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By

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TDH Targets Asbestos Hazards in Texas Schools

In the General Provisions section of the Texas Asbestos Health Protection Rules (TAHPR), the problem of asbestos-related disease is simply stated:

In more than 25 years of research into the relationship between airborne asbestos fibers and the diseases such exposure can cause, the bodily mechanism by which inhaled asbestos fibers initiate cancer or asbestosis is still not understood, no effective treatment has been found, and the only means of preventing asbestos disease depends entirely on limiting the exposure of the individual to asbestos fibers.

There are several well-documented influences that weigh heavily on one's chances of contracting asbestosis, lung cancer, and/or the uniformly fatal mesothelioma. These include: 1) age -- people exposed early in life have a greater chance of developing the disease due to the 15 - 40 year latency period; 2) level of exposure -- the heavier the exposure, the more likely the individual will contract the disease; and 3) individual susceptibility, which can be amplified by factors such as

smoking (or exposure to second-hand smoke) and/or genetics. In the simplest terms, one could view asbestos disease in our society as resting on a three-legged stool: if one could eliminate any of these influences, its recurrence would be overturned.

In schools, the influence of youth is a given, and the susceptibility of the student body must be assumed because asbestos is known to be present in society as a whole. Therefore, the only influence that can be reduced or eliminated in schools is exposure. For this reason, Congress enacted the Asbestos Hazard Emergency Response Act (AHERA) of 1986, which required the U.S. Environmental Protection Agency (EPA) to promulgate regulations for public and non-profit schools. These regulations, codified in 40 CFR 763 Subpart E, require local education agencies (LEAs) to identify, plan, manage, and respond to asbestos hazards in the schools. The regulations also required LEAs in Texas to submit asbestos management plans to TDH by October 12, 1988, and to file such plans or exclusion statements for buildings acquired after 1988 before

use as school buildings. The State of Texas adopted these and other federal asbestos regulations by reference.

Random checks by TDH have revealed that a substantial number of LEAs in Texas have failed to submit the original 1988 management plans and/or management plans for subsequent building additions. Without the guidance that these plans provide, faculty and staff of LEAs cannot adequately protect individuals from asbestos exposure. When questioned about failure to comply with AHERA, individuals responsible for health and safety in LEA's often claim that they were unaware of the regulations or were not aware that the schools had asbestos-containing building materials (ACBM). This lack of understanding can lead to situations where children and LEA employees are exposed to asbestos, and such occurrences have been all too familiar to TDH during the last year. To address this problem, TDH will be targeting LEA's that have not filed management plans.

The inspections of these schools will be comprehensive and cover many

issues other than management plan deficiencies, and the primary goal will be to protect and promote the public health.

Individuals concerned about whether an LEA is following AHERA regulations should ask the following questions: 1) Has the LEA submitted and implemented asbestos management plans for the individual schools? 2) If so, are the plans comprehensive and do they cover all school buildings currently in use? 3) Are the management plans up to date, covering all renovations, abatement activity, and response actions that may have occurred since the original plans were written? 4) Does the LEA have a designated person (DP) who is responsible for implementing the plans? 5) Are the updated management plans available for review in the schools' administrative offices, and have parents, teachers, and staff been notified annually of the availability of the plans? If the answer is yes to all of these questions, the LEA is probably making a good-faith effort to comply. However, the LEA should further address specific federal and state regulations to insure that all requirements are being followed.

TDH stresses that LEAs should not view the AHERA regulations as simply a process of signing forms. For example, the required six-month surveillance of known and assumed ACBM in the school buildings should represent a thorough visual inspection to determine if such material has been damaged or

changed composition in a way that could result in fiber release. If the surveillance indicates a potential for fiber release, an appropriate response action should be taken before the release can occur, not after the fact.

Similarly, the routine three-year reinspection should involve a thorough assessment of the LEA's buildings. It is important to note that most original AHERA surveys randomly audited by the EPA were found to be deficient in identifying all suspect ACBM. Therefore, when doing three-year reinspections, it is very important to look for areas of suspect ACBM, and if previously unidentified areas are discovered, update the management plan accordingly. If sampling is required, a TDH licensed inspector must be utilized. Doing so would not subject the LEA to violation of AHERA for having missed the material in the original inspection.

An assumption commonly made by workers in LEAs is that because a type of building material is not identified as ACBM in the management plan, the substance must be safe to handle using conventional means. This assumption is a common cause of exposure to workers, faculty, and students and is usually discovered after the fact. Workers should be well versed on the idea that any material that looks like it could contain asbestos should be treated as such until proven otherwise.

There has been no "safe" level of asbestos exposure demonstrated,

other than zero exposure. As more information is compiled on asbestos, incidences of serious and even fatal disease have been correlated to very short-term asbestos exposure. For example, during the annual TDH Regional Meeting, Mr. Frank Parker III, Chair of the Texas Asbestos Advisory Committee, stated that there was a case of mesothelioma attributed to a person's week-long exposure to asbestos, while cutting transite pipe in a job more than 30 years prior to contracting the disease. As a pediatrician phrased it, predicting a safe level of asbestos exposure would be like trying to guess the safest time to be without car insurance. No level is safe.

Questions regarding the state and federal asbestos regulations may be addressed to Alan Morris, TDH Asbestos Program Compliance and Enforcement Coordinator, in Austin, Texas (512) 834-6600 or 1-800-572-5548.

JUST A REMINDER

The Asbestos Programs Branch Update is a **Tri-Annual Publication**. (January thru April, May thru August, September thru December). Each edition goes out approximately the first week of May, September, and January. We apologize for any inconvenience delays in our mailing process may cause you or your organization.

COMING IN OUR NEXT ISSUE! ALTHOUGH THERE ARE NO AGREED ORDERS IN THIS ISSUE, THEY WILL RETURN IN OUR NEXT ISSUE.

Enforcement happenings from other states

Demolition Contractor Indicted

Howard Parsons of Holland, Pa., was indicted on April 10, in the U.S. District Court in Philadelphia, Pa., on seven counts of violating the federal Clean Air Act in regard to the demolition of the Grant Paper Co., building in Philadelphia. Parsons is charged with five counts of failing to follow federal workplace standards for asbestos abatement and two counts of illegal disposal of asbestos waste. Parsons, operator of Philadelphia Construction and Equipment Inc., was hired by the building's owner to demolish the building, which contained at least 7,605 square feet of regulated asbestos-containing material. Federal workplace standards have been established to reduce airborne asbestos fibers which can cause a lung disease known as "asbestosis" and lung cancer in people. Grant Paper Company's corporate successor, TGP Inc., pleaded guilty to one Clean Air Act count in 1995, and cleaned up the dump sites in a

minority community in Philadelphia at a cost of \$1.5 million. If convicted, Parsons faces a maximum of 35 years imprisonment and/or fines of up to \$1.75 million. The case was investigated by EPA's Criminal Investigation Division, the FBI, the asbestos regulatory programs of EPA Region 3 and the city of Philadelphia.

Asbestos Contractor Sentenced

Kenneth MacDonald of Masthope, Pa., doing business as American Asbestos Abatement, was sentenced to six months home detention, two years probation and 100 hours of community service on May 13, in U.S. District Court for the Middle District of Pennsylvania in Scranton, as a result of his guilty plea to one count of knowingly failing to notify EPA and the Pennsylvania Department of Environmental Protection (DEP) of his intent to conduct an asbestos demolition. Notification is required under the CAA so that regulators can insure that proper safety procedures are

being followed because the inhalation of asbestos fibers can cause lung cancer and a lung disease known as asbestosis in people. The case was investigated by EPA's Criminal Investigation Division and the Pennsylvania DEP.

Ohio Man Sentenced For Dumping Asbestos

Dennis Anderson of Cleveland, Ohio, was sentenced on July 2, to five months in prison, five months of home detention and three years supervised release and ordered to pay a \$10,050 fine in U.S. District Court for the Northern District of Ohio. Anderson pleaded guilty to one felony count of unlawfully disposing of asbestos in violation of the Clean Air Act, after hiring workers to remove asbestos insulation from the former McGuffy school in Cleveland. The case was investigated by EPA's Criminal Investigation Division, the Occupational Health and Safety Administration and the Cleveland Air Pollution control Authority with the Assistance of EPA's National Enforcement Investigations Center.

EPA Clarification

At the Fifth Annual Training Provider Seminar held on June 24, 1997 a question was asked of Darl Mount, the Environmental Protection Agency's Region VI

NESHAP Coordinator. The question asked was whether HVAC duct work should be listed as linear feet or square feet on the TDH notification form. Mr. Mount researched the

matter with EPA advisors and provided the answer: ***Duct work is measured and notified in square feet.***

Asbestos State Accreditation Examination Calendar September 1, 1997 - August 31, 1998

| FACILITY LOCATIONS | Sept | Oct | Nov | Dec | Jan | Feb | Mar | April | May | Jun | Jul | Aug |
|---|------|-----|--|-----|-----|-----|-----|-------|-----|-----|-----|-----|
| Texas Department of Health 8407 Wall Street Exchange Building N218 Austin, Texas *Contact: Lola Meinardus | 12 | 28 | 25 | 9 | 27 | 24 | 24 | 23 | 27 | 23 | 28 | 25 |
| Arlington Community Center 2800 South Center Street Music Room Arlington, Texas *Contact: Lola Meinardus | 3 | 1 | 5 | 3 | 4 | | 6 | 8 | 6 | 2 | 1 | 4 |
| Public Health Region 4 1517 West Front Street Tyler, Texas Contact: Joel Sprouls 903-595-3585 | 2 | 7 | 4 | 2 | 6 | 3 | 3 | 7 | 5 | 2 | 7 | 3 |
| Public Health Region 6/5 5425 Polk Avenue Houston, Texas 77023-1497 Room # given with registration *Contact: Lola Meinardus | 17 | 22 | 19 | 17 | 21 | 18 | 18 | 22 | 20 | 17 | 22 | 19 |
| Public Health Region 10 6070 Gateway East, Suite 401 El Paso, Texas *Contact: Lola Meinardus | | 23 | <i>EXAM DATES FOR 1998 WILL BE ANNOUNCED IN FUTURE</i> | | | | | | | | | |
| Public Health Region 8 7430 Louis Pasteur Drive Conference Room 130 San Antonio, Texas *Contact: Lola Meinardus | 10 | | 20 | | 21 | | 20 | | 21 | | 23 | |

All exam facilities have limited seating, therefore TDH recommends that registration forms with fees be submitted early. TDH suggests registration forms be postmarked at least four weeks before the date of the examination that is your first choice. Admission information will be sent to each registrant and this paperwork will be required for admittance into the exam facility. Walk-ins at any location will no longer be allowed. Exams will be given in Austin on the 1st & 3rd Fridays of each month and you may contact TDH for information concerning these additional dates. The location of any facility within a specified city is subject to change, when necessary. If such a change in location occurs, all registrants for that examination will be notified. Please contact Athan Ogoh with any comments, complaints or special requests that are related to the Texas Asbestos Accreditation examination at 1-800-572-5548 (in Texas) or 512-834-6600.

PROFESSIONAL FORUM BRINGS OPEN COMMUNICATION

Members of the Texas Department of Health, Toxic Substances Control Division (TSCD) attended a meeting of the Abatement Contractors Association of Texas (ACAT) in Houston on July 8, 1997. This meeting was an opportunity for the asbestos regulators to interact with the regulated community in a professional forum.

Mr. Pat Cochran the President of ACAT made some opening remarks. Mr. Joe Stuckey introduced Mr. Claren Kotrla, Director, TSCD, Mr. Todd Wingler, Asbestos Programs Branch Chief, and Ms. Jaye Stanley, Toxic Substances Control Program Manager in the Houston regional office.

Mr. Kotrla discussed the need for more direct communication with the regulated community. The need to identify recognized public health risks in abatement projects was discussed and it was noted that there are a number of non licensed projects that are conducted without the knowledge of TDH. The regulated community can assist these projects to comply by notifying the regional office of these instances so that we can inspect the project. Inspections of this nature protect the public health and allows TDH to place its inspectors in areas of greatest public health risk.

It is our desire to identify and inspect asbestos projects to reduce and eliminate public health risk. This can be best accomplished by having our inspectors visit projects that are most likely to present a public health

risk. These would include projects that do not have properly trained and licensed people working the project. The regulated community is most qualified to direct our inspectors to those types of projects. We depend on them with this effort.

Mr. Todd Wingler spoke about the RFCI guidelines and the way projects of this nature are handled. One of the concerns expressed was that project specifications were being written requiring RFCI and then when the project was underway RFCI would not apply. This placed the contractor in a difficult situation in that the specifications called for one method and the asbestos rules would not allow work to continue as RFCI guidelines were not met.

One of the items discussed was training of workers conducting RFCI projects. Under RFCI the contractor could train their own workers to work under those guidelines. This training would not require approval or licensing by TDH. The contractor would be responsible for creating a syllabus, conducting the training, and issuing certificates if they chose to do their own training.

Ms. Jaye Stanley answered questions on how the region responds to complaints and encouraged those present to let her office know of projects that are being done without proper notification and without proper procedures or trained people.

The meeting went well with questions and ideas being freely exchanged throughout the meeting. One issue discussed was the present

notification form. As a result of that discussion, we clarified the "assumption" choice on the form. In addition, we met with the regional inspectors on August 12, 1997 and discussed other aspects of the notification form, including the identification of the supervisor. This was done to make the form more user friendly.

During the August 12th meeting, we decided to clarify the form so individuals would understand that they needed to notify TDH of demolition projects, even if they determined there was no asbestos present. We also decided to continue identifying the supervisor for projects. The reason for this decision is that in many occasions we identify supervisors whose license has expired and we are able to identify individuals before the project starts. This does not result in NOV's. However, it may prevent the issuance of NOV's where non-licensed supervisors could have been assigned to a project.

If you have any ideas or recommendations for the Asbestos Programs Branch, please contact Todd Wingler at 1-800-572-5548.

We appreciated the opportunity to meet and discuss ways to better work with the regulated community in the professional forum provided by ACAT.

Sincerely,

Claren J. Kotrla, Director
Toxic Substances Control Division

In Place Asbestos Management:

A Building Owner's Perspective

If you or your organization is responsible for the management of a public building or facility in the State of Texas, you could face a challenging task if any asbestos containing material (ACM) is identified in them. It is clear under the Texas Asbestos Health Protection Act (TAHPA) that the responsibility for managing asbestos in a public building or facility lies with the building owner who under TAHPA is defined as the owner of record or one who exercises control over a building to the extent that said person contracts or permits renovation or demolition to the building. Effective and normal building use is a dynamic process requiring periodic maintenance, construction, renovation, installation and repairs. Under TAHPA, if the building owner intends to perform any of these activities and/or demolition, a survey for ACM in the affected areas is required.

The Environmental Protection Agency (EPA) in the 1990 document entitled "A Building Owner's Guide to Operations and Maintenance (O&M) Program for Asbestos Containing Materials" (the "Green" book) recommends a pro-active **in place management** program for ACM unless removal is required due to irreparable damage or prior to renovation and/or demolition projects. The document supports this recommendation by stating "removal is often not a building owner's best course of action to reduce asbestos exposure. In fact, an improper removal can create a dangerous situation where none previously

existed." The EPA recommended program for asbestos management includes selection of an asbestos program manager, inspecting facilities for ACM, assessment of any identified ACM and development and implementation of an operations and maintenance (O&M) program. A successful in place asbestos management program, whether for a single facility or a large number of buildings, will require not only the "buy-in" from upper management but a long term fiscal commitment. The total costs associated with implementing an asbestos O&M program can vary greatly depending on various factors including type and condition of ACM, site specifics, actual O&M procedures adopted and the useful life of the building.

Ultimately, the success of any O&M program lies in the commitment by the building owner to implement it properly. In support of this effort, the building owner should select a properly trained and experienced asbestos program manager (APM) to steward the program and have not only the responsibility but also the authority to oversee all asbestos related activities in the subject facilities. In addition, a trained, well experienced and highly competent consultant and laboratory should be selected to assist the APM in conducting a thorough survey for ACM in the subject buildings. It is important to note that all future responses by the APM to potential and existing asbestos hazards are based on the completeness and accuracy of the initial building inspection and ultimately, the

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**By Wade Mullin,
Asbestos Manager
for the City of Austin**

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analysis of suspect building materials. As a result, extra care should be taken to utilize only the highest quality consultants and laboratories. In this vein, select the consultant and laboratory based on their qualifications and negotiate a fee schedule with the best qualified candidates.

Once the ACM has been identified and assessed, an O&M program should be developed and implemented. Key elements of a effective O&M program include work practices, record keeping, worker protection, training, periodic surveillance, notification procedures and control mechanisms. A thorough evaluation of each of these elements can be obtained from the EPA "Green Book" document previously referenced.

Development and initiation of an in place asbestos management program can be a difficult process for many reasons. However, the successful implementation of a well developed in place asbestos management program, of which O&M is an integral part, can not only provide a cost effective means of safe guarding the building owner's property and liability but also protect the health and safety of any building occupants.

ATTENTION ABATEMENT CONTRACTORS

The formation of the Abatement Contractor's Association of Texas (ACAT) has finally taken place. This new organization is a forum for **abatement contractors only**, and was established to afford contractors an arena in which to discuss pertinent issues and laws.

ACAT was incorporated on May 14, 1997 as a non-profit corporation and its initial meeting was held on May 22, 1997. At this meeting, the Board of Directors and Corporate Officers were elected. The board members are: Mr. Pat Cochran, Mr. David Beeson, Mr. John T. (Skip) Stonbarger, Mr. Jack Cain and Mr. Kevin Davis. The Corporate officers are: Mr. Pat Cochran, President; Mr. David Beeson, Vice President; Mr. Rusty Wallace, Vice President; Mr. John T. (Skip) Stonbarger, Treasurer; Mr. Charles Holley, Asst. Treasurer; Mr. Gene Bush, Secretary; and Mr. Joe Stuckey, Executive Director/Legal Counsel.

ACAT holds its monthly meetings on the second Tuesday of each month at 6:15 p.m. The meetings are held at Howard Johnson Lodge-Hobby, 7777 Airport Blvd., Houston, Texas 77061.

By:

Mr. David Beeson

1997 ASBESTOS TRAINING SECTION SEMINARS

The Fifth Annual Asbestos Training Provider Seminar was held in two sessions this year. The first session was held on June 24, 1997 in Austin. Invited guests for the seminar were Chris Rocco, TDH, Ron Tom, Program Specialist with OSHCON, Darl Mount, Coordinator for EPA Region VI NESHP, and Neil Pflum, EPA Region VI Asbestos Coordinator. In addition, members of the TDH Asbestos Program gave presentations on current issues. The second session was held on August 22, 1997, also in Austin. Both sessions were very successful.

Please continue to send the training section any changes to class schedules (ie: location, time, instructor, etc.) and any updated training certificates for approved instructors as soon as possible. If at any time you cease using an individual as an instructor, the training section must be notified immediately in writing to have the person removed from your file. All requests for instructor approval should now be sent directly to the Training Section.

Again, thanks to everyone who participated in the success of these two seminars.

Personnel Changes

The Asbestos Branch has a couple of personnel changes that will affect whom you speak with when you call. The Asbestos Training Coordinator position is vacant and Mr. Jorge Montemayor is

coordinating the activities of that section. Mr. Chuck McLendon has accepted a promotion with Radiation Control and Mr. Todd Winger will be handling the enforcement duties during the interim.

REQUIREMENTS FOR SUBMITTAL OF MANAGEMENT PLANS UNDER AHERA

Clarification may be needed regarding the requirement for public and non-profit private schools (grades K through 12) to submit management plans to TDH. A variety of comments and questions directed to TDH from the regulated community indicate that it is commonly thought that an independent school district (ISD) or local education agency (LEA) need not submit management plans for schools acquired by the district after submittal of the district's original management plan. **NOT TRUE.** Management plans for schools (ie. A new elementary school campus) acquired after submittal of the original management plans must be submitted to the state for approval under a separate management plan, prior to use as school buildings. Individual buildings added to an existing campus are added to the existing management plan for that campus and if already reviewed by the state, don't require resubmission. The specific requirements for submittal of management plans can be found in 40 CFR, PART 763.93 (a).

Dr. Patti J. Patterson, TDH Executive Deputy Commissioner, visited Public Health Region 8 in San Antonio in August. She was taken on a visit to an asbestos project being conducted at the Texas Center for Infectious Disease to see how the public health is protected. Accompanying her were TDH Regional Inspectors Kirk Loftin and Sam Cook, P.E.



Pictured with Dr. Patterson are TDH Regional Inspector Kirk Loftin and Abatement Contractor/Supervisor Servando Silva. Photo by Sam Cook, P.E.

GOOD NEWS !

To help the asbestos industry and the general public stay informed with current information about the Asbestos Programs Branch and the rules and regulations, we have been working on updating and improving our Web Page. The New and Improved version is now up and running. Some of the information added is Frequently Asked Questions about Asbestos, current asbestos policy letters, information on health effects, Homeowners Guide to safe removal of asbestos containing materials, the state accreditation examination schedule, Licensing, Training, and Notification forms and applications, State and Federal rules and regulations, and current Asbestos Advisory Committee Members. The new address for the web page is:

<http://www.tdh.state.tx.us/beh/asbmain.htm>