AIA NORTH AMERICA

NEWS & NOTES

Info:

January 31, 1984

CONSTRUCTION ADVISORY COMMITTEE REVIEWS DRAFT OSHA PROPOSAL

On Jan. 11, OSHA's Advisory Committee on Construction Safety and Health met in Washington, DC to review a draft proposal on asbestos. Draft is to be basis of final, permanent asbestos standard that OSHA is required by law to have in place within six months of publication of its emergency temporary standard (ETS). ETS appeared in Federal Register of Nov. 4, but is presently stayed by order of 5th Circuit U.S. Court of Appeals. A hearing on merits of ETS action took place before court on Jan. 12, but as of yet, no ruling has been issued.

Draft proposal consists of 84 pages of prefatory discussion and three pages of regulatory text. Regulatory text is identical to wording of ETS. However, prefatory discussion includes list of 19 major issues upon which OSHA will solicit comments in proceedings for promulgation of final standard. These issues, which also formed basis of Advisory Committee discussion, give a good indication of agency's areas of concern, and are as follows:

1. What exposure limits would provide protection of employees against known and suspected workplace hazards of asbestos and what feasibility limitations exist in setting any given limit.

2. Whether the permissible ceiling limit should be reduced and, if so, what the revised limit should be. What feasibility limitations exist.

3. To what extent, if any, should the standard be modified for workplaces which are of a non-fixed nature or otherwise engage a highly transient workforce, e.g., the construction industry.

4. Whether the changes in the definitions of "asbestos" and "asbestos fiber" would clarify the standard's intended scope, and properly relate to known or suspected workplace hazards; whether specifying the mineralogic

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definition of asbestos, such as using the term "tremolite asbestos" rather than the current "tremolite," would better define the health hazard.

5. Whether an action-level below the PEL should trigger certain requirements and, if so, which requirements, and what level(s):

6. Whether OSHA should modify the existing medical surveillance provisions (29 CFR 1910.1001 (j)) to change the frequency of exams, their content, or otherwise.

7. Whether an expanded medical removal program should be provided where, as a result of the medical surveillance program, it is determined that an employee is at an increased risk of material impairment of health from further exposure to asbestos.

8. Whether and under what circumstances and conditions it is feasible to reliably measure asbestos concentrations at levels of 0.1 f/cc, 0.2 f/cc and 0.5 f/cc.

9. Whether the evidence cited by OSHA associating asbestos exposure with the following health effects is complete and whether OSHA's Assessment is scientifically valid:

   a. Lung Cancer
   b. Mesothelioma
   c. Gastrointestinal Cancer
   d. Asbestosis
   e. Other Malignant and Nonmalignant Diseases

10. Whether a linear model should be used to extrapolate the risks of certified disabling asbestosis from lifetime exposure levels below 0.5 f/cc: should oHSA quantify risks for other stages of asbestosis and if so, how.

11. Whether OSHA's analysis of the evidence for carcinogenicity and toxicity differentials by asbestos fiber types is appropriate or whether regulatory distinctions should be made for different asbestos fiber types.

12. Whether OSHA should permit any method of compliance to reach the new permissible exposure limits after 2 f/cc has been achieved by use of engineering controls or whether it should require the use of engineering and work practice controls down to the PEL established in the final standard.

13. Whether proposed procedures for initial and subsequent exposure monitoring are adequate to reliably determine employee exposure to asbestos.

14. Whether provisions for regulated areas are reasonably necessary and appropriate for all covered industries.

15. Whether provisions for hygiene facilities are reasonably necessary and appropriate for all covered industries.

16. Whether the standard should have a delayed effective date for any industry sector and, if so, the extent to which a phased schedule for compliance would be appropriate.

17. What are the environmental impacts of the proposal.

18. Whether the provisions of the proposed standard are cost-effective and, if not, how can thev be made cost-effective.

19. Whether OSHA should develop appendices, as it has with other health standards, that give appropriate information concerning the health hazards arising from human exposure to asbestos, substance technical information and medical surveillance guidelines.

Before discussing these issues, Advisory Committee agreed on some preliminary points. These included making no distinctions as to different kinds of asbestos fibers in final standard, and passing a resolution that "OSHA need proceed to immediately develop a separate and different Asbestos Standard for the construction industry."

Publication of proposal in Federal Register is expected by mid-February, but may slip some to a later date.

OSHA Issues Guide For Protection Of Workers At Hazardous Waste Sites

OSHA will provide technical assistance and conduct enforcement activities to protect worker safety and health at some 400 hazardous waste sites designated by the Environmental Protection Agency's "Superfund" for first priority in cleanup, according to a Dec. 30 instruction. Members of the OSHA Health Response Team and Regional Office Technical staff will provide health and safety advice and consultation to employers and contractors involved in cleanup activities at Superfund sites. Team members must complete a one-week training course before conducting any on-site inspections.

Complaints or accident reports will be investigated through existing agency procedures. Other toxic waste facilities will also be covered through normal OSHA inspection procedures. Since engineering controls may not be feasible, inspectors must specifically evaluate respiratory protection-including use of respirators during emergency evacuation, use of protective clothing and equipment, including decontamination procedures, and hygiene facilities and practices. The general duty clause will be cited where there is no standard applicable to the hazard involved.

ALM PROMISES RISK ASSESSMENT GUIDELINES THIS YEAR TO COORDINATE AGENCY ACTIONS

Environmental Protection Agency Deputy Administrator Al Alm has approved plans to develop six risk assessment guidance documents that will be used by all agency program offices in determining how to regulate specific toxic substances. Alm told reporters Jan. 19 that the agency will develop and issue six risk assessment guidelines this year covering mutagenicity, teratogenicity, oncogenicity, reproductive effects, sensitive exposed populations and complex mixtures of chemical substances.

"We'll be issuing a whole series of guidelines... and all will be out in the course of this year," Alm said, noting that there might also be a document on the use of mathematical models. Alm also said that the emphasis will be on developing qualitative risk assessments and not quantitative ones particularly when reviewing risks of hazardous waste sites. "We can't assess every chemical at a site and then give it a specific risk assessment [value]; there's just too many chemicals."

Risk assessment guidelines will be developed by EPA's office of Research and Development. Use of the guidelines will be further explained when the agency releases its task force report on toxics integration next month.

SEMINAR ON ASBESTOS IN WORKPLACE, BUILDINGS AND SCHOOLS: RISK ASSESSMENT AND MANAGEMENT

A one-day seminar on "Asbestos - The Workplace, Buildings, and Schools: Risk Assessment and Management," is scheduled for Apr. 25 at the The Johns Hopkins School of Hygiene and Public Health, Baltimore, MD. Program is designed to provide up-to-date information on asbestos risk assessment and evaluation of asbestos on premises of workplaces, schools and office buildings. It is designed for both governmental and private sector technical and non-technical persons who must deal with potential hazards of asbestos, but find that their understanding of the background information and issues is incomplete.

Speakers on the program have day-to-day involvement with asbestos issues and will provide factual briefings on subjects ranging from medical aspects to current state requirements for worker education and training.

Course director is Morton Corn, Ph.D., Professor and Director of Division of Environmental Health Engineering at Hopkins. For additional information contact: Dr. Jacqueline K. Corn, The Johns Hopkins School of Hygiene & Public Health, Department of Environmental Health Sciences, 615 North Wolfe St., Baltimore, MD, 21205/(301) 955-2609.

LITIGATION MAY DELAY OSHA HAZARD COMMUNICATION RULE

Long-standing controversy surrounding hazard communication rule published by Occupational Safety and Health Adminstration (OSHA) in Federal Register of Nov. 25 continues. United Steelworkers of America and other labor groups filed suit in 3rd Circuit U.S. Court of Appeals in Philadelphia challenging regulation even before it was published. On Dec. 21, states of Connecticut, New Jersey, and New York entered case to challenge OSHA's action. Main areas of disagreement with OSHA over regulation are that coverage is limited to manufacturing sector, that rule's trade secret provisions are overly protective, and that rule's claimed pre-emption of state "right-to-know" laws is improper.

According to Leonard Vance, director of health standards programs for OSHA, legal battles over pre-emption of state and local chemical right-to-know laws by federal hazard communication standard raise doubts about when chemical manufacturers and industrial employers who use chemicals will be required to comply with federal standard. Speaking at a conference in Philadelphia jointly sponsored by OSHA and American Conference on Chemical Labeling, Vance said some state and local chemical right-to-know laws go beyond scope of OSHA standard by requiring information on hazards to be made available to public as well as to industry employees. It would be up to courts to decide if narrower OSHA rule pre-empts such state or local regulations.

Vance said a frequently asked question is how OSHA will treat states that have previously taken over management and enforcement of their overall job-safety and health programs. In such situations, Occupational Safety and Health Act requires OSHA approval of standards developed by state.

In a state like Pennsylvania, which has not taken over job safety and health enforcement, OSHA's position is that the state is pre-empted, even if it enacts a chemical hazard communication program. In a state like Maryland, which has taken over management and enforcement of occupational health and safety with OSHA's approval, OSHA would give state six months to add a chemical hazard communication plan that must be at least as effective as federal standard

"It has to be at least as effective. The law does not say it can't be more effective," Vance said. "Given that kind of fuzzy language, it leads to a lot of hearings, and the first time that happens, we are going to have a hearing." Whatever decision OSHA makes on pre-emption will still be subject to a court decision if challenged, he added.

Issue of pre-emption in states by OSHA's hazard communication rule was also subject of a briefing session sponsored by Chemical Week and Executive Enterprises, Inc. in Washington, DC on Jan. 24. Claire M. Boccella, an attorney with Chemical Manufacturers Association, noted that based on past cases, "OSHA appears to take the view in its regulations that states have no authority to enforce any state regulation, exclusive or concurrent, on an issue covered by a federal standard, except by going through the state plan procedure contained in the Occupational Safety and Health Act."

State plans must be "at least as effective as" federal standard covering same area. Boccella asserted that state requirements imposing different or even more stringent requirements on employers than OSHA standard could be found to be less effective. Such might be case if a state requirement led to worker confusion due to changing hazard communication programs to which workers had become accustomed, or if it required labeling so detailed that important hazard information was obscured. Further, if state law applies to products which are distributed or used in interstate commerce, its standard must be "compelled by local conditions" and must not "unduly burden interstate commerce."

Boccella concluded that courts are likely to find pre-emption under section 18 of OSH Act if provisions of state regulation dealing with worker protection can be severed from balance of state regulation without unduly damaging rest of state scheme. Additional factors would be if provisions of state regulation dealing with worker protection appear to be primary purpose of regulation, which could have been submitted as part of a state plan, or if there is evidence of intent on part of state to circumvent state plan requirements.

FIRST QUARTER AIA/NA DIRECTORS MEETING SCHEDULED FOR MAR. 14

The regular fourth quarter meeting of the Association's Board of Directors will be held Wednesday, Mar. 14, at Stouffer's National Center Hotel, 2399 Jefferson Davis Highway, Arlington, VA. A reception and dinner are scheduled for Tuesday, Mar. 13. Details will be provided by separate correspondence.

Manville Corp. Wins Court Rulings in Fight For Chapter 11 Status

By a WALL STREET JOURNAL *Staff Reporter*

NEW YORK—Federal Bankruptcy Judge Burton Lifland dismissed four challenges to Manville Corp.'s petition to operate under Chapter 11 of the federal Bankruptcy Code. He also decided that a legal representative should be appointed to protect the interests of future claimants whose sickness from asbestos isn't yet manifested.

Manville filed for court protection in August 1982 to ward off thousands of lawsuits that it claimed threatened its existence. Under Chapter 11, a company continues to operate free from creditor lawsuits as it works out a reorganization plan.

The most important petition to dismiss the proceedings was filed by the committee representing plaintiffs suffering from asbestos-related illnesses. In essence, it charged that Manville had acted in "bad faith" in filing for court protection. The committee argued that Manville had "concocted" some figures used to demonstrate its case. But Judge Lifland stated that "the economic reality of Manville's highly precarious financial postion due to massive debt sustains its eligibility and candidacy for reorganization."

In addition to potential suits by individuals, Judge Lifland said Manville faces other liabilities. He mentioned "a range of $500 million to $1.4 billion" of debt to schools, which used asbestos in construction before the dangers of the powdery mineral product became widely known.

Commercial-Debt Claims

Moreover, the judge said there are claims of $425 million of liquidated commercial debt that have been filed in the proceedings. Those claims, he continued, triggered the acceleration of more than $275 million in other, unsecured debt that hadn't been due before the filing.

When Manville filed for Chapter 11 protection, it said potential liabilities from the asbestos suits would have been about $2 billion by the end of the century. The company's assets at the time were about $2 billion.

The other dismissed petitions, some of which were filed by former co-defendants with Manville in the suits, were more technical. One noted that future claims couldn't be assessed because they are nonexistent. But the judge found that the claims of the asbestos-exposed individuals may survive the bankruptcy proceedings because of the long period from the time of exposure to the manifestation of asbestos induced diseases: asbestosis and various cancers, including lung cancer.

Judge's Position

Judge Lifland said the petitioners will have to abide by the court's determination of whether the reorganization plan that emerges "deals fairly and equitably with all creditor groups."

The motion to appoint a legal representative for asbestos-exposed future claimants was filed by Keene Corp., a unit of Bairnco Corp. The judge said "it is abundantly clear that the Manville reorganization will have to be accountable to future asbestos claimants."

In New York, Robert J. Rosenberg, the attorney representing the asbestos committee, said the judge's ruling "is no surprise." But he declined to comment further, because he hadn't read the decision.

In Denver, John McKinney, Manville's chairman, said the judge's ruling "makes it possible for all parties to move forward to ultimate confirmation of the Manville plan."

However, Manville still faces a welter of motions from the plaintiffs' attorneys opposing the plan for paying both asbestos victims and their lawyers. Judge Lifland has scheduled a Feb. 8 hearing to set dates for considering the remaining motions. Those include petitions by Manville for approval of its proposed method of liquidating all current claims and setting fees for the plaintiffs' lawyers in lieu of their contingency contracts with clients.

THE WALL STREET JOURNAL
Tuesday, January 24, 1984

UNR Sues U.S. in Bid To Share Liability For Asbestos Damages

By a WALL STREET JOURNAL *Staff Reporter*

CHICAGO—UNR Industries Inc. said it's suing the U.S. for an amount that could exceed $100 million, charging that the federal government shares liability in asbestos-related cases brought against UNR.

The company said it is seeking reimbursement from the U.S. because damages "are likely to exceed $100 million."

The company is facing thousands of claims filed by people who say they were harmed by exposure to asbestos when UNR's predecessor companies, Union Asbestos & Rubber Co. and Unarco, supplied asbestos insulating material to the U.S. during World War II. The material was delivered to federal and private shipyards building warships, the company said. A company that UNR purchased in 1947, Carolina Asbestos Co., supplied asbestos cloth to shipyards.

The material has been linked to cancer and lung disease in humans. The UNR suit, similar to one filed by Manville Corp. in July, claims the government knew about and ignored the dangers of exposure to asbestos before buying the material for its shipbuilding program.

Joe Hollingsworth of the Washington law firm of Spriggs, Bode and Hollingsworth, which is representing UNR, said the fact that the U.S. purchased the asbestos through direct contracts, as well as through subcontractors, means the government should share any liability arising from those agreements.

He contended that under federal law if the manufacturer follows contract specifications and ends up with an unsafe product, the company can recover costs.

The UNR suit calls for the government to pay the company more than $60 million initially, the attorney said. That could exceed $100 million as additional cases pending against the company are settled, he said.

Currently, there are 20,000 cases pending, of which UNR estimates about 13,000 are related to government projects. UNR, which filed for court protection from creditors under Chapter 11 of the U.S. Bankruptcy Code in July 1982, said a total of 4,500 cases arising from asbestos exposure have already been dismissed, settled or adjudicated.

Between $10 million and $15 million has already been paid in settlements, the company said.

THE WALL STREET JOURNAL
Tuesday, January 17, 1984

Manville Corp. Faces Increasing Opposition To Bankruptcy Filing

Loss of Creditor Support Could Bring Liquidation Instead of Reorganization

Tale of the Errant Husband

By DEAN ROTBART
Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—When Manville Corp. decided to file for bankruptcy-court protection in August 1982, it literally bet the company on the outcome of the highly unusual legal maneuver.

Despite its sound fiscal health—its June 30, 1982, financial statement had boasted a net worth of $1.1 billion, with short-term debt of $102 million and long-term debt totaling $498.7 million—the Denver-based construction and forest-products company saw the Chapter 11 filing as a fast and fair way to deal with a worsening problem: lawsuits by individuals claiming health damage from exposure to Manville-made asbestos. Although the move would mean operating under court supervision, it would insulate Manville from the suits while the company devised a reorganization plan to satisfy creditors and plaintiffs and to free itself from future asbestos-related claims.

It was a bold gambit that Manville still insists will pay off. But the odds against it are growing. Although Federal Bankruptcy Judge Burton Lifland last week dismissed challenges by asbestos-exposed litigants to Manville's Chapter 11 petition, that decision has been appealed; and the company is certain to face other challenges by those litigants against its reorganization plan, which was proposed

John A. McKinney

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last November. Furthermore, Manville is losing support among its influential commercial and trade creditors, some of whom now believe that a reorganization isn't possible without the resignation of John A. McKinney, Manville's controversial chairman, who has supervised his company's sometimes rancorous dealings with asbestos lawyers.

Troublesome Possibility

Most troublesome to Manville is the increasing possibility that it might be liquidated, instead of reorganized. That decision is up to the court but will be influenced by the wishes of creditors who will vote on the company's reorganization proposal.

Manville's various creditors have been divided by the court into committees, including the Committee of Asbestos-Related Litigants and/or Creditors and the Unsecured Creditors' Committee (informally called the commercial- and trade-creditors' committee). The committees represent the interests of their members at large; but when it comes to a vote on the reorganization proposal, each creditor can vote as he or she wishes. And although liquidation is considered unlikely at this time, some creditors say that a First Boston Corp. projection of Manville's liquidation value has encouraged them to take a hard look at the merits of selling off Manville's considerable assets and divvying up the proceeds.

"As time goes by, I think you have to more seriously consider the liquidation scenario," says John Jamison, dean of the College of William and Mary's school of business administration and Goldman, Sachs & Co.'s representative on the commercial- and trade-creditors' committee. Robert J. Rosenberg, an attorney for the asbestos-health creditors' committee adds: "Every day that Manville remains in the bankruptcy court, the liquidation of the company becomes a more realistic alternative."

How the case is resolved will have repercussions far beyond Manville. Other asbestos makers, for example, have been pondering whether to follow Manville's Chapter 11 lead to combat lawsuits against them. At least one producer confides that it has already abandoned the idea because Manville's reorganization has hit so many snags.

Bargaining Chip

The case could also affect the legal strategy of other corporations outside the asbestos industry that are facing massive toxic-tort or product-liability litigation—makers of pesticides, defoliants and other chemical products, for instance. And even if other companies choose not to follow Manville's bankruptcy move, their fate still could be influenced by the outcome of the case.

"If things go poorly for Manville, it could mean other companies will have more motivation to settle their claims out of court," says Morris Shanker, a bankruptcy-law professor at Case Western Reserve University. "But if things go well for Manville," he adds, "companies will use the threat" of bankruptcy as a bargaining chip.

Still, some members of Congress are determined to limit the effect of the Manville strategy. Although Manville filed for bankruptcy on the basis of future liabilities, seeking court protection before the lawsuits filed against it eroded all its worth, congressional critics believe the bankruptcy code was never intended to protect a solvent company in Manville's predicament. And if Manville prevails, the congressmen may seek legislation to curb similar moves by other companies.

"No company should be able to cloak itself in the judicial processes of the U.S. to evade all responsibility," says Democratic Rep. George Miller of California, who is chairman of the House Subcommittee on Labor Standards.

Outward Calm

Through it all, however, Manville officials remain outwardly calm. They acknowledge disappointment over the delays and lack of creditor support for the company's reorganization plan but argue that Manville's strategy eventually will succeed. Given the same set of circumstances, "I think that people inside the company would make the same decision again," says G. Earl Parker, a Manville senior vice president who has been instrumental in the bankruptcy planning.

To understand how Manville came to make that decision, it helps to know something about the company's involvement with asbestos. That dates to founding of the H.W. Johns Co. in 1858 by Henry Ward Johns, a New York roofing manufacturer who fancied the fibrous mineral's fire-retardant properties. In 1901, Johns merged with Manville Covering Co., a Milwaukee-based maker of insulation for pipes, and eventually became Johns-Manville Co., for decades the non-Communist world's largest producer of asbestos. In 1981, a corporate restructuring resulted in the formation of Manville Corp., a holding corporation, with Johns-Manville as one of its five operating subsidiaries.

From the turn of the century until the mid-1960s, asbestos was used widely in the production of everything from ironing-board covers to spaceships. Millions of Americans worked with the mineral or had substantial exposure to it. But it is known now that asbestos poses a serious health hazard. Exposure to its raw dust can cause debilitating or even fatal lung diseases which often don't show up for as much as 20 years.

As early as the 1930s, scientists and doctors were coming to believe that asbestos exposure could be harmful to workers in asbestos mines, mills and factories where extensive exposure to the product occurred. However, only a minority of the cases against Manville involve those kinds of workers. "The vast majority of cases pending against Manville are brought by individuals allegedly exposed to asbestos-containing industrial-insulation products during fabrication and installation," the company says. And it states further that as late as 1964 it still didn't know that that kind of exposure—and exposure to other asbestos products—was unsafe. (It was in that year, the company says, that it voluntarily began placing warnings about asbestos-exposure problems on its industrial thermal-insulation products; the government began requiring similar warnings in 1972.)

Indeed, although Manville had faced a trickle of asbestos-related health claims from the 1930s to the 1970s, by 1976 it still had only 120 such suits pending against it. However, that number had ballooned to about 17,000 by the time of the company's bankruptcy filing; the total reflected a substantial increase in claims by World War II shipyard workers. Moreover, at the time of the filing, Manville projected it would face at least 35,000 additional suits. The potential cost was enormous, especially as some juries had begun awarding large punitive damages to plaintiffs based on claims that Manville had known the dangers of asbestos and failed to warn them. Manville denies any such foreknowledge.

After agonizing, Manville says, its board decided to seek bankruptcy protection—but not before Manville's management got a strong warning against such a move. Only five days before the filing, the company's recently retired president and chief operating officer, Frederick L. Pundsack, pleaded with Manville Chairman McKinney not to do it.

"This company is a viable, ongoing business enterprise," Mr. Pundsack argued in a 5½ page, handwritten appeal. "Why in God's name should this company be placed in bankruptcy with all the implications for stockholders, employees, creditors, etc.?" he asked in the letter, which now is part of Manville's voluminous court record.

Both Mr. McKinney and Mr. Pundsack declined to be interviewed. But in court filings, Manville says that when Mr. Pundsack wrote the letter, two weeks after his retirement, he hadn't been informed of an accounting opinion that was a major factor in Manville's bankruptcy.

That opinion, solicited from an outside accountant hired by Manville's directors to study the company's contingent liabilities, was that Manville needed to book a $1.9 billion accounting reserve against the possible cost of future asbestos-related lawsuits. Manville believed such a move would force it to secure all its future borrowings against assets and, eventually, to sell off assets to keep current; there was also the potential, the company says, of leaving future victims with little or no compensation. Manville says that Mr. McKinney himself opposed the bankruptcy filing before learning of the accounting opinion.

Blaming the Lawyers

Although some experts applaud the reasoning behind Manville's bankruptcy strategy, there is little question it hasn't worked out as the company envisioned. Manville mainly blames the asbestos victims' lawyers, arguing that they have hampered serious negotiations in the effort to enlarge their clients' claims and beef up their own fees. But Manville's critics say the company miscalculated the amount of compromise and negotiation necessary to pull off a bankruptcy reorganization.

"Once they got into bankruptcy, you had to continually beat them over the head to get even the most basic financial information out of them," says one of the company's largest creditors. Another major creditor describes Manville as having "a siege mentality that prevails to this day."

Manville's creditors outside the asbestos group began to get particularly uncomfortable with the company's hard-line strategy late last summer, when the company and asbestos representatives were discussing a possible settlement of the 20,000 asbestos-health cases now pending against Manville. The company offered to settle the litigation for $400 million; the asbestos creditors countered with a demand for $675 million. But instead of continuing the talks, an attorney for one Manville creditor recalls, the company simply declared $400 million to be its final offer and then withdrew it.

"To me, the two offers represented a negotiable difference," says the lawyer, who has been involved in other large bankruptcies. "Manville never should have walked away from the table."

With little consensus on a reorganization plan in sight, Manville eventually filed its own proposal, one particularly repugnant to the asbestos-creditors committee. In essence, Manville proposes to commit to creditors almost all its cash flow from U.S. operations, for as long as it takes to pay off its debts. But rather than allowing asbestos victims a jury trial to determine their claims, Manville wants a system that would provide fixed benefits to all victims, with certain flexibility for personal circumstances.

In addition, Manville proposes to transfer its operating assets to a new company. The new concern would continue to use its cash flow to pay off the debts of the old company, but it would be immune from any direct attack on its assets by current or future asbestos victims. Manville also has asked the court to cut sharply the fees claimed by attorneys for the asbestos victims.

Eroding Support

It isn't surprising that Manville is facing opposition from the asbestos committee, which believes the plan is designed solely to deprive asbestos victims of reasonable compensation. More damaging to Manville's chances of successfully reorganizing is the erosion of support among other creditors, particularly the commercial and trade creditors. With $600 million of their funds ensnarled in the case, they are in a position to influence the proceedings—and many of them are getting fed up with the lack of progress.

"The passage of time and the growing irritation, aggravation and impatience cause most of the creditors to wish we could find some way to move forward," says Charles Hazelrigg, president of United Bank of Denver, which holds $6 million in Manville debt. Another leading commercial creditor says, "I'm damn sick of this bankruptcy, and I'm looking for the fastest way out."

Some creditors feel they won't recover their money under a reorganization plan anytime soon unless they can get the company and its asbestos creditors to settle their differences. But deep animosities on both sides are keeping them far apart, and liquidation may be the only choice if a reorganization plan can't be confirmed, these creditors say.

"It's like a man who has cheated on his wife four times," says one Manville trade creditor. "When he starts out the door at night, she can only wonder. The lack of trust is a serious, serious problem in this case."

Those Manville creditors who would like to see Mr. McKinney ousted (an action that could be taken by the bankruptcy judge) believe their efforts to bring Manville and the asbestos group closer have been hampered by the chairman's no-compromise direction of the reorganization and his personal distaste for the asbestos creditors' committee. After a recent meeting with Mr. McKinney, "I was left with the impression that this guy just hates the guts of the asbestos [attorneys]," recalls a lawyer on another committee. "There is this enormous sense among Manville's management that what the asbestos creditors are doing is being unfair to them."

Defending the Boss

Mr. McKinney is strongly defended by Mr. Parker, the senior vice president, who says his boss has the "full support" of Manville's board and isn't about to compromise or step aside because "his principles are getting in the way of [negotiating] maneuvers." Mr. Parker adds that "if it is suggested that we should abandon the principles we set out to accomplish, we categorically refuse to do so."

Michael Crames, a New York bankruptcy attorney representing Manville, says the company will fight any attempt to remove Mr. McKinney or to liquidate Manville. "If people think that going through reorganization procedures are difficult, that would pale by comparison with the fight that we could give them if anyone ever tried to liquidate the company," he asserts. Mr. Crames predicts a liquidation would result in "a host of horrors," adding that "its achievability is close to zero."

But many creditors strongly disagree. According to the liquidation analysis First Boston conducted for the asbestos-creditors' committee, Manville's creditors could expect to fare well, and maybe even better than they would if the company reorganized. The confidential report concludes that, as a going concern, Manville has an estimated value of $1.8 billion to $2.3 billion but that liquidation of the company's businesses segment by segment could bring in between $1.90 billion and $2.36 billion. And while some legal hurdles might need to be overcome, First Boston says, "there is a market for both Manville as a whole and for selected assets."

(In the nine-month period ended last Sept. 30, Manville had income from continuing operations of $58.9 million, or $1.63 a share. Because of $7.1 million of income from discontinued operations, its net income for the period was $66 million, or $1.97 a share. Revenue in the period was $1.34 billion.)

"The First Boston report shows us that we all win in liquidation," declares Mr. Rosenberg, the asbestos-committee attorney. "If First Boston is right, there would be enough cash generated from the sale of the parts to pay all commercial and trade creditors, pay all victims what they are asking and leave over $1 billion to pay future claims." Adds Mr. Jamison, the business-school dean: "Creditors always love to see a mountain of cash and then go fight over it."

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Public Advocate makes asbestos complaint

TRENTON (UPI) — The Department of Public Advocate filed a complaint yesterday on behalf of about 40 Amtrak workers in an attempt to have the federal government enforce regulations regarding exposure to asbestos.

The complaint, filed with the Occupational Safety and Health Administration's regional office in New York, contends the employees are exposed to harmful levels of asbestos when they work with asbestos-protected circuit breakers at 12 substations in New Jersey.

FRIDAY, JANUARY 13, 1984
The News, North Jersey

Nader asks Reagan to oust OSHA official

WASHINGTON. — Twenty health and safety groups have asked President Reagan to replace Thorne Auchter, the assistant Secretary of Labor for OSHA.

Ralph Nader wrote the letter charging Auchter with refusing to issue health standards in a "timely and prudent fashion."

Auchter has denied requests for temporary standards to regulate benzene, formaldehyde, ethylene oxide and ethylene dibromide, Nader said. He added that OSHA has delayed implementation of portions of the hearing conservation amendment and the lead standard.

Nader asserted that standards OSHA had issued or plans to issue will not adequately protect workers from exposure to asbestos, ethylene dibromide and ethylene oxide.

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Asbestos defendants win case

CHICAGO—In a decision favorable to asbestos defendants, a federal appeals court has affirmed a lower-court ruling requiring victims of asbestos disease suing in Indiana to bring lawsuits within two years after their last exposure to the substance.

The 7th U.S. Circuit Court of Appeals rejected in a 2-1 decision plaintiffs' arguments that the Indiana statute of limitations only begins after victims discover their injuries.

As a result, plaintiffs who don't become aware of their asbestos injuries until many years after their last exposure, will be barred from recovery. The dissenting judge in the case called the decision a "mockery of justice."

The decision affirmed the dismissals of seven suits brought by former asbestos workers and spouses at a New Castle, Ind., factory operated by the World Bestos Division of Firestone Tire & Rubber Co. Defendants included Flintkote Mines Ltd., Bell Asbestos Mines Ltd. and Raybestos-Manhattan Inc.

An attorney for the plaintiffs has asked for a rehearing before the appeals court. /

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…KERS URGED TO ACT UPON TOXIC FIRE HAZARD

Six state legislators comprising a panel on toxic fire hazards have suggested that insurance companies take into account the toxicity of building construction materials when underwriting fire policies.

The suggestion was made during a public hearing in New York City by the national task force on fire gas toxicity. The task force is expected to issue its formal recommendations to the Council of Insurance Legislators at its annual meeting.

The purpose of the hearing was to provide legislators nationwide with the information necessary to develop a comprehensive program to minimize the dangers inherent in the use of toxic building materials.

In addition to the question of policy underwriting, a wide variety of other issues relating to combustion toxicity were considered as witnesses from insurance companies, rate setting firms, architects and builders group and attorneys involved in fire-related insurance litigation addressed the growing problem of toxic fire liability from vastly different perspectives.

One witness, M. H. DeYoung, president of the American Assn. of Insurance Services, Bensenville, Ill., maintained that the magnitude of the risk posed by combustible toxic materials paralleled that of asbestosis, the asbestos-related disease that last year forced the Johns-Manville Corp. into bankruptcy. Mr. DeYoung also expressed his fear that insurance company reserves, maintained to protect policyholders, are likely to be substantially eroded by creative court interpretations of insurance policies which often subject insurers to significant liabilities. Mr. DeYoung's contention that such liability is a problem beyond the reach of insurance companies and best left to government was questioned by the panel of state legislators.

Rep. Sally Tanner of California suggested that insurance firms should play a vital role in promoting safety by prohibiting the use of dangerous toxic materials in building construction. Sen. Charles Butts of Ohio asserted that this objective could be achieved if insurers considered the toxic properties of materials in determining fire insurance rates.

As an additional precaution, Rep. Irving Levin of Rhode Island recommended that all building products containing dangerous toxic materials be so labeled to protect the consumers.

Another witness, Cincinnati-based attorney Stanley Chesley, who has represented individuals in several cases in which toxic gases produced by fire caused death and serious injury, noted several areas which he felt deserved governmental review, including the following:

- the need to conduct tests to gather and disseminate information concerning potentially toxic materials.
- the establishment of a national policy requiring autopsies sufficient to produce accurate information concerning the cause of death on all fire-related victims.
- an in-depth examination of the quasi-public organizations which develop and carry out the product testing on which municipal codes and corporate policies are based.
- a requirement that insurance rating bodies provide both state insurance departments and buildings owners with existing information concerning toxic materials used in building construction.

A key theme of the testimony of all of the witnesses was the need for government to act to establish some mechanism for generating, gathering and disseminating information concerning the toxic properties of building materials.

43A-27 NATIONAL UNDERWRITER
PROPERTY & CASUALTY INS. ED.
WEEKLY 25,000

DEC 30 1983

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DEC 28 1983

Law of sea ruled out on shipworker's claim

United Press International

PHILADELPHIA — A shipyard worker who develops lung disease from exposure to asbestos cannot file a damage claim under admiralty law and must meet the state's statute of limitations, a Pennsylvania appeals court ruled yesterday.

The decision by the Superior Court upheld a ruling by Philadelphia Common Pleas Court Judge Harry Takiff, who is presiding over a spate of damage claims filed against asbestos manufacturers by workers at the Philadelphia Naval Shipyard.

Takiff dismissed a damage claim filed by Amedeo Volpe, a shipyard worker who said he developed lung disease from exposure to asbestos during work. He sought to file the claim using admiralty law, which governs matters related to the sea, in an attempt to circumvent the state's two-year statute of limitations.

But Takiff ruled that working on docked ships did not establish a maritime connection and that admiralty law, which is usually decided in federal courts, could not be used in the case. The appeals court upheld his decision.

Volpe, who worked at the Navy Yard from 1967 to 1974, filed suit against Johns-Manville and other asbestos manufacturers in 1977, four years after it was determined he had contracted asbestosis, a lung disease caused by inhalation of tiny asbestos fibers.

In seeking to file the claim under admiralty law, Volpe contended that his work on ships was sufficient to satisfy a maritime connection. That argument was rejected by Takiff and the appeals court, which said Volpe's job as a welder did not qualify as a maritime role.

"Mr. Volpe did not face the dangers inherent in traveling upon the seas or on navigable lakes and rivers," the court said in its decision, written by Judge Richard Wickersham.

Because admiralty law was not involved, Volpe should have filed his suit within two years of December 1973, when he first learned of the relationship between his disease and his work, the court said.

NORTH AMERICA

NEWS & NOTES

December 30, 1983

Info:

OSHA's ETS ON ASBESTOS TO BE REVIEWED BY COURT ON JAN. 12

As reported (N&N Nov.), the Occupational Safety and Health Administration's (OSHA) emergency temporary standard (ETS) for occupational exposure to asbestos which was issued on Nov. 4 was stayed by the U.S. Fifth Circuit Court of Appeals on Nov. 23 pending judicial review. This ruling by the Court was in response to a motion for stay filed by this Association and other petitioners. A hearing date of Jan. 12, 1984 was established for oral argument with briefs to be filed by Jan. 3.

On Nov. 28, OSHA filed a motion with the Court to advance the hearing date from Jan. 12 to Dec. 16. AIA/NA commented on Nov. 29 that it was willing to meet whatever schedule that might be established by the Court, but felt that any modification to original timetable had potential to be counterproductive. On Dec. 1, the Court denied OSHA's motion to advance the hearing schedule as previously set, i.e. Jan. 12 for hearing. In addition, the Court advised both parties that the hearing should specifically address the following issues:

- What new discovery or other discrete event indicates the existence of an "emergency" -- that is a sudden, generally unexpected occurrence demanding immediate action?
- Compare this case with situations in which OSHA has used, and had declined to use, the ETS procedure in the past. In answering each part of this question, include discussions of any court cases and legislative history dealing with either subject.

OSHA's ETS remains null and void pending further action by the Court. The Court has not established any schedule for itself in rendering a final decision. Notwithstanding the Court's prior decision to grant a temporary stay or any follow-on ruling after the Jan. 12 hearing, the ETS is only effective for six months and will expire May 3, 1984.

ASBESTOS INFORMATION ASSOCIATION

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OSHA continues to develop a separate notice of proposed rulemaking on asbestos which, according to the ETS, "will soon be published." This proposal will, of course, be much broader in scope than the ETS and will pertain to all industries covered by the Act, including general industry, maritime industry and construction industry. By notice in Federal Register of Dec. 27, OSHA announced that its Advisory Committee on Construction Safety and Health will meet on Jan. 11, 1984 in the Yorktown Room, Hyatt Regency Hotel, 400 New Jersey Ave., NW, Washington, D.C., at 9:30 AM "to review a draft proposal on asbestos." The meeting is open to the public.

Subsequent to above review, it is understood that the draft proposal will then be submitted to the Office of Management and Budget for additional review prior to its issuance. The draft proposal currently calls for a hearing 60 days after publication in Washington, D.C. As related item, the OSH Act mandates that the permanent standard shall be promulgated no later than six months after publication of an ETS.

AIA/NA will be represented at the Court's hearing on Jan. 12 on the ETS and is making preparations to participate in the rulemaking proceedings associated with OSHA's separate proposal yet to be published.

CANADIAN AMBASSADOR EXPRESSES CONCERN OVER U.S. REGULATORY INITIATIVES ON ASBESTOS

His Excellency Allan E. Gotlieb, Canadian ambassador to the United States was principal speaker at quarterly meeting of AIA/NA's board of directors on Dec. 13. He expressed his government's strong concern that the U.S., through the Environmental Protection Agency, was considering "abandoning the controlled use concept of asbestos practiced by other regulatory agencies in this and other countries in favor of banning."

Ambassador Gotlieb said the possible U.S. action was out of step with the "exhaustive reviews and conclusions" reached after many years, not only in Canada, but also by the nations that make up the European Economic Community. The International Labor Organization recently developed a code of practice for the "safe use of asbestos" which is generally consistent with the EEC approach.

"There is no doubt governments should do all necessary to protect the interests of their citizens," the Ambassador stressed. He continued by pointing out that "in many countries asbestos is not hazardous to health when it is properly regulated. All governments have the responsibility to ensure minimum risks be associated with its use worldwide."

Gotlieb further explained that Canada has consistently sought to develop safe standards, adequate engineering controls and firm adherence to regulations in the use of asbestos. He also urged the U.S. Government to do as Canada has done by seeking the assistance of other countries' experts to review the issues and develop regulations in harmony.

OSHA HAZARD COMMUNICATION RULE PRE-EMPTIVE, AUCHTER SAYS

Appearing as luncheon speaker before a Dec. 15 meeting of Chemical Manufacturers Association, Occupational Safety and Health Administration (OSHA) chief Thorne G. Auchter discussed his agency's recently issued hazard communication rule (N&N Nov.). In particular, Auchter focused on pre-emptive effect of rule. If this new federal standard is pre-emptive, it will take priority over right-to-know laws and regulations promulgated in many states.

Question of whether OSHA rule will pre-empt state right-to-know regulations has been a subject of controversy even before it was published in Nov. 25 Federal Register. Labor and consumer groups filed suit against OSHA on Nov. 22, in part to challenge contention that federal rule will pre-empt what they view as more stringent state right-to-know standards.

Auchter indicated OSHA would not assert pre-emption over any state rules prior to effective date of federal standard in Nov. 1985. However, he said it could be "credibly argued by some other party that a state regulation may not be enforced even before the effective date of the federal standard since compliance with one regulation, only to have it pre-empted later by another, could present an unreasonable burden to those subject to regulation." In response to a question from audience, Auchter made it clear that OSHA could support, in any dispute over pre-emption issue, position that federal law supersedes any state statute.

Federal standard would be effected differently in states that administer their own regulations under approved OSHA plans and in states without such plans. Auchter declared that in states without approved plans, right-to-know regulations will be pre-empted by federal rule "in all occupational settings."

Under Occupational Safety and Health Act, states with approved OSHA plans are given six months from publication date of federal regulation, in this case Nov. 25, to submit their own plans to agency for approval. Under section 18(c) of OSH Act, these plans must be "at least as effective" as federal rule. If they are as effective as federal rule, but differ from it, Auchter noted that they "must be justified on the basis of compelling local conditions, and they must not pose an undue burden on interstate commerce." "Unlike the situation in non-plan states, federal OSHA makes this determination, although, of course, our decision can be challenged in court."

Auchter anticipated that there would be "a great amount of litigation on the pre-emption issue for many years," but nonetheless expected manufacturers and importers to have labeling systems in place by Nov. 25, 1985. "If there ever was an OSHA issue which clearly required a uniform application nationwide, this has to be it," he added.

NEW CDC HEAD OUTLINES AGENCY PRIORITY

Dr. James Mason, who assumed the directorship of Centers for Disease Control (CDC) on Dec. 1, has declared eradication of work-related disease to be "keystone" of work of CDC and its workplace safety and health component, National Institute for Occupational Safety and Health (NIOSH). Speaking before meeting of National Advisory Committee on Occupational Safety and Health, Mason called upon fellow scientists and doctors to regard top 10 occupational safety and health problems as eradicable.

Ten leading work-related diseases and injuries, as determined by NIOSH (N&N Feb.), are focus of control strategies being developed jointly by NIOSH and CDC. List consists of occupational lung disease; musculoskeletal injuries; occupational cancer; fractures, amputations, eye losses, and traumatic deaths; cardiovascular disease; reproductive problems; neurotoxic illness; noise-induced hearing loss; dermatological problems; and psychological disorders.

These occupational problems must be considered from both an environmental and behavioral viewpoint. According to Mason, "the approach must address those two responsibilities, the life style and behavior of the individual as well as those things that occur in the environment, over which the individual has no control."

Mason used study of occupational lung disease as an example of how CDC and NIOSH are working together. "We are working on and concerned about asbestosis, byssinosis, silicosis, and coal workers' pneumoconiosis. We have called for broad controls to improve ventilation in mining operations, to improve bagging operations, using substitute materials that are less toxic, and use of respirators."

Although acknowledging that these are all mechnical solutions to lung disease problem, Mason said efforts are also being made to change worker behavior habits, such as smoking, that increase risk of lung problems in certain occupations, and to encourage adherence to safety procedures and proper use of protective equipment.

FIRST SESSION OF 98TH CONGRESS COMES TO MODEST CLOSE

Both House and Senate adjourned for 1983 on Nov. 18, bringing to an end a congressional session in which many issues were addressed but not much legislation was passed. Given below is a status report on pending legislation of significant interest.

Clean Air Act Amendments - As was the case in 97th Congress, no significant progress was made toward amending Clear Air Act. In Senate, hearings were held in Environment and Public Works Committee on S.768, introduced by Committee Chairman Robert T. Stafford (R-Vt.). That bill is identical to a package of comprehensive amendments reported out of Environment and Public Works Committee last Congress. In House, Energy and Commerce Chairman John D. Dingell (D-Mich.) held oversight hearings on EPA's implementation of hazardous air pollutants provision of Clean Air Act, section 112. However, no comprehensive amendments to Clean Air Act have been introduced in House.

In 1983, most of attention focused on two issues, section 112-EPA's mandate to list and regulate potentially hazardous substances, and acid rain. S.768 would require, among other things, EPA to list automatically nearly 40 substances for regulation under section 112. With regard to acid rain, bill would require reduction of sulfur dioxide emissions in a 31 state region east of Mississippi River by 8 million tons.

Clean Water Act - When Congress convened in Jan. of this year, Clean Water Act (CWA) appeared to be one of major environmental laws likely to see early action. CWA had been focus of hearings in 1981 and 1982, but tentative agreements that opposing parties reached in 1982 broke down after elections changed composition of Congress.

This year on June 28 Senate Environment and Public Works Committee reported out S.431, sponsored by Sen. Stafford. This bill would extend Clean Water technology compliance deadlines, establish stricter conditions for municipalities that want to discharge wastes into ocean, expand civil and criminal liabilities for violations, extend term of certain discharge permits from five to ten years, and mandate development of water quality - based effluent limitations.

On Sept. 21, Committee reported out S.2006, also introduced by Stafford, which would encourage states to develop effective management programs for "nonpoint sources of pollution," mainly runoff from agricultural lands and urban areas. Because of disagreements over a number of issues, neither bill was acted on by full Senate.

In House, Water Resources Subcommittee of Public Works Committee held extensive hearings on H.R.3282, introduced by Rep. James J. Howard (D-N.J.), but bill was not marked up or reported out.

Consumer Product Safety Commission - House and Senate each passed reauthorization bills, neither of which makes any substantive change in Commission's basic mandate. House bill contains two conflicting congressional review amendments and this dispute prevented scheduling of a House/Senate conference. CPSC is currently operating under continuing resolution funding.

Resource Conservation and Recovery Act - A bill amending national hazardous waste law, H.R.2867, was passed Nov. 3 in House. This is second time in two years House has passed Resource Conservation and Recovery Act (RCRA) reauthorization without corresponding action by Senate.

In Senate, Environment and Public Works voted to report out S.757, introduced by Sen. John H. Chafee (R-R.I.) in June, but report was not filed until late October. Floor consideration of this bill was pending as Congress adjourned. Barring new developments, RCRA should be first major environmental bill to reach President's desk, probably in late spring.

Occupational Disease - Rep. George Miller, (D-Calif.) introduced H.R.3175, a bill which would establish a federally administered workers' compensation system for occupational disease. Hearings on this proposed legislation were held by Miller's Labor Standards Subcommittee of House Education and Labor Committee, but despite plans for a 1983 markup, bill remained stalled in subcommittee.

In Senate, Don Nickles (R-Okla.), Chairman of Labor Subcommittee of Labor and Human Resources Committee, announced he would not hold hearings on occupational disease until amendments were enacted to Longshore and Harbor Workers' Compensation Act. Amendments were not enacted, and occupational disease hearings were not held.

Product Liability - Senate Commerce Committee twice postponed markup sessions on S.44, Federal Product Liability Act, which would establish nation-wide uniform product liability laws. Measure would also change relationship between tort liability and workers' compensation arising out of job-related injury or illness. Any judgement would be reduced by amount of workers' compensation to which an injured person "is or would have been entitled." If bill clears Senate Commerce Committee, it may still be referred to Senate Labor and Human Resources Committee.

Superfund - Numerous bills to amend Comprehensive Environmental Response, Compensation and Liability Act (CERLA), better known as Superfund, were introduced in Congress. Some dealt with compensation for personal injuries resulting from exposure to hazardous materials such as chemical wastes. Others focused on programs's funding mechanism. Currently, billion dollar trust fund is generated by excise taxes on raw chemical and petroleum feedstocks. Recently introduced proposals would shift funding to a tax or actual amount of hazardous waste disposed. While authorization of Superfund does not expire until Sept. 1985, Congress may expand size and scope of program in 1984.

Toxic Substances Control Act - Little substantive legislative action occurred on Toxic Substances Control Act (TSCA). In closing days of session, Rep. James J. Florio (D-N.J.) introduced two bills amending TSCA, H.R.4303 and H.R.4304. Both will be subject of hearings before Florio's Commerce, Transportation and Tourism Subcommittee in early 1984.

APPEALS COURT DENIES OSHA'S REQUEST TO EXPEDITE HEARING ON ASBESTOS STAY

The U.S. Court of Appeals for the Fifth Circuit Dec. 1 denied the Occupational Safety and Health Administration's request to accelerate the hearing schedule on the court's stay of the agency's emergency temporary standard covering occupational exposure to asbestos.

The appellate court's order in *The Asbestos Information Association, et al. v. Occupational Safety and Health Administration, Raymond J. Donovan, et al.* (Nos. 83-4687, 83-4688, and 83-4711) puts the parties under the time schedule originally set by the appeals court on Nov. 23 when it granted the Asbestos Information Association's request for a stay of the OSHA emergency action (Current Report, Dec. 1, p. 691).

At that time, the three-judge panel set a hearing date of Jan. 12, 1984, and ordered the petitioners and respondent to file simultaneous supplementary briefs by Jan. 3, 1984. The court's stay bars the agency from lowering the permissible workplace exposure limit for asbestos to 0.5 fibers per cubic centimeter "pending further order of the court."

In an effort to resolve the situation "as quickly as possible," OSHA had asked the court on Nov. 28 to further expedite the hearing schedule, setting Dec. 6 for the filing of the agency's brief, while giving AIA until Dec. 9 to submit its papers. OSHA sought a hearing on Dec. 15.

OSHA issued the emergency standard of 0.5 fibers on Nov. 4 requiring employers for the next six months to achieve the reduced exposure level through "any feasible combination of engineering controls, work practices, and personal protective equipment and devices" (Current Report, Nov. 10, pp. 587, 596).

In filing suit against the emergency standard, AIA argued that the rulemaking represented a "precipitous" action based on "the unfounded conclusion that a health 'emergency' exists" under the current two fiber per cubic centimeter standard.

OCCUPATIONAL SAFETY & HEALTH REPORTER

December 8, 1983

TECHNOLOGY

Lingering Asbestos Market . . .

DOING WITHOUT HAZARDOUS ASBESTOS hasn't been easy. Despite a decade of research, no substitute has been found that can play all of the mineral's roles. Several materials are doing most jobs as well as asbestos once did, and doing them more safely. But even the Environmental Protection Agency, which next year expects to propose that all remaining uses of asbestos gradually be eliminated, concedes that for some applications, alternatives haven't yet been discovered.

The use of asbestos, which appears to cause cancer and lung disease, has been dropping since 1973. But Americans are still using about 127,000 metric tons a year for thousands of tasks.

In sprayed insulation, shredded wood pulp and fibers made from the residue of iron and steel manufacture have taken the place of asbestos. Plastics now give strength to plaster. Filters and shields against heat are being made of substances known as aramids.

In electrical insulation, however, "nothing yet really takes the place of asbestos," says William Mirick, a chemist at Battelle Columbus Laboratories, a research institute. There appears to be a similar lack when it comes to pipe that will resist corrosive soils in the Southwestern states, where asbestos-cement pipe is preferred.

Progress has been made in eliminating asbestos from vehicle brakes by moving from drum brakes, which use the material, to disk brakes, which don't. However, because so many cars and trucks still use drum brakes, there promises to be a lingering market for asbestos.

THE WALL STREET JOURNAL
Friday, December 16, 1983

Asbestos: Just the Facts, Please

The fibers of asbestos, a material widely used in construction and insulation before 1973, are linked to lung cancer. The potential hazard exists when the fibers are airborne and capable of being breathed into the lungs.

That has caused concern in some schools. It goes without saying that the public has the right to expect schools free of an asbestos hazard.

At the same time, common sense is needed. It would be foolish to go to great expense to solve a problem that is unlikely to occur.

Not all asbestos is harmful.

Only certain forms of asbestos under certain conditions are considered dangerous. Used in flooring or sealed in walls, for example, asbestos presents little problem — unless damaged in such a way as to crumble and release fibers into the air.

Asbestos occurs under so many different circumstances that it is difficult to devise general guidelines for schools to use in addressing the matter, said a Washington-based EPA specialist, Edward Klein. He seemed to be endorsing a calm, rational approach when he said:

"What you really need in a school is people who understand how to deal with asbestos, who can recognize a problem from a non-problem."

Officials on all levels — and the public — should insist on the facts and avoid emotional reactions.

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NOV 25 1983

Illinois OKs asbestos bill

SPRINGFIELD, Ill.—The statute of limitations for asbestos injury claims in Illinois will be extended to 25 years from the date of last exposure from the current three years.

S.B. 1070, as earlier amended by Gov. James Thompson, was enacted by the Legislature during its fall veto session and will take effect July 1.

Besides changing the statute of limitations for asbestos claims, the measure also expands the Illinois Industrial Commission by one member and raises the interest rate applied to awards in appealed workers compensation cases (*BI*, Oct. 17).

43A-5 BUSINESS INSURANCE
SEMI-WEEKLY 37,000

NOV 14 1983

Recent Trends Hint Deregulatory Zeal Is Waning

By MARTIN TOLCHIN
Special to The New York Times

WASHINGTON, Nov. 30 — Perhaps they are merely straws in the wind, but some recent actions by the Reagan Administration suggest the White House may be rethinking, or at least moderating, its regulatory policy.

President Reagan came to town with a commitment to "get the Government off the backs of the people," as he put it, and supporters and critics alike agree that he has been as good as his word. Prodded by the Office of Management and Budget, the executive regulatory agencies have suspended or recinded scores of regulations, and stressed voluntary compliance while eschewing litigation.

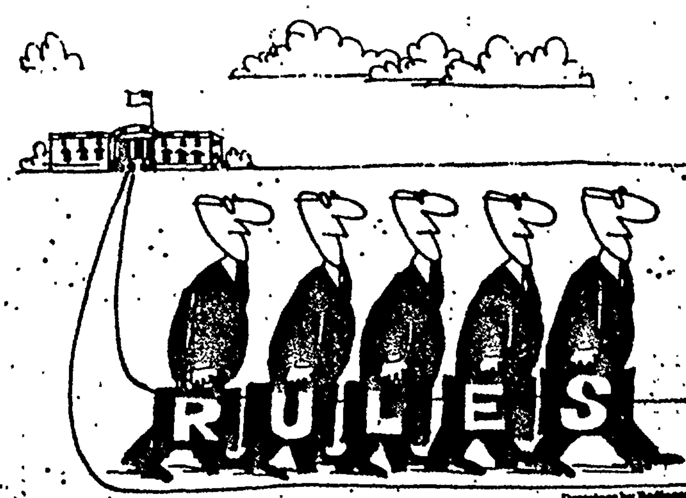
The Administration remains unalterably opposed to what it considers excessive regulation. Still, a number of recent actions indicate it may be softening its stance, perhaps in anticipation of the 1984 elections. Some question whether the changes are more apparent than real.

Whatever the case, the fact is that the Task Force on Regulatory Relief, headed by Vice President Bush, was quietly disbanded a few months ago. There has been no recent meeting of the Cabinet Council on Natural Resources, which had been engaged in proposing revisions of environmental regulations.

Changes at the E.P.A.

Since William D. Ruckelshaus was reappointed Administrator of the Environmental Protection Agency, agency has abandoned its policy of focusing on voluntary compliance and is taking polluters to court. It also has come out in favor of stronger Federal standards against the use of dangerous pesticides and rescinded an earlier decision not to regulate formaldehyde as a cancer-causing agent.

The executive regulatory agencies have begun issuing new regulations that are being heralded by the White House. A third brake light on automobiles was ordered by the National



Drawing by [illegible]

Highway Transportation Safety Administration. The Occupational Safety and Health Administration has put out regulations concerning asbestos and other toxic substances, as well as a new regulation that would enable employees to gain greater access to information on chemical hazards with which they work.

Administration officials responsible for the deregulation effort say there has not been any substantive change in regulatory policy. If new regulations are now being issued, they say, it is because they had been in the pipeline. If regulatory revisions are not as prominent as previously, they contend, it is because much of the work has been accomplished — the ostensible reason for disbanding the regulatory task force.

Christopher DeMuth, assistant administrator of the budget office in charge of regulatory affairs, said, "Every Administration matures and mellows a little as the years go by, but I don't think there's any lessening of the desire to get rid of what we consider bad regulations."

Regarding the changes at the environmental agency since Mr. Ruckelshaus's appointment, he said, "If you look at the Federal Register, it's not that different." The Register chronicles the promulgation, revision and recision of regulations.

Mr. Demuth also said that at OSHA "there have been a few recent cases where they've been assertive, involving asbestos and E.D.B. standards, but it's a matter of the timing of when the evidence came in." He added that "our workplace asbestos standard is still too high."

Mr. Demuth said the Reagan Administration had never gotten credit for tightening some standards, such as reducing the allowable amount of lead in gasoline. "We have issued a host of new effluent guidelines for air pollution," he said. "The statute says that we had to put them in, and we were under court-ordered deadlines. But we did it. The previous Administration also was under a court-ordered deadline, and didn't do it."

Still, others concerned about regulatory policy believe that the environmental agency and the workplace safety agency have been so battered by Congress and the news media that the White House may be softening its stance. They think it may be looking toward the 1984 elections, keeping in mind the strength of environmentalist groups that provided decisive support for some Republican candidates last year, among them Senators Robert T. Stafford of Vermont and John H. Chafee of Rhode Island.

Ralph Nader, the consumer advocate, said he believes that the Administration is "looking for a way out" of being characterized as antiregulation. "They read the same polls that we do," he said, noting that public opinion polls consistently indicated great public support for clean air, clean water, consumer protections and a safe workplace, regardless of cost.

William A. Niskanen Jr., a member of the President's Council of Economic Advisers, agreed that the pace of regulatory change being initiated by the Administration, as well as Congress, has slowed somewhat. But he said that nobody had sent out a "lay off" instruction. "It may be just going into an election year," he speculated.

But other critics noted that Mr. DeMuth has recently publicly tangled with Mr. Ruckelshaus, complaining about standards concerning toxic substances. "Presumably, some risks should simply be regarded as reasonable," Mr. DeMuth wrote to Mr. Ruckleshaus. Until recently, these critics said, the regulatory climate was such that no such dispute could be imagined.

But the differences may be more apparent than real. "We think that what we're trying to do over here is in tune with what this Administration wants to accomplish," said Philip Angell, Mr. Ruckleshaus's assistant.

NY-040 THE NEW YORK TIMES
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DEC 1 1983

Manville Files Defense Of Chapter 11 Petition

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Manville Corp. said its Chapter 11 bankruptcy-law petition was filed in good faith, defending the action in response to asbestos-liability creditors who are seeking to invalidate the filing.

In documents filed Friday in federal bankruptcy court here, Manville said it hadn't any alternative in August 1982 but to seek court protection because of the growing number of asbestos-related health claims being filed against it, and because it needed a reserve against future claims. The company said that the filing was made within the guidelines of the U.S. Bankruptcy Code.

Last month, the Asbestos Creditors Committee, a group that includes most of the lawyers defending asbestos victims, asked the court to dismiss the Manville filing. The group alleges that Manville would have been able to pay its asbestos-related claims and remain financially solvent, and that the filing for Chapter 11 protection was made "fraudulently and in bad faith." In addition, the group contends that Manville is using the bankruptcy-law proceedings as a "painstakingly rigged scheme for the unlawful purpose of defeating the rights of a single class of creditors, the victims of asbestos."

Under Chapter 11, the Denver-based forest-products and building concern is protected from its creditors while it tries to work out a plan to repay its debts. Bankruptcy Judge Burton R. Lifland has scheduled a Jan. 5 hearing on the motion to dismiss Manville's bankruptcy-law petition.

Manville told the court it agonized over the decision to enter bankruptcy-law proceedings. The company said it chose the Chapter 11 route when it concluded that it was "the only means available to protect the ongoing, operating businesses of Manville." The company said that the filing also was seen as the only means "to provide jobs and to generate the cash necessary to pay all Manville's creditors and claimants."

Manville said that the asbestos creditors used "speculation, innuendo and surmise" in arguing for court dismissal of the bankruptcy-law petition.

THE WALL STREET JOURNAL
Monday, December 19, 1983

Canada's Asbestos Companies Blame U.S. For Industry's Decline and Its Bleak Future

By Alan Freeman
Staff Reporter of The Wall Street Journal

MONTREAL—Canada is still waiting for the recovery of its asbestos-mining industry, and that makes some Canadians mad at the U.S.

Canada is the Western world's largest producer of asbestos, and for decades has provided virtually all of the mineral used in the U.S. But since 1979, production has declined 45%, a loss of $200 million (Canadian). And exports to the U.S. have been cut by more than half.

Canadian executives tend to blame the decline on a deep recession in the construction industry; about 75% of world asbestos production is used in building materials. But at the same time, resentment of the U.S. runs deep. U.S. agencies have restricted asbestos use because of evidence that it can cause cancer and asbestosis, a lung ailment. U.S. regulators seem ready to go further, gradually eliminating most asbestos use. Ironically, the Canadians got control of the asbestos industry in the midst of its decline. Two big U.S. companies have sold their asbestos operations to Canadians, one under pressure from the Quebec government.

The Canadians think the U.S. is being unfair. "If you touch cotton, you affect the whole southeast U.S.," a Canadian mining executive says. "But asbestos production is purely Canadian."

Government Control

Such troubles weren't expected in 1977, when Quebec's newly elected separatist government announced far-reaching plans to get a stake in the province's asbestos-mining business, then dominated by U.S. and British concerns. Most of Canada's asbestos production is concentrated in Quebec, and the government figured that getting a share of it would create thousands of jobs and increase Quebec's control of a valuable resource whose price was rising on world markets.

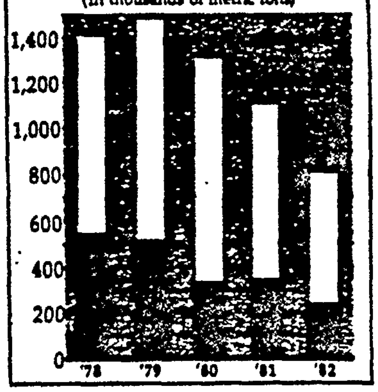
The controversy over the health effects of asbestos was already growing, but Yves Berube, the minister responsible for Quebec's asbestos policy, said it wasn't a cause for concern. "Asbestos isn't a product that's about to disappear," he said at the time. "It's an industrial product that will make Quebec rich."

The government decided to go after Asbestos Corp., the province's second-largest producer, which was controlled by General Dynamics Corp., the St. Louis aerospace concern. After four years of bitter negotiations, lengthy court battles and a threat of expropriation, General Dynamics agreed to sell control of the company to Quebec in late 1981.

The sale couldn't have come at a better time for General Dynamics. Asbestos Corp. had begun to report losses. In 1979, the company had earnings of $17.7 million (Canadian) on sales of $171.8 million; for the first nine months of this year, it had losses of $11.2 million on sales of $66.3 million. The company's work force at its main operation in Thetford Mines, Quebec, has fallen to about 800 from 1,450. A second mine in northern Quebec has been closed.

Private investors have also acquired some of the asbestos operations. Last September Manville Corp. completed the sale of its giant asbestos mine at Asbestos, Quebec,

Canadian Asbestos Production
(In thousands of metric tons)



to a group of Canadian investors for $117 million (Canadian). Manville decided to get out of the asbestos business after going into bankruptcy proceedings to protect itself against a deluge of lawsuits involving asbestos health claims.

With the sales by Manville, General Dynamics and Turner & Newall, a British company, about 60% of the Quebec asbestos is domestically owned. The only U.S. companies that still have Canadian asbestos mines are Asarco Inc. and Jim Walter Corp.

But control of the industry hasn't necessarily benefited the Quebec government. The government has invested $54.4 million in its asbestos agency, which has given it control of assets valued at $349.6 million. That investment is a fraction of what the government has invested in a deficit-plagued steel company, but it has nonetheless been costly. Asbestos Corp. stock, for example, has fallen to about $10 a share from $37 a share just before Quebec bought control of the company in 1981.

Mr. Berube, still a minister in the province's government but no longer responsible for asbestos policy, says that despite the setbacks, the government was wise to create Societe Nationale de l'Amiante, the agency that controls Asbestos Corp. and other asbestos ventures. "You have to ask the question: If Societe Nationale de l'Amiante didn't exist, what would there be left of asbestos? It's true the industry is less prosperous, but it remains one of the most important mining industries" in Quebec.

Mr. Berube says the agency has set up plants to make asbestos paper, asbestos yarn and asbestos brake linings, as well as plants for extracting magnesium oxide and mineral wool insulation from asbestos tailings. But total employment in these plants is about 400; employment at the province's asbestos mines has fallen to 3,300 this year from 6,400 in 1980.

The decline has meant hard times for the economy of Quebec's asbestos-mining region. Georges Nadeau manufactures wood pallets at a small facility in Thetford Mines. In 1979, he employed 55 workers, with 70% of his production going to the asbestos mines. Today, the mines take only 50% of his output, and employment has dropped to 35.

Population Decline

"There aren't many secondary industries except for machine shops and the like, and they all depend on the asbestos industry," Mr. Nadeau says. The unemployment rate in Thetford Mines is more than 20%, and the population has declined by 1,500 in the past year as people leave to look for jobs.

Mr. Nadeau has helped organize a committee of business, union and municipal leaders in both Thetford Mines and Asbestos in an attempt to revive the industry. The committee has persuaded the Canadian government to defend the industry against U.S. actions that would weaken it further.

The Occupational Safety and Health Administration recently decided on an emergency health standard that would cut the permissible level of asbestos exposure to one-half fiber per cubic centimeter from two fibers. A stay on the order was ordered last month by a U.S. court.

But what really concerns the industry is a proposal by the Environmental Protection Agency to ban some asbestos uses immediately and phase out all others. A formal proposal for the ban is expected by July, to be followed by public comment and hearings. It

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is expected that the proposed ban will also be contested in the courts.

Georges Dahmen, director general of the Canadian Asbestos Information Center, a government-industry lobbying group, says a ban by the EPA would be "catastrophic." Daniel Peristein, president of Societe Nationale de l'Amiante, says he fears other countries will ban asbestos if the U.S. does. He says a ban would be "a purely political move without any scientific basis."

Mr. Peristein concedes that asbestos use must be tightly controlled to avoid health dangers, but he says there is no danger when asbestos is locked in to products like vinyl tile, cement pipes and roofing materials—all uses that the EPA wants to ban.

Edward Klein, director of the EPA office proposing the ban, argues that his agency is looking at the "whole life cycle" of asbestos, from the time it is mined until the finished product is disposed of, rather than taking a strict occupational health approach. The agency has concluded that the risks aren't worth taking when substitutes are available.

Mr. Peristein says that even though a ban hasn't been formally proposed, let alone enacted, talk of such of a move is "hurting every sale in the U.S." He complains that by not issuing a formal proposal, the EPA is "regulating by rumor and regulating by slander."

Even without the ban, Mr. Peristein doesn't see Canadian asbestos mines producing at more than 60% of capacity for some time. But he does see potential for growth in exports to the Third World, where asbestos cement is a cheap and durable construction material. "As soon as their debt problems are solved, Third World exports should grow at rates of 3% to 5% a year," Mr. Peristein says.

Even the unions representing asbestos miners, which have fought for stricter regulation of the industry, are worried that U.S. moves may lead to more layoffs. Clement Belanger, head of the miners' union at Asbestos Corp., says asbestos is an easy target for U.S. regulators because the mining industry is concentrated in Canada.

"Tobacco is even worse than asbestos," he says, "but then again, there are many states that depend on it."

Boycott Sought On Manville

Two organizations of people with asbestos-related diseases yesterday announced at a news conference that they were trying to organize a boycott of all products made by the Manville Corporation, which went into bankruptcy Aug. 26, 1982, seeking relief from thousands of asbestos-related lawsuits.

At the news conference, the Asbestos Victims of America, the White Lung Association and the creditors committee representing the asbestos litigants said the reorganization plan Manville filed Monday is "a continuation of the inhumane and ruthless fraud Manville has perpetrated."

NY-040 THE NEW YORK TIMES
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Fear of asbestos overblown in some cases, expert says

By DAVID ALLEN
Staff Writer

JAMES CITY — The public's fear of asbestos, leading in many cases to costly removal of the substance in public buildings and schools, is overblown, medical examiners were told here Monday.

Val Vallyathan of the Appalachian Laboratory for Occupational Safety and Health said exposure to asbestos outside the workplace has not proven to be a major health problem.

"The amount of fibers detected in those situations have presented a very minimal hazard," he said. "We have not detected disease in those situations so far, to my knowledge."

Vallyathan addressed some 175 medical examiners attending a week-long annual meeting of the National Association of Medical Examiners. The meeting is being held at the Williamsburg Hilton and National Conference Center.

The doctors spent Monday afternoon in technical sessions covering occupational lung diseases: coal miners' black lung disease, cotton mill workers' brown lung disease and asbestosis, most frequently found in manufacturing, construction and shipbuilding industries.

Vallyathan said asbestos is of growing concern among pathologists because it has been found to be a prime cause of lung cancer as well as asbestosis.

Since World War II, more than 11 million people have been directly exposed to high amounts of asbestos dust because of their occupations, he said. But most Americans have been exposed to small quantities of asbestos fibers, he added.

The small fibers become trapped in the lungs and cause irritations that eventually can cause the lungs to fill with mucous and make it difficult to breathe. Fibers have not only been found in public buildings where asbestos was used as a fire retardant insulation, but have been discovered in beer, wine and soft drinks, Vallyathan said.

Asbestos fibers also have been discovered in commonly used drugs, such as aspirin and ampicillin. The public also comes into contact with high amounts of asbestos when old buildings are demolished or when used asbestos is dumped in open areas such as landfills.

Vallyathan said 60 percent of the population exposed to significant amounts of asbestos dust show symptoms of asbestosis.

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A monthly report of items of interest to the asbestos industry. $60.00 per year to non-AIA/NA members.
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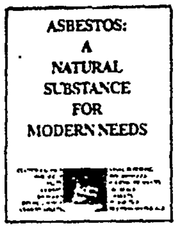

"Asbestos: A Natural Substance for Modern Needs" An overview of asbestos and current use in products. 5½ x 8½ $.75 each.
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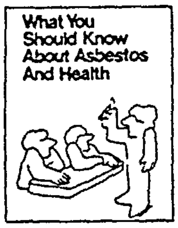

"What You Should Know About Asbestos and Health." Employee information pamphlet. 5"x7" $.35 each.
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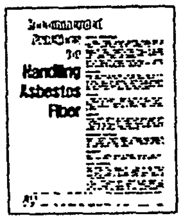

"Recommended Practices for Handling Asbestos Fiber." Heavy coated stock poster, 11"x14" printed blue on white for employee information boards. $.30 each.
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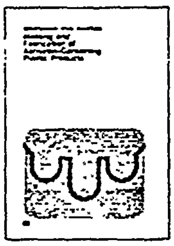

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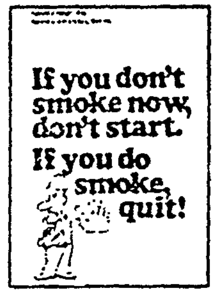

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Films—AIA/NA can make available, on a loan basis and at no charge, the educational training 16 mm films: "Working With Asbestos" (J-M, 20 min.); "Asbestos, The Indispensable Mineral" (J-M, 20 min.); "Living With Dust" (3M, 15 min.); and "Asbestos at Work" (AIC-UK, 20 min.).

Slide Presentation—"Asbestos: A Natural Product for Modern Needs" (35mm - 20 min.)

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