

Environmental Health Department

March 1, 1979

TO: Members of the LIA Board of Directors
All Official Members of the Lead Industries Association, Inc.
Members of the LIA Environmental Health Committee

FROM: Donald R. Lynam, Ph.D.

SUBJECT: STAY OF OSHA OCCUPATIONAL STANDARD FOR LEAD

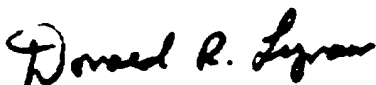
We are very pleased to inform you that the Court of Appeals for the District of Columbia Circuit has issued a partial stay of the OSHA Lead Standard. The Court's action on the stay request of LIA and a number of individual companies and other groups was announced on Thursday, March 1, 1979.

The stay prevents the more expensive items of the Standard from going into effect until the judicial review of the Standard has been completed by the Court of Appeals for the District of Columbia Circuit. The challenge to the Standard is scheduled to be heard during the September, 1979 session of the Court. Requirements relating to engineering controls, construction of facilities, multiple physician review, and revision of work practices are prohibited by the stay from going into effect. Items which are not included in the stay include the permissible exposure limit of 50 ug/m³ which can be met by use of respirators, medical surveillance except that determination of zinc protoporphyrin is not required, medical removal protection, training programs, and record keeping.

The effective date of the Standard is March 1, 1979. This date should be utilized in determining the dates for meeting provisions of the Standard which are not included in the stay.

A copy of the complete Order to the Court is enclosed.

Sincerely,



Donald R. Lynam, Ph.D.
Assistant Director, Environmental Health

Enclosure

cc: ILZRO Lead Environmental Health Committee

LIA03492

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1048

September Term, 1978

United Steelworkers of America,
AFL-CIO-CLC, Petitioner

v.

Ray Marshall, Secretary of
Labor, Respondent

and consolidated cases

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 1 1979

GEORGE A. FISHER
CLERK

Before: Wright, Chief Judge; *Tamm and MacKinnon, Circuit Judges

ORDER

Industry petitioners have moved for a stay of the Occupational Exposure to Lead, Final Standard, 29 C.F.R. 1910.1025. The stay is opposed by petitioner United Steelworkers, intervenor United Automobile Workers, and respondent Secretary of Labor. On February 23, 1979, the Court called for additional memoranda from the parties and then directed counsel for all parties to confer with the Chief Staff Counsel at the Court on February 27, 1979, to explore the possibility of an agreement on conditions for a stay. Respondent has voluntarily stayed the application of the standard through March 1, 1979, to permit the Court to consider these matters.

On consideration of the papers filed by the parties, and the discussions at conference, a partial stay of the standard will be ordered. The objective of the stay is to defer the requirements that employers undertake the expense of engineering controls, revision of work practices, and construction of facilities pending determination of their challenge to the standard. At the same time, the Court has concluded that portions of the standard which will provide protection to employees during the pendency of judicial review should go into effect, as set forth in the order.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1048, et al.

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It is therefore ORDERED that

(1) The motion to stay the application of 29 C.F.R. 1910.1025(c), governing the permissible exposure limit, is denied with one exception; to wit, the reference in paragraph (c)(3) to paragraph (f), which governs respiratory protection, shall incorporate only those portions of paragraph (f) not stayed by this order.

(2) The motion to stay the application of 29 C.F.R. 1910.1025(d), governing exposure monitoring, is denied.

(3) The motion to stay the application of 29 C.F.R. 1910.1025(e)(1), which provides for compliance by engineering and work practice controls, is granted. During the period of this stay respondent's present lead exposure standard, 29 C.F.R. §1910.1000, Table Z-2, shall remain in effect. The motion to stay the application of 29 C.F.R. 1910.1025(e)(2), which provides for respiratory protection, is denied except that the reference to paragraph (f) shall incorporate only those portions of that paragraph not stayed by this order. The provisions of 29 C.F.R. 1910.1025(e)(3), governing written compliance programs, are stayed except for paragraph (F). The remaining portions of 29 C.F.R. 1910.1025(e) are stayed.

(4) The motion to stay the application of 29 C.F.R. 1910.1025(f) is denied except it is granted with respect to paragraph (f)(2)(ii). During the period of the stay employers shall provide a powered, air-purifying respirator in lieu of the respirator specified in Table II of (f)(2)(i) when the physical characteristics of the employee are such that the respirators specified in Table II are inadequate for his or her protection.

(5) The motion to stay the application of 29 C.F.R. 1910.1025(g), governing protective work clothing and equipment, is denied except that the effective date of this section shall be thirty (30) days from this order. The purpose of this extension is to provide employers a period of time both to implement paragraph (g) and apply to respondent for relief if their circumstances warrant variances.

(6) The motion to stay the application of 29 C.F.R. 1910.1025(h), governing housekeeping, is denied. The effective date of this section shall be thirty (30) days from this order to the extent that employers must acquire vacuums to comply with it. During the extended period employers may apply to respondent for relief if their circumstances warrant variances.

(7) The motion to stay the application of 29 C.F.R. 1910.1025(i), governing hygiene facilities and practices, is granted to the extent this section requires the construction of new facilities or substantial renovation of existing facilities. The provisions in paragraph (i)(6) are stayed. Otherwise, stay of section 1910.1025(i) is denied.

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(8) The motion to stay the application of 29 C.F.R. 1910.1025(j), governing medical surveillance, is denied, except it is granted: (1) with respect to the requirements in paragraph (j)(2) that employers conduct biological monitoring of zinc protoporphyrin and in paragraph (j)(3)(ii)(D) that they conduct medical examinations for zinc protoporphyrin; and (2), with respect to the multiple physician review mechanism established by 29 C.F.R. 1910.1025(j)(3)(iii) and referred to elsewhere in the standard.

(9) The motion to stay the application of 29 C.F.R. 1910.1025(k), medical removal protection, 29 C.F.R. 1910.1025(l), training programs, and 1910.1025(n), record keeping is denied.

(10) The motion to stay the application of 29 C.F.R. 1910.1025(m), signs, is granted pursuant to the stipulation of counsel.

(11) The motion to stay the application of 29 C.F.R. 1910.1025(r), startup dates, is denied except to the extent that the obligations listed in that section are hereinbefore stayed. The effective date for the Occupational Exposure to Lead - Final Standard, 29 C.F.R. 1910.1025, shall be March 1, 1979.

(12) The motion to stay the application of all other sections of the standard not specifically mentioned in this order is denied.

(13) The subject cases shall be expedited and the clerk is directed to calendar them for argument during the September 1979 sitting of this Court.

(14) On the basis of their briefs on the merits and their experiences during the pendency of the stay, the parties may move for a modification of this order by the panel assigned to consider the merits of these cases. Respondent shall keep a record of all requests for variances and his disposition of these requests. Respondent's records in respect to requests for variances shall be available on request to counsel in these cases for their use in moving to modify this order, if they elect to do so.

Per Curiam

LIA03495

*Circuit Judge Tamm did not participate in the foregoing order.