

FRENCH REPUBLIC



Social Affairs Commission

Asbestos Monitoring Committee

**THE ASSOCIATIONS' REPLIES TO THE QUESTIONNAIRE**

Following the hearing of

*The Henri PEREZAT, Health, labour, environment Association*

and *the Ban Asbestos France association*

Senate, 2<sup>nd</sup> April 2014

- 1) Can you introduce concisely your association: year of establishment; how many members there are; assignments; territorial organisation; means of expression; partnerships (in France and abroad); ongoing projects?

The *Henri Pérezat, health, labour, environment association*, was created in October 2009. Its purpose is to provide support to the struggles in relation with health and environment. In 2013, the association had 138 members. These members registered as individuals, or on behalf of one of the working groups with whom they work: the association of people with chemical illnesses, CAPER Auvergne, Syndicat Solidaires, Phyto-victimes, Irradiés de l'Ile Longue, ADDEVA 81 and south-east ARDEVA, AFVS, etc. Our association is involved in international networks, in particular for the enhancement of the working conditions in Asia, Brazil and Canada... Lawyers, doctors, and journalists take part in its activity. <http://www.asso-henri-perezat.org/>

The association *Ban Asbestos France* was created in 1995, in continuation with the 1970s movement led by Henri Pérezat and the scientific workers from Jussieu on one hand, and the women workers from one of the worst asbestos factory in France, AMISOL, on the other hand. Our association took part in the creation of the ANDEVA, while helping the coordination of the international Ban Asbestos network that struggles since 1990 for a worldwide ban on asbestos. In France, the association that had a membership of 50 people in 2013 (individuals or groups) takes part in or provides support to different struggles for prevention, for the right to post-exposition and post-professional aftercare, the resort to the right to compensation for damages. The association also provides a legislative watch and a regulatory surveillance concerning the management of the asbestos in place. <http://www.ban-asbestos-france.com>

- 2) In your opinion, which are the legislative or regulatory texts published since 2008 which are a step in the right direction?

As a reminder, the two main texts which were adopted are the 3rd June 2011 decree regarding the protection of the population living in the existing buildings (public health code) and the 4th May 2012 decree related to the protection of the workers (labour code). We lodged appeals to the State Council concerning these two decrees. These appeals were rejected by the French Court (Decree of the 23<sup>rd</sup> October 2013 concerning the labour decree, decree of the 26th February 2014 concerning the public health decree) based on arguments that we still consider as being inconsistent with the health protection rights of workers and citizens.

1. **Decree of the 3rd June 2011 concerning the protection of the population in the existing buildings.**

This decree maintains a sort of right to pollute doubled with a protection against criminal sanctions for the owners who are in violation of the law.

- **Thus, the decree keeps the management value leading to the initiation of maintenance and work in the constructed buildings up to 5F/L (particles per liter), and does not set a figure concerning the materials other than heat-insulating (flocking) and false ceilings.**

Nevertheless, since the 1990s, studies reveal that the pollution is estimated at 0,5 F/L, and no jurisdiction calls into question this value, on the contrary: in its 2009 report the AFSSET (ANSES) has based on these studies to recommend the lowering of the 0,5 F/L limit, the High Council for Public Health also recommends to give consideration to the AFSSET (ANSES) recommendations in its notification of the 8<sup>th</sup> September 2010 regarding the decree on that matter, the fact-finding mission of the National Assembly in its 2005 report recommends the lowering of the figure, the national asbestos technique and fibers group ( interdepartmental structure) incorporates this recommendation and, to conclude, the lowering of the official figure was included in the national health and environment plan (PNSE) for 2009-2013, a plan which was developed by the Ministry of Health, which is the main author of the decree that we have tackled.

Despite these convergent opinions, the State Council maintained the official figure at 5 F/L explaining that the multiplication of construction sites, resulting from the lowering of this limit, and the extension of its application on materials other than heat-insulating materials, flocking materials and false ceiling would create risks for the buildings inhabitants' health as for the environment, considering the realisation capacities of such restoration works.

This argument is not admissible for two reasons:

- The conditions for the realisation of the asbestos removal operations as they are established by the 4th May 2012 Decree has been vigorously reinforced, and if the text is respected, the construction sites strictly checked and the offenders sanctioned, then the pollution risks from the restoration works can be supervised.
- We have never asked the asbestos removal works to be started as soon as the limit is reached. We ask for the population to be protected from the harmful effects of asbestos. This protection can also include asbestos encapsulation works, which are generally less emissive than removal works, a strict monitoring of the encapsulation sealing, informing widely and completely the inhabitants on the presence of the presence of encapsulated asbestos and on the precautions to take in case of restoration works. The asbestos removal works may be done during major

rehabilitation work made when the building is empty or partially emptied of its occupants or during the demolition of the building.

We should also add that strangely enough, following our appeal, the Ministry of health, maybe in doubt, strengthened the monitoring of materials from list B, such as the paving stones for example, when these are damaged. Thus, the 12th December 2012 decree imposes monitoring measures including dust accumulation monitoring. If no limit imposing removal work is set for list B, this dust accumulation measure may have the same effect, if one knows how to apply it.

➤ **Neither the Decree nor the pursuant resolutions require the counting of the short asbestos fibers (FCA length < 5µ) during the verification of the 5 F/L limit. Only the fine fibers (FFA) and the long fibers (OMS) are taken into account.**

The 2009 report of the AFSSET (ANSES) highlighted that the FCA proportion present inside an air specimen goes from 70% to 98%. Based on these findings, the ANSES concluded that the non-inclusion of the FCA in the general environment makes us seriously underestimate the asbestos fibers concentration.

This report adds that our current knowledge does not permit to affirm that FCAs do not present carcinogenic effects. Based on the precautionary principle, ANSES recommends to include the short fibers in the dust accumulating measures when the materials are damaged and to present two distinct results, one for thin and long fibers and other for short fibers.

Even if the ANSES shows doubt, the data from the toxicology – unchanged for more than 20 years – prove that the main carcinogenicity factor of the asbestos fibers is the physiochemical mechanism of surface reactivity, the fibers dimension being no more than an additional parameter. As for clinical and epidemiologic evidence, they help confirming, over the years, the existence of new cases of cancer in the populations exposed faintly and in various ways to asbestos, in dust accumulating situations in which short fibers are involved.

In our appeal we invoked the precaution principle as it is established by the article 5 of the Environment Charter which enables, even if the risk is unclear, to implement risk evaluation measures and temporary proportionate measures in order to be protected in case of damage. The monitoring of the dust accumulation level in FCA fits perfectly in this context.

The State Council confirms that we are right on two points:

- It recognizes that the presence of short fibers in the buildings must be seen as likely to generate damage, which, albeit uncertain given the current state of scientific knowledge, would lead, in these buildings, to environmental damage likely to be seriously harmful for health.
- The Article 5 from the Environmental Charter can be applied.

But, contrary to all expectations, The State Council does not draw the necessary conclusion: ask the Health Ministry to make provisions aimed at respecting this principle. Again, the Council hides behind construction sites security arguments, stating that the limit is hard to establish and that, in all cases, such a limit would lead to the realisation of maintenance works which would be poorly mastered and thus dangerous. However we may add a comment related with the application, in the national law, of the precautionary principle. By definition, it concerns risks that are poorly mastered and poorly understood and for which we don't have available information such as the monitoring limit for the

relevant FCAs for example. It is thus hard to understand how the absence of limit is used as an argument to determine that the principle should not be applied.

- **The Decree introduces a derogation concerning the deadline for the completion of the maintenance work for the IGHs and the ERPs from the 1<sup>st</sup> to the 3<sup>rd</sup> category (large ERP).**

It refers to the IGH (great-height-buildings) and the ERPs (premises open to the public) classified as level 3, that is with obligation to carry out remedial work as a result of the deterioration of the insulation or false ceilings, and whose owner did not realize those remedial work within 3 years, which may be extended once by the Prefect for another 3 years period (allowing 6 years in total). Those deadlines were those set out by the former decree. The owners who did not make these remedial works were out of compliance and risked criminal penalties. The decree offers the opportunity for those owners out of compliance to appeal to the Prefect in order to obtain an additional deadline to make these remedial works.

The High Council for Public Health, called upon to issue a statement on this derogation, did emit, without soul searching, a negative opinion on 9th February 2011. The High Council for Public Health considers this text opportunistic because it focuses only on the owners' legal security. The High Council is worried about the message sent to the owners who are out of compliance and wonders if unreasonable deadlines should actually result to penalties for slight negligence that may have endangered the occupants due to their high exposure to asbestos fibers.

This statement, quite a severe one for the High Council for Public Health, does not bother the Ministry of Health who recognizes that a regulatory framework had to be given to the owners so that they can complete their remedial works, if we may add, as easily as possible. The statement did not bother the State Council either, which approved this derogation.

## **2. Decree of the 4th May 2012 related to the workers protection against asbestos exposition risks.**

This decree includes some major measures that we agree with, such as: the banning of the difference between friable and non-friable asbestos, a mandatory certification for all asbestos removal companies, a strict regulation of the processes aiming at limiting the contact between asbestos and the workers and the emission of asbestos dust.

However, in its article 5, the same decree plans a transition period of 3 years in which the VLEP (limit value of occupational exposure) remains at 100 F/L measured in ATEM (analytical transmission electron microscopy) before its lowering at 10f/l.

The value of 10 F/L comes from the ANSES issue from the 7<sup>th</sup> August 2009 following a referral to the General Labour Directorate aiming at determining the pertinence of the legal threshold of 0,1 f/cm<sup>3</sup> in place since 1996 and of the measurement method used, the MOCP (phase-contrast optical microscopy).

Asbestos is a recognized carcinogen and as the ANSES recalls in its issue of the 7th August 2009 intended to the DGT:

« In order to set a VLEP, the risk manager must consider the following elements:

- ***No health threshold can be determined in human beings concerning asbestos fibres regardless of their nature or their dimensional properties***
- *The available data on carcinogenicity of these fibres are considerate sufficient to determine a dose-effect relation in low dose exposition, and calculate an excessive health risk ».*

The ANSES's reasoning consists then in estimating the excess of cancer cases and of mesothelioma depending on the exposure levels. In order to do so, the ANSES adopted the same model as the one established by l'INSERM in 1996 in the collective expertise related to « *the effects of the asbestos main exposition type on health* ». It is the conclusions of this 1996 expertise that led public authorities to forbid asbestos marketing and use in France and also to lower the VLEP to 0,1/cm<sup>3</sup> (100 F/L) in 1997.

Following the model adopted by the INSERM, the estimated amount of additional deaths by lung cancer, caused by asbestos exposure at a level of 0,1 F/cm<sup>3</sup> or 100F/L from the age of 20 to 65, is 20 deaths for 10 000 men exposed. This estimation is of 10 deaths for 10 000 exposed men when only mesothelioma cases are concerned. This estimation is a conservative assessment because it only takes into account lung cancers and mesothelioma. No estimation for other cancer types resulting from asbestos exposition was featured in the 1996 INSERM report, the obviousness of this relation having been confirmed over time since that day by the recent studies taken into account by the International Agency for Research on cancer (IARC). Indeed, the IARC confirmed in March 2011 the assured the link between asbestos exposure (all types, all sizes, high and low doses) and mesothelioma (of the pleura, the peritoneum, and the pericardium) and lung, larynx and ovaries cancers. The IARC also considered as possible the link between asbestos exposure and colorectal, stomach, and pharynx cancers.

The ANSES, based on the adopted model in the INSERM report, explains that the risk of mortality excess by mesothelioma or lung cancer is of 1 for 10 000 people for a concentration of 3 F/L, 1 for 1 000 000 people for a concentration of 0,03 F/L.

These are the values that the ANSES submitted to the risk manager to set a VLEP. In conclusion of its issue the ANSES recommends: « *The VLEP value for 8 hours of 10F/L (0,01f/cm<sup>3</sup>) is the lowest currently selected by the regulatory framework of many European countries.* The ANSES estimated that this value *can be a relevant step for France towards the lowering of asbestos exposition risk.* However, for this powerful carcinogenic that doesn't have threshold effects, the ANSES recommends keeping a **target value of 0,03 F/L (that is 0,00003F/cm<sup>3</sup>)** which corresponds to the 10<sup>-6</sup> risk level according to the selected model.

The State Council in its 23th October 2013 decision considered that the three years deadline was necessary to permit the necessary technical adaptations from companies and control bodies. Therefore, the workers protection against a life-threatening risk seems to be set in balance with a technical upgrading. Yet, now that nanoparticles are the reference, air extraction and pollution measurement systems are commonly used. What does such regulatory inertia protects?

### 3. What is the opinion of your association about the following topics:

The foregoing holds the long-standing positions by our association and the international network of Ban Asbestos. In view of a mortal threat, even for very low dose expositions, the prevention principle

– with no derogation possible – is to prevent contact between asbestos and people, workers or residents.

#### -PROTECTION OF THE PEOPLE / BUILDINGS:

The RPHA (Regional Public Health Agency) is responsible for the verification of the enforcement of the 3/6/2011 decree. This decree is accompanied by criminal penalties concerning the owners (block of flats and other buildings as the ones intended for sale or demolition) who would not defer to the basic following obligations:

-establishing and updating the locating reports of materials, products and equipments containing asbestos

-passing the summary page of the DTA (asbestos technical report) within one month on to the inhabitants of the buildings and to the employers when it comes to work spaces

-passing the DTA and the report on to any person performing works before demolition

-fulfil the obligations resulting from the locating, including the monitoring of the state of conservation of the materials containing asbestos, their dust accumulation levels and the works required that can lead to the removal of the degraded materials.

But this decree contains also criminal sanctions for the incompetent asbestos assessor in charge of tracking or for the assessors without sufficient resources to fulfil their mission.

**However, no control body within the ARS has, so far, the ability nor the means to enforce these regulatory measures which allow, early in the process, to prevent the population to be contaminated by asbestos fibres. For example: the collective garages flocked with asbestos, floors covered with asbestos vinyl tiles in public places and HLM (subsidized housing), when they are damaged, can keep spreading lethal fibres.**

**Furthermore, incompetent asbestos assessors, which is demonstrated in a report from the DGT and many construction site shutdowns by the labour inspectorate, can continue to submit incomplete tracking reports, which endangers the construction workers who do maintenance work and rehabilitation works every day, and also the population occupying the space or the neighbouring residents of the construction site.**

**As the prevention and the repression cannot be solely realized by the work inspection which is in charge of the construction site audits and the work conditions, consequently we propose:**

**1) the creation of a control body within the ARS which would be able to analyse the regulatory tracking reports, to check the competence of the bodies in charge of the asbestos tracking and to have a critical reading of the dust accumulation analyses results**

**2) to implement a repressive ARS policy when the regulatory obligations of this decree are not fulfilled**

**3) to provide the withdrawal of the certification of the incompetent asbestos assessors.**

#### WORKERS PROTECTION:

According to the regulatory requirements no asbestos tracking operation is intended in case of buildings rehabilitations. Nonetheless, not a week goes without hearing about accidental pollution of locals due to incomplete asbestos tracking. These operations require exhaustive tracking with destructive soundings for analysis because asbestos has been used everywhere in the buildings (it's undetectable with the naked eye), in order to allow a rigorous evaluation of the risks to ensure the protection of the workers and the people living or working in the building, and for the protection of the neighbouring residents of the construction site. In fact, in most cases, the DTA is the only thing that is notified to the companies realizing these works, strictly limiting the information to an inventory concerning the current use of the space.

4. The ANDEVA lodged an appeal at the Council of State against the decrees n°2013-915 and n°2013-914 concerning prohibited works and derogations for the people under the age of 18. What is the opinion of your association about these decrees?

For us the deep problem is not to forbid the derogation for the asbestos exposition but to completely call in question the principle of the right, for the employers, to expose their employees to lethal risks, whatever the status, the age or gender of the employees. By distinguishing asbestos and other toxic products, the ANDEVAs' appeal does not undermine this principle; it only concerns what is related to the asbestos exposition risk for young people, if we know that the said young people will be exposed to other toxic products. This accomplishes our concerns to see the Council of State invoke technical or economical difficulties as legitimate arguments which would be superior, in the hierarchy of norms, to the principles of law. We consider that it is to the duty of the legislator to be fully aware of such regulatory flaws and to propose to the parliamentary discussion a questioning of these decrees.

5. How do you perceive the activity of the GTNAF (National Working Group for «Asbestos and Fibres») ?

The National Working Group « Asbestos and Fibres» has been operating since 2008. It is an interdepartmental structure which follows carefully the resulting actions of the administrations to the recommendations that are addressed to them. The GTNAF does a high quality work which is useful and necessary for assessing the actions of administrations and require these administrations to meet one another.

6. Do you think it would be advisable to create eventually an interdepartmental structure devoted to asbestos risks and to place it under the authority of the Prime Minister?

We believe it is important the GTNAF continue their work, and that we should consider setting up the creation of **a designated fund for the management of the asbestos in place** financed by a contribution from companies that produce, transform and use asbestos. If possible this fund should be created at the UE level. We suggest that France should take the lead to propose this fund to competent European institutions. Such a structure should be able to manage this fund.

Also, criminal justice should start quickly the trials of the asbestos industrial companies, by taking the Italian example again, not only for the matter of the penalties but also for the financial penalties (compensations for local authorities and insurance agencies, not only the ones for the victims but also health insurance).

7. Do you think that the different official information websites (santé.gouv.fr; travailler-mieux.gouv.fr...) approaching the subject of the asbestos risk are sufficiently educational? Should one single platform be eventually created?

Travailler-mieux.gouv.fr is a very useful website. A plurality of information sources must be preserved because they enable to have different and complementary approaches on the subject. We are not in favour of the creation of one single platform.

## Appendix 1

### Funding for asbestos removal operations

#### Overview of the situation

In 1990, France was the first asbestos importing country in Europe. Industrial companies have widely used asbestos, an inexpensive material that has many qualities. Thus, asbestos is present in the composition of more than 3 000 products, and it has been disseminated everywhere into the buildings: floor tiles, glues, ties, claddings, asbestos flocking, insulating, partition walls, roofing, seals, mastics, plaster, paint...

The «magic mineral», of which industrials already knew the carcinogenic potential since the beginning of the 1930s, has disseminated asbestos into the buildings until 1996. The industrials have polluted these buildings and now they are exposing the inhabitants and the workers of the construction industry to mesothelioma and cancer risks.

The industrials did not just generate profits by disseminating this mortal fibre everywhere, they did it knowingly and they organized the concealment of the asbestos health impacts in order to take advantage of it to their benefit as long as possible. From 1971, during the London International Conference, asbestos industrial companies developed a strategy that enabled them to continue using that ore. An excerpt of the account of this meeting shows the strategy which would be implemented 11 years later in France by the industrial companies through the Asbestos Standing Committee (CPA).

*-« regarding the government regulation to come, it seems desirable in my opinion that you try to participate in the development (of the regulation) through your organizations. [...] without the Council [Research council on Asbestos], which has been entirely created by the asbestos industry, **British regulations would have been much more drastic** »;*

*- « I invite all of you to prepare your defence right now. [...] do you have an action committee with the necessary funds, but also a medical and technical expertise? [...] are you in contact with public relation consultants able to give you some good advice? ».*

On the initiative of Dominique Moyon, Director General of the INRS, who proposed to the asbestos manufacturers to meet in an informal atmosphere, the CPA was created in 1982. The CPA brings together the asbestos manufacturers, doctors, scientists, trade unionists and representatives of the public authorities. Under the influence of the asbestos manufacturers whose primary objective was to delay the ban of asbestos in France as long as possible, the CPA launched a slogan; «the controlled asbestos use», unenforceable to asbestos, disseminated in more than 3 000 products throughout the national territory. Nobody can control the utilisation of a material, its damage due to construction work, its ageing once incorporated into a building.

« The controlled use of asbestos», put in place by the asbestos manufacturers, led to the current situation: buildings full of asbestos that have to be removed before any restoration- which may

represent up to 40% of the restoration cost-; local authorities that cannot deal with such costs; farmers whose buildings are covered with asbestos cement and who won't be able to finance an asbestos removal operation; construction work negotiated at low a cost which leads to the pollution of the buildings; etc. For the community, the price to pay for the strategy developed by the asbestos manufacturers is very heavy. In these conditions, it is hard to understand why the asbestos manufacturers do not financially contribute in cleaning up the buildings that they have polluted. Some of them, who used to put flocking during the 80s, have now converted to asbestos removal. For these manufacturers there's no doubt asbestos truly is a «magic mineral»: they get to make more money when removing it than when applying it.

### **Proposition**

The manufacturers that have produced and marketed in full knowledge materials containing asbestos must participate in the financing of the removal of these materials.

We ask for **the creation of funds financed by the manufacturers that have produced and marketed materials containing asbestos**. These funds would be designated to partially finance the realisation of the asbestos removal operations, in public buildings in priority but not exclusively.

Theses companies are easy to identify. With the early retirement system for the asbestos workers, the companies which have produced and marketed products containing asbestos are registered .These company are on a list set by decree of the Ministry of Labour. Some of them have disappeared, but some others used to belong to big firms, the most famous of which is the Saint Gobain Group. Others changed their names and activities but they still exist.

## Appendix 2

### **The identification of materials, substances, physical agents that are likely to present risks for workers during the realization of construction work: the example of asbestos and lead.**

#### Inventory of the situation

The obligations in place for asbestos tracking come from the Public Health Code (CSP) and the French Construction and Housing Code (CCH). There are five of these regulatory tracking reports:

- Pre-sales review (materials list A and B, art R1334-15 of the CSP)
- Tracking of the private parts (material list A, art R1334-16 of the CSP)
- Tracking of the common parts (materials list A and B, art R1334-17 of the CSP)
- Pre-demolition tracking (material list C, art R1334-19 of the CSP)
- Waste diagnosis (art R111-45 CCH)

Except for demolition, no regulatory measure formally sets tracking operations before the realization of the works, that is to say a material tracking extended to all kind of materials, which can be accessed or not and likely to be altered by the works. This tracking should, however, be realized before any rehabilitation or repair work, in order to avoid polluting the work site and expose the workers and inhabitants to asbestos dust. Labour inspectorates must go through other regulatory measures, in particular the obligation to evaluate the risks threatening the principals, in order to impose this tracking.

In the words of the National Working Group for Asbestos and Fibres (GTNAF) April 2012 end-of-term report, the tracking demanded by the French Public Health Code are insufficient to identify the asbestos in place; resulting in polluted buildings which gives rise to expositions and the development of certain pathologies, particularly for construction workers. This pollution generates also work stoppages, delays in the construction sites and litigations in civil and penal matters. This report highlights also the inadequate qualifications of the people in charge of the tracking operations. The National Assembly's 2006 fact-finding mission report on asbestos exposure risks and consequences goes in the same direction.

This issue is not strictly related to asbestos; it is identical in the case of rehabilitation or maintenance work realized in presence of lead (paint, pipes).

More broadly, every time rehabilitation works are carried out, it is necessary to know the physical, chemical, biological agents and substances which are likely to constitute a risk during the rehabilitation works because of their presence in the building and/or its compounds. The past use of the building before its rehabilitation can also expose the workers health to harmful agents during the realization of the works.

**But no specific regulatory provision requires these pre-work tracking yet.**

#### Proposition

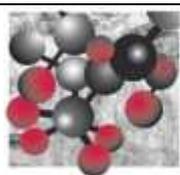
We suggest to add an obligation to the Code of Labour, to compel the principal to make that tracking. We suggest the legal text should follow this model:

“Before any construction work is to be started, the principal takes measures to make sure the tracking of materials, products, physical, biological or chemical agents, as well as structures likely to be a risk for the health and safety of workers during the construction period, is done in the floors and every part of the construction site perimeter. This tracking takes into consideration the risks caused by the present or past activity on the site.”

Decrees will determine:

- 1° What skills and training are mandatory for the people in charge of the foresaid tracking work.
- 2° The details of the method applied for the tracking

### Appendix 3 Post-occupational monitoring



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To Ms Marisol Touraine, Minister of Health and social Affairs

14 av Duquesnes, 75 350 Paris 07 SP

Paris, 26<sup>th</sup> February 2014

Ms Minister,

In October 2012, following my refusal to receive the Legion of Honor, Ms Cécile Duflot, Minister of Equality of the Territories and Housing, hosted me as well as a delegation of our associations for a discussion concerning health problems related to work and environment for which we have been mobilized for many years. At the outcome of the meeting, Ms Duflot indicated me that she wrote to you and asked you to host me. I would like to follow-up her approach to request an interview on a particularly serious subject with respect to the asbestos victims, and aside from it, the victims of mortal, professional, or environmental exposure risks.

While your ministry is very concerned about cancer screening, we wish to draw your attention on two situations that have common the same subject of preoccupation: «the aftercare of people who have been exposed to asbestos». This topic concerns:

- On the one hand, the Amisol victims: an asbestos factory from Clermont-Ferrand (63) closed down in 1974, which is probably the most extreme situation of industrial exposure in France.
- On the other hand, the Aulnay sous Bois scandal, the CMMP factory which adjoined a school and severely exposed over decades, not only the workers but also the pupils, the neighboring residents and the population.

For Amisol, a specific post-occupational monitoring system was set since 1996, which was denounced by the CPAM at the end of 2013. For the Aulnay sous Bois case, despite our thorough propositions, the ARS subcontracts to private for-profit companies to do temporary investigative research in conditions that do not only meet the monitoring aims but could also lead to failure which would be particularly harmful for the project of setting up a post exposition follow-up, consistent with a recommendation made by the HAS, with a view to justice and public health. The attached documents expound each situation and the requests of the said person. In both cases, it concerns particularly severe problems which are too serious to be treated approximately or to let go a practice that performed satisfactorily. The Amisol victims' representatives met Mister Masi during your visit in

Clermont-Ferrand on 10<sup>th</sup> February 2014 and to this date they did not receive any information from him in return.

Allow me to insist in order to have an interview with you in a close future, in order to be effective. I would like to bring Mrs Josette Roudaire from the Prevent and Repair Asbestos Group from Clermont-Ferrand, and Gérard Voide, from the Aulnay sous Bois CMMP Factory Neighborhood Group to assist me.

Thank you for your attention, please receive, Mrs Minister, my respectful greetings.

Annie Thébaud-Mony, Honorary Director of Research at INSERM

Copied to/ Misters Jean-Denis Combrexelle, director-general of labor, Claude Evin, General-Director of ARS Ile de France, Mister François Dumuis, General-Director of ARS Auvergne.

Anne Thébaud-Mony, President of the Association Henri Pérezat and Ban-Asbestos France spokesperson

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## **The case of CMMP Pollution in Aulnay sous Bois (Minerals and Raw Materials Branch)**

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**Proposition for the 2 April 2014 interview with Miss ARCHIMBAUD**

**(Senator from Seine Saint Denis)**

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The CMMP factory, 107 rue de Mitry à Aulnay, grinded asbestos and zircon (radioactive) and other toxic products from 1938 to its closure in 1991, polluting two towns which are Aulnay sous Bois and Sevran. The factory settled, since its beginning, in the middle of downtown among habitations and shops, at 60 meters from the town's school (nursery and primary sections), the factory was close to a market gardener and the cemetery.

Pierre Léonard, resident at the 33 rue Fransisco Ferrer then at the 49 rue du marché situated 70 meters from the factory, has been diagnosed with mesothelioma in 1995 and died in 1996. His family is looking for the place where he would have been contaminated by asbestos, and discovers, after hearing from an elderly neighbor, that « the factory at the end of the street, we use to call it the asbestos factory». The family gave the alert:

From 1995 to the Mayor and the Prefect

In 1998 to the Health Ministry

In 2000 to the General Directorate for Health, by providing a condemnatory report.

The family, in order to ensure this, investigated during 5 years in the Municipal and Departmental Archives, then in the prefecture, not without some reluctance and obstruction from its part. The polluter pretended not to have grinded asbestos after the war, a lie relayed by the prefecture and, by omission, by the municipality. The family will finally establish a file by referring to the CADA (Access to Administrative Documents Commission) and which will be transmitted to the judiciary police further to their complain against x lodged in 1997.

### **The file will reveal 4 scandals to the family:**

1. In 1998, the prefect authorized the opening of this factory classified «unhealthy and hazardous» in spite of a petition of the riverside inhabitants. The prefect has a perfect knowledge of asbestos danger as he delivers a prefectoral opening authorization where it is clarified that «the asbestos workshops must be absolutely watertight, no dust must escape through the windows or any interstice of the building...». The school located 60 meters from the factory exists since 1926.
2. The CMMP had deliberately breached the decree; the buildings are not watertight, the work is realized with the doors opened spreading dust on the school and the shops (the mayor at the time testifies that 3 millimeters of dust were found on the graves of the cemetery).

3. The prefecture let things happen in spite of the intervention of the municipal officials and the endless complains of the neighboring residents. Not less than 101 official controls that we can qualify as «bogus or at least complacent».
4. The successive prefects from 1995 to 2000 had been refusing access to the archive.

**In 2000**, convinced that there are other similar cases, the family organized a public meeting, sent 4000 invitations and brings together more than 100 people in the Gainville conference room. The first ill people are diagnosed and, from that date, a veritable citizen movement is created and will only keep on reinforcing with scientists, militants, elected representative, lawyers and 6 associations. From that date petitions, public meetings, motions sent to prefects and mayors, press conferences and street protests will be held one after the other, widely reported by media. More than 100 press articles, information and programs were broadcasted on the 3 main tv channels and on Canal+ and the 5<sup>th</sup> channel.

**From 2001**, received in the prefecture, the associations set the problems into three factsheets:

- Closing the widely opened site where children turn it into a playground
- Realize serious research on the pollution impact of the buildings and the basements
- Census ill people

#### **Current balance sheet:**

120 ill people of which 30 are mesothelioma were identified by the associations but no case has been identified by the authorities. 15 illnesses such as myeloma, liver cancer, leukemia, bone disease, thyroid disorders all related to the radioactivity of certain materials among which we suspect the zircon dust (radioactive). 57 dossiers went through compensation process at the FIVA through our lawyers.

#### **CIRE's study:**

It has not taken less than 9 years of epic discussion with the authorities to obtain the 2007 CIRE/Invs study demonstrating formally the link between the CMMP pollution and the diseased people. The prefect demanded the associations to provide him this evidence but, wasn't he in charge of searching this evidence from the moment the associations gave the alert, even when he was in possession of a condemnatory report which left little room for doubt? Anyway, this study has only been possible with the 35 dossiers provided by the associations, with the approval of the families.

#### **GISCOP 93's study:**

It took another 5 new years of struggle for the prefect's promise made in 2001 to be realized: «if you provide the evidence of the link between pollution and illness, a formal research will be undertaken». A «feasibility» study is finally requested to GISCOP 93 by Mister Claude EVIN. Realized in 2012, this study confirms that 40 000 people have necessarily been exposed and that it is possible to find their current address. At this occasion, the associations provided 100 cases that have been geo-localized in a perimeter of 1500 meters around the factory. These two studies, CIRE and GISCOP 93 are unique in France, and indeed abroad, with the particularity that they come from the collaboration between official bodies and associations representing civil society.

**In 2009**, the movement kept spreading with the steering committee initialized by the municipality and especially the opening of a weekly permanence of the doctor ALLOUCH, its president; voluntarily he receives, advises, and helps more than 50 diseased or exposed people, and he permits the compensations at the FIVA in collaboration with the associations. In addition, the local elected and associations, the steering committee enhanced again, in 2013, with doctor ISNARD, public health doctor at CIRE/Invs, who led the 2007 study. Many other doctors also join the committee, doctor MATHIEU and VIRALLY from the hospital Robert Ballanger, and two executives from Bobigny CPAM who collaborate with the ARS joined too.

#### **This year 2014.**

The ARS plan is finally in place, the research is oriented at the beginning at the former students of Bourg 1, Bourg 2 and Ormeteau schools, it is to say 11 000 people concerned. Unfortunately, the ARS only takes in account a small part of the problem. Furthermore the refusal to continue this collaboration started since 2007 with the associations, ARS commit to look only for exposed people, to provide them general information about asbestos disease – zircon is forgotten- with the creation of a call center and a web site, and leading them to the Robert Ballanger Hospital, or sending them back to their attending doctor.

#### **Complete refusal to monitor the post-exposition follow up.**

But, the associations experience as much as doctor ALLOUCH permanencies or the conclusions of the GISCOPI 93's official study require the establishment in a unique place of a multidisciplinary team (psychologists, doctors and social helpers) with the capability to take charge of the people. Compulsory follow up through time since we expect new diseased people until at least 2025 and because long-term health surveillance is obviously necessary. The associations can contribute but their resources are limited and with no doubt it is the responsibility of the public authority, which has failed to protect the residents when it was the moment, to do it. By the ARS refusal, the steering committee decides nevertheless the establishment of the local structure. A document is provided to the ARS proposing collaboration with the steering committee.

The only concession made is that the structure will be indicated in the ARS documents but ARS refuses to transmit the people's answers.

So, we emit serious doubt about on the efficiency of the following up under these conditions.

A room is reserved, near the council building, but it still needs to be arranged and the professional team's vacations have to be financed.

#### **The clean-up of the CMMP brownfield:**

The second great battle, started since 2000, for the secure demolition-sanitization. 14 years of struggle simply to enforce the law. The CMMP repeated the court proceedings and drawing upon the prefecture, CMMP only accepts an open-pit demolition, for cheap, after a small blow of vacuum cleaner, which, once again, would have polluted the whole neighborhood. Epic discussions occurred in the prefecture, sub-prefecture, with justice experts and work inspectorate, to impose the demolition under confinement. Surreal debates took place during which the professionals and the authorities disqualified themselves: «dust is not a material; dust is not friable, working at heights is

dangerous, isolation bubbles are too fragile»... The associations imposed the Véritas study which confirmed the importance of the site pollution up to 5 900 000 fiber per square centimeter of dust deposited on the roof-structure, brick walls containing asbestos, etc...

**In 2006**, the CMMP try to force through by starting without authorization the open-pit work site. Alerted, the work inspectorate suspends the work site because the workers captors indicate that there are 45 fibers per air liter.

**2009-2014**, it is finally an appropriate work site, under waterproof buildings confinement, that will continue, giving all the necessary protections to the stakeholders as for the environment. The only dark shadow is that the “polluter pays” law is violated: The cost of the work (17 millions EUR) is at the taxpayers charge. For the victims, it is a double sentence: the pollution made them sick and they are the one who finance the decontamination. The municipality did not follow the associations, which, in spite of the agreement with the labour inspectorate and the situation of danger, asked the prefect to impose to the CMMP (a flourishing company) a bubble wrapped worksite. According to the Environmental Code – article L514-1- the prefect has the authority to seize the amount of money from the recalcitrant company and to carry out the work. So, the municipality bought the site (more than 5 time the value of the initial sale prize of the CMMP from a real estate agency), and decided to carry out the works, hoping to go to court against the CMMP in order to be reimbursed. Unfortunately, the municipality tied its hand by signing an agreement under the prefect leadership, committing the CMMP to contribute only about 400 000EUR, maximum amount conditioning the CMMP signing.

### **Criminal complaints:**

Despite the exemplary procedure following the Léonard/Voide’s complaint, followed by more complaint, the TGI of Paris dismissed the case on 3rd July 2013. CEOs, prefects and person in charge of the control services could not be pursued since they’re all deceased. Nevertheless, it is recognized that they perfectly knew the danger they exposed the CMMP workers and population to. The CMMP Company has not been condemned, the 1994 corporation act being posterior to the criminal exposures; the retroactivity cannot be applied for CMMP case.

So, impunity is total for CMMP which did not pay for the decontamination of its site, nor the asbestos victim’s compensations since it is the FVA (Funds for asbestos compensation victims) which does it instead.

How many deaths will it take for the polluters to be forced to comply with the laws? How many for the authorities to stop giving priority to the economic aspect to the detriment of citizen’s health?

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### **Summary of our requests:**

- Local post-exposition follow up structure financing
- ARS acceptance to collaborate to this structure without restrictions
- Record the restrictions on use of the former CMMP site, which is still polluted below ground level

- Make the concerned ministries bring civil actions by the court proceedings for the reimbursement by the polluter, the CMMP, of the site depollution costs.

CMMP Factory Neighborhood and Victims Group

Gérard Voide

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30<sup>th</sup> April 2014