca L. Daiss *Bucky*

Subject: EPA Public Meetings and Policy Dialogue Sessions on
Asbestos in Commercial Buildings

Having rejected, at least temporarily, a regulatory approach to addressing the problem of asbestos in commercial buildings, EPA is attempting to find solutions via a series of meetings, some public, some by invitation, among interested parties from industry, labor, and government. At the first public meeting, held on May 3, 1989, the following four primary talking points were identified and placed on an agenda of priority items for future, more detailed analysis: 1) employee right-to-know of the presence of asbestos in public and commercial buildings; 2) actions that should be taken if asbestos is present; 3) adequacy of current training and certification regulations; and 4) adequacy of OSHA and EPA regulations governing asbestos removal. Additional public meetings have been scheduled for September 6, 1989 in Kansas City, September 7, 1989 in San Francisco, and a wrap up meeting in Washington D.C. on September 21, 1989. The meeting locations have yet to be announced.

Two "policy dialogue" sessions, open only to invited participants, were held on July 17 and 28, 1989. A copy of the agenda and a description of the key issues and objectives of the private sessions is attached. We will send you the summary of the two July meetings as soon as we receive a copy.

In April, 1989, the Service Employees International Union (SEIU) filed suit in the U.S. District Court in the District of Columbia in an attempt to force EPA to regulate asbestos in public buildings. As a "quid pro quo for EPA's good faith effort to address the issue," however, SEIU has requested that hearings on its suit be postponed. SEIU has scheduled a September 22, 1989 meeting with the D.C. Court Judge presiding over the case. Depending on SEIU's assessment of the progress being made through public and private meetings, a decision will be made regarding

whether and to what extent SEIU's grievances should be pressed through the court. SEIU remains convinced that a regulation is necessary. However, the Union acknowledges the reality of resource limitations within and outside of the Agency and the need for flexibility in identifying and dealing first with priority issues and accepting a phased in approach to regulatory controls.

Attachments

RLD3:lgs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

MEMORANDUM

SUBJECT: Policy Dialogue on Asbestos in Public
and Commercial Buildings

FROM: Robert C. McNally, Chief *RC McNally*
Regulatory and Technical Assistance Section (TS-799)
Hazard Abatement Assistance Branch

TO: Interested Parties

I have attached a copy of a memorandum prepared by The Conservation Foundation (CF) and mailed to individuals who have been invited to participate in a policy dialogue on asbestos in public and commercial buildings. CF is convening and facilitating this policy dialogue at the request of the Environmental Protection Agency (EPA).

Included in this memorandum is an overall plan and schedule for the dialogue process, a list of participants invited by CF to take part in the dialogue (Attachment A), and an agenda for the first dialogue meeting held on July 17, 1989, (Attachment B). The meeting on July 17 focused primarily on how the dialogue process should be structured.

In addition to these policy dialogue meetings, EPA has scheduled three additional public meetings in September on the issue of asbestos in public and commercial buildings. These meetings are scheduled for September 6 in Kansas City, September 7 in San Francisco, and September 21 in Washington, D.C. The purpose of these meetings will be to update interested individuals on the progress of the dialogue meetings and to allow broader public involvement in the dialogue process.

In the future, I will be sending you summaries of the policy dialogue meetings and additional information about the public meetings scheduled for September.

If you have any questions, please call Tom Tillman of my staff at (202) 382-3949.

Attachment



The Conservation Foundation

July 11, 1989

MEMORANDUM

TO: Invited Participants

FROM: Matthew Low and Tim Mealey, Facilitators

SUBJECT: Policy Dialogue on Asbestos in Public and Commercial Buildings -- Process Plan and Meeting Agenda

I. BACKGROUND

At the May 3, 1989 public meeting sponsored by the U.S. Environmental Protection Agency (EPA), representatives of a number of diverse interests discussed problems and potential governmental and private sector solutions to issues related to asbestos in public and commercial buildings. The sense of the meeting was that further discussions would be productive. Some participants suggested additional public meetings, and others suggested a more focused policy dialogue among a smaller group.

Based on the results of the May 3rd meeting, EPA asked The Conservation Foundation (CF) to interview representatives of affected interests and to incorporate their suggestions into a process for public involvement on issues related to asbestos in public and commercial buildings. After conducting over 75 interviews, CF has recommended that EPA and the other affected interests proceed with a dialogue as well as a larger process of public involvement on these issues.

The policy dialogue group process, which is tentatively scheduled to include four (4) meetings over the summer, will involve individuals representing the diverse interests affected by asbestos in public and commercial buildings. The larger public involvement component will include three additional public meetings, two of which will be held in the midwest and west and one in Washington D.C.

This memorandum sets forth a more detailed description of the recommended process, including a tentative schedule for the dialogue group and public meetings, a proposed structure for conducting the dialogue, a list of invited participants, and an agenda for the first meeting of the dialogue group, which is scheduled to be held on July 17, 1989 at the Washington Marriott, 1221 22nd Street N.W., Washington D.C.

II. DESCRIPTION OF POLICY DIALOGUE PROCESS

A. Objectives

The ideas that emerged at the May 3rd meeting included both regulatory and non-regulatory actions, and private sector actions as well as public sector actions. Many participants believed that additional dialogue among affected interests could help to refine and initiate some of these ideas. Furthermore, EPA officials from the Office of Toxic Substances (OTS) have indicated that they would like to find out to what extent affected interests believe EPA can be of some help in implementing proposed solutions. EPA officials have indicated that where affected interests appear to have similar views on specific actions that can be taken by the Agency, they will bring these ideas to Agency management for consideration.

The policy dialogue will provide an opportunity for a small group of individuals, representing the diverse interests that are affected by issues related to asbestos in public and commercial buildings, to hold focused discussions on potential ways of addressing these issues. The objectives of the dialogue are to:

1. discuss in more detail the issues and potential approaches for addressing these issues that were suggested at the May meeting;
2. identify potential implementing mechanisms (e.g., federal, state, or local government; private sector companies, associations or coalitions) for the proposed solutions; and
3. identify where parties share similar views on proposed solutions and implementing mechanisms.

The dialogue group, as proposed, will not function as a federal advisory committee to EPA. Rather, the dialogue process is intended to benefit all participants by conducting a thorough and focused discussion of the issues and the options for resolving issues that the parties might consider to be both appropriate and feasible. Some of these actions may not require any EPA involvement. Where parties share similar views on actions that do not involve EPA, it is hoped that this may influence the actions of other parties. Where EPA involvement is either useful or necessary, an indication that all parties are in support of such involvement will prompt consideration by EPA management. In addition, even where all parties are not of a similar view about an idea, we are hopeful that the reasons underlying the differing viewpoints can be expressed in a summary of the meetings, which could in turn be the basis of future discussion and action.

B. Role of EPA and OSHA

As noted above, EPA officials have stated that, where the participants in this dialogue appear to have similar views on actions than can be taken by the Agency, these ideas will be brought to Agency management for consideration. Because the dialogue group will not serve as a federal advisory committee and the objective of the dialogue process is not to achieve a consensus, per se, there have been some questions about the role of EPA staff in the process.

EPA staff from the Office of Toxic Substances will be full participants in the dialogue, but generally will not be in a position to make immediate commitments to options or ideas that go beyond EPA's existing programmatic authority. EPA participants will, however, comment on ideas that the Agency is already considering or committed to implementing. In addition, EPA representatives will attempt to clarify previously expressed Agency viewpoints, highlight implementation and feasibility issues with respect to some ideas, and note areas in which more information may be either useful or necessary for the Agency to proceed further.

In addition to EPA's Office of Toxic Substances staff, representatives from the Agency's NESHAPS Program and from the Department Labor's Occupational Safety and Health Administration (OSHA) also will be present at the meetings to the extent time and resources permit. Some of the issues to be discussed in the meetings may relate to the NESHAPS and OSHA programs. It should be noted that, like EPA representatives from the Office of Toxic Substances, these federal government representatives will not be authorized to commit their agencies to any actions that go beyond existing programmatic authority. They will, however, listen to the ideas expressed and share their perspectives and information needs with respect to those ideas.

C. Participation by Other Affected Interests

In our efforts to organize and convene a policy dialogue group, we have held discussions with many individuals who represent the key interests that are affected by asbestos in public and commercial buildings. Clearly, there are a large number of interests, organizations and individuals that have been involved in the asbestos issue. However, in order for the policy dialogue process to be effective, the number of participants needs to be maintained at a manageable size.

The proposed participant list, included as Attachment A, is intended to enable a thorough and balanced airing of all the viewpoints that need to be considered in order to identify workable and broadly supported solutions to the issues to be

discussed. Thus, although we are not able to invite every interested individual or organization to be a participant in the dialogue, we are hopeful that all major interests will be adequately represented and that the mechanisms described below will provide sufficient opportunities for any additional public participation that might be necessary.

The participants in this dialogue should be viewed primarily as individuals speaking from diverse perspectives, rather than as official representatives or negotiators. Where appropriate, we have asked invited participants to take steps to keep colleagues and constituents informed of the discussions and to seek their views on any proposed solutions that may emerge in the dialogue. The meetings of the dialogue group will be open public meetings. We also plan to share meeting summaries with all individuals who request them (starting with those who have placed their name with EPA's TSCA Hot-Line and/or who attended the May 3, meeting). Finally, the results of at least the first three dialogue meetings will be discussed at the two larger public meetings in the midwest and west, and the end results of the dialogue process will be discussed at the final public meeting in Washington D.C.

D. Schedule

EPA and other parties have requested that the policy dialogue process be completed by mid-September. To accomplish this, we have tentatively established the following schedule (please note that the second, third and forth dialogue meetings may be 2 days):

- o First dialogue group meeting -- July 17
- o Second dialogue group meeting -- July 27-28
- o Third dialogue group meeting -- August 22-23
- o Midwest and West public meetings -- August 29 & 30
- o Fourth dialogue group meeting -- September 11-12
- o Fifth dialogue group meeting (if needed) -- September 18-19 or 19-20
- o Washington D.C. public meeting -- September 21

In addition to the dialogue group meetings and larger public meetings, it may be necessary to conduct smaller meetings of sub-groups of the policy dialogue group or with other interested parties.

III. ISSUES AND SUGGESTED STRUCTURE FOR DISCUSSING THE ISSUES

A. Issues

Four issue areas emerged from the discussions that were held at the May 3rd public meeting:

1. Inspection and Notification;
2. Standard of Care (what does one do if inspection reveals asbestos is present);
3. Improper Removals; and
4. Accreditation and Training.

Our discussions with various individuals over the past several weeks confirmed that this breakdown provides a useful way of organizing discussion of the issues. However, our discussions also revealed that there may be interrelationships between and among these issues that should be considered in the dialogue group's discussion of these issues.

With respect to inspection and notification, various union representatives have been in the forefront of encouraging inspection of buildings for the presence of asbestos and notification of workers and building occupants if asbestos is found. They have publicly stated that such inspections and notifications should be mandated by federal regulation and, to that end, have petitioned EPA to promulgate necessary regulations under the Toxic Substances Control Act (TSCA). EPA has denied that petition for reasons stated in the Federal Register of April 4, 1989. The matter currently is under litigation.

EPA is interested in obtaining more information about the need for inspections and examining options other than federal regulatory measures (e.g., state, private sector). EPA also has noted that other potential avenues for federal regulation to address asbestos inspections include OSHA and the Agency's NESHAPS program. Union representatives also have noted that these programs may offer potential avenues to meet their objectives. In addition, some parties have proposed ideas for phasing in the use of inspections and sampling in a manner that attempts to address the most pressing worker and building occupant health and safety needs.

Some parties have indicated that many inspections are currently being carried out by building owners on their own initiative or because of the requirements of lenders, brokers or insurance companies. In addition, many parties are concerned about the number of unnecessary and improper removals that currently are taking place based on these market pressures.

While these parties recognize the value of inspections, they have noted that, in practical terms, government mandated inspections can be potentially counterproductive if they lead to an even greater number of unnecessary and/or improper removal actions. These groups suggest that because of the absence of clear guidelines relating to standard of care and the public perception that any amount of asbestos may present significant health risks, asbestos removal tends to be the preferred option. More effective communication by EPA and others about the risks of asbestos, additional guidance on how to conduct assessments and how to manage asbestos in-place, the use of an air monitoring guide, and finding ways to evaluate the effectiveness of operation and maintenance (O&M) plans are some of the ideas that have been suggested for addressing these concerns.

Other parties wish to obtain more information about the magnitude of the problem of unnecessary and improper removals. They have suggested that the dialogue group attempt to obtain such information.

It also has been suggested that many asbestos abatement consultants and contractors may not be sufficiently trained or qualified or may lack the proper incentives to assess the need for removals or to carry them out properly. As a result, more workers and building occupants may be put at greater risk during asbestos removal actions. Building on the steps that certain private sector groups are taking to ensure a more qualified asbestos abatement infrastructure and/or undertaking actions which result in greater scrutiny of asbestos consultants and contractors might help resolve some of these concerns.

Added to the above is the fact that the Health Effects Institute (HEI) will soon initiate a very comprehensive research effort designed to address some of the issues that are likely to be under discussion in this dialogue. This research is intended to determine actual airborne exposure levels prevalent in buildings, to characterize peak exposure episodes and their significance, and to evaluate the effectiveness of asbestos management and abatement strategies in a scientifically meaningful manner. Some parties believe that HEI's research effort may need to be factored into some of the group's discussions. Some have suggested that the policy dialogue group focus on those actions that the participants agree can be taken either independent of the HEI research or while the HEI research is being conducted.

B. Suggested Structure for Discussions

Given the limited time available to the group and the breadth and significance of the issues, we believe it would be helpful to develop an agreed upon approach for structuring the dialogue such that it will be possible to address these issues in

the four meetings that will be available to the group. With this in mind, we have developed a proposed structure that we suggest be discussed at the first meeting.

We suggest that the dialogue group's first meeting (on July 17th) focus largely on organizational issues and a preliminary discussion of each issue area. We have developed a suggested agenda that accomplishes this (see Attachment B). The basic thrust of the agenda is to try to address procedural issues in the morning, and to discuss each issue area in the afternoon. The afternoon discussion of each issue will include a brief summary of the results of the May 3rd public meeting, followed by discussions oriented toward identifying discrete options and ideas for resolving that issue that the group can focus on at future meetings.

As a way of reporting on what we've heard from parties in our convening interviews, as well as building upon the discussions at the May 3rd public meeting, we have attached a summary of some of the discrete options and ideas that various parties have proposed for each of the four issue areas (see Attachment C). We are hopeful that this list can serve as a starting point for the afternoon discussions on July 17th.

For the second meeting, we suggest a two-day meeting (on July 27-28) during which the group can spend a longer period of time discussing each issue, using the afternoon discussions of the July 17th meeting as a starting point. The objective of this meeting would be to sort out and evaluate the options and ideas that were identified at the previous meeting in order to begin to determine whether participants share similar views on the usefulness and workability of each option. Beyond this, we suggest that the group consider using the period in between the second and third meetings for any subgroup meetings that may be necessary.

We suggest that the third meeting, which would also be a two-day meeting (sometime during the week of August 21-25), focus on incorporating the results of any subgroup meetings into a discrete set of options and, if possible, tentative "areas of common ground" that could be used as the basis for conducting the regional public meetings in the midwest and west (tentatively scheduled for August 29 and 30). The fourth dialogue group meeting would then be used to report on and respond to the results of the regional public meetings and to try to reach conclusions on whether there are similar views on ideas and options proposed for resolving any of the four issues.

IV. CONCLUSION

Questions or comments on our suggested process, structure for addressing issues and schedule should be addressed to Tim Mealey at the Conservation Foundation at 202/778-9628 or Matt Low, at 202/331-0783.

ATTACHMENT A

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ATTACHMENT B

PROPOSED AGENDA
FIRST MEETING OF THE POLICY DIALOGUE GROUP ON
ASBESTOS IN PUBLIC AND COMMERCIAL BUILDINGS

Washington Marriott Hotel
July 17, 1989

- 8:45 Welcome and Introductions
- Introduction of Facilitators and Participants
- 9:15 Organizational Issues
- Objectives of Dialogue
- Groundrules or Protocols
- Role of EPA, OSHA representatives
- Discussion of Participant List and the other mechanisms for public involvement
- Discussion of proposed framework for discussions and tentative schedule
- 10:30 Break
- 10:45 Organizational Issues (continued)
- Additional discussion of proposed framework and schedule, if necessary
- Review of the proposed agenda and objectives for this meeting
- Other organizational issues
- 11:30 Discussion of relationship between HEI research effort and this policy dialogue
- 12:00 Lunch
- 1:00 Discussion of Standard of Care Issues and Options
- What guidance is available on standard of care?
- How is it used?
- Review of options
- 2:00 Discussion of Improper Removals

What data or other information exist that show improper and/or unnecessary removals?

Review of Options

2:45 Discussion of Accreditation and Training

What is being done to improve accreditation and training in the private sector? by states?

Are these efforts enough to improve the situation?

What can be done to build upon these efforts?

Review of Options

3:30 Break

3:45 Discussion of Inspections and Notification

What is currently being done?

Where are the gaps?

Review of options

What additional data, if any, is needed to support further regulations?

4:45 Discussion of next steps

Agenda for next meeting

5:30 Adjourn

ATTACHMENT C

SUMMARY LIST OF OPTIONS AND PROPOSED SOLUTIONS*

I. INSPECTION AND NOTIFICATION

- A) Make the implicit inspection requirement in EPA's NESHAPS regulations an explicit requirement.
- B) Make the implicit inspection requirement under OSHA's asbestos standards an explicit requirement.
- C) Identify priorities for phasing in more comprehensive inspection and notification requirements (i.e., beyond OSHA or EPA-NESHAPS), including such possibilities as requiring testing of materials that may contain asbestos prior to disturbing them, and/or identifying those buildings that may pose the greatest risk for the "first round" of inspections.
- D) Establish more comprehensive inspection and notification requirements under EPA's authority.
- E) Facilitate state and local government initiatives.
- F) Foster private sector initiatives.

II. STANDARD OF CARE

- A) Improve EPA's communications concerning the risks of asbestos.
- B) Develop a more comprehensive regime (or "cookbook") applicable to asbestos assessments, designed to militate against unnecessary removals (either through an EPA guide or a collective private sector initiative).
- C) Establish an acceptable ambient asbestos level (e.g., applying the post-removal clearance level at the assessment stage).

* The items included on this list of options and proposed solutions were raised during the May 3rd public meeting or in our convening interviews with affected interests. This list is not intended to be a comprehensive or exclusive list, nor is it intended to reflect any degree of consensus. Rather, it is intended as a starting point for purposes of discussion.

- D) Establish mechanisms for evaluating the effectiveness of O&M programs.
- F) Establish a private sector sponsored, diversified panel or organization that could serve as a vehicle for such functions as updating standard of care (i.e., asbestos assessment) guidelines, or arbitrating decisions on whether removals should be required in certain circumstances.
- G) Strengthen (through the private sector, state or federal programs) accreditation and training requirements applicable to the various phases of asbestos work (inspection, management, design, abatement and removal).

III. IMPROPER REMOVALS

- A) Revise standards for accreditation of contractors approved to perform removals.
- B) Increase number of government (federal, state and local) audits of removal actions.
- C) Institute an industry self-policing mechanism to check on compliance with removal protocols.
- D) Enhance guidance on protocols regarding removals.

IV. ACCREDITATION AND TRAINING

- A) Establish more stringent accreditation standards.
- B) Establish accreditation standards for companies, as well as or in lieu of, individuals.
- C) Establish standards for quality assurance and quality control.
- D) Develop ways to expand the infrastructure to include other professional disciplines, if appropriate.