PLAINTIFF'S EXHIBIT
CAP-1704

Info.

AIA NORTH AMERICA

NEWS & NOTES

December 31, 1984

AIA/NA AND BCTD SUBMIT COMMENTS TO OSHA ON ASBESTOS STANDARD FOR CONSTRUCTION INDUSTRY

By separate letters dated Dec. 17 and Dec. 11 respectively the Asbestos Information Association/North America (AIA/NA) and the Building and Construction Trades Department (AFL-CIO) submitted comments to the Occupational Safety and Health Administration (OSHA) pertaining to an asbestos standard for the construction industry. Both organizations emphasized that there are a number of important propositions which are fully supported by the primary interested parties, and that these propositions were endorsed during the public hearing conducted last summer by OSHA on a proposed asbestos standard.

AIA/NA identified the following propositions where there appears to be no disagreement:

- The unique nature of the construction industry merits a separate standard that will in some ways vary from the general industry standard.

- OSHA should issue such a separate construction standard as expeditiously as possible consistent with the constraints posed by legal requirements for fair notice to all interested parties.

- The low exposure typically encountered in installation of new products when appropriate work practices are employed support a regulation that requires minimal, if any, ancillary requirements when such work practices are mandated and implemented.

- For certain major removal, renovation and demolition jobs, the potential for high exposures over extended duration requires OSHA to mandate a more comprehensive set of requirements to assure such activities are well controlled.

OSHA was urged to move expeditiously in resolving the need for separate regulation of the construction industry.

ASBESTOS INFORMATION ASSOCIATION

1745 Jefferson Davis Highway, Crystal Square 4, Suite 509
Arlington, Virginia 22202 • (703) 979-1150

EPA Responds To NRDC Asbestos Brake Petition

In the Federal Register of Dec. 19, the Environmental Protection Agency (EPA) responded to the petition filed under section 21 of the Toxic Substances Control Act (TSCA) by the Natural Resources Defense Council (NRDC) to ban the use of asbestos in automobile and truck brakes (N&N, Nov.). While not granting a ban as requested by NRDC, EPA's response initiates a proceeding to address the risks which may be posed by this use of asbestos.

To respond to the NRDC petition, EPA conducted a review of information pertaining to the use of asbestos in brakes. The Federal Register notice presents a summary of the Agency's review, focusing on the risks posed by the use of asbestos in brakes, and on the availability of substitutes.

EPA estimates that about 2,750 people are potentially exposed to asbestos during primary manufacturing of brake friction materials, and that about 550,000 people are potentially exposed to asbestos during servicing and repair of vehicle brakes. EPA also noted it has evidence that motor vehicle braking most likely contributes between 0.23 to 1.3 percent of the concentration of asbestos in the ambient air. The conclusion is then drawn that, "Both general population and workplace exposures to asbestos fibers from its use in brakes may result in an increased number of asbestos-related illnesses, including cancer."

EPA's response then discusses the availability of substitutes for asbestos in brakes, addressing substitutes for heavy vehicle brake blocks, light and medium vehicle drum brake linings, heavy vehicle disc brake pads, and light and medium vehicle disc brake pads, in turn.

Concerning heavy vehicle brake blocks, braking components that are riveted or bolted to the insides of brake shoes to provide protection against the heat and wear caused by braking, the response notes that both semimetallic and aramid fiber products are available. However, semimetallic blocks are considered to be inferior to asbestos ones in resisting wear, minimizing brake fade, and in their erratic performance at different temperatures. Aramid fiber products are more expensive, and there is not sufficient evidence to determine whether aramid fiber products will be as effective as asbestos.

Semimetallic and aramid fiber products are also available as substitutes for asbestos drum brake linings, but the response notes that the semimetallics tend to perform erratically at different temperatures, fade, and produce more noise than asbestos-based linings. Concerning aramid fiber products, EPA's evidence indicates that, besides being more expensive, their large volume production may require substantial retooling by brake manufacturers, and therefore they may not be available in substantial quantities for several years.

For heavy vehicle disc brake pads, semimetallic substitutes are available for asbestos. The semimetallics are not considered to be good general replacements for asbestos disc brake pads in heavy vehicles because semimetallics perform better than asbestos only in hostile, high-friction, high-heat environments. For light and medium vehicle disc brake pads, semimetallics cannot substitute for asbestos in every application because of inferior performance characteristics. The response states that EPA has information which indicates that semimetallic disc brakes should be used only in cars with power brake systems because otherwise they may not provide enough stopping power.

EPA's response concludes by stating that the NRDC petition is being granted because the Agency believes that the use of asbestos in brakes does present risks to human health. EPA will analyze the exposure from uses of asbestos, the risk presented by those uses, and the substitutes for such uses. EPA will also gather information on the price, efficacy, and availability of substitutes for asbestos in brakes. After analysis of this information, EPA will determine what further action is appropriate to address the risks which may be posed by this use of asbestos. EPA's conclusion goes on to say:

> Based on information reviewed to date, EPA is not prepared to make an unreasonable risk finding for an immediate ban of all uses of asbestos in brakes at this time. Effective substitutes may not be available for certain applications of asbestos in brakes and substitutes for other applications of asbestos in brakes are not available in sufficient quantity because of limited production capacity. Retooling may be required to make substitutes available in large volumes.

EPA closes its response by inviting the public to submit comments on issues relating to the petition on or before March 18, 1985.

ONTARIO MINISTRY HOLDS ASBESTOS CONSTRUCTION STANDARD MEETING

On Dec. 17, Ontario's Ministry of Labour held a public meeting to permit public comment on its proposed regulation entitled "Asbestos on Construction Projects and in Buildings and Repair Operations." The proposal published in The Ontario Gazette of Nov. 17, would establish a performance-orientea occupational regulation of asbestos which could potentially apply to all non-mining and non-manufacturing operations involving asbestos (N&N, Nov.).

A review of the proposed regulation was presented by the Ministry's James Henderson. He pointed out that the current proposal differs substantially from an earlier version first proposed in Aug. 1982 and revised in Jan. 1983. The earlier proposal, for example, only distinguished between two types of exposure situations involving asbestos. The current proposal distinguishes three exposure situations, each requiring a different level of control measures. The current proposal also incorporates many of the recommendations made by the Ontario Royal Commission on Asbestos, and, for the first time, places responsibilities upon building owners for proper procedures to be used for work involving friable asbestos-containing materials.

AIA/NA participated in the meeting with written comments submitted to R. H. Ramsay, Minister of Labour, and with comments from the floor. In general, AIA/NA agrees with and endorses the control by procedures approach taken by the proposed regulation. However, because of the substantial re-working of the proposal, AIA/NA requested an extension of time in which to review the regulation in depth and, possibly, file additional comments for consideration by the Ministry before the proposal is finally adopted.

The request for additional time in which to study the proposal thoroughly and submit comments was repeated by over a dozen other speakers from the floor. Accordingly, at the conclusion of the meeting, Ministry officials announced that the comment period for the new proposal would be extended to Feb. 28.

HAZARDOUS WASTE LAW EXTENDED FOUR YEARS

The Resource Conservation and Recovery Act (RCRA), the major federal law governing the disposal of hazardous wastes, was reauthorized for four years, 1985-1988, by Public Law 98-616. Signed by the President on Nov. 9, P.L.98-616 provides legislative guidance on issues not yet addressed by existing RCRA programs.

Once such issue is the regulation of generators, transporters, and disposers of wastes from generators of 100-1,000 kilograms per month. Previously not regulated by RCRA, small quantity generators would now be subject to regulations which EPA must promulgate by Mar. 31, 1986. The standards may vary from those for large quantity generators but most be sufficent to protect health and the environment. In particular, under P.L. 98-616 EPA should examine whether it is possible to simplify, reduce the frequency of, or eliminate the existing reporting and recordkeeping requirements and still provide adequate protection. Distinctions may be made from requirements for larger generators, and among classes of small quantity generators or of wastes produced by them.

P.L. 98-616 also defines the regulatory approach to be taken towards mining waste and other special wastes such as fly ash wast, bottom ash waste, slag waste, flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, and cement kiln dust waste. In promulgating regulations for these wastes, EPA is authorized to modify the requirements relating to liquids in landfills, prohibitions on land disposal, minimum technological requirements, deep well injection, corrective action, and interim status surface impoundments for these wastes as long as such modified requirements protect human health and the environment.

P.L. 98-616 recognizes that even if some special wastes are determined to be hazardous, it may not be necessary or appropriate, because of their special characteristics and other factors, to subject such wastes to the same requirements that are applicable to other hazardous wastes, and that protection of human health and the environment does not necessarily imply the uniform application of requirements developed for disposal of other hazardous wastes.

EPA Declines Additional Regulation Of Asbestos In Schools

In a letter dated Nov. 30 to John J. Sweeny, President of the Service Employees International Union (SEIU), John A. Moore, the Environmental Protection Agency's (EPA) Assistant Administrator for Pesticides and Toxic Substances, outlined what further steps the Agency would take to control the risks associated with asbestos in schools and other buildings. On Nov. 13, 1983, SEIU petitioned EPA under the Toxic Substances Control Act (TSCA) to take additional action concerning this issue. Failing to receive what it considered an appropriate response, SEIU on Sept. 11 filed suit against EPA, asking the U.S. District Court in Washington, DC to order EPA to propose rules on asbestos in schools and other buildings within 30 days (N&N, Sept.).

EPA's letter begins by stating that although the Agency believes there is a serious risk presented by asbestos, its difference with SEIU is on the most expedient and effective approach to dealing with the problem. "We do not agree that Federal regulation is the best approach for deciding whether to abate potential asbestos hazards in schools and other public and commercial buildings," the letter said. "We believe that abatement decisions are best made at the local level with EPA guidance and assistance and that these decisions are being made and implemented."

EPA further believes that there may be a need for federal regulations protecting public employees not covered by Occupational Safety and Health Administration (OSHA) requirements during asbestos abatement activities. EPA intends either to propose a rule in June 1985 to establish requirements to protect abatement workers or to explain the reasons that have made rulemaking inappropriate.

EPA is also investigating whether it is feasible to promulgate a rule requiring persons to follow certain procedures and work practices during all asbestos abatement projects to limit asbestos exposure to building occupants as well as workers. If the Agency can determine that the rule can be implemented and that the necessary statutory findings can be made, it intends for this rule to proceed on the same schedule as the workers protection rule discussed above.

A press release dated Dec. 4 from SEIU President Sweeney was critical of the EPA letter. "After more than a year of debate and public hearings, the Environmental Protection Agency has decided not to issue Federal regulations for determining whether cancer-causing asbestos materials in schools are hazardous, for requiring that corrective actions be taken when such materials are found, or for requiring inspection for and removal of asbestos materials in other public and commercial buildings."

"The behavior of the EPA on this entire issue is absurd," Sweeney said. "They admit the stuff is highly toxic. They admit the problem is of immense proportions. And yet they continue to delay or deny remedies." He continued, "The ultimate absurdity is that EPA has created a high level of concern about asbestos, but refuses to tell anyone how to deal safely with the substance."

OMB ADVOCATES CPSC REDUCTIONS

In preparation for the Fiscal Year 1986 budget, the Office of Management and Budget (OMB) has directed the Consumer Product Safety Commission to cut its budget by 30 percent and lay off 25 percent of its work force, including most of its field staff. Implementation of OMB's order would reduce CPSC's current budget of $36 million to $25 million and would cut staffing from 587 employees to 440.

CPSC is appealing the OMB directive, proposing that its budget be frozen at the FY 1985 level minus the 5 percent pay reduction being requested of all government departments and agencies.

EPA, OMB in asbestos squabble

THE GETTYSBURG TIMES, DECEMBER 24, 1984

WASHINGTON (AP) — A proposal to ban asbestos has turned into a squabble between two government agencies over how much a human life is worth — and whether a life saved in the future is worth a life saved today.

The Environmental Protection Agency wants an immediate ban on the use of asbestos in cloth, roofing and flooring materials, vinyl tile and cement. It also is proposing declining quotas on imports and production of asbestos for 10 years; after a decade that too would be banned.

But the Office of Management and Budget says the cost of the ban is too high when compared with the number of lives that would be saved.

According to OMB, EPA's proposal would cost $5 million to $7 million for each life saved.

EPA won't put such a price tag on the cost of the ban. But the proposed regulation suggests $900,000 per life, although that figure is now outdated.

The two agencies are using different methods to calculate the cost of the asbestos ban and OMB, which must approve new regulations, is arguing that its method is right.

OMB also says the $2.7 billion in costs cited by EPA would be incurred over 15 years while the number of lives that would be saved — 3,011 — is computed over 90 years, starting in 1995.

The costs are costs to the economy in terms of unemployment, use of possibly inferior substitute materials and possible loss of capital investments by producers of asbestos products.

"They want us to discount lives. We don't like that," said an EPA official who spoke on the condition that he not be identified. "They've never done that before."

But an OMB official disputed that contention. "They (EPA) do. We do," he said. "Everyone else does in virtually every other regulatory decision. You have to do it to get a common measure."

The OMB official, who also spoke on condition that he not be identified, said his agency hopes to wind up talks with EPA in about two weeks.

Asbestos fibers in the air can cause lung cancer and other crippling lung diseases that often do not show up until 20 years after exposure.

More than 8,000 people will die each year until the end of the century because of previous exposure to asbestos, predicts Dr. Irving Selikoff of the Mt. Sinai School of Medicine.

Use of asbestos, valued for its flameproof, insulating and wear-resistant qualities, has declined drastically. In 1983, an estimated 239,000 tons were used, only about a quarter of the peak in the early 1970s. Most comes from the work of 3,000 to 4,000 miners in Quebec.

OMB Bid Advances To Screen Agency Rules

White House Officials Approve Proposal

THE WASHINGTON POST

FRIDAY, DECEMBER 21, 1984

By Felicity Barringer
Washington Post Staff Writer

High-ranking White House officials have approved an Office of Management and Budget proposal to increase OMB's control over government policy-making by screening agencies' regulatory proposals before the rules are drafted the same way OMB now screens their budgets, Reagan administration officials confirmed yesterday.

OMB officials familiar with the plan expect President Reagan to approve it quickly, adding new weight to OMB's authority by allowing it to look over the shoulders of executive-branch officials as they plan and draft regulations, many of which are mandated by Congress or the courts.

Since 1981, a Reagan executive order has given the budget agency the power to review and request changes in proposed and final regulations from all agencies except the independent regulatory commissions.

The new policy would expand that role, giving OMB another crack at a proposed rule—before an agency even begins drafting it—and expanding the universe of rules under OMB's control to include those "likely to establish an important new policy or legal precedent or . . . of unusual interest to the agency head, other federal agencies, the director of OMB or the public," according to a paper prepared in connection with the proposal, which was discussed by the Cabinet Council on Economic Affairs last week.

A knowledgeable OMB official said he expects a formal announcement of the new procedures before Christmas.

OMB now receives formal semiannual "regulatory calendars" in which each agency lists its planned rules, but these documents have little, if any, binding effect on the agencies. The new proposal would give OMB a role in approving these documents, and make the documents as binding as agency budgets are now.

Before the Reagan administration took office, regulations by executive-branch agencies would be drafted within the agency, then published in the Federal Register as "proposed rules" on which the public could comment.

In 1981, OMB was inserted into this process, reviewing proposed and final rules before they were published under the authority of Reagan's executive order and legislation passed in the last year of the Carter administration.

All Cabinet agencies except the Defense Department would be subject to the new policy; most DOD regulations are related to military procurement and as such would be exempt, an OMB official said. The policy would also apply to the Environmental Protection Agency, the Equal Employment Opportunity Commission, the General Services Administration, the Office of Personnel Management and the Veterans Administration.

It would still not apply to independent regulatory agencies, such as the Federal Communications Commission and the Federal Trade Commission.

The 1981 executive order exempted rules from review if the OMB review would conflict with judicial or statutory deadlines; the new proposal, according to the "talking points" paper, singles out rules with such deadlines as "priority regulatory actions" subject to early review by OMB.

According to the paper, "Under this Bulletin, the principal executive branch agencies will describe their proposed priority regulatory activities, including pre-rulemaking activities. These proposals will be reviewed like agency budget submissions, and will be compiled for publication in April as the Administration's Regulatory Program for the coming year."

"The purpose of this is for this administration this year and subsequent administrations . . . to say what they're all about and what purposes, objectives and priorities they have in rulemaking," said the OMB official. "The purpose is not for the administration to say it to itself but to Congress and the public."

However, Shannon Ferguson, technical director of OMB Watch, a private group that monitors OMB's actions, said the proposal would "obviate the need for public comment on a rule . . . ."

D.C. Officials Sue Asbestos Firms For $400 Million

By Ed Bruske
Washington Post Staff Writer

The D.C. government filed a $400 million lawsuit yesterday against manufacturers and distributors of asbestos to recoup the expected multimillion dollar cost of removing the cancer-causing material from the city's public schools and facilities.

In filing the suit, the District joins Maryland, Pennsylvania and several cities, including Baltimore, in seeking damages against the asbestos industry in what authorities believe is the beginning of a tide of similar lawsuits nationwide.

Officials here and elsewhere contend that asbestos makers for years distributed the material knowing its potential hazards, and that local governments must now foot the bill for removing it to meet federal health standards.

City Administrator Thomas Downs said the city expects to spend "in the neighborhood of $20 million . . . containing asbestos. We're saying that the manufacturers have a responsibility for the complete, safe removal of asbestos from public buildings."

The D.C. school system has found crumbling asbestos in 162 of its 189 school and administrative buildings, although none of the facilities has been closed down because of contamination. Parts of some buildings have been cordoned off in an effort to protect school children and staff workers.

School officials have asked the City Council for $5.8 million to finance the asbestos cleanup.

Downs said at least 100 buildings at the Lorton Reformatory in Fairfax County contain asbestos and the city has taken steps to alleviate the hazard.

Industry officials could not be reached for comment yesterday about the District's suit. In the past, some industry officials have argued that the presence of asbestos does not constitute a problem that requires removal.

The cleanup here and elsewhere comes at a time when the federal government is scaling back funding to remove asbestos from the nation's schools while the U.S. Environmental Protection Agency is cracking down on local school boards where asbestos has been found.

Asbestos also has been found in suburban schools here. The EPA in September proposed fining the Arlington County school system $14,600 for failing to post warning notices of asbestos presence in two schools.

In September, Maryland filed suit against 47 asbestos firms over material installed in public buildings, while authorities in Virginia say they are planning to file a similar court complaint.

In their suit, filed in D.C. Superior Court, city attorneys claim that the manufacturers are "responsible either through negligence or in some other actionable manner" for the hazards now caused by asbestos in public facilities.

The suit contends that industry officials for years "suppressed, discouraged, and/or retarded research and publication" of information concerning the link between asbestos and various diseases and "actively concealed and misrepresented such relationship."

According to the suit, the companies involved "adhered to an industry-wide practice of refusing to provide necessary warning as to the hazards presented by exposure to asbestos."

"The facts that are becoming known are that the manufacturers had substantial knowledge about the dangers," Downs said. "If they knew that, they had a responsibility toward public facilities."

Downs stressed that the ultimate cost of dealing with asbestos may not be known for many years because the city now is containing the material in most buildings, rather than removing it completely. Future generations will be forced to continue with the containment efforts, unless it is totally removed.

Local governments are under some pressure to file their suits now because of the ruling of a federal judge in New York involving

> *"The facts that are becoming known are that the manufacturers had substantial knowledge about the dangers."*
>
> —City Administrator Thomas Downs

the bankruptcy filing of Manville Corp., the largest manufacturer of asbestos in the western hemisphere. The judge has ordered that claims for property damage against the company be filed by next month.

Downs said the city has already filed a claim in that case.

A national coalition of attorneys is forming to represent any of the nation's 4,400 school boards which decide to sue the industry.

"The problem is obviously one of nationwide scope," said Neil Peterson of Philadelphia, one of the attorneys involved. "The only question is how many individual school boards will respond and how many need to."

The D.C. government sued the following companies:

Owens-Corning Fiberglas Corp., Washington; GAF Corp., Wayne, N.J.; The Celotex Corp., Washington; Eagle Picher Industries, Washington; Armstrong World Industries, Washington; Keene Corp., Washington; Fibreboard Corp., Portland, Ore.; Southern Textile Corp., Charlotte, N.C.; Owens-Illinois Inc., Washington; Certainteed Corp., Valley Forge, Pa.; U.S. Gypsum Co., Washington; W.R. Grace & Co., Washington; Combustion Engineering, Inc., Washington.

Also, National Gypsum Co., Washington; U.S. Mineral Products Co., Stanhope, N.J.; Standard Insulations Inc., Kansas City, Mo.; The Charles Pfizer & Co. Inc., New York; Georgia-Pacific Corp., Atlanta; Pryor Industries Inc., Mesquite, Texas; C. Tennant & Sons, New York; H.K. Porter Co., Pittsburgh; Nicolet Industries Inc., Ambler, Pa.; Asten Sprayed Insulations Inc., Wheeling, Ill.; Air-o-Therm Application Co., Chicago; Wilson Insulation Co., Mt. Prospect, Ill.; Forty-Eight Insulations, Inc., Wilton, Conn.; Rapid-American Corp., New York; The Flintkote Co., Stamford, Conn.; Raymark Industries, Inc., Trumbull, Conn.; Pittsburgh Corning Corp., Pittsburgh; Lake Asbestos of Quebec Ltd., Wilmington; Turner & Newall Ltd., Manchester, England.

Also, J.W. Roberts Ltd., Manchester, England; Cape Asbestos, Johannesburg; Bell Asbestos Mines Ltd., Quebec; Asbestos Corp., Montreal; Lac D'Amiante du Quebec, Wilmington; Carey-Canada Inc., Quebec; Brinco Mining Ltd., Vancouver; and Turner Asbestos Fibres Ltd., Manchester, England.

Court Rulings May Discourage Firms Facing Suits From Seeking Chapter 11 Aid

By Jonathan Dahl
Staff Reporter of The Wall Street Journal

Manville Corp.'s controversial tactic of using the bankruptcy court system for protection from thousands of lawsuits apparently won't be easy for other companies to imitate.

The Denver-based maker of paper and building products filed under Chapter 11 of the federal Bankruptcy Code two years ago without being broke, but claimed it needed protection from 16,500 lawsuits from individuals claiming health damage from exposure to Manville-made asbestos products. The filing generated widespread public concern that other companies might someday try the same strategy.

But two recent federal court rulings have upheld a change in the bankruptcy code this year, requiring district courts to handle personal injury lawsuits once assigned to bankruptcy courts. Not everyone agrees, but many bankruptcy law experts say that will make filing for Chapter 11 protection less appealing in some circumstances.

Under Chapter 11, a company continues to operate but has court protection against creditors' lawsuits while it tries to work out a plan for paying debt.

The bankruptcy code change may not hinder Manville or other companies currently deep into bankruptcy-law proceedings. But it could have important ramifications for companies that face thousands of personal injury suits in the future.

"I think it's definitely less attractive now" to duplicate Manville, says Vern Countryman, a bankruptcy-law professor at Harvard University.

Debate Over Manville

To be sure, Manville's case is hardly enviable, because the proceedings have stalled for months. But it's been a source of intense debate. The company contends its filing benefited victims by ensuring equal compensation. Critics, however, say the filing could reduce the company's obligations to asbestos victims.

The filing has allowed Manville to try to consolidate its lawsuits into one claim in bankruptcy court. Outside Chapter 11, the company had to try each suit separately, a considerably more expensive process.

Last summer, however, Congress ordered that all personal injury and wrongful death suits be tried in district courts. It wasn't immediately clear how the higher courts would interpret that, but Judge William Hart in Chicago last month and Judge John Keenan in New York this month affirmed the change.

The judges, though, denied efforts to transfer personal injury claims in current Chapter 11 cases immediately into district court. Instead, they ruled the cases can be transferred after the companies make compensation offers.

Manville and other companies, thus, still could make adequate compensation offers, but legal experts say the advantages of filing Chapter 11 have been reduced.

Spreading Out Lawsuits

"The whole concept before was to make the process as efficient as possible for the companies," says Lawrence King, a bankruptcy-law expert at New York University. "Now, this could spread out their lawsuits if people don't like what they get in bankruptcy court. That could make things much more expensive and time consuming."

Manville and some attorneys don't agree. They contend district courts will eventually shove personal injury cases back to bankruptcy courts.

"What district judge wants to handle all that? It's too much work," says one attorney familiar with Manville's case. But other attorneys counter it's unlikely all district judges would ignore the intent of a statute, and point out that neither Judge Hart nor Judge Keenan did.

Ironically, Congress's original change in the bankruptcy code was apparently accidental. At the time, the lawmakers were actually more concerned with the jurisdictional powers of bankruptcy judges than with the Manville case, say some congressional aides.

As previously reported, an apparent wording error resulted in the bankruptcy code change applying to both pending and future cases, when it was supposed to apply only to future cases.

"In hindsight, people might say now it (the change) was all planned out," says a former aide involved in the legislation. "The fact of the matter is that most of this happened at the spur of the moment, and that there wasn't any grand scheme."

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Ruckelshaus responds to editorial on asbestos

In a recent editorial you suggest that the EPA "seems to be rather laid back" about asbestos in the nation's schools. That is not so. We intend to fully and promptly implement the $50 million program of grants and loans for asbestos cleanup Congress has approved by the June 1985 deadline.

Meanwhile, the EPA will continue to aggressively implement the existing program, one that appears to be working well according to a recent survey. We provide across-the-board technical assistance to schools with asbestos problems and insist that all schools complete inspection of their premises and notify parents, employees and faculty when friable asbestos is found. About two-thirds of all schools in this country have already complied with these requirements and we believe most of the remainder will do so during this academic year.

We cannot set national guidelines for the cleanup process because each case of asbestos contamination is unique. Removal works best in some cases and encapsulation works best in others. Cleanup strategies must, therefore, be developed on the local level by those closest to the problem. National guidelines would, in any case, take at least two years to develop and no such delay is acceptable.

In a time of very tight constraints on the federal budget, the main financial initiative for actual cleanup must also come from local school systems. They should not wait on federal funds, which are targeted only toward school districts least able financially to undertake remedial measures, or hope for larger appropriations in future fiscal years.

Indeed, the question might be raised of whether it makes sense for citizens to send their taxes to Washington only to get them back again minus administrative expenses, or whether they should pay for containment and removal programs they can tailor to their own needs in the first place.

Contrary to popular opinion the asbestos problem, though serious, is not an emergency. It can be controlled by the existing program, which is working exactly as we intended. EPA will continue to upgrade its technical assistance efforts and will enforce the asbestos regulations with the greatest vigor against schools which fail to inspect their premises. Working together we can make the schools of America safe for all who work and study there.

William D. Ruckelshaus, administrator, Environmental Protection Agency, Washington, D.C.

NJ 'Cigarette Ruling' Seen Having Little Effect on Asbestos Insurance

By SUSAN BANHAM
Journal of Commerce Special

A recent ruling by a U.S. District Court Judge in New Jersey stating that the warning on cigarette packs does not prevent smokers from suing the tobacco companies, hasn't had much of an effect on product liability insurers. A few years ago, many of the product liability insurers of asbestos companies tried to convince the tobacco industry to assume some of the liability in their asbestos exposure claims.

In fact, three years ago, the Commercial Union Insurance Companies filed cross-complaints against the tobacco industry as part of its defense from numerous asbestos claims filed against them. The insurers at the time contended that claimants alleging asbestos exposure-related disease complicated their injury further by smoking cigarettes.

According to a spokesperson at Commercial Union, these cross-complaints have been shelved because of "constant judicial roadblocks."

The spokesperson added that Commercial Union Companies have "really not involved themselves anymore in the issue."

The recent Jersey Court ruling may have the possibility of an effect but "we are leaving it in our lawyers' hands."

The reason for Commercial Union's publicized involvement was largely the result of the actions of the then senior vice president for Commercial Union, William Bailey, who staunchly opposed the tobacco industry's "free-ride over something that is mostly the result of their product."

At the time, the claims were against the Pittsburgh Corning Co., then the largest asbestos company in litigation. According to Mr. Bailey, now an executive vice president with Litigation Services Inc., an automated legal services corporation in Boston, "The judge at the Pittsburgh Corning case was incorrect when he pronounced that it was an incontrovertible fact that exposure to asbestos fibers creates disease. This is absolutely wrong, not only legally but medically, economically and socially," he said.

Mr. Bailey added that the tobacco litigation involving asbestos "never truly got off the ground" as he would have very much liked. However, he noted that the case involving a New Jersey woman against the three major cigarette makers, Liggett Group Inc., Phillip Morris Inc., and the Lorillard Division of Loews Corp. has at least paved the way for thousands of other suits to be filed, such as the one about whether the companies must pay damages to seven smokers who contracted lung cancer, five of whom died.

According to Dr. Irving Selikoff, director of environmental sciences laboratories at Mount Sinai School of Medicine in New York and the man who is most closely involved with the study of cancer in asbestos workers who also smoke, "The combination of asbestos exposure and smoking cigarettes vastly increases the risk of lung cancer."

Dr. Selikoff added that "conclusive evidence through our extensive research on the subject has led us to believe that an asbestos worker who smokes has five times the risk of other people who smoke but are not exposed to asbestos."

This study was one of the prime reasons why Mr. Bailey had held to his cross-complaints against the tobacco industry. Now, with the recently approved bill by Congress, which President Reagan is expected to sign, establishing four new, effectively worded warnings for cigarette packs and advertisements, Mr. Bailey states, "It is quite obvious that the labels prior to these four were not at all adequate. Hopefully, in the future, it will be realized that no label is adequate because tobacco is addictive, not habit-forming. If the tobacco industry wants to advertise their product so that it induces people to become addicted, then they should contribute to damages — especially with regards to Commercial Union's shelved asbestos litigation," he urged.

The surgeon general has found that smoking is the major single cause of cancer deaths in the United States and is the leading cause of lung cancer, emphysema and chronic bronchitis. Researchers have also found that smokers are far more likely than nonsmokers to suffer cancers of the larynx, mouth, esophagus, bladder, cervix, kidney and pancreas.

According to survey results released last year by the U.S. Department of Health and Human Services, ignorance is the reason why some smoke. "Approximately 40 percent of the nation's high school seniors did not believe that there is a great health risk from smoking. Other polls have shown that nearly half of all women were unaware that smoking during pregnancy increases the risk of still-birth and miscarriage, and that nearly a third of Americans were unaware of the link between smoking and heart disease."

Yet, for years, tobacco companies have maneuvered successfully within Congress and key federal regulatory agencies, winning valuable exemptions from the Consumer Product Safety Act and the Toxic Substances Control Act. They have fended off attempts to coerce them to disclose the chemicals in cigarettes. And, they have maintained the federal price support program that guarantees farmers a minimum price for their tobacco.

"So," says Mr. Bailey, "it's time enough that those against the tobacco industry have their day in court."

Unfortunately, not everyone feels as strongly about the issue as Mr. Bailey. According to Stephanie Hoffman, assistant research director at the Defense Research Institute in Chicago, "This ruling by U.S. District Court Judge H. L. Sarokin in New Jersey most likely will not continue in other states. Nor do I see the ruling to have an effect on the shelved asbestos litigation. This ruling is most likely just an appeasement for the plaintiff and probably will not stand."

Dennis Connelly, senior counsel at American Insurance Association, stated that the ruling is just New Jersey's way of "torturing common sense."

Mr. Connelly added that people are warned of the risks involved with smoking and that if they chose to continue the habit, it is a "self-inflicted abuse." If the tobacco industry loses this case, which he very much doubts, then the defeat will "just be another indication of the deterioration of traditional defense."

He noted the three doctrines that would apply to the tobacco industry's defeat of the claim: contributory negligence, warning, and assumption of the risk. "If the individual is aware of the harm and still smokes anyway, it is of his/her own peril, he/she has assumed the risk."

And if the doctrines cannot be used as a basis for defense of the tobacco industry, states the Defense Research Institute's Hoffman, then "a whole new can of worms will be opened involving years of expensive litigation. And that, I just cannot foresee happening."

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