

CROCKETT COMMUNITY SERVICES DISTRICT and CROCKETT SANITARY COMMISSION

Joint Special Business Meeting
AGENDA FOR WEDNESDAY, DECEMBER 30, 2020

TIME: 4:30 PM

PLACE: ** TELECONFERENCE - SEE BELOW **

IMPORTANT NOTICE REGARDING COVID-19 AND TELECONFERENCED MEETINGS:

Based on the mandates by the Governor in *Executive Order 33-20* and the County Public Health Officer to shelter in place and the guidance from the CDC, to minimize the spread of the coronavirus, please note the following changes to the District's ordinary meeting procedures:

- The District offices are not open to the public at this time. (See *Resolution No. 19/20-18*)
- The meeting will be conducted via teleconference using Zoom.
- All members of the public seeking to observe and/or to address the local legislative body may participate in the meeting telephonically or otherwise electronically in the manner described below. See end of agenda for information on How to Submit Public Comments.

HOW TO OBSERVE THE MEETING:

Telephone: Listen to the meeting live by calling Zoom at +1 669 900 9128.

Enter the Meeting ID# 817 5375 0010 followed by the pound (#) key.

More phone numbers can be found on Zoom's website at <https://zoom.us/u/aeON0A5qL>.

Computer: Watch the live streaming of the meeting from a computer by navigating to <https://zoom.us/j/81753750010> using a computer with internet access that meets Zoom's system requirements (see <https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux>)

Mobile: Login through the Zoom mobile app on a smartphone and enter Meeting ID# 817 5375 0010

1. CALL TO ORDER: DISTRICT BOARD - ROLL CALL:

CALL TO ORDER: CROCKETT SANITARY COMMISSION – ROLL CALL:

2. PUBLIC COMMENTS ON NON-AGENDA ITEMS:

(The Commission is prohibited from discussing items not on this agenda. Matters brought up that are not on the agenda may be referred to staff for action or calendared on a future agenda.)

3. DISCUSSION ITEMS:

Discussion on the matter of using the Hosselkus Mortuary building for new offices of the District and the sanitary departments, including but not limited to the subject of asbestos abatement.

4. **ADJOURNMENT:** District Board

ADJOURNMENT: Crockett Sanitary Commission

HOW TO SUBMIT PUBLIC COMMENTS:

Written/ Read Aloud: Please email your comments to manager@town.crockett.ca.us, write "Public Comment" in the subject line. In the body of the email, include the agenda item number and title, as well as your comments. If you would like your comment to be read aloud at the meeting (*not to exceed three minutes at staff's cadence*), prominently write "Read Aloud at Meeting" at the top of the email. All comments received before 3:00 PM the day of the meeting will be included as an agenda supplement on the District's website under the relevant meeting date and provided to the Directors at the meeting. Comments received after this time will be treated as telephonic/electronic comments.

Telephonic / Electronic Comments: During the meeting, the Board President or designee will announce the opportunity to make public comments and identify the cut off time for submission. The public can speak up at that time or use the Zoom chat feature to indicate they want to make a public comment. If needed, a short recess (generally less than 10 minutes) will take place during the time public comment is open to allow the comments to be collected. Use Zoom chat or email your comments to manager@town.crockett.ca.us, write "Public Comment" in the subject line. In the body of the email, include the agenda item number and title, as well as your comments. Once the public comment period is closed, all submitted comments timely received will be read aloud. Comments received after the close of the public comment period will be added to the record after the meeting.

You will find the Minutes of this meeting posted on our website at www.town.crockett.ca.us Visit our website for more information on meetings and activities of the Crockett Community Services District and the towns of Crockett and Port Costa.

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in a District meeting, or if you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, please contact the General Manager at (510) 787-2992. Notification of at least 48 hours prior to the meeting or time when services are needed will assist District staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item, and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection. The Board has designated the District's website located at <https://www.town.crockett.ca.us/meetings> as the place for making those public records available for inspection. The documents may also be obtained by calling the District Manager, at the Crockett Community Services District Office in Crockett. If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda. The office address is 850 Pomona Street, Crockett, California 94525.



1-1-1991

Asbestos in the Work Place: What Every Employee Should Know

Barbara A. Wetzel

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COMMENTS

ASBESTOS IN THE WORK PLACE: WHAT EVERY EMPLOYEE SHOULD KNOW

I. INTRODUCTION

Mary works in a high-rise building in San Jose, California, that was built in 1962. Her employer, along with several others, leases a floor of the building. The building, like hundreds of thousands built prior to 1979, contains asbestos. In July of 1989, Mary received a memo from her employer describing, in very technical terms, the contents of a survey conducted to determine the existence and location of asbestos-containing construction materials in the building. Mary was also told where the survey results were kept so that she might examine them. Mary's employer indicated in the memo that the asbestos would not be removed at any time in the near future. The memo also stated that while her employer had no specific knowledge as to the potential health impacts of exposure to asbestos, Mary should take it upon herself to contact a local public health agency for further information. As a result of her own research Mary has found that there is no known safe level of asbestos exposure.

Mary has worked for her employer for twelve years, all at her present location. Now concerned about her past and present possible exposure to asbestos, Mary is faced with a serious dilemma. Is it unreasonable for her to leave her tenured job? Is she really in danger of contracting an asbestos related disease? Her company has no future plans to move its location. The future danger of exposure to the asbestos in Mary's building depends on a number of variables. If Mary should later develop asbestosis or other asbestos related diseases, will her

employer and the owner of the building be able to escape liability on an "assumption of risk" theory of defense?

In the foregoing hypothetical, Mary's employer has complied with the newly enacted "Asbestos Notification" chapter of the California Health and Safety Code.¹ Under the statute, the owner of any California building built prior to 1979 who knows that the building contains asbestos materials must give written notice of the fact to his employees.² The owner of the building is also required to give similar notice to those with whom he is in privity of contract.³ If a person contracting with an owner receives notice pursuant to this chapter he must in turn provide a copy of that notice to his employees working in the building.⁴

This comment traces the development of the asbestos problem beginning with its litigated inception in *Borel v. Fibreboard Paper Products Corporation*.⁵ It will then discuss how the problem of asbestos in the work place has been addressed by the federal government under the Asbestos Hazard Emergency Response Act of 1976, and the Occupational Safety and Health Act (OSHA).⁶ This comment then analyzes the newly enacted Chapter 10.4 of the California Health and Safety

1. CAL. HEALTH & SAFETY CODE §§ 25915-25924 (West 1984 & Supp. 1989). The legislation was introduced by assemblyman Lloyd Connely, D., Sacramento County. It was passed during the 1988 legislature and later amended during the 1989 legislature. Appendix A of this comment contains a reproduction of the statute in its entirety.

2. *Id.* § 25915.2(a). The statute requires notice be provided in writing to each individual employee. Notice must be provided to new employees within 15 days of commencement of work in the building. *Id.*

3. *Id.* § 25915.5(a). The section provides that:

An owner required to give notice to employees pursuant to this chapter, in addition to notifying his or her employees, shall mail, in accordance with this subdivision, a copy of that notice to all other persons who are owners of the building or part of the building, with whom the owner has privity of contract. Receipt of a notice pursuant to this section by an owner, lessee or operator shall constitute knowledge that the building contains asbestos-containing construction materials for purposes of this chapter. Notice to an owner shall be delivered by first-class mail addressed to the person and at the address designated for the receipt of notices under the lease, rental agreement, or contract with the owner.

Id.

4. *Id.* § 25915.2(b).

5. 493 F.2d 1076 (5th Cir. 1973), *cert. denied*, 419 U.S. 869 (1974).

6. See *infra* notes 84-118 and accompanying text.

Code⁷ in light of the assumption of risk doctrine and worker's compensation law.⁸ Finally, the comment will propose that employers be *required* to notify employees of the dangers of asbestos exposure and of the current "safe" levels of exposure that have been established by the state and federal government. The comment further proposes that building owners be *required* to take steps to minimize the risk of asbestos by developing an asbestos management or abatement plan.

II. BACKGROUND

A. *The "Asbestos Problem"*

While asbestos has become practically a household word in the past two decades, few people really know exactly what it is and how it harms the human body. Asbestos has been known to man since ancient times.⁹ The use of asbestos dates back to the first century when it was believed to be used by the Greeks and Romans.¹⁰ Modern use of asbestos dates back to the late 1800's when it was first used as an insulator against heat in 1866.¹¹ Asbestos cement was introduced around 1870, and asbestos insulation materials have been mass produced and widely used since 1874.¹²

"Asbestos"¹³ is a mineral of the silicate family that displays certain properties that have yet to be synthesized.¹⁴ De-

7. CAL. HEALTH & SAFETY CODE §§ 25915-25924 (West 1984 & Supp. 1989).

8. See *infra* notes 183-191 and accompanying text.

9. *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076, 1083 n.3 (5th Cir. 1973), *cert. denied*, 419 U.S. 869 (1974). Asbestos was used as an insulator against heat as early as 1866, and asbestos cement was introduced about 1870. Asbestos insulation material has been commercially produced since at least 1874.

10. Kirkland, *What's Current In Asbestos Regulations*, 23 U. RICH. L. REV. 375, 377 (1989) [hereinafter Kirkland].

11. *Borel*, 493 F.2d at 1083 n.3.

12. *Id.*

13. The name "asbestos" is a broad commercial term for a specific group of minerals (also known as asbestiform minerals). The California Labor Code section 6501.7 defines this group as ". . . [f]ibrous forms of various hydrated minerals, including chrysotile (fibrous serpentine), crocidolite (fibrous riebeckite), amosite (fibrous cummingtonite-grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite" CAL. LAB. CODE § 6501.7 (West 1985). This section of the Labor Code is made applicable to Chapter 10.4 of the Health and Safety Code by § 25918 which reads, "[a]sbestos," as used in this chapter, has the same meaning as defined in Section 6501.7 of the Labor Code."

14. The silicate family of minerals includes any numerous insoluble often complex metal salts that contain silicon and oxygen in the anion. Silicates consti-

rived from a Greek word, asbestos means "inextinguishable, unquenchable or inconsumable."¹⁵ Asbestos readily separates into long, thin, flexible fibers.¹⁶ When airborne, these fibers are invisible to the naked eye and have proven toxic if ingested or inhaled.¹⁷

Despite their harmful effects, these fibers possess certain characteristics which make them valuable to many industries. The unique properties of asbestos—high tensile strength, flexibility, and resistance to fire, heat, and corrosive chemicals—are often the critical factors in the proper functioning of a particular product.¹⁸ In the past four decades, the construction industry has used asbestos extensively.¹⁹ Following World War II, the technique for spray-on application of asbestos was developed and used in high-rise buildings as a thermal and acoustic insulator.²⁰ As a result, asbestos can be found in and around heating, ventilation, air conditioning (HVAC) equipment and ductwork in buildings built prior to 1973 when

tute the largest class of minerals, and are used in building materials such as cement, bricks and glass. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1097 (1988). "Synthesized," for purposes of this comment means that no substitute product for asbestos has been created. A product that could serve in the place of asbestos would have to be resistant to fire, heat and corrosive chemicals.

15. Treiger, *Relief for Asbestos Victims: A Legislative Analysis*, 20 HARV. J. ON LEGIS. 179, 180 (1983) [hereinafter Treiger].

16. Kirkland, *supra* note 10, at 376.

17. Kirkland, *supra* note 10, at 376.

18. See O'Hare, *Asbestos Litigation: The Dust Has Yet to Settle*, 7 FORDHAM URBAN L.J. 55, 57-58 (1978) [hereinafter O'Hare]. For example, beginning in the industrial era, a product was needed for packaging materials and insulation which could withstand high temperatures.

19. The use of asbestos for fireproofing purposes was even required by law under some building codes. *Asbestos Abatement: Risks and Responsibilities 2* (Special Report, Bureau of National Affairs 1987). Today, asbestos is still used in cement construction materials such as roofing, shingles and cement pipes. Mossman, Corn, Seaton, Gee, *Asbestos: Scientific Developments and Implications for Public Policy*, SCIENCE, Jan. 1990, at 294 [hereinafter Mossman].

In addition to extensive application in the construction industry, asbestos has also been utilized in the shipbuilding industry. Shipbuilders employed asbestos to insulate boilers, steam pipes, hot water pipes, and nuclear reactors in ships. See also National Inst. of Health, Public Health Serv., U.S. Dep't of Health and Human Serv., *Asbestos Exposure—What It Means, What To Do*, NIH Publication No. 89-1594 (revised Nov. 1988, printed Mar. 1989) [hereinafter *Asbestos Exposure*].

20. Glazerman, *Asbestos in Commercial Buildings: Obligations and Responsibilities of Landlords and Tenants*, 22 REAL PROP. PROB. & TR. J. 661 (1987) [hereinafter Glazerman]. Prior to World War II, the technique used was the "trowelling method." The trowelling method required the use of hand tools to apply, spread, shape and smooth the asbestos.

the EPA partially banned spray-on application of asbestos.²¹ It is estimated that the use of asbestos was so widespread that it can be found in "[m]ore than half of all buildings erected in the United States between 1940 and 1970, and in almost every factory, school and home across the land."²²

In spite of its wide usage in buildings, the mere existence of asbestos does not necessarily pose a health problem.²³ Asbestos which is not friable²⁴ or is encapsulated may not be harmful.²⁵ The health problems associated with asbestos exposure occur when asbestos fibers are released into the air and subsequently inhaled by people occupying the building. This "release" of asbestos fibers occurs when the adhesives that hold the asbestos in place, or the asbestos itself, begins to deteriorate naturally over time.²⁶ This process, however, may be accelerated by vibration,²⁷ water damage, passage of air, negligent or willful contact, and disturbance by maintenance activities.²⁸

Although the methods of asbestos dispersal are well estab-

21. EPA National Emission Standard for Asbestos, 40 C.F.R. §§ 61.140-61.156 (1989). The partial ban of the spray-on application of asbestos was enacted in response to the recognition of the dangers of asbestos exposure. The spray-on technique is considered to be most dangerous because it uncontrollably disperses large amounts of asbestos fiber into the ambient air. The statute specifically limits the amount of asbestos that may be applied using the spray-on technique to one percent on a dry weight basis. If this amount is exceeded, the owner or operator must notify the EPA Administrator of the location of the spraying operation and the procedures that are being followed in accord with the statutory controls.

22. Kirkland, *supra* note 10, at 378 (quoting Fried, *Asbestos Abatement: A Pragmatic Survey of Problems and Solutions*, in ASBESTOS REGULATION, REMOVAL AND PROHIBITION 113, 115 (Practicing L. Inst. ed. 1987)).

23. See *infra* notes 34-46 and accompanying text for a discussion of health problems caused by asbestos exposure.

24. "Friable" is defined as decaying or easily crumbled by hand pressure. Glazerman, *supra* note 20, at 662.

25. The characteristic of asbestos that makes it dangerous is its tendency to crumble and release fibers that can be inhaled. Asbestos which is encapsulated may prevent this dispersion by sealing it in an airtight plastic bag.

26. Diamond, *Liability in the Air: The Threat of Indoor Pollution*, 73 A.B.A. J. 78, 82 (Nov. 1987) [hereinafter Diamond]. Other causes of deterioration of asbestos include vandalism and contact by maintenance personnel who must fold, staple and mutilate the asbestos to run cables through it.

27. It is highly likely that the October 17, 1989, Loma Prieta earthquake in Northern California, which measured 7.1 on the Richter Scale loosened and released asbestos into the air of many buildings. This can be inferred from the fact that "vibration" can cause deterioration of asbestos. See Glazerman, *supra* note 20, at 662.

28. See Glazerman, *supra* note 20, at 662.

lished, the exact amount of exposure that will later prove harmful to the human body remains controversial. Both the Environmental Protection Agency and the California State Department of Health Services contend that there is no safe level of asbestos exposure, and that precautionary measures must be taken to avoid exposure.²⁹ Others in the medical profession feel that non-occupational exposure to asbestos, such as the mere occupation of buildings containing asbestos, does not pose a significant health risk.³⁰ Nonetheless, even a single exposure to asbestos is capable of causing an asbestos related disease.³¹

While no formal study has linked non-occupational exposure to asbestosis, there has been at least one documented case of a woman who contracted mesothelioma³² during her employment as a word processor for twelve years in a Cleveland, Ohio office building. In *Layne v. GAF Corporation*,³³ the plaintiff proved that in-place asbestos used as insulation, fire retardant and noise-softening product had been released into the ambient air during numerous renovations of the building,

29. Assembly Office of Research, *California Schools—Danger: Asbestos Policies at Work*, 0160-A (1987). The article supports the proposition that even though no study has linked non-occupational exposure to asbestosis, no completely safe level of asbestos has been found. Therefore, precautionary measures must be taken. This appears to be a motivating factor behind the asbestos abatement statutes enacted regarding schools. See also EPA, *Study of Asbestos-Containing Materials in Public Buildings, A Report To Congress 5* (Feb. 1988) [hereinafter EPA Report to Congress].

30. See Mossman, *supra* note 19. The authors of this study believe that both the asbestos fiber type and size are important determinants of the pathogenicity of asbestos. Furthermore, the authors believe that airborne asbestos in schools and other buildings does not pose a risk to the health of individuals because the concentration levels are too low. *Id.* at 299.

31. Kirkland, *supra* note 10, at 376-77. "Even a single exposure may present a health risk."

32. See *infra* text accompanying note 40. Mesothelioma is a rare form of lung cancer.

33. 42 Ohio Misc. 2d 19, 537 N.E.2d 252 (1988). The \$400,000 verdict was returned against the United States Mineral Products Company, a company who admitted that in the late 1960's it had manufactured and marketed a product called "Cafco" which contained asbestos. Cafco was used in Ms. Layne's office building as insulation, fire retardant and as a noise-softening product. On appeal, the award of damages was reduced to \$338,000. In reducing the award, however, the court noted, "Whether or not there are repercussions from the creation of a new class of plaintiffs is not a proper criterion for evaluating the defendant's motion for judgment notwithstanding the verdict and for setoff." *Id.* at 21, 537 N.E.2d at 254.

thereby causing her illness.

B. *Medical Effects of Asbestos*

In spite of the uncertainty surrounding minimum exposure levels, the medical effects of asbestos exposure are well known. Once an individual inhales asbestos and the substance enters the respiratory tract, the fibers become permanently embedded in the lung tissue, causing a slowly progressive tissue reaction.³⁴ Many diseases result from exposure to airborne asbestos. While lung cancer is responsible for the largest number of deaths from exposure to asbestos, the most common disease associated with asbestos is asbestosis.³⁵ Asbestosis is an irreversible disease of the lung characterized by clubbing of the fingers,³⁶ cyanosis,³⁷ and basal rales³⁸ in the chest.³⁹ Other diseases include mesothelioma, a rare form of lung cancer that effects the thin membranes lining the chest and abdomen, and cancers of the esophagus, stomach, colon, and other organs.⁴⁰ Also, exposure to asbestos in conjunction with cigarette smoking may dramatically increase the risk of developing lung cancer.⁴¹

These diseases caused by asbestos exposure are frequently

34. *Borel*, 493 F.2d 1076, 1083 (5th Cir. 1973), *cert. denied*, 419 U.S. 869 (1974).

35. EPA Report to Congress, *supra* note 29, at 4.

36. Clubbing of the fingers is characterized by a proliferate change in the soft tissues about the terminal phalanges of the fingers or toes with no constant osseous changes. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 331 (25th ed. 1974).

37. Cyanosis is a bluish discoloration, applied especially to such discoloration of skin and mucous membranes due to excessive concentration of reduced hemoglobin in the blood. *Id.* at 393.

38. Basal rales are characterized by an abnormal respiratory sound indicating a pathological condition. Rales are distinguished as moist or dry, according to the absence or presence of fluid in the air passages. They are further classified according to their site. Basal means pertaining to or situated near the base (of the lung). *Id.* at 187.

39. *See O'Hare*, *supra* note 18, at 58 n.21.

40. *See O'Hare*, *supra* note 18, at 58 n.21.

41. Asbestos Exposure, *supra* note 19, at 5-6. Cigarette smoking and asbestos have a strong synergistic interaction in the development of lung cancer. Smokers who are also heavily exposed to asbestos have been shown to be up to ninety times more likely to develop lung cancer than non-exposed individuals who do not smoke. There is evidence that quitting smoking will reduce the risk, perhaps by as much as one half or more. *See also* EPA Report to Congress, *supra* note 29, at 4.

deadly. In part, the mortality rate for those exposed to asbestos is a result of the fact that there is a long latency period between exposure and illness. As a result, the illness is often not diagnosed in its earliest, most treatable stages.⁴² Although the latency period between the first exposure to asbestos and the appearance of lung cancer is generally fifteen years or more, a lag of thirty to thirty-five years is not uncommon.⁴³ The latency period for mesothelioma and asbestosis is even greater, often as long as forty to forty-five years.⁴⁴

Studies indicate that both fiber type and size are also important determinants of the pathogenicity of asbestos. However, these findings have been difficult to confirm since most people who work with or near asbestos have been exposed to a variety of asbestos fiber types during their lifetime.⁴⁵

Another factor that must be considered is the cumulative effect of the disease. Each exposure to asbestos dust can result in additional tissue changes.⁴⁶ Thus, when an individual has been exposed to several different types of asbestos fibers over a period of years, determination of which exposure or exposures caused the disease is extremely difficult.

C. *The Onset of Litigation*

While there is still a great amount of controversy regarding the issue, most concede that considerable dangers associated with asbestos exposure were known in the first part of the twentieth century.⁴⁷ The first recognized case of asbestosis

42. *Borel*, 493 F.2d at 1083.

43. *Asbestos Exposure*, *supra* note 19, at 4.

44. *Asbestos Exposure*, *supra* note 19, at 4.

45. *Asbestos Exposure*, *supra* note 19, at 3. The four major types of asbestos are chrysotile, amosite, crocidolite and anthophyllite. Some scientists believe that crocidolite and amosite are more likely to produce mesothelioma than is chrysotile. See also O'Hare, *supra* note 18, at 58. "Every major commercial variety of asbestos has been found to produce a significant health hazard to persons exposed to the fibers." (footnote omitted). Other studies indicate that exposure to chrysotile at the current occupational standards does not increase the risk of asbestos-associated disease. See also Mossman, *supra* note 19, at 298.

46. *Borel*, 493 F.2d at 1083. See also Mossman, *supra* note 19, at 295. "A number of epidemiologic studies have indicated that the relation between the development of lung cancers and cumulative exposure to asbestos is approximately linear, but wide variations in slope of the line occur apparently related to fiber type and industrial usage." *Id.*

47. *Id.* at 1083-86. See also P. BRODEUR, *THE DUSTING OF AMERICA: A STORY*

was reported in 1906.⁴⁸ Still, despite numerous studies of asbestos in the United States and England, the causal relationship between asbestos and disease received little public attention.⁴⁹ Asbestos manufacturers finally acknowledged the asbestos hazard in 1965, when Dr. Irving J. Selikoff of the Mt. Sinai Hospital Environmental Sciences Laboratory in New York and the leading expert on asbestos-related disease, published a well-documented study on the issue. Dr. Selikoff concluded that "asbestosis and its complications are significant hazards among insulation workers."⁵⁰ Later studies have since confirmed these findings.⁵¹

Although the harmful effects of asbestos exposure were known as early as the beginning of the century, lawsuits against asbestos producers and manufacturers of asbestos containing products are a relatively recent phenomenon. Again, the unusually long latency period is to blame: individuals exposed to asbestos after World War II did not show any signs of illness for twenty to forty years or more. As a consequence, the first products liability suit against a manufacturer was not filed until 1968.⁵² Although that case and a second were settled for relatively small amounts, the third suit, *Borel v. Fibreboard Paper Products Corporation*,⁵³ filed in 1969, was decided with a verdict for the plaintiff, an insulation worker, and affirmed on appeal.⁵⁴ The court found that the manufacturer had violated its duty to warn Borel of the known hazards of working with asbestos, and hence was liable for damages to his widow.⁵⁵

As predicted,⁵⁶ *Borel* began a flood of litigation that has

OF ASBESTOS—CARNAGE, COVER-UP, AND LITIGATION (1985). Brodeur puts forth convincing evidence that the asbestos industry initiated a conspiracy to cover up the medically known risks of asbestos exposure which were discovered in the early 1900's. The author tells the story of how a small group of plaintiff's attorneys banded together in the late 1960's, to conduct a discovery campaign that ultimately uncovered evidence that crushed the manufacturers' state-of-the-art defense. *Id.*

48. Treiger, *supra* note 15, at 181.

49. Treiger, *supra* note 15, at 181.

50. Treiger, *supra* note 15, at 181 (quoting Selikoff, Churg & Hammond, *The Occurrence of Asbestosis Among Industrial Insulation Workers*, 132 ANNALS N.Y. ACAD. SCI. 139, 152 (1965)).

51. *Borel*; 493 F.2d at 1085. See also Mossman *supra* note 19.

52. Treiger, *supra* note 15, at 181.

53. 493 F.2d 1076 (5th Cir. 1973), *cert. denied*, 419 U.S. 869 (1974).

54. *Id.*

55. *Id.* Borel died before the district court reached the trial stage.

56. *Id.* The litigation that followed *Borel* turned out to be the "legal tidal

literally deluged the courts to date.⁵⁷ By August of 1987, over 50,000 asbestos related cases were filed making asbestos litigation one of the fastest growing areas of tort law.⁵⁸ Most of these suits involve claims for personal injury, removal costs, or insurance coverage under general liability policies.⁵⁹ If the backlog in the courts was not enough, the plaintiff's problems were further complicated when the largest manufacturer of asbestos, Manville Corporation (formerly Johns-Manville Corp.), filed for bankruptcy in August of 1982.⁶⁰ At the time, Manville was a defendant in 16,500 cases.⁶¹ Other manufacturers have attempted to settle the claims against them.⁶²

Today, despite its harmful effects, asbestos is still produced and widely used. Patents have been issued for more than 5,000 different asbestos-containing products.⁶³ Some of these include electrical insulation, wall and ceiling boards, pot-holders, pipes, brake shoes and theater curtains.⁶⁴

D. Abatement of Asbestos and the Asbestos Hazard Emergency Response Act of 1986

The United States Environmental Protection Agency estimates that 733,000 public and commercial buildings in the United States contain friable asbestos or asbestos-containing material (ACM).⁶⁵ Although asbestos-containing material may

wave" and "tip of the iceberg" that it was touted to be in various periodicals of the early 1980's.

57. See *The Nat'l Law J.*, May 22, 1989, at 14, col. 2. The issue of backlog in the courts of asbestos cases may surface in Congressional hearings.

58. Kirkland, *supra* note 10, at 375 n.5.

59. Kirkland, *supra* note 10, at 375 n.5.

60. Treiger, *supra* note 15, at 184. The propriety of Manville's bankruptcy filing as a shield against litigation has been questioned. Manville's bankruptcy filing revealed that the company had spent more on lawyers than on health injury claims. Legal fees had totaled \$24.5 million, as opposed to \$24 million for injuries and \$7.5 million for property damage. (footnote omitted) *Id.*

61. Treiger, *supra* note 15, at 184.

62. *Asbestos Firm Offers to Pay*, San Francisco Chron., Nov. 6, 1990, at A11, col. 3. Eagle-Picher Industries, Inc. is one of the asbestos firms currently attempting to settle over 65,000 outstanding claims against it.

63. *Asbestos Exposure*, *supra* note 19, at 1.

64. *Asbestos Exposure*, *supra* note 19, at 2. See also Treiger, *supra* note 15, at 180 n.9.

65. EPA Report to Congress, *supra* note 29, at 8. By EPA estimates, the cost of removal in these buildings would be \$53 billion (discounted at 10% over 30 years). *Id.* However, due to uncertainties as to the amount and condition of the

not currently be friable in all buildings, it may at any given time begin to deteriorate.⁶⁶ The deterioration of asbestos is what creates a health hazard for building occupants.⁶⁷ Once the harmful asbestos fibers become airborne, they are inhaled by building occupants. The problem is compounded by dust particles circulating and recirculating in heating and air conditioning (HVAC) systems.⁶⁸ Many buildings contain asbestos in every square foot of ceiling and floor space;⁶⁹ some estimate cleanup of asbestos-containing buildings to take up to forty years.⁷⁰

Federal laws requiring identification and abatement of asbestos-containing products currently apply only to schools. The Asbestos Hazard Emergency Response Act of 1986 (AHERA), ordered both public and private school systems throughout the United States to inspect their buildings for asbestos, determine where asbestos-containing materials posed hazards, and abate those hazards.⁷¹ Under the Act, the EPA distributes loan and grant money to financially needy schools to help fund asbestos abatement costs.⁷²

The AHERA also required the EPA to conduct a study to determine both the extent of danger to human health posed by asbestos in public and commercial buildings and the proper means of dealing with the problem. Specifically, Congress wanted to know whether public and commercial buildings should be subject to the same inspection and response action

asbestos, some estimate cleanup costs as high as \$100 to \$150 billion (footnote omitted). Mossman, *supra* note 19, at 294.

66. See *supra* notes 24-28 and accompanying text.

67. *Id.*

68. Diamond, *supra* note 26, at 82.

69. Brown, *What Lawyers Must Know About Asbestos*, 73 A.B.A. J. 74 (Nov. 1987) [hereinafter Brown]. Asbestos-containing materials (ACM) may be found in cement products, acoustical plaster, fireproofing textiles, wallboard, ceiling tiles, vinyl floor tiles, thermal insulation and other building materials.

70. Diamond, *supra* note 26, at 82.

71. See generally Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C.A. §§ 2641-2654 (West 1984 & Supp. 1987). AHERA was enacted to establish a comprehensive regulatory framework of inspection, management planning, operations and maintenance activities and appropriate abatement responses to control asbestos-containing materials in schools. While recognizing that thousands of buildings contain asbestos, congress singled out schools as a starting place to begin abatement—the protection of children being a priority. EPA's regulations implementing these requirements are published in 40 C.F.R. §§ 763.80-119 (1988).

72. 20 U.S.C. §§ 4011-4022 (Supp. V 1987).

requirements that apply to school buildings under the AHERA school rule.⁷³

In 1985, the EPA reported its findings to Congress. The EPA found that exposure to asbestos in public and commercial buildings presents a significant health risk.⁷⁴ However, the EPA Administrator, Lee Thomas, expressed concern that a comprehensive federal program requiring asbestos abatement in all public and commercial buildings could exceed the capability of accredited asbestos abatement professionals to remove all the asbestos. Thomas also expressed concern that a federal program would overwhelm governmental enforcement authorities.⁷⁵ Therefore, the EPA concluded that present efforts to reduce risks associated with asbestos in public and commercial buildings should focus on assessing and improving the quality of asbestos-related actions that currently take place in such buildings. The administrator also stated that if a rule similar to the AHERA school rule were imposed on public and commercial buildings, it could "pose a serious obstacle to the success of the schools program."⁷⁶ The EPA estimated that while the total cost of the AHERA program is approximately \$3 billion, a similar regulatory program in public and commercial buildings would cost approximately \$51 billion.⁷⁷

73. Asbestos Hazard Emergency Response Act of 1986, § 213(3), 15 U.S.C. § 2641(b)(3) (Supp. V 1987).

74. EPA Report to Congress, *supra* note 29, at 16.

75. Letter from Lee M. Thomas, EPA Administrator, to George Bush, President of the Senate, and James C. Wright, Jr., Speaker of the House of Representatives 2 (Feb. 26, 1988) (*published in* EPA Report to Congress, *supra* note 29, after p. 36).

76. *Id.* at 5. The administrator explained that:

It has taken a great effort over six years to put the school asbestos program in place. We should be very careful not to take steps which undermine its completion. During the next several years, AHERA school rule activities will stretch the resources of this country, in terms of trained and accredited inspectors, planners, removal contractors, and laboratories, as well as compliance assistance and enforcement capabilities among Federal, State, tribal and local governments. Although we expect the supply of accredited professionals and laboratories to expand in response to the demand for increased services, any significant additional demand imposed by new and immediate regulation could pose a serious obstacle to the success of the schools program.

Id.

77. *Id.* at 4. "There are approximately 35,000 school buildings which contain friable asbestos, as compared to more than 750,000 public and commercial build-

In the state of California alone, the Office of the State Architect estimated the cost of abating asbestos in state public buildings would exceed \$1.2 billion.⁷⁸ Further, the removal of in-place asbestos causes release of asbestos fibers into the air. In the event that an individual contracts an asbestos related disease as a result of this removal, both the party performing the work and the party ordering it face liability. Owners of commercial buildings are also faced with difficult decisions in dealing with the "time bomb" effects inherent in asbestos.⁷⁹ Owners that rely on inspection and air-sampling may only be postponing the inevitable.⁸⁰ Views differ as to the "safe" life span of the product if left in-place, and as to the efficacy of encapsulation, enclosure and other abatement techniques.⁸¹ Since safe levels of asbestos are also currently under debate, an owner may face significant exposure to liability if it is determined after harm has occurred that more stringent measures should have been taken.⁸²

Should the owner of a commercial building decide to abate the asbestos containing material, the owner must then determine who shall bear the tremendous cost of abatement.⁸³ Once cost has been allocated, he is then faced with the problem of finding a qualified asbestos-abatement contractor. This too, can be difficult due to the astronomical cost of liability insurance for these contractors.

ings."

78. Brown, *supra* note 69, at 74.

79. Glazerman, *supra* note 20, at 664. At any time, the adhesives that hold the asbestos in place, or the asbestos itself, can begin to deteriorate.

80. Glazerman, *supra* note 20, at 664.

81. Glazerman, *supra* note 20, at 662.

82. Glazerman, *supra* note 20, at 662.

83. See Hartigan, *Asbestos Abatement Cost Recovery Under the Comprehensive Environmental Response, Compensation, and Liability Act*, 14 HARV. ENVTL. L. REV. 253. This article examines the applicability of CERCLA to asbestos abatement cost recovery litigation by property owners. Federal courts have generally held that CERCLA does not authorize property owners to sue asbestos manufacturers and previous owners for recovery of asbestos abatement costs. See, e.g., *Corporation of Mercer Univ. v. National Gypsum Co.*, 24 Env't. Rep. Cas. (BNA) 1953 (M.D. Ga. 1986), *aff'd in part and rev'd in part*, 877 F.2d 35 (11th Cir.), *cert. denied*, 110 S. Ct. 408 (1989); *3550 Stevens Creek Assoc. v. Barclays Bank*, 915 F.2d 1355 (9th Cir. 1990); *Prudential Ins. Co. of America v. United States Gypsum*, 711 F. Supp. 1244, 1254 (D.N.J. 1989).

E. *Regulation of Asbestos in the Work Place*

In 1970, Congress enacted the Occupational Safety and Health Act to ensure safe working conditions for the nation's work force.⁸⁴ Under the act, all employers are required to: (1) furnish employees with a place of employment free from recognized hazards which can cause death or serious injury, and (2) comply with the standards promulgated by OSHA pursuant to the Act.⁸⁵

Acknowledging the hazards of asbestos exposure posed to employees, OSHA developed two standards governing asbestos in the work place. The first applies to the construction industry⁸⁶ and the second applies to all other types of employees, or the "general industry."⁸⁷ OSHA's general industry standard governs all occupational exposures to asbestos except exposures of construction employees.⁸⁸ The general industry standard includes industries such as ship repair and rebuilding, manufacturing, secondary processing and brake and clutch repair.⁸⁹

Workers who are exposed to asbestos in office buildings would be categorized under the general industry standard. Under the general industry standard, exposure is only "occupational" in the sense that exposure is unrelated to the employer's operations. OSHA contemplated that because exposure levels would be low in office buildings, the employer's only requirement would be to initially monitor the asbestos levels present.⁹⁰ However, if the employer has relied on objective data indicating the release of asbestos in unlikely, he need

84. 29 U.S.C. §§ 651-78 at § 651(b) (1982 & Supp. IV 1986).

85. *Id.* § 654(a).

86. *See* 29 C.F.R. § 1926.58 (1988) (*amended by* 53 Fed. Reg. 35,610 (1988)). The construction industry standard regulates exposure of asbestos for those whose occupation requires them to directly handle ACM. Those people who are exposed to asbestos because of its presence in their office buildings would fall under the "general industry" standard.

87. *See id.* § 1910.1001(a)(1-2). In order to limit the scope of this paper, only the general industry standard will be fully discussed as it is most relevant to the California statute dealing with asbestos notification.

88. *Id.* § 1910.1001(a)(1-2). Exposure to asbestos in the construction industry is governed by 29 C.F.R. section 1926.58.

89. 29 C.F.R. § 1910.1001 (1988).

90. *Id.*

not conduct initial monitoring.⁹¹ Under the OSHA standard, building owners do not incur any specific obligation to occupants of the building who are not employees.

For both industry standards (general and construction), OSHA has set the same permissible exposure limit (PEL) in regard to acceptable levels of airborne asbestos.⁹² Exposure cannot exceed (1) the "time weighted average limit" of 0.2 fibers per cubic centimeter (f/cc) measured as an eight hour time weighted average (TWA),⁹³ or (2) the "excursion limit" of 1.0 F/cc averaged over a thirty minute sampling period.⁹⁴ The so called "action level" is an airborne concentration level of 0.1 fiber per cubic centimeter (f/cc) of air calculated as an eight hour time weighted average.⁹⁵

Each employer subject to the general industry standard is required to conduct initial air monitoring to determine exposure levels for employees who are, or may reasonably be exposed to airborne asbestos concentrations exceeding the 0.1 f/cc action level or the 1.0 f/cc excursion limit.⁹⁶ Periodic monitoring must be conducted with such frequency and pattern as to represent with reasonable accuracy the levels of asbestos exposure to employees.⁹⁷

If the initial monitoring or periodic monitoring indicates that employee exposure is below the action level or the excursion limit, the employer may discontinue monitoring.⁹⁸ However, if changes in activity create new or additional exposures above the action level or excursion limit, or if the employer has any reason to suspect that a change may result in new or

91. *Id.*

92. Although states are free to enact more stringent standards, they must at least comply with the standards set by the federal OSHA statute. In California, the PELs are the same as those of the federal statute described in the text. CAL. CODE REG. tit. 8, § 5208 (1990).

93. See 29 C.F.R. §§ 1910.1001(c), 1926.58 (1988) (amended by 53 Fed. Reg. 35,610 (1988)).

94. See *id.* § 1910.1001(c), 1926.58 (amended by 53 Fed. Reg. 35,610, 35,625 & 35,627 (1988)).

95. *Id.* §§ 1910.1001(b), 1926.58(b).

96. *Id.* § 1910.1001(d)(2)(i) (amended by 53 Fed. Reg. 35,610, 35,626 (1988)). If, however, an employer has relied upon objective data indicating that airborne concentration levels will not exceed the action level and/or excursion limit, then no initial monitoring is required.

97. *Id.* § 1910.1001(b)(3).

98. *Id.* § 1910.1001(d)(4).

additional exposure, monitoring must be recommenced.⁹⁹ If the employees' exposure level may reasonably be foreseen to exceed the action level or excursion limit, sampling shall be conducted at intervals not to exceed six months.¹⁰⁰

The OSHA standard also requires some notification to employees of the results of any exposure monitoring.¹⁰¹ Within fifteen working days after the receipt of the results of any monitoring performed under the standard, the employer is required to notify the affected employees of the results in writing.¹⁰² If the monitoring results indicate that a PEL was exceeded, the notification shall contain the corrective action the employer will take to reduce employee exposure to or below the PEL.¹⁰³

If either the action level or excursion limit has been exceeded, the employer must institute a training program for all employees who have been exposed.¹⁰⁴ The training program is designed to give employees information regarding the risks involved in asbestos exposure and procedures that have been implemented for employee protection.¹⁰⁵ OSHA also requires that a medical surveillance program be established to monitor the health of those employees who have been or will be exposed.¹⁰⁶

If airborne asbestos concentrations exceed permissible exposure levels (PEL's),¹⁰⁷ more stringent action is required by the employer. The employer shall establish and implement a written program to reduce employee exposure to or below the limit by means of engineering and specific work practice controls.¹⁰⁸ These programs may include acts such as providing tools with local exhaust systems, and working with asbestos only when wet so as to prevent fibers from becoming air-

99. *Id.* § 1910.1001(d)(5).

100. *Id.* § 1910.1001(d)(3).

101. *Id.* § 1910.1001(7).

102. *Id.* § 1910.1001(7)(i).

103. *Id.* § 1910.1001(7)(ii).

104. *Id.* § 1910.1001(j)(5)(i) (1988) (amended by 53 Fed. Reg. 35,610, 35,627 (1988)).

105. *Id.* § 1910.1001(j)(5)(iii).

106. *Id.* § 1910.1001(f)(1)(ii).

107. See *supra* notes 92-95 and accompanying text.

108. See 51 C.F.R. § 1910.1001(f)(2)(i).

borne.¹⁰⁹

During the interval necessary to install or implement feasible engineering and work practice controls, and in situations where such controls are not feasible,¹¹⁰ the employer must regulate the area by demarcating it from the rest of the work place. Access is limited to authorized personnel only, and those entering the regulated areas are required to wear OSHA approved respirators and full protective work clothing.¹¹¹

Warning signs must be posted at each regulated area and each approach to the regulated area. The warning signs must provide the following information:

**DANGER. ASBESTOS.
CANCER AND LUNG DISEASE HAZARD.
AUTHORIZED PERSONNEL ONLY.
RESPIRATORS AND PROTECTIVE CLOTHING ARE
REQUIRED IN THIS AREA.¹¹²**

Similar labels of warning must also be affixed to all raw material, mixtures, scrap, waste, debris, and other products containing asbestos.¹¹³

In addition to these requirements, the employer must also supply special lunchroom facilities for those employees working in the areas where airborne asbestos exceeds the PEL's.¹¹⁴ OSHA also provides for specific housekeeping practices.¹¹⁵

An employer who fails to comply with OSHA's asbestos standards faces both civil and criminal penalties. Civil penalties may be up to \$1,000 per violation.¹¹⁶ Willful or repeated violations may result in fines up to \$10,000.¹¹⁷ A willful violation

109. *Id.* § 1910.1001(f)(1)(v-vi).

110. *Id.* §§ 1910.1001(e), (f), (g).

111. *Id.*

112. *Id.* § 1910.1001(j)(1)(i).

113. *Id.* § 1910.1001(j)(2)(i). Labels should read: DANGER—CONTAINS ASBESTOS FIBERS. AVOID CREATING DUST. CANCER AND LUNG DISEASE HAZARD.

114. *Id.* § 1910.1001(i)(3)(i).

115. *Id.* § 1910.1001(k). The purpose of these controls is to prevent asbestos that has attached to an employee's clothes from spreading and thereby endangering others around him.

116. 29 U.S.C. § 666(b) (1982).

117. *Id.* § 666(c).

that causes an employee's death is punishable by a criminal fine of up to \$10,000, imprisonment up to six months, or both. Criminal penalties can be doubled for subsequent convictions.¹¹⁸

F. *California Regulation of Asbestos in the Work Place*

Existing law in California prohibits the spraying, use or sale of asbestos or asbestos products for the construction of buildings.¹¹⁹ California law also includes various provisions concerning asbestos abatement and control.¹²⁰ However, not until 1988 did the California legislature require the owners of buildings which contain asbestos products to notify employees about asbestos exposure. The California Asbestos Notification statute¹²¹ requires the owner of any building constructed prior to 1979, who knows that the building contains asbestos-containing construction materials, to provide written notice to all employees of that owner working within the building.¹²² The notification must contain certain information including the existence of and conclusions from any survey conducted to determine the presence and location of asbestos containing construction materials within the building.¹²³ Specific locations within the building identified by the surveyor or known by the owner to contain asbestos must be disclosed.¹²⁴ General procedures regarding the handling of asbestos-containing products in order to prevent or minimize disturbance, release, and exposure to asbestos must also be provided.¹²⁵ In addition, the building owner must give information regarding potential health risks or impacts that may result from exposure to asbestos.¹²⁶

However, if the owner of the building has no special knowledge of the health risks associated with asbestos or the procedures designed to minimize the exposure and release of

118. *Id.* § 666(e).

119. *See generally* CAL. HEALTH & SAFETY CODE § 25910 (West 1984).

120. *See generally* CAL. HEALTH & SAFETY CODE §§ 25925-25929, 25999 (West 1984 & Supp. 1989).

121. *Id.* §§ 25915-25924 (West 1984 & Supp. 1989) *See* Appendix A.

122. CAL. HEALTH & SAFETY CODE § 25915(b) (West 1984 & Supp. 1989).

123. *Id.* § 25915(a)(1).

124. *Id.* § 25915(a)(2).

125. *Id.* § 25915(a)(3).

126. *Id.* § 25915(a)(5).

asbestos, he is not required to provide it. He has no affirmative duty under the statute to seek out this information for his employees. Instead, he must encourage his employees to find this information on their own by contacting local or state public health agencies.¹²⁷

Furthermore, the statute requires that notification be given to employees within fifteen days of the first receipt of the building owner of information identifying the presence or location of asbestos-containing construction materials, and annually thereafter.¹²⁸ New employees must be provided the same information within fifteen days of commencement of work in the building.¹²⁹ The owner must also provide supplemental notice if new information has been obtained during the previous ninety days that pertains to any provision required in the notice.¹³⁰

An owner who is required to give notice to his employees under the statute must also give notice to other building owners and to those with whom he is in privity of contract.¹³¹ If a person contracting with an owner receives notice pursuant to the statute, that contractor must provide a copy of the notice to his employees working in the building.¹³² Receipt of notice pursuant to the statute shall constitute knowledge that the building contains asbestos-containing construction materials for purposes of the statute.¹³³ The owner must also make readily available all existing asbestos survey and monitoring data in regard to the building.¹³⁴ All those to whom he is required to give notice under the statute may review and photocopy this information at the building or a location nearby.¹³⁵ If however, the asbestos containing construction materials in the building are limited in certain respects so that the dangers of release are minimized or only certain employees are in danger of coming into contact with the asbestos, a limited form of notice will be allowed.¹³⁶ In this situation, only those employ-

127. *Id.* § 25915(c).

128. *Id.* § 26915.2(a).

129. *Id.*

130. *Id.*

131. *Id.* § 25915.5(a).

132. *Id.* § 25915.2(b).

133. *Id.* § 25915.2(a).

134. *Id.* § 25917.

135. *Id.*

136. *See generally* CAL. HEALTH & SAFETY CODE §§ 25915.2(c), (d) & (e) (West

ees who are working in or entering the areas of the building that contain asbestos will be notified.¹³⁷

The statute also provides that when any construction, maintenance, or remodeling is conducted in an area of the building where employees might come into contact with, disturb, or cause to be released, the asbestos-containing material, the building owner shall post a clear and conspicuous warning.¹³⁸ The notice may be in either of two forms:

**CAUTION. ASBESTOS.
CANCER AND LUNG DISEASE HAZARD.
DO NOT DISTURB WITHOUT PROPER TRAINING AND
EQUIPMENT.¹³⁹**

**DANGER. ASBESTOS.
CANCER AND LUNG DISEASE HAZARD.
AUTHORIZED PERSONNEL ONLY.
RESPIRATORS AND PROTECTIVE CLOTHING ARE
REQUIRED IN THIS AREA.¹⁴⁰**

The statute also provides that the owner of the building may elect to prepare an asbestos management plan.¹⁴¹ If the owner chooses this option, the plan shall be designed to minimize the potential for release of asbestos fibers and to outline a schedule of actions to be undertaken with respect to the asbestos.¹⁴² The plan must be prepared by a person accredited to prepare management plans for schools pursuant to the Asbestos Hazard Emergency Response Act.¹⁴³ To comply with the notification requirements of the statute, the owner must still provide employees, other owners, and those with whom he is in privity of contract with the specific locations of asbestos in the building, potential health risks that may result from exposure to asbestos,¹⁴⁴ and information conveying that any

1984 & Supp. 1988).

137. *Id.* § 25915.2(c)(3).

138. *Id.* § 25916.

139. *Id.* § 25916(a).

140. *Id.* § 25916(b).

141. *Id.* § 25915.1(a), (b).

142. *Id.*

143. See 15 U.S.C. § 2646 (Supp. V 1987).

144. CAL. HEALTH & SAFETY CODE § 25915.1(a)(2). As written, the statute does

disturbance or movement of the asbestos by the employee should not be attempted.¹⁴⁵ He must also notify employees of the existence and contents of the management plan and its availability to them.¹⁴⁶

An owner who knowingly or intentionally fails to comply with the provisions of the statute, or knowingly or intentionally presents any false or misleading information to employees or any other owner, is guilty of a misdemeanor, punishable by a fine of up to \$1000 or up to one year in jail, or both.¹⁴⁷

III. IDENTIFICATION OF THE PROBLEM

The remainder of this comment addresses the problem of an employee who has been notified of the asbestos hazard in her building under the California Asbestos Notification statute and subsequently develops mesothelioma as a result of asbestos exposure in her work place. Although abatement of asbestos in buildings is the ultimate goal, the tremendous costs of abatement and lack of federal regulation requiring abatement in commercial buildings will prevent it from occurring for several decades. Thus, in-place asbestos in buildings has the potential to be released and harm occupants of the building. Currently, only those employees who work with asbestos, such as construction workers, are given warnings of the dangers of asbestos exposure. Yet those employees who work in office buildings may also be exposed to asbestos at dangerous or even deadly levels. Legislation must be enacted which will protect all employees, while still protecting from liability those building owners who cannot afford to abate the asbestos.

IV. ANALYSIS

In the hypothetical posed earlier in this comment, Mary is forced to decide whether or not she should continue to work

not state what the health "risks or impacts" of asbestos exposure are. It is assumed that this information must be sought out by the building owner. Also, contrast this section with section 25915 (b), which allows a building owner who has no special knowledge of the potential health impacts of asbestos exposure to merely encourage employees to contact local or state public health agencies to obtain the requisite information.

145. *Id.* § 25915.(a).

146. *Id.*

147. *Id.* § 25924.

in a building she knows contains asbestos. While she is undoubtedly concerned about the health risks of asbestos exposure, she is also extremely hesitant to leave her job. Suppose Mary decides to remain at her job. She consequently develops mesothelioma in eight years and sues both her employer and the building owner on a negligence theory.

Mary's employer claims that the suit should be dismissed because it is a claim properly brought under worker's compensation law. Where this is true, worker's compensation is the exclusive remedy for the plaintiff. The building owner raises the defenses of assumption of risk and contributory negligence.

A. *Assumption of Risk in California*

The assumption of risk doctrine evolved at common law as a defense to a negligence claim.¹⁴⁸ Under the doctrine, a plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm.¹⁴⁹ While courts use the term "assumption of risk" in several different senses, three basic perspectives have evolved. The first is referred to as "express consent."¹⁵⁰ Under the express consent theory, the plaintiff, in advance, gives his *express* consent to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone.¹⁵¹ The result in this situation is that the defendant is relieved of a legal duty to the plaintiff. Since he has no duty, he cannot be charged with negligence.¹⁵²

Under this theory, the building owner is likely to have difficulty proving that Mary's consent was "express." Mary merely received notice of the asbestos conditions in her work place from her employer; she did not expressly consent to exposure. Furthermore, although one might argue that Mary's consent could be inferred by her continuing to work in the building, an inference of consent is not sufficient under an

148. W.R. KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER AND KEETON ON TORTS 451 (5th ed. 1984) [hereinafter KEETON].

149. KEETON, *supra* note 148, at 451.

150. KEETON, *supra* note 148, at 480.

151. KEETON, *supra* note 148, at 480 (footnote omitted).

152. KEETON, *supra* note 148, at 480.

"express consent" defense. Rather, the consent must be definitely expressed so as to leave no doubt or ambiguity in the minds of either party. In the situation where the plaintiff does not bargain for the terms of an agreement drafted solely by the defendant, the defendant must show that the terms were explained to and understood by the plaintiff in order to prevail with an "express consent" defense.¹⁵³

If a building owner is unable to prove "express" assumption of risk, he may still succeed under another theory of assumption of risk. The second theory of assumption of risk rests upon a "duty perspective."¹⁵⁴ In this situation the plaintiff voluntarily enters into a relationship with the defendant, with full knowledge that the defendant will not protect him against certain future risks. Since the plaintiff enters into the relationship with knowledge of the excused duty of care, the defendant can argue that a reasonable person could infer that the plaintiff consented to the negligence. This is a type of "implied" assumption of risk. For example, a person who goes to a baseball game and sits in an unscreened seat impliedly consents to the risk that he may be struck by a baseball, and if he is injured, he will be precluded from recovering damages for his injury.¹⁵⁵

Under this "implied" theory of assumption of risk, the building owner is more likely to escape liability. Although Mary's employer cannot avail himself of this defense since Mary had been working in the building for twelve years prior to her notification of the presence of asbestos. However, the implied assumption of risk defense may apply to those employees who accept employment and are notified within the fifteen-day requirement of the asbestos contents of the building. One could argue that the employee is entering into the relationship with the employer with full knowledge of the work place hazards and in doing so has chosen to assume the risk of asbestos related injury. Arguably, if the employee quits his job and does not assume the risk of exposure, he would suffer little adversity since he had only worked at the job for a couple of weeks.¹⁵⁶

153. RESTATEMENT (SECOND) OF TORTS § 496 B comment c (1965).

154. KEETON, *supra* note 148, at 481.

155. Neinstein v. Los Angeles Dodgers, Inc., 185 Cal. App. 3d 176, 229 Cal. Rptr. 612 (1986).

156. This argument assumes that the employee was not exposed to enough

The employee, on the other hand, could argue that since he was not notified of the asbestos hazard until after he began working, it would have been impractical for him to simply quit once he was notified. This argument is especially convincing where the position the employee holds is one that is not easily obtainable.

The third assumption of risk doctrine is called the "misconduct defense."¹⁵⁷ Under this theory the plaintiff is aware of a risk that has already been created by the negligence of the defendant, yet he still chooses to encounter it. If the choice is voluntary, the plaintiff may be found to have agreed to relieve the defendant of his duty.¹⁵⁸ This too, is a type of "implied" assumption of risk. The Restatement Second of Torts exemplifies this situation in the following hypothetical:

An independent contractor finds that he has been furnished by his employer with a machine [that] is in a dangerous condition. He notifies his employer of the dangerous condition, yet the employer does nothing to cure the defect. The independent contractor continues to use the defective machine. In this situation, he may not be negligent in doing so, since his decision may be an entirely reasonable one, because the risk is relatively slight in comparison with the utility of his own conduct; and he may even act with unusual caution because he is aware of the danger. [However], the same policy of the common law which denies recovery to one who expressly consents to accept a risk will prevent his recovery in such a case.¹⁵⁹

A recent case in California is analogous to the Restatement hypothetical. In *King v. Magnolia Homeowner's Association*,¹⁶⁰ an independent contractor came to the defendant's premises in response to a complaint that the air conditioner was not working. He successfully went up and down a ladder to the building roof to see what was wrong with the air conditioner.¹⁶¹ The ladder was affixed to the building and went thirty feet straight up the building.¹⁶² However, during his initial

asbestos during the two week period to cause disease.

157. KEETON, *supra* note 148, at 481.

158. KEETON, *supra* note 148, at 481.

159. RESTATEMENT (SECOND) OF TORTS § 496 A (1965).

160. 205 Cal. App. 3d 1312, 253 Cal. Rptr. 140 (1988).

161. *Id.* at 1314, 253 Cal. Rptr. at 141.

162. *Id.*

trip up and down the ladder, plaintiff noticed that the ladder seemed "too close" to the building for him to climb comfortably.¹⁶³ He had to bend his knees outward, and when he placed his feet on the rungs his toes would touch the building.¹⁶⁴

After his first trip up and down the ladder, plaintiff went to defendant's manager and complained that the ladder was unsafe, and he asked the manager if there was any other way to get to the roof.¹⁶⁵ The manager responded that "There's nothing to it, I go up there all the time myself."¹⁶⁶ Plaintiff, in response, told the manager that, "Well, I guess if you can do it, I can do it."¹⁶⁷

Plaintiff ascended the ladder again and repaired the air conditioner.¹⁶⁸ The accident he sought recovery for occurred on the way down when plaintiff was just three or four steps down from the top.¹⁶⁹ Plaintiff had difficulty maneuvering down the ladder and fell, sustaining serious injuries.¹⁷⁰ The court held that the plaintiff, having already succeeded in climbing the ladder once, assumed the risk he could do it again.¹⁷¹ "He had knowledge and appreciation of the specific risk involved, and he voluntarily exposed himself to the danger."¹⁷²

Mary's case is not unlike that of the plaintiff in *King*. The difficulty in proving an "implied" assumption of risk lies in the meaning of the word "voluntary." If her words or conduct make it clear that she refuses to accept the risk, she does not assume it.¹⁷³ However, when her actions are otherwise, she may *still* assume the risk. The Restatement (Second) of Torts addresses this problem:

The plaintiff's mere protest against the risk and demand for its removal will not necessarily and conclusively prevent his subsequent acceptance of the risk, if he then pro-

163. *Id.*

164. 205 Cal. App. 3d 1312, 1314, 253 Cal. Rptr. 140, 141 (1988).

165. *Id.*

166. *Id.*

167. *Id.*

168. 205 Cal. App. 3d 1312, 1314, 253 Cal. Rptr. 140, 141 (1988).

169. *Id.*

170. *Id.*

171. *Id.* at 1315, 253 Cal. Rptr. at 142.

172. *Id.* at 1315, 253 Cal. Rptr. at 143.

173. RESTATEMENT (SECOND) OF TORTS § 496 E comment a (1965).

ceeds voluntarily into a situation which exposes him to it. Such conduct normally indicates that he does not stand on his objection, and has in fact consented, although reluctantly, to accept the danger and look for himself.¹⁷⁴

If Mary has indeed expressed unwillingness to accept the risks of exposure to asbestos, yet continues to work in the building, the building owner will undoubtedly argue that her actions outweigh her words.

Mary's "Catch 22" situation forces her to choose between two evils. She may either keep her tenured job that she enjoys and run the risk of possible disease and death, or quit her job and risk losing tenure, benefits and a comfortable salary in order to avoid an injury that may never occur. In this situation, the Restatement provides:

The plaintiff's acceptance of the risk is not to be regarded as voluntary where the defendant's tortious conduct has forced upon him a choice of courses of conduct, which leaves him no reasonable alternative to taking his chances [W]here the defendant is under a duty to the plaintiff, and his breach of duty compels the plaintiff to encounter the particular risk in order to avert harm to himself, his acceptance of the risk is not voluntary, and he is not barred from recovery.¹⁷⁵

Here, Mary may argue that, in the words of the Restatement, she continued working "to avert harm" to herself, namely the loss of income, benefits, and tenure, that would occur if she quit. Mary's strongest argument is that the risk she assumed was not voluntary because it was totally unreasonable for her to leave her job of twelve years. The building owner may argue that even though he forced a decision upon Mary, the alternative choice of leaving her job afforded her full protection.¹⁷⁶

Also, it may be difficult for the building owner to prove that Mary had "knowledge and appreciation" of the risk since such a determination would require an examination of Mary's subjective intent.¹⁷⁷ Where the dangers are spelled out in the

174. *Id.*

175. *Id.* comment c.

176. *Id.* comment d. If the plaintiff under the circumstances is reasonably required to elect a certain choice, the particular risk may still be considered as a voluntary one.

177. *Id.* § 496 D comment c.

statutory notification, the only question is whether the plaintiff appreciated the danger itself and its nature, character, and extent.¹⁷⁸ In the hypothetical, however, the employee has been encouraged by the building owner to investigate on her own the risks involved in asbestos exposure. If the employee fails to educate herself about the dangers of asbestos, her employer may raise the defense of contributory negligence.

B. *Assumption of Risk or Contributory Negligence?*

Courts have sometimes considered a fourth type of assumption of risk: contributory negligence.¹⁷⁹ Contributory negligence exists when there is negligence on the part of both the plaintiff and the defendant. In theory, the distinction between assumption of risk and contributory negligence is that assumption of risk rests upon the voluntary consent of the plaintiff to encounter the risk and take his chances.¹⁸⁰ If he does so, he cannot recover at all. Contributory negligence, on the other hand, rests upon the plaintiff's failure to exercise the care of a reasonable person for his own protection.¹⁸¹ If he fails to do so, he may still recover, although in a lesser amount, because his own percentage of fault will reduce his damages award accordingly.

While there has been a strong movement to abolish the assumption of risk doctrine altogether because of its unfairness in cases of genuine hardship, the doctrine has not been totally abrogated in California. In *King*, the appellate court interpreted the California Supreme Court's decision in *Li v. Yellow Cab Company*¹⁸² as abolishing assumption of risk only when it overlaps with the unreasonable conduct of the plaintiff in failing to care for his own safety; it is then subsumed by contributory negligence.¹⁸³

Under the foregoing analysis, it is unlikely that the build-

178. *Id.*

179. *Id.* § 496 A comment c.

180. KEETON, *supra* note 148, at 451.

181. KEETON, *supra* note 148, at 451 ("Contributory negligence is conduct on the part of the plaintiff, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection (footnote omitted).").

182. 13 Cal. 3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858, (1975).

183. See *King v. Magnolia Homeowner's Ass'n*, 205 Cal. App. 3d 1312, 253 Cal. Rptr. 140 (1988). Other cases have interpreted *Li* the same way.

ing owner will be able to avoid liability to an employee who works in his building on a theory of express assumption of risk. He may possibly be able to escape liability if the plaintiff is his own employee, but it is very doubtful that a building owner can avoid liability to his lessee's employees. Still, under the two theories of implied assumption of risk, the building owner may be liable to the injured employee.

The determination of whether or not the plaintiff has been contributorily negligent will be fact specific. In applying the "reasonable person" standard, the court will likely consider the importance of the interest the plaintiff is seeking to protect, the probability and gravity of each alternative risk, and the difficulty or inconvenience of one course of conduct as compared with the other. In those jurisdictions that have completely barred recovery under any theory of assumption of risk, and even in jurisdictions where it is still a defense, the theory of contributory negligence will limit the plaintiff's recovery.

C. *Assumption of Risk and Employer Liability*

As previously discussed, a defense of assumption of risk may be valid for a building owner in a suit by an employee of a lessor of the building.¹⁸⁴ However, given the advent of workers' compensation laws, it is highly doubtful that a theory of assumption of risk or contributory negligence will relieve an employer/lessee of liability.

Workers' compensation law is a form of strict liability that has been accepted in all states since 1963.¹⁸⁵ Under a workers' compensation statute, the employer is liable for the injuries arising out of his business, without regard to either his negligence, or that of the employee.¹⁸⁶ He is liable for injuries caused by pure unavoidable accident, or by the negligence of the worker.¹⁸⁷ The three common law defenses of contributory negligence, assumption of risk, and the fellow servant rule are abolished as defenses.¹⁸⁸ In a workers' compensation

184. *Id.*

185. KEETON, *supra* note 148, at 573. See also *Pacific Employers Ins. Co. v. Indus. Accident Comm'n*, 219 Cal. App. 2d 634, 33 Cal. Rptr. 442 (1963) (The United States Supreme Court has upheld the Workmen's Compensation Law of California and of other states as being a valid exercise of the police power.).

186. KEETON, *supra* note 148, at 573.

187. KEETON, *supra* note 148, at 573.

188. KEETON, *supra* note 148, at 573. These common law defenses are often

suit, the only questions to be decided are, first, whether the worker and his injuries are within the scope of the act, and second, what compensation will be paid.¹⁸⁹ Most statutes provide detailed provisions in regard to calculating the amount of compensation.¹⁹⁰ Usually, the amount is much less than would be awarded by a jury trial in a civil suit, but the employee gives up his right to a jury trial in return for immediate and definite payment for his injuries. However, this is the only recovery the employee will be allowed.

In 1982, the California legislature established a special Asbestos Workers' Account¹⁹¹ to cover workers' compensation claims for diseases resulting from exposure to asbestos. It is designed to cover any person whose occupation subjected him or her to asbestos exposure.¹⁹² A claim, such as Mary's, brought by an employee against his employer would most likely be covered by worker's compensation laws.

V. PROPOSAL

In enacting the Asbestos Notification statute, the legislature sought to protect the health and safety of people who work in buildings that contain asbestos products.¹⁹³ Although a laudable goal, the statute falls short of fulfilling its purpose in several respects.

A major problem with the statute is that it does not absolutely require the building owner to notify the employee of the known dangers of asbestos. If the owner has no "knowledge" of the risks he can leave it to the employee to seek the information on his own. One can assume that few employees will seek this information on their own. Also, given the disagreement among the scientific and medical communities as to what is a safe level of exposure, an employee may obtain inconsistent or misleading information. Employers should be *required* to provide the necessary information to employees. The notice

referred to as the "unholy" trinity.

189. KEETON, *supra* note 148, at 573.

190. See CAL. LAB. CODE §§ 4451-4855 (West 1988).

191. CAL. LAB. CODE § 4401-4406 (West 1988).

192. *Id.* § 4402(b).

193. *Asbestos Notification to Employees in Buildings and Related Penalties: Hearings on A.B. No. 3713 Before the Assembly Comm. on Labor and Employment, 1987-88 Regular Session (April 6, 1988).*

should contain the description and explanation of the health action levels or exposure standards established by the state or federal government. The notice should also set out the risk levels established by the AHERA school rule, and the action levels established by state and federal OSHA regulations.¹⁹⁴ Such a notice is not unduly taxing on the employer, and it further assures that employees will be able to make informed decisions as to their safety and well-being. The practice of leaving it up to the employee to research what the dangers of asbestos are does not guarantee employee safety. Employers should have an affirmative duty to seek out and provide their employees with this information.

Still, once an employee learns of the risks, he then faces a difficult decision in determining how to proceed in spite of the risk. Employees who are given notice of this information will probably not leave their jobs. They may consider the potential harm caused by asbestos exposure to be too speculative to be taken seriously. In this respect, the statute arguably does not protect the employees at all but merely serves to relieve the building owner of liability he would otherwise incur. While the owner may not totally escape liability, his liability may be significantly reduced by the contributory negligence of the employee.

The California statute also provides that the owner of a building that contains asbestos can "elect" to develop an asbestos management plan. However, an elective asbestos management plan does not ensure that employees will be protected since many employers will elect *not* to implement such a plan. All building owners should be *required* to develop an asbestos management plan designed to minimize the potential for release of asbestos. This is the only way to assure employee safety. It is also the only plausible way of attaining the goal of total abatement of asbestos in buildings.

VI. CONCLUSION

Under the new California Asbestos Notification statute, it is highly probable that any future claim by an employee against his employer will be covered by workers' compensation law. However, a building owner may be able to escape full or par-

194. See *supra* notes 84-118 and accompanying text.

tial liability to an employee of his lessee under a theory of assumption of risk or contributory negligence. Whether the building owner is successful with these defenses will depend on the particular facts of the case, since there are several variations in the statute as to types and requirements of notice.

While the California Asbestos Notification statute is not a solution to the asbestos problem, it is a step in the right direction. However, in order to assure safety of all workers, it should be amended to require an affirmative duty on the part of all employers to notify their employees, in understandable terms, exactly what the dangers of asbestos exposure are. It should also be amended to require building owners to develop an asbestos management plan with an eye toward one day completely eliminating all asbestos from the work place.

Barbara A. Wetzel

Appendix A

§ 24915. Buildings constructed prior to 1979; notice to employees of known asbestos-containing building materials; contents and form of notice; exceptions

(a) Notwithstanding any other provision of law, the owner of any building constructed prior to 1979, who knows that the building contains asbestos-containing construction materials, shall provide notice to all employees of that owner working within the building concerning all of the following:

(1) The existence of, conclusions from, and a description or list of the contents of, any survey known to the owner conducted to determine the existence and location of asbestos-containing construction materials within the building, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Specific locations within the building known to the owner, or identified in a survey known to the owner, where asbestos-containing construction materials are present in any quantity.

(3) General procedures and handling restrictions necessary to prevent, and, if appropriate, to minimize disturbance, release, and exposure to the asbestos. If detailed handling instructions are necessary to ensure employee safety, the notice required by this section shall indicate where those instructions can be found.

(4) A summary of the results of any bulk sample analysis, or air monitoring, or monitoring conducted pursuant to Section 5208 of the California Code of Regulations, conducted for or by the owner or within the owner's control, including reference to sampling and laboratory procedures utilized, and information describing when and where the specific monitoring data and sampling procedures are available pursuant to Section 25917.

(5) Potential health risks or impacts that may result from exposure to the asbestos in the building as identified in surveys or test referred to in this section, or otherwise known to the owner.

The notice may contain a description and explanation of the health action levels or exposure standards established by the state or federal government. However, if the notice con-

tains this description, the notice shall include, at least, a description and explanation of the no significant risk level established pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20, and specified in Section 12711 of Title 22 of the California Code of Regulations, the school abatement clearance level specified in Section 49410.7 of the Education Code, and the action levels established by state and federal Occupational Safety and Health Act regulations.

The notice requirements specified in this subdivision shall not apply to an owner who elects to prepare an asbestos management plan pursuant to Section 25915.1. In those cases, the notice requirements specified in Section 25915.1 shall apply.

(b) If the owner has no special knowledge of the information required pursuant to paragraphs (3) and (5), of subdivision (a) the owner shall specifically inform his or her employees in the notice required by this section, that he or she lacks knowledge regarding handling instructions necessary to prevent and minimize release of, and exposure to, asbestos and the potential health impacts resulting from exposure to asbestos in the building, and shall encourage employees to contact local or state public health agencies.

§ 25915.1 Asbestos management plans

(a) An owner may elect to prepare an asbestos management plan for any building subject to this chapter, and in that case may, upon implementation of that plan, comply with the notification requirements of this chapter by providing notice to other owners and all employees of that owner working within the building of the following:

(1) The specific locations within the building where asbestos-containing construction materials are present in any quantity.

(2) Potential health risks or impacts that may result from exposure to the asbestos.

(3) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an employee who is not qualified to handle asbestos-containing construction material.

(4) The existence and availability of the management plan and a description of its contents.

(b) For purposes of this chapter, an asbestos management

plan shall be designed to minimize the potential for release of asbestos fibers and to outline a schedule of actions to be undertaken with respect to the asbestos. The plan shall be prepared by a person accredited to prepare management plans for schools pursuant to Section 2646 of Title 15 of the United States Code and shall contain all of the following:

(1) The information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915.

(2) A description of an ongoing operations and maintenance program which shall include but not be limited to, periodic reinspection and surveillance, suggested fiber release episode procedures, measures to minimize potential fiber releases, and information and training programs for building engineering and maintenance staff.

(3) Recordkeeping procedures to demonstrate implementation of the plan which shall be maintained for the life of the building to which they apply.

§ 25915.2. Written notice to employees, other owners and employees of contractors; exceptions

(a) Notice provided pursuant to this chapter shall be provided in writing to each individual employee, and shall be mailed to other owners designated to receive the notice pursuant to subdivision (a) of Section 25915.5, within 15 days of the first receipt by the owner of information identifying the presence or location of asbestos-containing construction materials in the building, and shall be provided annually thereafter. In addition, if new information regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915 has been obtained during the previous 90 days, then a supplemental notice shall be provided within 15 days of the close of that previous 90-day period. Notice shall be provided to new employees within 15 days of commencement of work in the building, and shall be mailed to any new owner designated to receive the notice pursuant to subdivision (a) of Section 25915.5 within 15 days of the effective date of the agreement under which a person becomes a new owner.

(b) If a person contracting with an owner receives notice pursuant to this chapter, that contractor shall provide a copy of the notice to his or her employees or contractors working within the building.

(c) If the asbestos-containing construction material in the

building is limited to an area or areas within the building that:

(1) Are unique and physically defined; and

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated throughout the building; and

(3) Are not connected to other areas through a common ventilation system; then, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or 25915.1 may provide that notice only to the employees working within or entering that area or those areas of the building meeting the conditions above.

(d) If the asbestos-containing construction material in the building is limited to an area or areas within the building that:

(1) Are accessed only by building maintenance employees or contractors and are not accessed by tenants or employees in the building, other than on an incidental basis; and

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated in areas of the building which are accessed by tenants and employee; and

(3) The owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from the material; then, as to that asbestos-containing construction material, an owner required to give notice to his or her employees pursuant to subdivision (a) of section 25915 or Section 25915.1 may provide that notice only to its building maintenance employees and contractors who have access to that area or those areas of the building meeting the conditions above.

(e) In those areas of a building where the asbestos-containing construction material is composed only of asbestos fibers which are completely encapsulated, if the owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from that material in its present condition and has no knowledge that other asbestos-containing material is present, then an owner required to give notice pursuant to subdivision (a) of Section 25915 shall provide the information required in paragraph (2) of subdivision (a) of Section 25915 and may substitute the following notice for the requirements of paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 25915:

(1) The existence of, conclusions from, and a description or list of the contents

of, that portion of any survey conducted to determine the existence and location of asbestos-containing construction materials within the building that refers to the asbestos materials described in this subdivision, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an unqualified employee. The notice shall identify the appropriate person the employee is required to contact if the condition of the asbestos-containing construction material deteriorates.

§ 25915.5 Notice to persons having privity of contract with owner; effect of notice or lack of notice; method of delivery; liability of owner

(a) An owner required to give notice to employees pursuant to this chapter, in addition to notifying his or her employees, shall mail, in accordance with this subdivision, a copy of that notice to all other persons who are owners of the building or part of the building, with whom the owner has privity of contract. Receipt of a notice pursuant to this section by an owner, lessee or operator shall constitute knowledge that the building contains asbestos-containing construction materials for purposes of this chapter. Notice to an owner shall be delivered by first-class mail addressed to the person and at the address designated for the receipt of notices under the lease, rental agreement, or contract with the owner.

(b) The delivery of notice under this section or negligent failure to provide that notice shall not constitute a breach of any covenant under the lease or rental agreement, and nothing in this chapter enlarges or diminishes any rights or duties respecting constructive eviction.

(c) No owner who, in good faith, complies with the provisions of this section shall be liable to any other owner for any damages alleged to have resulted from his or her compliance with the provisions of this section.

§ 25916. Construction, maintenance or other work in area of asbestos-containing materials; posted warning

If any construction, maintenance, or remodeling is con-

ducted in an area of the building area where there is the potential for employees to come into contact with, or release or disturb, asbestos or asbestos-containing construction materials, the owner responsible for the performance of, or contracting for, any construction, maintenance, or remodeling in the area shall post that area with a clear and conspicuous warning notice. The posted warning notice shall read, in print which is readily visible because of its large size and bright color, as specified in either subdivision (a) or (b).

(a) "CAUTION. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."

(b) "DANGER. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. AUTHORIZED PERSONNEL ONLY. RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA."

§ 25916.5 Designated owner to prepare notice; use by other owners

(a) When there is more than one owner of a building or part of a building subject to this chapter, the owners may agree in writing to designate one particular owner to prepare any notice required pursuant to this chapter.

(b) Any owner, other than the owner preparing the notice, may use a notice prepared by another owner to satisfy the requirements of this chapter if all of the following are satisfied:

(1) The notice fully complies with that owner's obligations under this chapter.

(2) That owner does not know that the notice contains false or misleading information.

(3) That owner does not know that the owner who prepared the notice has failed to comply with this chapter.

§ 25917. Asbestos survey and monitoring data and asbestos management plans; review by other owners or employees; time and place for review

An owner shall make available, for review and photocopying, to other owners and all of his or her employees or those employees' representatives at an accessible place and time, all existing asbestos survey and monitoring data and any asbestos management plan which has been prepared, specific to the building. This place shall be within the building, or another

building which is leased or also owned by the owner, located on the same property as the building, and accessible and convenient to employees, and shall be available during employee working hours, including lunch and break periods, if any owner maintains an office or similar facility in the building; if not, the survey, data, and asbestos management plan shall be available at another place, and at a time accessible and convenient to employees and their representatives. Any owner may enter into an agreement with another owner to provide the location where the survey, data, and asbestos management plan is available to employees within one building pursuant to this section.

§ 25917.5 Asbestos information system or statewide asbestos register established pursuant to § 25927; requirements

If an asbestos information system or statewide asbestos register, or both, is established subsequent to the designing of the system and register pursuant to paragraphs (5) and (6) of subdivision (a) of Section 25927, the system or register, or both, as the case may be, shall integrate, be consistent with, and, at a minimum, include all of the requirements of this chapter.

§ 25918. Asbestos

"Asbestos," as used in this chapter, has the same meaning as defined in Section 6501.7 of the Labor Code.

§ 25919. Asbestos-containing construction material

"Asbestos-containing construction material," as used in this chapter, means any manufactured construction material, including structural, mechanical and building material, which contains more than one-tenth of 1 percent asbestos by weight.

§ 25919.2 Building

"Building," as used in this chapter, means all or part of any "public and commercial building," as defined in Section 2642 of Title 15 of the United States Code, as that section reads on January 1, 1989, except that "building" shall not mean residential dwellings.

§ 25919.3 Employee

"Employee," as used in this chapter, means every person who is required or directed by any employer, to engage in any

employment, and who performs that employment other than on a casual or incidental basis in any building subject to this chapter, or any person contracting with an owner who is required or directed to perform services, other than on a causal or incidental basis, in any building subject to this chapter.

§ 25919.4 Employee's representative

"Employee's representative," as used in this chapter, means an employee's union representative, a member of the employee's immediate family, a nonrelated member of the employee's household, and an employee's attorney or a person with power of attorney.

§ 25915.5 Owner

"Owner," as used in this chapter, means an owner, lessee, sublessee, or agent of the owner of a building or part of a building, including, but not limited to, the state or another public entity.

§ 25919.6 Agent

"Agent," as used in this chapter, means a person acting in accordance with Title 9 (commencing with Section 2295) of Part 4 of Division 3 of the Civil Code for purposes of managing, operating, leasing, or performing a similar function with respect to a building subject to this chapter.

§ 25919.7 Violations; operative date of section

Any owner who knowingly or intentionally fails to comply with this chapter, or who knowingly or intentionally presents any false or misleading information to employees or any other owner, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or up to one year in the county jail, or both. This section shall become operative on July 1, 1989.



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HEALTH AND SAFETY CODE - HSC

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 26250] (*Division 20 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 10.4. Asbestos Notification [25915 - 25919.7] (*Chapter 10.4 added by Stats. 1988, Ch. 1502, Sec. 1.*)

25915. (a) Notwithstanding any other provision of law, the owner of any building constructed prior to 1979, who knows that the building contains asbestos-containing construction materials, shall provide notice to all employees of that owner working within the building concerning all of the following:

- (1) The existence of, conclusions from, and a description or list of the contents of, any survey known to the owner conducted to determine the existence and location of asbestos-containing construction materials within the building, and information describing when and where the results of the survey are available pursuant to Section 25917.
- (2) Specific locations within the building known to the owner, or identified in a survey known to the owner, where asbestos-containing construction materials are present in any quantity.
- (3) General procedures and handling restrictions necessary to prevent, and, if appropriate, to minimize disturbance, release, and exposure to the asbestos. If detailed handling instructions are necessary to ensure employee safety, the notice required by this section shall indicate where those instructions can be found.
- (4) A summary of the results of any bulk sample analysis, or air monitoring, or monitoring conducted pursuant to Section 5208 of Title 8 of the California Code of Regulations, conducted for or by the owner or within the owner's control, including reference to sampling and laboratory procedures utilized, and information describing when and where the specific monitoring data and sampling procedures are available pursuant to Section 25917.
- (5) Potential health risks or impacts that may result from exposure to the asbestos in the building as identified in surveys or tests referred to in this section, or otherwise known to the owner.

The notice may contain a description and explanation of the health action levels or exposure standards established by the state or federal government. However, if the notice contains this description, the notice shall include, at least, a description and explanation of the no significant risk level established pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20, and specified in Section 12711 of Title 22 of the California Code of Regulations, the school abatement clearance level specified in Section 49410.7 of the Education Code, and the action levels established by state and federal Occupational Safety and Health Act regulations.

The notice requirements specified in this subdivision shall not apply to an owner who elects to prepare an asbestos management plan pursuant to Section 25915.1. In those cases, the notice requirements specified in Section 25915.1 shall apply.

(b) If the owner has no special knowledge of the information required pursuant to paragraphs (3) and (5), of subdivision (a), the owner shall specifically inform his or her employees in the notice required by this section, that he or she lacks knowledge regarding handling instructions necessary to prevent and minimize release of, and exposure to, asbestos and the potential health impacts resulting from exposure to asbestos in the building, and shall encourage employees to contact local or state public health agencies.

(Amended by Stats. 1989, Ch. 948, Sec. 1. Effective September 27, 1989.)

25915.1. (a) An owner may elect to prepare an asbestos management plan for any building subject to this chapter, and in that case may, upon implementation of that plan, comply with the notification requirements of this chapter by providing notice to other owners and all employees of that owner working within the building of the following:

- (1) The specific locations within the building where asbestos-containing construction materials are present in any quantity.
- (2) Potential health risks or impacts that may result from exposure to the asbestos.
- (3) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an employee who is not qualified to handle asbestos-containing construction material.
- (4) The existence and availability of the management plan and a description of its contents.

(b) For purposes of this chapter, an asbestos management plan shall be designed to minimize the potential for release of asbestos fibers and to outline a schedule of actions to be undertaken with respect to the asbestos. The plan shall be prepared by a person accredited to prepare management plans for schools pursuant to Section 2646 of Title 15 of the United States Code and shall contain all of the following:

- (1) The information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915.
- (2) A description of an ongoing operations and maintenance program which shall include, but not be limited to, periodic reinspection and surveillance, suggested fiber release episode procedures, measures to minimize potential fiber releases, and information and training programs for building engineering and maintenance staff.
- (3) Recordkeeping procedures to demonstrate implementation of the plan which shall be maintained for the life of the building to which they apply.

(Added by Stats. 1989, Ch. 948, Sec. 2. Effective September 27, 1989.)

25915.2. (a) Notice provided pursuant to this chapter shall be provided in writing to each individual employee, and shall be mailed to other owners designated to receive the notice pursuant to subdivision (a) of Section 25915.5, within 15 days of the first receipt by the owner of information identifying the presence or location of asbestos-containing construction materials in the building. This notice shall be provided annually thereafter. In addition, if new information regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915 has been obtained within 90 days after the notice required by this subdivision is provided or any subsequent 90-day period, then a supplemental notice shall be provided within 15 days of the close of that 90-day period.

(b) Notice provided pursuant to this chapter shall be provided to new employees within 15 days of commencement of work in the building.

(c) Notice provided pursuant to this chapter shall be mailed to any new owner designated to receive the notice pursuant to subdivision (a) of Section 25915.5 within 15 days of the effective date of the agreement under which a person becomes a new owner.

(d) Subdivisions (a) and (c) shall not be construed to require owners of a building or part of a building within a residential common interest development to mail written notification to other owners of a building or part of a building within the residential common interest development, if all the following conditions are met:

(1) The association conspicuously posts, in each building or part of a building known to contain asbestos-containing materials, a large sign in a prominent location that fully informs persons entering each building or part of a building within the common interest development that the association knows the building contains asbestos-containing materials.

The sign shall also inform persons of the location where further information, as required by this chapter, is available about the asbestos-containing materials known to be located in the building.

(2) The owners or association disclose, as soon as practicable before the transfer of title of a separate interest in the common interest development, to a transferee the existence of asbestos-containing material in a building or part of a building within the common interest development.

Failure to comply with this section shall not invalidate the transfer of title of real property. This paragraph shall only apply to transfers of title of separate interests in the common interest development of which the owners have knowledge. As used in this section, "association" and "common interest development" are defined in Sections 4080 and 4100 or Sections 6528 and 6534 of the Civil Code.

(e) If a person contracting with an owner receives notice pursuant to this chapter, that contractor shall provide a copy of the notice to his or her employees or contractors working within the building.

(f) If the asbestos-containing construction material in the building is limited to an area or areas within the building that meet all the following criteria:

- (1) Are unique and physically defined.

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated throughout the building.

(3) Are not connected to other areas through a common ventilation system; then, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or 25915.1 may provide that notice only to the employees working within or entering that area or those areas of the building meeting the conditions above.

(g) If the asbestos-containing construction material in the building is limited to an area or areas within the building that meet all the following criteria:

(1) Are accessed only by building maintenance employees or contractors and are not accessed by tenants or employees in the building, other than on an incidental basis.

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated in areas of the building which are accessed by tenants and employees.

(3) The owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from the material; then, as to that asbestos-containing construction material, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may provide that notice only to its building maintenance employees and contractors who have access to that area or those areas of the building meeting the conditions above.

(h) In those areas of a building where the asbestos-containing construction material is composed only of asbestos fibers which are completely encapsulated, if the owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from that material in its present condition and has no knowledge that other asbestos-containing material is present, then an owner required to give notice pursuant to subdivision (a) of Section 25915 shall provide the information required in paragraph (2) of subdivision (a) of Section 25915 and may substitute the following notice for the requirements of paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 25915:

(1) The existence of, conclusions from, and a description or list of the contents of, that portion of any survey conducted to determine the existence and location of asbestos-containing construction materials within the building that refers to the asbestos-containing materials described in this subdivision, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an unqualified employee. The notice shall identify the appropriate person the employee is required to contact if the condition of the asbestos-containing construction material deteriorates.

(Amended (as amended by Stats. 2012, Ch. 181, Sec. 66) by Stats. 2013, Ch. 605, Sec. 38. (SB 752) Effective January 1, 2014.)

25915.5. (a) An owner required to give notice to employees pursuant to this chapter, in addition to notifying his or her employees, shall mail, in accordance with this subdivision, a copy of that notice to all other persons who are owners of the building or part of the building, with whom the owner has privity of contract. Receipt of a notice pursuant to this section by an owner, lessee, or operator shall constitute knowledge that the building contains asbestos-containing construction materials for purposes of this chapter. Notice to an owner shall be delivered by first-class mail addressed to the person and at the address designated for the receipt of notices under the lease, rental agreement, or contract with the owner.

(b) The delivery of notice under this section or negligent failure to provide that notice shall not constitute a breach of any covenant under the lease or rental agreement, and nothing in this chapter enlarges or diminishes any rights or duties respecting constructive eviction.

(c) No owner who, in good faith, complies with the provisions of this section shall be liable to any other owner for any damages alleged to have resulted from his or her compliance with the provisions of this section.

(d) This section shall not be construed to apply to owners of a building or part of a building within a residential common interest development or association, if the owners comply with the provisions of subdivision (d) of Section 25915.2. For purposes of this section, "association" and "common interest development" are defined in Sections 4080 and 4100 of the Civil Code.

(Amended by Stats. 2012, Ch. 181, Sec. 67. (AB 806) Effective January 1, 2013. Operative January 1, 2014, by Sec. 86 of Ch. 181.)

25916. If any construction, maintenance, or remodeling is conducted in an area of the building area where there is the potential for employees to come into contact with, or release or disturb, asbestos or asbestos-containing

construction materials, the owner responsible for the performance of, or contracting for, any construction, maintenance, or remodeling in the area shall post that area with a clear and conspicuous warning notice. The posted warning notice shall read, in print which is readily visible because of its large size and bright color, as specified in either subdivision (a) or (b).

(a) "CAUTION. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."

(b) "DANGER. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. AUTHORIZED PERSONNEL ONLY. RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA."

(Amended by Stats. 1989, Ch. 948, Sec. 4. Effective September 27, 1989.)

25916.5. (a) When there is more than one owner of a building or part of a building subject to this chapter, the owners may agree in writing to designate one particular owner to prepare any notice required pursuant to this chapter.

(b) Any owner, other than the owner preparing the notice, may use a notice prepared by another owner to satisfy the requirements of this chapter if all of the following are satisfied:

(1) The notice fully complies with that owner's obligations under this chapter.

(2) That owner does not know that the notice contains false or misleading information.

(3) That owner does not know that the owner who prepared the notice has failed to comply with this chapter.

(Added by Stats. 1989, Ch. 948, Sec. 5. Effective September 27, 1989.)

25917. An owner shall make available, for review and photocopying, to other owners and all of his or her employees or those employees' representatives at an accessible place and time, all existing asbestos survey and monitoring data and any asbestos management plan which has been prepared, specific to the building. This place shall be within the building, or another building which is leased or also owned by the owner, located on the same property as the building, and accessible and convenient to employees, and shall be available during employee working hours, including lunch and break periods, if any owner maintains an office or similar facility in the building; if not, the survey, data, and asbestos management plan shall be available at another place, and at a time accessible and convenient to employees and their representatives. Any owner may enter into an agreement with another owner to provide the location where the survey, data, and asbestos management plan is available to employees within one building pursuant to this section.

(Amended by Stats. 1989, Ch. 948, Sec. 6. Effective September 27, 1989.)

25917.5. If an asbestos information system or statewide asbestos register, or both, is established subsequent to the designing of the system and register pursuant to paragraphs (5) and (6) of subdivision (a) of Section 25927, the system or register, or both, as the case may be, shall integrate, be consistent with, and, at a minimum, include all of the requirements of this chapter.

(Added by Stats. 1988, Ch. 1502, Sec. 1.)

25918. "Asbestos," as used in this chapter, has the same meaning as defined in Section 6501.7 of the Labor Code.

(Added by Stats. 1988, Ch. 1502, Sec. 1.)

25919. "Asbestos-containing construction material," as used in this chapter, means any manufactured construction material, including structural, mechanical and building material, which contains more than one-tenth of 1 percent asbestos by weight.

(Added by Stats. 1988, Ch. 1502, Sec. 1.)

25919.2. "Building," as used in this chapter, means all or part of any "public and commercial building," as defined in Section 2642 of Title 15 of the United States Code, as that section reads on January 1, 1989, except that "building" shall not mean residential dwellings.

(Added by renumbering Section 25920 (as amended by Stats. 1989, Ch. 948) by Stats. 1990, Ch. 216, Sec. 69.)

25919.3. "Employee," as used in this chapter, means every person who is required or directed by any employer, to engage in any employment, and who performs that employment other than on a casual or incidental basis in any

building subject to this chapter, or any person contracting with an owner who is required or directed to perform services, other than on a casual or incidental basis, in any building subject to this chapter.

(Added by renumbering Section 25921 (as amended by Stats. 1988, Ch. 1502) by Stats. 1990, Ch. 216, Sec. 70.)

25919.4. "Employee's representative," as used in this chapter, means an employee's union representative, a member of the employee's immediate family, a nonrelated member of the employee's household, and an employee's attorney or a person with power of attorney.

(Added by renumbering Section 25922 (as added by Stats. 1988, Ch. 1502) by Stats. 1990, Ch. 216, Sec. 71.)

25919.5. "Owner," as used in this chapter, means an owner, lessee, sublessee, or agent of the owner of a building or part of a building, including, but not limited to, the state or another public entity.

(Added by renumbering Section 25923 (as added by Stats. 1988, Ch. 1502) by Stats. 1990, Ch. 216, Sec. 72.)

25919.6. "Agent," as used in this chapter, means a person acting in accordance with Title 9 (commencing with Section 2295) of Part 4 of Division 3 of the Civil Code for purposes of managing, operating, leasing, or performing a similar function with respect to a building subject to this chapter.

(Added by renumbering Section 25923.1 by Stats. 1990, Ch. 216, Sec. 73.)

25919.7. Any owner who knowingly or intentionally fails to comply with this chapter, or who knowingly or intentionally presents any false or misleading information to employees or any other owner, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or up to one year in the county jail, or both. This section shall become operative on July 1, 1989.

(Added by renumbering Section 25924 by Stats. 1990, Ch. 216, Sec. 74.)



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HEALTH AND SAFETY CODE - HSC

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 26250] (*Division 20 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 10.6. Asbestos Abatement and Control [25925 - 25929] (*Chapter 10.6 added by Stats. 1986, Ch. 116, Sec. 1.*)

25925. (a) "Asbestos" means naturally occurring fibrous hydrated mineral silicates, including chrysotile, crocidolite, amosite, fibrous tremolite, fibrous anthophyllite, and fibrous actinolite.

(b) "Asbestos materials" means materials formed by mixing asbestos fibers with other products, including, but not limited to, rock wool, plaster, cellulose, clay, vermiculite, perlite, and a variety of adhesives, whether sprayed on surfaces or applied to surfaces in the form of a plaster or a textured paint.

(c) "Public building" means any structure, facility, or building owned or leased by the State of California, the University of California, or any local agency as defined in Section 54980 of the Government Code. "Public building" does not include any building or structure used for a primary or secondary school.

(*Added by Stats. 1986, Ch. 116, Sec. 1. Effective May 28, 1986.*)

25926. The Legislature finds that:

(a) Substantial medical and scientific evidence indicates that human exposure to asbestos fibers significantly increases the risk of contracting cancer and other debilitating or fatal diseases, including, but not limited to, asbestosis.

(b) The Legislature has taken measures to reduce the risk of asbestos exposure for school children and school employees by creating a statewide program to rid schools of asbestos (Chapter 1751, Statutes of 1984).

(c) Asbestos materials were commonly used in public buildings for fireproofing, soundproofing, decoration, thermal insulation, and other purposes.

(d) When these materials deteriorate or become loose, damaged, or friable, they release asbestos fibers into the ambient air. This may result in exposure of employees and the public to potentially dangerous levels of asbestos.

(e) It is vital for the safety of the public to identify the precise location and condition of asbestos materials in public buildings in order to institute abatement and control procedures as needed and to ensure that when repairs or renovations are undertaken that any asbestos materials present are properly handled.

(*Added by Stats. 1986, Ch. 116, Sec. 1. Effective May 28, 1986.*)

25927. It is the intent of the Legislature to ensure the safety of the public and of public employees by creating an interdepartmental task force composed of representatives from the State Department of Health Services, the Department of Industrial Relations, the Department of General Services, and the Commission on Building Standards, which shall be known as the Asbestos Assessment Task Force to analyze the magnitude of the asbestos problem in public buildings.

The State Department of Health Services shall be responsible for coordinating the work of the Asbestos Assessment Task Force and compiling a report to include all of the following:

(a) A statewide inspection plan and a schedule for assessing the presence and condition of asbestos in public buildings. In developing the inspection plan the Asbestos Assessment Task Force shall do all of the following:

(1) Inspect a representative sample of public buildings and utilize the data to project priorities and costs for inspection and asbestos abatement and control required for public buildings.

(2) Design a uniform reporting form for building inspection to document the presence of asbestos and their location within the building. The form shall contain an evaluation of the extent to which any asbestos materials are loose, friable, flaking, dusting or otherwise show evidence of damage, deterioration, or disturbance and the causes, if ascertainable, of such problems.

(3) Develop criteria to rate buildings according to the degree of hazard posed by the presence and condition of the asbestos materials in the buildings. The criteria shall include, but not be limited to, considerations of the exposure potential for the type of public and employee use of the building and the condition and location of the asbestos material. The criteria shall include a designation of an emergency situation in which the condition or location of the asbestos materials constitutes an imminent and severe threat to human health.

(4) Design an emergency procedure for buildings in which the condition of the asbestos materials constitutes an imminent and severe threat to human health.

(5) Design an information system which will provide building maintenance personnel, employees and the public with information about the asbestos materials in the building. The information system shall include a notification procedure for employees and the public concerning any activities to contain or remove asbestos materials or to renovate, repair, or engage in construction activities in buildings containing asbestos materials.

(6) Design a statewide register which contains information, including, but not limited to, reports of any inspection for asbestos and any containment, abatement, encapsulation or other asbestos control measures.

(b) Review the relevant research, laws and regulations and develop methods and standards to accurately assess the potential for employee and public exposure to asbestos in public buildings. These methods and standards shall include recommendations for effective asbestos control which may be taken to minimize employee and public exposure and recommendations regarding standards for minimum levels of asbestos concentration in ambient air in public buildings. In developing the methods and standards the Asbestos Assessment Task Force shall hold public hearings to obtain testimony from the scientific community and the public.

The duties to inspect public buildings and to report to the Legislature which are imposed on the state pursuant to this chapter shall not be interpreted to impose on the state, the University of California, or any local agency any duty to repair buildings if that duty does not exist on the date this chapter becomes operative.

Local agencies are urged to provide the Asbestos Assessment Task Force with data needed by the task force to complete the duties imposed pursuant to this chapter.

(Added by Stats. 1986, Ch. 116, Sec. 1. Effective May 28, 1986.)

25929. If any building standards are adopted pursuant to this chapter, the standards shall be placed in the appropriate sections of the State Building Standards Code, contained in Title 24 of the California Administrative Code.

(Added by Stats. 1986, Ch. 116, Sec. 1. Effective May 28, 1986.)