123

PLAINTIFF'S EXHIBIT

SH-1229

JUNE 18, 1981

SEE ATTACHED DISTRIBUTION LIST

The attached Note for File which discusses a February 18 OSHA field instruction regarding medical surveillance for asbestos workers may be of interest.

Ken Crawford

Attachment

cc - C. F. Phillips
J. D. Ransdell
J. L. Rivard

K. C. CRAWFORD

LAM 000989

ENVIRONMENTAL

DATE	6-19-81
NAME	P. J. Snyder
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DPMC-16688

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MARIETTA CHEMICAL PLANT
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MOBILE CHEMICAL PLANT
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NOTE FOR FILE

SUBJECT: MEDICAL SURVEILLANCE FOR ASBESTOS WORKERS

An article in the March 12, 1981 issue of the Occupational Safety & Health Reporter, page 1325, discusses OSHA Field Instruction CPL 2-2.21A. The stated purpose of this Field Instruction is to provide uniform inspection and compliance procedures for the medical examination requirement in the asbestos standard. In substance it is a reissue of OSHA Program Directive No. 300-16 dated October 11, 1978, with the addition of procedures for documenting past exposures.

This article raised a question from a field location regarding the legal basis for the OSHA use of 0.1 fibers/cc as an exposure criteria for requiring medical examinations. The following information is pertinent:

The OSHA regulation for asbestos (1910.001) relates the requirement for medical examinations to "employment in an occupation exposed to airborne concentrations of asbestos fibers." No specific exposure level is quoted.

In a 1977 decision of a case (GAF Corporation vs. OSAHRC and Dunlop) confirmed by the U.S. Court of Appeals for the District of Columbia Circuit, the following finding was upheld. "Asbestos standard, 29 CFR 1910.1001(j) requires employers to provide medical examinations for all workers in occupations exposed to airborne asbestos in any measurable concentration." This case is reviewed in BNA 5OSHC 1555.

In a later case against GAF Corporation, a citation was upheld because GAF did not make medical surveillance examinations available even though the exposures did not exceed 0.10 fibers per cu cm. This case (6OSHC 1206) was prior to the 1978 OSHA Program Directive.

K. C. Crawford
4/30/81

Attachments:
BNA Article
OSHA Program Directive 300-16

rule "is far too restrictive and invalidates alternative dosimeter types which would be equivalently effective," de Bernardo said. Regarding testing booths, the Chamber attorney said that "essentially laboratory conditions" would be required to meet the low frequency noise specifications for the booths, which he called an "impractical and unworkable requirement."

- There is confusion in the standard of the terms "noise" and "dose" which causes "significant ambiguity."
- Training program requirements are excessive and present "the potential for harassment of employers."
- Recordkeeping requirements are "far too excessive and costly," particularly for small and medium-sized businesses.
- The calibration requirements for dosimeters and audiometers are "exhaustive" and require more testing than necessary to ensure accuracy.
- Projections of the number of workers covered by the amendment, the overall cost of compliance, and the cost per worker for compliance are "badly underestimated."
- The requirements that only audiologists, qualified physicians, and otolaryngologists evaluate audiograms and perform certain duties is "excessively costly and an inefficient use of limited professional resources since trained technicians and qualified nurses could adequately perform such responsibilities."
- The agency miscalculated the effect of impulse noise on measurements.

The Chamber has sought to stay the rule since it was issued on Jan. 16 (Current Report, Jan. 22, p. 833). Last month, the Chamber proposed to Reagan's task force on regulatory reform that the eight-hour time-weighted noise exposure to which workers must be exposed to be included in industrial hearing conservation programs under the new rule be raised from 85 dB to 90 dB (Current Report, Feb. 19, p. 1266).

ORC Petition

A similar petition requesting suspension of the effective date of the Occupational Safety and Health Administration's new hearing conservation amendment, full review of the record compiled on the amendment, and a reopening of the record also was submitted March 2 to Secretary of Labor Raymond J. Donovan by the Organization Resources Counselors, Inc.

ORC criticized the amendment for relying on specification rather than performance criteria and for being too technically complex for most employers. "In our view, OSHA can solve the broad problem and many of the specific problems [contained in the amendment] only if it substitutes a performance standard for the excessively specification-oriented amendment," the organization stated.

ORC shares similar concerns with the Chamber of Commerce about a number of issues, including specifications for test booths, recordkeeping requirements, specifications required for dosimeters, whether dosimeters are reliable under the requirements of this program, definitions of significant threshold shift and revised baseline in the program, enforcement and need for the 14-hour quiet period, requirements for audiometer calibration, training requirements, effect of impulse noise on measurements, and limitation of audiogram review to certain physicians.

In addition, ORC requested that several issues, such as the cost effectiveness of the amendment, the number of workers covered and the resulting overall cost of the amendment, the provision for employee monitoring of the program, possible confusion between the requirements of the amendment and those of the old standard, the handling of computer programs, and the requirement that noise levels as low as 80 dBA be included in the time weighted average, receive additional consideration and review before the amendment becomes effective.

LAM 000992

Asbestos

OSHA INSTRUCTION GIVES PROCEDURES FOR DOCUMENTING PAST EMPLOYEE EXPOSURE

Procedures for documenting past employee exposure to airborne asbestos fibers when concentrations can not be measured by taking of air samples on the day of the inspection or thereafter were detailed in an Occupational Safety and Health Administration instruction issued Feb. 18.

The instruction, CPL 2-2.21A, sets guidelines for determining whether asbestos had been used or handled regularly at the workplace — or, if it had been used or handled on an irregular basis, whether employees were exposed to "significant amounts" of asbestos-containing dust — for the purposes of the medical examination requirements of the asbestos standard (Reference File, 31:8306).

Compliance officers are instructed to obtain monitoring results from the employer or contractor, or from other sources. Information necessary to document asbestos use or handling is to be obtained through employee, employer representative, or union interviews, and through written employer information if it exists.

The instruction cancels a similar document issued in October 1978 but, except for the addition of the procedures for documenting past exposure, leaves it essentially unchanged (Current Report, Nov. 2, 1978; Reference File, 21:9158).

Text of the instruction follows.

Text of OSHA Instruction CPL 2-2.21A

Subject: 29 CFR 1910.1001(j)(2), (3) or (4), Minimum Airborne Fiber Concentration for Initiating and Continuing Asbestos Medical Examinations.

A. *Purpose.* This instruction provides uniform inspection and compliance procedures for the medical examination requirement in the asbestos standard.

B. *Scope.* This instruction applies OSHA-wide.

C. *Cancellation.* OSHA Instruction CPL 2-2.21, October 11, 1978, is canceled.

D. *Action.* OSHA Regional Administrator and Area Directors shall assure that enforcement of 29 CFR 1910.1001 (j)(2), (3) or (4) is consistent with the guidelines in G. of this instruction.

E. *Federal Program Change.* This instruction describes a Federal program change which affects State programs. Each Regional Administrator shall:

1. Ensure that this change is forwarded to each State designee.

2. Explain the technical content of the change to the State designee as requested.

3. Ensure that State designees are asked to acknowledge receipt of this Federal program change in writing, within 30 days of notification, to the Regional Administrator. This acknowledgement should include a description either of the State's plan to implement the change or the reasons why the change should not apply to that State.

4. Review policies, instructions and guidelines issued by the State to determine that this change has been communicated to State program personnel. Routine monitoring activities (accompanied inspections and case file reviews) shall also be used to determine if this change has been implemented in actual performance.

F. *Background.* OSHA has determined that generally citations should, as a matter of policy, be issued for

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violations of 29 CFR 1910.1001(j)(2), (3) or (4), only when employees are exposed to a minimum of 0.1 asbestos fibers longer than 5 micrometers per cubic centimeter of air, as determined by the sampling method prescribed in section G.2. of this instruction. [The phrase "fibers longer than 5 micrometers per cubic centimeter of air" shall hereafter be abbreviated as "fibers/cc."] However, for situations in which sampling of exposure is infeasible, citations may be issued as provided in G.5. of this instruction.

G. *Enforcement Guidelines.*

1. Medical examinations as per 29 CFR 1910.1001 (j)(2), (3) or (4) will be required for any 7- to 8-hour time-weighted average concentration of 0.1 fibers/cc, or for a greater concentration.

2. Sampling procedures will follow Chapter X of the IHFOM with the additional guidelines of G.3 and 4. of this instruction.

3. *Sampling for Exposures to Asbestos Dust with Low Levels of Contamination (e.g., Mixed with Other Minerals).*

a. For exposure to dust that is mostly asbestos and is expected to be below the permissible exposure limit, the same filter should be used for the entire shift, but no longer than 8 hours.

b. For exposure expected to be at or above the permissible exposure limit, several samples may be required during the shift to avoid overloading the filters.

4. *Sampling for Exposure to Asbestos Dust with High Levels of Contamination.*

a. Several samples of exposure may be required during the shift to avoid overloading the filter.

b. Filters should be changed only after a minimum of 1 hour of sampling time for exposures expected to be close to 0.1 fibers/cc. Seven or eight 1-hour samples can be collected during the day.

5. *Past Exposures.* When employees have been exposed to asbestos but air samples cannot be taken on the day of the inspection or thereafter, citations for serious violation of 29 CFR 1910.1001(j)(2), (3) or (4) should be issued according to the following procedures:

a. Determine that employees were exposed to airborne concentrations of asbestos, and that the use or handling of asbestos was performed on a regular basis; or that the use or handling of asbestos was performed on an irregular basis, but employees were exposed to significant amounts of dust containing asbestos.

NOTE: Compliance officers shall obtain monitoring results from the employer (contractor) or other source (e.g., insurance company; company or plant for whom contracting work is being done; building owner/building management; other Federal, State or local agency), and shall indicate exposure levels above 0.1 fibers/cc of asbestos.

b. Document, by employee, employee representative, and union interviews, that this work was performed routinely, on a repeated basis; or that the use or handling of asbestos was performed on an irregular basis, but employees were exposed to significant amounts of dust containing asbestos. In addition, obtain documentation from written employer information on these routine operations, if it exists.

c. The violative conditions must have occurred at least within the previous 6 months to meet the requirements of Section 9(c) of the Occupational Safety and Health Act.

6. *Types of Violations.*

a. A "serious" violation of 29 CFR 1910.1001(j)(2), (3) or (4) would exist where an employer does not provide the required medical examinations, and an employee is exposed to 0.1 or more fibers/cc.

b. For definitions and guidance on "repeated", "willful" or a "failure to correct" violation, see the FOM, Chapter VIII.

Litigation

COURT RULES GRAIN DUST ACCUMULATION VIOLATES OSHA HOUSEKEEPING STANDARD

An employer that has been cited twice for violation of the Occupational Safety and Health Administration's housekeeping standard, for failure to prevent accumulations of grain dust in its grain elevator, is in repeated, serious violation of that housekeeping standard, the U.S. Court of Appeals for the Fifth Circuit, Unit A, ruled March 5.

This decision in *Bunge Corporation v. Secretary of Labor and OSAHRC* (No. 79-1906) affirmed a ruling of the Occupational Safety and Health Review Commission (7 OSHC 1326).

The case arose out of the inspection of the employer's Destrehan, La., grain elevator. During that inspection, the OSHA compliance officer found 42 locations where dust and grain had accumulated. The citation charged that this condition was in violation of 29 CFR 1910.22(a)(1) and that it created a fire hazard. This citation was the third such citation issued to the employer for violation of the same housekeeping standard. The first and third citations involved dust accumulations and the second involved material and ropes left in walking areas.

After a hearing on the merits of the case, an OSAHRC judge found the employer to be in repeated, serious violation of the housekeeping standard and assessed a $10,000 penalty. This appeal followed.

The employer did not dispute the existence of the dust accumulations at the grain elevator but, instead, argued that the housekeeping standard had been impermissibly expanded to include fire and explosion hazards. According to the employer, grain dust fire and explosion hazards can only be addressed by promulgating a specific rule covering those hazards. The appellate court rejected that argument, stating, "[w]hile a specific rulemaking may be preferable, OSHA is by no means obligated to countenance dangerous conditions pending the promulgation of a regulation that specifically addresses one of the hazards that the condition generates."

This opinion, which was written by Circuit Judge Sam D. Johnson, who was joined by Circuit Judges Irving L. Goldberg and Henry Politz, will appear in a future Decisions issue.

LAM 000993

State Plans

MONETARY PENALTIES AGAINST WORKERS SUBJECT OF OSHA INSTRUCTION TO FIELD

States are not absolutely prohibited from leveling economic penalties against workers who fail to comply with job safety and health standards, but any state considering the inclusion of such sanctions in its state plan should evaluate the action carefully to determine whether it "weakens the effectiveness of the overall enforcement program," according to an Occupational Safety and Health Administration field directive.

The document, OSHA Instruction STP 2-1.8A, dated Feb. 24, also said that a state which includes such penalties in its plans "must show how these sanctions would *not* reduce the overall effectiveness of the state's enforcement program below that of the federal enforcement program."

(3) Magnesium arsenate.
(4) Sodium arsenite.
(5) Zinc arsenate.
(6) Zinc arsenite.
(7) Zinc fluoroarsenate.
f. Manufacturers of desiccants.
Example : Orthosarsenic acid.
g. Manufacturers of wood preservatives.
Some examples of these products are as follows:
(1) Ammoniacal copper arsenite.
(2) Chromated copper arsenate.
(3) Mixture of chlorinated arsenate, fluoride and phenolic salts in aqueous solution.
(4) Zinc-chromium arsenate.
(5) Copperized zinc-chromium arsenate.
(6) Fluorchrome arsenate phenol.
h. Manufacturers of feed additives.
Some examples of these products are as follows:
(1) Arsanilic acid.
(2) 3-Nitro-4-hydroxyphenylarsonic acid.
(3) 4-Nitrophenylarsonic acid.
(4) 4-Ureido-1-phenylarsonic acid.
i. Manufacturers of pharmaceuticals for use in veterinary medicine.
Some examples of these products are as follows:
(1) Acetarsamide.
(2) Carbarsone.
(3) Dichlorophenarsine.
(4) Lead arsenate.
(5) Melarsonyl.
(6) Neoarsphenamine.
(7) Thiacetarsamide (Caparsolate).
j. Manufacturers of glass that use arsenic trioxide as a refining agent and a decolorizer.
k. Manufacturers of alloys of nonferrous metals and arsenic.
Some examples of products manufactured from these alloys are as follows:
(1) Lead shot.
(2) Cable sheathing (lead and arsenic).
(3) Battery grids (lead and arsenic).
(4) Battery electrodes (lead and arsenic).
(5) Speculum metal.
(6) Boiler tubes (Copper and arsenic).
(7) Arsenic bronze.
(8) Special solders such as used on body joints and seams in the automobile industry.
(9) Arsenic brass.
(10) Arsenical Babbitt.
l. Users of solders that contain arsenic as a component in the alloy.
Example: Automobile and truck body manufacturers.
m. Manufacturers and/or users of arsenic-based flotation reagents.
n. Miscellaneous.
Arsenic and/or arsenic-containing, inorganic compounds are used in each of the following types of establishments. However, every employer does not necessarily use them.
(1) Leather tanneries.
(2) Manufacturers of ceramics and ceramic or vitreous enamel.
(3) Manufacturers of analine colors.
(4) Manufacturers of pyrotechnics.
(5) Manufacturers of semiconductors.

OSHA PROGRAM DIRECTIVE #300-16
October 11, 1978

TO: REGIONAL ADMINISTRATORS/OSHA

Subject: 29 CFR 1910.1001(j)(2) or (3) or (4), Minimum Airborne Fiber Concentration for Initiating and Continuing Asbestos Medical Examinations.

1. *Purpose*
The purpose of this directive is to provide uniform inspection and compliance procedures for the medical examination requirement in the asbestos standard, 29 CFR 1910.1001(j)(2), or (3) or (4).
2. *Documentation Affected*
This directive supplements and provides reference for the OSHA Industrial Hygiene Field Operations Manual (IHFOM) and the OSHA Field Operations Manual (FOM).
3. *Background*
In 29 CFR 1910.1001(j)(2), or (3) or (4), Medical examinations, the term ". . . exposed to airborne concentrations of asbestos fibers. . . ." has been the subject of considerable discussion and debate as to the meaning or interpretation of "airborne concentrations."
4. *Action*
a. Definition.
In 29 CFR 1910.1001(j)(2), or (3) or (4), Medical examinations, the term ". . . exposed to airborne concentrations of asbestos fibers. . . ." is administratively interpreted to mean exposed to a minimum of 0.1 asbestos fibers longer than 5 micrometers per cubic centimeter of air, as determined by the sampling method prescribed in section 4.c. of this directive. The phrase "fibers longer than 5 micrometers per cubic centimeter of air" shall hereafter be abbreviated as "fibers/cc."
b. Scope and applicability.
Medical examinations as per 29 CFR 1910.1001(j)(2), or (3) or (4) will be required for any 7- to 8-hour time-weighted average concentration of 0.1 fibers/cc, or for a greater concentration.
c. Sampling information.
(1) Sampling procedures will follow Chapter X of the IHFOM., with the additional guidance of 4.c.(2) and (3) of this directive.
(2) Exposure to asbestos dust with low levels of contamination (e.g., mixed with other minerals).
(a) For exposures to dust that is mostly asbestos and is expected to be below the permissible exposure limit, the same filter should be used for the entire shift, but no longer than 8 hours.
(b) For exposures expected to be at or above the permissible exposure limit, several samples may be re-

quired during the shift to avoid overloading the filters.

(3) Exposures to asbestos dust with high levels of contamination.

(a) Several samples may be required during the shift to avoid overloading the filter.

(b) Filters should be changed only after a minimum of 1 hour of sampling time for exposures expected to be close to 0.1 fibers/cc. Seven or eight 1-hour samples can be collected during the day.

d. Examples of types of violations.

(1) Where an employer does not provide the required medical examinations, and an employee is exposed to 0.1 or more fibers/cc, it would be considered a "serious" violation of 29 CFR 1910.1001(j)(2), or (3) or (4).

(2) For definitions and guidance on "repeated," "willful," or a "failure to correct" violation, see the FOM, Chapter VIII.

5. *Effective Date*

This directive is effective immediately and will remain in effect until further notice.

OSHA Instruction CPL 2-2.20
April 2, 1979

Subject: Industrial Hygiene Field Operation Manual

A. *Purpose.* This instruction establishes the revised Industrial Hygiene Field Operation Manual (IHFOM) and incorporates it into the OSHA Directives System.

B. *Scope.* This instruction applies OSHA-wide.

C. *Cancellation.* This directive cancels OSHA-Instruction CPL 2-2.10, CPL 2-2.14 and the IHFOM dated June 1976.

D. *Action.*

1. All policies and procedures described in the IHFOM should be initiated as of April 30, 1979.

2. Two copies of this instruction appear in the IHFOM. One of these should be filed in new OSHA Directives System Binders.

E. *Federal Program Change.* This directive describes a Federal program change which affects State programs. Each Regional Administrator shall:

1. Ensure that this change is forwarded to each State designee.

2. Explain the technical content of the change to the State designee as requested.

3. Ensure that the state, within 30 days, submits a plan supplement, a timetable for adoption of such a supplement, or reasons why it is not necessary for the State to change its plan. States must not be allowed more than 6 months from the date of notification to formally submit the plan change supplement to the Region.

4. Review policies, instructions, and guidelines issued by the State to determine that this change has been communicated to state program personnel. Routine monitoring activities (accompanied inspections, spot check visits, and case file reviews) shall also be used to determine if this change has been implemented in actual performance.

OSHA Instruction CPL 2-2.25
May 8, 1979

Subject: Sampling Techniques and Laboratory Submittal Strategies

A. *Purpose.* This directs OSHA Compliance Officers to take samples in an efficient manner and prioritize samples submitted to the laboratory. It directs laboratory personnel to be selective about the samples analyzed and establishes a quality control program to ensure meaningful samples are not disregarded. It also establishes procedures to submit screening data to OMDS.

B. *Scope.* This instruction applies OSHA-wide.

C. *Action.*

1. *Field Compliance Officers.*

a. Determining Types of Samples. Before conducting full shift sampling for chemicals identified in Table 1, screening samples should be taken with detector tubes or other currently available direct reading instruments. When screening samples indicate exposures of less than 50 percent of the PEL, further sampling shall not be required. Detector tubes in Table 1 will be made available to the Regions from the Cincinnati Maintenance and Calibration Laboratory.

Table 1

Detector Tubes Available from MCL	*Substance Code #*
1. Acetone	0040
2. Benzene	0320
3. Ethyl Alcohol	1060
4. Formaldehyde	1290
5. Isopropyl Alcohol	1560
6. Methyl ethyl Ketone	0430
7. Methyl isobutyl Ketone	1385
8. Perchloroethylene (tetrachloroethylene)	2020
9. Trichloroethane (methyl chloroform)	1720
10. Trichloroethylene	2490
11. Toluene	2460
12. Vinyl Chloride	2580
13. Methylene chloride	1730
14. Xylene	2590

b. *Recording Screening Results.* The total number of screening tests taken for the above substances must be recorded and transmitted to the National Office for MIS purposes. As an interim measure, the Direct Reading Data OSHA-93 Form will be used for this purpose (see IHFOM Chapter 14). Although the Direct Reading Data Form was not designed with screening in mind, this form lends itself to recording the data required to determine by substance the total number of screening samples taken.

When the Direct Reading Data OSHA-93 Form is used to report screening tests the following information will be recorded on the form:

1. Print the word "SCREEN" at the top of the form.

2. Complete the following items on the form. See the example on Attachment A.

Item 7. Establishment Name

LAM 000995

730
Asbesto
RT

EPA/CPSC BEGIN JOINT ASBESTOS CONTROL ACTIVITIES

Elimination of all non-essential uses of asbestos is the ultimate goal of a dual agency announcement last week as the Environmental Protection Agency and the Consumer Product Safety Commission both moved toward regulating the fibers. The action is a major regulatory effort by the government to more fully control asbestos use in the U.S., long known for its adverse health effects on the human respiratory system. EPA and CPSC each published an advance notice of proposed rulemaking to regulate the fibers in the Oct. 17 *Federal Register*.

In the interests of reducing the reporting burden for the Federal asbestos control efforts and to assure the agencies' efforts will be coordinated, compatible and non-duplicative, EPA and CPSC also published an interagency agreement explaining each agency's responsibilities in the asbestos control effort.

EPA's efforts will be the more comprehensive effort of the two. Using the Toxic Substances Control Act, EPA will initiate a broad systematic regulation to gather and evaluate information about asbestos and then eliminate non-essential uses of the popular fiber based on a "life cycle" concept for asbestos regulation. CPSC will take the narrower approach and regulate asbestos on a product by product basis (TMN, Aug. 29, 1979, p. 277).

Both agencies point out that their preliminary assessments show that asbestos use presents a health problem. Yet, they also note that asbestos use is steadily increasing each year, and this increase constitutes a "substantial continuing exposure of millions of people to the ever growing inventory of asbestos sources." (EPA estimates that 750,000 pounds of the fibers are annually processed into about 2,000 to 3,000 "discrete products.")

EPA Will Regulate Asbestos According to 'Life Cycle' Risks

EPA will regulate the fibers' use according to a life cycle approach to analyzing the risks of asbestos use; this concept weighs the "cumulative risk from exposure to asbestos," i.e. all risks of every facet of asbestos' use, from the mine to the dump site. Rather than attempt to regulate asbestos products and uses one by one, EPA's ANPR sets the stage for a sweeping control program over asbestos.

EPA's use of the life cycle concept begins what could become a critical test case for future Federal regulatory actions.

EPA is considering two basic approaches for asbestos regulation. First, EPA could prohibit the processing, manufacture and use of certain asbestos products or product categories. Or, EPA could decide to set a limit on the total annual amounts of asbestos that may be produced, imported or processed, thus eliminating products by attrition. EPA will probably combine elements of both approaches.

Agency is currently considering reducing asbestos use by employing a collapsing ceiling limit for annual asbestos production. EPA might pick a production level and then reduce that amount annually by 5% to 20% until all nonessential use of asbestos are eliminated, according to the EPA document. EPA notes that it may also regulate against certain products on a case by case basis to ensure that asbestos use is discontinued in nonessential but profitable hazardous products.

Development of the asbestos regulation will be the first major EPA action to fully utilize the various authorities under TSCA. The program will use Sections 8(a), 8(d), 6(a) and 5(a). First step will be reporting rules under Sec. 8.

To gather economic and exposure information about asbestos products, uses and possible substitutes, EPA will issue a Sec. 8(a) reporting rule. Possible topics for the rule would include: composition of asbestos containing products, uses of product; all existing data concerning environmental and health effects, number of exposed workers including duration and extent of exposure and disposal methods.

Risk Assessments Will Be Based on Availability of Substitutes

EPA states that the suitability and the availability of substitute products will play an important role in risk assessments of asbestos products. One particular concern is the use of fibrous glass for asbestos. EPA says known studies indicate that nonasbestos fibers in the range of 1.5 microns by 5 or 60 microns are "likely to have greater fibrotic and carcinogenic potency" than fibers outside this range. Therefore, EPA will not consider fibers in this range as suitable substitutes until tests are submitted indicating otherwise, EPA said.

(Continued on following page)

EPA/CPSC BEGIN ASBESTOS CONTROL PROGRAM (Cont.)

In addition, EPA will "rely heavily" on epidemiology studies to characterize the seriousness of the health effects associated with routes, levels and durations of human exposures. Also, EPA will use the linear nonthreshold model to develop quantitative risk estimates of cancer and will follow published Federal guidance on assessing cancer risk. To supplement agency files, Sec. 8(d) rules will be used to collect unpublished health and safety studies on asbestos.

The controlling actions for asbestos products and uses will be issued under Sec. 6(a) and through issuing significant new use rules under Sec. 5(a) requiring premanufacture notification for new uses of asbestos.

The friction product category is likely to be the first regulated by EPA, with an eye on asbestos paper products like roofing paper and automobile and light truck brake linings. EPA notes that these products make up the bulk of total asbestos comsumption. Paper products account for nearly 30-40% of asbestos products while brake linings constitute about 14% of the market and are the largest single product within the friction category.

Comments on the EPA proposal should be sent by Dec. 17 to: Joni Repasch, Record Clerk, Office of Toxic Substances (TS-793), EPA, 401 M St., S.W., Washington, D.C. 20460. Comments should reference OTS-61005. Further information is available from the Office of Industry Assistance, (800) 424-9065 or in D.C. 554-1404.

* * *

EPA OFFICIALS GRAPPLE OVER PMN TESTING ISSUES

Environmental Protection Agency will publish test guidelines for premanufacture notices, Assistant Administrator for Toxic Substances Steven Jellinek said October 19, although he conceded that EPA "must determine if we publish if anyone will pay attention to them." Jellinek's comments came at the executive meeting of EPA's Science Advisory Board.

He also noted that "the first time we take 5(e) [follow-up] action we'll automatically set individual standards," adding that "we are anxiously awaiting the opportunity to do that kind of action" since the first 10 PMNs didn't give EPA that opportunity. Jellinek told the panel the agency would most likely not take any action on a chemical with very low exposure or one with little information.

"We are approaching the time to determine if test guidance is warranted and what kind is needed," Warren Muir, deputy assistant administrator said in a less definitive statement, while staffer Ron Outen, explained that EPA staffers have taken all the comments received on the proposal and chopped them into issues notebooks (such as legal and chemical fate issues) in order to expedite agency analyses. He acknowledged that many people have told EPA that it should not have any testing guidelines because the statute does not require them, Outen said. Those same commenters who oppose the guidelines continue that if the agency is going to issue them anyway, it should also provide a list of tests and protocol. In response to panel questions, Outen said that EPA has received no ecological or health effects information under PMN procedures.

* * *

FIRST TEST RULES UNDER TSCA SECTION 4 WILL BE HARDEST, EPA SAYS

First test rules to be issued under Section (4a) of the Toxic Substances Control Act could result in a "package likely to be well over 1,000 pages," Deputy Assistant Administrator Warren Muir of the Environmental Protection Agency said October 19 at a meeting of EPA's Science Advisory Board. He told the panel that 80-90% of the policy issues will be included in the first test rules, which accounts for the difficulty and extensive planning involved in the first set of substances that will be regulated under the upcoming EPA standard. Muir explained that the agency is responsible for basic findings determinations, levels of exposure for each substance, what form the chemical takes and the aspects of production and use involved.

However, Dr. Geraldine Cox of the Chemical Manufacturers Association complained that the test standards are too detailed and include "excessively rigid requirements." CMA has charged that EPA's plan "would impose a far greater level of standardization than is scientifically necessary to assure that the chemical industry develops scientifically acceptable test data."

730 Asbestos RI

FOR THE RECORD

Notice of request for competitive grant applications for demonstration programs for safe asbestos removal or treatment in schools. National Institute for Occupational Safety and Health. October 10 *Federal Register*, p. 58546.

Extension of time for written comment on proposed rule for guarding of low-pitched roof perimeters during roofing work. Occupational Safety and Health Administration. October 16 FR 59561.

Proposed rule on reporting of fatality or multiple hospitalization accidents. OSHA. October 16 FR 59560.

Notice of meeting of National Advisory Committee on Occupational Safety and Health to be held November 1-2 in Washington. OSHA. October 16 FR 59676.

Notice of policy and request for public comment on regulation of chemical carcinogens. Regulatory Council. October 17 FR 60038.

Advance notice of proposed rulemaking for entry and work in confined spaces. OSHA. October 19 FR 60333.

Notice of November 6 meeting of the Federal Advisory Council on Occupational Safety and Health to be held in Washington. FACOSH. October 19 FR 60421.

* * *

NIOSH NOW ACCEPTING APPLICATIONS FOR ASBESTOS REMOVAL

National Institute for Occupational Safety and Health, the National Cancer Institute and the National Institute of Environmental Health Sciences said that competitive grant applications for demonstration programs for safe asbestos removal or treatment in schools will be accepted until December 1. Grants will be awarded and administered by NIOSH. Eligible applicants may be universities, colleges and other public and private nonprofit organizations including state or local departments of health or education or school districts.

Total funds to be awarded may be $2-million and will be awarded by April 15, 1980. For further information contact Joseph West, Grants Management Officer, NIOSH, Rockville, Md. 20857, (301) 443-3133 or Roger A. Nelson, 443-4496.

* * *

OSHA ISSUES SEVEN NEW BOOKLETS ON WORKER RIGHTS

Occupational Safety and Health Administration has issued seven new booklets and a poster spelling out ways workers can use their rights to help employers reduce job-related hazards. The series, called OSHA: York Workplace Rights in Action, has been sent to all OSHA regional and area offices where it is available free to the public. Copies are also available at the Labor Department, Rm. S-1212, 200 Constitution Ave., NW, Washington, D.C. 20210. The series includes:

You Have a Right to Protect Your Life on the Job (OSHA 3032)

The poster, You Can't Be Punished for Insisting on Job Safety and Health (OSHA 3033)

OSHA Inspections: How You Can Help (OSHA 3023) and OSHA Health Inspections: How You Can Help (OSHA 3024)

Job Safety and Health: OSHA Inspections Are Only the Beginning (OSHA 3029)

Workers' Rights Under OSHA (OSHA 3021)

Health and Safety Committees: A Good Way to Protect Workers (OSHA 3035)

Job Safety and Health: Answers to Some Common Questions (OSHA 3034)

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LAM 000998

OSHA DIRECTIVES

OSHA Instruction ADM 1-1.2 CH-1, Oct. 1, 1979, transmits a revised page of the weekly program activity summary report.

OSHA Notice STP 2-4, Oct. 1, 1979, changes the state plan evaluation period from six to 12 months.

OSHA Instruction ADM 12-8.1A, Oct. 5, 1979, directs all OSHA components to report records holdings as of September 30 each year.

OSHA Notice CPL 2-2, Sept. 26, 1979, establishes a uniform citation control procedure for radio frequency (RF) and microwave radiation in general industry.

OSHA Notice ADM 8, Oct. 2, 1979, cancels OSHA instruction STD 1-23.1.

END

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Asbestos
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OSHA PROPOSES TO CUT TIME ALLOWED FOR REPORTING WORKPLACE DEATHS/ACCIDENTS

Occupational Safety and Health Administration moved October 16 to require employers to report a workplace fatality or multiple hospitalization accident within eight hours instead of the 48-hour period now allowed under law. The proposed rule specifies that all deaths resulting within six months of an accident also be reported eight hours after the employer becomes aware of the death. The same rule would apply in cases in which five or more workers are hospitalized.

OSHA plans to provide a toll-free telephone number for use during night hours, weekends and holidays. The agency is taking the action to "assure more timely reports and inspections, thereby improving the quality of inspection data." The notice remarked that under present practices, reports may not reach OSHA for up to seven days because of delays in mail delivery. "During the delay in receipt of the report, circumstances at the accident site may change," the notice said. "Projects may be completed and the site shut down, critical parts of a project may change although the site may remain, and witnesses' recollections may fade."

Comments should be submitted to OSHA by November 15 and mailed to Docket Officer, Docket S-125, Rm. S-6212, OSHA, 200 Constitution Ave., NW, Washington, D.C. 20210, (202) 523-7894. For further information, contact Kathleen Grosso, Rm. N-3106, (202) 523-8137.

* * *

OSHA CONSIDERING STANDARD FOR ENTRY AND WORK IN CONFINED SPACES

In an advance notice of proposed rulemaking published October 19, Occupational Safety and Health Administration said that it is now developing a proposal to revise existing rules covering entry to and work in confined spaces in general industry, excluding agriculture, construction, longshoring and shipyards. Any forthcoming proposal would also include hazards connected with confined spaces in petroleum refineries. OSHA defines "confined spaces" to include tanks, boilers, pressure vessels, sewer vaults, manholes and trenches.

Noting that it received 107 comments on another advance notice published in 1975, OSHA said that it now has available information "including reports of deaths and serious injuries attributable to working in confined spaces." National Institute for Occupational Safety and Health is currently developing a criteria document for confined spaces that will recommend relevant standards.

Specifically, the agency is interested in procedures available for testing and monitoring for oxygen content and toxic or flammable materials in confined spaces. It also hopes to determine when testing for hazardous atmospheres is necessary, what types of standby rescue equipment are used, what special training do workers receive and what is needed to maintain communications between workers in confined spaces and those on the outside. Comments should be sent by December 15 to the Docket Officer, Docket S-019, OSHA, Rm. S-6212, 200 Constitution Ave., NW, Washington, D.C. 20210. For further information, contact Dr. Jerry Purswell, director of safety standards, Rm. N-3605, (202) 523-8061.

* * *

ASBESTOS DANGERS TO SHIPYARD WORKERS WILL CONTINUE, GAO REPORT SAYS

Asbestos hazards experienced by naval shipyard workers will continue for years to come, according to a General Accounting Office report issued October 19 and released by Rep. Glenn Anderson (D.-Calif.), who noted that asbestos use was "a serious matter, a matter of life and death." The GAO report noted that the Navy decided against attempting to remove all asbestos materials from older Navy ships since the cost would be an estimated $2-billion.

"Thus, shipyard employes will continue to work with or near asbestos for many years as ships are repaired and overhauled," the report added. "The Navy has made considerable efforts to protect workers from asbestos, but safe work practices are not always followed." The year long study conducted for the report focused on the Long Beach Naval Shipyard in California and the Norfolk Naval Shipyard in Virginia. Meanwhile, a Navy seaman in Long Beach charged that enlisted personnel were required to remove asbestos with no protection other than cotton gauze masks.

CONSUMER PRODUCT SAFETY COMMISSION

ENVIRONMENTAL PROTECTION AGENCY

Commercial and Industrial Use of Asbestos Fibers and Consumer Products Containing Asbestos; Statement of Policy on Coordination of Regulatory Activities

AGENCIES: Consumer Product Safety Commission and Environmental Protection Agency.

ACTION: Joint Statement on Coordination of Regulatory Activities

This issue of the Federal Register contains two Advance Notices of Proposed Rulemaking (ANPRM) regarding exposure to asbestos. The Notices are being issued by the Consumer Product Safety Commission (CPSC) and the Environmental Protection Agency (EPA). Both agencies have taken previous regulatory action to control human exposure to asbestos. Even with these actions, both continue to be concerned that human exposure to asbestos from many sources may present an unreasonable health risk. The purpose of this joint statement is to explain the interrelationship of the proposed regulatory efforts by the two agencies and to assure the public that these investigations and possible resulting regulations will be coordinated, compatible and nonduplicative.

EPA has authority to regulate asbestos under a number of laws it administers. In the ANPRM appearing in this issue, EPA describes a regulatory investigation using the authority provided by the Toxic Substances Control Act (TSCA, 15 U.S.C. 2601). Under TSCA, EPA may regulate any chemical substance whose manufacture, processing, distribution in commerce, use and/or disposal presents an unreasonable risk of injury to human health or the environment.

CPSC administers two statutes under which it is empowered to regulate asbestos in consumer products. Under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051), CPSC has the general responsibility to protect the public from unreasonable risks of injury, illness, or death associated with consumer products, and may take action against specific products presenting a substantial product hazard. Under the Federal Hazardous Substances Act (15 U.S.C. 1261), CPSC may regulate hazards involved in the presence or use of toxic and other hazardous substances in the household.

The EPA Advance Notice of Proposed Rulemaking describes the Agency's broad effort to systematically gather information on asbestos exposure sources and to evaluate health risk from these sources based on the "life cycle" concept. In the life cycle analysis, the cumulative risk from exposure to asbestos is examined from primary processing through end use and disposal. The CPSC Advance Notice describes a narrower approach to the investigation of possible health risks that may be associated with the use of asbestos in a number of consumer products.

The Agencies recognize that in order to expeditiously and effectively provide public health protection from certain asbestos-containing products, there may be a need for remedial actions individually tailored to specific products or uses as well as broader controls. For example, the Agencies anticipate situations where CPSC's authority may enable it to reduce consumer exposure to asbestos-containing products pending more general proceedings initiated under EPA's broader program.

Through close cooperation in our regulatory endeavors, EPA and CPSC hope to achieve the following three objectives. The first is to significantly reduce unreasonable human health risk from exposure to asbestos through complementary actions. The second is to reduce potential reporting burdens on industry by coordinating information gathering under our respective statutory authorites. We plan to share all available data, while maintaining the confidentiality of business information in accordance with applicable law. Third, to avoid inconsistent or needlessly burdensome regulations, each Agency's regulatory actions (e.g., rules, bans, recalls) that may result from these investigations will be developed in close consultation with the other agency.

The initiatives described here are illustrative of the efforts of CPSC and EPA to further the goals of the Interagency Regulatory Liaison Group (IRLG). The IRLG was established in 1977 to promote better coordination among the major health and safety regulatory agenices.

Dated: October 10, 1979.

For the Consumer Product Safety Commission:

Susan B. King,

Chairman.

For the Environmental Protection Agency:

Douglas M. Costle,

Administrator.

[FR Doc. 79-32036 Filed 10-16-79; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Consumer Products Containing Asbestos; Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Consumer Product Safety Commission is concerned that consumer exposure to asbestos from consumer products may present an unreasonable risk of injury and that some consumer products containing asbestos may present a substantial product hazard. CPSC will begin its formal investigation of the use of asbestos in consumer products by publishing this notice soliciting general information on the use of asbestos in consumer products. In addition to soliciting information on the use of asbestos in consumer products, this notice describes CPSC's proposed regulatory approach to asbestos in consumer products and solicits public comment on the approach. The Commission will consider the comments during the development of any proposed regulation or other remedial action to protect consumers.

DATE: Comments and information should be submitted on or before December 17, 1979. Those comments received after this date will be considered only to the extent practicable.

ADDRESS: Comments and information should be sent, preferably in five copies, to Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, and should refer to "Asbestos." Received comments and other relevant information may be examined in copies obtained from Office of the Secretary, 1111 18th Street, N.W., 3rd Floor, Washington, D.C. 20207, during business hours Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Francine Shacter, Program Manager, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6557. For information concerning financial compensation for public participation in this investigation, contact Catherine Bolger, Office of the Secretary at the above address, telephone (202) 254-6241.

SUPPLEMENTARY INFORMATION:

Background

Asbestos is a general term for any of several naturally occurring fibrous minerals composed of silica, oxygen, hydrogen, and other elements such as sodium, calcium, iron, or magnesium. There are six basic varieties of asbestos minerals that are found in fiber form: chrysotile (the most common variety, and that found in about 95% of asbestos-containing products in the Unites States), amosite, crocidolite, actinolite asbestos, tremolite asbestos, and anthophyllite asbestos.

The high tensile strength, flexibility and heat chemical resistance of asbestos makes it adaptable to a large number of uses. Although precise figures on the number of asbestos-containing products are not available, the Commission estimates that hundreds of different types of consumer products contain asbestos in some form. Many consumer products, for example, contain asbestos paper as a thermal or electrical insulating barrier. Asbestos is also commonly used in household building products to provide strength and stability.

Health Risks Related to Asbestos Exposure

CPSC is concerned that the presence of asbestos in consumer products, under certain conditions, may present a risk of cancer and respiratory disease. On the basis of current information, it appears that consumer products containing asbestos fibers can pose a health hazard if the asbestos fibers are released into the air, and therefore are available for inhalation. The hazard may be undetectable in the ordinary use of asbestos-containing products, since some asbestos fibers may be visible only by means of optical or electron microscopy.

A large body of scientific evidence suggests that all major types of asbestos are carcinogenic. Animal data and human epidemiologic studies support this conclusion.

Extensive epidemiologic studies of health effects conducted in occupational settings provide the largest body of information on asbestos-related diseases. Since the early 1960's there has been increasing evidence as well of asbestos-related diseases in populations not occupationally exposed to asbestos. Epidemiologic studies have demonstrated increased incidence of asbestos-related diseases, including lung cancer and mesothelioma (a cancer of the linings of the pleura and peritoneum) among nonoccupationally exposed populations, including individuals with only brief or intermitten "bystander" exposures.

Autopsy studies of lung tissues of residents in urban areas in many parts of the world indicate that the general population is being exposed to asbestos from the general environment and that once inhaled, asbestos fibers can remain lodged in the lungs for life.

Health Risks Related to Consumer Products Containing Asbestos

Asbestos released from consumer products poses several unique problems in the household. First, young children and infants are subject to exposure. This is of particular concern to the Commission. Second, unlike asbestos released into the general environment, where fibers may be disbursed by air currents, asbestos fibers released from consumer products into the living space can remain in a confined space over long periods of time and may be subject to repeated cycles of settling and resuspension. The presence of asbestos fibers can thus pose an ongoing inhalation risk in the household. Third, unlike the workplace where engineering control systems and protective clothing are available to minimize worker exposure to asbestos, household members have little or no protection from exposure to asbestos fibers released from consumer products.

Previous Commission Action Concerning Asbestos in Consumer Products

The Commission has issued rules declaring consumer patching compounds and artificial emberizing materials containing respirable asbestos as banned hazardous products under the Consumer Product Safety Act (CPSA). (16 CFR 1304 and 1305, 42 FR 63354, December 15, 1977.) These actions were taken on the basis of Commission findings that the use of these products in the household would subject consumers to increased exposure to asbestos fibers. The Commission determined that this increased exposure, combined in many cases with exposure to asbestos from other sources, would result in an increased risk of cancer. In view of the seriousness of this illness and the cumulative effects of asbestos exposure, the Commission determined that continued use of these products in the household presented an unreasonable risk of unjury and that no feasible consumer product safety standard under the CPSA could adequately protect the public from the risk.

The Commission has also been concerned with the use of asbestos in hair dryers in light of information initially indicating that a significant

proportion of some 50 to 60 million hair dryers in consumers' hands or in the chain of distribution contained asbestos. As a result of negotiations between the Commission's staff and firms which share approximately 90% of the consumer hair dryer market, the firms have agreed to cease production and distribution of hair dryers containing asbestos and to offer consumers some form of repair, replacement, or refund.

The Commission's concern with hair dryers containing asbestos has been broadened to include hair dryers used by consumers in commercial hair dressing establishments.

Tests of hair dryers containing asbestos have been performed for CPSC by the National Institute of Occupational Safety and Health (NIOSH) of the Department of Health, Education, and Welfare to aid in the determination of emission of asbestos fiber from the hair dryers. The results of these tests are currently being analyzed.

Information Gathering on Consumer Products Containing Asbestos

In order to determine the scope of the potential problem posed by consumer products containing asbestos, CPSC commissioned a study to determine what other categories of consumer products contain asbestos. As a result of a report by a Commission contractor, *Review of Asbestos Use in Consumer Prducts,* A. T. Kearney, Inc., Management Consultants (April, 1978) (Kearney report) and through examination of other published sources, the Commission has developed information that indicates the presence of asbestos in a number of consumer products. Using the Kearney report and other available published sources, the Commission's staff has grouped the products according to the general form in which the asbestos exists in the product. This list of consumer products or categories of products containing asbestos is set forth in Appendix A to this notice. Also included in Appendix A is a list of consumer products that have been the subject of consumer inquiries or that are otherwise alleged to contain asbestos. The Commission requests interested persons to provide information on whether the lists in Appendix A are complete and accurate. Any information received in response to this notice will help the Commission determine the scope of the problem and identify specific products on which it may need to focus its attention.

To obtain additional specific information on the use of asbestos in consumer products in the near future, the Commission intends to issue general and special orders under the authority of section 27(b)(1) of the CPSA (15 U.S.C. 2076(b)(1)) to require manufacturers (including importers) and private labelers of certain categories of consumer products to submit information on the use of asbestos in specified consumer products which the Commission believes merit initial attention. The Commission intends to select consumer products containing asbestos for priority attention in this investigation, based on the following criteria: (1) the number of units of the product estimated to be in use by consumers, (2) the form and location of the asbestos in the product; (3) the frequency, duration, manner, and location in the consumer's environment of product use, including such factors as the expected useful life of the product and the presence of heat and/or moisture and the likelihood of abrasion during use or forseeable misuse; (4) the likely availability and feasibility of substitutes for asbestos in the product; (5) the relative ease of data collection and analysis by the Commission and the reporting burden on industry; and (6) the degree of potential overlap of CPSC reporting requirements with the information gathering efforts of other regulatory agencies, particularly the Environmental Protection Agency.

The information which the Commission may require in the general or special orders includes for the products covered: specific product indentification information; the function performed by the abestos in the product; a description of the asbestos; the location of the asbestos in the product; available test or other data concerning asbestos fiber emission; information on the promotion, marketing, and use patterns of the product; and information on possible substitutes for the asbestos in the product.

The Commission plans to begin selecting products for priority attention and may issue general or special orders to require the submission of information on those products during the time it is receiving comments on this notice.

The Commission intends to coordinate the gathering of information under the general and special orders with the information gathering activities of the Environmental Protection Agency (EPA), which is proposing, in an Advance Notice of Proposed Rulemaking appearing elsewhere in this issue of the Federal Register, a comprehensive regulatory program under the Toxic Substances Control Act to address asbestos exposure. Coordination between CPSC and EPA will include the sharing of information, including where permitted by applicable law, the sharing of confidential business information. Through this coordination, EPA and CPSC will endeaver to reduce reporting burdens on industry and improve the efficiency and effectiveness of regulatory efforts. The Commission solicits comments and information from interested persons on the issues raised by the sharing of confidential business information, particularly concerning ways to reconcile the agencies' need for information with industry's legitimate interest in preserving the confidentiality of trade secrets and other confidential commerical or financial information.

Regulatory Approach

General Policy

The previous regulatory action the Commission has taken concerning asbestos in consumer products has been based on several principles. First, the Commission concluded that exposure to any respirable asbestos fibers from consumer products presents a health risk because there has not been demonstrated to be a threshold or no-effect level below which exposure to asbestos fibers would be considered safe. Further, exposure to asbestos from consumer products is generally in addition to environmental exposure from a number of other sources, and therefore must be viewed as part of a cumulative burden of asbestos exposure.

Second, the seriousness of the injury associated with asbestos exposure—the potential increased risk of cancer—was given considerable weight by the Commission in the decision-making process to determine whether the consumer products presented an unreasonable risk. As it is required to do by statute, the Commission carefully considered the effect of regulatory action on the utility, cost, and availability of the product and concluded that in the absence of compelling evidence of unacceptable social or economic costs associated with removal of asbestos from the product, regulatory action was warranted.

The Commission recognizes that before it may take regulatory action, the Commission must make the necessary statutory findings, based on substantial evidence; and that it must observe the requisite procedures designed to ensure due process in taking regulatory action.

As a general approach, however, the Commission proposes initially to seek the elimination of all non-essential uses of asbestos in consumer products from which asbestos fibers are released during reasonably foreseeable conditions of use, including misuse. The Commission proposes to take regulatory action concerning non-essential uses of

asbestos on the basis of a determination of the fact of asbestos fiber emission, rather than a quantitative assessment. In determining whether a use of asbestos is essential, the Commission will generally consider a number of factors, including but not limited to: the function performed by the asbestos in the product; the benefit derived from the use of asbestos in the product; and the availability and cost of substitutes for the asbestos; and the safety of such substitutes.

The Commission proposes to use this regulatory approach in addressing the problem of asbestos exposure from consumer products and solicits comments from interested persons on whether this is an appropriate approach under the regulatory authority of the Commission.

By proposing this regulatory approach, the Commission does not intend to preclude possible action to address essential uses of asbestos in consumer products from which asbestos fibers are released. The initial focus, however, will be on non-essential uses of asbestos.

Statutory Tools for the Regulation of Asbestos in Consumer Products

CPSC administers two statutes under which it is empowered to regulate asbestos in consumer products. Under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051, et seq.), CPSC has the general responsibility to protect the public from unreasonable risks of injury, illness or death associated with consumer products. Under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261, et seq.), CPSC may regulate hazards presented by the presence or use of toxic and other hazardous substances in the household.

Possible regulatory actions under the CPSA to address asbestos exposure include:

(1) consumer product safety standards consisting of requirements as to performance, composition, contents, design, construction, finish or packaging of the product;

(2) consumer product safety standards requiring that the product be marked with or accompanied by clear and adequate warnings or instructions, including requirements specifying the form of warnings or instructions;

(3) rules declaring the product a banned hazardous product;

(4) orders, following the opportunity for an evidentiary hearing, determining that a product presents a substantial product hazard; and requiring the manufacturer, distributor, or retailer to notify the public and specific purchasers of the product of the nature of the hazard and requiring the repair or replacement of the product or refund of the purchase price; or

(5) rules requiring manufacturers of the product to give notification to consumers of performance and technical data, including warnings or instructions for safe use, at the point of sale. Such performance and technical data could include the results of testing which, under certain circumstances, the Commission may require manufacturers to perform.

At any time, even when one of the above proceedings is pending, the Commission may file a civil action in a United States district court against an "imminently hazardous" consumer product or the manufacturer, distributor or retailer of such product for seizure or injunctive relief.

The FHSA prescribes requirements for cautionary labeling of household products which are or contain "hazardous (including "toxic") substances", as those terms are defined in the Act or as the Commission may define them by regulation. The Commission also may prescribe by regulation reasonable variations or additional label requirements for hazardous substances. If the Commission finds that notwithstanding cautionary labeling, the degree or nature of the hazard presented by the substance is such that the public health can be adequately protected only by excluding such substance from the channels of commerce, it may, by regulation, declare the substance a banned hazardous substance. Banned hazardous substances are subject to automatic repurchase under the Act. Where a serious threat to public health exists, the Commission, pending completion of a rulemaking proceeding to declare a substance a banned hazardous substance, may, by notice published in the Federal Register, declare a substance an "imminent hazard", and thus temporarily ban such substance from the channels of commerce.

The CPSA empowers the Commission to address unreasonable risks of injury associated with consumer products or components of such products. The inclusion of components was intended to enable the Commission "to regulate just a part of a consumer product if only such regulation were warranted." *ASG Industries, Inc.* v. *Consumer Product Safety Commission*, 593, F. 2d 1323 (D.C. Cir. 1979). This recognition that products may pose a risk of injury because of the presence of a particular component suggests that the Commission could address in a single regulatory action the use of asbestos as a component in a number of different consumer products that share similar or related uses of asbestos, provided the Commission makes the requisite statutory findings under the CPSA. (See section 9(c), 15 U.S.C. 2058(c).)

Regulatory action to address asbestos in consumer products could include regulation of asbestos as a component in any consumer product where exposure to asbestos fibers occurs; regulation of a group or category of consumer products which contain asbestos in a form that results in exposure to asbestos fibers; or regulation of individual products that contain asbestos on a case-by-case basis if exposure to asbestos fibers occurs. The Commission has used the latter approach in the past. From the standpoint of effective protection of the public health and efficient expenditure of limited resources, however, the Commission believes that in certain circumstances a broader, more "generic" approach to regulation may be preferable. Where appropriate, the Commission will consider such an approach to the regulation of asbestos in consumer products. In situations where a particular type of product is found to present a hazard, the Commission will pursue appropriate regulatory action as to that product type.

Issues Highlighted For Comment

The Commission solicits comments and information from interested persons on all the issues raised in this notice as well as any other matter relevant to the investigation and possible regulation of consumer products containing asbestos. The Commission is particularly interested in receiving comments and information on the issues and questions set forth below.

1. Is the Commission's list of consumer products containing asbestos (or possibly containing asbestos) contained in Appendix A accurate and complete? Are there products or categories of products on the list that are (a) no longer manufactured or (b) currently manufactured but no longer contain asbestos? Are there products or categories of products currently manufactured that contain asbestos but that are not on the list?

2. How can agencies (such as CPSC and EPA) proceed to obtain information necessary to make informed regulatory decisions concerning asbestos while considering industry's, and the general public's interest in avoiding unnecessary reporting burdens? How can the agencies' needs for information be met while protecting industry's legitimate interest in preserving the confidentiality of trade secrets and other confidential commercial and financial information.

3. The Commission's proposed regulatory approach will initially seek the elimination of all non-essential uses of asbestos in consumer products from which asbestos fibers are released during reasonably foreseeable conditions or duration of use, including misuse. Is this a sound approach? Is it an appropriate one under the statutes the Commission administers? Under what circumstances should the Commission consider action to address essential uses of asbestos in consumer products from which fibers are released?

4. How should the Commission determine what constitutes an essential use of asbestos in consumer products? Are the Commission's proposed criteria appropriate? How much weight should be given to cost, availability, utility or safety of substitutes for asbestos in consumer products? How should the societal benefit derived from a product, or the use of asbestos in a product, be assessed?

5. The Commission's proposed position concerning the type of evidence necessary for regulatory action is that it can take action on the basis of a determination that asbestos fibers are being emitted from a product. Is this approach appropriate? In what situations should quantitative measures of asbestos fiber emission be attempted? If so, who should conduct the tests to determine the quantitative levels being emitted from particular products? Should the Commission attempt to define or develop criteria to determine whether asbestos fibers are "respirable"?

6. Where appropriate the Commission intends to consider regulation of asbestos as a component of one or more groups or classes of consumer products (i.e. "generically"), rather than on a product-by-product basis. Under what circumstances would this be an appropriate approach? What are the advantages or disadvantages of such an approach?

7. The Commission does not intend to employ quantitative estimates of cancer risks posed by exposure to asbestos fibers in making regulatory decisions concerning consumer products containing asbestos. Is this an appropriate approach to the regulation of the risks posed to the public from exposure to asbestos in consumer products?

8. The Commission has limited information concerning qualitative or quantitative studies of asbestos fiber emission from particular consumer products. The Commission is interested in receiving any such information in order to help identify products which should receive priority attention in this investigation.

9. The Commission has listed a number of criteria which it intends to apply in selecting consumer products containing asbestos for priority attention in its investigation. Are these criteria appropriate? Are there additional criteria that should be applied?

Public Participation

During the investigation and possible regulation of consumer products containing asbestos, the Commission hopes to receive the views of public interest, consumer, industry and other interested groups on all relevant issues. In order to facilitate this participation, the Commission, in addition to soliciting written comments and information through this notice, may conduct one or more public hearings or meetings. In order to ensure representation of viewpoints from groups and individuals who might otherwise not have the means to furnish comments in response to this notice, the Commission will make available financial compensation for reasonable expenses incurred in furnishing comments. Funding will also be available for participation in any hearings, meetings, or other future Commission proceedings connected to this investigation. Eligibility for financial compensation will be determined in accordance with the Commission's Interim Policies and Procedures concerning Financial Compensation of Participants in Informal Rulemaking Proceedings (16 CFR Part 1050). Individuals or groups who wish to apply for financial compensation should promptly contact the Office of the Secretary at the above address, and indicate their interest in receiving the necessary application forms and other information.

(Consumer Product Safety Act, 15 U.S.C. 2051 et. seq., Federal Hazardous Substances Act, 15 U.S.C. 1261, et. seq.)

Dated: October 12, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix A.—Consumer Products Containing Asbestos [1]

Asbestos Paper Products

Acoustical ceiling tile
Lamp sockets
Burner mats for gas stoves
Roofing felts (outer layers)
Pipe and boiler covering
Vinly sheet flooring backing
Radiator top insulation
Appliance heating shielding (paper)
  Slow cookers
  Hair dryers
Paper sheets for heat insulation
Millboard
  TV and other electronic switch plates
  Electric switch boxes
  Metal reinforced gaskets (for air-cooled engines)
  Electrical washers
  Linings for ovens, kilns, safes, safety boxes, incinerators
  Millboard sheet
    Wall protection behind heat-generating products
    Floor protection under wood and coal stoves
    Soldering and welding blocks
Iron rests
Appliance heat shielding (millboard)
    Toasters
    Rotisserie broilers
Fireproof wallboard
Metal-clad fire doors and partitions
Tent grommets
Stove pipe rings

Cloth and Woven Products

Flexible air conductor for heating, cooling and ventilating equipment
Appliance wiring
  Barbecue fire starters
  Broilers
  Curling irons
  Electric blankets
  Hair dryers
  Heating pads
  Ranges
  Slow cookers
  Toasters
  Irons
  Deep fat fryers
  Electric fry pans
Awnings
Candlesticks
Catalytic Heater Mantles
Cigarette Lighter wicks
Cord
  Seals for high temperature gaskets
  Valve steam packings
  Insulation for glass handling tools
  Reinforcing for braided wall stem hose
Theater curtains
Felt
  Reinforcements in plastics
  Gaskets
  Reinforcement in asbestos tapes
  Secondary insulation in high temperature wire and cable
  Asphalt impregnated roofing felts
  Piano and organ felts
Heating pads (element insulation)
Ironing board pads and covers
Lamp and lantern mantles
Pipe and boiler covering
Pot holders and oven mitts
Flame resistant garments
  Gloves
  Hats
  Helmets
  Hoods
  Mittens

[1] Source: *Review of Asbestos Use in Consumer Products*, A. T. Kearny Inc., Management Consultants (April, 1978), and other published sources. Final jurisdictional determinations for these products have not been made. The inclusion of a product on this list does not mean that all brands or models of that product contain asbestos.

Overgaiters
Sleeves
Suits
Umbrellas
Aprons
Arm protectors
Flame-resistant blankets
Boots
Caps
Smokers' bibs
Stoves—Coal and wood burning
Tape for pipe insulation
Braid and rope for packing
Motion picture screens
Tent grommets

Asbestos Cement Products

Water, sewer and septic drain field pipe
Airduct pipe
Sheet products
Roofing clapboard
Siding
Shingles
Interior walls
Boiler and furnace baffles
Bulk sheeting
Welding shields
Baking sheets
Blackboards
Laboratory table tops
Linings for vaults, safes, humidifiers and filing cabinets

Viscous Matrix Products

Adhesives (glues and epoxies)
Air duct cement for asbestos-cement air duct
Buffing and polishing compounds
Caulks and putties
Floor tile cement and mastic
Auto body filler
Flashing cement
Furnace cement
Glazing compound for ceramics
Pipe and boiler coverings
Roof and driveway coatings
Stains and varnishes
Automotive metal deadener
Automotive undercoating
Refrigerant cements
Automotive muffler repair compounds

Products Subject to Inadvertent Asbestos Contamination

Driveway gravel
Fertilizer and lawn care products
Potting materials (vermiculite)
Talcs for noncosmetic or food use applications

Miscellaneous Products

Acoustical and thermal insulation material, sprayed
Ammunition shell wadding
Automotive mufflers
Barbecue firebed materials in gas barbecue grills
Boat Hull Repair Kits
Flower pots
Friction Materials
Clutch plates
Brake linings
Potters' kilns (home hobby)
Pottery clay
Powder (asbestos)
Bulk fiber
Reinforcement in molded plastics and rubber
Automotive radiator sealant
Vinyl asbestos floor tiles
Abrasive wheels
Aerial distress flares
Molded plastics and phenolic laminates
Paint
Textured paint
Cement, drywall and plaster patching compounds
Artificial gas fireplace emberizing material
Phonograph records

Consumer Products Possibly Containing Asbestos [2]

Appliances

Air conditioners
Dishwashers
Hand-held mixers
Portable electric heaters
Popcorn poppers
Refrigerators
Vacuum cleaners
Waffle Makers

Miscellaneous Products

Carpet padding
Fire places
Instant papier mache
Light fixtures on railroad passenger cars
Welding masks
File cabinets

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OTS 61005; FRL 1332-4A]

Commercial and Industrial Use of Asbestos Fibers; Advance Notice of Proposed Rulemaking

AGENCY: Office of Toxic Substances, Environmental Protection.
AGENCY: (EPA, or the Agency).

ACTION: Advance Notice of Proposed Rulemaking (ANPRM) Under the Toxic Substances Control Act (TSCA).

SUMMARY: EPA is concerned that many sources of human exposure to asbestos may present an unreasonable health risk. Exposure to asbestos fibers has been shown to contribute to increased risk of lung damage (asbestosis) and cancer of several anatomic sites in humans.

Asbestos is a generic name for several naturally occurring mineral fibers. Since the beginning of the century, approximately 30 million tons of asbestos fibers have been used in the United States to produce thousands of commercial and industrial products. The inventory of asbestos products is growing since products introduced into commerce represent about 750,000 tons of asbestos per year. Some fibers used in these products are inevitably released as a result of fiber processing, product manufacturing, distribution in commerce, product use, and disposal. Much of this asbestos remains in the biosphere as a ubiquitous pollutant because of the fibers' mobility and resistance to chemical and physical decomposition. Humans may be exposed to these fibers from the aforementioned direct and indirect sources.

Certain exposures to asbestos are controlled under various Federal and State authorities. However, because of limited mandates (i.e., focused on specific populations or exposure sources), technical difficulties (e.g., available fiber measurement techniques), and other analytical constraints, these authorities are not able to deal with the total asbestos problem. As a result, many population segments remain exposed to, and inadequately protected from both direct and diffuse sources of asbestos.

The comprehensive manadate of the TSCA enables EPA to reduce health risk from sources which are difficult to control through media-specific or source-specific regulation authorized under other Federal authorities. Under TSCA, EPA is currently investigating the cumulative effects of exposure to asbestos throughout its life cycle in commercial and industrial products (i.e., from mining and milling through processing, product manufacturing, use and disposal). Our preliminary studies indicate substantial continuing exposure of millions of people to the ever growing inventory of asbestos sources. As a result of this study, the Agency expects to promulgate rules to prevent and reduce any unreasonable risks that are identified.

EPA anticipates that any rules it develops to control unreasonable asbestos risk will evolve chiefly from a combination of the following regulatory approaches. Under the first approach, the Agency might promulgate rules that prohibit the processing, manufacture, and use of certain asbestos-containing products or product categories. Under the second approach, the Agency might limit the annual amount of asbestos imported and produced in the United States, or it might limit the amount of asbestos processed in the United States. Both approaches would aim at reducing the consumption of asbestos for nonessential purposes. Both reflect the Agency's belief that many asbestos products have economically available substitutes. All rules would be designed to minimize adverse impacts on industry

[2] Source: Consumer inquiries and other sources not verified by the Commission.

by providing sufficient time to adopt substitutes and eliminate asbestos processing equipment.

Control of asbestos already installed or in service will generally require action different from the ones above. Many existing sources are difficult to identify and control. However, as an initial step, the Agency is investigating the development of a rule to require public school surveys to determine whether asbestos hazards are present due to deteriorating insulation. The Agency will also consider requiring appropriate corrective measures where hazards are found. An Advance Notice of Proposed Rulemaking has been published in the Federal Register describing this action (44 FR 54676, September 20, 1979). Other existing sources that the Agency may control in the future include public buildings where asbestos was used as an insulation or decorative material and merchant ships where asbestos is widely used as insulation.

In support of the investigation of asbestos products and uses, EPA expects to issue a reporting rule under section 8(a) of TSCA to gather economic and exposure information. The Agency also anticipates issuing a rule under section 8(d) of TSCA to require the submittal of unpublished health and safety studies relating to asbestos. Finally, EPA will consider the need for supplementary regulation under other Federal laws administered by EPA and other Federal agencies.

EPA solicits comments on this Notice. These comments will be considered during development of any proposed regulations.

DATE: All comments must be received by the Record Clerk by December 17, 1979.

ADDRESS: Mrs. Joni T. Repasch, Record Clerk, Office of Toxic Substances (TS-793), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Comments should include the docket number OTS-61005. Comments received on this Notice will be available for viewing and copying from 9 a.m. to 4:30 p.m., Monday through Friday, excluding holidays, in Room 447 East Tower, EPA Headquarters, 401 M Street, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Industry Assistance Office, Office of Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Phone: 800-424-9065, (In Washington, D.C., call 554-1404).

SUPPLEMENTARY INFORMATION:

The Problem

EPA has conducted a preliminary evaluation of asbestos related health effects and exposure situations. On the basis of this evaluation, EPA believes that many sources of exposure to asbestos may present an unreasonable human health risk because of serious adverse health effects and large numbers of people subject to exposure. Studies of exposed populations have shown that asbestosis, a progressive deterioration of lung function, and various types of cancer are associated with asbestos exposure, even at low concentrations or after short exposure periods.[1,2]

Asbestos is a generic name for a variety of naturally occurring fibrous mineral silicates (chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite). For many years asbestos has provided reliable protection against damage from heat, fire, and rot and has served many other valuable functions. The high tensile strength, flexibility, and heat and chemical resistance of asbestos fibers make them adaptable to a large number of uses. Although accurate figures on the number of asbestos-containing products are not available, some 2,000 to 3,000 discrete products are estimated to contain the material.

Asbestos use has been increasing steadily. Since the beginning of this century, approximately 30 million tons of asbestos have been used in the United States with the total increasing annually by about 750,000 tons (average annual use over the past ten years).[3]

Much of this asbestos is still in the biosphere because asbestos fibers are highly indestructible and quite mobile, moving from land and water to air through normal physical processes. Exposure sources include mines, mills, processing facilities, products, disposal sites and the ambient environment. With long latency periods between exposure and evidence of disease, we probably have not yet felt the total impact of asbestos-related disease incidence due to the growing presence of asbestos in the biosphere.

Approximately twenty Federal regulations under various laws regulate human and environmental exposure to asbestos.[4] Despite these regulations, however, large segments of the population continue to be exposed to asbestos. Consistent with their legislative mandates, existing regulations are limited to controlling asbestos in specific media (e.g., air, water, food), source categories (e.g., process emissions, waste piles), or population segments (e.g., workers). These regulations are not designed to control the full range of exposure situations. For example, there are over 100 million motor vehicles in the United States today. Since most vehicles use a set of asbestos-containing brake linings every 3 or 4 years, a considerable amount of asbestos-containing material is released to the environment during use and maintenance. Yet, not Federal regulation addresses the problem of asbestos build-up in the biosphere from this and many other sources.

Even within their regulatory purviews, Federal and state authorities are constrained in establishing adequate asbestos exposure controls. Because of their limited focus, these authorities only weigh partial risks (e.g., occupational exposure) against total societal benefits of asbestos-containing products and uses. The limitations of available fiber measurment techniques also constrain the range of feasible control options.

Approach to Regulation of Asbestos Under TSCA

The Agency believes that TSCA provides an effective means of controlling the proliferation of asbestos use in the United States and of reducing the health risks associated with the existing accumulation of asbestos in the environment. Under the compreshensive jurisdiction of TSCA, EPA has authority to weigh overall risks presented by the entire asbestos life cycle, from mining to final disposal. For example, EPA can control any chemical manufacturing, processing, distribution in commerce, use, or disposal activity, or any combination of these activities found to pose an unreasonable risk to health and the environment. EPA is planning to use TSCA's unique authority in this rulemaking to assess whether exposure to asbestos throughout its life cycle presents an unreasonable risk to human health. Where the presence of risk is determined, EPA will consider developing regulations under TSCA and other laws which the Agency administers. The development of

[1] Bogoviski, P. et al. (eds.). *The Biological Effects of Asbestos.* Proceedings of working conference held at the International Agency for Research on Cancer, Lyon, France: 2-6 October 1972, pages 155-182.

[2] Levin, R.J. (ed.). *Asbestos: An Information Resource.* DHEW Publication No. (NIN) 78-1681. May 1978, page 24.

[3] U.S. Environmental Protection Agency. *Chemical Market Input/Output Analysis of Selected Chemical Substances to Assess Sources of Environmental Contamination: Task III Asbestos.* Washington, D.C., 1978.

[4] U.S. Environmental Protection Agency. *Federal Register Citations Pertaining to the Regulation of Asbestos.* In-House Report, April 1979.

regulations under TSCA and other authorities will be integrated to promote adequate health protection and minimize impacts on industry.

The Agency anticipates that most asbestos regulatory action will be taken under section 6(a) of TSCA, although section 5(a) might also be used where appropriate. Among other things, section 6(a) enables the Agency to restrict chemical processing, limit quantities that can be used, require appropriate labels, and mandate recordkeeping. Section 5(a) enables the Agency to require that manufacturers submit premanufacturing notification for significant new uses of a chemical.

Before promulgating a rule under section 6(a) of TSCA, the Administrator must determine that the substance in question presents an unreasonable risk to human health and the environment. The Agency can then develop rules to reduce or prevent the risk using the least burdensome requirements.

To accomplish this end in the case of asbestos, TSCA requires that the following areas be examined and documented:

(1) The seriousness of health effects associated with identified levels and durations of human exposure to asbestos;

(2) The benefits of various uses of asbestos and the availability of practical substitutes for these uses; and

(3) The reasonably ascertainable economic impacts of the rules on the national economy, small business, technological innovation, the environment, and public health.

The following sections discuss the method the Agency plans to use in carrying out these studies.

Risk Assessment

EPA is examining the total risk to human health from exposures to asbestos throughout the material's commercial life cycle (i.e., from mining and milling, through fabrication into products, to final use and ultimate disposal). The Agency is preparing an assessment of occupational and general population risks from both new and existing exposure sources. The investigation will be based principally on available data concerning asbestos-related health effects and potential exposure situations. EPA believes that it already has much data to support rulemaking under TSCA. However, to insure that all relevant information is considered, the Agency expects to propose a reporting rule under section 8(d) of TSCA. The rule will require submission to the Agency of any unpublished health and safety studies on asbestos.

In examining asbestos health effects, EPA is relying heavily on the extensive epidemiological studies conducted primarily in occupational settings. The results of animal studies are being used to supplement epidemiolgic data. For example, data from animal studies are being used to assess the biological activity of fibers which differ in size, shape, or chemical composition. These studies, when combined with known and potential exposure situations, will show the seriousness of health effects associated with identified routes, levels, and durations of human exposure to asbestos. The linear nonthreshold model is being used to provide quantitative estimates of cancer risk in accordance with EPA Interim Guidelines for Carcinogen Risk Assessment (41 FR 21402, May 25, 1976) and the Interagency Regulatory Liaison Group's Guidance (44 FR 39858–39879, July 6, 1979) on the subject.

EPA particularly requests comment with respect to the analysis it intends to perform on the health risks of asbestos. Ideally, EPA would examine health risks presented throughout the commercial life cycle of asbestos associated with particular end products then analyze the substitutes for each of the end use products to determine if the risks presented are unreasonable. Asbestos, however, is contained in so many products that it would be an impracticable, if not impossible, task to analyze the risks associated with each of the 2,000–3,000 uses, except for certain distinct products which may present unique exposure situations. Furthermore, it is not clear that it is technically possible to trace the life cycle risks for a particular product, since at the early stages, such as mining and milling, asbestos is undifferentiated and may be used in any number of different end products.

Accordingly, EPA intends to analyze as a whole all the health risks associated with asbestos. The Agency's risk assessment will document major risks that occur within stages of the asbestos life cycle. Individual situations will be described that illustrate these stages. For certain situations, such as in some of the well studied asbestos workplaces, more precise estimates will be possible than in other situations. This type of risk assessment would show that risks occur generally from exposure to asbestos, rather than from any particular product because of the characteristics of that product.

EPA requests comment on the general validity of its risk assessment approach, and solicits suggestions for alternatives to remedy the problems associated with a product-by-product approach.

Some technical problems remain in making comparisons among the concentrations of asbestos that were measured by different sampling and analytical techniques. In particular, a comparison of work place levels measured with the light microscope to ambient urban levels measured with the more sensitive electron microscope would be helpful in estimating some components of asbestos risk. The Agency welcomes comments on the appropriate conversion factors to use when making comparisons of both types of data, and on the implications for estimating risk.

Socioeconomic and Substitute Assessment

If EPA's life cycle risk assessment concludes that substantial human health risk is associated with general exposure to asbestos, then the Agency will examine the situation for the presence of "unreasonable" risk on the basis of the availability of reasonable substitutes. Unreasonable risk may be analyzed on the basis of the present or future availability of reasonable substitutes on a product or category specific basis, or may be analyzed by a more general, representative socioeconomic evaluation of proposed asbestos controls. The Agency's choice of economic analysis will depend on the choice of regulatory options, which are explained below in the section titled "Regulatory Control Options." A combination of the two types of economic analyses is also being considered. The Agency will develop least burdensome controls to reduce these risks after consideration of probable socioeconomic impacts.

The analysis of substitutes will address the following issues: (1) the basic need for the product in the marketplace; (2) the performance capabilities of substitutes; (3) the present and anticipated availability of substitutes; (4) the cost of substitutes; and (5) the health and environmental hazards associated with substitutes. The evaluation of hazards from substitutes generally will be limited to a qualitative analysis. The economic analysis will include an economic profile of the industry and an examination of the potential impacts of any proposed controls. Key factors to be examined include: (1) industry structure and concentration; (2) pricing; (3) production volume; (4) current employment; (5) energy consumption; (6) income distribution; (7) growth, profitability, and capital availability; and (8) market segmentation.

Regulatory Control Options

The Agency is considering the following regulatory approaches to prevent and reduce unreasonable health risks at all stages of the asbestos life cycle.

First, the Agency might promulgate prohibitions on the manufacture, processing, and use of specific asbestos-containing products or product categories. The products or categories to be controlled would be determined on the basis of a category or product specific analysis of socioeconomic factors. Possible controls might include banning the manufacture and use of asbestos-containing textiles, roofing paper, or brake linings.

One disadvantage of this approach stems from asbestos fiber demand which reportedly exceeds current supplies. If this situation persists, fibers orginally destined for a banned product might be transferred to increase production of unrestricted products. Such a transfer could offset the reduction in asbestos use anticipated under the product use ban. The situation would only change after a large number of asbestos-containing products and uses were banned.

Another disadvantage of the specific product restriction approach is that it could generate voluminous exemption requests. Although well defined exemption criteria could minimize the number of requests, the demand on EPA resources could be significant. Despite these drawbacks, this option should still enable EPA to reduce and prevent many exposures associated with nonessential asbestos products.

Under the second approach, EPA could promulgate regulations setting limits on the amount of asbestos mined in the United States and imported annually. Alternatively, the regulation could restrict the amount of asbestos processed annually in the United States. The net risk reduction and prevention from either alternative should be about the same. In selecting between them, EPA would consider such factors as economic impacts and resources necessary for enforcement. Either alternative within this approach would be supported by a general or representative socioeconomic analysis of the proposed asbestos controls.

In essence, the second approach would establish a ceiling on the amount of asbestos used in the United States. This ceiling could be reduced gradually until it reaches a level which the Agency's socioeconomic analysis indicates is necessary for essential asbestos-containing products and uses. This approach would allow industry to determine which products and uses to eliminate. EPA would still be assured of reduction in asbestos use and environmental build-up. The disadvantage of this approach is that there is no guarantee of eliminating products which present a particularly high risk. For example, if a product with easily released fibers commands a relatively high price, it might remain in the marketplace much longer than if it was regulated specifically.

Under the third approach, the Agency might select a combination of the preceding approaches to take maximum advantage of their desirable features. The key differences between the two approaches are (1) whether EPA or industry determines which products are eliminated, and (2) whether specific products or overall quantity of asbestos fibers are regulated. EPA may prefer to allow industry to determine which products to eliminate and how to allocate available asbestos fibers. In order to provide this opportunity, the Agency may select production/import limits as the primary control option. Depending upon the outcome of socioeconomic and substitute analyses, EPA might reduce the initially established ceiling limit annually by 5 to 20 percent until an appropriate level is reached where all remaining fiber use is essential. In conjunction with the production/import rule, EPA might also ban a few selected products to ensure speedy elimination of items or uses presenting particularly significant risk. Possible candidates for ban include millboard, commercial paper, and certain friction products.

All regulations developed by the Agency under any of these approaches will be designed to minimize adverse impacts on the asbestos industry and asbestos users. To this end, the development of implementation schedules will allow for reasonable transitions to substitutes and orderly phase-out of asbestos processing equipment.

Phased Approach of Analysis

The widespread use of asbestos makes evaluating substitutes, assessing economic impact, and examining other factors necessary to support regulation a difficult and time consuming process. Therefore, the Agency is conducting regulatory assessments in a systematic manner on all asbestos product categories.

The following product categories account for the major portion of asbestos used in 1978: Paper products including certain roofing and flooring products, other flooring products, asbestos-cement pipe, asbestos-cement sheet, friction products, plastics, packing and gaskets, coatings and compounds, insulation and textiles.[5] Of these, EPA has selected asbestos paper products and automobile and light truck brake linings as initial candidates for analysis and possible rulemaking.

According to various estimates of asbestos use in 1978, paper products account for approximately 30–40 percent of the total asbestos consumption. Much of asbestos paper is used to make asbestos roofing products. Because of its versatility, however, asbestos paper has a wide variety of applications. These include asbestos paper, tubes, and tapes for electrical and thermal insulation; diaphragms for brime electrolysis cells; corrugated paper sheets and blocks for use in appliances and other applications; underlayments for sheet vinyl flooring; gaskets; beverage filters; molten glass handling equipment; and general heat/fire-proofing components. Many of these uses have reasonable substitutes. For example, roofing felt can also be made with organic and fiberglass fibers at less cost than asbestos fibers. The performance of these materials is very similar to asbestos roofing felt.

Friction products currently account for about 14 percent of total asbestos consumption. Brake linings constitute the largest single product within the friction product subcategory. Human exposure to asbestos emissions from brake linings occurs not only during processing (i.e., production of the brake linings), but also during use and servicing of brakes. Several automobile manufacturers are already using nonasbestos disc brake pads with plans to ultimately convert totally to nonasbestos pads. Nonasbestos shoes for drum brakes have been more difficult to develop but some manufacturers believe that they are near to developing a commercially acceptable substitute.

Existing Sources of Asbestos Exposure

Although risk associated with newly processed asbestos may be substantial, the continuing aggregate risk associated with existing and past asbestos use may be equally and possibly more significant. Unfortunately, reducing risks from the latter group is more complicated than reducing new risks because of difficulties in identifying all the related exposure sources, the lack of feasible control options for many sources, and the large costs associated with removing and replacing existing

[5] Clifton, R. A., *Asbestos-Mineral Commodity Profiles*, U.S. Department of the Interior, Washington, D.C., July 1979.

products. Some existing asbestos products, however, are amenable to evaluation and control. For example, asbestos has been widely used for insulation in schools and other buildings. In some of these buildings the insulation has deteriorated and fibers are entering the air in the buildings. EPA is currently investigating whether to require surveys of public schools for asbestos and appropriate control actions wherever exposure problems are identified. This action was announced in another ANPRM published in the Federal Register on September 20, 1979 (44 FR 54676).

Other existing uses of asbestos will be examined where practicable during subsequent stages of the asbestos regulatory investigation. Possible candidates include all public buildings and merchant ships.

Information Gathering under Section 8(a) of TSCA

EPA is developing a section 8(a) rule to help gather information needed for this investigation. The information will be used to determine appropriate regulatory action under TSCA as well as under other laws administered by EPA and other Federal activities. EPA invites comments on the need for such a rule: who should be subject to, or exempt from reporting; what information should be gathered under this authority; and how the section 8(a) rule should be designed.

Under section 8(a), EPA could require maintenance of records and reporting by persons who mine or mill asbestos, process asbestos (including making asbestos-containing products), and import asbestos or asbestos-containing products. Insofar as the information is known to, or reasonably ascertainable by those persons, the Agency could require reporting of information about any aspect of asbestos manufacture and processing. Possible reporting topics include the composition of asbestos-containing products, the uses of each product, all existing data concerning environmental and health effects, the number of individuals exposed in workplaces, and the duration and extent of these exposures, and the manner and method of asbestos waste or product disposal.

The section 8(a) rule could be designed in several ways depending, in part, on the control strategy selected by the Agency. A single rule might require one-time reporting of information, while a series of rules might require phased reporting by industry segments. Either type of rule could establish different reporting requirements for the various groups or persons (i.e., millers, processors, importers of asbestos) subject to the rule. A rule might require immediate submission of some information while retaining the authority to request other specified information by letter at a later date. The possible scope of a section 8(a) rule is discussed in more detail in the issue section below.

Citizens Petition

Under section 21 of TSCA, a citizen may petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under various provisions of the Act. On June 21, 1979, the Agency received such a petition requesting that a proceeding be initiated to restrict future use of asbestos-cement pipe in drinking water supply systems. This request is compatible with the Agency's plans, as announced in this Notice, to initiate a comprehensive investigation of commercial and industrial asbestos uses including asbestos-cement pipe.

The Administrator's response to the petition notes that the evaluation of health effects information on risks resulting from the ingestion of asbestos is not yet complete. It also states that the Agency has just begun gathering exposure and socioeconomic information on asbestos-cement products. Thus, it is not EPA's intent to include asbestos-cement pipe as a candidate for initial rulemaking. Nonetheless, because the Agency has initiated investigations to support a decision on whether to regulate asbestos-cement pipe under TSCA, the Administrator granted the petition.

Issues

Several issues must be resolved during this asbestos rulemaking process. EPA invites comments on the following issues and any others which might be relevant.

1. *Health Effects of Substitutes.* To adequately assess substitutes for asbestos, EPA requests health, environmental and socioeconomic information on substitute materials. This information has two purposes: (1) it will allow an informed analysis of the health effects of the substitutes for comparison with the known hazards of asbestos, and (2) it will enable a balanced consideration of the environmental, economic, and social impact of any action taken by the Agency.

We are particularly concerned with materials, such as fibrous glass, that might have physical dimensions and characteristics very similar to those of asbestos fibers, but differ only in chemical composition. EPA is aware of relevant research, especially the studies by Stanton [6, 7] Pott [8, 10] and others.[11, 12, 13, 14, 15] These studies suggest that the length and width of fibers or the ratio of the width to the length may be more important than their chemical composition in determining carcinogenicity. More specifically, current research findings suggest that fibers with diameters less than or equal to 1.5 microns and lengths between 5 and 60 microns are likely to have greater fibrotic and carcinogenic potency than fibers falling outside these ranges. Consequently, we plan to adopt a policy that nonasbestos fibers with physical dimensions within these ranges are not appropriate substitutes unless appropriate testing indicates otherwise. Fibrous or other substitutes which do not present major health risks would be determined to be suitable. EPA solicits comments on this approach.

2. *Scope of a Section 8(a) Rule.* To develop regulations for asbestos sources, the Agency must gather and

[6] Stanton, M. F. Layard M. "The carcinogenicity of fibrous minerals." Proceedings of the workshop on asbestos: definitions and measurements methods held at NBS, Gaithersburg, Maryland, July 18–20, 1977. National Bureau of Standards Special Publication 506, November 1978.

[7] Stanton, M. F. "Some etiological considerations of fiber carcinogenesis." In: Bogovski P. Gibson J. C., Timbrell V. Wagner J. C., eds. *Biological effects of asbestos.* Lyon: International Agency for Research on Cancer (IARC Scientific Publication number 8), 1973: pages 289–294.

[8] Stanton, M. F., Layard M. Tegeris A. Miller E. May M. Kent E. "Carcinogencity of fibrous glass: pleural response in the rat in relation to fiber dimension." J. Nat. Can. Inst. 1977, *58*(3).

[9] Pott F. Huth F. Friedricks K. H. "Results of animal carcinogenesis studies often applications regarding human exposure." In: NIOSH symposium on occupational exposure to fibrous glass, University of Maryland, 1974. National Institute for Occupational Safety and Health, 1977 (DHEW publication number (NIOSH) [76–151].

[10] Pott, F, Huth F. Friedricks K. H. "Tumoren der matte rnach i.p. injektion von gemahl-enem chrysotil und benzo (a) pyren.".

[11] Wagner J. C., Berry G. "Mesothelioma in rats following innoculation with asbestos and other materials." B. J. Can 1969; 23: pages 567–81.

[12] Wagner J. C., Berry G., Timbrell V. "Mesotheliomas in rats often innoculated with asbestos and other materials." B. J. Can 1973; 28: pages 173–85.

[13] Wagner J. C., Berry G. Timbrell V. "Mesothelioma in rats following the intrapleural innoculation of asbestos." In: Shapiro H. A., ed. *Pneumoconosis.* Proceedings of the international conference. Cape Town: Oxford University Press, 1970: pages 216–19.

[14] Wagner J. C., Berry G. Skidmore J. W. "Studies of the carcinogenic effects of fiber glass of different diameters following intrapleural innoculation in experimental animals." In: NIOSH symposium on occupational exposure to fibrous glass, University of Maryland, 1974. National Institute for Occupational Safety and Health, 1977. (DHEW publication number (NIOSH) 76-151).

[15] Smith, W. E., Hubert D. D. "The intrapleural route as a means for estimating carcinogenicity." In: Karbe E., Park J. F., eds. *Experimental lung cancer, Carcinogenesis and Bioassays.* New York: Springer-Verlog, 1974: pages 92–101.

analyze a variety of information concerning asbestos. Various EPA program offices have already accumulated a considerable amount of data through previous studies. These data will be used as much as possible. However, the Agency anticipates that it will need additional data for regulatory decision-making. The additional data includes recent production, market, substitute, exposure and health effects information. The Agency hopes to acquire some of this information through submittals by industry and other knowledgeable people in response to this ANPRM. EPA has also specifically contracted for studies to review the state-of-the-art knowledge and to develop new environmental and economic data.

Insofar as these nonregulatory avenues (e.g., this ANPRM, contractor studies, and other informal information requests) do not provide, or are not likely to provide sufficient information, the Agency will promulgate a section 8(a) rule. The issue at hand regards the appropriate scope of the section 8(a) rule. The Agency would like to minimize reporting burdens on industry. To this end, the promulgation of such a rule and its potential content will be influenced by responses to this ANPRM and informal Agency requests and by the need for confidential business information or other data not likely to be provided on a voluntary basis.

Relationship With Other Federal Laws

As previously noted, a number of rules for controlling exposure to asbestos have been promulgated under several Federal laws.

The Occupational Safety and Health Administration (OSHA) and the mining Safety and Health Administration (MSHA) regulate workplace exposures, the Department of Transportation (DOT) regulates the commercial transport of asbestos, the Food and Drug Administration (FDA) regulates the use of asbestos by the food and drug industries, and the Consumer Product Safety Commission (CPSC) regulates consumer products containing asbestos. EPA has established National Emission Standards for Hazardous Air Pollutants (NESHAP) for several asbestos sources under the Clean Air Act [16], 42 U.S.C. 7401 *et seq.*, and is considering additional asbestos air emission standards. EPA is developing effluent guidelines regulating wastewater discharges of asbestos and a water quality criterion under the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et. seq.*, as amended in 1972 and 1977. EPA is also considering additional regulation of asbestos in drinking water under the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.* The Agency may also develop regulations for asbestos waste management under Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. 6921 to 6931.

Under section 9 of TSCA, 15 U.S.C. 2608, the Administrator will consider whether risks from asbestos exposure could be reduced to a sufficient extent by actions taken by other agencies under other Federal laws. The Administrator will also consider whether rules promulgated under other EPA authorities could address the asbestos problems more effectively. To maximize the effectiveness of this proposed rule, EPA is coordinating with several agencies both directly and through the Interagency Regulatory Liaison Group (IRLG). These agencies include the Food and Drug Administration, Consumer Product Safety Commission, Department of Agriculture, Mine Safety and Health Administration, and Occupational Safety and Health Administration.

Public Participation

The Agency plans to conduct this investigation and rulemaking in compliance with the public participation section of the *FR Notice* entitled "EPA: Improving Regulation: Final Report Implementing E.O. 12044" (44 FR 30988, May 29, 1979). Before and after publication of any notice of proposed or final rulemaking in the Federal Register, EPA will identify and meet with public interest groups, industry, regional, State, and local governments and other interested groups to obtain their views on regulatory needs, the Agency's approach, and technical issues. Information exchange will be facilitated through various public participation mechanisms, including public meetings and public hearings at appropriate locations around the country.

A financial compensation program for public participation will be available to applicants meeting eligibility criteria. The funds may be used for the cost incurred in commenting on proposed rules after publication. A Notice of Availability of Grant Funds will be published in the Federal Register announcing the financial compensation program, eligibility criteria, level of funding, and the procedures for applying for reimbursement.

Public Record

EPA has established a public record for this rulemaking (docket number OTS-61005) which, along with a complete index, is available for inspection in the OTS Reading Room from 9:00 a.m. to 4:30 p.m. on working days (Room 477, East Tower, 401 M Street, S.W., Washington, D.C., 20460). This record includes basic information considered by the Agency in developing this ANPRM. The Agency will supplement the record with additional information as it is received. Materials for incorporation in the public record include:

1. This Notice.
2. All comments on this Advance Notice and the proposed rule.
3. All relevant support documents and studies (including economic analyses performed for the purpose of defining small business as prescribed by section 8(a)(3)).
4. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record).
5. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

EPA will identify the completed rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material, for inclusion in the record at any time between this Notice and such designation. The final rule will also permit persons to point out any errors or omissions in the record.

Questions and Information Needs

To assist the Agency in gathering information for regulatory decision-making, EPA invites comments on, and responses to, the questions and information requests that are listed here or are discussed elsewhere in this Notice.*

1. *The Agency solicits suggestions* relating to the definition of several key terms identified below as well as other terms members of the public consider important to regulatory decision-making.

[16] These standards included certain work practice requirements which the United States Supreme Court in *Adamo v. Train*, 98 St. Ct. 566 (1978), found to be invalid. The Clean Air Act was amended by Congress in 1977 and 1978 to provide EPA with the authority to prescribe and enforce work practice standards. These asbestos standards are being promulgated again by EPA.

* CSPC, in an Advance Notice of Proposed Rulemaking appearing elsewhere in this issue of the Federal Register, announces a program to investigate the use of asbestos in consumer products. As part of this investigation, CPSC will solicit information through a variety of voluntary and regulatory means. To reduce potential reporting burdens on industry, CPSC will take into account response to EPA's questions when tailoring the Commission's requests for information on the use of asbestos in consumer products.

To the extent possible the Agency would like our definitions to conform to generally accepted usage. The terms to be defined include: (1) asbestos, (2) encapsulated fibers, (3) locked-fibers, (4) easily released fibers, and (5) friable materials.

2. The Agency is requesting all unpublished data or estimates relating to human exposure and to human health risks from exposure to asbestos during mining, manufacturing, processing, use, and disposal for all asbestos products including the following product categories:

(a) Asbestos paper, including roofing and floor underlayments;
(b) Friction products;
(c) Asbestos cement sheet;
(d) Asbestos cement pipe;
(e) Textiles;
(f) Flooring;
(g) Gaskets and packings;
(h) Paints, coatings and sealants;
(i) Asbestos-reinforced plastics.

The information submittals should include data on exposure of both workers and people near mining, manufacturing and processing facilities. Where data might be extensive, covering several years, many work stations or many sampling points, summaries which include appropriate statistical analysis would be sufficient. Data of interest include present and future estimates of:

(a) The number of people exposed;
(b) The routes, duration and frequency of exposure;
(c) The intensity of exposure (fiber concentration preferred);
(d) Fiber size distributions;
(e) Fiber types;
(f) Relative and attributable risk estimates for all cancers of specific organs and nonneoplastic respiratory diseases;
(g) Variations in risk by age, sex, smoking status, duration and intensity of exposure, fiber types, and time from onset of exposure; and
(h) Technical controls currently used to monitor and control exposures to asbestos at the plant site.

3. Based on preliminary information, a list of asbestos-containing commercial and industrial product categories is presented in the Appendix to this Notice. The extent of human exposure to asbestos fibers from these products depends on many factors including the releasability of the fibers, the duration of the exposures, and the size of the population exposed throughout various parts of the life cycle of asbestos in the product. Products which release asbestos fibers during normal use, installation, maintenance, removal, or plausible mishandling are of particular concern during the use segment of the life cycle. Categories containing products which EPA believes may fall into this classification are noted with an asterisk in the Appendix. Identification of these products was based not upon testing but upon generally available information. The Agency is interested in determining the necessity of using asbestos in these products. The Agency requests the following information on these products and other asbestos-containing products.

(a) Do these products contain asbestos?
(b) What is the purpose of asbestos in the product; what is the asbestos content by percent of total composition and weight; and what is the asbestos fiber type, size and shape?
(c) What are the figures for annual production and sales of the product, and the annual amounts of asbestos used in each product?
(d) What is the value of the product and the cost of the asbestos used in that product?
(e) What exposures are expected during the manufacture of the asbestos-containing product; and what are the expected exposures associated with each use? (Rate of fiber release, frequency, duration, population exposed, and conditions of use.)
(f) What point source and non-point source discharges of asbestos to water are associated with the processing of asbestos fibers, manufacture and use of asbestos-containing products (e.g., quantity, concentration)?
(g) What amounts and types of asbestos-containing wastes are generated in connecton with manufacture of the product; and what methods and sites of storage, treatment and disposal are currently used for those wastes?
(h) What are the product life, and expected removal and disposal techniques for each use? What type of disposal sites are used?

4. The Agency is requesting the following information regarding the industry structure.

(a) What are the current trends in the use of asbestos and asbestos-containing products?
(b) Is the market stable?
(c) What size and type of industry is most likely to be affected by regulation of asbestos under TSCA?
(d) What effects on industry structure would be anticipated from regulation under TSCA?
(e) What effects on employment can be anticipated from asbestos regulation under TSCA?

5. The Agency is requesting the following information regarding substitutes for asbestos and asbestos-containing products. Manufacturers of substitutes are particularly encouraged to submit information.

(a) What substitute substances are presently available or currently under development for asbestos in paper products (including roofing felts and floor underlayments), friction products, flooring, plastics, cement, sealants and other commercial and industrial products?
(b) What substitute products are presently available or currently under development for asbestos-containing products in the categories described above?
(c) What are the performance characteristics of these substitute substances and products as compared to asbestos-containing products?
(d) What unpublished data are available regarding human exposure to, and health effects of substitutes for asbestos-containing products?
(e) What is the price differential between asbestos or asbestos-containing products and their substitutes?
(f) How long will it take to convert to production and use of alternatives? Please comment on a product-specific or product category-specific basis.
(g) To what extent can present makers of asbestos-containing products change to substitute materials? Can this conversion be accomplished using existing asbestos production facilities? What will the cost of the changeover be in terms of capital and operating costs?
(h) If existing facilities cannot be used once substitutes replace asbestos, will new facilities be built by existing asbestos processing companies, by other companies, or by some combination of these?
(i) What effects might regulation of asbestos have on industrial innovation and introduction of new products?

6. What categories or individual products and uses containing asbestos do not present a health hazard to users? Why?

7. What asbestos-containing individual products or categories might be considered essential because of significant benefits and/or lack of reasonable substitutes? What are the specific benefits and costs and how should they be weighed?

8. Is the state-of-the-art for asbestos identification and quantification (phase contrast or electron microscopy) analytically adequate and economically feasible to establish numerical standards for fiber release and exposure resulting from the production of asbestos-containing products, their use and disposal? Can airborne fiber levels

be measured at 10^2 fibers/m^3, 10^3 fibers/m^3, 10^4 fibers/m^3, or 10^5 fibers/m^3, and can waterborne fiber levels be measured at 10^3 fibers/liter, 10^4 fibers/liter, 10^5 fibers/liter, 10^6 fibers/liter or 10^7 fibers/liter? Should the level be expressed as total fibers or as fibers greater than a specified length or aspect ratio? Are other parameters more appropriate (e.g., total mass release, etc.)?

9. What unpublished data are available regarding ambient levels or asbestos in air and water and asbestos exposure from various noncommercial asbestos sources such as drinking water supplies and naturally occurring asbestiform rock?

10. EPA and CPSC intend to share information received in support of their respective asbestos regulatory investigations. However, in view of potential statutory conflict regarding treatment of confidential business information, how should the agencies treat data for which a company claims confidentiality?

Authority: Secs. 5 and 6 of the Toxic Substances Control Act (TSCA) (90 stat. 2003; 15 U.S.C. 2601).

Dated: October 10, 1979.

Douglas M. Costle,

Administrator.

APPENDIX

A. *Automotive Repair*

1. Mufflers *
2. Brake linings *
3. Clutch facings *
4. Custom auto body filler *
5. Metal deadener *

B. *Household Materials*

1. Appliance wiring *
2. Counter surfaces *
3. Electrical cord *
4. Filler for shoe soles *
5. Floor tile *
6. Hair dryers *
7. Heat protective mats *
8. Ironingboard pads and covers *
9. Lamp mantles *
10. Lamp sockers *
11. Potters' kilns *
12. Slow cookers *
13. Toasters *

C. *Safety Equipment*

1. Aprons *
2. Arm protectors *
3. Blankets *
4. Boots *
5. Caps *
6. Clothing *
7. Curtains *
8. Draperies *
9. Gloves *
10. Hats *
11. Helmets *
12. Hoods *
13. Mittens *
14. Overgaiters *
15. Sleeves *
16. Suits *
17. Umbrellas *

D. *Recreational Activity*

1. Aerial distress flares *
2. Ammunition shell wadding *
3. Catalytic heater mantles *
4. Tent gromets *
5. TV sets and projector equipment *

E. *Home Building Repairs*

1. Latex paints *
2. Texture paints *

F. *Commercial Applications*

1. Aluminized cloth *
2. Bags *
3. Bearings *
4. Belting *
5. Blocks *
6. Boards *
7. Braid *
8. Buffing and polishing compounds *
9. Cloth *
10. Cord *
11. Diaphragms *
12. Drier felt *
13. Drilling fluids *
14. Fabrics *
15. Felt *
16. Filtering materials *
17. Metallic cloth *
18. Millboard *
19. Paper *
20. Pipe and boiler covers *
21. Pottery clay *
22. Plywood patch *
23. Sheet flooring *
24. Table tops *
25. Tape *
26. Textiles *
27. Welding electrodes *

G. *Asbestos Cement Products*

1. A/C air duct *
2. A/C pipe *
3. A/C sheet *
4. Baking sheets *
5. Cement boards *
6. Clapboard *
7. Roofing *
8. Shingles *
9. Siding *
10. Tile *

H. *Molded Products*

1. Gun grips
2. Filler and reinforcement in plastic *
3. Pond liners
4. Phenolic laminates
5. Resins
6. Rheostat backing

I. *Roofing Materials*

1. Aluminum roof coating
2. Roof patch
3. Roofing felts *
4. Roof preservative

J. *Sealants and Mastics for Consumer and Commercial Use*

1. A/C pipe joint sealant
2. Adhesives
3. Caulking compounds and putty *
4. Furnance cement
5. Glazing compound
6. Radiator sealant
7. Varnish *

* Indicates that products within the category potentially contain easily releasable fibers.

Note.—Not all of the products in each identified category are believed to contain asbestos.

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of 0.1 to 0.2 pound active ingredient per acre;

2. A maximum of two applications of permethrin might be made;

3. The applicant was to establish criteria which were to be used in determining when emergency conditions existed. The existence of these conditions was to have been determined prior to the application of permethrin in a given area. This determination was to have been made by an employee of the Applicant or of the State Extension Service, or by a knowledgeable expert who was licensed by, or under the direct supervision of, the Applicant;

4. No individual was to use permethrin until it had been determined that emergency conditions existed in the area in which the user grew corn. Growers were to obtain authorization from the applicant to use permethrin and the applicant was to regulate pesticide dealers to limit distribution and sale to areas of actual or projected emergency. Records were to be kept regarding the amounts of each product sold and applied, total acreage treated, and general benefits realized from the treatments. All unused, unopened containers were to be returned to the manufacturer after the end of the 1979 season;

5. A maximum of 358,415 acres were to be treated;

6. Applications were to be made with air or ground equipment with a minimum spray mixture volume of three gallons of water per acre;

7. Applications were to be made by State-certified commercial applicators;

8. Ambush and Pounce are toxic to fish. The products were to be kept out of any body of water. They were not to be applied where excessive run-off was likely to occur. They were not to be applied when weather conditions favored drift from treated areas. Care was to be taken to prevent contamination of water by cleaning of equipment or disposal of wastes;

9. Permethrin is highly toxic to bees exposed to direct treatment or residues on crops or weeds. It was not to be applied or allowed to drift to weeds on which an economically significant number of bees were actively foraging. Protecive information was to be obtained from the State Cooperative Agricultural Extension Service;

10. Residue levels of permethrin were not expected to exceed 0.05 ppm in corn grain and 2.0 ppm in forage and fodder. Corn grain (except popcorn) and forage and fodder with residues which are not in excess of these levels may enter interstate commerce. The existing meat and milk tolerences will not be exceeded as a result of this use of permethrin. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, was notified of this action;

11. A 30-day pre-harvest interval was to be observed;

12. A 60-day crop rotation restriction was imposed;

13. The EPA was to be immediately informed of any adverse effect resulting from use of permethrin in connection with this specific exemption;

14. The Applicant was responsible for assuring that all of the provisions of this specific exemption were met and must submit a report summarizing the results of this program by February 15, 1980; and

15. Since inadequate data existed concerning the propensity of permethrin to enter aquatic ecosystems, field monitoring in accordance with an EPA monitoring program was required.

Statutory Authority: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: October 10, 1979.

James M. Conlon,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-32019 Filed 10-16-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1335-7]

List of Toxic Pollutants; Petition To Remove Aromatic Haloethers; Final Action

AGENCY: United States Environmental Protection Agency.

ACTION: Denial of petition to remove aromatic haloethers from list of toxic pollutants under section 307(a) of the Clean Water Act, as amended, 33 USC 1317(a).

SUMMARY: This action gives notice of denial of a petition to remove aromatic haloethers from the toxic pollutant list. It addresses comments received on the proposal to deny, reviews additional information regarding these chemicals, and affirms that aromatic halothers be retained on the toxic pollutant list.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460 (202-755-0100).

SUPPLEMENTAL INFORMATION: On June 7, 1978, the Agency received a petition from the Dow Chemical Company requesting that aromatic haloethers, found under the general class haloethers, be removed from the toxic pollutant list under Section 307(a) of the Clean Water Act.

EPA reviewed the information submitted by Dow in support of its petition as well as other available information and concluded that aromatic haloethers should be retained on the list. A proposed denial and request for public comments was published on March 27, 1979 (44 FR 18279). Three respondents submitted comments.

The General Electric Company objected to an Agency statement suggesting that highly toxic dibenzofurans and dibenzodioxins were formed when PCBs were used in electrical capacitors or exposed to the environment. This statement was based on the assertion of Dow that "the toxicity of PCBs has been attributed in part to acnegenic impurities such as the chlorinated dibenzodioxins and chlorinated dibenzofurans."

A review of the literature indicates that the Agency's statement in the notice was partially inaccurate. Chlorinated dibenzofurans have been found in some commercially prepared PCBs (Vos et al., 1970) and have been shown to be formed when PCB's are used in heat exchangers (Roach and Pomerantz, 1974; Nagayama et al., 1976). Data are not sufficient to assess the possiblity of chlorinated dibenzofuran formation from PCBs while in electrical capacitor or trnasformer service but to date these contaminants have not been found under these use conditions. Despite occasional statements that commercial PCBs may contain polychlorinated dibenzo-p-dioxins, there appear to be no authenticated reports of their presence in PCBs or any reports on their formation from PCBs under industrial use or environmental exposure conditions.

Dow Chemical U.S.A. submitted eight specific comments.

(1) Dow asserted that the report (Kloepfer, 1977) of a single occurrence of a bromochlorodiphenyl oxide in the oil of a waste pit, cited by the Agency, does not demonstrate known occurrence in point source effluents, in aquatic environments, in fish and/or drinking water. Contrary to Dow's assertion, the Kloepfer (1977) report indicates that three bromophenylchlorophenyl ethers were found (86,000 ppm w/w) in the contents of the waste pit and that at least one of the ethers was found in soils, sediments, and aquatic biota, including fish in water surrounding and adjacent to the pit. Gas chromatographic analysis of the oil also suggested the presence of monochlorodiphenyl oxide isomers.

The Agency has also obtained additional information demonstrating the presence of aromatic haloethers in the aquatic environment. At least eight fully aromatic or aromatic-alklyhaloethers have been found in raw and finished drinking water (Schackelford and Keith, 1976; Ewing, et al., 1977; Friloux, 1971; U.S. EPA, 1972). For instance, the analysis of 204 water samples collected from 14 heavily industrialized river basins indicated the presence of pentachlorophenyl methyl ether in 12 samples (5.88%) (Ewing, et al., 1977). In addition bis (4-chlorophenyl) ether, dichlorophenyl chlorophenyl ether, and 2,4,4'-trichloro-2'-hydroxydiphenyl ether were found in at least 1 water sample. These four compounds were also found in at least one sample of several industrial effluent samples (Schackelford and Keith, 1976). Thus, EPA believes it is reasonable to conclude that aromatic haloethers are found in points source discharges and the aquatic environment.

(2) Dow asserted that the Agency ignored the structural and chemical reactivity dissimilarities between aliphatic and aromatic haloethers in terms of their physical and toxicological properties, particularly with respect to trying to link carcinogenicity of some aliphatic haloethers to that property for the aromatic compounds. EPA made no suggestion of carcinogenicity for aromatic haloethers nor did it see a need to discuss structural and chemical reactivity dissimilarities between the two classes of compounds. The Agency considered the properties of individual aromatic holoethers in deciding to retain these compounds on the toxic pollutant list. Dow also stated that certain functional groups, such as the nitro group, impart toxicity to the aromatic haloethers which are not common to the category in general and that data on the nitro substituted aromatic ethers should be used to place nitroaromatic haloethers on the list, rather than to retain the entire class. Dow did not submit comparative toxicological data for the non-nitro analogue that could be compared to the nitrated aromatic haloether mentioned in the proposed Agency action. Finally, since the petition sought removal of the entire class of aromatic haloethers, the Agency has no choice but to consider all compounds in this class including nitrated derivatives.

(3) Dow asserted that the Agency ignored the data which showed no effect to rabbits from monochlorodiphenyl ether. These data were included in Table 3 (44 FR 18281) in the Agency proposed action. The negative results of monochlorodiphenyl ether were not cause to grant the petition, however, since the higher chlorinated compounds demonstrated significantly toxicity.

(4) Dow objected that the Agency ignored the results of tests it asserts showed the absence of dibenzofurans and dibenzodioxins in Dow's dielectric fluid after use in capacitors or after environmental exposure. The Agency acknowledges that the results of a bioassay run on freshly prepared dielectric fluid and on the fluid from highly stressed capacitors did not indicate the presence of acnegenic impurities in either fluid. However, this bioassay cannot conclusively prove the presence or absense of chlorinated dibenzofurans or dioxins. A more appropriate technique for demonstrating the presence of absence of these compounds is gas chromatography (gc)-mass spectrophotometric (ms) analysis, a highly sensitive procedure. Although Dow submitted gc-ms analysis of freshly prepared dielectric fluid, it submitted no such analysis of the highly stressed capacitor fluid.

(5) Dow challenged EPA's conclusions about persistence and accumulation of aromatic haloethers on the grounds that the Agency considered properties of the aromatic haloethers individually, rather than collectively. Contrary to Dow's assertions, the Agency considered collectively several physical properties such as vapor pressure and water solubility, as well as Dow's bioconcentration data to conclude that aromatic haloethers, as a class, would be expected to persist in water and/or sediment and bioconcentrate in aquatic organisms. Dow offered no direct empirical data to refute these conclusions. Instead, Dow argued that the aromatic haloethers were not persistent or bioaccumulative because a few members of the haloether class were less persistent and bioaccumulative than a PCB isomer. However, PCB's are extremely persistent and accumulative. The fact that aromatic haloethers may be less persistent and bioaccumulative than PCB's does not demonstrate that the former are not persistent or bioaccumulative.

(6) Dow criticized the Agency's statement that additional bioconcentratiion data were needed before it could be concluded that aromatic haloethers had low bioconcentration potential. As stated in the proposed denial, Dow had submitted data showing that at least two compounds bioconcentrate several hundred fold in trout muscle and argued that since these figures were considerably lower than bioconcentration figures for PCB's, the bioconcentration potential of aromatic haloethers was insignificant. EPA does not agree. Although the haloether data show less bioconcentration potential than that of a PCB isomer, the haloether data show a significant potential for accumulation of these compounds or other compounds in the class in tissue of aquatic organisms. By calling for additional bioconcentration data, the Agency was attempting to determine if the same high degree of bioconcentration exhibited by the two compounds mentioned by Dow exist for other aromatic haloethers as well.

(7) Dow asserted that since the rates of appearance for $14CO_2$ and disappearance for ring-labelled 4-chlorophenylphenyl ether are similar it could be concluded that no stable degrates were formed. Since no such rate data were presented in Dow's supporting documentation, EPA can only concludes that the absence of stable degrates has not been demonstrated.

(8) With its comments, Dow submitted additional data on octabromo diphenylether showing toxicity and bromide residues in rats. Dow appears to argue that these data should not detract from its petition because Dow did not commercialize this compound. This reasoning is spurious. The demonstration of toxic potential from yet another member of the class of aromatic haloethers, whether commercialized or not, is further evidence that the class should not be removed from the toxic pollutant list.

At the conclusion if its comments, Dow suggested that all aromatic haloethers be delisted except for specific compounds demonstrated to present unusual hazard to man and the environment. Dow's petition sought removal of the entire class of aromatic haloethers. Demonstration that one member of a class does not possess a specific property which calls for listing does not prove that this member does not possess other properties which warrant listing. Still less does it demonstrate that the entire class should be delisted. For reasons noted in the proposed denial and the Agency's review of Dow's comments on that proposal, the petition must be denied.

Comments from the Food and Drug Administration supplied further information supporting retention of aromatic haloethers on the toxics list. FDA pointed out that there are a number of aromatic haloethers in addition to the ones mentioned in the agency's response to the petition which should be of concern as potential environmental contaminants.

—Chlorinated diphenyl ether (Cl_7 to Cl_{10}) were found in fish collected in 1977 following a fish kill in a lake in Mississippi resulting from a spill of waste pentachlorophenol.

—The estimated annual production of decabromodiphenyl ether is 10 to 12 million pounds.

—Several other aromatic haloethers are believed to be produced in commercial quantities. Among them is 2,4,4'-trichloro-2'-hydroxydiphenyl ether, a compound that could potentially form a chlorinated dioxin under manufacturing conditions or environmental exposure.

Action: EPA hereby denies the Dow Chemical Company's petition to remove aromatic haloethers from the list of toxic pollutants under section 307(a) of the Clean Water Act, as amended, 33 USC 1317(a).

Dated: October 10, 1979.

Douglas M. Costle,

Administrator.

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[FRL 1339–2; OPP–180364]

New Mexico Department of Agriculture; Issuance of Specific Exemption To Use Permethrin or Fenvalerate To Control Heliothis Species on Lettuce

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of specific exemption.

SUMMARY: EPA has granted a specific exemption to the New Mexico Department of Agriculture (hereinafter referred to as the "Applicant") to use permethrin or fenvalerate to control *heliothis* species on 6,000 acres of lettuce in New Mexico. The specific exemption expires on June 1, 1980.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room: E–124, Washington, D.C. 20460, Telephone: 202/426–0223. It is suggested that interested persons telephone before visiting EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: *Heliothis virescens* and *H. zea* migrate from cotton to lettuce after the cotton is defoliated. In the past, growers plowed the cotton under after harvest. Now, however, the cotton is allowed to stay in the fields and thereby provides an excellent habitat for the pest. According to the Applicant, registered insecticides failed to control *Heliothis* spp. in cotton in 1977 and 1978. The Applicant stated that a fifty percent infestation of *Heliothis* spp. was found in New Mexico's fall lettuce crop, and approximately two to three percent of the 1978 lettuce fields were not harvested due to the lack of control of *Heliothis* spp. by available pesticides. The Applicant anticipated that losses of up to $6 million initial investment could result to lettuce producers in New Mexico without sufficient control of *Heliothis spp.*

The Applicant proposed to use permethrin (manufactured by ICI Americas, Inc. as Ambush, EPA Reg. No. 10182–18, and by FMC Corp. as Pounce 3.2 E.C., EPA Reg. No. 279–3014), or in the event of insufficient stocks of permethrin, fenvalerate (manufactured by Shell Chemical Co. as Pydrin, EPA Reg. No. 201–401). Permethrin or fenvalerate would be applied at a rate of 0.1 to 0.2 pound active ingredient (a.i.) per acre by ground or air equipment with a maximum of five applications made at 5- to 7-day intervals.

EPA has determined that residue levels of permethrin and fenvalerate should not exceed 10 parts per million (ppm) and 1 ppm, respectively, on lettuce, from the proposed use. EPA has judged these levels to be adequate to protect the public health. EPA has also determined that the proposed use should not pose an unreasonable hazard to the environment. Since permethrin and fenvalerate are known to be highly toxic to aquatic vertebtrates and invertebrates and to bees, appropriate conditions have been imposed.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of *Heliothis* has occurred; (b) there is no effective pesticide presently registered and available for use to control this pest in New Mexico; (c) there are no alternative means of control taking into account the efficacy and hazard; (d) significant economic problems may result if *Heliothis* is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until June 1, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The permethrin products Ambush, EPA Reg. No. 10182–18, and Pounce, EPA Reg. No. 279–3014, may be used at a maximum dosage rate of 0.2 pound a.i. per acre;

2. In the event that a sufficient quantity of permethrin is not available for this use, the fenvalerate product Pydrin, EPA Reg. No. 201–401, may be used at a maximum dosage rate of 0.2 pound a.i. per acre;

3. Available data indicate that the 0.1 pound a.i. rate should provide as good a control as the 0.2 pound a.i. rate in most situations. Therefore, in most instances the 0.1 pound a.i. rate should be recommended;

4. Applications are limited to 6,000 acres of lettuce in New Mexico;

5. A maximum of five applications may be made per season at 5- to 7-day intervals with a 7-day pre-harvest interval;

6. Applications may be made by either air or ground equipment;

7. Lettuce will be field-trimmed to remove wrapper leaves;

CALIFANO SEEKS SMOKING BAN IN HAZARDOUS INDUSTRIES

Secretary of Health, Education and Welfare Joseph A. Califano says he will ask the Labor Department to develop industry-by-industry standards aimed at a possible smoking ban in workplaces where hazardous toxins are present. In a speech to the American Cancer Society, Dec. 1, Califano said he has directed the Center for Disease Control and the National Institute for Occupational Safety and Health to work with DOL to prepare such standards "on an urgent basis." Califano said he is taking the action because of concern that smoking aggravates the effects of toxins.

NIOSH probably will not recommend a single standard or an across-the-board criteria document advocating a smoking ban for workers, Acting NIOSH Director Dr. Michael Lane told TMN. NIOSH prepares recommendations for occupational standards, which are actually established by DOL's Occupational Safety and Health Administration. Sources at OSHA emphasized that their agency's priorities are on specific controls for hazardous substances. In the past, OSHA's viewpoint has been that industry should not be allowed to ease off on controls for toxins because smoking can be identified as an alternative cause of disease.

In a related development, Lane told TMN that a new report from the surgeon general's office, scheduled to be released next month, will contain a chapter on occupational hazards and smoking.

* * *

EPA PUBLISHES AGENDA OF UPCOMING REGULATIONS

As part of its efforts to elicit public participation in the regulatory process, Environmental Protection Agency published an agenda of upcoming regulations in the Nov. 30 *Federal Register*. The agenda summarizes the major regulations now being prepared by EPA, lists scheduled publication dates, both proposed and final, and provides someone to contact for additional information on each topic.

Under the Toxic Substances Control Act, EPA lists the following major regulations currently being developed: PCB manufacture and distribution ban -- proposed, June 7, 1978; final, January 1979; contact Peter Principe, (202) 755-0920. Control of PCBs -- proposal, January 1979; final, July 1979; contact Lucy Sibold, (202) 755-8963. Non-aerosol use of chlorofluorocarbons -- EPA has not yet decided whether a rule will be proposed; contact Ferial Bishop, (202) 755-0932.

Section 8(d) reporting -- proposal, May 1979; final, December 1979; contact Ed Brooks, (202) 755-0932. Records of adverse reactions -- proposal, March 1979; final, October 1979; contact Ed Brooks, (202) 755-0932. Export notification -- proposal, December 1978; final, May 1979; contact Ed Brooks, (202) 755-0932. Assessment of Civil Penalties -- interim final, Aug. 4, 1978; final, October 1979; contact Terrell Hunt, (202) 755-0970.

To implement Section 112 of the Clean Air Act, the agenda lists the dates for proposing and issuing hazardous air emission standards for various sources of asbestos, vinyl chloride and benzene, and for deciding on whether to designate arsenic and coke oven emissions as hazardous.

Fifteen pesticide regulations are due in final form by the end of next year, according to the agenda. Regulations for storage and disposal of pesticides have been dropped from agency plans; contact John Lehman, (202) 755-9185. In the area of water pollution, EPA plans to propose water quality criteria for 29 toxic pollutants in March 1979, and put them into final form in September 1979. Criteria for another 36 toxic pollutants will be proposed next July and put into final form in December 1979. Regulations governing state water standards based on the criteria will be proposed next March and put into final form a year later.

* * *

PACKAGING REQUIREMENTS TIGHTENED FOR ASBESTOS BY NEW MTB RULES

Shippers of asbestos must put their product into rigid airtight packages such as metal or fiber drums, portable tanks, or bags and non-rigid packages that are dust and sift proof, under regulations issued by the Materials Transportation Bureau Dec. 4. To provide further protection, when transported by other than a private carrier or highway, the bags and other non-rigid packages must be palletized and

(Continued on following page)

MTB TIGHTENS ASBESTOS SHIPPING RULES (Cont.)

unitized by methods such as shrink-wrapping in plastic film or wrapping in fiberboard secured by strapping, MTB says.

Rules also specify that asbestos must be handled so as to minimize the occupational exposure that occurs during transportation of the substance.

Aim of the rule, which becomes effective April 30, 1979, is to prevent public exposure to asbestos that may be emitted during commercial transportation. MTB concedes that it does not have data on the amount of asbestos currently entering the atmosphere in this manner, but states the belief that "the amounts of asbestos fibers that are being released now, or would be released in the future, in the absence of these amendments, may pose an unreasonable risk to health."

The rules do not apply to asbestos which is immersed or fixed in a natural or artificial binder, manufactured products containing asbestos, or products whose commercial value is not dependent on their asbestos content. For further information contact Douglas Crockett, Standards Division, MTB, Research and Special Programs Administration, 2100 Second St., S.W., Washington, D.C. 20590, (202) 426-2075.

* * *

LAM 001017

SOLVENT USES OF CFCs MAY NEED REGULATION, DRAFT WORKING PAPER SAYS

While initial observations indicate that solvent uses of chlorofluorocarbons do not appear to be a "good target" for regulation, a working note prepared by the Rand Corp. suggests that further consideration should be given to the matter in light of findings that nearly all CFCs used as solvents are promptly emitted and techniques are available to reduce these emissions by 60% or more. Further, Rand adds, solvent uses may become a substantial fraction of total CFC emissions by 1990 if there is no reversal in present trends of usage.

The working note is part of preliminary findings by Rand in its evaluation of non-aerosol uses of CFCs for the Environmental Protection Agency (TMN, Nov. 1, 1978, p. 327). Only CFC-113 used in vapor and liquid phase cleaning and drying applications -- the bulk of CFC solvent uses -- is covered by the working note.

Rand estimates that 48.3-million lbs. of CFCs were emitted to the atmosphere during use as solvents in 1976, representing 95.6% of CFCs used for that purpose. Another 2.2-million lbs. were emitted during production and distribution of CFCs for solvent purposes. Working note discusses control options, such as quotas, excise taxes and enforced conservation.

Rand cautioned that additional information has become available but was not incorporated into the working note and may change the analysis and conclusions. Copies of the working note are available from Ann Smith, (202) 755-0733.

* * *

DOT PROPOSES MINOR AMENDMENTS TO RULES FOR SHIPPING HAZARDOUS MATERIALS BY WATER

Amendments to regulations governing the transportation of hazardous materials by water have been proposed by Materials Transportation Bureau, including changes in maintenance of manifest for dangerous cargoes.

Proposal clarifies that for barges, the responsibility for preparing the manifest rests with the individual responsible for loading. The manifest is to be kept readily available on the barge, and a copy is to be furnished the person in charge of the towing vessel. MTB also proposes that barges carrying hazardous materials be made of steel unless other materials are approved by the Coast Guard. In using the IMCO hazardous material classification system, MTB proposes that the division number and name be written as the hazard class entry on the manifest.

MTB also notes that hazardous materials may be packaged, marked, labeled, classified, described, certified and placarded in accord with the IMCO or Department of Transportation system, or any combination of the two. Other amendments cover inspections and changes in shipping names.

For further information contact Douglas Crocket, Office of Hazardous Materials Regulations, MTB, Research and Special Programs Administration, Washington, D.C. 20590, (202) 755-4962. Comments on the rules should be sent by Jan. 29 to Docket Branch, MTB, DOT, Washington, D.C. 20590. Five copies are to be submitted.

IRLG LISTS PLANNED FEDERAL REGULATION OF 24 HAZARDOUS MATERIALS

Plans of four Federal agencies to protect workers and the public from diseases caused by the unsafe manufacture and handling of 24 hazardous materials are outlined in a report issued by the Interagency Regulatory Liaison Group Nov. 26.

The IRLG -- formed by Environmental Protection Agency, Occupational Safety and Health Administration, Consumer Product Safety Commission and Food and Drug Administration -- is designed to better coordinate the agencies' activities and prevent duplication of effort, and the aim of the report is to insure that each agency knows what the others are doing.

Commented OSHA chief and current IRLG chairman, Eula Bingham, "Instead of duplicating one another's work and perhaps even laboring at cross purposes, we'll be sharing information and research, issuing complementary standards, and conducting joint economic studies to control the dangers from radiation, heavy metals and pesticides."

As a result of activities by IRLG's regulatory development work group, which prepared the report, the four agencies say they have already improved communications among their staffs, begun to institute coordinated, multi-agency regulatory programs, and established forums for further cooperative action.

Plans To Be Updated Quarterly

In the future, the group plans to publish quarterly updates and expansions of work plans for the 24 substances and maintain an "alert" system by which the agencies will inform each other of their intent to start work on a new hazardous substance regulation.

Following is a summary of actions with regard to the 24 substances. EPA Administrator Douglas Costle noted that the agencies intend to stop or minimize risks associated with the compounds, while maximizing their benefits. He particularly cited asbestos, which EPA expects to regulate under the Toxic Substances Control Act. The intent of EPA is not to prevent essential uses of asbestos in fire proofing material, Costle explained, but rather to insure that these uses "can be done in ways that don't jeopardize people's health or environmental quality."

Summary of Planned Activities

Acrylonitrile (AN) -- is highly toxic and may be a human carcinogen and birth defects agent. FDA has prohibited use of plastic beverage containers made from AN. OSHA has issued permanent workplace standards. EPA has received voluntary cancellations of AN as a pesticide, is establishing water discharge controls, and is considering regulating AN as a toxic pollutant.

Arsenic -- is a poison and suspect human cancer and birth defects agent. OSHA and EPA are cooperating to restrict the manufacture and use of arsenic in wood preservatives and are planning joint inspections of smelting sites.

Asbestos -- has caused cancer among exposed workers. CPSC is evaluating consumer product uses of asbestos while FDA is examining toxicological effects. OSHA has established workplace standards and EPA has issued air pollution controls. EPA is also planning technical assistance for owners of buildings with deteriorating asbestos ceilings.

Benzene -- has caused leukemia and chromosomal damage among workers. OSHA has set worker standards and is coordinating research with EPA on the use of benzene in gasoline.

Beryllium -- may cause lung disease, heart problems, cancer. OSHA has proposed workplace standards and EPA has issued air pollution rules and water criteria for beryllium.

Cadmium -- may cause kidney damage and emphysema, and is a suspect source of cancer, birth defects and changes in genetic material. EPA is considering air pollution controls and OSHA is planning workplace standards. FDA, EPA and CPSC plan to issue guidance on cadmium in glassware decorations.

Chloroform and chlorinated solvents -- causes depression of the central nervous system and heart functions, liver problems and possibly cancer. FDA is planning limits on the solvents in drugs and foods. EPA has proposed standards for the solvent in drinking water and is reviewing chloroform's use as a pesticide.

(Continued on following page)

~~MEO~~ ~~GEB~~ J. W. Kendall

SM-32-DPC (1-75)

SHELL OIL COMPANY SHELL CHEMICAL COMPANY
DEER PARK MANUFACTURING COMPLEX

DATE SEPTEMBER 15, 1978

TO SAFETY INSPECTORS

FROM MANAGER SAFETY - REFINERY
DEER PARK MANUFACTURING COMPLEX

YES Asbestos in Turnaround File

SUBJECT HEALTH HAZARDS

I ask you to read this article because I feel it highlights several principles which are directly applicable to our business of protecting workers from health hazards. This is certainly not the best article ever written on cancer and the accuracy of the numbers is not my concern.

One principle referenced is that exposure to asbestos fibers is a health hazard. There is clear evidence that exposure to asbestos fibers increases one's risk of developing lung cancer.

Another principle which you are all aware of is that the law requires that the employer protect the worker from overexposure to asbestos fibers. Reference General Industry Standard 1910.1001.

A third principle that is inferred is that OSHA is dedicated to and will not be discouraged from enacting into law a generic carcinogen standard to expedite regulating suspected cancer-causing agents in the workplace. The generic carcinogen standard will most likely be opposed to ensure a cost-benefit analysis; however, it is my feeling that it is only a matter of time before the standard becomes a reality.

I propose that, as safety professionals concerned with promoting safe and healthful working conditions, we should be on the "leading edge" of defending those principles which will protect workers from the invisible long term health hazards. I speak to your concern for humanity; I address your sense of pride and righteousness.

On the subject of asbestos exposure, our job is to know and enforce the law. Accepted asbestos handling procedures have been documented in a Complex Order to be issued shortly. Deviations from the law and those accepted handling procedures are unacceptable. Your challenge and mine is to convince our employees that compliance with the law is right and is good because it is in the best interest of promoting each employee's health.

M T Anderson

M. T. Anderson

LAM 001019

DPMC-16718

Work exposure blamed for 20% cancer deaths

WASHINGTON (AP) — Exposure to cancer-causing substances at American work sites may cause at least 20 percent of all this country's cancer deaths — nearly 80,000 persons each year — with asbestos apparently the No. 1 killer, government scientists say.

The new estimates are sharply higher than past figures, which placed the cancer toll from occupational exposure at only 1 percent to 5 percent, Secretary Joseph A. Califano Jr. of the Health, Education and Welfare Department, said Monday.

Indeed, a single substance, asbestos, may account for 17 percent of all cancer deaths annually. Other culprits include arsenic, benzene and vinyl chloride.

Scientists from the National Cancer Institute and the National Institute of Environmental Health Sciences said 20 percent was a "conservative" estimate of the cancer toll at work sites, estimating it could run as high as 38 percent.

The scientists based their findings not on new medical research, but on new statistical analyses of the number of workers exposed to cancer-causing chemicals on the job and their risk of incurring cancer.

Califano told an AFL-CIO conference on occupational safety and health about the new estimate and released a five-page draft summary of the study.

HEW scientists are putting the study into final form to submit to the Labor Department's Occupational Safety and Health Administration by Friday.

OSHA is preparing new standards for regulating hundreds of known or suspected cancer-causing agents at work places in hopes of speeding federal action to ban or restrict them.

Critics of the plan have said it could

(See 20% of CANCER, Page 4)

20% of cancer deaths may be related to jobs

(From Page 1)

cost industry billions of dollars, and some have said the standards are not needed because the incidence of occupational cancer was low.

But Dr. David P. Rall, director of the National Institute of Environmental Health Sciences, said scientists who made the low estimates "just haven't looked carefully enough at the problem."

The new study singles out asbestos, the fire-resistant mineral used in a host of fields from construction to auto brake lining repair, as the worst offender.

HEW began a campaign in April to alert the estimated 8 million to 11 million Americans who have been exposed to asbestos since World War II about its long-term effects.

The HEW study said at least 2.15 million of those workers will die from asbestos-related diseases, or 67,000 a year for the next 30 to 35 years. It blamed asbestos for 17 percent of all cancer cases.

The study says 5.8 million workers were potentially exposed to arsenic, benzene, vinyl chloride, coal tar pitch and coke oven emissions, which could cause 1 percent to 3 percent of all cancers each year.

Some 7.5 million workers potentially were exposed to four other substances, chromium, iron oxide, nickel and petroleum distillates, which could cause 3 percent to 18 percent of the cancers, the study added.

The total for all occupational carcinogens (cancer-causing substances) would be 38 percent, the top-range estimate for the cancer-toll.

The National Cancer Institute says 390,000 Americans die from cancer annually. The new 20 percent minimum estimate for all worker deaths from chemicals would mean 78,000 deaths. The number of new cancer cases diagnosed each year is 700,000.

The study listed a dozen occupations in which it said the workers showed excessive cancer rates, but they have not been traced to any single substance.

These included: coal miners, chemists, foundry workers, textile workers, printing pressmen, metal miners, coke by-product workers, cadmium production workers, and lead, rubber, wood and leather workers.

The AFL-CIO convention on worker safety was called to rally opposition to a proposal that would exempt businesses with fewer than 10 employees in non-hazardous industries from inspections by OSHA.

ASBESTOS ISSUE SUBJECT OF CROSS COUNTRY DISCUSSION

The cancer-causing properties of asbestos were discussed and debated in various forums across the country last week. In CALIFORNIA, a Navy study revealed that about one-third of workers at the Long Beach Naval Shipyard employed there for at least 17 years have already contracted asbestosis, a scarring of the lungs that can cause cancer 20 or 30 years after exposure to asbestos fibers. The Navy investigation was the first to examine an entire shipyard.

Of the 6,640 workers, 16% had abnormal chest x-rays, although 5,300 of these employes had been employed there for less than 12 years. The percentage of abnormal x-rays increased in proportion to length of employment.

In April, Health, Education and Welfare Secretary Joseph Califano announced that 4.5-million persons who worked in Navy shipyards during World War II may die of lung cancer due to exposure to asbestos materials (JS&HR, May 9, 1978, p. 72).

A study of a NEW JERSEY plant shows no unusual incidence of cancer among people who lived near the factory 30 to 40 years ago. Researchers found the same incidence of lung and other cancers in persons living near the plant as a similar group several miles away. Although numerous studies of workers exposed directly to asbestos have been conducted, there are few studies on the effects of smaller exposure levels such as might occur in a general population near an asbestos plant. The study traced 5,550 men and showed death rates from all cancer types identical in the group exposed to asbestos dust in the air and the group not exposed to the fibers.

In NEW YORK, Dr. Irving J. Selikoff of Mt. Sinai School of Medicine, told the New York Academy of Sciences, "We can't wait for dead bodies in the streets," but industry, government and the scientific community must begin to use information accumulated so far on cancer hazards. "We must examine the information that has been building over the last 15 years and use it to guide us in decisions that affect what happens in the next decade," he added. Asbestos hazards, lung cancer linked to cigarettes and a combination of both are examples of long-term cancer studies with significant amounts of data that can be used today. Smokers who have been exposed to asbestos are up to 90 times more likely to develop cancer than non-smokers not exposed to asbestos and 30 times more likely to develop cancer than non-smokers who have been exposed.

New Source of Lung Damage Discovered

Mesothelioma, cancer of the lung lining previously only associated with asbestos, has been found in central Turkey in villagers who breathed dust from the mineral, zeolite. Findings were revealed at the New York Academy of Sciences conference. The mineral is common in soft rock formations from the Canadian border to Arizona. Approximately 40 types of the mineral occur naturally and 100 other varieties have been synthesized by scientists. The preliminary findings should set off a "warning flag" to spur government research, said one expert, although it is still not clear what damage could result to persons living near zeolite deposits.

Selikoff also appeared on NBC's *Meet the Press* June 25 with Dr. Arthur C. Upton, National Cancer Institute; Dr. Paul Kotin, Johns-Manville Corp.; Dr. Sidney M. Wolfe, Ralph Nader's Public Citizens Health Research Group; Dr. Donald Kennedy, Food and Drug Administration; and Anthony Mazzocchi, Oil, Chemical and Atomic Workers Union.

Kotin claimed that industrial research has identified a significant portion of cancer-causing chemicals in advance of pressures from government regulatory agencies, but Mazzocchi countered that his remarks were "pure nonsense" and that "American industry has not divulged one single item about a cancer-causing substance."

In response to a characterization that the war on cancer is the "nation's medical Vietnam," Upton cited more stringent asbestos standards as one of his agency's responses to the problem. Wolfe added that "If you are a worker and you are given a choice of no job or cancer, that is not any kind of choice at all and the worker may opt for having a job even though it exposes him to a carcinogen."

Selikoff added, "We are going to notify, educate people concerning that which they have been exposed to in the past, but what they should do about it, every one of the scientists... looks at one another. What are we going to do? What are we going to advise these people? We haven't solved that one."

(Continued on following page)

ASBESTOS ISSUE POSING NUMEROUS PROBLEMS FOR INDUSTRY (Cont.)

As part of its efforts to reduce cancer risks, Johns-Manville Corp. is in the process of prohibiting employe smoking in its 14 asbestos plants. Penalties for puffing on the job are not final but they could include suspension or firing. Although the company cannot regulate workers' actions off the job, they will offer "stop smoking" courses as an incentive to employes and their spouses to give up the habit altogether. Also, the company is now hiring only non-smokers.

Union reactions to the policy have been negative for the most part, with some reservations. The Asbestos Workers International, which represents only heavy construction workers at the company, pointed out the link between smoking and asbestos [illegible] hold true for all forms of cancer. They contend that mesothelioma [illegible] oking and, therefore, the company ban will not protect workers

[illegible] International Union, which represents a majority of Johns-[illegible] arbitration on a case-by-case basis at their locals. [illegible] located in New Jersey, hopes to have the rule [illegible] would be beneficial to worker health. [illegible] around allegations of infringement of [illegible] the company action is only a bandaid measure that [illegible] the cancer risks in the industry. So far, the smoking ban [illegible] only two court cases with union locals. The results are split with [illegible] for the union and the other for the company.

[illegible], the company is involved in numerous lawsuits with victims of lung cancer allegedly caused by asbestos exposure. A Norfolk, Va., jury recently awarded $750,000 to the widow of a shipyard worker who claimed that her husband's death from cancer was caused by asbestos made by John-Manville and used by his employer. The judgment could be a precedent for 40 other asbestos cases in Virginia.

The day after Califano's April announcement, a San Francisco court awarded a Sacramento asbestos worker $266,000 to be paid by three major firms including Johns-Manville. The suit was one of eight involving a total of $845,000 in settlements against major asbestos makers.

HEW has launched a public information program to notify workers and physicians of the danger. In a related move, the Environmental Protection Agency recently issued new, more stringent restrictions on asbestos spraying and removal from buildings during renovation and demolition.

* * *

SHA WINNING WAR ON PAPERWORK, SAYS 131-PAGE STUDY

The U.S. Commission on Federal Paperwork, with some reservations, has praised the Occupational Safety and Health Administration for its efforts to reduce its paperwork burden by cutting reporting requirements. "OSHA has already made significant progress in reviewing existing regulations," the study noted.

The 131-page government study is the first of a series of regular reports on the paper plague in the Federal government. The commission reported that OSHA lessened its reporting requirements by 559,000 hours during the first half of fiscal year 1978. OSHA has also proposed the modification or elimination of 20% of its safety standards that were found to be nit-picking or ineffective. In addition, the Department of Labor is currently reviewing OSHA information requirements and methodology to see whether the current statistical program is the least costly and burdensome way to provide data needed for program administration and analysis.

The commission made 25 specific recommendations to OSHA -- 11 were rejected, 11 implemented and three are still under review. OSHA rejected the recommendation that all businesses with 100 or fewer employes be exempt from agency recordkeeping requirements and the filing of reports as part of the annual OSHA statistical survey sample. It did implement recommendations to reduce the survey sample size and revise reporting required from states with approved OSHA plans in order to eliminate duplicate information and excessive reporting.

OFFICE MEMO

TO: Mr. F. G. Reitz

DATE: June 13, 1978

SUBJECT: Asbestos Problems

This is a follow-up per your request in regard to asbestos problems of the EPA letter dated February 11, 1974. The areas mentioned in the attached letter are clear of any debris. The inside areas are continuosly hosed down.

The storage of the asbestos materials is located in the Southern Warehouse and not at the Deer Park Manufacturing Complex. When these materials are transported, they are in very durable plastic bags and covered with plastic during transit. Also, materials are kept covered with plastic while being used in the C.A. cell room.

When the asbestos materials are dumped from bags into the mixing vessel, the empty bags are put into a closed container and sealed for proper disposal by Rollins Enviornmental Services, Inc.

The asbestos material that is washed from the cathodes goes to a pit outside of the cell room working area and then removed by vacuum truck, processed and disposed of at the Shell Refinery Land Fill area and plowed into the earth which never leaves the Deer Park Manufacturing Complex. The operators of the machinery which plows the material into the earth are furnished with proper respiratory equipment. During this procedure, sampling has been performed by the DPMC environmental Department which reports the samples are well within the accepted limit.

J. R. Oliphant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI

1600 PATTERSON, SUITE 1100

DALLAS, TEXAS 75201

February 11, 1974

E. S. Martin, Plant Manager
Shell Chemical Company
P. O. Box 2633
Deer Park, Texas 77536

Dear Mr. Martin:

This is in follow up to the plant inspection conducted at your facility on January 31, 1974, by myself and other representatives of the Environmental Protection Agency.

During the inspection, problem areas were discovered which, if unattended to, could lead to possible violations of the asbestos emission standard promulgated on April 6, 1973.

One problem area is at the chlorine plant cell renewal site. The inside area was being hosed down at the time of the inspection; a commendable and I assume routine practice. On the outside area however, clumps of debris which are suspected of being asbestos were sighted. Plant personnel stated that the spillage most likely occurred when bags of asbestos were being transported from the main storage area to the cell renewal area. Since the path used to transport the asbestos to its destination is an outdoor path, adequate care must be taken to ensure that the asbestos fibers do not become airborne or spilled on the ground.

Another area of concern is at the main storage area for asbestos. The stockpile of bags is exposed and therefore subject to breezes which can cause asbestos particles to become airborne. Again, adequate precaution must be taken to prevent this.

Your prompt attention to these matters is urged to prevent any possible violations of the asbestos emission standard from occuring.

LAM 001024

DPMC-16723

Should any questions arise, please contact me by letter to this office or by telephone at (214) 749-2142.

Sincerely,

Gary A. Bernath

Gary A. Bernath
Investigation & Support
Branch
Enforcement Division

cc:
Mr. F. G. Reitz, Manager
Safety and Training
Shell Chemical Company
P. O. Box 2633
Deer Park, Texas 77536

LAM 001025

DPMC-16724

XC → T.P. Ramsdell
P.L. Bryan
F.G. Reitz

used to dangerous levels of asbestos, a suspected causer of cancer. The tremolite talc is used principally in ceramic tile, and Vanderbilt is a major supplier.

Asbestos

NIOSH PROPOSAL FOR NEW STANDARD IS 0.1 FIBERS/CUBIC CENTIMETER

Revising its proposed environmental limits on asbestos, the National Institute for Occupational Safety and Health recommended December 15 that worker exposure over an eight-hour, time-weighted average be limited to 100,000 fibers of asbestos per cubic meter of air.

The revision of the standard proposed by the Occupational Safety and Health Administration in October 1975 is 0.5 fibers per cubic centimeter (500,000 fibers per cubic meter). The existing standard for asbestos exposure is five fibers per cubic centimeter for fibers longer than five micrometers.

The NIOSH proposal was contained in a memorandum to Assistant Secretary of Labor Morton Corn. A similar memorandum explaining NIOSH's decision was sent to the assistant secretary of health.

NIOSH said it had chosen the figures not because 100,000 fibers per cubic meter is necessarily a safe exposure level. "Currently, it is not possible to establish a safe exposure level for a carcinogen," NIOSH said. The figure was arrived at because it is the lowest concentration at which asbestos fibers can be monitored reliably.

The NIOSH recommendation contains a peak concentration level of 500,000 fibers per cubic meter of air based on 15-minute sampling periods. NIOSH previously recommended to OSHA a higher level than the present one — 2,000,000 fibers/cubic meter on an 8-hour TWA basis with a peak concentration of 10,000,000. This was done January 21, 1972, and "designed primarily to prevent asbestosis."

Since that time, however, more information has become available on asbestos-related diseases, such as pulmonary, pleural, and peritoneal neoplasms, NIOSH said. The current recommendation of a stricter standard is based on the most pertinent studies of those conditions which have come out in the intervening years.

NIOSH said it has concluded that all forms of asbestos — commercial and noncommercial — are carcinogenic. "All have the capacity to induce pleural and peritoneal mesotheliomas and lung cancer in man. In addition, all forms of asbestos have been found to cause asbestosis in man," the memorandum to Corn explained.

The proposed recommendation, NIOSH said, is intended to protect against the noncarcinogenic effects as well as materially reduce the risk of asbestos-induced cancer. But "only a ban on its use can ensure complete protection against this mineral's carcinogenic effect."

Emphasis should be placed on occupational use of asbestos only in closed operations and substituting asbestos where technically feasible with substances "with the lowest possible chronic toxicities," NIOSH said.

Concentrations of asbestos fibers of 100,000 per cubic meter can be expected to occur rarely except in the industry, NIOSH added, and fireproofing or anechoic linings of air ducts and plenums in buildings probably are not major polluters.

The NIOSH memorandum dealt only with the health effects of a proposed standard. Formal reports dealing with other provisions of the standard outlined in OSHA's Notice of Proposed Rulemaking (Current Report, October 9, 1975, p. 572) will be forthcoming.

The announcement follows shortly after criticism of OSHA and NIOSH in the case of a talc mining company, R.T. Vanderbilt Company of Norwalk, Conn., which a citizens' group said was allowed "illegally" to certify that its tremolite-containing talc used in industrial processing is asbestos-free.

LAM 001026

DPMC-16725

SM-32-DPC (1-75)

SHELL OIL COMPANY SHELL CHEMICAL COMPANY
DEER PARK MANUFACTURING COMPLEX

DATE SEPTEMBER 16, 1976

TO DEER PARK MANUFACTURING COMPLEX -
MAINTENANCE ENGINEER - MANAGER

FROM INDUSTRIAL HYGIENIST
DEER PARK MANUFACTURING COMPLEX

SUBJECT ASBESTOS SAFETY BULLETIN

This is in response to a question from your organization regarding the fate of asbestos fibers which are inhaled. Please see that this answer is coordinated within your organization and forwarded to J. W. Dickens.

Airborne asbestos material will usually consist of a wide range of fiber sizes. The fiber size is the primary factor which determines what happens to the fiber that has been inhaled. The larger fibers will be filtered by nasal hair or be trapped by the wet surfaces of the upper respiratory tract. Fibers small enough to enter the lungs can adhere to the lung surface or eventually be exhaled through normal breathing.

The lung has biological mechanisms to guard against the deposition of foreign material. The lung surface is lined with minute hairs which transport dust particles such as asbestos fibers from the lungs to esophagus where the material is expectorated or swallowed. Fibers reaching the deepest portions of the lungs, where the tiny hairs do not exist, can be absorbed into blood capillaries or captured by special cells and stored in the lungs.

The best available information about exposure levels and incidence of injury was studied in the development of a safe exposure level. The purpose of the exposure limit is to prevent a person from inhaling so many fibers that collectively they cause lung injury. Therefore, a limit of two fibers per cubic centimeter of air was judged as providing adequate protection against injury.

By following the work procedures covered in the safety bulletin, environmental levels can be kept well below the permissible exposure limit. The use of approved respirators to supplement the work procedures is additional insurance against exposure.

J. D. Ransdell

JDR:bc

cc - R. L. Bryan
D. E. Miller
F. G. Reitz
J. L. Rivard
File
Chron

LAM 001027

DPMC-16726

(1) 8 3/10 pounds of sucr[illegible]

(2) One gallon of concentrated fruit juice of not less than 70 Brix made from the same kind of fruit used in the manufacture of the concentrate; or

(3) 2½ ounces of any of the following:

(i) Malic acid;

(ii) Citric acid; or

(iii) Tartaric acid.

§ 18.128 Concentrate returned from a bonded wine cellar.

(a) *General.* The proprietor of a concentrate plant may accept the return of concentrate shipped by him to a bonded wine cellar. In such case, the proprietor of the concentrate plant shall:

(1) Give written consent to the proprietor of the bonded wine cellar for such return; and

(2) File, with the regional director, a consent of surety extending the terms of his bond, Form 1694, to cover the return of such concentrate to his plant. (He may, if he so desires, file one consent of surety on his bond to extend the terms thereof to cover all such concentrate which may be so returned to him.) If the regional director approves the application of the proprietor of the bonded wine cellar to return the concentrate, he will send a copy of his approval to the proprietor of the concentrate plant.

(b) *Receipt of returned concentrate.* When the returned concentrate is received, the proprietor shall note on both copies of the covering Form 3874 any loss in transit or other discrepancy, sign the form, retain one copy, and forward one copy to his regional director before the close of the next business day. The quantity of concentrate received shall be recorded in the proprietor's daily records and shall be reported on an unused line on his monthly report, Form 1695.

Subpart I—Records and Reports

§ 18.141 Records and reports.

Each proprietor shall keep records and render reports as required by this part. Such records and copies of applications, notices and reports, shall be maintained on or convenient to the concentrate plant available for inspection by ATF officers during business hours. Such records and copies of applications, notices and reports shall be preserved for a period of not less than two years from the date thereof or the date of the last entry required to be made thereon, whichever is the later: *Provided,* That the regional director may require such records to be kept for an additional period of not exceeding two years in any case where he deems such retention necessary or advisable.

§ 18.142 Photographic copies of records.

Persons who desire to record, copy, or reproduce records required to be preserved under § 18.141 by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original of such records, shall make application to the regional director, in triplicate, to do so, describing:

(a) The records to be reproduced.

(b) The reproduction process to be employed.

(c) The manner in which the reproductions are to be preserved.

(d) The provisions to be made for examining, viewing, and using such reproductions.

The regional director shall not approve any application unless (1) the Director has approved that type of record for reproduction and the reproduction process to be employed, and (2) the manner of preservation of the reproductions and the provisions for examining, viewing, and using such reproductions are, in the regional director's opinion, satisfactory. Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it shall be treated and considered for all purposes as though it were the original record; all provisions of law and regulations applicable to the original record shall be applicable to the reproduced record. As used in this section "original record" shall mean the record required by this part to be maintained or preserved, even though it may be an executed duplicate or other copy of the document.

§ 18.143 Daily records.

The proprietor shall maintain daily records which show the date of the transaction and which accurately and clearly reflect, by kind and by quantity, the following:

(a) Processing material used.

(b) Processing material removed.

(c) Concentrates produced and the alcohol content thereof.

(d) Concentrate used (by kind) in the manufacture of products at the concentrate plant premises.

(e) Concentrate transferred (by kind) and the percent alcohol by volume thereof.

(f) The name and address of each person to whom such concentrates are shipped and, in the case of concentrates shipped to, or returned by, a bonded wine cellar (1) the registry number of the bonded wine cellar, (2) the variety of grape, the kind and variety of berry, or the kind of fruit (if other than grape or berry), from which the concentrate was produced, (3) the percent of alcohol by volume of the concentrate, and (4) the fold of the concentrate.

(g) Substances received for use in rendering concentrates unfit for use as a beverage.

(h) Substances used in rendering concentrates unfit for use as a beverage or otherwise disposed of.

(72 Stat. 1392; 26 U.S.C. 5511)

§ 18.144 Monthly report.

A monthly report, on Form 1695, of concentrate plant operations shall be prepared in duplicate by each proprietor. Where the proprietor has given notice of suspension of operations in accordance with the provisions of § 18.79, a report on Form 1695 need not be prepared or submitted for any month in which there were no operations. The original of each monthly report shall be forwarded to the regional director not later than the fifteenth day of the month succeeding that for which rendered.

§ 18.145 Final report.

When a change in the proprietorship of the concentrate plant occurs, the outgoing proprietor shall enter on his final report, Form 1695, an account of all concentrates transferred to his successor, who shall in turn enter such items on his report, Form 1695, as received from his predecessor. The outgoing proprietor shall make appropriate notation on all forms and records required to be kept by him, showing the change in proprietorship and the date thereof.

[FR Doc. 76-7931 Filed 3-18-76;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Standard for Exposure to Asbestos

Pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 12-71 (36 FR 8754), and 29 CFR Part 1911, § 1910.1001(i)(1) of Part 1910 of Title 29, Code of Federal Regulations, is hereby amended in the manner set forth below, in order to extend the retention period for asbestos exposure monitoring records from three years to twenty years.

On December 7, 1971 (36 FR 23207), OSHA issued an emergency temporary standard on asbestos in response to a petition by the Industrial Union Department of the AFL-CIO, pursuant to section 6(c) of the Act (84 Stat. 1596, 29 U.S.C. 655). This emergency temporary standard was designed primarily to immediately reduce and control occupational exposure to asbestos dust concentrations, and did not contain recordkeeping procedures. However, on January 12, 1972 (37 FR 466), OSHA published a proposed comprehensive standard for asbestos exposure which did include recordkeeping provisions. Paragraph (h)(1) of the proposal (37 FR 468) provided that exposure monitoring records, and records of medical examinations, be maintained for a period of twenty years. After public hearings the Secretary promulgated a new, permanent OSHA standard for asbestos on June 7, 1972 (37 FR 11318), in accordance with section 6(b) of the Act (84 Stat. 1593, 29 U.S.C. 655). This new regulation, which appeared as 29 CFR 1910.93a prior to recodification, contained a three-year requirement for retaining exposure monitoring records, 29

CFR 1910.93a(i)(1) (now 29 CFR 1910.1001(i)(1)).

On July 27, 1972, pursuant to section 6(f) of the Act, (84 Stat. 1597, 29 U.S.C. 655), a petition for judicial review of the asbestos standard was filed with the United States Court of Appeals for the District of Columbia. The principal petitioners, the Industrial Union Department, AFL–CIO, objected to several substantive portions of the standard, including those dealing with recordkeeping. The Court affirmed the Secretary's judgments and the standard's validity except for two provisions, one of which was the retention period for exposure monitoring records. "Industrial Union Department, AFL–CIO v. Hodgson," 499 F. 2d 467 (C.A.D.C. 1974). The Court directed the Secretary to re-examine the standard with respect to the three-year recordkeeping provision and to reconsider whether such time period adequately assured employee protection from asbestos-related diseases.

In discussing this issue, the Court noted that many of the problems facing the Secretary in developing an asbestos standard were directly attributable to the lack of information concerning asbestos-related diseases, and particularly to the lack of reliable data on past exposure levels. Noting the close functional relationship between medical records and exposure records, and the fact that the standard required that medical records be maintained for at least 20 years, the Court expressed surprise at the short three-year retention period for monitoring records. After reviewing the Secretary's obligation under the Act to require retention of records necessary for the development of information concerning the causes of disease and the importance of exposure data in establishing this causal relationship, the Court remanded the recordkeeping requirements to the Secretary "for such modification or clarification as may be necessary to ensure that the statutory objectives will be fulfilled" 499 F. 2d at 488.

Pursuant to the Court's direction, OSHA has completed its review, and has concluded that the opinion expressed by the Court is an accurate reflection of the record, and that the agency's initial judgment warrants correction.

OSHA believes that extension of the recordkeeping requirement for exposure monitoring from three years to twenty years as originally proposed would be in harmony with the twenty-year retention period now required for employee medical records, 29 CFR 1910.1001(j)(6)(i). As the court noted (499 F. 2d at 488), the two sets of records when read together would provide a more complete record of an employee's history of exposure, a factor vitally important with respect to asbestos-related diseases. The extended period for retention, with resultant data accumulation, will be critical to medical and scientific investigations studying such questions as dose-response relationships in diseases caused by occupational exposure to asbestos. This decision would also be responsive to the agency's declared concern that the past inadequacy of health and monitoring records have hindered research into the consequences of asbestos exposure at the workplace. 37 FR 11318, June 7, 1972.

The long latency periods associated with asbestos-related diseases, and the consequent need for a standard to take such latency periods into account, were recognized by both the OSHA Advisory Committee on Asbestos Dust (proceedings at pp. 103–105, February 17, 1972) and the NIOSH Criteria Document for a Recommended Standard on Asbestos (generally chapters I and II). In addition, testimony by two witnesses at the OSHA hearings also supported longer retention periods for exposure monitoring records (Tr. at 527, 538, March 17, 1972). A consensus of the evidence in the record indicates that exposure monitoring records should be held for at least 20 years in order to make such a requirement meaningful in view of what is generally recognized as the minimum latency period for many asbestos-related diseases. OSHA is of the view that the interests of worker health would be best served by requiring the retention of exposure monitoring records for a period which reflects an appreciation of this recognized latency factor.

Accordingly, pursuant to the Court's remand for further consideration of the retention period for monitoring records, we have concluded, based on the existing record and for the reasons stated above, that a 20-year retention period is supported by the evidence and necessary for the protection of employees. It is noted that in a new proposal on exposure to asbestos (40 FR 47652, October 9, 1975), which reflects the most recent scientific and medical developments in the field, a 40-year retention period (or the duration of employment plus twenty years) for both exposure measurement and medical records has been proposed.

For the reasons stated above, the exposure records provision of the asbestos standard will be corrected to require retention of exposure monitoring records for at least 20 years, effective March 19, 1976. OSHA believes that a delay in the effective date of this requirement is not warranted since this rule only requires that affected employers retain records which they have already compiled and therefore does not impose a new burden of action, and since the initial three-year retention period for such records has now lapsed and these records might be destroyed. Loss of such records would be irreparable. Continued access to such records by all concerned is essential in the public interest, and is an appropriate means of effectuating the goals of improved worker safety and health under the Act. Good cause is found, therefore, pursuant to section 4(d)(3) of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), for making this rule effective.

Accordingly, pursuant to the direction of the United States Court of Appeals ("Industrial Union Department, AFL–CIO v. Hodgson, supra"), and the above referenced authority, paragraph (i)(1) of 29 CFR 1910.1001 is hereby amended to read as follows:

§ 1910.1001 Asbestos.

* * * * *

(i) *Recordkeeping*—(1) *Exposure records.* Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

* * * * *

(Secs. 6, 8, Pub. L. 91–596, 84 Stat. 1593, 1598 (29 U.S.C. 656, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754); 29 CFR Part 1911).

Signed at Washington, D.C. this 12th day of March 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76–7791 Filed 3–18–76;8:45 am]

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Lake Mead National Recreation Area, Arizona—Nevada Closure of Designated Airstrip

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916, (39 Stat. 535, as amended; 16 USC 3), Section 6 of the Act of October 8, 1964, (78 Stat. 1040; 16 USC 460n–5), and 245 DM–1 (34 FR 13879) as amended, § 7.48(a)(3) of Title 36 of the Code of Federal Regulations is revoked as set forth below.

The purpose of this revocation is to permanently close the Pierce Ferry (also known as Pearce Ferry) landing strip located at approximate latitude 36°05′ N., approximate longitude 114°03′ W. Pursuant to the Superintendent's authority under 36 CFR § 2.6, this landing strip has been temporarily closed due to its inadequate length and other safety factors. Standard markers have been used to indicate to pilots that the strip is closed. Revocation of this subparagraph will remove this landing strip from the list of those within Lake Mead National Recreation Area at which aircraft operation and use are permitted.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. In this instance, however, safety considerations which necessitated closure of this airstrip make it impractical to withhold implementation of this revocation during a period of public comment. Persons who wish to submit written comments, suggestions, or objections regarding this action may provide these comments to

SH-32-I (Rev. 9-57)

REFERENCE

SHELL OIL COMPANY

Recd 3/31/76

DEER PARK MFG COMPLEX

MAR 31 1976

DATE MARCH 26, 1976

TO DEER PARK MFG. COMPLEX - GENERAL MANAGER

FROM MANAGER - SAFETY AND HEALTH - MANUFACTURING

MANUFACTURING COMPLEX - MANAGERS
- MARTINEZ
- NORCO
- WILMINGTON

SUBJECT INCREASE IN RETENTION OF ASBESTOS MONITORING RECORDS FROM 3 TO 20 YEARS

REFINERY - MANAGERS
- ANACORTES
- ODESSA/CINIZA
- WOOD RIVER

CHEMICAL PLANT - MANAGERS
- DENVER
- GEISMAR
- MARIETTA
- MOBILE
- PRINCETON
- WOODBURY

GENL MANAGER
SUPT CHEMICAL
SUPT OPER I&R
SUPT OPER O&S
SUPT ENGR
ENG SUPT CHEM
SUPT ENV CONS
TECH
MGR E&S
MGR MAINT
SPV SECURITY
SUPT REFINERY
CHIEF TECH.
SUPT OPER E
SUPT OPER W
SUPT UTILITIES
MGR DISPATCH
MGR E&S
MGR ENG FIELD
CONTROLLER
MGR EMP REL
SUPT MAJ PROJ
MGR PURCH/GS
MGR SAFETY/IH
LS HANDLE

On March 19, 1976, OSHA promulgated a new rule which requires the retention of personal or environmental monitoring for a period of at least 20 years. The rule, which is in the Federal Register, vol. 41, no. 55, p. 11505, modifies 29 CFR 1910.1001 (i)(1). Copies of the news release and FR excerpt are attached.

H. L. Kusnetz

Attachments

Attn J L Ward ← THIS COPY FOR
" R V Mattern
" J D Randsdell
" C L Miller

LAM 001030

DPMC-16729

NEWS

U. S. DEPARTMENT OF LABOR
OFFICE OF INFORMATION, WASHINGTON, D. C. 20210

Occupational Safety &
Health Administration

Contact: James Foster
Office : (202) 523-8151
Home : (703) 941-6798

USDL-- 76-203

FOR RELEASE: Immediate
Friday, March 19, 1976

OSHA EXTENDS TO 20 YEARS TIME FOR KEEPING RECORDS OF ASBESTOS EXPOSURE

The U.S. Department of Labor today lengthened from three to 20 years the time employers are required to retain monitoring records of employee exposure to asbestos.

The action was taken after a court-directed review of certain provisions of the Occupational Safety and Health Administration's (OSHA) asbestos standard. The United States Court of Appeals for the District of Columbia had specifically ordered the Department to re-examine the standard's three-year record retention period for exposure monitoring "for such modification or clarification as may be necessary to insure that the statutory objectives will be fulfilled."

OSHA's decision to extend the record retention period to 20 years takes into account the minimum latency period for many asbestos-related diseases and conforms to the retention period now being required for employee medical records. The agency believes that the data obtained as a result of the new retention period will be useful in detecting patterns of health hazards associated with occupational exposure to asbestos.

Since the standard's initial three-year retention period has now lapsed, certain of the monitoring records being kept by employers would have been legally subject to destruction were it not for Department's new rule which takes effect upon today's scheduled publication in the Federal Register.

# # #

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Standard for Exposure to Asbestos

Pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 12-71 (36 FR 8754), and 29 CFR Part 1911, § 1910.1001(i)(1) of Part 1910 of Title 29, Code of Federal Regulations, is hereby amended in the manner set forth below, in order to extend the retention period for asbestos exposure monitoring records from three years to twenty years.

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On July 27, 1972, pursuant to section 6(f) of the Act, (84 Stat. 1597, 29 U.S.C. 655), a petition for judicial review of the asbestos standard was filed with the United States Court of Appeals for the District of Columbia. The principal petitioners, the Industrial Union Department, AFL–CIO, objected to several substantive portions of the standard, including those dealing with recordkeeping. The Court affirmed the Secretary's judgments and the standard's validity except for two provisions, one of which was the retention period for exposure monitoring records. "Industrial Union Department, AFL–CIO v. Hodgson," 499 F. 2d 467 (C.A.D.C. 1974). The Court directed the Secretary to re-examine the standard with respect to the three-year recordkeeping provision and to reconsider whether such time period adequately assured employee protection from asbestos-related diseases.

In discussing this issue, the Court noted that many of the problems facing the Secretary in developing an asbestos standard were directly attributable to the lack of information concerning asbestos-related diseases, and particularly to the lack of reliable data on past exposure levels. Noting the close functional relationship between medical records and exposure records, and the fact that the standard required that medical records be maintained for at least 20 years, the Court expressed surprise at the short three-year retention period for monitoring records. After reviewing the Secretary's obligation under the Act to require retention of records necessary for the development of information concerning the causes of disease and the importance of exposure data in establishing this causal relationship, the Court remanded the recordkeeping requirements to the Secretary "for such modification or clarification as may be necessary to ensure that the statutory objectives will be fulfilled" 499 F. 2d at 488.

Pursuant to the Court's direction, OSHA has completed its review, and has concluded that the opinion expressed by the Court is an accurate reflection of the record, and that the agency's initial judgment warrants correction.

OSHA believes that extension of the recordkeeping requirement for exposure monitoring from three years to twenty years as originally proposed would be in harmony with the twenty-year retention period now required for employee medical records, 29 CFR 1910.1001(j)(6)(i). As the court noted (499 F. 2d at 488), the two sets of records when read together would provide a more complete record of an employee's history of exposure, a factor vitally important with respect to asbestos-related diseases. The extended period for retention, with resultant data accumulation, will be critical to medical and scientific investigations studying such questions as dose-response relationships in diseases caused by occupational exposure to asbestos. This decision would also be responsive to the agency's declared concern that the past inadequacy of health and monitoring records have hindered research into the consequences of asbestos exposure at the workplace. 37 FR 11318, June 7, 1972.

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Accordingly, pursuant to the Court's remand for further consideration of the retention period for monitoring records, we have concluded, based on the existing record and for the reasons stated above, that a 20-year retention period is supported by the evidence and necessary for the protection of employees. It is noted that in a new proposal on exposure to asbestos (40 FR 47652, October 9, 1975), which reflects the most recent scientific and medical developments in the field, a 40-year retention period (or the duration of employment plus twenty years) for both exposure measurement and medical records has been proposed.

For the reasons stated above, the exposure records provision of the asbestos standard will be corrected to require retention of exposure monitoring records for at least 20 years, effective March 19, 1976. OSHA believes that a delay in the effective date of this requirement is not warranted since this rule only requires that affected employers retain records which they have already compiled and therefore does not impose a new burden of action, and since the initial three-year retention period for such records has now lapsed and these records might be destroyed. Loss of such records would be irreparable. Continued access to such records by all concerned is essential in the public interest, and is an appropriate means of effectuating the goals of improved worker safety and health under the Act. Good cause is found, therefore, pursuant to section 4(d)(3) of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), for making this rule effective.

Accordingly, pursuant to the direction of the United States Court of Appeals ("Industrial Union Department, AFL–CIO v. Hodgson, supra"), and the above referenced authority, paragraph (i)(1) of 29 CFR 1910.1001 is hereby amended to read as follows:

§ 1910.1001 Asbestos.

• • • • •

(i) *Recordkeeping*—(1) *Exposure records.* Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

• • • • •

(Secs. 6, 8, Pub. L. 91-596, 84 Stat. 1593, 1598 (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754); 29 CFR Part 1911).

Signed at Washington, D.C. this 12th day of March 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-7791 Filed 3-18-76;8:45 am]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI
1600 PATTERSON
DALLAS, TEXAS 75201

16 MAR 1976

Q. H. Dillard

Mr. ~~E. S. Martin~~
Shell Chemical Company
P.O. Box 2633
Deer Park, Texas 77536

Dear Mr. Martin:

As you know, on April 6, 1973, the Administrator of the Environmental Protection Agency (EPA) promulgated national regulations for the control of hazardous air pollutants. Recently, these regulations were revised for asbestos and mercury. A copy of these revisions as promulgated in the October 14, 1975, Federal Register, together with a set of registration and waiver forms are enclosed with this letter.

The above revisions affect not only additional facilities but also many of those that are currently classified as asbestos or mercury emitters. Therefore, we request that the attached Federal Register be carefully reviewed for revisions that affect your company. In this regard, owners or operators of asbestos emission sources should carefully review section 61.22(j) with regard to asbestos containing waste material disposal requirements. Similarly, mercury emitting source operators should review sections 61.53-61.55 with reference to stack sampling procedures, sludge sampling procedures and emission monitoring procedures for testing, analyzing and monitoring mercury emissions.

Since your facility is listed in our files as a hazardous material emission source, we are requesting that you state in writing those revisions that affect your facility and remit with your letter the attached Compliance Status Information Form (OMB 158-R0131) to this office. Since the above 90 day requirement for submittal is passed, we are requesting that this registration form be forwarded to this office within 30 days from the date of this letter. //

cc + att to Q-V Matters to handle
" J L Arnold
" J D Randall

THIS COPY FOR

LAM 001033

DPMC-16732

If you have any questions concerning this matter, please contact Mr. William D. McNally or the undersigned at (214) 749-2142.

Sincerely yours,

Paul D. Fahrenthold
Air Compliance Branch
Enforcement Division

Enclosures

Programs Asbestos Compliance
Program 1972-1984

231.1

LAM 000988

DPMC 16687.1