

SPECIAL Report



NATIONAL ROOFING CONTRACTORS ASSOCIATION

OSHA ASBESTOS REGULATIONS

October 21, 1994

CONFIDENTIAL

Dear Member:

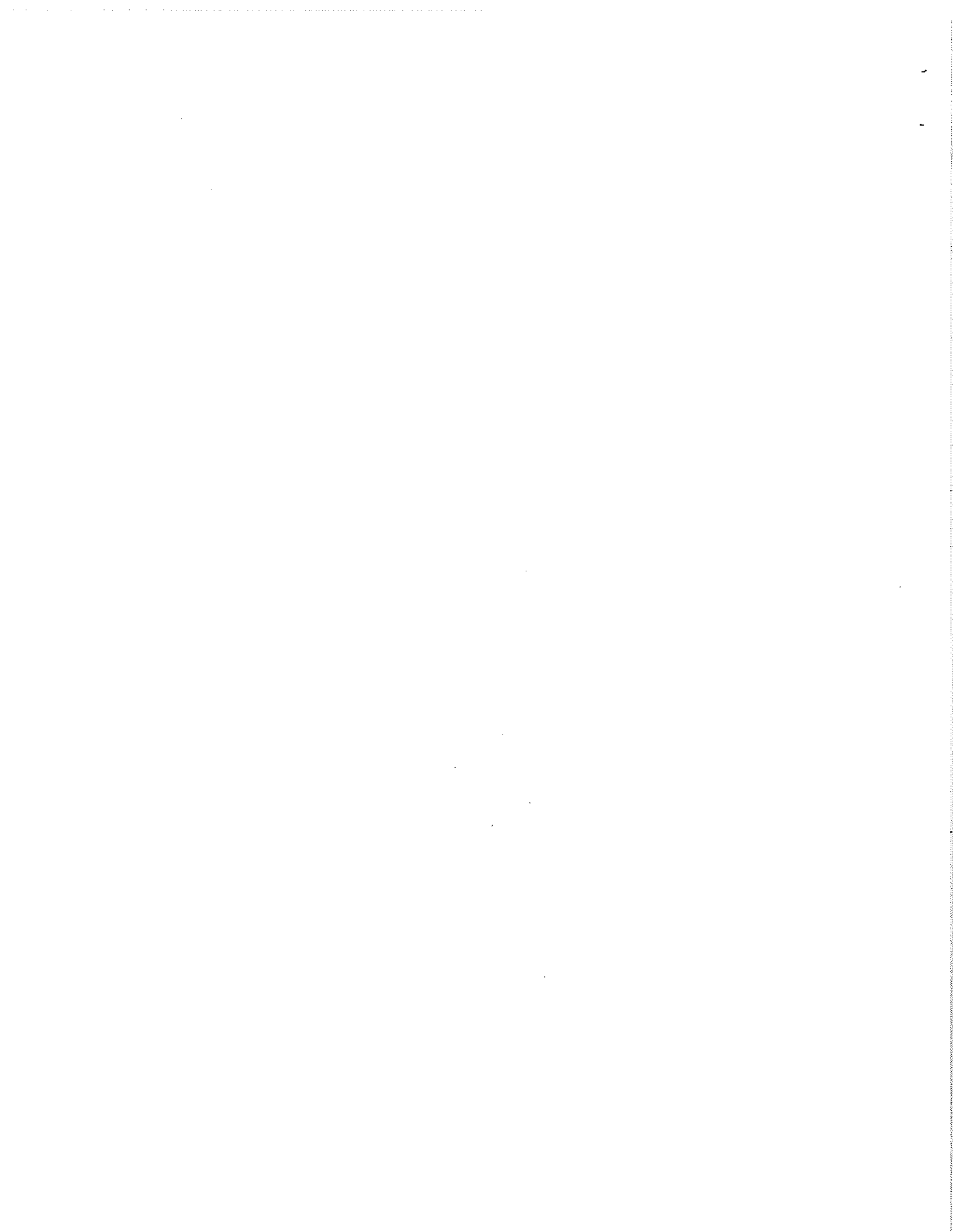
As we reported to you earlier, OSHA published final rules on handling asbestos-containing materials on August 10 of this year. Included in the rules are specific provisions for handling asbestos-containing roofing materials ("ACRM"). For a number of reasons, NRCA and several individual members have filed petitions for judicial review of the standard. The petitions now reside with the U.S. Court of Appeals for the Fifth Circuit.

Portions of the new rule went into effect on October 11; some of the requirements take effect on January 9, others on February 8, and still others on April 10, 1995. Needless to say, there is a good deal of confusion in the industry surrounding this issue.

On Friday, October 14, NRCA delivered to OSHA a formal application for a stay of enforcement of the regulation as it applies to the roofing industry. We have asked OSHA to respond to the request by October 31; if they deny or fail to respond to our application, we will have the option of filing a stay motion with the appeals court. Whether and when we do so will depend on a number of factors, including our assessment of the likelihood that an administrative solution acceptable to the roofing industry is likely to be agreed upon. We hope to be able to work with OSHA to arrive at a reasonable and enforceable regulation, but we are also prepared to pursue all of our legal remedies if that proves not to be possible.

The most frequently asked question we get is: What am I supposed to do today to be in compliance? It's a difficult -- if not impossible -- question to answer, but based on our reading of the regulation, and our sense of OSHA's intent, we offer the following observations for your consideration:

1. All provisions of the standard have deferred effective dates except the following:
 - The permissible exposure limits ("PELs") in subsection (c) of the new standard, set at 0.1 f/cc 8-hour time-weighted average ("TWA"), and 1.0 f/cc 30-minute excursion.



- The "regulated area" requirements of subsection (e).
- The "exposure assessment and monitoring" requirements of subsection (f).
- The protective clothing requirements of subsection (i), which apply where (a) the PELs are exceeded, or (b) the employer does not make a "negative exposure assessment."
- The recordkeeping requirements of subsection (n); for the time being, these apply only to records of any exposure monitoring.

These provisions apply on all jobs involving the removal and repair of any amount of ACRM. Installation of ACRM is not affected by the regulated area or protective clothing provisions.

2. With regard to those requirements of the new standard that have deferred effective dates (mandatory methods of compliance, respirators, hygiene facilities, hazard communications (including training), housekeeping, medical surveillance, and "competent person"), the provisions of the previous standard apply until the new requirements become effective. However, all these provisions were triggered by exposures above 0.1 f/cc (8-hr TWA) or 1.0 f/cc (30 min excursion) under the prior standard. The large database of thousands of measurements NRCA has assembled shows no readings above those levels for ACRM work.

3. The requirements for "initial exposure assessments," which became effective October 11 and apply to all ACRM work, are going to cause the most frustration and confusion. A "competent person" is supposed to conduct the assessment, but roofing contractors are not required to have trained competent persons until next April 10. We therefore believe it is not feasible for you to have a competent person conduct the initial exposure assessment. This leaves you with two choices: (a) conduct no assessment on the ground that such an assessment is not feasible until a trained competent person, or someone else who is capable of undertaking the detailed assessment required by the new standard, is available; or (b) you, or the person in charge of the project in question, conduct the assessment based on all the information available to you. If you do conduct the assessment (which is the "safer" course) it would be wise to document it in case there is an inspection (which is unlikely until later this year at the earliest, as indicated below). A similar approach could be taken with respect to "regulated areas" which, technically, must be supervised by the competent person.

4. The "initial exposure assessment" provision of the new standard appears to require initial exposure monitoring on every job "if feasible". There are some informal indications that OSHA may not intend routine monitoring, but until the matter is clarified you will have to deal with the existing language. The options are: (a) decline to monitor on the ground that it is not "feasible" (for example, because it must be supervised by the competent person, or because it cannot be done prior to the start of the job, as the standard appears to require); (b) conduct exposure monitoring yourself or by using an industrial hygiene consultant.



5. If the initial exposure assessment does not produce a "negative exposure assessment," the currently-effective provisions of the new standard appear to require daily monitoring (for ACRM removal jobs) and protective clothing (for ACRM removal or repair jobs). Again, you have two options. First, you can make a "negative exposure assessment" based on the industry data base, which arguably qualifies under the "objective data" provision of the new standard. Or, you can conduct daily monitoring and require the use of protective clothing until the monitoring results, once they are in, show compliance with the PELs in accordance with the standard. (Some of you who have, for whatever reasons, been regularly doing monitoring for asbestos may be able to make a "negative exposure assessment" on the basis of this historical data.)

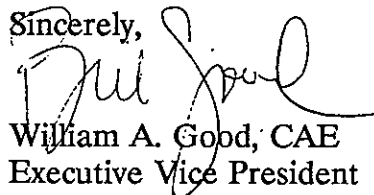
6. The case for claiming the "objective data" basis for making a negative exposure assessment is strongest, we believe, for jobs where the only asbestos present is contained in cements, coatings, mastics or flashings. In fact, NRCA will be retaining a testing firm to conduct "worst case" testing of asbestos-containing cements, coatings, mastics and flashings to provide members with further evidence of meeting the objective data criterion.

7. OSHA has indicated that it will be issuing a compliance manual for enforcing the new standard by the end of the year, but probably not before December 1. Absent these guidelines, it is highly unlikely that OSHA will be enforcing the new regulation.

8. In our submission to OSHA, we indicated the devastating effect the new rule is already having on our industry. Thanks to your responses to our survey, we were able to document that reroofing costs on projects where asbestos is present can be expected to roughly double, and that our members will expect to lay off about 25 percent of their field workers as a result of the rule. **Now is the time to communicate those same concerns to your elected officials in Washington.** If you agree that the new asbestos rule is damaging your business, please let your Senators and Congressman know how it will affect your business and what it will mean in terms of lost jobs. Then ask them to call or write OSHA and ask for an explanation. A one-page summary of key points to cover in your correspondence is enclosed for your use. Please copy us on any of your correspondence.

We're grateful for the terrific response and support we've gotten from all of our members on this issue. We will keep you informed as the issue evolves, and we encourage you, as always, to call or write with your questions.

Sincerely,



William A. Good, CAE
Executive Vice President

P.S. Our legal counsel have advised us that this communication might be used against NRCA in the pending court challenge if it were to fall into the "wrong hands." Therefore, please keep it confidential.



Key Points for Including in Letters to Elected Officials

1. There is no evidence anywhere of any asbestos fiber release on roofing projects above OSHA's new permissible exposure limits (PELs).
2. Even if you can prove there are no asbestos fibers being released, you must still demarcate the project; limit access to trained workers; wet, HEPA vacuum and containerize asbestos-containing materials; supervise the project with a trained "competent person"; provide annual medical surveillance; create records and maintain them for as long as thirty years; prevent workers from eating, drinking or chewing on the job; put OSHA warning labels on containers of asbestos-containing waste, place OSHA warning signs on the roof during the job, and leave OSHA warning placards on the roof where asbestos-containing coatings, cements and mastics remain after the job.
3. Incidental amounts of asbestos are present in the roofing materials on more than half of all buildings, and more than 90 percent of all homes in the country, so the regulation has tremendous consequences.
4. Insurance and bonding requirements may keep you from bidding work historically done by roofing contractors; and awarding jobs to asbestos abatement contractors may cause serious scheduling problems.
5. Your costs will increase dramatically (NRCA members report an average increase of 87 percent), and roofing jobs will take far longer to complete in compliance with OSHA's detailed, bureaucratic requirements (NRCA members anticipate at least a doubling in job time). Building owners, including homeowners, will bear the burden of these increased costs and delays, and property values are likely to decline.
6. You may be forced to lay off workers. (NRCA members report an average of 27 percent of field workers.)
7. You need help. Ask your Senators or representatives to intervene with OSHA on your behalf.

