AIA NORTH AMERICA

NEWS & NOTES

a monthly publication

May 29, 1992

## EPA'S SCIENCE ADVISORY BOARD IS CRITICAL OF AGENCY'S ASBESTOS PROGRAM

In a letter to EPA Administrator William K. Reilly dated April 21, 1992, the U.S. Environmental Protection Agency's Science Advisory Board was critical of the agency's regulatory approach on asbestos.

The comments of the SAB followed a public meeting held on Feb. 24-25, 1992 of SAB's Indoor Air Quality and Total Human Exposure Committee which included several presentations by EPA officials.

Excerpts from the April 21 letter appear below:

> As we expressed in our letter to you of April 20, 1990, the SAB is concerned that the scientific basis for EPA's regulatory actions and guidance documents on asbestos have not had the benefit of review by the Science Advisory Board (SAB). You yourself indicated some concerns about past Agency decisions on asbestos in your address of June 12, 1990 to the American Enterprise Institute (AEI) entitled "Asbestos, Sound Science, and Public Perceptions." The report you received in September of 1991 from the Health Effects Institute (HEI) - Asbestos Research on "Asbestos in Public and Commercial Buildings: A Literature Review and Synthesis of Current Knowledge" is a comprehensive, up-to-date, and objective summary of the available data on human exposure, effectiveness of remediation procedures, and critical issues in toxicity assessment and exposure-response relationships.
>
> We heard no evidence that there is any strategic planning for addressing either important research needs or the implications of past research concerning the importance of fiber dimensions on inhalation hazard. The ORD programs for measurements and controls appear to be based on outmoded notions of which fibers need to be measured and controlled, and the scientists and engineers in ORD have not redirected, nor have been requested to redirect, resources to what they acknowledge is a critical need. In fact, there is a absence of guidance, in general, from the Agency's health scientists on the specification of the factors that govern toxicity.
>
> There appears to be little, if any ongoing research on the critical issue of fiber properties affecting toxicity since the retirement of Dr. David Coffin from the Health Effects Research Laboratory (HERL). It is possible that replacement fibers for asbestos in products and buildings may be as hazardous or more

hazardous than the asbestos products they replace. Such research is needed if the Agency is to make scientifically sound policy regarding asbestos and substitute products.

There does not seem to be any formal mechanism for coordination on hazard ranking, monitoring methodology, or control technology on an Agency-wide basis. It is necessary to bring together the expertise and insights of ORD, OAR, OSWER, OPP&T, and other Agency units having related interests in asbestos. Further, there is no evidence of such coordination between involved Federal agencies.

Given the preliminary nature and incomplete coverage of our initial review of Agency programs in asbestos, we propose that the above concerns receive a more thorough exam-ination at the next meeting of the IAQTHE Committee, which is tentatively scheduled for June-July 1992. We urge you to attend if your schedule permits, and to advise us if you have any particular concerns regarding asbestos which you would like to examine. We hope that a further dialogue will prove valuable to you as you come to grips with the difficult issues in asbestos risk assessment and risk management that will confront the Agency in the near future, and for many years to come.

The SAB letter was signed by Dr. Raymond Loehr, chair, Executive Committee, Science Advisory Board and Dr. Morton Lippman, chair, Indoor Air Quality and Total Human Exposure Committee, Science Advisory Board.

## BUSH EXTENDS REGULATORY MORATORIUM; SEEKS LEGISLATIVE COST/BENEFIT ANALYSES

President Bush April 29 extended his regulatory moratorium for an additional 120 days, instructing federal agencies to implement the reforms they identified since he announced the freeze on rules in January. He also instructed agencies to work with the Office of Management and Budget to improve cost estimates for active legislative proposals. One day after the expiration of his initial 90-day freeze on new regulations, Bush announced the extension in a Rose Garden speech before members of his Cabinet and invited business representatives.

A four-month extension would allow federal regulatory agencies and his Council on Competitiveness to begin implementing deregulatory reforms that would produce savings of $15 billion to $20 billion for consumers each year, he said. Michael Boskin, chairman of the president's Council of Economic Advisers and one of the chief architects of the regulatory moratorium, reiterated the administration's view that it has not jeopardized worker health and safety, or the environment through changes sought to pending regulations by OMB or the Competitiveness Council, which is chaired by Vice President Dan Quayle. Critics of the moratorium, including advocacy groups such as Public Citizen and OMB Watch, contend that the freeze has delayed job safety and health regulations.

The president extended the moratorium in two memos to agencies April 29, asking in one that agencies expedite their reform initiatives through Aug. 1, and in the second, that the agencies work with OMB to develop analyses on the costs and benefits of legislation actively working its way through Congress, as well as legislation recommended by the agencies. In addition to the steps Bush took April 29, he is expected in the near future to propose legislation that would give him the authority to exert a regulatory "line-item veto" on provisions of legislation sent to him by Congress that he deems a burden to the economy, according to several administration sources. Such authority would have to be approved by Congress.

In addition, Bush is preparing an executive order that would attempt to impose standard risk assessment methodology on all regulatory agencies that would weigh the most probable, or realistic risk to human health or safety, as opposed to current consideration of the worst-case risk, according to administration sources. A draft executive order has been prepared, but still is undergoing internal debate and consideration, sources said.

Representatives of businesses affected by the president's regulatory moratorium hailed the extension as a welcome commitment to oversight of the federal regulatory bureaucracy and to economic growth. The regulatory agencies have been "running amok for 20 to 25 years," said former Reagan administration Transportation Secretary Drew Lewis, currently chairman of Union Pacific Corp. and chairman of the Business Roundtable. Lewis told reporters after Bush's speech that he wanted to see a two-year freeze on new regulations.

Environmental and public advocacy groups denounced Bush's effort as blatant pandering to big business interests during an election year. "This represents a wholesale handout to the American business community," Fred Krupp, executive director of the Environmental Defense Fund, told reporters outside the White House. Gary Bass, executive director of OMB Watch, criticized Bush for imposing a process on federal regulators through the extended moratorium that has delayed or halted the progress of some proposed regulations. "I think the moratorium as we've seen it for the last 90 days has had a devastating impact on health, safety and environmental protection," Bass said, pointing to OMB and Competitiveness Council intervention in proposals at EPA and the Occupational Safety and Health Administration. "It is pandering to election-year needs."

Bush asked regulators to use the additional 120 days to implement deregulatory reforms that do not require public comment by June 1, and those nearing final publication "no later than Aug. 1." Other proposals requiring public comment should be published by June 15 with a goal of final issuance "no later than Aug. 27," the president said. As with his initial 90-day freeze, agencies are to use the next four months to review regulations for possible eliminations and modifications and to implement the deregulatory proposals they already have identified and reported to the Quayle council. Bush asked that agencies send him a second report of their activities by Sept. 1 summarizing "all the pro-growth reforms implemented since Jan. 28," as well as estimated cost savings and expected net increase in jobs.

The agencies were expected to have sent the president similar reports on the first 90 days by April 28. Those reports are being examined by White House officials and will be used to send Bush a final report under Quayle's signature.

## CONSTITUTION BARS OSHA INSPECTIONS, ILLINOIS EMPLOYER TELLS U.S. SUPREME COURT

An employer in a three-year battle with the Occupational Safety and Health Administration told the U.S. Supreme Court April 15 that OSHA's inspection of his facility was barred by the Constitution, the Federalist Papers, and the Declaration of Independence *(Justice v. Secretary of Labor,* US SupCt, No. 91-1680, petition filed 4/15/92). John C. Justice, of Cicero, Ill., told the court that OSHA's warrant to inspect his company, Microcosm, which produces coated and laminated items, was illegal and that the federal government had no jurisdiction to enter his work site because it was not located on federal land.

"[I]f this Court will redeem our lost liberties and restore to us the freedom and responsibility we once believe to be secured by the Constitution, its granting of this Petition will be cheered by all Patriots," Justice declared in his petition. "If there is no such likelihood, it is nonetheless worth the effort and filing fee to know, rather than to wonder."

Justice filed a petition asking the court to hear his appeal of a decision against him by the U.S. Court of Appeals for the Seventh Circuit. The Seventh Circuit upheld a federal district court's imposition of $619 in attorney's fees and costs against Justice for refusing to allow OSHA to inspect his workplace. The federal appeals court dismissed Justice's constitutional arguments as "frivolous" and "lacking in merit." Labor Department attorneys refused to comment because the case is ongoing.

Justice argued that OSHA's warrant was illegal because it was signed by a magistrate instead of a judge. He also claimed the inspection was illegal because it was based on an unsigned complaint.

## DR. SELIKOFF DIES AT AGE 77

Dr. Irving J. Selikoff, longtime researcher of asbestos-related occupational disease, died on May 20, 1992. See NEW YORK TIMES news clip for details.