

Regulation Requires 'Dedicated Vehicles' to Haul Asbestos

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Legislation prohibiting the transportation of asbestos in trucks or rail cars that are also used to carry food and other consumer products was signed into law by President Bush Nov. 3.

The "anti-backhauling" legislation (HR 3386) requires the use of "dedicated vehicles" to haul asbestos and other dangerous waste.

Titled the Safe Transportation of Food Act, the regulation has now become Public Law 101-500 and is designed to curb a reported increase in transportation of hazardous waste and garbage in trucks also used to haul food. The practice—called backhauling—is being used with increasing frequency as landfill space

decreases, especially in the Northeast, necessitating the transportation of waste to landfills in other parts of the country. To make out-of-state freight hauling more profitable, many transporters have been hauling food or other consumer products to cities in the East, and then backhauling waste on the return trip.

Supporters of the law say it will help prevent the potential danger of contaminating the nation's food supply due to this practice.

Section 6 of HR 3386, titled "Dedicated Vehicles," states: "At a minimum, the regulations...shall prohibit any person from using, offering for use, or arranging for the use of, a motor vehicle or rail

vehicle to provide transportation of asbestos or products which present extreme danger to human or animal health, despite any decontamination, removal, disposal, packaging, or other isolation procedures, unless such motor vehicle or rail vehicle is used only to provide transportation of such asbestos or products, or both."

This section also requires that a list of products determined to "present extreme danger to human or animal health" be developed and published in the *Federal Register*.

The law designates three federal agencies to develop the regulations. The Department of Transportation, the Department of Health and Human Services and the Department of Agriculture have six months to propose rules that specify: 1) recordkeeping and identification requirements for refrigerated ve-

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hicles, tank trucks, rail tank cars, cargo tanks, and dedicated vehicles for asbestos and infectious waste; 2) appropriate decontamination, removal, disposal and isolation standards for refrigerated trucks and rail cars; and 3) appropriate materials for construction of tank trucks, cargo tanks and accessory equipment.

By Laura Troner

Asbestos Substitutes Questioned

Just when the nation appeared to gain control of the asbestos issue through widespread abatement, a U.S. senator has introduced legislation that questions some of the materials being used as substitutes.

Sen. Herb Kohl (D-WI) says that in the mad rush by the nation's schools to remove asbestos, many are replacing the cancer-causing types of the material with "equally dangerous materials."

Kohl says fiberglass and mineral wool, which he says are routinely used to replace asbestos, have been found by the World Health Organization to contain carcinogens.

Nobody has warned the schools that they are replacing one carcinogen with another, he says. "As a result, some schools may find themselves in the same plight ten years from now that they are in today with asbestos."

Kohl's measure, expected to be the subject of hearings if he reintroduces it

next year, would require the Environmental Protection Agency (EPA) to inform all governors and local education agencies of the risks of replacing asbestos with fiberglass and mineral wool.

The EPA also would be required to report to Congress the appropriate action to regulate the use of these substances and on the need to test other materials that are likely to be used as substitutes. □



In the mad rush to remove asbestos from schools, many are replacing it with equally dangerous materials such as fiberglass, says Kohl.

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Outhwaite clears hurdle

LONDON—A letter from a Lloyd's of London syndicate claims manager supporting a ceding company's decision to join the now-defunct Asbestos Claims Facility does not, in itself, bind the syndicate to pay asbestos-related claims, the British High Court says.

The ruling came in a dispute between Lloyd's of London syndicate 661, managed by R.H.M. Outhwaite (Underwriting Agencies) Ltd., and its rival, Anton Underwriting Agencies Ltd.

Anton sued Outhwaite in 1989 for refusing to pay claims under a runoff reinsurance policy, even though an arbitration panel has declared the policy valid.

During discovery, Outhwaite released a letter sent by Outhwaite Claims Manager Fred Folwell to Richard Allan Lee, claims manager of Anton's broker Butcher Robinson & Staples Ltd., in which Mr. Folwell said Outhwaite "agrees to support the decision" by Anton to join the Asbestos Claims Facility created under the Wellington Agreement.

Mr. Folwell's letter was a response to a 1984 letter from Mr. Lee seeking his support.

British High Court Justice Hirst last week rejected all arguments that Mr. Folwell's letter bound Outhwaite to pay claims on the runoff policy that are related to the Asbestos Claims Facility, which shut down in 1988 (BI, May 30, 1988).

Anton is considering an appeal. And, the case continues over whether other factors may force the runoff policy to respond to asbestos-related claims against Anton settled through the facility, said Anton lawyer Mark Humphries, an assistant solicitor with Linklaters & Paines

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