FROM THE DESK OF

Bill McCaig

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TO: J. W. Wolter

Interesting article from "Building Operating Management". Especially study information on last page.

Those studies may help sales people.

Bill

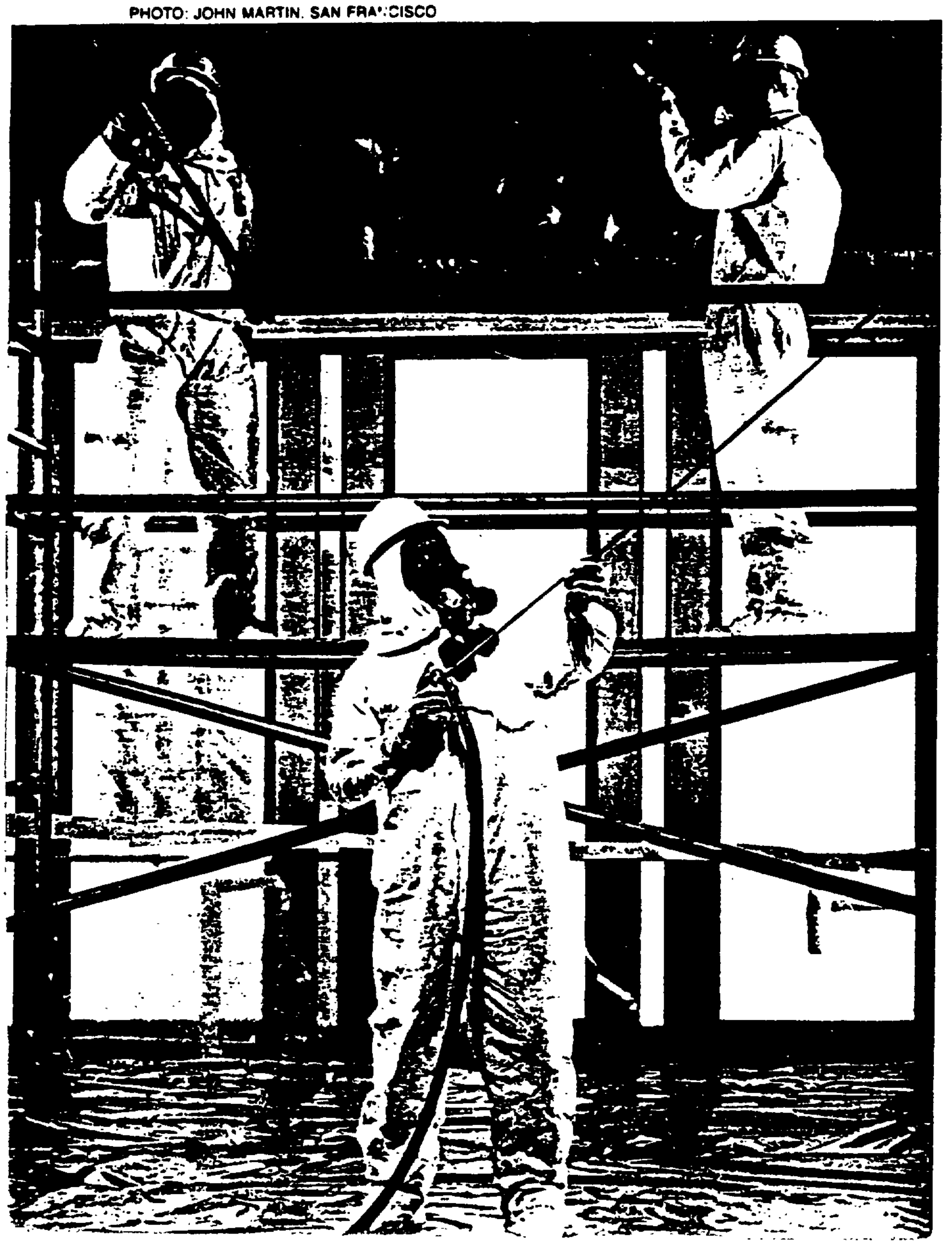
Attachment

by WILLIAM McFARREN

An Owner Primer on Asbestos Awareness

Precautionary measures necessary to protect against increased liability, higher insurance rates and a decrease in the market value of a given property

PHOTO: JOHN MARTIN. SAN FRA''CISCO



The increased public awareness of the asbestos issue in the last few years has made it imperative for building owners to understand the asbestos situation in their buildings in order to protect themselves from increased liability exposure, increased insurance rates, and decrease in the market value of their property.

Although asbestos has long been known as a health hazard, it was not until 1973 that the first regulations against its use in the construction of buildings were issued by the EPA. These regulations were revised in 1975 and 1978 so that the use of asbestos-containing material (ACM) in construction was phased out by 1978. It must be kept in mind that ACM in a pre-1976 building does not necessarily pose a health threat, especially if the material is in good condition. But even where the ACM poses no health risk, its presence in a building can be serious financial threat to the owner.

Left photo: Workers removing asbestos fireproofing in a San Francisco high-rise office building.

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Asbestos and tenant-landlord relations

It is common practice in current leasing arrangements that costs for maintaining and operating a building are "passed through" to the tenants. Since an asbestos abatement program is more costly than normal maintenance and is usually not something the tenant bargained for when agreeing to the "pass-through" clause in the lease, the tenant will not accept this cost. If it goes to arbitration or litigation the tendency is for the tenant to win.

What is of greater concern to landlord than losing on the "pass-through" issue is the possibility that the tenant can terminate the lease when the presence of ACM becomes known. This can be done through the "quiet enjoyment" clause or clauses which ensure that the building will be properly maintained. In addition to this, the long-term tenant's right to remodel could bring to bear EPA and local regulations dealing with renovation. This could effect the entire building and cause greater cost to the landlord and problems with other tenants.

The landlord would probably have little success in refusing approval of a tenant's remodeling plans on the basis of asbestos, as it would once again be something the tenant had not bargained for.

The indemnity clause in a lease can also be of significant concern. The landlord may be held partially or wholly liable for asbestos-related claims brought by tenants, tenants' employees or business guests of tenants. Although this may be a future possibility, it is a concern that cautious building owners should address now.

Asbestos and the commercial real estate market

Since the asbestos issue has received a large amount of attention, it is unlikely that the seller could successfully claim ignorance if the buyer brings suit requiring remedial treatment for an after-sale discovery of ACM in a building. It is becoming common for an asbestos report to be required in presale disclosure statements.

Another current trend is for the purchaser to put an "asbestos-free" clause in the sales contract. If the seller fails to disclose information about the asbestos in a building, he may be liable for future claims made by tenants against the new owner.

What is of the most pressing concern to owners of buildings found to contain asbestos is the abrupt decrease in the market value and the possibility that the property may be unsalable. The seriousness of this issue can be seen in the fact that Prudential, Aetna and Metropolitan have internal policies against considering any direct investments in buildings with ACM, or even making loans secured by such property.

Another example of harsh market consequences for buildings containing asbestos was the Arco Center in Los Angeles where the sale price had to be drastically discounted — and the building still remained difficult to sell.

Solutions to the asbestos dilemma

The first thing owners and managers of older (pre-1976) buildings should do to protect their investments is to dispel their own ignorance of the asbestos issue in general, and the situation in their building in particular. A good place to start is with the local office of the Environmental Protection Agency and the local Air Quality Management District. They can provide information about asbestos and the names of qualified professionals who can assist in surveying property for asbestos. It is quite often the case that by having a thorough survey and abatement plan available, the salability of the building can be preserved.

If significant amounts of ACM are found which decrease the building's value it may prove to be cost-effective to remove the asbestos. Although this can be costly, it is likely to be considerably less than the overall loss of market value. This is especially true when abatement work is conducted as part of a general renovation program.

If it is decided that abatement work is necessary, the owner should make his choice of who is to perform this work based on a critical examination of the con-

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THE ASBESTOS ISSUE

Check contractor insurance coverage – an issue that has been a problem for the asbestos abatement industry

(continued from page 99)

tractor's qualifications and references. An owner should choose a contractor in the same way as he would for any major project ... with only a few exceptions.

When inquiring about the contractor's insurance, it is important to realize that general liability insurance does not fully cover asbestos-related claims. The contractor should be able to provide asbestos insurance for the project. Insurance has long been a problem for the asbestos abatement industry, and the owner should be clear on what the contractor's insurance covers.

"Claims made" insurance only covers those claims which are made while the policy is in force. Since many such claims are made several years after the actual work was done, the "claims made" policy will probably have lapsed. "Occurrence" insurance covers any incident which occurs while the insurance is in force even if the claim is made years later when those concerned may be insured by some other company.

It is extremely important that the contract is clear on what it is that needs to be done, the schedule for completion, and any other details which may affect the work. This will ensure a thorough abatement project with a minimum of problems for both the owner and the contractor.

In conclusion, today's building owners and managers need to inform themselves on their particular asbestos situation, carefully look at their leasing and sales agreements as they may relate to ACM in their building, conduct a survey, and prepare an asbestos maintenance or abatement plan — and only proceed with abatement work with fully qualified asbestos abatement contractors. BOM

Study Qualifies Asbestos Health Risk...

Studies conducted in Great Britain and Canada provide additional scientific support for the conclusion that asbestos exposures in buildings are not likely to pose significant health risks, according to the Safe Building Alliance [illegible]

The first study found that asbestos levels in buildings with asbestos containing materials rarely were different from levels in buildings without such materials. The second suggests asbestos exposure in public buildings or urban air will not produce detectable disease.

A study conducted by the United Kingdom's Health and Safety Executive and the Department of the Environment finds that asbestos materials in buildings, even when there is forced air circulation over [illegible] products, are unlikely to give rise to measurable airborne asbestos levels. The study compared airborne concentrations of asbestos in 39 buildings containing asbestos materials with concentrations in outside air and buildings without asbestos materials.

The majority of the buildings contained sprayed asbestos insulation which the authors characterized as "the most friable (crumbly) and easily damaged form," or asbestos materials close to air circulation systems. Rooms then were selected that contained exposed or damaged sources of asbestos. Air sampling was carried out under normal conditions of occupancy.

Using transmission electron microscopy (TEM) analysis — a highly reliable measurement technique — the study found that most of the fibers present were not asbestos and that asbestos levels in building air were very low. The analysis also showed that asbestos levels in these commercial and residential structures only rarely differed from levels in buildings without asbestos containing products or locations where asbestos had been removed years earlier.

According to the study, "It appears that under normal conditions of occupation very low levels of airborne asbestos are present in buildings unless some maintenance activity or some form of physical attrition is present."

This conclusion confirms results of other studies previously published in the U.K. and Canada. □

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