

In defense of their study, Najarian insisted, "It will be 10 to 20 years before there's a consensus among scientists." He added that there is growing evidence which shows that workers exposed to very low radiation levels are in danger.

Conspiracy Feared

Due to the present lack of scientific consensus on low-level radiation, Irwin Bross, a member of the consultant team, warned NIOSH researchers that there may be a conspiracy afoot to suppress any findings which indicate worker harm. Naming the National Cancer Institute, the Navy, and Senator Edward Kennedy (D-Mass) as co-conspirators, Bross alleged that in a June 19, 1979, Congressional hearing Colton and Najarian's second set of findings were attacked on methodology and generally discredited by Kennedy using NCI and Navy evidence.

"This episode falls into a broader pattern of suppression of positive reports of the health hazards of low-level ionizing radiation that were reported in some detail in Serial 95-179 of the 1978 Congressional hearings," Bross said.

He also charged that "the same tactics and even the same individuals were involved in these previous efforts to discredit the findings of hazards that contradicted the official policy that 'low-level radiation is harmless' set back in 1955."

Taking note of Bross's fears, Philip Landrigan, chief of NIOSH's Division of Surveillance, Hazard Evaluations, and Field Studies, assured him such possible threats would not thwart NIOSH's investigation of low-level radiation effects. The Portsmouth project is of such great importance, Landrigan said, that 52 percent of his division's epidemiologic force is devoted to studying it.

Reproductive Hazards

DOL EEOC ISSUE CORRECTIONS NOTICE FOR PROPOSED DISCRIMINATION GUIDELINES

The Department of Labor Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission March 14 issued corrections to errors in previously proposed guidelines on employment discrimination and reproductive hazards (45 FR 16501).

Issued February 1, the proposed guidelines would prohibit policies which exclude workers from certain jobs on the basis of possible reproductive hazards, if the policies result in the blanket exclusion of only one sex (Current Report, February 7, p. 835; text of proposal, p. 852).

Errors corrected by the March 14 notice were minor, and included incorrect references in the introduction to the document to "polyvinyl chloride" rather than "vinyl chloride," and to "estrogen" rather than "synthetic estrogen."

The DOL-EEOC notice of corrections appears in the Full Text section of this Current Report.

Research

REGULATORY AGENCIES SEEN NEEDING EXPANSION OF TOXICOLOGICAL RESEARCH

Toxicological research on both specific compounds and broad classes of substances must be "greatly expanded" to meet the needs of federal standard-setting agencies, according to David P. Rall, director of the National Toxicology Program.

Predictive toxicology and the role of reactive chemistry in toxicologic effects are areas requiring special emphasis, Rall noted. Comparative toxicology, or determining whether two different species will react similarly to a toxic substance, also should be explored further, he added.

Rall's remarks were delivered March 12 at the annual meeting of the Society of Toxicology in Washington, D.C.

Rall also emphasized that there is a need for toxicologists to work with other scientists. Such cooperation "is critical to understanding the relationship between animal study results and human beings," he asserted.

John W. Hanley, president of the Monsanto Company, urged toxicologists to advance from "the question of what chemicals do" in tests involving laboratory animals to "the questions of why and how they affect the human body."

Toxicologists and other scientists have obligations in shaping government policy concerning issues of public safety and health, Hanley stated. Although conceding that "risk acceptability is a political concern," he maintained that risk assessment is a scientific question which should be decided by scientific experts, not bureaucrats.

"Risk is a complicated equation involving toxicity, hazard, and potential for exposure," he said. "I suggest that your segment of society is best equipped to develop that equation."

Hanley asserted that toxicologists also have an obligation to the public to "improve communication of toxicological information without raising the level of hysteria." To facilitate this he suggested the establishment of a "truth squad" which could monitor public debates involving toxicological research in order to counter false and misleading statements.

"Anti-business bigotry" is threatening professional science with the "too common attitude that, however jealously you try to guard your independence, contact with business inevitably corrupts," he asserted, warning toxicologists to be alert to those undermining forces.

If sound science is not taken to the public, the "instant experts" will continue to proliferate bad science and to confuse and mislead the public, Hanley stated. It is the obligation of toxicologists to challenge the "pseudo-scientists," he concluded.

Participation Needed

Paul E. Toth, Ford Motor Company, stated that the information most needed from toxicologists by industrial hygienists concerns advice and information on government regulations.

The toxicologist also can assist the industrial hygienist by participating in the preparation and presentation of testimony regarding government regulation of toxic substances, reviewing substances manufactured or used by the company on a regular basis, recommending appropriate background monitoring, and advising the company of decomposition products of manufactured or used substances, Toth said.

Toxicologists are needed to conduct biological monitoring to assess employee exposure to toxic substances, to accompany industrial hygienists on plant tours for a more comprehensive evaluation, and to recommend a safe substance as a substitute for a toxic one, he added.

Litigation

SEVENTH CIRCUIT DISMISSES PETITION FOR REVIEW OF FINAL ORDER AS 'UNTIMELY'

An employer's petition for review of an Occupational Safety and Health Review Commission final order was dismissed by the U.S. Court of Appeals for the Seventh Circuit February 29, because the petition was filed too late.

This decision in *Midway Industrial Contractors, Inc. v. OSAHRC and Secretary of Labor* (No. 79-2550) lets stand an administrative law judge's decision upholding a

Vaello Shipyard, Inc., Catano, P.R., is contesting an \$18,700 additional penalty for failure to correct violations of 1910.213(i)(1) for failure to guard a bandsaw adequately, 1910.219(d)(1) for failure to guard pulleys adequately, 1910.309(b) for failure to secure an electrical cable properly, and 1915.83(d) for failure to make safety shoes available to all employees (No. 80-0274).

Jerry E. Wylie Oil Drilling Company, Rising Star, Tex., is contesting a \$1,750 penalty for an eight-item serious cita-

tion, including Section 5(a)(1) for failure to secure a mud hose at both ends, 1910.309(a) for failure to guard electrical equipment adequately, and 1910.219(e)(1)(i) for failure to guard a horizontal belt adequately.

The company also is contesting a \$50 penalty for a non-serious citation for 1903.2(a)(1) for failure to post an OSHA notice informing employees of their rights under the Occupational Safety and Health Act (No. 80-0265).



Full Text

CORRECTIONS TO PROPOSED JOINT GUIDELINES ON REPRODUCTIVE EFFECTS, EMPLOYMENT DISCRIMINATION

[45 FR 16501, March 14, 1980]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1603

DEPARTMENT OF LABOR

Office of Federal Contract Compliance
Programs

41 CFR Part 60-20

Interpretive Guidelines on Employment Discrimination and Reproductive Hazards; Correction

AGENCIES: Equal Employment
Opportunity Commission and
Department of Labor.

ACTION: Proposed Rulemaking;
Corrections of Contact Person,
Introduction, Analysis and Cross-
References in the Proposal.

SUMMARY: This document corrects the third paragraph of the Introduction, the tenth paragraph of the Analysis, and the cross-references in sections 3(a)(2) and 3(a)(3) of the proposed rulemaking published on Friday, February 1, 1980, at 45 FR 7514.

FOR FURTHER INFORMATION CONTACT:

Frederick D. Dorsey, Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20508, 202-634-7060

Joseph Hogan, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210, 202-523-9126, or James D. Henry, Associate

Solicitor, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210, 202-523-8235.

SUPPLEMENTARY INFORMATION: 1. In the third paragraph of the Introduction (45 FR 7514), the reference to "polyvinyl chloride" should have read "vinyl chloride". The reference to "estrogen" should have read "synthetic estrogen". The reference to the May 31, 1978 letter of the Assistant Secretary for Occupational Safety and Health should have referred to the May 1, 1978 letter. As corrected, this paragraph reads as follows:

"It was also during this process that EEOC and OFCCP became aware of the increasing number of employers and contractors who are initiating policies excluding all women of childbearing capacity from certain jobs because of exposure to hazardous substances or conditions. Preliminary evidence indicates that as many as 20 million jobs may involve exposure in the workplace to alleged reproductive hazards. Chemicals and physical agents which have been alleged to pose such hazards include lead, vinyl chloride, radiation, synthetic estrogen, anesthetic gases, and organic solvents. In response to such exclusionary practices the EEOC, on April 21, 1978, issued a policy statement indicating its concern about whether such practices conform with federal anti-discrimination laws. In a May 1, 1978, letter from the Department of Labor's Assistant Secretary for Occupational Safety and Health, Eula

Bingham, to all major American corporate medical directors, OSHA expressed its concern regarding employment practices which deny opportunities to any class of workers on the basis of safety and health. These guidelines specifically address those situations, involving allegations of sex discrimination."

2. The twenty-second through twenty-third line in the tenth paragraph of the Analysis (45 FR 7515) should refer to the National Institute of Environmental Health Sciences, rather than to the National Institute of Environmental Health Safety.

3. The cross-reference at 45 FR 7517 at the end of proposed Section 3(a)(2) should refer to Section 2(d)(6), rather than to paragraph 2(d)(b).

4. The cross-reference at 45 FR 7517 at the end of proposed Section 3(a)(3) should refer to Section 2(d)(8), rather than to paragraph 2(d)(8).

Signed at Washington, D.C. this 7th day of March 1980.

Eleanor Holmes Norton,
Chair For the Commission.

Ray Marshall,
Secretary of Labor.

Donald Ellisburg,
Assist Secretary, Employment Standards
Administration.

Weldon J. Rougeau,
Director, Office of Federal Contract
Compliance Programs.

BOR 014540



Current Report

Labeling

OSHA TO REVIEW REGULATORY ANALYSIS BEFORE PROPOSING CHEMICAL IDENTITY RULE

Although a draft of a proposed labeling standard is being reviewed by Occupational Safety and Health Administration officials, the agency is awaiting completion and review of a regulatory analysis before publishing the proposed standard.

According to several OSHA officials, the agency still hopes to publish its proposed labeling standard at about the same time the Environmental Protection Agency publishes its proposed labeling rule. The two agencies are working to develop complementary rules to cover labeling of hazardous substances through various stages of manufacture, formulation, and use.

Both agencies predict that labeling standards will be proposed by early summer.

The regulatory analysis of the OSHA labeling proposal, prepared by Southwest Econometrics of Austin, Tex., should be presented to OSHA by the end of March, an OSHA official said. But the initial analysis would be subject to review and possible revision before publication. The review would be conducted simultaneously with agency review of the draft proposal, officials said.

The labeling proposal being developed by OSHA covers the disclosure of chemical identity, while the EPA rules are expected to require hazard warning labels on regulated substances.

Although OSHA officials declined to comment on specific provisions of the draft proposal, general issues to be covered by the standard include labeling of trade secret information, labeling of mixtures, employer maintenance of a list of chemicals used in the workplace and material safety data sheets on specific substances, and retention of labeling records.

Some existing OSHA standards for specific chemicals include labeling provisions, and the generic labeling rule will not impose additional requirements, OSHA officials said. The generic rule is designed to fill in gaps for labeling substances where no specific standard exists.

Oversight

WHITING, LABOR OFFICIALS TESTIFY ON EDUCATION AND CONSULTATION FUNDS

In the first of three Senate oversight hearings in the Occupational Safety and Health Administration's tenth year of operation, a top OSHA official and union representatives defended the agency's three-year-old training and education and on-site consultation programs.

Basil Whiting, deputy assistant secretary for OSHA, told a Senate Labor and Human Resources Committee hearing March 18 that while enforcement of standards is the foundation of a national safety and health program, training and education and employer assistance are needed if OSHA is to be effective.

The committee, chaired by Senator Harrison Williams (D-NJ), will hear testimony about OSHA enforcement and an overview of OSHA's 10-year history in two future hearings.

Whiting defended the Administration's request for a \$40 million budget for compliance assistance activities in fiscal year 1981 after Senator Howard M. Metzenbaum (D-Ohio) questioned whether "in the enthusiasm for training and education and consultation programs, we have lost sight of the dollar cost."

"I recognize the need to come in with the carrot rather than the stick," Metzenbaum said, but added there is not an "unlimited trough" from which to draw funds.

Whiting responded that the cost of education programs would be paid regardless, in the form of higher injury and illness rates. He added that most small businesses do not have the resources for providing their own training and education programs.

Whiting said that the agency's on-site consultation program, under which employers can receive free advice on improving safety and health conditions in their own facilities, is assisting employers to comply voluntarily with OSHA standards. More than 50 percent of on-site consultations in 1979 were conducted in workplaces with fewer than 25 employees, he said.

A 'Wise Investment'

The committee also heard from Francis X. Burkhardt, research director for the International Brotherhood of Painters and Allied Trades, AFL-CIO.

Burkhardt described a training and education program operated by the union under an OSHA "New Directions" grant as "not one of grandiose munificence on the part of an overendowed federal agency," but "one of the wisest investments in our nation's economy to be made with taxpayers' money."

Burkhardt told the committee that the \$1.2 million spent by OSHA and the union over the past four years in training and education will be returned five-fold in the form of reduced cancer rates, fewer workers' compensation claims, and increased productivity. Burkhardt based the speculation in part on the facts that painters rank among the top five trades in workers' compensation payments, painters are three to five times more likely to develop lung cancer, and a painter's life expectancy is 11 years below the national average.

"The full potential savings could easily be \$500 million per year now lost in health costs, insurance premiums, lost wages and lowered productivity," Burkhardt said.

Praise by Schweiker

The description of the union's OSHA project drew praise from Senator Richard S. Schweiker, (R-Pa) sponsor of a bill to curtail OSHA inspections of small businesses (See related article in this issue).

"I've been critical of OSHA, but the agency and [OSHA Administrator] Dr. [Eula] Bingham get a lot of credit" for offering grants to high-hazard industries, Schweiker said.

Whole-hearted support of OSHA was voiced at the hearing by Senator Jacob Javits (R-NY) who said he would continue to fight "efforts to break the [OSHA] law right open."

"After 10 years a review is certainly needed," Javits said, but he voiced his opposition to legislative attempts which he said would treat employees of small businesses "as if their bodies and minds were second-rate to those working for larger employers."

OSHA, in accordance with 29 CFR 1903.4, considered the employer's refusal of its compliance officer's request to be a refusal of entry. OSHA indicated to the employer that it would seek an inspection warrant compelling the employer to permit the OCAW representative to participate in the inspection. The employer then requested to be informed as to when and where OSHA intended to secure a warrant so it could have an opportunity to be heard before a magistrate. OSHA refused because it is OSHA's policy to obtain inspection warrants *ex parte*.

The employer then sought and obtained a temporary restraining order (TRO), which prevented OSHA from obtaining an inspection warrant compelling entry of any non-governmental employee upon its premises. The judge that granted the TRO then set the matter for a preliminary injunction hearing.

During that hearing, the employer failed to meet its burden of proving "irreparable harm, injury, or loss as a result of defendants obtaining or seeking to obtain an inspection warrant compelling the entry of a union representative (or any nongovernmental employee), upon plaintiff's premises," according to the judge.

The employer's argument that it might face contempt proceedings, should it refuse to honor the OSHA inspection warrant, was rejected by the judge as "insufficient" to establish "irreparable harm, injury or loss," under existing case law.

Since "irreparable harm, injury or loss" is a necessary element in obtaining a preliminary injunction, and the employer failed to prove that necessary element, the employer's request for a preliminary injunction must be denied, according to the court's opinion.

This opinion, written by Judge Hugh Gibson, will appear in a future Decisions issue.

Cadmium

OSHA TO SEEK CURRENT INFORMATION THROUGH VOLUNTARY EMPLOYER SURVEY

In an attempt to gather current information about the workplace use of cadmium, the Occupational Safety and Health Administration is planning to conduct a voluntary survey of employers which use the substance.

Information from the survey, which will be conducted independently of any inspections, is to be used to help OSHA decide whether to develop a new standard for cadmium, according to OSHA technical support staff.

Although the survey will not be "statistically significant," it is intended to provide OSHA with an expanded base of information about ways to control hazards from cadmium. Mary Ellen Weber, OSHA's director of regulatory analysis, told OSHR.

The survey, to be taken through a questionnaire, is also a "test case" for finding different ways to prepare regulatory analyses of new standards, required by Executive Order 12044, Weber said. OSHA needs technological, economic, and engineering information about particular substances to prepare a regulatory analysis, and seeking the information directly from users of the substance may result in better information, Weber said.

However, OSHA has in the past foregone the use of questionnaires because of an Office of Management and Budget requirement that surveys of more than nine respondents be approved. But in view of "increasing pressure" on the agency to better analyze regulatory analyses, OSHA decided to seek OMB approval and prepare a questionnaire, officials said.

The questionnaire seeks information about monitoring and exposure levels, workplace hygiene facilities, medical monitoring, personal protective equipment and clothing, employee education and training, engineering controls, housekeeping, demographic employment information, and financial and economic information.

No Inspection Tie

OSHA is being "very careful to divorce" completion of the questionnaire from inspection activity, Weber said. Completion of the questionnaire is voluntary, and information from the questionnaire cannot be used in citations against an employer, she added.

The agency is working with the Cadmium Council of the International Lead, Zinc and Research Organization, Inc., and hopes to secure employers' cooperation in completing the questionnaire through the trade association.

OSHA officials said they hope to begin distributing the questionnaire in the next few weeks and to have initial findings by the end of the summer. Although the questionnaire is to be distributed only among states with federal OSHA enforcement programs, OSHA officials do not yet have a definite idea of how many employers will be asked to participate.

Program Directives

EYE INJURY RISK FROM ARC WELDING DEMANDS EMPHASIS, OSHA NOTICE SAYS

Results of a Bureau of Labor Statistics survey indicate that "special attention" should be paid to workplace hazards created by arc welding, the Occupational Safety and Health Administration told its field personnel.

BLS data indicating a "high frequency" of eye injuries resulting from welding and cutting operations were transmitted to OSHA field offices in OSHA Notice CPL-2, dated March 3.

According to data reported in the notice, 67 percent of the workers included in the BLS welding and cutting accident survey had suffered eye injuries. Of these injuries, 37 percent were due to flash burns, and 32 percent to metal or hot slag.

The survey also found that only 49 percent of the welders surveyed were wearing eye goggles or helmets with filtered lenses, and only 26 percent were using curtains or shields to protect other workers.

Based on results of the survey, it appears that 29 CFR 1910.252(e)(2) on eye protection, and the corresponding standards applicable to the construction and maritime industries, "need special compliance emphasis" in workplace inspections, the directive stated.

The text of OSHA Notice CPL-2, including six tables of BLS data published as Appendix A of the notice, appears in the Full Text section of this Current Report.

Grants

NIOSH PROPOSES REVISIONS TO RULES FOR TRAINING, RESEARCH GRANTS PROGRAM

The National Institute for Occupational Safety and Health on March 13 proposed regulations to revise its training and research grants program and to exercise its authority to award grants for health research in all types of mining.

The institute proposed to revoke its regulations for "Grants for Advancement of Health in Coal Mining" (42 CFR Part 55) and to combine the provisions pertaining to grants for health research in mining with its regulations for

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