

RISK MANAGEMENT

At this writing, roofing contractors are still waiting with abated breath for the new Occupational Safety and Health Administration (OSHA) rules on asbestos to be forwarded to the Office of Management and Budget (OMB). The rules will reportedly define hazardous occupational exposure levels of asbestos for the construction industry.

A recent *Construction Labor Report* newsletter noted that last February, OSHA had predicted that the rules would be sent to OMB "in four to six weeks." Carl Good, NRCA's director of membership development, said, "Last September, OSHA told us we would see the rules in the next couple of months." The agency will only say that it is concerned about getting "all the details ironed out" before releasing the document to the OMB.

The current permissible exposure level (PEL) is 2 airborne fibers longer than 5 micrometers per cubic centimeter of air as an eight-hour, time-weighted average. "The new PEL may be as low as 0.1 fiber per cubic centimeter," offers Good.

The key concern in dealing with asbestos is friability. Exposure to friable asbestos, meaning asbestos in a brittle, crumbled state, has been linked to various types of cancer. Asbestos in a non-friable state, such as encapsulated asbestos in roofing felts or shingles, presents little health hazard. When a roof is torn off, however, asbestos fibers may become friable and present a problem. "Of course, whenever asbestos is involved, you should be taking some kind of action," Good says, "but this may be more clearly specified in the new rules."

Another drawback with the original OSHA rules is that they were written primarily for wall and ceiling work, which involves installing insulation that contains friable asbestos. "What's on the books right now is not very specific for roofing," admits John Marbtonick, an OSHA representative. Good agrees this is cause for frustration on the part of the roofing contractor, who will be held responsible for assessing the level of asbestos on the jobsite and doing something about it. "The building owner's responsibility is not necessarily recognized by OSHA," he says.

"There's a lot of inconsistency, like what levels of asbestos exposure are truly safe, how you can best dispose of it, and how you can best protect yourself from it. We hope the new rules will address some of us that lie on the fringe of the standard's initial intent," said Good.

Unfortunately, the confusion will not end with the promulgation of the updated federal documents. Each state OSHA agency appears to have a different idea about how to deal with the material.

"We've had state OSHA and Environmental Protection Agency people tell us that asbestos encapsulated in roofing felts and shingles requires no special care. Others tell us it's always hazardous," Good says disgustedly. "We've heard reports of some state inspectors advising our members to take the asbestos they encounter during tear-offs to special hazardous waste sites. Others have told them to just bag it and dump it."

The Construction Advisory Board, which is composed of representative members of the subcontractor organizations, is serving as advisor to OSHA in drafting the guidelines.

Why is OSHA concerned about updating exposure rules now? Good says it has nothing to do with the recent EPA ban on asbestos. (They condemned the material, calling it "a potent carcinogen.")

"OSHA has been working on this for a year," Good reports. "The agency saw the amount of litigation that was taking place, with asbestos-related lawsuits numbering around 30,000, and considered the widely quoted estimate that 8,000 people are dying of asbestos-related diseases annually. OSHA decided it was time to take another look at its guidelines for handling it."

Asbestos issue nears resolution

PLAINTIFF'S EXHIBIT

BIR-562

IN BRIEF

■ **Construction Products Manufacturers Council** has announced it is joining the newly formed American Tort Reform Association (ATRA). ATRA is trying to combine the efforts of business, consumers, public interest groups and government agencies to promote the reform of a legal system clogged with frivolous lawsuits. Its ultimate aim is to resolve the liability insurance crisis.

And they're not alone. An administration task force has presented President Reagan with a set of recommendations to deal with the insurance problem. The 80-page report deals almost exclusively with tort reform. The suggestions include placing a \$100,000 ceiling on non-economic jury awards for pain and suffering, basing findings in court cases on credible scientific and medical evidence, and limiting attorneys' contingency fees.

■ **In case you missed it**, May 25 was the OSHA deadline for hazardous communication rules. By then, chemical manufacturers and importers were to have had a complete communication and training program in place for advising employees of the hazards involved with toxic chemicals and materials. Communication, legislation and OSHA efforts indicate that a broader standard covering the entire workforce is forthcoming.