



NEWS & NOTES

PLAINTIFF'S EXHIBIT

CAP-1702

October 31, 1984

AIA/NA TO FILE FURTHER COMMENTS ON OSHA'S PROPOSED STANDARD FOR ASBESTOS

As reported (N&N July), the informal public hearing on OSHA's proposed standard for occupational exposure to asbestos which was published on Apr. 10, 1984 (N&N Apr., May & June), was concluded July 12. The deadline for filing of post hearing briefs was extended from Oct. 11 to Nov. 1 by the Department of Labor in response to a request submitted by the AFL-CIO.

The Association's final position on the OSHA proposal will be submitted to OSHA on Nov. 1 as required. AIA/NA has in the past and continues to support OSHA's efforts to publish a revised standard for workplace asbestos exposure. The following key provisions in a revised OSHA standard will be emphasized and urged for implementation:

- . Achievement of a 8-hour PEL of 0.5 fibers/cc supported by a 5.0 fibers/cc fifteen minute ceiling exposure limit within two years by all manufacturers except friction materials manufacturers, for whom a four-year implementation period will be necessary;
- . Maintenance of existing housekeeping and work practice specifications with the addition of a prohibition on compressed air blowing of asbestos dust in workplace cleanup and, particularly, in brake repair/replacement operations;
- . Application of monitoring, pre-placement training programs and medical surveillance requirements for workplaces where workers are exposed more than 30 days annually to over 0.1 fibers/cc;
- . Application of other requirements, such as work clothes, warning signs, hygiene facilities and regulated areas in workplaces not complying with the 8-hour PEL or ceiling;

ASBESTOS INFORMATION ASSOCIATION

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- . Reduction in the number of smokers in the asbestos workforce through imposition of a ban on future hiring of workers who smoke, a prohibition on smoking in workplaces not consistently below 0.1 fibers/cc, and a requirement that employer-sponsored smoking cessation programs be made available to current workers who smoke;
- . Regulation of the construction industry by the general industry standard supplemented by specific work practice requirements; and
- . Prompt agency action following the promulgation of this revised standard on the development of specific new requirements for high-exposure construction work involving removal, renovation, and demolition of friable asbestos.

The above provisions are consistent with AIA/NA's chief objective in the OSHA rulemaking: to provide for the safe manufacture and use of asbestos products through OSHA regulations designed to reduce unnecessary asbestos exposures to insignificant levels and to protect adequately the health of all workers involved with asbestos.

The next phase of the rulemaking will involve OSHA's review and consideration of the entire hearing record followed by issuance of final regulations and/or any further proposal. The most recent federal regulatory agenda, Federal Register of Oct. 22, indicates Mar. 1985 for "final action" on a revision to the asbestos standard by OSHA.

SCIENCE ADVISORY BOARD COMMENTS ON EPA ASBESTOS STUDIES

At a meeting on Oct. 24, the Environmental Protection Agency's (EPA) Science Advisory Board (SAB) approved a set of comments concerning two Agency documents on asbestos. The documents, a draft titled "Asbestos Health Assessment Update" prepared under contract to EPA's Office of Research and Development by Dr. William J. Nicholson of the Mt. Sinai School of Medicine, and a paper prepared by the Criteria and Standards Division in the Office of Drinking Water and entitled "Major Issues Associated with Health Effects of Asbestos in Drinking Water (Carcinogenesis of Ingested Asbestos Fibers)" were reviewed by the SAB's Environmental Health Committee on July 24 (N&N July).

The purpose of the Update document is to provide the health effects basis for possible revisions in the National Emission Standard for asbestos, which was first promulgated in 1973. The reviewing committee identified five issues for which the Update should more thoroughly describe the recently available literature, so as to provide more complete descriptions of why certain scientific positions and rationales were adopted. The

comments stated, " In view of the deficiencies in the completeness of the literature review, the Committee did not look in much detail beyond these problems into the reasonableness of the judgements made."

The comments first ask that the Update more thoroughly discuss the issue of the type of asbestiform fiber, stating, "As currently written, the calculated risks assume that all three kinds of commercially available asbestos (chrysotile, amosite and crocidolite) are the same with respect to pleural mesothelioma at a given exposure. In fact, many scientists do not agree with this view." The comments also stress that "the document could better address the difference in risk with physical and chemical properties of the fibers."

Respecting exposure data, the comments point out that the document gives greater weight in deriving a risk value to studies in which individual exposures were not estimated, as opposed to studies in which individual exposures are estimated. Such differences should be emphasized for the regulator, according to the Committee, because any statistical bias in the description of the past incidents in which asbestos exposure was associated with health effects will be replicated in prospective estimates of risk used in regulating. The Committee also expressed that, "a risk assessment for lung cancer caused by asbestos inhalation is possible, but that the current draft document misses the mark, principally because uncertainty is not adequately expressed."

With regard to mutagenesis by asbestos, the Committee commented 'The document leaves an impression that asbestos fibers probably are weakly mutagenic, by citing a series of papers with positive experimental findings, but no summary conclusion is stated. In fact, more papers provide negative experimental results than not, but some of the negative evidence is not cited.'

Finally, the Committee also addressed the issue of the association between exposure to asbestos and cancers other than those of the lung, particularly the question of gastrointestinal cancer following oral ingestion or inhalation, stating, "the EHC finds that current peer-reviewed evidence does not support the view that ingested asbestos causes organ-specific cancers."

This last point was also reviewed by the Committee in relation to the Office of Drinking Water paper. In comparing this paper and the Update document, the Committee stated that "the two papers contradict each other on a very important scientific issue. ORD's Health Assessment Update finds a consistent association between gastrointestinal cancer and exposure to air-borne asbestos, presumably from swallowing the inhaled fibers brought up from the respiratory tract. The ODW analysis does not reach this conclusion."

On this issue, the Committee concluded: "Given the positive signal seen in some epidemiologic studies, plus well-documented evidence for the association between asbestos fiber inhalation and lung cancer, it is hard for the Committee to feel comfortable in dismissing the possibility of an increased risk of gastrointestinal cancer in humans exposed to asbestos fibers

from drinking water. However, the Committee consensus is that current peer-reviewed evidence for humans and animals does not support the view that asbestos ingested in water causes organ-specific cancer."

INSURERS' GROUPS SPONSOR NATIONAL OCCUPATIONAL DISEASE CONFERENCE

A National Conference on Occupational Disease, sponsored by the Alliance of American Insurers and the Risk and Insurance Management Society, will be held in Chicago Dec. 4 and 5. The purpose of the meeting is to bring employers, labor representatives, doctors, attorneys, insurers, and workers' compensation administrators together to consider occupational disease issues and the ability of state workers' compensation systems to handle occupational disease claims.

Topics which will be discussed include the magnitude of the occupational disease problem; the difficulty encountered in developing the occupational disease-workplace link and the liability of the parties involved; consideration of federal or state issues; and discussion concerning the possible courses of future activity.

A discussion of the critical issues in occupational disease from the standpoint of the employer, employee, and insurer will be initiated, with the union view presented by David Mallino, of the Industrial Union Department, AFL-CIO, and the insurers' view presented by Gary L. Countryman, president of the Liberty Mutual Insurance Company.

The magnitude of the occupational disease problem will be explored from the major impact and moderate impact views. The major impact view will be addressed by Irving J. Selikoff, Mount Sinai Medical Center, New York City, N.Y. while the moderate impact view will be presented by Phillip Cole, University of Alabama, Birmingham. An overview of occupational disease's impact on the business community will be offered from an international employer's perspective. The effect of product liability, tort litigation, and worker's compensation on U.S. competitiveness in the world market will also be examined.

The problems of causation in occupational disease will be examined by Shirley Conibear, of Carnow, Conibear & Associates, a Chicago medical consulting group, and by Merton Marks, of Lewis and Roca, a Phoenix, Ariz., law firm. Viewpoints on the question of who is responsible for paying disease claims will be presented by Kenneth Feinberg, of Kaye, Scholer, Fierman, Hays & Handler, Washington, D.C.; Bruce Eckert, of Pennsylvania Foundrymen's Association; Donald Elisburg, of Connerton and Bernstein, Washington, D.C.; and Marshall Bennett, of the Mississippi Workers Compensation Commission.

Consideration of a state or federal administration of the occupational disease program will be addressed by Sen. Don

Nicklos (R-Okla) and Maine state Representative John Martin. The future of the occupational disease system will be explored by Richard B. Victor, of the Workers' Compensation Research Institute, Waltham, Mass; C. Clarke Imbler, of the Alliance of American Insurers; Robert Steingut, chairman of the New York Workers' Compensation Board; and J. Donald Millar, director of the National Institute for Occupational Safety and Health.

Registration fee for the conference is \$250. Additional information may be obtained from Steven D. Millikan, Director of Workers' Compensation, Alliance of American Insurers, 1501 Woodfield Road, Suite 400 West, Schaumburg, Ill. 60195-4980; telephone: (312)490-8500.

EPA RELEASES ASBESTOS IN BUILDINGS STUDY

The Office of Toxic Substances of the Environmental Protection Agency has released a study this month entitled, "Asbestos In Buildings: A National Survey of Asbestos-Containing Friable Materials." The study's primary objective was to determine the extent of the use of friable asbestos-containing materials in buildings and the amount of asbestos in them.

Previous estimates of the numbers of buildings that contain asbestos ranged from 5 to 45 percent. These estimates had an unknown degree of accuracy because they were based on anecdotal information or expert opinion. The reported national survey was undertaken to produce more precise and statistically valid estimates with a known degree of accuracy that can be used to support the Agency's technical assistance and regulatory programs. Accordingly, the study was designed to estimate the number and percent of buildings with asbestos-containing friable material; estimate the square footage of such material; and estimate the percent asbestos content of the material. The estimates were to be made at specified levels of accuracy, and estimates of their precision were also to be made.

The survey was conducted in 10 sites, consisting of cities or groups of counties, chosen with probability sampling to represent the continental U.S. A total of 231 buildings was inspected, with about half being private nonresidential, one-quarter residential, and one-quarter Federal government. A total of 1,514 bulk samples were taken.

Among the major findings of the survey were:

- . About 20 percent of all buildings have some type of asbestos-containing friable material. This represents 733,000 buildings.
- . Five percent of buildings have asbestos-containing sprayed or trowelled on friable material, accounting for 192,000 buildings.

- . Sixteen percent, or 563,000 buildings, have asbestos-containing pipe and boiler insulation. This material is generally limited to closed, restricted-access areas rather than offices or other highly-used space.
- . Very few, less than 0.5 percent, buildings had asbestos-containing ceiling tile.

NEW JERSEY ISSUES ASBESTOS POLICY REPORT

New Jersey's Asbestos Policy Committee, a group composed of representatives of several state agencies, issued its Interim Report to New Jersey Governor Thomas H. Kean earlier this month. Created in Jan. of this year by executive order of the governor, the Committee's goal is to develop a State Asbestos Policy "which will provide a rational, uniform approach towards the management of asbestos problems in this state."

A particular concern of the Committee is the issue of asbestos in schools. Dr. J. Richard Goldstein, Chairman of the Committee, noted that "in the past, the pressure placed on school boards has all too often resulted in the removal of asbestos which posed no immediate health hazard, yet required substantial expenditures. The key problem was the absence of standards to determine what action was necessary. And unfortunately, unnecessary removal jobs can pose more of a risk than if the asbestos is left untouched."

The Committee's report advised the Governor that low-level exposures to asbestos, such as may occur in schools and offices, pose an extremely low health risk. The Committee stated that "the estimated lung cancer mortality rates due to non-occupational asbestos exposures were found to be about 1,000 to 10,000 times lower than the rates due to tobacco smoking."

An extensive training course for asbestos removers and contractors is called for in the report, one that would require 32 hours of training; completion of a test prior to certification; familiarization with health risks; hands-on instruction as to the proper use of respirators and other equipment; and procedures for preventing asbestos from becoming airborne.

An additional factor recommended by the Committee is the "action guideline" which applies a maximum permissible air level of asbestos in occupied areas of 100 nanograms, or one billionths of a gram, per cubic meter of air. This "action guideline" is 660 times lower than the occupational standard. This level is 165 times more stringent than that previously applied to the opening of schools.

Asbestos— Applying the Brakes

By MYRON LEVIN,
Times Staff Writer

On the evening news, a moon-suited technician carefully scrapes asbestos off the ceiling of a teachers' lounge. A newspaper describes a former shipyard worker wasting away from lung cancer. A profitable, billion-dollar firm files for bankruptcy to stave off damage claims by dying workers allegedly exposed to its asbestos products.

Incidents such as these have left asbestos—a major cause of lung cancer—with such a sinister image that a common perception exists that it was banned long ago.

But while some uses of the mineral have been abandoned or prohibited, asbestos still is found in many products handled by millions of construction workers, auto mechanics and home handymen throughout the country. U.S. consumption of asbestos, used most often in building materials and automobile brake linings to give them strength or resistance to heat, was about 217,000 tons last year, or nearly two pounds for every American.

Proposed Ban

Last May, almost five years after announcing that it would consider regulating the commercial use of asbestos, the Environmental Protection Agency finally completed draft regulations that would ban several categories of asbestos building products for which substitutes are available. The agency also completed a companion proposal in August that would phase out all other asbestos uses in 10 years.

But the proposals have drawn heavy fire from the asbestos industry and several foreign governments, and currently are stalled in the federal bureaucracy.

Canada—the world's largest exporter of raw asbestos fiber—and several European countries that manufacture asbestos products have filed formal diplomatic protests with the State Department. And, in meetings with EPA officials, Canada, Greece and Great Britain have denounced the proposals as unnecessary to protect public health and potentially harmful to their foreign asbestos markets.

White House Review

The proposed rules also have been under review at the Office of Management and Budget, and it is uncertain when or if the White House budget agency will allow the EPA to put them out for formal public comment, moving them closer to implementation.

The review comes under the 1981 executive order issued by President Reagan that requires budget office clearance of regulations that could have a major economic impact. Should the office reject the rules, the EPA would probably have to rewrite them or forget them. Nor is the budget agency under any legal obligation to act promptly—or ever. It has already passed its 60-day deadline.

Budget office spokesman Edwin Dale, while declining to discuss specific concerns raised by budget office analysts, said there are "some fairly big consequences of banning asbestos, and I think it just requires a careful look." He said the agency "is trying to analyze the

costs versus the benefits . . . and I can't tell you how long that review will take." He said the office is aware of the foreign protest but that he could not say if it has had an effect.

Some EPA officials said they aren't surprised that the review has dragged on. Ed Klein, an official with the EPA toxic substances program, acknowledged that the proposals are "controversial."

"When you propose to put all or most of an industry out of business they get very upset," Klein said.

Cathleen McInerney, an official with the EPA office of international affairs who has taken part in meetings between EPA staff and officials from Canada, Greece and Great Britain, said the delay has put the agency in an awkward position. "We've told the world [essentially] that the proposed rules were coming out, she said.

Whether the November election has influenced the Office of Management and Budget's schedule is the object of "endless speculation around here," a third EPA official said.

Fear of Acknowledgement

At a House subcommittee hearing last month on school asbestos problems, Rep. James Florio (D-N.J.) speculated that the budget office is motivated by fear of any further "acknowledgement by the federal government of the risks posed by asbestos." Such acknowledgement, he said, might increase pressure by the asbestos industry "on the federal government to

assume some financial responsibility" for thousands of asbestos victims who worked in federal shipyards during and after World War II.

The weekly newsletter "Inside EPA" recently quoted "informed sources" as saying that budget office analysts have concluded that the regulations' potential public health benefits are minute compared to their costs to industry. The newsletter said budget office sources maintained that if the rules are cleared, the decision "may be a 'political' one, weighing widespread public fear about asbestos-induced cancer against the rule's allegedly skimpy benefits."

The rule sent to the Office of Management and Budget in May would prohibit the use of asbestos in vinyl tile and sheet flooring, in roofing and flooring felts, and in asbestos cement pipes and fittings. Together, these uses account for about half of current U.S. consumption.

Some Uses Unaffected

That rule would have no immediate effect on other current asbestos uses, such as in roofing compounds, pipe wrapping, asbestos cement sheets, industrial and automotive gaskets and seals, in certain types of fabrics and in brake linings.

But the second rule would gradually eliminate these uses too. It would halt, over a 10-year period, the importation or domestic mining of the raw fiber used to make asbestos products. (Most asbestos fiber used in the United States comes from Canada but there are still three active U.S. mines: one in Vermont and two in California, at King City and Copperopolis.)

Occupational disease experts at the Mt. Sinai School of Medicine in New York estimate that more than 8,000 asbestos-related cancer deaths are occurring each year among workers exposed to the mineral in the past. About 25,000 lawsuits have been filed by asbestos workers and their survivors against asbestos manufacturers and suppliers, prompting at least three of these companies—including the giant Johns-Manville Corp.—to file for bankruptcy.

During the 1970s, the EPA and the federal Consumer Product Safety Commission acted to ban the use of asbestos in spray-on insulation and in patching compounds and artificial fireplace emberizing materials. Some other asbestos uses, such as in hair dryers, were eliminated voluntarily or through negative publicity.

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Children May Be at Risk

In recent years, a major focus of concern has been the problems of crumbling asbestos insulation in schools and the possible effect on millions of pupils, teachers and custodians. Experts say children may be particularly at risk, given the long time it takes to develop asbestos-related diseases.

Accordingly, dozens of school districts throughout the country, including the Los Angeles Unified School District, have been removing damaged asbestos insulation from school buildings. Such corrective work has been voluntary but was spurred by an EPA regulation that gave school officials until last year to search their buildings and to notify teachers and parents if they discovered asbestos hazards.

Yet the EPA's latest proposals and the ensuing controversy have been little noticed. The general impression that asbestos is no longer in use may account for the issue's low profile.

Another reason may be the lack of a federal requirement that products containing asbestos be so identified on their labels. Even those who sell such products are often unaware of their asbestos content, with or without label information.

Asbestos in Home Products

At one Los Angeles home improvement store, for example, a clerk told a reporter that asbestos had been banned, even though asphalt roofing compounds labeled as having asbestos were stocked on the shelves.

At a San Fernando Valley floor covering store that carries products by Kentile, a firm that uses asbestos in some of its vinyl floor tiles, a salesman stated emphatically that asbestos no longer is used in manufacturing such tiles.

Scientists and industry representatives agree that as long as asbestos fibers do not become airborne, the material is harmless. Spokesmen for the Asbestos Information Assn. of North America and Canadian diplomatic officials stress this point in arguing that the current generation of asbestos products is safe.

Fiber Release Unlikely

They say that the high asbestos death toll is a remnant of bygone days when shipyard workers and insulators had little or no protection against massive, continuous exposure to the fibers. They contend that strict occupational standards are in force today and that

asbestos is tightly bonded or "locked in" present-day products, making fiber release almost impossible.

But the EPA counters that even with the safeguards now used in mining, fabrication, finished products and disposal, there is still ample opportunity for the brittle, microscopic fibers to be released into the air.

Citing reports of illness among people whose exposure apparently was brief or indirect, agency scientists contend that no amount of asbestos is safe to breathe.

As an example, they cite the hazards to flooring contractors and home handymen who may unknowingly sand vinyl asbestos tiles to create a smooth surface for installing replacement tile or carpet.

"That sanding process liberates significant quantities of asbestos fibers and in some cases can contaminate an entire home," said Wolfgang Brander, an EPA asbestos coordinator based in Kansas City.

More Education Urged

Industry critics argue, however, that such occurrences probably are rare and can be avoided by stepped-up industry and government-backed education programs.

A ban is "not a wise and justifiable approach when a substance can be controlled," said B.J. Pigg, executive director of the industry's Asbestos Information Assn. To outlaw some asbestos products would be "completely inconsistent with the international approach to regulation of asbestos, which is control versus ban," he said.

Paul Lafleur, counselor for commercial affairs at the Canadian Embassy in Washington, warned that a product ban would promote "the development (of) substitutes very, very quickly," before adequate testing to assure that those substitutes are safe.

Asbestos would be replaced in many cases by other natural and synthetic fibers that have "not been studied in depth, and almost

without exception, are not regulated," Pigg said. "It is possible, even likely," he said, that these substitutes "would increase, rather than diminish health risks."

The EPA approach to asbestos regulation has also displeased some environmentalists. Jacqueline M. Warren, senior staff attorney with the Natural Resources Defense Council, said it is "a disgrace" that the agency has been unable to take action on commercial asbestos use. "The time just keeps going by and the exposures just continue," she complained.

The council last month petitioned the EPA to ban the use of asbestos in automotive brakes, which account for more than 20% of U.S. asbestos consumption. The group cited the risk of asbestos exposure to 900,000 auto and brake mechanics and the increase in airborne asbestos occasionally found in urban areas where there is heavy stop-and-go traffic.

The council said that semi-metallic friction materials and synthetic fibers, which are already used in some brakes, could replace asbestos, although that view is disputed by some industry spokesmen. EPA officials said they are studying the petition.

LOS ANGELES TIMES
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The asbestos scare was overdone

By P. J. Wingate

The current furor about asbestos in school buildings, which reached a peak just as the schools were opening, is a prime example of how the problem of carcinogens in the environment should not be handled.

This problem has been bungled by a number of organizations, local and national, but the two worst offenders were the Environmental Protection Agency (EPA) and television. Both failed miserably in their obligation to inform the public and to react rationally themselves.

No one disputes the fact that asbestos fibers lodged in the lungs will frequently cause cancer. But when the EPA put out information to the effect that 15 million students in more than 30,000 schools were in grave danger because of asbestos in school construction, and this information was passed on to the public in frenzied 45-second television reports, it led to expensive corrective action that made the situation worse rather than better.

Asbestos in the insulation of pipes and ceilings of schools, if it is protected by an effective seal of some sort, such as an elastic nonchipping paint, is no more hazardous than if it had never been removed from the mines where nature produced it.

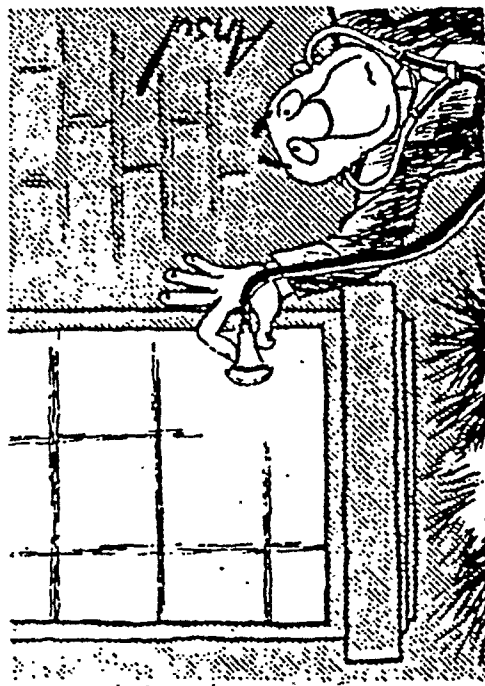
Of course it would have been a good thing if some other insulating material had been used in the schools, but once the asbestos was in place the best thing that could have been done was to leave it undisturbed, after making certain that it was sealed off at every point where particles of it might flake off and enter the air. This would have given the best protection possible to students, school employees, maintain-

nance workers and the public passing by.

Asbestos does not evaporate into the air and it could safely exist for the life of the building without being a hazard to anyone, provided only that it was kept sealed off.

The copper in the electrical wiring of schools is a poison. In addition if the copper becomes exposed any student who touches it may be electrocuted. However, these two facts do not justify any program to rush in and tear out all copper wiring from schools. The wiring is simply covered with a protective layer that is inspected from time to time to see that no bare copper is exposed.

A failure in leadership on the part of EPA combined with frenzied television reporting to make such a common sense approach impossible when it came to asbestos in the schools. The public was encouraged



to look upon asbestos as a sort of cobra hiding in the walls of each classroom ready at any instant to strike silently at nearly all the school children in the nation.

The failure of the EPA to show the kind of leadership it should have shown can be explained, in part at least, by the fact that EPA has been between the devil and the deep blue sea for a decade or so whenever the subject of carcinogens in the environment arises. Anything less than a fierce determination on the part of EPA to abolish, instantly, anything suspected of being a carcinogen has been interpreted by EPA's critics as proof that the agency has sold out to wicked industrialists who would happily poison their own children in their mad pursuit of profits.

This attitude is partly political because his opponents believe that President Reagan is vulnerable on

the subject of the environment. One director of the EPA was driven from office by charges of this sort and the current director surely is aware of the fact that he must bend over backward to avoid the fate of his predecessor.

But all of it is not political. There are a great many people, in and outside EPA, who have been terrified by the cancer threat in recent years. They have been told that one molecule of a carcinogen may cause cancer (the "no-threshold" theory) and indeed will cause cancer statistically. So they demand that EPA abolish all suspected carcinogens at once, not knowing that this is absolutely impossible.

Most of them are not aware of the fact that asbestos, and scores of even hundreds of other suspected carcinogens, such as benzene, benopyrene, nitrites and formaldehyde, have always existed in nature and that everyone has always been exposed to many millions of their molecules. But EPA is afraid to tell them that this is so for fear of being charged with selling out to the wicked industrialists.

However, there is one aspect of EPA behavior for which it is difficult to find any excuse at all. This is the practice of levying fines on certain school boards for not reacting to the asbestos scare in a manner acceptable to EPA. It has been reported that EPA has, so far, fined 30 school districts a total of about \$800,000. These fines, of course, are not paid by the school board members personally but come out of general funds, which in turn come from taxes.

It is difficult to believe that anyone in EPA really thinks that this petty harassment of school board members and the taxpayers they repre-

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As for the television reporters who handled the entire asbestos problem in such a frantic and irresponsible manner, no excuse at all can be found unless abysmal ignorance and a willingness to do anything to attract attention to themselves be counted as an excuse.

Finally, any observer of the asbestos problem must wonder why neither EPA nor the television reporters call attention to the fact that smokers who are exposed to asbestos are five times as likely to develop cancer as nonsmokers with the same exposure to asbestos. Surely, it would make more sense to emphasize the 8 percent hazard than the 20 percent hazard, but good sense is not what has stood out in handling the asbestos problem.

'Model' Designed for Toxic Suits

By LEAH R. YOUNG

Journal of Commerce Staff

WASHINGTON — If necessity is the mother of invention, then history will show that necessity drove Yale Law School Dean Harry H. Wellington to invent a new facility for the settlement of massive product liability lawsuits.

The insurance industry may not want to tag the new facility being developed to deal with asbestos claims as a model, for fear the model will fail, but Dean Wellington admits that "quite candidly, yes," the facility is designed to become a model for the handling of other possible claims concerning toxic substances.

What Dean Wellington has designed is a facility that will allow all interested asbestos producers and their insurers to band together so that claims will be pursued against one facility instead of 15 companies and several insurance firms.

The average number of defendants in an asbestos lawsuit today is twenty, he pointed out.

There already are 23,000 cases before the courts claiming cancer or other injury due to asbestos. Researchers at the Mt. Sinai School of Medicine estimate there will be 8,800 asbestos-related cancer deaths this year and that this death rate will rise to 10,000 annually by the year 2000.

The new approach to handling these claims is twofold, Dean Wellington explained in an interview. On one level, the intent is to provide alternate settlement mechanisms to keep these cases out of the courts.

On another level, if plaintiffs insist on lawsuits, asbestos producers and their insurers would win huge savings in litigation costs by facing these lawsuits with one uniform team of lawyers instead of 20, each representing the interests of one company.

The cost-saving device ultimately will be beneficial to those who suffer asbestos-associated illnesses, Dean Wellington explained, because it will preserve the resources available to indemnify claims.

A study released last spring by the Rand Institute for Civil Justice estimated that the average plaintiff in an asbestos-related product liability lawsuit receives only 39 cents for every dollar spent by defendant companies and their insurers.

So far 17 insurance companies have indicated they will participate in the facility, with Travelers Insurance Co. the only large insurer that so far has not signed on, Dean Wellington said.

Twenty-three producers have signed up, including the Manville Corp., which announced Friday it would take part.

Oct. 31 is the date established by

the participants for determining if there is a proper mix of producing companies and their insurers to go ahead with the new facility.

Both insurers and asbestos producers "seem to believe that either the critical mass is there or they are very close to it," Dean Wellington observed.

With the announcement that Manville Corp., which has been in bankruptcy reorganization due to projections of massive claims against the company, will join the facility, Pittsburgh Corning Corp. President John Baldwin predicted, "There can be little doubt that we now have critical mass on the producer side prior to the conditional sign-up date of Oct. 31."

Mr. Baldwin chairs the producers involved in establishing the facility.

His insurance counterpart, Aetna Life & Casualty Co.'s vice president, John F. Shea Jr., predicted that "Manville's participation in the facility will certainly encourage a number of producers and insurers who are standing on the sidelines to take a closer look at the facility and what it can offer."

If the facility has an appropriate mix of companies and insurers to go forward, it will develop an organization that would hire claims agents and attempt to negotiate settlements with those who can medically document asbestos-related disease.

To lure plaintiffs to use the facility, the organization will permit those who can prove asbestos exposure to register as such, so they will not be foreclosed by state statutes of limitations if they develop disease in later years.

The facility would not offer punitive damages, but it would offer compensation much more rapidly than it could be achieved through crowded court dockets.

"Litigation is so protracted," Dean Wellington said, he is hopeful that attorneys representing victims will see the desirability of alternative dispute mechanisms, which could be arbitration or other methods of settling disputes out of court.

"There is every reason, if the facility is fair, to use it," Dean Wellington said.

As the facility is envisioned, somewhere in the negotiating process, the victim would have to decide whether he is going to accept the compensation that is offered, go to the alternative dispute mechanism or instead file a lawsuit.

The facility would only offer settlement to victims who could show that the product which caused the injury was manufactured by one of

the companies involved in the facility.

"This is not a charitable organization," Dean Wellington observed, and the facility will not offer to compensate those who were injured by products produced by non-members of the group.

A victim could conceivably negotiate a settlement with the facility and then go into court against non-member companies. Insurers would try to "fill the gaps" owed by non-participating insurance companies and then take actions to recover these funds.

If the go-ahead signal is granted on Oct. 31, the first order of business will be to determine how to take insurance files from various companies and integrate them, Dean Wellington said.

The facility will then start wrestling with questions of how to obtain claims agents, how to allocate costs for settlements and how to bill subscribers.

There are outlines that have been developed so these problems can be handled swiftly, he added.

Dean Wellington was brought to the job by a group of insurers, producers and plaintiffs' lawyers "who decided they needed someone innocent of their squabbles," he explained. The negotiations have been under the auspices of the non-profit Center for Public Resources.

The insurance companies that have already agreed to join the facility include: Aetna Life & Casualty Co., Bituminous Casualty Corp., Insurance Co.'s., Continental Insurance, Employers of Wausau, First State, Hanover Insurance Co., Harbor Insurance Co., Insurance Corp. of North America, Liberty Mutual Insurance Co., Lloyd's of London and London Cos., Reliance Insurance Co., Royal Insurance, St. Paul Fire & Marine Insurance Co., Zurich American Insurance Cos., and United States Fidelity & Guaranty Co.

Asbestos producers who have signed on include A C and S Inc., Amatex Corp., Armstrong World Industries Inc., Brinco Mining Ltd., The Celotex Corp., Dana Corp., Eagle-Picher Industries Inc., Eastern Refractories Co. Inc., Fibreboard Corp., the Flintkote Co., Forty-Eight Insulations Inc., Lac d'Amiante du Quebec Ltd., Marmont Corp., National Service Industries, Owens-Corning Fiberglass Corp., Owens-Illinois Inc., Pittsburgh-Corning Corp., Porter Hayden Co., Rock Wool Mfg. Co. Inc., Shook & Fletcher Insulation Co., Manville Corp., Nuclear Environmental Protection Inc., and one company that refuses to divulge its identity.

OCT 15 1984

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Fairness on asbestos claims questioned



By John Chamberlain

Politicians prate endlessly about "fairness." But how often in recent months has our Congress been fair in settling a specific problem?

One of the questions currently at issue on Capitol Hill is the dirty trick played by fate on shipyard workers who spent the World War II years installing asbestos insulation in the ships that delivered our troops and munitions to Europe and Asia. Everything was in a hurry-up phase in those days — and asbestos was the one sure safeguard against fire on destroyer fleets and Liberty ships alike.

Even in that innocent time there were those who had reason to suspect that asbestos exposure wasn't particularly good for the lungs. But it wasn't until decades later that cancer began striking the workers who, in both private and Navy-owned shipyards, had responded to a crying national need.

Nobody in or out of Congress would now deny that war-connected disabilities call for compensation. But who should pay the bill for a negligence that involved the Navy on the one hand, and the corporate manufacturers of asbestos on the other? The Manville Corp., which was by all odds the most in-

portant provider of asbestos, has had perforce to accept a top-heavy share of liability for a tragic situation. But should it be stuck with such a major portion of the insurance bill?

Congress, by doing nothing, has in effect said "let the corporations, including the private insurance companies, take all the blame." But in letting individual cases go to litigation, the government has forced the Manville Corp., as the leading asbestos manufacturer, to file for bankruptcy under Chapter 11 reorganization legislation. The asbestos-related lawsuits faced by Manville could ultimately total 63,000 — a matter of more than \$2 billion.

What has resulted is a lawyer's harvest: The Manville experience in resolving some 4,000 claims prior to its filing for bankruptcy is an eye-opener. Some 60 percent of the claims resulted in awards of less than \$10,000 each. Some 30 to 40 percent of each \$10,000 payment went for attorney's fees and other costs. In 21 percent of the cases there was no award at all. Where compensation did ultimately reach a victim or a victim's family it was often exorbitantly late, due to the overweening clogging of the courts.

Recently there has been a declassification of documents bearing on wartime shipbuilding. Poring through them, the Manville lawyers think they have evidence that proves Washington was "solely responsible" for those injured by overexposure to asbestos in Navy-owned or controlled shipyards. The Manville company is trying to recover some \$40 million

which has been paid out in litigation involving 1,400 workers.

The bankruptcy proceedings have played new claims against Manville. But the flow of legal bills continues at a rate of \$4.5 million a month. Though Manville has turned its business around by producing for the general building materials market, it is still stuck with a costly reorganization plan. There is still some \$300 million in insurance coverage by Manville that needs to be resolved through settlement negotiations with 24 other insurers involved in a San Francisco lawsuit.

Navy personnel, including inspectors, were responsible for the helter-skelter speed of construction that enabled us to back up our fighting fronts in Europe and in the Pacific through four years of war. Congress went home without acting on bills that would make the government a partner, along with private manufacturing companies and insurance companies, in settling claims without letting attorneys run off with money that should go to the victims of a patriotic emergency.

A government-endorsed asbestos claims handling facility would help. But Congress, though it talks about "compassion," has been loath to express its compassion in money terms. Its response to the "fairness" question is to say that the king — meaning the government as shipbuilder — could do no wrong.

Asbestos is no health hazard in village's schools

RIDGEWOOD — Village schools are safe from asbestos, according to Dr. William J. Nicholson, an authority on asbestos-related health factors. He who has counseled the village through the state-wide asbestos problem.

Nicholson, Associate Director of the Environmental Science Laboratory at Mount Sinai School of Medicine, reported his findings to the Board of Education at its Sept. 18 work session.

Nicholson was part of the original team which identified asbestos as a danger and a serious health threat. This summer, the village resident was a consultant on an asbestos study conducted for the village school district. He found that existing asbestos in the school buildings, found mainly in boiler rooms, basements and storage areas, is not a health hazard. There are no traces of it in the classroom.

The authority believes it is better to seal asbestos rather than remove it because of the danger caused when the substance is disrupted. Village officials have been sealing those areas where asbestos was found.

Nicholson pointed out that if 1,000 people are exposed for ten years to asbestos in a heavily-exposed work area, 200 of those people will be affected. In schools with the worst asbestos problems, if 1,000 students are exposed for ten years, one student may be affected. He said the level of asbestos fibers found in village schools is comparable to the air we breathe outdoors.

Superintendent of Schools Dr. Samuel Stewart said that Ridgewood is exceeding the law's requirement and is eliminating even the most minor evidence of asbestos-related problems. Nicholson indicated that the problems many school districts faced this summer were due to unqualified people removing the asbestos and other unqualified people inspecting the removal.

Asbestos will not be listed as a hazardous waste by the agency, but EPA hopes to have a first draft of guidance for disposal of the mineral ready by the first of next year. Air pollution problems associated with asbestos disposal will be discussed. Another prime focus will be prevention of groundwater contamination. EPA sources say, however, that this poses little threat since asbestos does not leach through the ground once put there. EPA says it decided not to list asbestos after concluding that testing would result in overkill with regard to taking protective action.

568-1 AIR/WATER POLLUTION
REPORT
WEEKLY

OCT 1 1984

Governor's Panel in Jersey Proposes Strict Rules on Asbestos

TRENTON, Oct. 6 (AP) — New Jersey will have the toughest environmental standards for asbestos in the nation under proposals the state will adopt by the end of the year, Governor Kean said this week.

"The Federal Government has not done what we're doing here," Mr. Kean said Thursday. "No other state has. From now on, New Jersey will be the standard. We will now be the state others will look to, including the Federal Government."

The proposals were contained in an interim report of the Governor's Asbestos Policy Committee, which was formed last January.

Mr. Kean said the proposals called for standards for airborne asbestos 990 times stricter than the Federal limits. They also would require stringent regulations for training and licensing asbestos-removal workers.

To 'Reduce Confusion'

The state will put the standards into effect, even though, the report said, low-level exposure to asbestos poses an extremely low health risk and the possibility of developing cancer from cigarette smoking is up to 10,000 times greater than exposure to low levels of asbestos.

Mr. Kean said the proposals "will reduce confusion, subjectivity by individual inspectors and will help make sure that the most appropriate solution to an asbestos problem is chosen."

The report also proposed that the State Health Department be the lead agency in coordinating asbestos removal in schools and state buildings. The State Department of Education has overseen the removal work in public schools, and the removals have been ordered locally.

The Health Department is to have a larger role in overseeing removal, including evaluating buildings, sampling, training and certifying removers and removal instructors. Removers would be required to train 32 hours, in-

stead of the current 4, as well as to take a written test.

The report recommended the Health Department inspect schools requesting checkups.

The Health Commissioner, Dr. J. Richard Goldstein, said that more than 300 public schools had asbestos removed last summer and that they were safe. He issued the assurance even though the proposed standard for airborne asbestos is 33 times more stringent than the level used to permit the schools to reopen. The schools that were allowed to reopen would not have to meet the new standards, officials said.

The proposed standards set limits of 0.003 fibers of asbestos a cubic centimeter of air, compared to the current standard of 0.1.

Mr. Kean said some schools had unnecessarily removed asbestos that did not present a danger because the fibers were not airborne. He praised the Education Commissioner, Dr. Saul J. Cooperman, who conceded that his department had failed to keep accurate records on the removals.

"Only five schools in the entire state were delayed in their opening because of asbestos removal," the Governor said. "And among those five, the longest delay was 72 hours."

THE NEW YORK TIMES, SUNDAY, OCTOBER 7, 1984

Maryland seeks damages from the asbestos industry

United Press International

BALTIMORE — The state of Maryland is seeking \$500 million in damages from at least 47 asbestos manufacturing and distributing firms in a suit believed to be the first of its kind filed by a state government. Attorney General Stephen Sachs announced yesterday.

The suit alleges that the companies were grossly negligent in supplying and using asbestos in the construction of hundreds of state buildings over the last 50 years.

"As early as the mid-1930s, some or all members of the asbestos industry sought to suppress, conceal and obscure data on the relationship between asbestos exposure and disease," said Sachs, who filed the 49-page suit late Thursday in Anne Arundel County Circuit Court.

The defendants "were aware or should have been aware that asbestos can lead to diseases that are serious, irreversible, often fatal, but nevertheless continued to mine, produce, manufacture and sell asbestos and asbestos-containing products without any warnings as to potential

health hazards presented by their products," said Sachs.

By doing so, Sachs said, they have "created an unreasonable risk of harm to persons" working in state buildings.

The attorney general said state buildings containing asbestos include schools, campus buildings at colleges, gymnasiums, laboratories, prisons, hospitals and institutions for the mentally ill and retarded.

"In order to eliminate the health hazard posed by... asbestos products in every such affected building and facility, the state of Maryland will eventually be required to expend millions of dollars," the suit said.

Among the companies named in the suit were: GAP Corp., Georgia-Pacific Corp., National Gypsum Co., Owens-Corning Fiberglass Corp., Owens-Illinois Inc., United States Gypsum Co., and W.R. Grace & Co.

In addition to requesting compensatory damages and an unspecified amount of punitive damages, the suit asks the firms be ordered to perform "all necessary asbestos abatement remedial actions" in Maryland's public buildings.

Suit Against Asbestos Firms Is Criticized as Political

BALTIMORE (AP)—An official of the Maryland Chamber of Commerce has charged that Attorney General Stephen Sachs' recent decision to sue 47 asbestos manufacturers and distributors for \$500 million was motivated by politics.

Charles Krautler, the chamber's vice president for public affairs, asserted earlier this week that the lawsuit has damaged the state's business climate and

that it was filed to generate publicity for Sachs' campaign for governor.

Sachs defended his action, saying he did not believe the suit would hurt the state and added the decision to sue was not linked to political ambitions.

"If the price of preserving the state's business climate is to lie supine while big corporations roll over you, I plead guilty," Sachs said.

THE WASHINGTON POST

Friday, September 22, 1984

SEP 22 1984

PA-068 PHILADELPHIA INQUIRER
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KU to run center for training asbestos handlers

By STEVE SWARTZ
Capital-Journal state staff writer

LAWRENCE — Experts believe there are some 25 million metric tons of the carcinogenic asbestos in use in the United States.

How to deal with the wide-ranging problems created by such a massive amount of the material will be among the aims of a training center which will soon be set up in the Kansas City area.

The center will be operated by the University of Kansas with funding from a \$225,000 grant announced last week by the Environmental Protection Agency.

Morris Kay, EPA regional director in Kansas City, members of his staff and university officials gathered on the KU campus Tuesday to explain how the center will work.

Although the specific location of the center is yet to be announced, Kay said he expects the center to be in operation within the next several months.

The KU center will be one of three in the United States, Kay said. One is already in existence in Atlanta, Ga., at Georgia Tech University, and the other center will be in Boston, at either Harvard or Tufts University, he said.

KU was chosen to operate one of the three centers approved by Congress this year because its proposal was among the best submitted by universities nationally, Kay said.

Max Lucas, dean of KU's School of Architecture and Urban Design, said that in addition to experts from the architecture school, the center will be able to make use of other KU experts, including those in the school of law, the medical center and other areas.

"The emphasis at the center will be on training," Lucas said.

The center will conduct seminars for contractors, school superintendents, homeowners and others who may have to deal with the problems presented by asbestos.

Lucas said the center will provide an intensive, one-week, hands-on training session on how to safely deal with asbestos and how to remove it from buildings.

Wolfgang Brandner, the regional asbestos director for EPA in Kansas City, said asbestos has been used for various things for 4,000 years, but it did not become widely used as a construction material in the United States until the 1880s and 1890s.

One hundred years ago, it was used primarily as an insulator around boilers in buildings and on locomotives.

It is also used in mixtures for forming a lightweight but strong concrete, he said.

Brandner said that in the early 1940s, the spray application of asbestos was first used in the quick construction of military ships and later used in construction of buildings. He said EPA officials are particularly concerned about sprayed asbestos and its flaking away from the objects it was sprayed on.

A body cannot rid itself of inhaled asbestos, he said. Asbestos causes various types of inoperable cancer and is expected to cause 200,000 deaths a year from now until the disease runs its course, Brandner said. He said it takes 20-40 years to die from diseases caused by asbestos.

Asbestos has thousands of uses and it is still being widely used, Brandner said. It does not burn, is not destroyed by acid and does not decompose.

He noted that if it can be made or applied

in ways in which it is not harmful, it has positive uses in many trades.

Center officials hope to instruct contractors and others not only how to safely remove asbestos from buildings but also how to use it safely.

One of the KU officials who will be involved with the center said he hoped to organize a national conference on asbestos in Kansas City during the current fiscal year, which began Monday.

Kay said funding for the KU center and the other two will be dependent upon additional appropriations by Congress. However, he said EPA would not expect KU to provide its own funding for the center and added he expected the program to continue after its first year.

"It is a significant problem that will go on for a number of years," Kay said.

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OCT 3 1984

Companies and Local Boards Sued By Jersey Teachers Over Asbestos

By JOSEPH F. SULLIVAN
Special to The New York Times

TRENTON, Sept. 25 — The New Jersey Education Association today sued 157 school boards and 125 unidentified asbestos manufacturers and contractors for the costs of medical checkups for school employees exposed to asbestos hazards.

"We have found it necessary to file such a suit, because many of our schools have proven to be potentially hazardous places to work," the president of the union, Edythe Fulton, said.

"We know that friable asbestos is a carcinogen, and we know that it has been present in many school buildings for years," she said. "Those who have worked in these buildings deserve some assurance of at least diagnostic care."

Friable asbestos means the fibers can be loosened and become airborne.

The suit does not seek a specific dollar amount. It asks for compensatory and punitive damages that the union said could be used for a trust fund to cover the costs of periodic checkups for the 60,000 teachers, custodians and other school employees who could be affected by asbestos.

The suit seeks to include all workers employed from September 1978, when the Federal Secretary of Health Education and Welfare asked all 50 Governors to assess the asbestos dangers in their schools.

State agencies were not sued, the union said, because the responsibility had been shifted to the localities. The suit, filed by the Trenton law firm of Greenberg, Kelley & Prior in Superior Court here, contends that the school boards and the "John Doe" corporations and contractors caused and permitted the presence of asbestos "even though they knew that this presented a substantial risk of harm to the employees."

A lawyer for the New Jersey School Boards Association, Paula Mullaly, said

"If such a trust fund is created to provide for annual physical examinations for school employees, we feel the cost of the trust fund should be borne by the manufacturers of asbestos and not by the local districts. We do not feel that local school boards could have knowingly and deliberately permitted this dangerous condition to exist, and therefore we do not believe they should be liable for the exposure."

After reports this month that more than 100 schools in the state would have their openings delayed because of incomplete asbestos inspections, only schools in the Fair Lawn and East Orange-Maplewood districts had significantly delayed openings, the State Education Department said.

NYTIMES 9/26/84

AMOSITE ASBESTOS TESTS

Studies of the carcinogenic potential of ingested amosite asbestos at a level of one percent for their lifetime showed no toxic effects and caused no carcinogenic response in male and female Syrian golden hamsters. The diet "inexplicably" seemed to enhance body weight gain and survival. The tests were part of a major government program to obtain data of potential value in assessing the suspected risk from asbestos in water supplies and other sources.

► (NTP Technical Report Series No. 249, available without charge from NTP Public Information Off., Box 12233, Research Triangle Park, NC 27709. Telephone: 919/5401-3330.)

808-8 ENVIRONMENT REPORT
SEMI-MONTHLY

Canada pushes to regain U.S. asbestos market

Since the use of asbestos has been sharply restricted by many governments because of its carcinogenic properties, Canada has been researching ways to regain its position in this market.

Canada, one of the world's leading suppliers of the mineral, exports 90 percent of its asbestos, much of it to the United States. But consumption in the United States, which included insulation materials and roofing felts, has dropped in recent years to more than half of what it was 10 years ago.

In 1983, the volume of asbestos used was 215,000 metric tons, says David Dull, deputy director of the Chemical Control Division of the

Environmental Protection Agency, Washington, D.C. This was down sharply from the 1978 estimate of 75 million metric tons.

Meanwhile, Canadian asbestos mines operated at only 55 percent-60 percent in 1983, says Oliver Vagt, a mineral economist with Canada's Energy, Mines and Resources Department. Production plummeted from almost 1.5 million metric tons per day in 1979 to 820,000 metric tons in 1983.

The Canadian government has been urging the United States to modify its regulations since the U.S. demand is expected to further decline. The Environmental Protection Agency may ban the use of

various asbestos products and further reduce the use of others.

In turn, the provincial government of Quebec, owners of the Societe Nationale de L'Amiante (SNA), an asbestos firm, has started a pilot plant that will produce what they term a "safe" phosphate-treated asbestos fiber at the rate of 1 metric ton per day. SNA claims the treated fiber lowers the health risks of asbestos by reducing its dust out-

The technology converts the terminal hydroxyl groups of magnesium in chrysotile asbestos into phosphate groups of fibers that are considered less dangerous. This treatment would slightly increase the price also.

SNA claims the phosphate-exposed asbestos can be substituted for all grades of asbestos fiber in industrial and construction applications.

"We've heard about this treated asbestos," says Dull. "We're gathering as much information as we can from the people who are making it and reporting it in the United States."

Other substitutes for asbestos, such as fiberglass, already dominate the market. Silica and other mineral products are also used. But SMA is so optimistic that they are already preparing for larger-scale production.

"By the end of the year, we hope to have the information available to proceed to construction of a proper factory," says Jean-Marc Lalan-cette, SNA vice president of research and development.

"There are several ways to approach the asbestos problem," says Dull. "One is to use a safer material and another is to use one that doesn't form dust or fibers. We're skeptical in terms of the chemical treatment changing the health effects, but we're certainly open to being shown that it is safer."

Asbestos cleanup results in lawsuit by Ky. policeman

COVINGTON, Ky. — The Covington Independent School Board and the asbestos-removal company it contracted with to clean up schools in the area are being sued by a local police officer.

David Finan claims he suffered health problems after breathing chemical vapors used to seal asbestos while answering burglar alarms at two schools last August. He said no warning signs were posted at the schools.

The suit names the school board; American Insulated Structures Inc., Blue Ash, Ohio; and "unknown manufacturers and distributors of the chemicals and products used. . . ." It says the defendants had a duty to give adequate warning that the work being performed and the chemi-

cals and products being used presented a danger to anyone who might breathe or ingest them.

The suit does not specify a dollar amount for damages, but seeks compensation for medical expenses, lost wages, and diminished future earning capacity.

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