

File: ⑥ Asbestos Sampling Task
Force, ORC

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Memorandum

PLAINTIFF'S
EXHIBIT
AL-978

June 13, 1989

To: ORC Asbestos Task Force

From: Rebecca L. Daiss *Becky*

Subject: Minutes of EPA Public Meeting on Asbestos in Public Buildings

Attached is a copy of the meeting summary of the May 3, 1989 EPA sponsored meeting on Asbestos in Public Buildings. The minutes were prepared by The Conservation Foundation, the organization that EPA used as a "facilitator" for the meeting. As a result of the May 3rd meeting, EPA has agreed to convene a series of meetings to discuss four primary talking points consensually agreed upon at the meeting; 1) employee right-to-know of the presence of asbestos in public and commercial buildings, 2) actions that should be taken if asbestos is present, 3) adequacy of current training and certification regulations, and 4) adequacy of regulations governing asbestos removal. We will keep you posted on the dates, locations, and content of those meetings.

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Attachment

PUBLIC MEETING ON ASBESTOS IN PUBLIC BUILDINGS

The Environmental Protection Agency

May 3, 1989

Meeting Summary

The meeting began with Matt Low, the meeting facilitator, explaining that the meeting was designed to be a facilitated discussion to refine thinking about asbestos, and not a consensus-building exercise. Mr Low proposed the following agenda: opening remarks from the U.S. Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA); an open discussion about the problems with asbestos in public buildings; an open discussion about potential solutions; and an open discussion on the need for, and desirability of, additional meetings.

Charles Elkins, of EPA's Office of Toxic Substances, informed the participants that EPA was glad to see the interest in the asbestos issue. He added that the agency believes that consensus is beginning to form in several areas. Mr. Elkins reported that although EPA is part of the solution to the asbestos problem, solving asbestos problems in public buildings will take the effort of all the parties involved. He also informed the group that Lee Thomas personally helped formulate the recommendations in the report EPA submitted to Congress last year.

Noting that the report to Congress has been interpreted differently by different people, Mr. Elkins urged participants to focus on the information contained in Lee Thomas' cover letter for the report. In it Mr. Thomas stated that it is premature to go forward with a regulation at present, because: it might deemphasize and diminish resources for the schools program; there would be problems in scaling up a regulatory program from 100,000 schools to 3.6 million public buildings; and a great deal can be learned from the school experience that could improve the federal government's approach to public buildings. Mr. Elkins added that there have been several suggestions of possible interim actions, which EPA is willing to explore.

Sims Roy, of EPA's Office of Air Quality Planning and Standards, gave the participants some background on the National Emission Standard for Hazardous Air Pollutants (NESHAP). Standards for asbestos were promulgated by EPA under the Clean Air Act in 1973. The NESHAP was revised in 1975 and 1978, and was repromulgated in 1984 with minor changes. EPA also began, in 1980, a long-term risk-based revision in the NESHAP. In 1986,

EPA prepared a new draft standard, however plans have been held-up because of a court case concerning vinyl chloride, which brought into question all NESHAPs. As currently designed there are two parts to the NESHAP revision. The first, designed to enhance enforcement standards, is moving ahead, however, the second, designed to improve risk management decisions, has not yet been proposed.

The first part of the NESHAP revision, proposed in January, 1989 underwent a comment period during which about 100 comments were received, covering 200 comment areas. Mr. Roy estimated that it will take another three months to finish the analysis of the comments.

Patty Waugh, Asbestos Project Officer in OSHA, informed the group that the Court of Appeals has asked OSHA to reconsider the following asbestos issues: OSHA's ban on the spraying of asbestos products; OSHA's failure to issue a smoking-control regulation; the feasibility of a 0.1 f/cc PEL; OSHA's respirator policy; the clarity of definitions in its standards; warning and labeling requirements; reporting requirements; scope of "competent person"; and exemption from removal, demolition, and renovation requirements. Ms. Waugh encouraged the meeting participants to provide OSHA with comments on these issues.

Asbestos in Buildings: Identifying Current Problems.

Matt Low asked the participants to state what they feel are the current problems concerning asbestos in buildings. The participants identified 30 problems which are listed below as recorded in the meeting, and are followed by comments made by participants about the problems.

1. The asbestos problem is extensive, but little is being done

An EPA study estimated that hundreds of thousands of buildings contain damaged or potentially damaged asbestos. However, little is being done to determine where the asbestos is and what should be done to protect people exposed to the asbestos.

2. People are not being notified of the presence of asbestos

Although the "purple book" says building owners should look for asbestos, inform people, and take necessary action, thousands of buildings have not been checked. Workers are being exposed to asbestos without their knowledge.

3. Improper removals

If removals are conducted improperly, there may be an

increased risk to workers. There are a lot of unqualified people doing the work.

4. Subgroups exposed to high levels

There are groups of workers who are exposed daily to high levels of asbestos, and many are not warned and therefore do not take precautions.

6. Exposure to building maintenance and renovation workers

Renovation and maintenance workers are being exposed to asbestos without their knowledge. Buildings should be checked before renovation to inform the workers of any asbestos problems, allowing them to take the proper precautions.

7. Concern about small-scale, short duration work

Adequate guidance is lacking for contractors who replace pipes (and other small-scale, short duration workers). The people that do this type of work should be trained.

8. TSI asbestos

Thermal system insulation asbestos is not properly being dealt with.

9. Unnecessary removals

Because EPA has not determined at what level asbestos is "safe," there may be unnecessary removals being done. The unnecessary removals contribute to asbestos disposal problems, which include exposure to landfill workers.

10. Lack of operations and maintenance (O&M) programs

There are not adequate O&M programs in existence, nor is their adequate guidance. A lot more attention needs to be given to this area. In particular, the hazards presented by surfacing materials have not been adequately addressed. There should be a requirement for specific O&M protocol for each building in which there is exposure to asbestos.

11. No tumor registry

Because there is no national tumor registry, the epidemiological information on the effects of exposure is sparse, making determination of "safe" levels more difficult.

12. No evaluation of air circulation systems

There is a need for a thorough evaluation of air circulation systems in buildings known to contain asbestos.

13. Inequality of power among parties

Many of the people most affected by asbestos are powerless to do anything about it.

14. Non-compliance with NESHAP

NESHAP is probably not being totally complied with. There is a need to compare building permits with whether or not EPA was notified.

15. Defining an "asbestos-related job"

There is no standard definition of an "asbestos-related job." The states are beginning to individually define this term, though not uniformly.

16. OSHA regulations are insufficient

OSHA regulations are insufficient in the following ways: systematic training is not required; standards (table D-4) are too low; there is no definition of "asbestos-related job;" and training has proven inadequate for the "competent person."

17. No "right-to-know" requirement

No regulations kick-in until asbestos is known to be present. There is currently no requirement that inspections be conducted and information about asbestos be reported following inspections. In addition, there are not enough inspectors.

18. Contractors' financial considerations jeopardize health

Since there are no requirements in place mandating state-of-the-art standards, conscientious contractors who protect their workers with state-of-the-art equipment may be underbid by other contractors who emphasize price over safety.

19. Inadequate education about asbestos

There are numerous misunderstandings and misperceptions about the potential risks of asbestos. People need to be educated about the risks of asbestos, what to look for, and what to do about it. In addition, technical information is

not being distributed widely enough, and there has not been adequate communication of what the sophisticated building owners are doing to address the asbestos problem.

20. Absence of a national accreditation standard

Because there is not a national accreditation standard, there is no assurance of the quality of any given trained individual.

21. Poor communication of existing knowledge

Communication between EPA and people affected by asbestos has been poor. Owners and tenants have not been adequately informed.

22. Difficulty of a building owner knowing when a job is done

It is unclear when an asbestos maintenance or removal job has been properly and completely executed. Building owners are, for the most part, unable to distinguish good work from bad.

23. Inadequacy of training requirements

Current training requirements are not strong enough; a three day course is inadequate. Even people from good firms have been found to have missed over half the asbestos in a building. Building owners have been unable to find good contractors because of the inadequate training requirements.

24. State variance in accreditation programs

There is little consistency among the different accreditation programs adopted by various states. This will be a problem if EPA wants to delegate accreditation authority to the states.

25. Lack of definitive guidance

EPA is sending a very vague message. There are no defined steps to be taken by responsible parties trying to deal with a potential asbestos hazard.

26. Financial issues driving asbestos activities

Financial and insurance interests are driving the inspection and accreditation process. This is the wrong trigger.

27. Training undermined by lack of enforcing mechanism

There is no enforcement mechanism to get people trained, nor is there a mandate for follow-up training.

28. No determination of when asbestos is safe

EPA has not given a clear message of when asbestos is safe. This has resulted in excess removal of asbestos, leading to disposal, moving, and storage problems. Building owners need assurance that by taking certain measures they will be providing a safe building environment. Unless EPA provides clear guidance, building owners are likely to unnecessarily remove asbestos to cover themselves.

29. Conflict between state and local regulations

Numerous state and local regulations conflict with one another and may conflict with OSHA and AHERA.

30. Lack of risk assessment model

The potential hazards from asbestos in buildings have not been determined. It is insufficient to simply determine that an area containing asbestos is safe at present. The data are available to do risk assessments; what is lacking are guidelines from EPA that can be applied to buildings for risk assessment. We need to distinguish between "risk" and "acceptable risk."

Asbestos in Buildings: Identifying Potential Short-term and Long-term Programmatic and Regulatory Solutions

Matt Low suggested that the problems raised in the previous section be grouped into a few broad categories for which the participants could then develop solutions. The participants began with trying to develop solutions for the problems associated with training.

Adequate Training

A participant suggested that a way to improve training was to develop credentials for the instructors of AHERA courses. Suggested credentials were a college degree in an appropriate science and/or previous work with asbestos.

A participant recommended that EPA's Washington office, not the regions, provide the guidance on the asbestos issue because the message might vary between regions. Another participant remarked that making decisions about adequate training would be

difficult in a negotiated rulemaking, based on the experience in the schools negotiations.

A participant stated that although many of larger owners and developers are hiring good people, many others do not know the difference, highlighting the need for a strong accreditation program. People should not be hired only on the basis of the successful completion of a 3-day course; the variance in experience and quality among people with the 3-day training is sizable. Everyone should not be viewed as being on the same level. Another participant stated that there is a need for national training standards and for reciprocity between the states.

A participant noted that the asbestos problem is multidisciplinary, adding that one group of professionals cannot oversee it adequately. A participant called for an accreditation approach parallel to those of other professional disciplines.

A participant warned the group that in the schools negotiation, trying to give the schools as much flexibility as possible on who could be used to handle the asbestos problem resulted in inadequate action. It should not be done "on the cheap" again.

Mr. Elkins pointed out that there appeared to be a conflict between getting the best trained people and having people available now. In response, a participant remarked that there would be more qualified people available if there were not 43 states without reciprocity and if there were a grandfather clause covering people who have been working with asbestos for as long as ten years. A participant noted that there are a number of qualified people who are not being utilized, and who need to be brought back into the process.

In response to a question about what a complete training is, a participant responded that there are four major areas that need to be covered: identifying a hazard; development of a plan for removal; asbestos removal; and certifying that the building is safe. Another participant noted that these four areas would be difficult for a single person to master adequately without extensive training. A participant suggested adding a fifth area, air quality monitoring. The participants recognized the value of identifying discrete areas and called for EPA to develop advanced classes for training in the various areas.

A participant suggested that EPA develop a standardized certification for O&M activities, such as small-scale, short duration exposure. This participant also stressed that there is a need for training materials for non-English speaking peoples and the illiterate, and for a right-to-know requirement.

A participant suggested that OSHA, in its current rule-making process, may be able to incorporate some of the suggestions of the group, such as defining "competent person."

Inspections/Right to Know

Participants discussed actions for both prompting inspections for the presence of asbestos, and for requiring disclosure to affected parties. Although distinct issues, several participants observed that the two are linked.

A participant suggested that education by EPA and others would go a long way toward informing owners, managers, and occupants of their rights and responsibilities, and educating them on steps to be taken. This participant emphasized the need to encourage people to find out about asbestos.

Another participant warned that if EPA cannot say under what circumstances asbestos is safe, inspections may just make the problem worse. While acknowledging the link between right to know and standards of care, another participant emphasized the need to recognize the rights of people to know they are being exposed to a very hazardous substance. This participant called for a federal regulation mandating investigation and disclosure.

A participant reported that New York's Attorney General mandated disclosure. The participant also noted that many insurance and investment companies are mandating assessment, though another participant remarked that the companies seem to be relying on the information generated regardless of who collected it. A participant reported that New York has a bill that mandates inspection of all public buildings in 12-15 years, with high risk buildings subject to earlier deadlines.

A participant called for centralized control by EPA, beginning with the identification of populations at risk and followed by mandated inspection and at least some level of care. Another participant urged EPA to develop a standard air monitoring protocol.

Mr. Elkins asked participants why the OSHA rule and NESHAP program were apparently inadequate. A participant responded that there is no inspection requirement under OSHA, only a monitoring and action requirement once asbestos is known to be present. It provides a disincentive for people to look for asbestos. Another participant remarked that a simple change of one word in the OSHA appendix (from non-mandatory to mandatory) would go a long way toward solving this problem.

A participant remarked that inspections are not made because of financial considerations; people do not want to look for asbestos for fear that they will have to pay to get it removed if

it is found. This participant went on to suggest that an asbestos "Superfund" be developed for abatement or removal. Another participant remarked that it is not appropriate for liability to be driving the process; people should be required to look for asbestos.

Standards of Care

A participant suggested that O&M programs be required and enforceable, noting that guidelines are useless if they are not enforceable. Another participant added that the current EPA guidance is insufficient, and suggested EPA develop authoritative guidance documents.

A participant stated that the primary need is for focusing on the removal problem. EPA should make clear what the risks are of different exposure levels and set an acceptable exposure level. The radon program was suggested as a good model.

Mr. Elkins responded that EPA does not currently have the scientific information to determine what a safe level is; there is a concern about evaluating the risk associated with episodic events. He explained that a priority research area for the Health Effects Institute is to clarify this question so that EPA can establish an action level.

Another participant stated that there should not be a built in assumption that until we know what a safe level is, asbestos is not hazardous; the opposite should be true. While agreeing that no one wants to see unnecessary removals of asbestos, this participant believed it was necessary to err on the side of safety. Building owners and managers should be required to check for the presence of asbestos.

A participant suggested that a good temporary criterion for a safe level is if the level of asbestos inside is no higher than the level outside.

Another participant suggested that a lot more could be done to educate the public about relative risk, though this should not preclude following good public health steps by requiring an O&M program. A different participant agreed that an O&M program is effective for some things, but questioned whether it can adequately address things like surfacing materials, particularly episodic events involving surfacing materials. Another participant countered that there are air monitoring techniques to define episodic exposures, and that there are data on episodic exposure to help EPA begin to establish a standard for safe levels.

A participant closed discussion of this topic by requesting as a minimum that protection be required where it is known that

asbestos is being disturbed.

Uncontrolled Removals

A participant began this discussion by remarking that although the sophistication of consultants has increased significantly in the last decade, there are still people out there who want to have removal done in a quick and dirty manner. Another participant noted that as long as there are no safety standards, lenders and insurance companies are going to drive the removal process. Charles Elkins again remarked that it is not currently scientifically sound to set a safe ambient level for asbestos. A participant replied that if a health standard is infeasible at this time, then EPA should at least set a workplace standard and regulate asbestos through requirements for the workplace.

Additional Meetings: Should They be Planned? How Should They be Structured?

Matt Low remarked that a number of ideas had surfaced that would be useful to discuss further. He asked participants if they felt more meetings should be scheduled, and if so, what they should cover and how they should be structured. A participant suggested that EPA hold a series of meetings on specific topics, some outside of Washington, D.C. so that different views can be heard. Another participant suggested that future workshops focus more on the technical issues, in which case the number of participants should be reduced.

A participant remarked that there is a great deal to accomplish, requiring EPA to be committed to following through. This participant added that if any further dialogue or negotiation was conducted, the parties would need to be assured that EPA would follow-through if consensus was reached. Mr. Elkins replied that EPA is open to finding a solution that makes sense, and that it would be easier to convince the Administrator to support a solution that was agreed to by all the parties.

Matt Low discussed two options for future meetings: 1) open meetings, or 2) a policy dialogue, involving a smaller group of people. A participant suggested that it should be up to each individual to decide if they wish to attend. When EPA was asked what kind of mechanism it envisioned, Mr. Elkins replied that probably not as formal a process as used in the schools program. He suggested that it might be useful to prepare papers (a paragraph or two on problem areas and a page on solutions) ahead of the meetings, form discussion groups, refine the product, and then take it back to the broader audience. Mr. Elkins also suggested that it might be helpful to involve OSHA.

When a participant requested that EPA issue an advanced notice of proposed rulemaking, Mr. Elkins remarked that this would be unlikely to go far quickly, because the transition and resulting personnel changes in the agency are still in process.

Mr. Elkins announced that if a party wants to be involved in future meetings they should call the EPA hotline, (202)554-1404, or leave a business card with one of the EPA representatives before leaving. Mr. Elkins informed the group that anyone expressing an interest will be notified of future meetings and other actions.

A participant remarked that there appeared to be several groups missing from the meeting who should be involved in the future. Matt Low responded that it might be useful for some convening work to be conducted.

Following this discussion, the meeting was adjourned.