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Oil Association Comments

The International Association of Drilling Contractors challenged the OSHA rules claiming that the cost estimates used by OSHA in certifying that the proposed rules would not be "major" was totally invalid. OSHA's analysis of the rule's economic impact on the industry said the compliance costs would be "relatively small on a per firm" basis. The agency added that the compliance costs are actually overestimated when taking into account the increased savings that would occur by reducing the costs of downtime, administrative costs, insurance premiums and environmental damage that will result from the rules.

The association said, "IADC must oppose these regulations — and their attendant real costs — on the basis of the projected drastic economic effects they will have on the economy and on the drilling industry." IADC claimed that rather than costing the industry $2,639 per rig, as OSHA's estimate to the Office of Management and Budget said, the proposed rules would create costs of $25,000 to $150,000 per rig depending on certain variables.

The American Petroleum Institute agreed with IADC's comments saying that the actual costs of complying with OSHA's proposed rules could be "as a minimum, eight to ten times higher" than OSHA estimated. "Compliance with these proposed regulations would most certainly have a severe financial impact on this presently economically depressed industry, without automatically providing added benefits to worker safety and/or health," API said.

IADC pointed out that OSHA justifies the need for the proposal because of the hazards inherent to the industry. However, IADC noted that OSHA's "statistical data base is subject to question and the validity of their analysis and conclusions are certainly open to challenge." Further, IADC claimed that some "experts" find a number of the rules to be "counter-productive to safe practices."

IADC also noted that OSHA is considering adding seven areas which would be covered under the rules, which were not addressed when OSHA prepared the regulatory impact assessment. IADC said that agency representatives "have publicly stated their intention to incorporate some, or all, of these seven areas in the final rules." The trade group said it was concerned "over possible violations of administrative procedures. Such additions should not not be permitted without additional study of financial impact on the economy."

In other areas, the trade group said that a hearing conservation program is "impractical and unnecessary" for the drilling industry. It said, "High turnover of personnel and geographic dispersion of work activities mitigate against exposure monitoring, baseline testing and periodic audiometric testing. The financial burden of 'proving' there is no problem is excessive."

IADC also claimed that the proposed rules would create a "significant" number of new recordkeeping requirements. Although there are only a few rules which would actually require recordkeeping, many other rules imply a need for keeping records in order to stay in compliance, the organization said.

Appalachian Differences

In other comments on the proposal, the Appalachian Energy Group warned OSHA of the necessity of recognizing the difference between the oil and gas industry in the Appalachian area and that in the Gulf South and Western states in developing the oil and gas standard. AEG, which is made up of representatives of oil and gas organizations in Pennsylvania, Ohio, New York, and West Virginia, noted that the Appalachian area is heavily wooded and mountainous, while the Gulf South and Western states have a relatively flat terrain.

AEG pointed out that oil and gas wells in the Appalachian region are only about 3,000 to 6,000 feet deep, compared to the 20,000 foot wells in the Gulf South and Western states. These factors, and others, create a need for a standard that incorporates the differences in the oil and gas well drilling and servicing operations in the two areas.

Similarly, Pennzoil Exploration and Production Company claimed that the shorter wells "do not pose the same degree of safety hazard as do deeper wells, which oftentime incur high pressures and high flow rates."

OSHA is planning to hold hearings on the proposed standard July 24-26 in Washington, D.C.; July 31-Aug. 2 in Casper, Wyo.; and Aug. 8-10 in Dallas, Texas (Current Report, May 17, p. 1323).

Asbestos

AIA RECOMMENDS LOWEST FEASIBLE PEL THROUGH ENGINEERING, WORK CONTROLS

The Asbestos Information Association recommended May 25 that the Occupational Safety and Health Administration reduce the permissible exposure limit for asbestos to the lowest level feasible through engineering and work practice controls.

In its comments to the agency, the association also urged the adoption of a highly protective standard governing asbestos exposure in construction and other non-fixed operations. Specifically, the agency should dispense with many of its customary ancillary requirements and instead prescribe specific work practice and respirator controls tailored to the type of exposures that are likely to occur in the various operations, according to the AIA.

In addition, the association urged OSHA to consider the effectiveness and practicability of supplemental worker protection programs, including a requirement that feasible engineering and work practice controls that are shown to yield significant exposure reduction benefits be implemented even in workplaces that are achieving the new PEL. The group also asked OSHA to consider implementing a program to reduce substantially or eliminate smoking among asbestos workers as well as a program to achieve respirator use even where the PEL has been achieved through feasible engineering and work practice controls.

"The comprehensive evidence that the harmful effects of asbestos are dose-related, the great progress that has been made to reduce asbestos exposures, and the predictions from the medical evidence that de minimis, if any, risk exists at the low levels that can be achieved in most asbestos applications, establish the major guidelines for developing a policy for future asbestos use," according to the AIA.

The association asserted that a PEL of 1.0 fiber per cubic centimeter of air could be achieved in a matter of months in most sectors. Widespread compliance with a PEL at or approaching 0.5 f/cc could be achieved within a reasonable additional period in most situations, AIA said. The organization cautioned, however, that under OSHA's traditional enforcement policy, which holds employers strictly accountable for meeting exposure limits at all places and at all times, an asbestos PEL below 0.5 f/cc is not feasible. Technological constraints and the inability to reliably measure exposures below 0.5 f/cc set a lower limit of 0.5 f/cc on feasibility, AIA maintained.

Necessity of Respirators

Although stating that respirators "should generally be regarded as a last resort in achieving the PEL," the association urged that the revised standard recognize the necessity of respirators during the period when engineering and work practice controls are being implemented. Further, it maintained that certain operations, such as maintenance on dust control equipment, cannot achieve such low exposures without the employment of respirators.

In addition, AIA recommended that OSHA consider incorporating in the final standard a provision for supplemental respirator use even in workplaces that are achieving the lowest exposure levels attainable through feasible engineering and work practice controls. Employers in primary and secondary manufacturing should make respirators available to all workers who are potentially exposed to asbestos and should aggressively encourage their use, the association stated.

OSHA should evaluate a variety of alternatives which could assure that workers who smoke will not be allowed to work in jobs involving continuous asbestos exposures, according to the organization. These measures include: banning new hires who are smokers; requiring an aggressive anti-smoking program for existing workers; removing smokers from jobs with asbestos exposures, perhaps after allowing a reasonable period to quit, with mandatory transfer to non-asbestos jobs when such jobs exist within a plant; and requiring smokers to wear respirators regardless of asbestos exposure levels.

The AIA stressed the need for a separate asbestos standard for the construction industry, recognizing the significant differences in the types of exposures that could occur in construction activities from asbestos products. Installation of asbestos-containing products, such as roof coatings, which present no foreseeable risk of significant fiber release need not be regulated by OSHA, according to AIA, while work with friable products should be stringently controlled. Between these two extremes are potential exposures installing non-friable asbestos products, such as asbestos-cement pipe and sheet. The association suggested that regulation of products in this category should include employment of proper work practices that minimize fiber release throughout installation and use of respirators for the very brief periods when certain occasional operations may lead to the release of substantial numbers of fibers.

"A revised OSHA asbestos standard as proposed by AIA could represent the most protective standard ever issued by the agency for exposure to any carcinogen," the association concluded.

Litigation

FEDERAL COURT HAS AUTHORITY TO REVIEW OSAHRC REMAND ORDER, FIFTH CIRCUIT RULES

An Occupational Safety and Health Review Commission order which upheld violations of the lead standard's medical removal protection benefit provision and assessed penalties against a company is a proper subject for judicial review even though the order remanded the case for further proceedings and was not a final judgment, the U.S. Court of Appeals for the Fifth Circuit ruled June 8.

This decision in *RSR Corporation v. Donovan* (No. 83-4083) denied the secretary of labor's motion seeking dismissal of RSR's appeal from an OSAHRC order on the basis that judicial review at this time was premature (11 OSHC 1163).

In four individual cases, RSR was cited for willful violations of 29 CFR 1910.1025(k), on the basis that it failed to pay benefits to employees who were temporarily removed from their jobs or terminated due to high lead concentrations in their blood, and for willful violation of the recordkeeping requirement at 29 CFR 1904.7(b)(1). After hearings in the cases, the violations were upheld in part, and several were reclassified as nonwillful in nature.

On review, the full commission found that all alleged violations of the medical removal protection benefit and recordkeeping provisions had been established and reversed commission judges' decisions to the contrary. The commission then upheld classification of the violations as willful, and assessed penalties totalling $10,000 against the company. It remanded the cases, however, for a calculation of the amount of benefits to be awarded employees.

Prior to the completion of proceedings before commission judges, RSR filed a petition for review of the OSAHRC order in the Fifth Circuit court of appeals. In response, the labor secretary moved to dismiss the appeal on the basis that the federal court lacked jurisdiction to review the order.

Act's Judicial Review Provision

The secretary argued specifically that OSAHRC's decision was not appealable since it did not possess the finality necessary to permit judicial review due to the nature of its order which remanded the case for further proceedings to determine benefit amounts. The secretary argued in addition that RSR was not "adversely affected or aggrieved" by the commission order and thus to permit the company to appeal from the decision under these circumstances would not be permissible in accordance with Section 11(a) of the OSH Act.

The court disagreed with the secretary's contentions. It indicated that a review of the OSH Act reveals that a requirement of finality in a narrow sense is not necessary as a "prerequisite to review" of commission orders. Instead, according to the court, Section 11(a), which makes appellate review available to persons adversely affected or aggrieved by OSAHRC orders, refers back to orders as described in Section 10(c) which affirm, modify, or vacate a secretary's citation or proposed penalty, or direct other appropriate relief. Since the types of orders which are "specifically defined" make no reference to finality and several, in addition, are not equivalent to the "general statutory term, 'final order,'" finality in the traditionally recognized sense is not considered a requirement for judicial review of OSAHRC orders, the appeals court concluded.

The court also determined that review from the order was not premature since RSR was "adversely affected or aggrieved" immediately, not sometime in the future, by substantial penalties which had been assessed against it in this case. In contrast to some other issues, which have yet to be resolved by the review commission, the issue of penalties has been resolved and there is no way for RSR to postpone payment of amounts assessed pending the conclusion of remand proceedings, the court stated.

The full text of this decision, written by U.S. Circuit Judge Alvin B. Rubin, and joined in by Circuit Judges Samuel D. Johnson and Jerre S. Williams, will appear in a future Decisions issue.

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