PLAINTIFF'S EXHIBIT

CAP-545

A/C Pipe
Producers Association

Internal Correspondence

TO Public Affairs Committee
International Affairs Committee

FROM J. F. Welch, Director, Public Affairs

DATE January 12, 1981

SUBJECT: OSHA Advisory Committee on Construction Safety and Health

REF: (1) JFW correspondence, same title, May 20, 1980
(2) JFW correspondence, same title, December 17, 1980.

Enclosed is the response of an OSHA/NIOSH task force to the Advisory Committee on Construction Safety and Health report, "Report on Occupational Health Standards for the Construction Industry." The content is consistent with that reported in Reference (2) above. "Recommended Work Practices for A/C Pipe" was an attachment to the report.

If you have any questions, please do not hesitate to call.

JFW/ajb

Enclosure

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RESPONSE

to the

"Report on Occupational Health Standards for the Construction Industry"

(Advisory Committee on Construction Safety and Health)

OSHA/NIOSH Task Force

1/2/81..

FUTURE HEALTH STANDARDS APPLICABLE TO THE CONSTRUCTION INDUSTRY: OSHA/NIOSH TASK FORCE RESPONSE TO THE REPORT OF THE ADVISORY COMMITTEE ON SAFETY AND HEALTH

I. INTRODUCTION

The Advisory Committee on Construction Safety and Health was established by Public Act 40 USC 333, 1969, to provide the Assistant Secretary (OSHA) with expert advice on matters pertaining to the OSHA standards and policies which effect the Construction Industry.

In recognition of the special characteristics of construction work, including temporary work-sites, seasonal work, and rapid employee turnover, Dr. Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, directed that a sub-group of the advisory committee be formed to develop recommendations for the areas of concern.

The sub-group was formed and worked for a period of approximately 8 months to develop such recommendations. They prepared a Report ("Report on Occupational Health Standards for the Construction Industry", May 6, 1980) which was approved by the full committee and submitted to Dr. Bingham. After preliminary review of the report, it was decided that assignment to a joint OSHA/NIOSH Task Force would be the most appropriate way to initiate development of OSHA responses to the recommendations contained in the Report. Such a Task Force was appointed consisting of Lucile Adamson (OSHA, Directorate of Health Standards Programs), Don Cagle/Marci Burch (OSHA, Office of Special Assistant for Construction), Marty Erlichman (NIOSH), Ken Hunt (OSHA, Office of Special Assistant for Public Affairs), Allan Martin (OSHA, Directorate of Safety Standards Programs), John Martonik (OSHA, Directorate of Federal Compliance and State Programs), Munshi Rahman (OSHA, Directorate of Technical Support), Abe Reich (OSHA, Directorate of Health Standards Programs), and Melody Sands (OSHA Office of Field Coordination and Experimental Programs).

On October 2, 1980, this OSHA/NIOSH Task Force was asked by Dr. Bailus Walker (Director, Health Standards Programs) to examine the Report, prepare recommendations, and suggest workable guidelines for implementation. The Task Force met weekly for two months and developed this response.

II. SUMMARY AND RECOMMENDATIONS

The Task Force is in general agreement with most of the Advisory Committee Report and believes that most of its recommendations, but with some suggested revisions, should be implemented for future health standards.

The recommendations from the Report are listed on the following pages, along with the Task Force response to each. Some guidelines for implementation are also given. The more substantive conclusions of the Task Force include the following:

Vertical Standard: That future health standards which effect the construction industry be promulgated as separate construction industry (1926) standards. (Recommendation A, below)

Monitoring: That compliance with work practices which are shown to prevent worker overexposure be acceptable in lieu of exposure monitoring in construction work (Recommendation 1, below)

Employer Information Exchange: That at multiple employer worksites, reportable information concerning a health hazard which is under the control of one employer should be given not only to OSHA but also to other employers whose employees may be effected. (Recommendations 2, 5, 8, below)*

Medical Surveillance and Medical Recordkeeping: That a special OSHA/NIOSH Task Force be appointed to develop recommended procedures for standardized medical surveillance and medical recordkeeping programs for construction workers. (Recommendations 9, 10, 11, below)

Additional recommendations are detailed below.

It is our opinion that the recommendations of the Task Force should be reflected as soon as possible in new health standards being proposed by the Directorate of Health Standards Programs.

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*We recognize that OSHA may or may not be able to require provision of information by one employer to another, as envisioned by recommendations 2, 5 and 8. Therefore, we have requested the Solicitor's office to render an opinion on this point.

III. TASK FORCE RECOMMENDATION CONCERNING VERTICAL STANDARDS (RECOMMENDATION A)

The Task Force recommends that OSHA implement its previously stated intention to develop separate (1926) construction industry health standards (vertical standard), rather than making the General Industry (1910) health standards or sections of those standards applicable to construction work.

We see the following advantages and disadvantages to accepting this recommendation:

Advantages:

1. Would allow the standards to be specifically appropriate to the conditions of construction work.

2. Is the preference of the construction industry and OSHA has already, to some degree, made a commitment to use this approach.

3. Would correspond to the present practice for safety standards.

4. Would be more convenient for compliance officers, employers, and employees and therefore would have a beneficial effect on compliance.

Disadvantage:

1. Would be marginally more work for Health Standards Directorate (as judged by the experience with safety standards) than would insertion of any needed special provisions into the General Industry Standard.

IV. TASK FORCE RESPONSES TO ADVISORY COMMITTEE RECOMMENDATIONS

Advisory Committee Recommendation	Task Force Response/Recommendation
1. WORK PRACTICES AS ALTERNATIVE COMPLIANCE METHODS (pp. 5-7, 36-37)*	
That OSHA accept reliable work practices, which assure that PELS are not exceeded, in lieu of monitoring.	That OSHA accept, in lieu of monitoring, work practices which assure that an action level (if one is specified by the standard) or PEL (if no Action level is specified) will not be exceeded. 1A. That the Construction Industry Advisory Committee be asked to participate in the delineation of procedures, consistent with OSHA's mandate, which will facilitate implementation of these compliance alternatives (with regard to validation of work practice criteria, their adoption for a particular job, and their enforcement). (Note: See guidelines for implemenation, below).
2. PROVISION OF ENVIRONMENTAL DATA BY OWNER TO CONTRACTORS (p. 36)	
That owners of worksites provide contractors at that worksite with any available initial & periodic monitoring data concerning toxic materials under the control of the owner to which the contractor's employees may be exposed.	That, given clearance by the Solicitor, OSHA approve this recommendation with the modification that "any employer" (rather than "owner") at a multiple-employer worksite should provide such information to other employers. (See guideline for implementation, below). (The Solicitor's Office (SOL) has been requested to review this recommendation and render an opinion as to whether OSHA can require one employer to provide information to another, as would be required by recommendations #2,5, and 8).

*Page numbers given in this response refer to the "Report on Occupational Health Standards for the Construction Industry" submitted to Dr. Bingham by the Advisory Committee on Construction Safety and Health.

Advisory Committee Recommendation	Task Force Response/Recommendation
	2A. If SOL advises against recommendations #2, we recommend that any monitoring data which OSHA receives or produces from a multiple-employer worksite be made available to all employers at that worksite; and that employers be encouraged to share data on a voluntary basis.
3. REGULATED AREAS (pp. 8-10)	
Designation of Regulated Areas is a good approach for protection of construction workers, but they should be defined as narrowly as possible.	That Regulated Areas, specified in standards applicable to the construction industry, be defined to be as small as is consistent with adequate health protection of workers. (See guidelines for implementation, below)
4,5 REPORTING REQUIREMENTS AT MULTIPLE-EMPLOYER WORKSITES (pp. 11-15)	
4. On multiple employer worksites, the employer responsible for routine use of or an emergency condition involving a reportable substance should be the only employer required to notify OSHA of the use or emergency.	4. That this recommendation be accepted and implemented except for those cases where, because of the nature or location of their work, the employees of another employer may experience a greater exposure to the reportable substance than the employees of the Employer responsible for the condition. In such cases, the second employer should continue to be required to notify OSHA.
5. On multiple employer worksites, the employer responsible for routine use of or an emergency involving a reportable substance should also be required to notify other employers whose employees might be affected by that condition.	5. That on multiple employer worksites, the employer responsible for routine use (or an emergency) involving a reportable substance be required to notify other employers whose employees might be affected by the condition. For routine use, this notification should occur before the possibility of exposure begins. For emergencies, notification shall be as soon as possible.

Advisory Committee Recommendation	Task Force Response/Recommendation
	5A. If SOL advises against #5, we recommend that employers be encouraged to follow it on a voluntary basis and that recommendation 4 remain unchanged.
6,7 ROUTINE USE REPORTS TO OSHA (p. 15).	
Construction contractors should not be required to report to OSHA routine uses of reportable materials. If routine use reporting is required, the maximum grace period should be reduced to _____ in view of the short term of some jobs.	That reports to OSHA by employers using reportable material shall be required of construction contractors only if the continuous or interrupted period of routine use will equal or exceed the "exempt period" allowed by the standard for such notification. (See guidelines for implementation, below)
8. EMERGENCY PLANS ON MULTIPLE EMPLOYER WORKSITES (pp. 16-18)	
Notification of potential emergency plans shall be given by the responsible employer (whether the owner of a facility or a contractor at the site) to all other employers whose employees might be exposed to the emergency condition.	That OSHA accept and implement this recommendation, but with substitution of the word "operator" for "owner" and that it be reflected in future standards.
	8A. If SOL advises against #8, we recommend that employers be encouraged to comply with it on a voluntary basis.

Advisory Committee Recommendation	Task Force Response/Recommendation
9,10,11 MEDICAL SURVEILLANCE AND MEDICAL RECORDKEEPING (MS/MRK) (pp. 19-34)	
9. A generic (construction industry) standard for physical examinations should be developed, to be applied in lieu of the separate requirements for medical surveillance in every health standard. 10. Recordkeeping for this construction-industry medical surveillance standard should be centralized in national or regional depositories. 11. Record gathering and recordkeeping requirements should be developed which would rely on specialized studies of a sample of the construction industry workforce, producing coordinated medical, exposure and occupational data, rather than requiring medical surveillance of all workers. Because of the complexities of the MS/MRK problems, labor and management members actively involved in construction should be invited to participate in formation of solutions.	The Task Force recommends that because of the complexities of medical survillance and recordkeeping problems, a technical work group be appointed to resolve the issues relating to MS/MRK. Its responsibility would be to formulate recommended solutions to MS/MRK problems in construction work. (See guidelines for implementation, below)
12. PERSONAL PROTECTIVE EQUIPMENT (PPE) (pp. 38-39)	
That requirements for PPE in construction activities should be specified only after a careful review to assure that the protection afforded is really needed and would not be counteracted by health and safety hazards (heat stress, flammability, restriction of movement, etc.) caused by the clothing or equipment itself.	The Task Force recommends that OSHA accept and implement this recommendation. (See guidelines for implementation, below).

Advisory Committee Recommendation	Task Force Response/Recommendation
14,15 EMPLOYEE TRAINING (pp. 40-46)	
14. A list of items which the employer should be required to include in any required training program is given (pp. 44-45)	14. The Task Force recommends that OSHA accept and implement this recommendation.
15. Existing training or apprenticeship programs which are shown by the employer to meet requirements of the training and education sections of a health standard should be accepted as fulfilling those requirements. Records of the persons participating in the training must be maintained. The Health Standards training should be completed (a), either in the apprenticeship program or in separate training before an employee works with or around a controlled substance. (b)	15. The Task Force recommends that accept and implement this recommendation with the following amendments: a) Insert at (a): "within the year before potential exposure begins". b) Insert at (b): "The Health Standards portion of the training program (including the items referred to in recommendation XIV) must be repeated annually for each employee as long as that employee's potential exposure to a regulated substance continues". (See guidelines for implementation, below).
16. SAFETY DATA SHEETS (pp. 47-48)	
Manufacturers or formulators of harmful materials or agents should be required to supply material safety data sheets along with their products in such a fashion that they reach construction employer users of the products.	The OSHA Hazardous Substance Identification Standard (Construction), now in preparation, will meet this recommendation. At the time the Proposed Rulemaking is published, there will be an opportunity for the construction industry (management and labor) to submit comments, statements of support, and suggestions for revisions.

Advisory Committee Recommendation	Task Force Response/Recommendation
13, 17, 18 ADAPTATION OF STANDARDS REQUIREMENTS TO CONSTRUCTION CONDITIONS (pp. 49-54)	
13. (Implied but not directly stated): Whenever hygiene facilities are specified in a standard, consideration should be given to practicality under construction industry working conditions; exemptions or alternatives should be specified when appropriate (e.g., for outside cold-weather work or for worksites without operational plumbing).	The Task Force agrees with these recommendations. It is the belief of the Task Force that when HSP initiates development of separate construction industry standards (Recommendation A), these recommendations will be acted upon.
17. The standard development process should include research and development of exposure control methods which are practical for the construction industry.	The extent of the research for recommendation #17 can be expected to be limited by restrictions on available resources.
18. New standards should include appendices describing engineering and work practices controls feasible for the construction industry (usable in lieu of the controls prescribed for general industry).	OSHA can request that a limited amount of such research be conducted by NIOSH. However, it should be emphasized that in the opinion of the Task Force, the primary responsibility for this research must remain with the industry. The Construction Industry is reminded that funds can be requested from OSHA and NIOSH for support of occupational health research projects). The Task Force recommends that HSP encourage such industry research by utilizing, whenever possible during standards development, results of construction industry research.

IV. RECOMMENDED GUIDELINES FOR IMPLEMENTATION

For most recommendations given above, the Task Force believes that approaches to implementation are obvious. However, some implementation guidelines are suggested below.

WORK PRACTICES AS COMPLIANCE ALTERNATIVES (Response #1, 1A)

Health Standards drafted for the construction industry which require compliance with specified PEL's should also include the following:

A. Designation of the following general compliance methods as alternatives to periodic monitoring:

   1. Compliance with work practices for which the employer shows in an initial determination, based on monitoring or on theoretical calculations of maximum probable exposure, that the action level (or PEL) will not be exceeded.

   2. Compliance with work practices which have been shown by past experience under equivalent conditions to maintain exposures below the action level (or PEL).

   3. Compliance with published work practices which have been demonstrated, to OSHA's satisfaction, to prevent exposures above the Action Level (or PEL) under exposure conditions as severe or more severe than those that can be reasonably expected to occur on the intended job.*

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* Examples of such work practice specifications, published by the Asbestos Informaton Association are attached. They are provided only for illustration. The Task Force has not reviewed them and their inclusion here in no way represents an endorsement of these particular work practices.

4. Where toxic emissions are under the control of another employer, demonstration that exposures will not exceed the exposures of employees of the employer responsible for the emissions.

B. A non-mandatory appendix, to be updated through a Federal Register notice whenever appropriate, citing references to any published work practices which are known and acceptable to OSHA as compliance alternatives for specified operations.

Note: In applying the above guidelines, it will be necessary for the Health Standards Programs Directorate to develop policies and procedures for allowing or rejecting and for enforcing the use of compliance alternatives 1-4. Therefore, recommendation 1A, asking for Construction Industry advice in these matters was proposed.

SHARING OF MONITORING DATA (Response #2)

OSHA health standards should include the following requirement:

At multiple-employer worksites, each employer should provide any available environmental monitoring data for toxic exposures for which he or she is responsible to every other employer whose employees may be exposed as the result of the responsible employer's operations.

REGULATED AREAS (Response #3)

HSP personnel engaged in developing standards applicable to the construction industry should be instructed to:

a) Recognize the special utility, for the construction industry, of the use of restricted-access regulated areas as an approach to worker protection.

b) Define Regulated Areas to be as small as is consistent with adequate worker protection.

ROUTINE USE REPORTING (Response #7)

Some periods of use of reportable substances are very brief. Therefore, in developing health standards for the construction industry, OSHA should specify an "exempt period", the period of use which, if not exceeded, would not need to be reported.

PROCEDURES FOR MEDICAL SURVEILLANCE/RECORDKEEPING (Response #9, 10, 11)

We suggest that the technical work group appointed to develop these procedures should be given the full-time assistance of at least one staff person for a sustained period of time. Advice and information from the Construction Advisory Committee will also be needed. If the decision is made to develop generic standards for medical surveillance and record-keeping, we recommend that the text and rulemaking procedures be such that these standards will supersede the corresponding sections of existing health standards.

PERSONAL PROTECTIVE EQUIPMENT (Response #12)

Implementation will be to a large extent automatic as the result of development of vertical construction industry health standards. Personnel engaged in standard development should be urged to consider carefully the wide range of construction activities and to restrict PPE requirements to those situations where they actually provide a net safety and health benefit to the worker.

EMPLOYEE TRAINING (Responses #14, 15)

Guideline for Implementation

The Task Force recommends that a standardized statement of minimal health standards training requirements, based on the list given on pages 44 and 45, be developed for routine inclusion in construction industry health standards. The provisions listed in recommendation 15 (as amended) should be included in the Training Section. For individual standards, the basic minimal training requirements could then be supplemented as required.

ATTACHMENT

1. "Recommended Work Practices for A/C Pipe" A/C Pipe Producers Association (attached only as an example of the type of specification which the Construction Industry might propose as a Work Practice compliance alternative. Our attachment of this document does not imply that it has been evaluated or recommended by the Task Force.)