



NEWS

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NOTES

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FINAL AHERA RULES ANNOUNCED FOR ASBESTOS-IN-SCHOOLS

On Oct. 20, the U.S. Environmental Protection Agency announced final rules under the Asbestos Hazard Emergency Response Act (AHERA) of 1986, that require all public and private elementary and secondary schools to inspect for friable and non-friable asbestos-containing materials, implement response actions and submit asbestos management plans to states.

The schools, referred to as local education agencies (LEAs), must submit management plans to the state governors by Oct. 12, 1988. The states then have 90 days to approve or disapprove these plans. Implementation of these management plans must commence by July 9, 1989.

The final rules require LEAs to use accredited persons to conduct inspections for asbestos-containing building material, develop the management plans, and design or conduct major actions to control asbestos. Exclusions are provided for LEAs which have previously conducted inspections.

The definition, "asbestos-containing building material (ACBM)" encompasses surfacing, thermal system, and miscellaneous asbestos-containing materials "in or on interior parts of the school building." Also, these parts do include a few specified exterior portions of school buildings.

EPA believes the rule's coverage of all interior areas and a few exterior areas that function similar to interior areas protects the health of building occupants.

"Miscellaneous ACBM" includes a wide variety of materials in buildings, such as vinyl flooring, fire-resistant gaskets and seals, and asbestos cement. Damage to these materials is defined by the same cohesion and adhesion (if appropriate) properties as surfacing materials, i.e., such damage or deterioration may be illustrated by delamination; separation from the substrate; flaking, blistering, or crumbling; water damage; or significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury.

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The final rule identifies five major response actions: operations and maintenance, repair, encapsulation, enclosure and removal. The response action selected shall be sufficient "to protect human health and the environment." From among the response actions that protect human health and the environment, the LEA may select the response action that is "least burdensome."

The successful completion of response actions is determined by air sampling. For two years after the rule's effective date, Phase Contrast Microscopy (PCM) clearance at .01 fibers/cc is acceptable for projects of 3,000 sq. ft. or 1,000 linear ft. or less. Transmission Electron Microscopy (TEM) is required for these projects after two years. For an additional year, PCM is permissible for clearance of 1,500 sq. ft. or 500 linear ft. or less, then TEM would be required exclusively. PCM clearance is to be determined by the NIOSH 7400 method. TEM clearance is accomplished through analysis and comparison of indoor and outdoor samples.

The final rules also augment the EPA requirements regarding transport and disposal of asbestos-containing waste material. Forthcoming are revisions to the National Emission Standards for Hazardous Air Pollutants on asbestos, the overall controlling regulations for asbestos waste disposal. Until NESHAPs is revised, however, transport and disposal of asbestos-containing waste from AHERA projects must conform with the most recent revision of EPA's "Asbestos Waste Management Guidance" document.

SBA WARNS EPA'S ASBESTOS-IN-SCHOOLS RULE COULD CAUSE ASBESTOS-RELATED DISEASE

The lack of an exposure standard in the U.S. Environmental Protection Agency's final rules for the "asbestos-in-schools law" could drive schools toward unnecessary removals of asbestos-containing materials, increase exposures to building occupants and spark a future wave of asbestos-related disease among abatement workers, the Safe Building Alliance warns.

The Asbestos Hazard Emergency Response Act passed in Congress last October. It orders EPA to require elementary and secondary school systems to inspect their buildings for asbestos-containing building materials (ACBM) and, if they are present, to take "appropriate response actions."

"By not setting an exposure standard for asbestos, as it has for other substances such as radon, EPA has failed to tell school systems when ACBM in their buildings pose

a health hazard and, most importantly, when they do not, notes John F. Welch, president of the Safe Building Alliance -- a non-profit organization of leading building product companies which formerly manufactured ACBM. "That leaves schools at a tremendous disadvantage when deciding which response action is appropriate and forces them to rely on the subjective judgments of 'consultants' who have a bias toward, and often an economic interest in, removal -- in spite of the sobering evidence that shows exposure levels are higher after removal than before."

Welch observes that "all available scientific data --including a large survey of schools with ACBMs--uniformly show that airborne asbestos levels inside buildings are at or near asbestos levels in outside air. Expert medical groups have concluded that such exposures pose no significant health risk.

"It is ironic that the AHERA rules announced require air monitoring after removal to determine whether it is safe to reoccupy a building, but they do not require air monitoring to determine whether removal should be undertaken in the first place. In all likelihood, most schools already have asbestos levels lower than the levels required by EPA upon completion of billions of dollars worth of asbestos abatement."

Welch also points to a recent study in which British government scientists -- including Dr. G. J. Burdett, to whom EPA has in the past looked for expert assistance -- confirmed that removal often increases rather than decreases exposures both to building occupants and to abatement workers. The Burdett study found exposure levels remain elevated up to 10 months after removal activities.

Moreover, "abatement experts themselves acknowledge that up to 9 percent of the 5,000 contractors offering to remove asbestos today are not qualified to conduct such potentially dangerous activities, and federal and state agencies have candidly admitted their efforts to ensure that removal is conducted safely are meeting with only minimal success," says the SBA president.

ASBESTOS MANUFACTURERS SEEK POSTPONEMENT OF TRIALS UNTIL MANVILLE APPEAL IS HEARD

Seven asbestos manufacturers seeking reimbursement from the U.S. government for claims paid to workers asked the U.S. Claims Court to postpone their trials in status reports filed Oct 19.

Each of the manufacturers sought postponement until after the U.S. Court of Appeals for the Federal Circuit considers

an appeal filed by Johns-Manville in Johns-Manville v. U.S. scheduled for completion in June 1988.

Manville filed its appeal Oct. 2, seeking review of an Aug. 6 decision by Judge Christine Nettesheim that the company had failed to prove that the government breached a duty to reveal its superior knowledge about asbestos hazards, and a duty to insure that government specifications would result in safe products.

**CONSTRUCTION GROUPS AGC AND ABC
FILE CT CHALLENGES TO EXPANDED HCS**

The Associated General Contractors of America and the Associated Builders and Contractors filed Oct. 16 separate court challenges to the Occupational Safety and Health Administration's expansion of the federal hazard communication standard.

AGC, an association of construction contractors including general contractors, filed its petition for review with the U.S. Court of Appeals for the Fourth Circuit. ABC, which represents merit shop construction companies, filed its lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit.

The construction industry, including management and labor interests, unsuccessfully urged OSHA to consider their industry separately in expanding the hazard communication standard beyond the manufacturing sector. OSHA's Construction Advisory Committee on Occupational Safety and Health also pressed for a separate standard, arguing that the industry is too transient and mobile to comply with the same requirements that cover fixed workplaces.

OSHA told representatives of the construction industry in June that it could not justify a separate standard because the difference among construction and other industries to be covered by the expansion were not sufficient.

**CT REFUSES TO FIND ASBESTOS SUPPLIERS
HAD NO DUTY TO WARN SOPHISTICATED USERS**

Chrysler Corp., General Motors, and Pennwalt Corp. are not such knowledgeable asbestos users that suppliers have no duty to warn them or their employees about hazards from the material, a U.S. district court ruled Sept. 23, refusing to dismiss suits filed by brake lining workers against the suppliers.

In Russo v. Abex Corp., the U.S. District Court for the Eastern District of Michigan held that under state law, a supplier's duty to warn is not discharged simply because the user is "sophisticated."

Rather, the court held, "there is a balancing test for determining when a duty exists to warn a sophisticated user." Where the danger is great, and the burden of disclosure is small, the supplier must warn, the court found.

Because asbestos is "an inherently dangerous product with patent dangers to its ultimate users," the court refused to find, as the defendants had asked, that there was no duty to warn.

The court distinguished between defendants who supplied asbestos-containing products, and those who supplied asbestos in raw form, where any packaging warnings might not have reached the ultimate users.

The latter might be entitled to the sophisticated user defense, the court held, but only if they proved at trial that the cost to them of effectively warning unsophisticated ultimate users outweighed the danger to such users of prolonged contact with asbestos.

Editor's note: The federal standard for occupational exposure to asbestos in general industry exempts manufacturers or importers from labelling, material safety data sheets, and employee training as specified in the federal hazard communication standard, provided that the manufacturer can demonstrate that during any reasonable foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the 0.1 fibers/cc action level will be released. See: 29 CFR 1910.1001(j)(4).

INDUSTRY ATTORNEY WARNS OF PROBLEMS FROM CT'S REFUSAL TO HEAR PRE-EMPTION CASE

The U.S. Supreme Court's refusal to hear a case involving federal preemption of portions of Pennsylvania's hazard communication law means problems for employers.

In Manufacturers Association of Tri-County v. Knepper, the Court denied a petition for certiorari filed by industry groups, letting stand a decision by the U.S. Court of Appeals for the Third Circuit that the federal standard does not preempt workplace requirements applicable to the manufacturing sector which also are calculated to protect the public.

Robert Thomson, a MATCO attorney on the case, warns that other states could adopt hazard communication schemes like Pennsylvania's. "The circuit court opinion allows states to do what they want." "Pennsylvania did it, New Jersey did it. I don't see why other states wouldn't try to do it," prophesies Thomson.

HOUSE PASSES HIGH RISK NOTIFICATION BILL

The U.S. House of Representatives passed legislation Oct. 15 intended to reduce occupational diseases and disabilities by requiring the federal government to notify workers who have jobs potentially dangerous to their health.

The High Risk Occupational Disease Notification and Prevention Act (HR 162), which passed by a vote of 225-186, leaves the tort liability and workers' compensation systems untouched.

The bill, introduced by Rep. Joseph M. Gaydos (D-Pa.), is intended to reduce occupational disease by requiring employers to provide medical monitoring of employees whom the government has notified as being at risk.

By monitoring such employees the government would accumulate comprehensive and long-term data. This data is needed especially with long-latency diseases, the House Committee on Education and Labor reported.

As an example of a successful notification and monitoring program, the report cites the asbestos program in Port Allegheny, Pa., where the union, the asbestos company and the Mt. Sinai School of Medicine worked together on the monitoring.

FOURTH QUARTER AIA/NA DIRECTORS MEETING SCHEDULED FOR DEC. 16

The regular fourth quarter meeting of the Association's Board of Directors will be held Wednesday, Dec. 16 at the Old Town Holiday Inn, Alexandria, VA. The meeting will commence at 9 a.m. A reception and dinner are scheduled for Tuesday, Dec. 15, starting at 6:30 p.m. in the Old Town Holiday Inn.

The AIA/NA Executive Committee will meet on Tuesday, Dec. 15, at the Old Town Holiday Inn. The meeting will commence at 1 p.m.

Details on the above meetings will be forwarded to members in the near future.