HOECHST CELANESE CORPORATION
Spartanburg, South Carolina

DATE: January 3, 1990

TO: Bob Lanier

FROM: Jim Stowe

SUBJ: Revisions to Asbestos Standards

Bob, please find attached a copy of an article taken from the December 20, 1989 Occupational Safety and Health Reporter. The article summarizes what revisions are ahead for the asbestos standards. A listing of important points follows.

1) It appears that rule making will occur in relation to small scale, short duration operations and the use of fiber control methods such as negative pressure enclosures. The point discussed in our December 12th meeting involving OSHA's interpretation of small scale project sizing (ie. any amount of asbestos removed above one glove bag is considered large scale projecting and should occur in negative pressure enclosure) is referenced in the second column on page 1275 under Exemption Provision.

2) Operation-specific permissible exposure limits referenced on page 1276, could have major impact on project sampling requirements.

3) Competent person training requirements referenced on page 1276, if expanded to all employees working in abatement projects could have major impact on training programs presented to employees.

4) The remanded issue of respirators referenced on page 1276, could have major impact on respirator use if in fact protection factors are decreased for the equipment we are utilizing at the Site.

It may be an interesting year for those involved in asbestos abatement work.

cc: Ben Fugitt
Charles Furber
Jeff Randolph

Administration

OSHA CONTINUES 'TEMPORARY' PERSONNEL CHANGES: SHIFTS DALLAS OFFICIAL TO D.C. SAFETY STANDARDS

The Occupational Safety and Health Administration has brought in Glen Williamson, deputy regional administrator of OSHA's Region VI office in Dallas, to temporarily head the safety standards program in the national office.

Williamson, who began working in the Washington, D.C. office Dec. 4, told BNA that he expects to serve as acting director of the safety program shop until at least the end of January.

The move is part of OSHA's policy of rotating national and field personnel on a temporary basis. By doing so, the agency says, officials from the national office gain field experience and staff from regional offices get acquainted with D.C. operations (19 OSHR 1107).

Williamson temporarily steps into Barry J. White's former post. White was placed on a 90-day assignment Nov. 6 as head of the technical support office. That position opened when Edward Baier retired in November.

Thomas Seymour, who was serving as acting director of safety standards when White left for the technical support office, will resume his role as deputy director of the safety standards programs.

Currently, Williamson's position at OSHA's Dallas office has not been filled, according to a spokeswoman from that office.

The shifts at safety standards occurred the same time OSHA made changes at its compliance office. H. Berrien Zettler, director of OSHA's compliance program directorate was placed on a 60-day temporary assignment Nov. 6 as acting regional administrator of OSHA's Region VII office in Kansas City. Filling in for Zettler is Joseph Rufolo, OSHA's deputy regional administrator for Region II in New York.

Asbestos

OSHA REVISES STANDARDS, PROPOSES NEW RULEMAKING IN RESPONSE TO COURT

ouch

The Occupational Safety and Health Administration Dec. 14 amended several provisions of its asbestos standards in response to a federal appeals court order, but indicated it would propose further rulemaking concerning asbestos controls during small scale, short-duration operations rather than clarify the existing provision, as the court had ordered.

In documents submitted to the U.S. Court of Appeals for the District of Columbia Circuit, OSHA said it was complying with an Oct. 30 order by deleting a ban on asbestos spraying and clarifying its monitoring regulations for the construction industry (19 OSHR 1062).

But instead of issuing a clarification for the provision of the standard governing controls during small scale, short-duration operations related to asbestos removal, demolition, and renovation, OSHA indicated it would deal with the issue through supplementary rulemaking next year.

OSHA was responding to an order issued at the request of the Building and Construction Trades Department, AFL-CIO, which asked the court last summer to enforce a previous court order that had been issued in February 1988 (*Building and Construction Trades Department, AFL-CIO v. Secretary of Labor*, CA DC, No. 86-1359, 10/30/89). In the 1988 order, the court remanded to OSHA a number of issues related to the agency's final asbestos standards for the construction trades and general industry, with a directive that the agency take action.

The agency said it intends to publish its response to the court in a *Federal Register* notice shortly, and the amended provisions will take effect 30 days after the notice is published. The notice will be published in the full text section of a future issue of the Current Report.

Exemption Provision

The additional rulemaking concerns a section of the existing standard that provides for an exemption— during small scale, short duration operations—from the requirement to construct a walk-in enclosure device to protect passersby and workers not in the asbestos removal area from escaping asbestos fibers.

The final rule issued by OSHA in June 1986 does not explicitly define "small scale, short duration operations," but gives a number of examples of those types of operations. In its initial 1988 order, the court ruled that the scope of the exceptions allowed by OSHA under the provision was so unclear that "the exception as now worded seems to erase the rule." The court thus ordered the agency to limit the exception to operations where it would be impractical to construct an enclosure (13 OSHC 1561).

In its Dec. 14 response, OSHA indicated that such a requirement would expand the use of enclosures—which operate in negative pressure much like a partial vacuum—to involve "virtually all removal and renovation jobs" regardless of the amount of asbestos being disturbed or consideration of the effectiveness of such things as glove bags. A requirement is not necessary, according to the agency, because OSHA is now enforcing through interpretation restrictions on the exemptions that "meet the court's concerns about its potential overbreadth."

OSHA said, moreover, the record of the 1986 rulemaking contained no data as to whether employees working inside the enclosure devices benefit from any reduced exposures, or whether working inside the enclosures may actually increase their exposures or introduce other work hazards such as heat stress. The agency said it is collecting information on negative pressure enclosures and on alternatives that may provide the same degree of protection to both employees removing asbestos and bystander employees.

What a surprise!

The agency said additional rulemaking was required to compile and assess information on the risk reduction for employees working in negative pressure enclosures and said an interim expansion of the requirement "would be confusing in light of possible regulatory approaches in the subsequent rulemaking."

Alternatives Considered

OSHA said that during the rulemaking it will look at a number of alternatives, including technology not available in 1986—such as negative pressure glove bags—that appears to offer improved protection in certain circumstances.

0095-3237/89/$0+.50

HNA SB STEW 12332

"Thus. OSHA's approach in the rulemaking may limit, rather than expand, the walk-in enclosure requirement." OSHA said.

The agency said it would publish a notice of proposed rulemaking on the issue by Feb. 27. 1990. at the same time it initiates rulemaking on several other issues remanded by the court in 1988.

Those issues involve establishment of operation-specific permissible exposure limits, extension of reporting and transfer requirement, and expansion of the competent person requirement to all employers engaged in any type of construction work. The court had asked OSHA to attempt to resolve those issues based on the existing record, but set the February deadline for further rulemaking if agency officials believed they could not do so.

Finally, OSHA said it would meet with a Jan. 28, 1990, deadline on a last set of remand issues concerning employee smoking controls, respirators, and bilingual warnings and labels for employers with a significant number of non-English speaking employees. The agency indicated it would publish a notice detailing its resolution of the issues using the existing record.

Attorneys representing the union petitioners were still reviewing OSHA's response as BNA went to press and had no immediate comment.

Construction

SCANNELL TRIES TO MEND FENCES WITH ADVISORY PANEL AT DECEMBER MEETING

As promised, Assistant Labor Secretary Gerard F. Scannell is making every effort to forge a "beneficial partnership" with the Advisory Committee on Construction Safety and Health—a panel that has had, at times, a tumultuous relationship with the Occupational Safety and Health Administration.

In his first appearance before the committee as OSHA administrator, Scannell told the panel Dec. 13 that his objective was "to utilize the construction experience of the advisory committee membership to obtain programmatic advice."

The committee consists of representatives from labor unions, employers, states with their own job safety programs, professional organizations, and the National Institute for Occupational Safety and Health. OSHA is required by law to get advice from the panel before implementing policy that affects the construction industry. For years, committee members lamented that OSHA disregarded the panel's advice.

Scannell aims to change that. The new OSHA administrator's "blueprint for activity" entails dissecting the "Construction Safety, Health, and Education Improvement Act of 1989," proposed legislation that would change the way OSHA inspects and trains compliance officers for construction sites.

Item-By-Item Review

Scannell reiterated that the bill contains "some very good provisions" that he hopes to implement administratively—with the advisory panel's help. Scannell made similar remarks in Nov. 16 testimony before the Senate Labor and Human Resources Committee (19 OSHR 1148).

Scannell called on the advisory panel to review all of the bill's key elements and to recommend if and how the agency should proceed with adopting the changes.

OSHA's targeting system heads the list of areas that the agency needs to improve, Scannell said, since targeting is a "crucial part of our enforcement strategy."

Scannell also wanted the panel's input on how much time employers should have to report a fatality or accident that hospitalizes more than one worker. Current law gives the employer 48 hours, which Scannell said "is too long." The legislation would shorten the reporting time to 24 hours, but Scannell questioned whether a day was even too long. "What about 12, eight, or four hours?" Scannell asked. "Or immediately?"

One of the bill's provisions that Scannell continues to vehemently reject is the creation of a separate construction office within OSHA. OSHA has the office of construction and maritime engineering support, headed by Charles G. Culver, which already "is serving as a focal point for construction," Scannell said. "I don't plan to appoint a special assistant secretary for construction," Scannell bluntly concluded.

The committee expects to have recommendations regarding the proposed legislation by the March 1990 meeting.

Lockout/Tagout

ADVISORY PANEL URGES OSHA TO START DEVELOPING RULE FOR CONSTRUCTION INDUSTRY

While the Occupational Safety and Health Administration continues to fine-tune its lockout/tagout standard for general industry, efforts are afoot to get the agency moving on a similar rule for the construction industry.

During its Dec. 13-14 meeting in Washington, D.C., the Advisory Committee on Construction Safety and Health unanimously voted to urge OSHA to proceed with a lockout rule for the construction industry.

In doing so, the panel also hopes to send a message to the Office of Management and Budget, which must okay any project that OSHA puts on its semiannual regulatory agenda.

Consisting of representatives from labor unions, employers, states with their own job safety programs, professional organizations, and the National Institute for Occupational Safety and Health, the committee meets regularly to advise OSHA on policy affecting the construction industry.

When OSHA published the final rule for general industry Sept. 1, the agency said it was working on "future rulemakings" to cover the maritime, agricultural, and construction industries not addressed by the rule. The rule sets out requirements for properly disconnecting and locking or tagging equipment so that workers can safely service machinery without it being turned on accidently or releasing stored energy (19 OSHR 620).

Five-Point Program

During the meeting, the committee approved and sent off to OSHA a report laying out "basic minimum requirements that should be included in a lockout standard for construction.

The report, prepared by a panel work group headed by committee member George Smith, said the work group "deplores the general industry standard, and feels that it could not be applied effectively to construction."

Neither the title nor the standard should be called "lockout/tagout," the committee concluded, but instead "lockout-tagout." That way, the committee said, the agency does not give the impression that there is an alternative between locks and tags, but that both are required, which the committee recommended.