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ASBESTOS CONTROL REPORT

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STAFFORD BILL TARGETS ASBESTOS IN PUBLIC BUILDINGS

Legislation aimed at controlling asbestos in all federal and, ultimately, other publicly accessible buildings has been introduced by Sen. Robert T. Stafford (R-Vt.), ranking Republican on the Senate Environment and Public Works Committee.

The measure, S.981, is almost identical to one introduced by Stafford when he chaired the committee last session. That bill died in committee. The current bill is given a much better chance of passage now that the Senate is controlled by the Democrats. Liberal Republicans like Stafford are also likely to spurn administration arguments that such legislation is unnecessary.

Moreover, the contention that a uniform federal requirement is needed has been underscored by the turmoil that a New York City ordinance has unleashed. That law applies to all commercial and residential property, with the exception of single family homes.

"You can't put a nail in a wall without getting it inspected," Stanley Gold, executive secretary of the Master Plumbers Association, told Asbestos Control Report. "God help you if you want to sell an apartment house, even a two-family."

"Asbestos is the biggest single problem facing real estate today," John MacMahan, a San Francisco adviser to pension funds, said. "If you have a building that's even suspected of containing asbestos -- and that's every building put up before and after World War II -- it's automatically discounted 15 percent," said Peter MacDowell of Entek, Inc., Troy, N.Y., an environmental consulting firm.

The Stafford bill exempts any residential building having less than 10 units. But it also gives the Environmental Protection Agency sweeping authority, in an emergency situation, to clean up the asbestos in a building and sue the owner later for costs.

"The purpose of this bill is to provide the users of federal buildings, and, over time, other publicly accessible buildings, with the same protection from exposure to asbestos that we have judged it wise to provide to school children and school workers," said Stafford.

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BILL TARGETS ASBESTOS IN PUBLIC BUILDINGS (Cont.)

Stafford's bill would require EPA to issue regulations on: inspection; response action (based on the latest version of the agency's "Guidance for Controlling Asbestos-Containing Materials in Buildings"); post-response action, including periodic reinspection and surveillance; and transport and disposal.

The regulations also would cover accreditation of inspectors and laboratories, and education and protection of both workers and building occupants. The bill also calls for EPA to develop a model plan for accreditation of contractors. States are to adopt accreditation plans that are at least as stringent as the EPA model plan.

Final regulations would have to be issued within 360 days of enactment of the measure. However, should EPA fail to meet that deadline or should the rules be stayed by a court, building owners still would have to meet the bill's requirements, using EPA's most current guidance document.

Bill Sets Deadlines For Action by Owners

Within 360 days of enactment of the bill, EPA is to publish a schedule of non-federal buildings that must be inspected. The schedule will set dates for inspection of the various categories or types of buildings. Buildings owned by the federal government are to be inspected within 180 days after final EPA rules are promulgated.

The bill further specifies that the EPA regulations are to require owners to develop and begin implementing management plans for affected buildings within 360 days after inspection. Response actions are to be completed "in a timely fashion," the bill says without further elaboration.

If EPA does not issue the regulations within the 360-day deadline, owners would have 540 days after enactment of the bill to inspect their buildings for asbestos; 720 days to develop and begin implementing an "operation and maintenance" plan; and 990 days to begin implementing a management plan for responding to asbestos in their buildings.

Management plans would have to include the following elements, "wherever relevant to the building":

- o A description of the results of inspections;
- o A detailed description of response actions, including locations, method or methods and a timetable;
- o A detailed description of any asbestos-containing material that remains once response actions have been taken;
- o Plans for periodic reinspection and long-term surveillance, and for operations and maintenance activities; and
- o An evaluation of resources needed to successfully complete response and post-response actions.

Standards for cleanup under the bill are the same as those contained in the Asbestos School Hazard Abatement Act. The ambient interior concentration of asbestos after response actions is not to exceed the exterior concentration, discounting any contribution from any local stationary source.

MASSACHUSETTS ADOPTS ASBESTOS LICENSING,
TRAINING, OCCUPATIONAL HEALTH STATUTE

Massachusetts has adopted new legislation providing for the licensing of asbestos control contractors and the establishment of occupational safety and health standards for asbestos control workers. The law goes into effect on July 1, 1987.

Specifically, the statute requires the Department of Labor and Industries to monitor, inspect and investigate all work involving the use or handling of asbestos or material containing asbestos. This provision explicitly covers construction, demolition, alteration or repair involving any building or structure -- including state and local public buildings -- and disposal of asbestos-bearing waste materials. No person or company may engage in the business of asbestos removal, containment or encapsulation unless licensed to do so by the commissioner.

The commissioner, in turn, is required to promulgate rules and regulations to protect the health and safety of workers involved in asbestos use or control projects. These regulations must require adequate instruction and training of workers with respect to health risks, precautionary measures, protective equipment and other safeguards. No employee may be penalized by an employer in any way as a result of filing a complaint or otherwise notifying the department as to an asbestos-related occupational safety and health problem.

If the commissioner determines that there is a violation of any asbestos-related workplace standard, or any requirement of licensure, he may order any work site to be closed by issuing a cease and desist order. Violations may be punished by a fine of \$500 to \$1,500 for each offense, and may be cause for denial, revocation or suspension of license subject to the determination of the commissioner.

In no event, the act states, shall any public contract involving the removal, containment or encapsulation of asbestos or material containing asbestos be performed by anyone other than a general contractor or subcontractor licensed to perform such work.

All applications submitted by contractors for state certification in the category of asbestos removal must contain evidence of a current license issued by the commissioner. Failure to furnish such evidence shall require the Division of Capital Planning and Operations to find the applicant ineligible to bid. Moreover, a general contractor who subcontracts the asbestos removal work must certify in writing to the awarding authority that, if awarded the contract, the general contractor will retain a licensed subcontractor for the work.

NORTH DAKOTA SENATE CLEARS ASBESTOS
CONTRACTOR CERTIFICATION BILL

Legislation enabling the North Dakota Department of Health to administer an asbestos contractor and worker certification program was adopted Feb. 4 by the North Dakota Senate on a 52-0 vote. The bill would apply to asbestos abatement activities conducted in any building to which the public has unguided access or for which employee protection is not provided under the federal Occupational Safety and Health Act.

Provisions of the bill require (1) training and examination of asbestos contractors and workers on safe asbestos abatement; (2) establishment of standards and procedures for certification of contractors and workers, as well as

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NORTH DAKOTA SENATE CLEARS CERTIFICATION BILL (Cont.)

performance standards for asbestos abatement based on National Emission Standards for Hazardous Air Pollutants (NESHAPs) adopted by the U.S. Environmental Protection Agency.

(3) Issuance and renewal of certificates to all applicants who satisfy the standards that are set, and suspension or revocation of certificates for cause, after notice and opportunity for hearing; (4) establishment of annual certification, examination and renewal fees; (5) establishment of indoor environmental non-occupational air quality standards for asbestos; and (6) adoption and enforcement of any other rules necessary to implement the act.

The North Dakota Senate bill was requested and strongly endorsed by the state Department of Health and its Division of Environmental Engineering. During hearings on the bill before the Senate Natural Resources Committee last month, Division Director Dana K. Mount cited enactment of the federal Asbestos Hazard Emergency Response Act as evidence of the high priority now being given to the identification and management of asbestos in buildings.

"The Department of Health has already encountered numerous situations where the certification program could have prevented potential health hazards," Mount said. "In several public schools, work has been performed by local plumbing firms and lumber yards which had no experience in asbestos removal. Although the work was completed at a low cost, the asbestos-containing material was not handled properly and left a potential health hazard for the children to encounter when they were allowed back in the schools because of the asbestos fibers in the air."

More Expensive Than Doing The Job Right

According to Mount, the schools had to be cleaned again after the Department discovered the situation. "The additional cleaning made the overall cost greater than doing the job right the first time."

Mount said the Department proposes to use the law to ensure that all persons who work with asbestos have the proper training to ensure that good asbestos abatement will be conducted. "This requirement for training will also be followed up by Department inspections of the persons conducting the work," Mount said, noting that the cost of ensuring proper training and conducting worksite inspection will be recovered from examination and annual certification fees.

An amendment to the bill -- limiting its application to exclude general industry and the construction industry where already regulated under existing asbestos laws -- was supported by the Greater North Dakota Association-North Dakota State Chamber of Commerce. Spokesman Don Litchfield reminded the committee that North Dakota industry "is experiencing hard times" and said the "addition of yet another asbestos program to the existing regulatory burden would be expensive, nonproductive and unnecessary." Litchfield's position was endorsed by Curt Peterson, executive vice president of Associated General Contractors of North Dakota.

Ultimately, the language adopted limits application "only to asbestos abatement conducted in buildings including but not limited to schools, government facilities, medical facilities, public buildings, residential buildings, motels, hotels, restaurants, or other commercial buildings, and any other buildings to which the public has unguided access or for which employee protection is not provided under the Federal Occupational Safety and Health Act."

The legislation now goes to the North Dakota House, which must consider it before the session ends April 1, 1987, if the bill is to become law.

CALIFORNIA COURTS OF APPEAL SPLIT
ON EFFECT OF 'DEEP POCKETS' LAW

Some 6,000 asbestos injury cases now pending in California may be affected by a ruling this month of a state appeals court in Los Angeles. According to that decision, damage awards in those cases may be limited by a ceiling on non-economic damages (such as pain and suffering) which state voters approved last June.

A contrary decision, holding that the so-called "deep pockets" initiative could not be applied to cases already pending, was handed down last September by another state appeals court in San Francisco. The state Supreme Court let that decision stand, but did not preclude considering the issue later.

Under the "deep pockets" initiative -- officially known as Proposition 51 -- defendants in personal injury suits are liable for non-economic damages only in proportion to their degree of fault. Before that initiative was adopted, defendants were jointly and severally liable, meaning a city or town with so-called "deep pockets" could be forced to pick up the entire cost if other defendants were unable to pay.

The latest decision, holding Proposition 51's effect retroactive to cases pending at the time of adoption, involved the blinding of an 18-year-old who was mixing chemicals for homemade firecrackers. Trial courts in much of Southern California will be bound by the decision, pending further Supreme Court action. Trial courts in Northern California will be bound by the earlier, and opposite, decision. Elsewhere, trial courts are free to adopt either ruling.

In the San Francisco opinion, Justice Harry Low found no clear intent of the electorate for retroactive application of Proposition 51, and so held that the traditional presumption against retroactive application of a new law would apply. In the Los Angeles opinion, however, Justice Lynn Compton found Low's argument unpersuasive and said it frustrated the legislative will of the voters by postponing the effect of their decision by an average of several years.

CONNECTICUT ASBESTOS JUDGMENT SEEN
PENETRATING THE CORPORATE VEIL

A recent Connecticut court decision holding both building owner and abatement contractor personally liable for inadequate response to an asbestos hazard has been cited as an important precedent in piercing the so-called "corporate veil." Judge T.F. Gilroy Daly sentenced both owner and contractor to one-year prison terms, reduced to 30 days, \$25,000 fines, five years' probation and 1,000 hours required community service. The contractor was also required to attend an asbestos response seminar at his own expense.

Writing for the Asbestos Information Center at Tufts University, Michael H. Hicks of the Washington, D.C., law firm of Leftwich, Moore and Douglas, noted: "In the past, individuals could hide behind their businesses. It is now clear that guilty individuals will not be shielded by the corporate veil.

"This imposition of individual criminal liability creates a host of new problems that building owners and contractors must evaluate before undertaking any kind of abatement work....

"The solution to this new liability crisis is to hire competent individuals and companies to perform necessary abatement work in a manner consistent with federal, state and local guidelines. Disregard of this recommendation may result in a wave of additional encounters with jurists like Judge Daly."

COMPUTERIZED ASBESTOS INVENTORY PROCESS
MAY SATISFY EPA COMPLIANCE REQUIREMENTS

A computerized information management system for identifying asbestos-bearing material, its location, condition, accessibility and quantity, and the cost of dealing with it -- developed by the experts who put together the National Institute of Building Sciences' (NIBS) asbestos specifications -- may meet all present and future compliance requirements of the Environmental Protection Agency.

According to its developers, Dr. Robert N. Sawyer and Roger G. Morse, the process is probably best implemented by architects, who are "most capable of performing asbestos risk assessment and determining control strategies because of their knowledge of where, and in what form, asbestos is likely to be found in buildings."

In an article published last month by the American Institute of Architects (AIA), Sawyer and Morse observe that "architects are not currently able to get involved with asbestos, however, if they also wish to carry professional liability insurance."

Yet determining "whether identified asbestos should be removed remains one of the principal challenges of building owners and their professional consultants." The problem is compounded by "severe emotional and political influences that plague the current situation" and the absence of effective guidance from EPA.

Nevertheless, Sawyer and Morse argue that their approach should provide "more than a tool for inventory and the development of an asbestos control strategy. It also supplies the basis of a record-keeping system for administrative applications. The survey and analytical data that provide inventory information should satisfy any compliance requirements, such as those generated by the EPA."

Sawyer and Morse base their arguments on the assumption "it is now generally accepted that the discovery of asbestos-bearing materials within a structure does not necessarily indicate high hazard or imply the material need be removed." Instead, the developers contend that "current thinking indicates the first step should be analytical, assessing contamination potential and examining various options for controlling the release of asbestos fibers."

This "direct input" process is based on the hands-on experience of Morse, president of Entek Environmental and Technical Services of Troy, N.Y. -- the company retained to draft the NIBS specifications -- and Sawyer, a medical doctor and engineer who supervised the first asbestos removal project in the country at the Yale School of Architecture, and the largest, the New York City school system.

Elements of the Sawyer/Morse Process

As published in AIA's Architecture magazine, the Sawyer and Morse proposal is broken down into three distinct parts, using hand-held and stationary computers at every stage. These elements are:

- (1) Survey of the structure and suspect materials by personnel following a sequence of computer-based queries.
- (2) Collection of the information assembled in a readily accessible inventory database.

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COMPUTERIZED ASBESTOS INVENTORY PROCESS (Cont.)

(3) Graphic projection of a summarized assessment of materials and control requirements on computer screens, "quite literally providing a picture of the problem and highlighting priorities for action."

The assessment, in turn, becomes a visual matrix, "an easily understandable stratification of contamination potential, exposure and recommended control sequence." As asbestos-bearing materials are patched and repaired, or removed and replaced by non-asbestos material, the matrix will reflect the changes.

Facility managers can also use the matrix to quickly estimate the amount and type of work that must be done. Personnel demands can be charted, and the matrix can set priorities for asbestos work control schedules.

As a result, the developers say, asbestos control can take place, not in a climate of "great anxiety on the part of building owners, buyers, tenants and workers," as is now the case, but in the context of sensible long-term maintenance programs.

DISPOSAL POSES NEW, DIFFICULT PROBLEM
FOR ASBESTOS REMOVAL CONTRACTORS

Ninety-nine percent of the asbestos fibers entering the atmosphere do so as a consequence of transporting and disposing of asbestos waste following abatement action, according to the Environmental Protection Agency's Emission Standards and Engineering Division.

The division has concluded that only one cancer case per year is being caused by all manufacturing, milling, mining, demolition and removal activities, while 80 cases per year are presumably being caused by the asbestos torn out of buildings over the past 10 years and dumped in improperly sealed waste sites.

Almost 100 million tons of asbestos have been deposited in pits, tailing piles and dumps all over the country, according to John Copeland, the lead engineer in the emissions division study. Another 38 million will be ripped out of buildings over the next 30 years. The waste is stored in plastic bags or other containers that eventually rupture and spill loose asbestos fibers into the soil to be carried away into the air and water.

Emission concentrations -- and the level of danger -- are consequently much higher around the 44 hazardous waste sites and 12,677 sanitary landfills where the mineral is stored than around the more numerous, but more tightly controlled worksites where asbestos is used or removed.

A new regulation proposed by the emissions division would require that the asbestos be buried deeper in landfills. Current regulations on landfilling asbestos call for an "intermediate cover" of six inches of compacted material, and a final cover of 24 inches. The proposed regulation would require an initial 18 inches, with a final cover of 36 inches.

At present, disposal site operators may substitute application of a "resinous or petroleum-based dust suppression agent" for cover requirements. The proposed regulations would require "at least two inches of Portland concrete or asphaltic cement."

Moreover, the amended emissions standard would require contractors to maintain records of waste shipments and require waste site operators to document "improperly contained waste" and report it to EPA.

FIBERS & FILLERS

NEW JERSEY DEPARTMENT OF HEALTH is cutting in half the eight-hour permissible occupational exposure level for asbestos promulgated just last June by the U.S. Occupational Safety and Health Administration. The OSHA 0.2 fiber per cubic centimeter of air is under court challenge. The New Jersey level of 0.1 fiber, which applies to public employees whose jobs could bring them into direct contact with asbestos fibers, seems to be immediately effective. The Department is now also drafting standards to cover indirect asbestos exposure.

ASSOCIATED GENERAL CONTRACTORS OF AMERICA and the New York State Council of Building and Construction Trades agree on one thing at least: New York should simply incorporate by reference the asbestos regulations of the U.S. OSHA and EPA rather than draft its own regulations under a 1986 state law. The unions have only minor problems with the federal regulations, Henry Landau, secretary-general of the council, said at a January hearing. The federal regulations are enough to prevent "any small contractor with a pickup truck" from performing asbestos response work, Landau said. "We are sick of the unscrupulous contractors," he added.

CHICAGO'S COMMONWEALTH EDISON has decided to outfit its asbestos abatement workers in baby blue, rather than traditional antiseptic white protective garb, hoping to allay public fears about the danger. Rather than having frightened workers, school children and others calling to find out if they're in any danger from a response project, the utility simply took some good advice that any designer -- or parent -- could supply: No color is more soothing than baby blue.

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