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AIA/NA Responds To OSHA's Proposal To Revise Asbestos Standard

As reported (N&N Apr.), the U.S. Occupational Safety and Health Administration (OSHA) published a proposal to revise the standard for occupational exposure to asbestos in the Federal Register of Apr. 10. Comments concerning the proposed revisions to the standard, including changes proposed by the emergency temporary standard issued Nov. 4, 1983 and subsequently invalidated by U.S. Fifth Circuit Court of Appeals on Mar. 7, were due by May 25. In addition, parties requesting more than 10 minutes for their presentation at the hearing, and parties submitting documentary evidence at the hearing, were required to submit the text of their testimony and all documentary evidence by May 25.

The informal hearing will begin at 10:00 AM, June 19, in the Auditorium, U.S. Department of Labor, Third St. and Constitution Ave., N.W., Washington, D.C. A wide range of organizations have expressed their intention of presenting testimony at the hearing. Present indications are that the hearing could approximate a 30-day period and include some 100 witnesses.

AIA/NA filed advance testimony and documentary evidence with OSHA on May 25. Testimony will be submitted by about 20 witnesses, the majority coming from member companies. It is estimated that three to four days will be required for the Association's presentations.

AIA/NA's comments primarily cover two major issues; the first is permissible exposure limit (PEL) and the second is a standard governing asbestos exposure in construction and other non-fixed operations. As to a revised PEL for primary manufacturing and secondary fabrication activities, AIA/NA commented that: "The revised eight-hour TWA permissible exposure limit for asbestos should be set at the lowest level that is feasible (i.e., the lowest level routinely achievable through available and cost-effective measures) through engineering and work practice controls. For most sectors, a 1.0 fiber/cc PEL can be achieved in a matter of months and many work stations could attain even lower limits in a similar period. Widespread compliance with a PEL at or approaching 0.5 fibers/cc could be achieved within a reasonable additional period, although up to four years may be needed for a few especially troublesome work stations."

ASBESTOS INFORMATION ASSOCIATION

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Second, the Association stated that OSHA should dispense with many of the customary ancillary requirements of its standards and instead prescribe specific work practice and respirator controls tailored to the type of exposures that are likely to occur in the various operations.

Apart from the above major issues, AIA/NA observed that the hearing should provide a forum for examining other measures for providing an additional margin of health protection for workers exposed regularly and for extended periods in primary and secondary industries. Among other things, the Association urged OSHA to consider the effectiveness and practicability of three such supplemental worker protection programs: (1) a requirement that feasible engineering and work practice controls that are shown to yield significant exposure reduction benefits be implemented even in workplaces that are achieving the new PEL; (2) a program to reduce substantially or eliminate smoking among asbestos workers; and (3) a program to achieve respirator use even where the PEL has been achieved through feasible engineering and work practice controls.

An overview of AIA/NA's submission to OSHA was characterized in the following statement:

> The comprehensive evidence that the harmful effects of asbestos are dose-related, the great progress that has been made to reduce asbestos exposures, and the predictions from the medical evidence that de minimis, if any, risk exists at the low levels that can be achieved in most asbestos applications, establish the major guidelines for developing a policy for future asbestos use. Consistent with these general principles, AIA/NA believes improvements can be made in the existing OSHA asbestos standard that both will be feasible and will establish an even greater margin of worker health protection than the current OSHA standard provides.

As a related matter, the regular second quarter meeting of the Association's directors will be held Wednesday, June 13, at the Old Town Holiday Inn, 480 King St., Alexandria, VA. Obviously, AIA/NA's comments to OSHA and hearing participation will be a principal agenda item. In the meantime, inquiries to the Executive Director are welcome.

ONTARIO COMMISSION ISSUES REPORT ON ASBESTOS

The long-awaited report of the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario was released on May 7. The three-member commission included J. Stefan Dupre, professor of political science at the University of Toronto, who acted as chairman; Dr. J. Fraser Mustard,

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professor of pathology at McMaster University; and Robert J. Uffen, professor of engineering and geophysics at Queen's University.

The Commission's three-volume report runs over 900 pages and includes an exhaustive analysis of the health effects of asbestos. The report reflects the results in part on scientific literature and in part on sworn testimony given by a large number of international experts on asbestos which was presented during more than 50 days of formal Commission hearings. The expert witnesses underwent examination and cross-examination by representatives of industry, labor and government.

There were a number of conclusions reached by the Commission. Some of the more significant are listed below:

- Crocidolite asbestos and amosite asbestos are more hazardous than chrysotile asbestos because fibers of crodidolite and amosite are more likely to conform to the most hazardous dimensions. The Commission, therefore, recommended that the use of crocidolite and amosite be prohibited in Ontario.

- Endorsed Ontario's present 1 f/cc control limit in chrysotile manufacturing except that textile manufacturing should be prohibited.

- There is no evidence of significant health risks to the general public from exposure to asbestos in the ambient air and in buildings unless the person is breathing in the immediate vicinity of loose asbestos that is being disturbed. The mere presence of friable asbestos in a building does not present a health hazard to the building occupants.

- There is no health risk from ingestion of asbestos. Concern about asbestos in drinking water, beverages and food is not justified. The Commission concluded that regulation of asbestos in drinking water, beverages and food is unnecessary and unproductive.

In introducing the Commission's report to the Legislative Assembly, the Honorable Russell Ramsay, Ontario Minister of Labor, emphasized that current adverse health effects in workers resulted primarily from exposure to large quantities of asbestos many years ago, and that, as the Commission concluded, "The health risk posed by asbestos, therefore, is a workplace health risk rather than a general public health risk."

Copies of the complete report may be obtained from:

Ontario Ministry of Government Services
Publications Services Branch
5th Floor
880 Bay Street
Toronto, Ontario, Canada M7A 1N8

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The cost is $25.00 (U.S.) which covers mailing; checks should be made out to Treasurer of Ontario.

MANUFACTURERS, INSURERS REACH AGREEMENT TO ESTABLISH CLAIMS RESOLUTION FACILITY

Asbestos manufacturers and insurance companies announced plans May 18 to establish a claims resolution facility which would administer, settle, and pay asbestos related claims filed against all members. The negotiators met under the auspices of the Center for Public Resources Legal Program and have been known as the Wellington Group after the moderator, Harry Wellington, the dean of Yale Law School.

The agreement would signal an end to the more than 30 major coverage cases which are currently before the courts for a determination of the insurer's liability, according to E. Judge Elderkin of San Francisco's Brobeck, Phleger & Harrison, who represented Fibreboard Corporation. He stated that the proposal would give the producers comprehensive insurance coverage, while the insurers would be rid of litigation and punitive damage claims and the cost of defending the cases would be greately reduced. The healthclaimants, Elderkin said, would be likely to have their claims adjusted without waiting four to five years. However, he noted, the proposed system would not take away any of their benefits, including retention of legal counsel, and the ability to go into the court system.

There would be one claims facility set up on the West Coast and one on the East Coast at locations not yet determined, with the headquarters located at one of those regional locations. The facility would be governed by a 12-member board of directors, with an equal number of representatives from the insurers and producers. The start-up costs will be paid by the subscribing primary insurers, with the operating costs being paid by the insurers and the subscribing producers after their insurance coverage is exhausted. Liability payments and allocated expenses will be allocated to each producer member in accordance with an agreed schedule.

Claimants will file a claim, whether or not there is a lawsuit pending, and submit data in order that the claim may be evaluated. Once eligibility is determined and an evaluation is made, the facility will attempt to negotiate a settlement. If such a settlement cannot be reached, the facility will make available mediation aimed at resolving the dispute. Reportedly, education sessions would be held in June with signatures from the participants coming in July, the closing being slated for Sept. 13, and the facility being in operation by the end of the year. The arrangement, he said, would go forward with or without the participation of the Manville Corporation or Travelers Insurance Company, neither of which were part of the negotiations.

The insurance negotiators involved represented Aetna Life and Casualty Company, Hartford Insurance Group, CIGNA Corporation,

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Continental Insurance Company, Fireman's Fund Insurance Companies, and Lloyd's of London. In addition to Fibreboard Corporation, the other manufacturers included Pittsburgh Corning Corporation, Armstrong World Industries, Owens-Corning Fiberglas Corporation, Owens-Illinois, Inc., and Celotex Corporation.

James Vermeulen, executive director of Asbestos Victims of America, stated that, although he was not involved in the negotiations relating to the establishment of the claims facility, he was "highly suspicious of the entire situation, because this was put together by the industry and its insurance companies for their benefit." However, one good thing which came out of the plan, he added, was that claimants' ability to resort to the tort system was not affected.

OSHA Extends Experimental Program For Asbestos Inspections In Construction

An experimental program in which Occupational Safety and Health Administration inspectors visit construction sites which are conducting asbestos demolition or removal activities has been extended by the agency until Sept. 30, 1984. OSHA Notice CPL 2, issued Apr. 1, stated that the procedures which have been in effect for handling referrals from the Environmental Protection Agency in asbestos construction or demolition projects are being continued.

Under the continuing program, which has been in effect since Oct. 1983, EPA informs OSHA of all firms engaged in such asbestos activities. All EPA referrals result in OSHA inspections. OSHA was to review the experimental program after six months and decide whether it should be extended. The notice specified that lines of communication should be continued between EPA representatives and OSHA regional and area office staff to ensure that asbestos demolition/removal notices from EPA to OSHA are transmitted as quickly as possible. EPA was requested to give particular attention to contractors with which the agency had experienced difficulties in the past. This would include contractors with a history of ignoring the EPA reporting requirements and/or which may not be using safe and healthful work practices for asbestos demolition and removal.

Further, OSHA instructed its area directors to evaluate all EPA notifications as thoroughly as possible, paying particular attention to the starting and ending times of the project referred. Once it is determined that a contractor is following safe and healthful work practices and procedures, continued OSHA inspections of the same contractor normally will not be necessary, according to the notice.

At the end of six months, the area director must evaluate the program and submit the results to the director of field operations by July 13, 1984. At the end of this experimental

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program, the area director must evaluate the overall project and submit the results to the director of field operations by Oct. 12, 1984.

CAL/OSHA STANDARDS BOARD CLOSES FILE ON PREVIOUSLY APPROVED ASBESTOS RULE

A rulemaking proceeding to revise California's asbestos standard to conform to the Occupational Safety and Health Administration's emergency temporary asbestos rule was closed Apr. 19 by the state Occupational Safety and Health Standards Board. The board, which adopted revisions to the state asbestos standard at its Nov. 1983 meeting, never filed the amended standard with the secretary of state, so it never went into effect.

The revisions to California's standard paralleled those in OSHA's emergency temporary rule, including a reduction in the permissible exposure limit from 2 f/cc of air to 0.5 f/cc. However, OSHA's emergency temporary standard was invalidated Mar. 7 by a federal appeals court (N&N Mar.). The board agreed to a suggestion from its executive officer, Steve Jablonsky, that the rulemaking file should be closed.

SENATE ACTION ON ASBESTOS DISEASE COMPENSATION CONTINUES

Hearings before the Labor subcommittee of the Senate Labor and Human Resources Committee on the issue of compensation for asbestos-related diseases which began last month (N&N Apr.), continued on May 21. Testimony was presented to the subcommittee, chaired by Sen. Don Nickles (R-OK), by the U.S. Justice Dept., Manville Corp., the AFL-CIO, and the National Association of Manufacturers.

B. Wayne Vance, Justice Dept.'s Civil Division deputy assistant attorney general, stated a compensation program would be "difficult to control and the total cost may have no rational relationship to expectations." He also noted that problems in other compensation systems, such as that for black lung, left the administration "reluctant to endorse" compensation programs in other areas. In response to repeated questioning from Sen. Donald W. Riegle (D-MI) on when the administration would develop its own recommendations or take a position on legislation already being proposed, Vance replied that while it was "intensely studying the problem," the administration had no set schedule for formulating a proposal.

G. Earl Parker, senior vice president of Manville Corp., stressed the importance of developing some sort of compensation system, pointing out that asbestos tort litigation "benefits only the few," with lawyers and not victims being the "only consistent" winners.

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