



Maryland
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Environment

Air & Radiation
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1800 Washington Blvd.
Baltimore, MD
21230-1720

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Asbestos Accreditation &
School Assistance
Division

Editor:
Mardel Knight
(800) 633-6101, ext. 3200
mknight@mde.state.md.us

FAX (410) 537-3924
TTY USERS:
(800) 735-2258



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Shari T. Wilson
Secretary

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A sbestos 101

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

EDITOR'S NOTES ...



SEASON'S GREETINGS

VERY INTERESTING NEWS!!! The United States Senate passed bill, S. 742—The Ban Asbestos Act of 2007, on October 4, 2007. The bill was introduced by Senator Patty Murray (D-WA) and passed unanimously. It was sent to the House of Representatives for action. In the House, Representative Betsy McCollum (D-MN) introduced a companion bill, H.R. 3339—Bruce Vento Ban Asbestos and Prevent Mesothelioma Act of 2007. The bills are quite similar. Provisions of S. 742 would (1) ban the importation, manufacture, processing, and distribution of products containing asbestos. The ban would cover the six regulated forms and three durable fibers. The EPA would issue rules to ensure that the materials are off the shelves within two year's of the bill's enactment; (2) expand research and treatment by creating a \$50 million Asbestos-Related Disease Research and Treatment Network, creating a new National Asbestos-Related Disease Registry, and direct the Pentagon to conduct additional research on asbestos disease, early detection and treatment since nearly 1/3 of mesothelioma victims served in the U.S. Navy; (3) require the EPA to conduct a public education campaign to increase awareness of the dangers of asbestos both in the workplace and in the home. The EPA would also work with the Consumer Product Safety Commission on this campaign.

The House bill, H.R. 3339, basically asks for the same things. In addition, EPA would also promulgate rules for the exemptions to the importing, etc. for the Department of Defense and NASA. It would also require the disposal of

asbestos-containing materials (ACM) in two years, but would exempt products no longer in trade or in the possession of an end-user.

BACKGROUND. As you may or may not remember, the EPA had proposed a ban in 1989 and it was overturned by the Fifth Circuit Court of Appeals in New Orleans in 1991. It was challenged on the basis of the cost-benefit analysis made by the EPA, not on the basis of asbestos proven health risks. EPA never appealed to a higher court to reconsider the overturn of the ban. There are only six items banned at this time and these are: flooring felt, rollboard, commercial paper, specialty paper, corrugated paper, and new uses of asbestos. The latter was a prohibition on adding asbestos to products that historically did not contain asbestos.

Under the Clean Air Act, the 1970s bans on use of spray-applied surfacing applications for fireproofing, insulating, and decorative purposes are still in effect. The 1975 bans on wet-applied and pre-formed asbestos for pipes, tanks, and boilers remains in effect. Curiously, NESHAP did not ban troweled-on surfacing ACM. The full document can be found at www.epa.gov and search on "asbestos ban".

For those of us working with the AHERA regulations that were final in 1987, the overturn of the ban had some "side effects" for us. When the AHERA rules were being promulgated, there was no doubt in anyone's mind that the ban would take effect and schools would not have to contend with the issue of asbestos in replacement materials. Thus AHERA was written in anticipation that the initial

inspection and management plan would suffice for existing materials in schools.

This, too, was the reasoning for the exclusion granted to the buildings completed after October 12, 1988 that would only need the architect's letter to be excluded from AHERA requirements. That is also the reason that the use of nonasbestos replacement materials was not really mentioned in the model curricula that EPA made available for the inspector and management planner courses. EPA never went back to revise the AHERA regulations when the ban was overturned. So that is the situation 20 years later. As you are all well aware, the US is still importing ACM with or without proper labels and/or material safety data sheets. ***In fact according to Canadian government statistics, the US increased its imports for 2007 from 2006 by 15%!!***

TRAINING PROVIDERS ...

Some of the training providers have received **Notices of Violation**. These are exactly what the name implies. The notices have been issued for late reporting of classes well beyond the 10 working days that are allowed in COMAR 26.11.23J(2). (These are MDE working days.) Others were issued for failing to account for a large number of blank photo identification cards and failing to submit renewal applications on time. The latter is not a problem unless you are teaching classes **AFTER** the course approvals have expired. It is a problem, too, if you wish to continue with business as usual which you may if the fee and application are received **BEFORE** the course approval expires.

If these violations are not corrected promptly, further action may be taken. There may be a substantial penalty. If the nature of the violations repeats, these do accumulate and may result in a penalty.

Some of the training providers are not keeping close track of what they send in and then are surprised when the Department's records indicate there are many cards not accounted for or what are called the "nondisposed". These are cards that have been issued to the training provider and we no other record of their disposition. Whenever you ask for more cards or submit an application, your card inventory is compared with the Department's records. If the training provider has a large number of nondisposed cards, then more cards cannot be issued until these discrepancies are reconciled. Voided cards seem to get lost in the "shuffle". These must be accounted for, too, and must be returned as soon as possible. If you destroy a card or lose a card, you must document this in a letter on your letterhead, not an email. These will be entered in our records as **voids, destroyed and not returned**. You need to do the same for your records.

You may submit the class rosters and copies of photo id cards by email. If we have not acknowledged receipt of these in a couple days, ask about them. If the attachment is too large (>4MB) then the Department's email system will reject the email. There is a second email address that you may use that allows for larger emails and that is available if you call Mardel Knight at 410-537-3814. The good thing about emails is that you will receive a receipt once the items are printed and reviewed. The submittals are also stored so they are available

when records are being reconciled. Submittals sent via the postal service are not acknowledged in this manner.

CONTRACTORS' CORNER ...

Your employees may not upgrade to a supervisor by taking the supervisor review class if they are workers. Supervisors may not take the worker review under the guise of just staying accredited. Each of the five AHERA disciplines has a matching review class and that is the only one they may use for that discipline. It is not a mix and match situation.

The Department has been advised of a rumor that a training provider may have offered a supervisor class in Spanish. **THIS IS ABSOLUTELY NOT ALLOWED!!** The only classes that may be taught in a foreign language are the worker and worker review. In Maryland these must be approved separately from the English language worker and worker review courses.

The next training provider meeting is at MDE on Thursday, March 13, 2008 in the Test Room from 9:30 to Noon.

SCHOOLS ...

CONSENT AGREEMENTS & FINAL ORDERS (CAFOs)

The following CAFOs have been issued to Maryland schools since September 2007. A CAFO is issued after the Department has inspected the school and deficiencies were found that are subject to penalties. The school will receive from the EPA a Notice of Noncompliance and Request to Show Cause

and has a certain number of days to respond.

1. 9/11/07 Worcester County Public Schools.

The counts included failure to make annual notification to parents, teachers, and staff and failure to inspect all of its buildings. The cash component of the penalty was \$0 (zero dollars).

2. 9/2/7/07 Carroll County Public Schools.

The counts included failure to make annual notification to parents, staff, and teachers, failure to inspect all buildings, and failure to maintain an updated management plan at the local school. The cash component of the penalty was \$0 (zero dollars).

3. 11/19/07 Prince Georges County Public Schools. (Note: this is a result of inspections of the charter schools in the county that are public schools.) The counts included failure to make the annual notification to parents, staff, and teachers, failure to prepare management plan and submit it to MDE, and failure to inspect all schools in the LEA. The penalty was \$6,000.

During this last quarter we have received calls from parents who are not shown the management plan because the school could not locate it. There was a management plan for the school. However the school did not know where it was and/or the notification did not clearly explain where the plan was to be found. You have to tell people where the plan is and who is in charge of it at the school. Parents should not have to call us to help them locate a management plan!

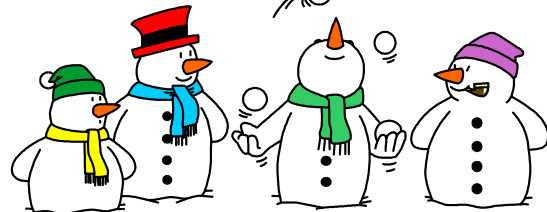
NET NIBBLES ...

On November 15, 2007 OSHA issued a final rule titled Employer Payment for Personal

Protective Equipment in the Federal Register, 72:64342-64430. This rule offers no new requirements for PPE, but clarifies what the employer must pay for and what the employer is not required to pay for. It was clearly OSHA's intent in its rulemaking that PPE required by a standard had to be paid for by the employer. However, this was not clearly stated as many standards said that it had to be provided to the employee and maintained properly, but did not say who paid. This rule applies to 29 CFR Parts 1910, 1915, 1917, 1918, and 1926. The rule takes effect February 13, 2008 and must be implemented by May 15, 2008. Please contact Mardel Knight if you need a copy (.pdf).

STATESIDE ...

Some of the state facility management plans are seriously overdue!!! If you are planning to ask for AOC money, then you need to have a current approved plan.



You may only have this much fun if schools in Baltimore City or Baltimore County are cancelled due to inclement weather. Then there will be no training classes!!

STATE EMPLOYEES' TRAINING CALENDAR

JANUARY 2008 NO CLASSES!!	FEBRUARY 2008 21 IMPR - MDE 28 AUTO ROSEWOOD
MARCH 2008 5-7 INSPECTOR - MDE 11-12 MAN. PLANNER MDE 27 SUPERVISOR R-MDE	If you must cancel, please call Sharon Manger at 800-633-6101, -3200 or email smanger@mde.state.md.us