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Asbestos 101

This newsletter is on the MDE web site: <http://www.mde.state.md.us>.

EDITOR'S NOTES...



The good news for Charlie Kobal, our school inspector, is that he retires July 1, 2001!!

The bad news is that we will miss him and have to do his work.



ASBESTOS FOR ALL...

This part of the newsletter is definitely not good news. We were recently informed by the EPA's Criminal Investigation Division (CID) that Frankland P. Babonis, the president of F&M Environmental Technology, Inc. (F&M) pled guilty to charges of false statement and mail fraud in The United States District Court for the Eastern District Court of Virginia. The corporation also pled guilty to a count of false statement. Babonis and the corporation pled guilty to these charges on February 9, 2001. On April 20, 2001 he was sentenced to 30 months in prison.

The company is an asbestos training provider approved in Virginia located in Virginia Beach. The following information came from the plea agreements and the statements of facts (SOF) that Babonis signed. By signing the SOF, he agreed that if he went to trial that the federal government would prove the facts by proof beyond a reasonable doubt.

Babonis was charged with making a false statement for providing asbestos training certificates that stated the trainees had successfully completed the required training for accreditation and passed an exam as required by Section 206 of the Toxics Substances Control Act (TSCA), Title II, 15 U.S.C. § 2646. (This is the language in the 1994 Model Accreditation Plan). Babonis further provided a false statement by certifying to Virginia that his courses would meet all the requirements for an EPA-approved course when he applied to the state to obtain approval for his training courses. His courses were approved only in Virginia.

Babonis was charged with mail fraud because he used interstate commerce i.e. Federal Express and the United States Postal Service to deliver the fraudulent certificates and obtain money from the clients for these certificates. As an aside, he did agree that he had earned \$235K from 1996-2000 from the selling of the certificates. This was used with other facts in the determining the sentence that he received.

As part of the plea agreements he has agreed to help the Criminal Investigation Division (CID) of the EPA in determining who holds fraudulent certificates. He is also providing the CID with information on who knowingly or otherwise bought the fraudulent certificates, both companies and/or individuals.

The SOF says that Babonis issued 500-1000 certificates from 1995 to 2000. It is estimated that at least 65% of these are fraudulent. We don't yet know which certificates are fraudulent. The CID is working with Babonis to determine which are "good" certificates and which are not, but there is no guarantee that this can be done for all certificates nor will it be done any time soon. It may be some time before this information is provided to the states mentioned in the statement of facts. (These certificates have been found in Maryland, Virginia, Georgia, Oklahoma, West Virginia, and Nebraska.)

Babonis also agreed in the SOF that some of the certificates were issued to individuals who did not know what the training requirements were, and to some who did know that they had obtained fraudulent certificates. The same is true of companies that knowingly bought fraudulent certificates and other companies that relied on Babonis' assertion that the certificates were valid. These companies included consultants, abatement contractors, labor pools, etc.

The Department was given the names of at least five (5) licensed abatement contractors in MD

who allegedly have fraudulent certificates from F&M. A quick perusal of our licensing files have found more F&M certificates used by contractors not named on the list.

A number of persons holding F&M certificates have come to our office to obtain a photo identification card needed to work in Maryland. So we also have a number of F&M certificates in our files. In fact, Babonis was evidently busy training persons after he pled guilty. Unfortunately some of these were honored because we were not informed of his pleas until April.

This situation obviously presents many problems. Beyond the illegality of the certificates, we have persons who are working with a hazardous material who had little or no training. They are a danger to themselves and to others because they are not trained in proper use of personal protective equipment nor in safe work practices. People have unwittingly exposed themselves, other workers, their families, the general public, etc. to a material with no known safe exposure level.

There is a potentially serious legal problem for anyone with a fraudulent certificate (and/or those who conspired to obtain the same). These persons have broken their "chain of accreditation" because *any* training after that first fraudulent certificate may be deemed invalid. The other issue is a potential for liability to the companies that used these persons to perform asbestos activities when they did not have a valid training certificate. We would suggest that if you or any of your employees have an F&M certificate for which you cannot vouch; stop that person's asbestos activity and obtain initial training for that asbestos discipline. Please note that a review course is not sufficient to repair "the accreditation chain".

If you can document that the person took the requisite number of hours of training, took the exam, and passed the test; you may wish to conduct

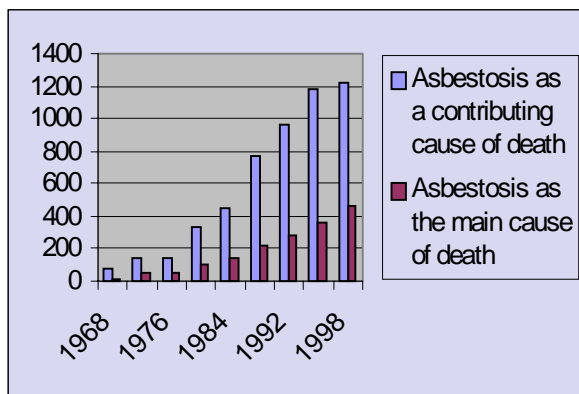
business as usual. This may be difficult to determine, however, because Babonis sold certificates by mail order or sent them out by fax when someone was in a hurry. He gave certificates to people who failed the test. He did do a bit of training by having trainees watch a video, chat a bit with him, perhaps take an exam, and leave after a few hours with a certificate of course.

We do not know at this time what action EPA, other states, or the Department may take against individuals or companies. We have been told that Babonis kept detailed records on clients and trainees. This information is being provided so that contractors can take actions that they deem appropriate under circumstances.

There is a series of articles in *The Virginian Pilot* about asbestos in the Hampton Roads shipyards titled "Shipbuilding's Deadly Legacy". The articles ran May 6-12 and June 18, 2001. Some of the articles have information about Babonis and his company. These can be found in NET NIBBLES.

TRAINING PROVIDERS...

The following graphic shows how the number of asbestos-related deaths have been increasing in the United States while most occupational diseases are on the decline.



Source: NIOSH

This chart is a sobering reminder to trainees that the misery and deaths caused by asbestos have not disappeared just because regulations are more stringent or persons are being less exposed.

Mark Thursday, September 27, 2001, on your calendar for the next training providers' meeting. It will be here at MDE at the 9:30 to noon and in the Patuxent conference room.

The application process still seems to puzzle some providers. If you do not respond to deficiencies within 30 days, you should receive a "5 day notice" from MDE (by certified mail) asking that you respond within in 5 days. If this is ignored, you may have to apply again and pay the application fee. You may do no training during this time.

If you reapply in a timely manner (COMAR 26.11.23.13) before the application expires; your application is in a pending status, but it has not expired. I would also remind you that the application process is complete and entered in our database ONLY when we have both the application and the funds.

A rubber stamp is not allowed in lieu of the director's original signature. All information on the card except for the two required signatures must be typed or printed by machine (COMAR 26.11.23.11.D). When you change certificate styles, please provide a copy so that we know what the new one looks like and so that we can check it for the minimum requirements.

The certification form, MDE/TR 265, requires the address of the training location for the class that is on the form, not the main office of the provider. The instructor(s) listed should be the one(s) who actually participated in teaching the class. The same is true for the proctor.

The annual MAREC (Mid-Atlantic Environmental Consortium) meeting took place in early May and we will be passing the CONES (Consortium of North-Eastern States) agreement around to

states in region III for signing. All the states except Delaware will probably sign. MDE allows for reciprocity already.

The MAP was also a topic of discussion at the conference. All of the jurisdictions feel that the MAP should be changed, especially the type and frequency of review classes. All of us agreed that there are no new regulations, no really new information on health effects, etc. and this is reason enough to either reduce the frequency of classes or offer a half day class every year. This will also reduce time away from the job for persons who hold multiple certificates and must spend a day per year on each class. The regulations are structured in such a way that many topics must be repeated in every review class, sometimes 2-4 times for trainees with multiple accreditations every year. This is redundant and makes the classes tedious for those who must attend so many classes. The half day proposal has many advantages in that anything new can be presented and still leave time for some topics that the trainees need to review each year. Some states would like to see a core course that would cover all of the topics common to each course so that the review courses would contain only the topics pertinent to that discipline.

Cindy Fraleigh from EPA headquarters attended the meeting while we were discussing this topic. At this time she said that there are no plans for changes to the MAP. She said that we would need to petition for changes. This will of course be a topic at the National Asbestos Conference this fall.

CONTRACTORS CORNER...

If you send more than 4 persons to our office for a photo identification card, we want the fees prepaid and the paperwork submitted before they come in. Unfortunately this has become

necessary since we have had persons not show up after requesting a large number of cards. We wasted a large amount of time doing this. Preparing cards ahead of time will also save your employees time when they come in.

NET NIBBLES...

These are the urls for "*The Virginian Pilot*": www.pilotonline.com/special/asbestos/index.html, www.pilotonline.com/news/nw0512fra.html, and www.pilotonline.com/nw0618job.html. The first series that ran in May provides a description of asbestos, WWII, and Hampton Roads shipyards. The most interesting part is the series of pictures, interviews, and audios of persons who worked in the shipyards and what asbestos did to them and their families. There is a graphic showing the increase in asbestos deaths since 1968, www.pilotonline.com/special/asbestos/graphic.html. This material could be useful for training classes.

STATESIDE...

Management plans for state facilities are due by September 30, 2001.

If your employees are late for class, they may have to return to work and take the class later. There is a minimum time that persons must attend a class.

These classes are only for state employees.

July 12	2001 Worker R	August 2001 NO CLASSES!!
September 5 19-21 25-26	2001 Worker R Building Insp. I Management Planner I	If you must cancel, call Sharon Manger or Janice Lafon at (410) 631-3801 or (800) 633-6101, -3801 or email: smanger@mde.state.md.us or jlafon@mde.state.md.us