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SECOND RESPONSE TO COURT, OSHA BROADENS ITS SMOKING PROHIBITION TO ANY ASBESTOS EXPOSURE

As a second response to a federal appeals court order to clarify portions of its two asbestos standards, the U.S. Occupational Safety and Health Administration announced Feb. 5 several amendments and other comments in the Federal Register which are effective May 7, 1990. Remanded issues addressed are employee smoking controls, respirator effectiveness levels, and the possibility of bilingual warning signs. OSHA's action stems from the challenges of its 1986 asbestos standard revisions in the U.S. Court of Appeals for the DC Circuit by AIA/NA and by labor.

In June and July 1989, the Building and Construction Trades Department and the Industrial Unions Department, AFL-CIO, both petitioned the Court, as did AIA/NA, to order OSHA to resolve all outstanding, remanded issues. In October, the Court responded setting up a three-stage schedule for OSHA to follow with a final deadline of Feb. 27. OSHA complied with the first stage back in December by announcing a lift of the ban on the spraying of asbestos.

The Feb. 5 announcement constitutes OSHA's second stage response. Summary and explanation follow:

1) Expanded Smoking Control Regulations: OSHA is adding a provision which will prohibit smoking in all work areas where there is "occupational exposure to asbestos" because of activities in such areas. This is an expansion of the present smoking ban, which, as in most OSHA health

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standards, is confined to regulated areas where exposures are elevated. "Occupational exposures," as discussed in the preamble to the 1986 asbestos standards, means asbestos exposure which has its source in the workplace. Thus, employees who work in areas where asbestos abatement and renovation activity are ongoing may be occupationally exposed even though they do not disturb or handle asbestos.

OSHA is extending the former more limited smoking ban, to reduce residual risk among exposed smokers and non-smokers, based on the following record evidence and considerations. OSHA appropriately relied on studies that included smokers when it determined that workplace asbestos risk for all workers is "significant". The risk for smoking workers exposed to asbestos is substantially higher. OSHA does not know with certainty whether banning smoking at the workplace will result in diminished total smoking consumption for asbestos workers who smoke. However, given their higher residual risk, and the suggestion that contemporaneous smoking and asbestos exposure is particularly risky, the Agency believes that even a small reduction in workplace smoking will reduce risk to smoking employees by more than a de minimis amount.

OSHA is also requiring that employers augment their training programs to offer smoking cessation self-help material and that physicians certify that they have informed employees of the health risks of smoking and asbestos exposures during required medical examinations. These provisions are the core of AIA/NA's suggested smoking cessation program requirement, which the Court found on the record to be feasible and effective.

2) Respirator Policy: In the 1986 asbestos standards, OSHA reaffirmed its traditional policy of preferring engineering and work practice controls to respirators to control employee exposures. The issue of whether OSHA should change this policy to allow the employer to rely on respirators was specifically raised and rejected by the Agency based on "overwhelming record support" for OSHA's traditional policy. Thus, in the standards, employers first must attempt to reduce exposures by installing engineering controls and instituting work practices. Only when the preferred methods are infeasible, not yet installed, or insufficient to meeting the permissible limits, or in situations where estimated exposures are uncertain does OSHA require respirator use.

NOTE:

In abatement and renovation work, where expected ambient concentrations are variable, additional provisions encourage and require supplemental respirator use without regard to exposure level. Thus in major abatement jobs incentives to use the most protective class of respirators, supplied air respirators operated in the positive-pressures mode, are provided by exempting employers who provide such respirators from the obligation to monitor exposures daily for construction employees working within regulated areas.

In small-scale, short-term abatement and renovation operations, where glove bags are used, respirators must be worn by employees removing asbestos regardless of actual exposures measured in the workplace.

OSHA believes that this approach is rational and that employees required to wear respirators for supplimental protection will first benefit from all feasible engineering and work practice controls.

3) Bi-Lingual Signs and Labels: In the 1986 standards, OSHA prescribed a comprehensive hazard communication program including formal training, labeling asbestos-containing products, and erecting signs demarcating regulated areas where exposures exceed the PEL and, in construction, where negative pressure enclosures are erected for major abatement and renovation jobs. The training program is required "to be conducted in a manner which the employee is able to understand." OSHA is adding a new element to its training program specifically covering the content and placement of warning labels and signs, and a new requirement that the employer assure that employees comprehend warning signs required in regulated areas--whether by utilizing universal symbols, graphics, or foreign languages. However, OSHA is not requiring similar assurances for warning labels.

WILL ADVISE

OSHA is not specifically mandating that warning signs and labels be in languages other than English. OSHA intends that employees be shown actual signs and labels and review their contents during training. Non-English speaking employees thereby will be familiarized with the working of signs and labels and the significance of those legends. OSHA believes that the additional training component will assure the comprehension by all employees of written warnings which are applied or posted to hazardous products and locations.

The labeling of asbestos products is done by the

manufacturer and the appropriate language for any downstream work force is unknown.

Finally, OSHA intends to publish a notice of proposed rulemaking shortly to cover the third stage of issues and the issue of the exemption for "small-scale, short-duration operations" deferred from the December 1989 response.

NON-ASBESTIFORM MINERALS PROPOSED FOR EXCLUSION FROM SCOPE OF OSHA FINAL RULE

Saying there is insufficent evidence to conclude that non-asbestiform minerals pose the same health threat as asbestos, the U.S. Occupational Safety and Health Administration has proposed to remove three such minerals from the scope of its revised asbestos standards. The agency said it was also seeking comment as to how to regulate non-asbestiform minerals, asking specifically whether excluding them from the revised standards is the correct approach, or whether it should adopt an alternative regulation.

The notice of proposed rulemaking is published in the Federal Register dated Feb 12. The proposed rulemaking is limited to non-asbestiform tremolite, anthophyllite, and actinolite.

When OSHA revised its asbestos standards for general industry and construction in June 1986, reducing permissible exposure limits from 2 fibers per cubic centimeter of air to 0.2 f/cc, it included the non-asbestiform minerals.

However, the R.T. Vanderbilt Co. Inc., a Connecticut firm that mines and mills talc containing non-asbestiform minerals, asked for and was granted in July 1986 a stay of the standards' provisions relating to three minerals. That stay has been extended several times and the current stay is set to expire in November. Vanderbilt argued that since the minerals were not asbestos they should not be regulated as such. The company also filed a lawsuit seeking to have the minerals excluded from the asbestos regulations.

As an interim measure, OSHA has been regulating the non-asbestiform minerals under the old asbestos standards

and their less stringent exposure limits, which had been in effect from 1972 until 1986.

In its Federal Register notice the agency requested comments as to whether the non-asbestiform minerals should continue to be regulated under the old standards, and it also left open the possibility of ultimately placing them within the scope of the revised standards.

Responding to OSHA's actions, Dennis M. Race, a Washington, D.C., attorney representing Vanderbilt, commented that company officials were pleased with OSHA's proposal and that the company "plans to actively participate" in the rulemaking process. The litigation is on hold, he said, pending the outcome of the rulemaking process.

Race said Vanderbilt wants to "lift the stigma of having its product called asbestos when it doesn't contain asbestos." He added that "the company does not object to being regulated by the federal government; it just did not want to be regulated as asbestos."

In a prepared statement, the company said that it was "confident" that at the close of the rulemaking process, OSHA's final regulation would recognize the "critical mineralogical and health differences which exist between common non-asbestos minerals and asbestos." That would bring OSHA's regulations in line with those of other agencies such as the Mine Safety and Health Administration, the Consumer Product Safety Commission, the Environmental Protection Agency, and the U.S. Bureau of Mines, the company said.

OSHA's most recent action stems from a longstanding dispute over the health effects of the non-asbestiform minerals and from efforts by Vanderbilt going back to the 1970s to exclude the minerals from regulation under the standards for asbestos.

Among those that in the past have opposed removing the non-asbestiform minerals from the asbestos standards were officials from the National Institute for Occupational Safety and Health. In 1988, NIOSH Director Donald J. Millar and Deputy Director Edward L. Baker told both Vanderbilt officials and OSHA officials that their studies showed higher-then-expected rates of death and other diseases in Vanderbilt talc miners.

EPA TAKES A STAND, DISTRIBUTES SPECIFIC GUIDANCE FOR MAINTENANCE OF ASBESTOS FLOORING

Late in January, the U.S. Environmental Protection Agency distributed a memorandum addressed to "interested parties" that contains specific recommendations for stripping wax or finish coat from asbestos-containing flooring in buildings. "The recommendations were developed by EPA in consultation with asbestos control professionals and several flooring materials and floor care product manufacturers to reduce any possible exposure to asbestos fibers."

The memorandum explains that the local National Broadcasting Corporation television channel in Washington DC produced and aired a three-part series last November on the potential danger of stripping asbestos floor tiles. The NBC network news carried a brief portion of the series on Nov. 29. The series concluded that stripping excess wax or finish coat from asbestos floor tiles in schools may increase the asbestos exposure of school maintenance personnel and school children.

The series has precipitated numerous telephone calls to EPA Headquarters and to the ten EPA Regional offices, according to the memorandum.

"Since its airing, EPA's Environmental Assistance Division has tried to explain more clearly what the series did and did not demonstrate. First, these is no clear evidence that the 'routine' stripping activities described in the series produced significantly elevated levels of asbestos fibers. In fact, the air levels generated during routine stripping were below those which require special procedures under federal regulations. Thus the levels are unlikely to cause asbestos-related health problems. Second, higher levels were produced only after a stripping machine was used on a relatively dry, unwaxed floor. Such a practice is not a normal maintenance procedure.

"Since improperly performed floor tile maintenance procedures could result in an increase in asbestos exposure, EPA strongly recommends" that certain guidelines be followed.

-- AVOID STRIPPING FLOORS
-- PROPERLY TRAIN STAFF
-- FOLLOW APPROPRIATE WORK PRACTICES
-- STRIP FLOORS WHILE WET
-- RUN MACHINE AT SLOW SPEED
-- SELECT THE LEAST ABRASIVE PAD POSSIBLE
-- DO NOT OVERSTIP FLOORS