



HIGHLIGHTS OF CURRENT REPORT

COTTON DUST STANDARD enforcement is suspended by the Occupational Safety and Health Administration for the cotton warehousing and cotton classing industries, following agency review of the Supreme Court decision in the benzene case. The agency says it has determined that the preamble to the standard "may not adequately describe" the rationale for including the two industries under the regulation, but it adds that further administrative action on the applicability of the regulation to the industries is likely (p. 237) . . . Text of OSHA notice of suspension of enforcement (p. 255).

MORE BRAIN CANCER CASES are uncovered by OSHA and National Institute for Occupational Safety and Health investigators among workers in the Houston, Tex., area. Some 25 cases are found among workers at a Dow Chemical Company plant in Freeport, Tex., in addition to earlier cases found among Union Carbide employees, but a Dow spokesman asserts there is no apparent relation between the cancer incidence and the work experience of the employees involved (p. 237).

REPRODUCTIVE HAZARDS from occupational exposures are the subject of a research and demonstration grant program announced by NIOSH. The institute says it is looking for applications addressing such areas as epidemiology, toxicology, control technology, and health education (p. 237) . . . Text of NIOSH notice on the grant program (p. 256).

TESTING AND CERTIFICATION procedures carried out by NIOSH should be revised to permit manufacturers to establish their own "third party" testing program pursuant to equipment performance criteria developed by the institute, an industry spokesman tells a hearing held by NIOSH. Witnesses also maintain it is "essential" that manufacturers currently be allowed to witness NIOSH tests involving their own equipment (p. 238).

COMPLAINT-BASED INSPECTIONS must be limited to those areas of a workplace in which violations reported by an employee allegedly occurred, the U.S. Court of Appeals for the Third Circuit rules. A wall-to-wall inspection made in response to a specific employee complaint "surpasses the boundaries set by Congress," the court reasons (p. 239).

THE IMPACT OF STANDARDS on industrial productivity would be studied under a grant for which the Labor Department policy office is seeking applicants. The DOL request for proposal says the study should focus on the impact of specific OSHA and Mine Safety and Health Administration standards, as determined by a "micro-economic" evaluation rather than a "broad economy-wide" survey (p. 240).

DIRECTIONS FOR REVIEW will be vacated in cases reviewed by only two commissioners who cannot agree on the outcome, the Occupational Safety and Health Review Commission announces. The commission finds the former procedure — affirmance of a judge's decision with the precedential value of an unreviewed decision — insufficient for an official action of the commission (p. 240).

EX PARTE WARRANTS are supported by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry in comments submitted to OSHA. According to the union, such warrants are necessary because some contractors intend routinely to refuse entry to OSHA inspectors without search warrants. However, an attorney for Cerro Metals Products asserts that the agency has failed to show "a need for a police agency approach" to compliance (p. 241).

A UNIFORM CONSULTATION program envisioned by OSHA is "a thrust to get all of the states out of the business of enforcement," and "a major interference" with state consultation prerogatives, the chairman of an association of state officials charges (p. 241).

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Cotton Dust

STANDARD LIFTED FOR SOME INDUSTRIES AFTER OSHA REVIEWS BENZENE DECISION

Based on a review of the Supreme Court's July 2 decision on benzene, the Occupational Safety and Health Administration July 25 suspended enforcement of its cotton dust standard in certain industries.

The temporary suspension of the standard for the cotton warehousing and cotton classing industries is the result of OSHA's conclusion that the preamble to the cotton dust standard "may not adequately describe the rationale for including cotton warehousing and cotton classing offices."

The Court's ruling on benzene (8 OSHC 1586) said that in regulating toxic substances, the Secretary of Labor must find that the substance poses a significant risk of material impairment that a new, lower standard will eliminate or reduce.

According to Labor Department attorneys, that "central question" posed by the Court is the basis for OSHA's action in reviewing the cotton dust standard, which industry groups have asked the Supreme Court to review (Current Report, March 27, p. 996). But OSHA said in its July 29 notice (45 FR 50328) that the standard's enforcement in other areas of the textile industry is not affected, because "a determination has been made that the standard meets the Supreme Court's requirements."

500 Microgram Limit

According to the 1978 cotton dust standard (Reference File 31:8601), exposures to cotton dust in warehousing and classing operations would have to be reduced to 500 micrograms of respirable dust per cubic meter of air. Cotton classing is a service performed by brokers who determine the quality grade of the cotton.

The Cotton Warehouse Association and American Cotton Shippers Association, representing the classing and warehousing industries, were among the groups which asked the Supreme Court to review the upholding of the cotton dust standard by the U.S. Court of Appeals for the District of Columbia Circuit. The petition for review has not yet been ruled upon by the Supreme Court.

But OSHA attorneys indicated that suspending the standard for cotton classing and warehousing may make that portion of a Supreme Court review unnecessary.

While enforcement of the standard is suspended, OSHA said it would review the rulemaking record and preamble "to determine the possible regulatory options" and said that further administrative action on the applicability of the standard to the two industries is likely. OSHA attorneys said no decision yet has been made as to whether the record will be reopened.

During the suspension, OSHA will enforce the preexisting national consensus standard for exposure to cotton dust of 1000 micrograms per cubic meter of air.

OSHA's notice of suspension of enforcement appears in the Full Text section of this Current Report. The action also will be reflected in a future Reference File supplement.

Health Hazards

MORE BRAIN CANCER CASES FOUND AS TEXAS INVESTIGATION CONTINUES

A 16-month long investigation of brain cancer cases in a Texas petrochemical plant has uncovered additional cases in another plant not far from the site of the original investigation.

Medical investigators from the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health found 25 cases of brain cancer among workers at a Dow Chemical plant in Freeport, Tex., in addition to an earlier finding of 18 cancer cases among current and former workers at a Union Carbide plant in Texas City, according to federal officials.

Suspicion of a high rate of brain cancer led to the OSHA NIOSH investigation of the Texas City plant in March 1979 (Current Report, March 8, 1979, p. 1526). After identifying the cases through a review of Union Carbide, state, and county records, a case/control study was begun to determine if any of the workers had common exposures to any of the chemicals used or produced at the plant.

The brain cancer cases at the Dow plant were uncovered as the investigation of the Union Carbide plant proceeded, according to NIOSH and OSHA investigators. Records from the tri-county area including Brazoria, Galveston, and Harris counties were inspected, confirming not only the Union Carbide cases but uncovering the Dow cases.

Higher Than Expected

The data from the three counties are incomplete, although there is a "higher number of cases than expected," according to James Hansen, Dow spokesman. He added that the company is looking at a large number of current and former worker histories as part of a "broader effort" to identify the health hazards at the plant.

Hansen added that there is no apparent relation between the deaths and the work experience of Dow Chemical employees.

Studies of the brain cancers are continuing, federal officials said. The first report of the study is to be published this fall in the new American Journal of Industrial Medicine, according to OSHA physician Victor Alexander.

Reproductive Hazards

GRANT PROGRAM FOR TOXICOLOGY STUDIES. CONTROL RESEARCH ANNOUNCED BY INSTITUTE

The National Institute for Occupational Safety and Health announced that it plans to award grants for research and demonstration projects concerning reproductive effects from occupational hazards.

According to the announcement, the program is intended to expand the institute's involvement in identifying and preventing such effects. Applications are sought for basic and applied projects in such areas as epidemiology, toxicology, control technology, and health education, NIOSH said.

In recent years, increasing numbers of pregnant women have remained on the job until near the end of pregnancy.

the NIOSH announcement stated. As a result, it asserted, "many more women and their unborn children are being exposed to chemical, physical, and psychological hazards of the workplace."

However, "very little is known about the impact of such exposures on fetal wastage and growth and development," NIOSH commented.

The institute also noted that concern about reproductive hazards generally has focused on the offspring of females exposed to chemical and physical hazards, even though exposure of male workers to mutagenic agents also puts offspring at risk.

Other problems include occupational hazards that affect the fertility of both men and women, the exposure of non-working women to materials brought home on the clothing of male workers, and the possibility that childhood cancers may be related to pre-natal environmental exposures, according to the notice.

NIOSH said it is interested in projects to:

- ▶ Consider the epidemiology of reproductive effects, particularly where dose-response relationships can be determined.

- ▶ Identify reproductive hazards of chemicals and provide an "early warning" of possible harmful effects.

- ▶ Clarify the biological mechanisms through which hazardous substances work.

- ▶ Develop new and improved methods or equipment to prevent reproductive effects from hazardous substances.

- ▶ Increase awareness of the importance of reproductive hazards in the workplace.

Applications should be submitted on form PHS 398 (form PHS 5161-1 for state and local governments) to Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building, Room 448, Bethesda, Md. 20205, telephone (301) 496-7441.

Earlier this year, NIOSH reported that reproductive effects from occupational exposure were one of a variety of subjects at which the agency would be looking in an attempt to identify possible future hazards (Current Report, January 17, p. 765).

The text of the NIOSH announcement of the grant program appears in the full Text section of this Current Report.

Certification

NIOSH SHOULD RESTRUCTURE PROGRAM TO ALLOW INDUSTRY TESTS, MEETING TOLD

The National Institute for Occupational Safety and Health should permit manufacturers of personal protective equipment and hazard measuring instruments to establish a "third party" testing and certification program pursuant to performance criteria developed by NIOSH, an industry spokesman recommended July 28.

Frank E. Wilcher, Jr., executive director of the Industrial Safety Equipment Association, spoke at a hearing convened by NIOSH on possible ways to restructure the institute's current program for testing and certifying equipment.

Last February NIOSH asserted that a "major reconstruction" of the current certification program under 30 CFR Part 11 appeared necessary, based on the findings of a study by five outside consultants (Current Report, February 21, p. 878). The consultants were asked to evaluate the program after failures were reported in some NIOSH-certified respirators.

Testing and certification procedures in 30 CFR Part 11, which are conducted jointly by NIOSH and the Mine Safety

and Health Administration, "have not worked effectively" for either NIOSH or equipment manufacturers. Wilcher told the hearing. Because the procedures were developed for underground mining applications, they "do not adequately cover other common applications" for respiratory equipment, he charged.

Further, the NIOSH certification branch "has been hampered by constant turnover of staff, as well as lacking personnel with sufficient expertise in the field to handle the program effectively, fairly, and in a timely manner," the ISEA official stated.

Under the system proposed by ISEA, independent private laboratories would use manufacturer facilities to test and certify equipment to meet "realistic" and technologically advanced standards recommended by NIOSH. To ensure the validity of the certifications, NIOSH would purchase new, off-the-shelf units on a random basis and test them in its own laboratory or subcontract the testing to a qualified outside laboratory, the association suggested.

Where manufacturers would need assistance in developing suitable facilities for testing, NIOSH should offer such help, Wilcher said. However, the institute should not continue tests for manufacturers in lieu of manufacturers establishing test facilities in their plants, and it should not evaluate the manufacturers' "test set-ups," he added.

The results of NIOSH field audits could be publicized, as long as the manufacturers received prior notification, tests were conducted on similar products from several manufacturers at one time, and results were published on a pass/fail and not a comparative basis, Wilcher suggested.

Witnessing Approval Tests

It is "essential" that manufacturers be given the right to witness NIOSH tests involving their own equipment, the ISEA director maintained. "The experience of many manufacturers indicates tests conducted by NIOSH personnel... have frequently been improperly conducted, and improperly interpreted," he charged.

John B. Moran, a member of the NIOSH Mine Health Research Advisory Committee, also expressed support for manufacturers being permitted to witness tests. NIOSH procedures must be able to withstand peer review, and not have "the appearance of taking place behind closed doors," Moran declared.

James A. Oppold, director of the NIOSH safety research division, said he agreed that the institute's tests should "withstand the attention of our peers." However, he maintained, past experience has indicated that it is "hard" for a manufacturer's representative "not to interfere" in testing if the representative is present.

NIOSH is considering a "workshop" approach in which representatives from several manufacturers would be invited at one time to the NIOSH facilities to "see how we conduct business," Oppold noted.

The NIOSH official also stated that the charge of improper testing had never been brought to his attention. "There were times when our tests were not as comprehensive as some manufacturers would have liked, but we have always carried out our mandate properly," he asserted.

Wilcher said he was not prepared to cite examples of his charge in detail. In one instance, however, NIOSH ran tests on a number of safety helmets and reported that a "high percentage" had failed American National Standards Institute criteria, he commented. "Subsequently, we were told by some NIOSH personnel that some flammability tests had been used improperly," Wilcher stated.

State of the Art Technology

NIOSH should revise the procedures in 30 CFR 11 to establish state of the art performance testing criteria, according to a statement by Jerry Purswell, director of safety standards for the Occupational Safety and Health Administration.

Purswell noted that such a revision might entail a "procedural delay" because of the necessity of going through rulemaking procedures. However, NIOSH can begin certain improvements immediately in the current program that do not require rulemaking, he maintained.

For example, the frequency with which respirators are tested should be increased, Purswell recommended. This could be accomplished, he suggested, by requiring manufacturers to provide a specified number of units to NIOSH as part of their application for approval.

To ensure that units are submitted on a random basis, NIOSH might specify that manufacturers issue reimbursement purchase coupons to the institute, the official commented. Using the coupons as payment, NIOSH itself would collect units for testing by purchasing them from distributors across the U.S., he said.

In-house contractors could be retained, or testing expanded to a two-shift operation, to increase the number of units tested, Purswell proposed.

Specific duration periods for NIOSH approval of respirators should be set, Purswell urged. The durations should vary with different types of respirators, with longer durations granted for more complicated equipment, he suggested, observing that users are "not likely" to replace complicated or expensive units as often as less costly items.

The OSHA official also called on the institute to establish a formal stop-sale and recall program for defective equipment. Under the program, a statistically significant number of respirators should be tested to determine the extent of the defect, and recall should be limited to those cases in which an "immediate hazard" is posed to a user, he stated.

Where testing shows defects that lead NIOSH to believe that a respirator should not be used, the approval should be suspended until the defect is corrected or a more suitable unit is developed, Purswell commented.

A panel consisting of government officials and independent respirator experts should review every case to determine whether a stop sale notice, recall, or decertification is necessary, according to the OSHA official.

Fire Fighter Needs

The firefighting service should be involved more actively in the certification of respirators, according to Randy Watts, fire training coordinator for the Cumberland County (Pa.) Volunteer Firemen's Association.

There should be some requirement in the certification process to ensure that a user selects the type of respirator appropriate for his needs and receives training in the proper use of the equipment, Watts testified. He noted that firefighting subjects respirators to many conditions — such as sudden extremes in temperatures — not found in other occupations.

At present, a firefighter "typically" learns how to use a respirator by reading instructions on the box lid before going into the burning building, Watts asserted.

According to Watts, a federal agency "with some teeth" is needed to establish standards for firefighting and ensure that they are followed. He noted that fire departments, as units of local governments, are not covered by OSHA.

More Comment Time Needed

William H. Revoir, chairman of the ANSI ad hoc respirator test and approval subcommittee, said his group

"deplored" the "very short time" provided by NIOSH for the preparation of testimony to be delivered at the hearing. He urged that an additional 90 days be provided for submission of further comment on the certification issue.

Revoir added that if NIOSH fails to devote "sufficient resources" to developing an effective certification program, it should "relinquish its authority" in that area.

Jon R. May, NIOSH special assistant for testing and certification, told the meeting that the institute intends to make a commitment toward getting adequate resources for the program. If NIOSH cannot get Office of Management and Budget approval for increased funds, it will attempt an internal reorganization to get additional personnel into the certification branch, he stated.

Litigation

INSPECTION BASED ON WORKER COMPLAINT MUST BE LIMITED TO ALLEGED VIOLATIONS

An inspection conducted under Section 8(f) of the Occupational Safety and Health Act, pursuant to an employee complaint, must be limited to those areas of the employer's premises where the violations allegedly occurred, the U.S. Court of Appeals for the Third Circuit ruled July 24.

This decision in *Marshall v. North American Car Company* (No. 79-2374) affirmed a decision of a federal district court which quashed an inspection warrant that authorized a general ("wall to wall") Occupational Safety and Health Administration inspection of the employer's premises (7 OSHC 1551).

The case arose out of an attempted OSHA inspection following receipt of an employee complaint alleging safety violations in three areas of the employer's Sayre, Pa., railroad car repair facility. After the employer refused entry to OSHA inspectors, OSHA obtained an inspection warrant from a U.S. Magistrate. That warrant authorized the inspectors to conduct a "wall to wall" inspection of the employer's plant.

After three days of inspection, the employer refused to permit the inspection's continuance. The Secretary of Labor then moved, in district court, for an order holding the employer in contempt for halting the inspection. After a hearing, the district court held that the warrant was overbroad in that it did not limit inspection only to the physical areas specified in the employee complaint. The court then quashed the warrant and dismissed the petition for contempt. The Secretary appealed.

On appeal, the Secretary's sole argument, that a "wall to wall" search is authorized in any case where OSHA has received an employee complaint, was rejected.

According to the appellate court, the OSH Act authorizes two types of inspections. Section 8(a) inspections, which are conducted pursuant to a general administrative plan, and Section 8(f) inspections, which result from employee complaints. This case involved only a Section 8(f) inspection the appellate court decided.

Scope of Inspection

After a thorough analysis of Section 8(f), the appellate court concluded that that section "requir[ed] that the scope of an inspection must bear some relationship to the alleged violations in the employee complaint." The appellate court supported this conclusion by pointing out that Congress referred to Section 8(f) inspections as "special" in the third sentence of 8(f).

In addition, the court reasoned that when the first and third sentences of Section 8(f) were read together, it in-

dictated "that Congress contemplated that these inspections would bear some relationship to the employee complaint."

The Secretary argued unsuccessfully that 29 CFR 193.11 states that a warrant issued on the basis of an employee complaint may authorize a search that is not limited to the area in the complaint. The Secretary attempted to bolster this argument by contending that "this regulation is supported by sound policy in that limited enforcement resources are better utilized if there is a wall-to-wall inspection once the inspectors have to go to the plant anyway."

The appellate court rejected the Secretary's argument on the ground that although the Secretary's interpretations of the OSH Act are entitled to deference, those interpretations cannot exceed the statutory limits imposed by Congress. According to the appellate court, "[b]ecause Congress has expressed a requirement that the scope of the inspection be related to the complaint, to the extent that the regulation permits wall-to-wall inspections in every case, it surpasses the boundaries set by Congress."

This opinion which was written by Chief Judge Collins J. Seitz, who was joined by Circuit Judges John J. Gibbons and Max Rosenn, will appear in a future Decisions issue.

Research

IMPACT OF STANDARDS ON PRODUCTIVITY SUBJECT OF ASPER REQUEST FOR PROPOSAL

Proposals were invited July 22 by the Labor Department's Office of the Assistant Secretary for Policy, Evaluation, and Research for a study to investigate the possible impact of workplace safety and health regulations on industrial productivity.

According to the DOL request for proposal, the study should focus on the "productivity impact" of specific Occupational Safety and Health Administration and Mine Safety and Health Administration programs. The "micro-economic" rather than the "broad economy-wide" effects of the agencies should be examined, the request added.

The department called for an evaluation of "specific production process impacts," such as those resulting from retrofitting of equipment, new equipment and process techniques, technological and process innovation, and adjustments in staffing patterns.

Some topics "illustrative of the type of study to be performed" include the individual impacts of the OSHA asbestos, lead, vinyl chloride, rollover protective structures, and punch press standards, the request noted.

Other examples cited included the impact of "a specific MSHA regulation, group of regulations, or program (such as enforcement)," and the individual impacts of the MSHA roof control and coal dust standards.

The rate of annual productivity increase as measured by output per hour was lower in the 1970s than during the previous two decades, ASPER commented. According to some theories, a decline in measured productivity is "one of the costs of improving workplace safety and health through MSHA and OSHA programs and regulations," the division observed.

These theories hold that regulation decreases productivity by requiring more labor, slowing down production through the imposition of machine guards or more "housekeeping," and diverting the limited capital available for investment into "nonproductive" uses such as pollution controls, the request stated. ASPER quoted a 1978 macro-economic study by Edward F. Dennison, published in *Survey of Current Business*, that indicated a reduction in business growth by

0.3 percentage points from 1973 to 1976 due to health and environmental regulation.

However, such macro-economic studies "inevitably have major methodological and data problems," ASPER asserted.

Benefits Seen

On the other hand, some micro-economic analyses indicate that OSHA and MSHA regulations may increase productivity, the request for proposal noted. Regulation appears to accomplish this, it added, by reducing the amount of "down time" resulting from accidents, by forcing improvements in technology, and by preserving a healthy workforce.

ASPER noted an OSHA study indicating that the vinyl chloride standard spurred technological change to the point that productivity in the industry increased. Also, union official Francis Burkhardt reported at a Senate hearing that there had been a 40 to 60 percent improvement in the productivity of painters as a result of improved respirators, traceable to OSHA requirements, the request for proposal said.

Additional analyses are needed to "improve our understanding of the productivity impact" of safety and health regulations, the request stated. More information is needed as well on the underlying factors that "influence the adjustment process," including "possible technology and process innovation responses," the document said.

ASPER acknowledged that micro-economic studies also may have methodological problems, but it maintained that these problems "appear to be more susceptible to control and solution by research."

The request for proposal called for submission of a draft report no later than nine months after the awarding of the contract.

Proposals must be received no later than August 25 by the DOL Office of Procurement, Room S-1519, Department of Labor Building, 200 Constitution Ave., N.W., Washington, D.C. 20210.

For further information on the RFP, contact Leonard Benhar, the contract negotiator, at (202) 523-6269. Written queries should be submitted to the procurement office at the above address. The number of the solicitation is RFP L A 80-29.

Review Commission

OSAHRC WILL VACATE DIRECTION FOR REVIEW IN 'ONE-TO-ONE' CASES

The Occupational Safety and Health Review Commission announced in a July 22 decision that it will vacate the direction for review in cases reviewed by only two commissioners who cannot agree on the outcome.

This decision was made in *Texaco Inc.* (No. 77-3040 and 77-3542) because the former procedure — affirmation of the judge's decision with the precedential value of an unreviewed decision — was declared insufficient for an official act of the commission.

The judge's decision on review involved a finding that the Secretary had failed to establish the economic feasibility of proposed controls to reduce employee exposure to excessive amounts of benzene vapors. The commission observed that the two reviewing commissioners divided on the outcome of the case presented an obstacle to its resolution, since an act of the commission requires the affirmative vote of at least two members. Furthermore, the former procedure for disposing of such cases was ruled inadequate for an official act of the commission by the Ninth Circuit Court of Appeals.

in *Willamette Iron & Steel Company v. Secretary of Labor*, 7 OSHC 1641 (1979).

In *Willamette*, the court refused to take jurisdiction of the Review Commission's affirmance of the hearing officer's decision because it was supported by the affirmative vote of only one of two reviewing commissioners. Because the affirmance was accorded only the precedential value of an unreviewed decision, the dissenting commissioner did not truly vote to affirm, according to the court, and the label placed upon the determination made by the two commissioners is not alone determinative.

In *Texaco*, the Review Commission expressly disagreed with the Ninth Circuit's conclusion that an affirmance whose precedential value is limited to that of an unreviewed decision is inadequate for an official act of the commission. The new procedure of vacating the direction for review is believed by the commission to satisfy all courts of appeals as an official action of the commission. It was adopted in response to *Willamette* as a different means to attain the same result.

This ruling will appear in a future Decisions issue.

Enforcement

UNION BACKS OSHA ON EX PARTE WARRANTS; TRADE GROUPS SEEK HEARINGS ON PROPOSAL

Charging that some contractors intend to routinely refuse entry to Occupational Safety and Health Administration inspectors without search warrants, the plumbers and pipefitters union, in comments submitted to OSHA, supported a proposed regulatory amendment confirming the Secretary of Labor's authority to seek warrants on an *ex parte* basis.

In other comments submitted, two trade associations and a legal foundation called for public hearings on the proposal. Several companies, trade associations, and legal groups also submitted statements opposing the proposed confirmation of authority (Current Report, July 24, p. 225).

The statements were made in response to OSHA's May 20 notice seeking public comment on its proposal to amend compulsory process provisions of regulations governing inspections over the objections of employers (Current Report, May 29, p. 1204). The proposed amendment would confirm authority called into question by an April decision of the U.S. Court of Appeals for the Third Circuit (8 OSHC 1196).

The union, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, included with its comments a copy of an employer's safety memorandum instructing all its supervisors to require a search warrant "before allowing any type of OSHA inspection of your jobsite." The existence of such policies was given by OSHA as one of its reasons for seeking the authority granted by the proposed amendment.

The union, citing a further instruction in the safety memorandum advising supervisors to refuse to allow inspectors to privately interview employees on company premises, suggested that OSHA supplement the proposed amendment with a field directive providing for such situations.

In the union suggestion, warrant requests would include language saying, "During the course of the inspection, [the] inspector shall be able to interview employees in private, excluding any and all representatives of the employer. The employer shall permit such interviews to be conducted on its property at any location deemed necessary or appropriate by the inspector to facilitate the inspection."

The Communications Workers of America also submitted a statement of support for the proposed amendment.

Hearings Requested

The American Subcontractors Association, the Cast Metals Federation, and the Mid-Atlantic Legal Foundation included in their comments requests for public hearings on the proposed amendment. The legal foundation, noting "the seriousness of the questions raised by the concept of pre-entry and postrefusal *ex parte* warrants," urged that affected parties be given the opportunity to debate the proposal's "necessity and advisability," while the metals federation said that to deny public debate on the "arbitrary proposal" would be "unreasonable."

In a letter written on behalf of Cerro Metal Products, plaintiff in the Third Circuit decision that triggered the proposed amendment, a Dallas, Tex., attorney expressed concern that the public comment solicitation "is little more than a charade."

The attorney, Ronald M. Gaswirth of Gardere, Wynne & Jaffe, observed that OSHA "has not changed one word" from its original proposal and charged that the agency is now only "begrudgingly" submitting it for public comment. The courts, he noted, had invalidated the regulation as a result of OSHA's failure to do so when it was first promulgated.

Gaswirth further stated that *ex parte* warrant proceedings are unnecessary to "proper enforcement," and that OSHA has failed to compile evidence that would demonstrate "a need for a police-agency approach to achieving OSHA compliance." He questioned the value of "surprise" inspections, criticized the "extreme disruption of an employer's business" resulting from such inspections, and challenged OSHA on whether the neutrality of a judge acting solely on information supplied by OSHA was an adequate safeguard against unjustified warrants. He also doubted the efficacy of post-warrant litigation as redress against ill-founded warrant grants and inspections.

Substitute Proposal

Gaswirth suggested as an alternative to the OSHA proposal that the agency not be allowed to seek a warrant without first attempting voluntary entry to a workplace. In the "small percentage of cases where voluntary entry is refused," Gaswirth proposed, notice of judicial proceedings should be given to the employer in order "to bring out the relevant facts for a probable cause determination."

Ex parte warrants should be sought only in "truly exceptional cases involving imminent danger," based on a showing of "demonstrable facts." Such showing, Gaswirth contended, should be made a part of the administrative probable cause standard.

In another comment, the U.S. Chamber of Commerce characterized the proposed regulatory amendment as an attempt to "circumvent" the 1978 U.S. Supreme Court decision affirming an employer's right to require a warrant before admitting an OSHA inspector on the premises (6 OSHC 1571). The proposal, the Chamber stated, would reinforce OSHA's "image among many employers as 'over-legalistic' and punitive-minded."

The Chamber further stated that *ex parte* warrants would enable inspectors to utilize a legal strategy at a stage where employers may be without legal assistance, thus placing employers at an "unfair disadvantage."

State Plans

OSHA UNIFORM CONSULTATION PROGRAM SEEN AS THREAT TO STATE ENFORCEMENT

RALEIGH, N. C. — (By an OSHR staff correspondent) — The Occupational Safety and Health Administration's plan to

develop a uniform, nationwide onsite consultation program "is a thrust to get all of the states out of the business of enforcement," according to the chairman of the Occupational Safety and Health State Plan Association.

North Carolina Labor Commissioner John C. Brooks said state designees "reject that direction," which he labeled an "ominous development."

In a July 23 interview with OSHR, Brooks said states which have their own OSHA programs offered consultative services at least five years before federal OSHA began developing such programs in states with federally administered programs.

Last February, Assistant Labor Secretary Eula Bingham told an appropriations hearing that OSHA is requesting an increase in its fiscal 1981 budget to convert onsite consultation programs in 15 states with state plans to federally directed programs under Section 7(c)(1) of the Occupational Safety and Health Act. This action will ensure "uniform standards of advisory service" across the U.S., she stated (Current Report, February 28, p. 903).

In a May 29 memorandum to OSHA regional administrators, Bingham said the agency intends to offer the states the opportunity to convert their programs to 7(c)(1) operations "in a straightforward manner." Those declining that request would be required to operate their programs under the provisions of 29 CFR Part 1908, which Brooks asserted "amount to exactly the same thing" as the 7(c)(1) provisions.

In a memo to Congress, Brooks charged that OSHA's intentions are "a major interference with the states' congressionally delegated prerogative to provide the best and most effective services to their citizens."

The major difference between the two types of programs is that advice given to an employer by a consultant under a 7(c)(1) program must be implemented within a specific period and compliance must be certified in writing by the employer, Brooks said. Under an 18(b) program, advice from a consultant is not mandatory, and employers understand that voluntarily requested inspections "will in no way jeopardize the employer in terms of OSHA enforcement activities," he added.

If a serious violation or a situation presenting imminent danger is observed, however, the consultant will issue a notification of violation identifying the hazard and setting an abatement date.

Another drawback in a 7(c)(1) program is that funds would be provided only for personal visits, not for advice given by telephone or in writing, Brooks said.

Too Much Like Enforcement

"In the eyes of many of the states, this kind of consultation service looks too much like their enforcement activity," he said.

In North Carolina, he predicted, converting to a 7(c)(1)-type program would cause the present backlog of requests for consultative services to "evaporate overnight." North Carolina has a higher rate of voluntary compliance with health and safety standards than federally administered programs in other states, he asserted.

The dispute over consultative services is an example of the problems which exist between federal OSHA and state OSHA designees, Brooks said.

"The federal administration of OSHA with regard to day-to-day administration is of continuing concern because it vacillates greatly," he charged.

He cited OSHA's promises to involve state designees in drawing up recommendations to be submitted in the benchmarks case (Current Report, May 1, p. 1107) and

also promises made in 1977 by Bingham that she would meet with state designees two or three times each year.

Bingham has not met with state designees this year, and the state did not see the benchmarks recommendations before they were submitted, Brooks said.

In addition, although state designees were told they would be briefed before major policy developments were announced, Brooks said state designees still learn of such decisions from the newspapers. He said rules issued in May giving employees access to medical records were never discussed with the state, and that he received information on the rules four weeks after they were announced.

Federal Monitoring

Federal OSHA "is tying up lots of money" in special studies by teams of federal monitors, Brooks charged. Although he said he welcomed monitoring reviews, Brooks questioned the effectiveness of the type of research underway. "This activity has drained away regional travel money and expense money for regional federal field activity," he added.

He suggested shifting some of the monitors to positions as safety officers or industrial hygienists.

"They complain about insufficient enforcement level nationally, and it is inconsistent to be so overloaded with regard to these state monitors at the same time they are so starved for enforcement officers," Brooks said.

States favor monitoring, "but see a lot of massive make-work," he said.

Federal monitors recently examined 4,000 randomly selected North Carolina case files and concluded that 3.6 percent of the cases were closed without sufficient documentation. A 400-sample study would have been sufficient with random selection, Brooks maintained.

Noise

ENGINEERING PRIORITY WILL NOT MEET LEGAL BURDEN OF PROOF, COMPANY SAYS

The Occupational Safety and Health Administration's priority on engineering controls to reduce workplace noise cannot meet the burden of proof placed on the Secretary of Labor by the Supreme Court's ruling on benzene to show that significant risks can be reduced or eliminated by a change in practices, according to E.I. duPont de Nemours & Company, Wilmington, Del.

In comments to the agency's workplace noise standard docket, duPont contended that OSHA cannot show that lowering workplace noise levels to 90 dBA or 85 dBA solely through engineering controls is "reasonably necessary" to assure worker protection.

The U.S. Supreme Court, in a five-to-four decision issued July 2, ruled invalid OSHA's standard governing worker exposure to benzene, and declared that the Secretary of Labor must show that a "significant risk" exists before issuing a health and safety standard.

"Rather than continue this argument over engineering controls by requiring industry to phase them in in conjunction with a standard incorporating hearing conservation programs," duPont urged OSHA to adopt a workplace noise standard that "recognizes the validity of hearing conservation programs as an equally effective alternative to engineering controls."

In comments submitted to the noise docket earlier, duPont and others argued that hearing protectors are as effective a method of noise control as engineering and administrative measures (Current Report, July 3, p. 122).

Daniel Johnson, Aerospace Medical Research Lab, Wright-Patterson Air Force Base, Ohio, recommended limiting or postponing the use of engineering controls of noise when the costs per worker are "excessively high."

Based on 1975 cost estimates of reducing the standard from 90 dBA to 85 dBA, prepared by Bolt, Beranek and Newman, Inc., Johnson calculated the percent of dollars that would be saved plotted along with the percent of workers that would still require hearing protection against a maximum cost expenditure per worker for noise control.

From this he calculated that little benefit would occur in terms of decreasing the number of workers requiring hearing protection if more than \$900 per worker were spent. "This would seem to indicate that perhaps limiting maximum noise control costs to a value somewhere between \$900 and \$1000 per worker might be a reasonable and cost effective strategy," Johnson stated.

Johnson said that most likely an 85 dBA noise standard could be reached using a combination of engineering controls and hearing protectors for the same cost required to make all of industry meet a 90 dBA noise standard through engineering controls alone.

Johnson proposed imposing an 85 dBA standard "for noise that reaches a worker's ear." "It has always upset me to hear that the 85 dBA standard is too costly," he said. "What in fact is too costly is engineering controls used as a blanket procedure," he added.

Purchase of Protectors

It is "almost universally accepted" that the purchase of ear protectors is the responsibility of the employer, the International Brotherhood of Teamsters told OSHA.

If employers attempt to require employees to purchase their own protectors, it will cause resentment among workers, demonstrate a lack of commitment to preventing hearing loss, discourage the use of ear protectors, and engulf the hearing protection program in an adversarial atmosphere, the Teamsters predicted.

It said for these reasons "it is absolutely vital" that specific language be included in the standard requiring employers to purchase, provide, and maintain any necessary ear protectors.

The Teamsters also recommended that any future noise standard include provisions requiring that workers be "adequately informed," in writing, of any indications of overexposure to noise or hearing loss.

Also, the future noise standard must include provisions prohibiting discrimination toward workers exposed or potentially exposed to harmful noise levels, the union urged. It said that the exercise of administrative controls to reduce noise exposure, such as job rotation or removal, must not be permitted to include any form of discrimination, such as firing, layoff, rotation to a lower paying job, loss of hours, or "other infringements on employment conditions or benefits."

"The possible financial impact on an employer due to noise induced hearing loss, such as workers' compensation claims, must serve as an incentive to take further actions to prevent such loss, not as an incentive to remove the affected workers," according to the Teamsters.

"Without comprehensive protection from such discrimination, workers could be faced with a choice between feeding their families or preserving their hearing," the union predicted.

OSHA closed the docket on the proposed revision to the workplace noise standard July 3 after temporarily reopening it to accept comment on certain new entries dealing primarily

with hearing conservation (Current Report, April 24, p. 1091).

Other commentators expressed concern about the measurement capabilities of the instrumentation used to measure the permissible noise dose (Current Report, July 17, p. 200).

Oversight

STATISTICAL INCREASES FAIL TO REFLECT IMPROVED SAFETY, HEALTH, DOD TESTIFIES

Statistical increases in occupational injuries and illnesses and in total lost workday cases do not accurately reflect improvements made by the Defense Department in its occupational safety and health programs, Deputy Assistant Defense Secretary George Marienthal told the House Education and Labor Subcommittee on Health and Safety July 29.

Stressing that the department is "satisfied" but not "complacent" in its evaluation, Marienthal laid the increases to an improved reporting system and changes in laws governing workers' compensation for federal employees. He cited significant progress since the department's last subcommittee appearance in 1976 and discounted any merits of bringing the department under Occupational Safety and Health Administration jurisdiction.

Statistics submitted with Marienthal's testimony showed a rise in occupational injuries and illnesses between 1974 and 1979, from 46,279 to 74,805 during a period in which the total number of employees rose from 956,317 to 1,049,564.

Total number of lost workday cases rose in the same period from 9,334 to 31,786, according to the DOD figures. The ratio of lost workday cases to the total number of cases rose from one out of five to one out of two.

Marienthal defended the statistics by noting that one of the first components of the DOD effort to improve its safety and health programs in 1976 was to bring "varied reporting systems" together into one uniform procedure. "The early statistics were apples," he contended, "and we're looking at oranges now."

'Significant Progress'

The defense official stressed that "tremendously significant progress" had been made since 1976, when his tenure in office began but that the statistics do not verify the improvement. "The apparent rise in incidence rates is deceptive," he cautioned.

Asked by Subcommittee Chairman Joseph M. Gaydos (D-Pa.) whether future statistics will demonstrate such improvements, Marienthal said, "I'm not saying they will but they'd better, or I'll be doing something else."

Marienthal laid the increases in lost workday cases to several factors, primarily the liberalization of benefits provided for in 1974 amendments to the Federal Employee Compensation Act. The prospect of obtaining the improved benefits, along with reluctance on the part of doctors to approve an injured worker's return to work in light of recent malpractice controversies, has caused more workers to miss workdays, Marienthal stated.

Similar increases in total dollar amounts of compensation claims can be laid to carryovers of permanent disability and other continuing claims, payment of scheduled claims such as those related to hearing loss, and inflation of both wage rates and medical expenses, Marienthal contended.

Pressed by Gaydos to indicate what means the department might undertake to "level off" the increase, Marienthal said that possible changes include provision of alternate light work, the placement of workers' compensation costs in the budgets of individual commanders, and the institution of a three-day waiting period.

Mandatory Inspections

In response to questions by Gaydos whether the department was able to "ride herd" on responsible officials in cases of inadequate compliance through demotions, reprimands, or inquiries, Marienthal conceded that personnel actions were limited, due in part to civil service protections. He reiterated, however, that he believed the DOD program to be excellent in general, and invited subcommittee members to visit installations to view its operation.

Marienthal disclosed that most installations undergo mandatory annual inspections, while hazardous installations are inspected more often, at a frequency determined by the base commander. He contended that there was no need for validation of inspections at the secretarial level, "because there are people looking over [base commanders'] shoulders at every stage."

On whether federal agencies should be brought under OSHA jurisdiction, Marienthal noted that such a proposal raises serious questions of procedure and stated, "On balance, we believe that such an amendment would be undesirable. We believe that the consequent diversion of OSHA's resources would weaken the program in the private sector, without corresponding benefits."

Expanding on his prepared testimony, Marienthal asserted, "We feel we have a great program now, so why change? We are very satisfied with where we are now and would like to continue that way." Asked by Rep. Mickey Edwards (R-Okla) whether the situation is analogous to proposed exemption of private-sector companies with good safety records from OSHA inspections, Marienthal endorsed both the analogy and the proposed exemption.

Abatement Funding

Gaydos, in concluding the hearing, referred to DOD's "progressive intentions" and said that there seemed to be no "widespread neglect." He proposed a partnership between Congress and federal agencies to solve program and policy problems, and stated the possibility that the subcommittee might offer to use its influence in the future on DOD budget requests for safety and health and workers' compensation programs.

Marienthal had alluded in his testimony to insufficient funding assistance for institution of engineering controls at local commands. The DOD budget request to abate hazards through engineering controls was \$142 million in fiscal 1981, with \$796 million funded for 1981-85. The target date of the program is the end of fiscal 1984.

Procurement

NATIONAL CANCER INSTITUTE SEEKS FIRM TO STUDY FURNITURE-WORKER MORTALITY

The National Cancer Institute is seeking nonprofessional technical, managerial, and clerical support to conduct a follow-up mortality study of workers employed in the furniture manufacturing industry.

The study is designed to relate the mortality experience of furniture workers to workplace exposures as determined by job titles and type of furniture manufactured, an NCI announcement said.

All requests must be in writing, referring to RFP No. NCI-CP-FS-01040-65, to Sydney M. Jones, Contracting Officer, Biological Carcinogenesis & Field Studies Contracts Section, Research Contracts Branch, National Cancer Institute, Landow Building, Room 4C-19, 7910 Woodmont Ave., NIH, Bethesda, Md. 20205.

The National Institute for Occupational Safety and Health is seeking a contractor to conduct a study of noise/chemical

agents effects on hearing. Proposals are due 30 days after issuance of RFP No. 210-080-0001, which is available from R.E. Heil, DHHS PHS/CDC/NIOSH, Procurement and Grants Management Branch, Parklawn Building, Room 8-29, Rockville, Md. 20857.

NIOSH also is seeking a contractor to conduct an industrial hygiene characterization of fluidized bed combustion processes. Interested persons may contact Bill Klemmer, NIOSH, at the above address, and refer to RFP No. 210-80-0024-0000.

NIOSH also is seeking a contractor to provide data entry services for its Morgantown, W. Va. facility. Interested persons may contact Bill Klemmer, NIOSH, at the above address, and refer to RFP No. 210-80-0095-0000.

Contract Negotiations

NIOSH is negotiating with the Franklin Institute, 20th and Parkway, Philadelphia, Pa. 19103, for additional work on the development of seven criteria documents under Contract No. 210-79-0091.

NIOSH also is negotiating with the Midwest Research Institute, to expand its industrial hygiene characterization of resource energy recovery systems to include aeroviral sampling and add an additional resource recovery plant to the study.

NIOSH also is negotiating with Thermo Electron Corporation, Waltham, Mass., for additional effort under existing contract No. 210-77-100 to study n-nitroso compounds in the factory environment.

Legislation

TRUCK SAFETY MEASURE SLATED FOR CONGRESSIONAL ACTION THIS SESSION

Legislation that would tighten up safety standards for commercial trucks, both interstate and intrastate in excess of 10,000 pounds, is expected to pass both the House and the Senate by the end of this session of Congress.

Salvatore J. D'Amico, chief counsel for the House Public Works Subcommittee on Surface Transportation, told OSHR July 24 that he "anticipated" that the proposed Truck Safety Act of 1979 (S 1390) "would get through Congress" before it concludes in early October.

Congress was expected to recess by August 2 for the Democratic National Convention and to reconvene again August 18 for the final session of the 96th Congress, now expected to end around October 3.

According to D'Amico, the subcommittee staff is preparing for markup of the truck safety bill in early September, prior to full committee approval.

S 1390, introduced by Senator Charles Percy (R-Ill) last July, would require employers to provide "vehicles and working conditions that are safe and healthy" and employers and employees to "comply with the safety and health standards and rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct."

The bill passed the Senate by a vote of 69 to 19 on February 20 and then was referred to the House Transportation Subcommittee where hearings were held February 25 to March 6. The House version is HR 4971.

Among the key provisions in S 1390 are:

- Protection for drivers who refuse to drive unsafe vehicles and for those who bring safety violations to the attention of federal or state enforcement officers.

- A system of civil fines and criminal penalties for safety violations with the former carrying a maximum fine of \$10,000 for failure to comply. For criminal violations, the

maximum penalty would be \$25,000, one year in prison, or both.

► A mandatory complaint investigation requirement, ordering the Secretary of Transportation to look into any nonfrivolous written complaint within 60 days.

Teamsters, ATA Support Measure

The truck safety bill carries the general support of both the International Brotherhood of Teamsters and the American Trucking Association, OSHA was told.

In hearings last summer before the Senate Commerce Committee, R. V. Durham, director of safety and health for the Teamsters, said the bill could be improved, but nevertheless represents "a major advancement toward achieving meaningful safety standards for those who work in the trucking industry."

However, Durham termed the bill's exemption for trucks weighing less than 10,000 pounds "a serious flaw" and one which should be deleted from the measure.

California

CAL/OSHA STANDARDS BOARD TO REVISE RULES FOR TRASH COLLECTION EQUIPMENT

SAN FRANCISCO — (By an OSHA staff correspondent) — A complete revision of California's job safety standards for mobile refuse and trash collection equipment will be considered by the state Occupational Safety and Health Standards Board in Sacramento at a meeting set for August 28.

The board also will hear comments on proposals to change tire-inflation work practices and to amend the list of airborne contaminants in the General Industry Safety Orders to drop the allowable exposure level for trichloroethylene from 100 parts per million parts of air to 25 ppm.

The proposed rules for trash and refuse collection equipment cover both stationary and mobile equipment. They require such equipment to meet minimum standards of the American National Standards Institute Z245.1-1975. The proposal also includes new operating rules for compaction equipment to protect workers.

The Standards Board will meet in the auditorium, 1416 Ninth St., Sacramento, beginning at 10 a.m.

Health Hazards

TESTS ON VOLCANIC ASH PLANNED; AGENCIES CONTINUE HEALTH MONITORING

SEATTLE — (By a BNA staff correspondent) — In an attempt to end disagreements over how much of Mount St. Helens' ash is potentially dangerous to human health because of its crystalline free silica content, the National Institute for Occupational Safety and Health will send standardized samples of ash to a number of laboratories and then analyze their results.

Dr. Donald D. Dollberg, research chemist at the NIOSH division of physical science and engineering, told BNA July 14 that some 15 laboratories have agreed to participate in the "round robin," or reference sample program.

Laboratories in the Northwest and elsewhere are reporting widely varying percentages of crystalline free silica that is respirable, Dollberg said. The figures range from zero to as high as 20 percent, he said. Respirable particles are those under 10 microns.

Long-term exposure to high concentrations of crystalline free silica may result in silicosis (Current Report, June 19, p. 72).

Dollberg said results of the analyses should be available in mid-August.

Hospitals Monitored, Loggers Tested

Dr. George Rogers, epidemiologist from the division of tuberculosis control at the Center for Disease Control, now assigned to federal emergency assistance offices in Vancouver, Wash., said the short-term effects of breathing ash from Mount St. Helens appear to be minimal. CDC's monitoring of hospital visits for pulmonary problems indicates irritation of the eyes and lungs seems to be temporary.

But CDC is testing logging crews in the Chehalis area who are working on ashfall areas and will continue to monitor their health, he said. CDC is concerned also that ash cleanup crews wear face masks.

For the general public, protection is not necessary unless further eruptions occur, according to CDC. In that case CDC would advise the general public to "just use common sense" and wear NIOSH-approved devices, he said.

Analysis of the chemical makeup of the ash reveals no radiation and indicates the composition is "that of weak fertilizer minus the nitrogen," Rogers said.

California

CAL/OSHA APPEALS JUDGE SAYS DOSH HAS CONCURRENT AUTHORITY OVER MINES

SAN FRANCISCO — (By an OSHA staff correspondent) — The California Division of Occupational Safety and Health (DOSH) has jurisdiction to enforce job safety standards on mining operations in the state so long as the standards do not conflict with those of the Secretary of Labor, an administrative law judge of the California Occupational Safety and Health Appeals Board ruled July 3.

"The state [Occupational Safety and Health] Act and state safety orders apply to mines," said law judge Adolf Loeb.

The case involved a joint venture sand and gravel mining company, Yuba Gold Fields, Inc. and the Lamon Group, d.b.a. Yuba River Ores, Marysville (Docket Nos. 424-80 — 426-80). The firm was cited by DOSH for alleged serious violation of 8 CAC 7030(b) because tail pulleys and conveyor belts lacked guarding at their nip points. DOSH also charged that a front-end loader lacked rollover protection and adequate brakes to hold it on a grade.

At the hearing, the company said that federal inspectors from the Mine Safety and Health Administration visited the site only a few weeks before the DOSH inspection. The company's general manager testified that all MSHA recommendations were complied with.

That testimony raises a threshold issue of the jurisdiction of DOSH to inspect the site and issue its citations, Loeb observed. He concluded that DOSH does have such jurisdiction to the extent that the standard cited by DOSH does not conflict with another under the Mine Safety and Health Act.

"In the administration of the health and safety in mines the Division has jurisdiction under the California Occupational Safety and Health Act, concurrent with the Secretary of Labor under the Federal Mine Safety and Health Act of 1977 to the extent that the two laws or standards or safety orders promulgated thereunder are not in conflict," he said.

Loeb went on to compare the standard cited by the division with 30 CFR 56.14-3, a federal standard on nip points, and found them substantially similar. "Without a conflict between the two orders the cited safety order is not superseded by its federal counterpart and the division may bottom a citation upon it," he decided, affirming the citation. Loeb affirmed three serious citations against the company, but reduced the penalties assessed for them from \$435 to \$250 because of good faith.

Metro-Young Construction

Barricades or traffic delineators installed in a public thoroughfare do not create a barrier for an employer that insulates it against inspection without a warrant, administrative law judge Jonah Lebell said in the case of *Metro-Young Construction Company*, San Diego (Nos. 314-80 and 315-80). A DOSH inspector did not violate the firm's constitutional rights when he crossed the barriers to investigate possible job safety violations, Lebell decided.

The case arose when a DOSH inspector passed an excavation site in a roadway. Before presenting credentials to anyone at the site, the inspector crossed a barricade and observed an unshored trench in which a person was working on a water line. He photographed the trench and later cited Metro-Young for alleged serious violation of 8 CAC 1540(b).

The employer contended the inspection should be nullified because the inspector failed to present credentials before gaining access to the work site. The site was delineated clearly, the employer claimed, by barricades and traffic control devices.

Noting that the work site was in a public area, open to public view, Lebell upheld the validity of the inspection. "Barricades and delineators installed in a public thoroughfare as here described do not create a barrier beyond which the employer has a reasonable expectation of privacy requiring the obtaining of an inspection warrant or the presentation of credentials by the division's representative before passing between these markers to observe the operation," Lebell explained. He went on to affirm the citation and a \$185 civil penalty.

Susanville Construction

A standard requiring construction equipment operators to be qualified by training or experience for their work "means having the skill, acquired by training or experience, to recognize the hazards in working with such equipment and how to cope with them," Law Judge Loeb said in construing Construction Safety Order 1510(b). Deciding the case of *Susanville Construction Company*, Susanville (No. 1401-79), he said the standard "means more than knowing how to start and stop [a heavy construction vehicle] and put it in reverse and forward gear."

Susanville Construction was cited for serious violation of the standard after its operator of a nine-wheel pneumatic roller was killed when the roller tipped over. The evidence showed the employee had operated the roller for only two days and received no training for the job. Susanville Construction explained that the employee had experience operating other construction equipment more complicated than the roller.

There is no assurance that experience in operating other types of equipment will qualify a worker to operate a nine-wheel roller, Loeb observed. In this case, the employer should have inquired into the employee's specific qualifications to operate the roller to insure that only qualified personnel operate such equipment, he said. He affirmed the violation as a nonserious one.

Wyoming**OSHA APPROVES STATE REGULATIONS COVERING MULTI-PIECE WHEEL RIMS**

The Occupational Safety and Health Administration July 15 approved Wyoming standards for servicing multi-piece wheel rims.

According to the OSHA notice (45 FR 47549), the state standards were found to provide worker protection at least as effective as that provided by federal standards.

Copies of the Wyoming state supplement, along with the approved state plan, are available for inspection and copying from:

- Office of the Regional Administrator, OSHA, Room 1554, Federal Building, 1961 Stout St., Denver, Colo., 80294.
- Occupational Safety and Health Department, 200 East Eighth Ave., Cheyenne, Wyo., 82002.
- Technical Data Center, Room N2439R, 200 Constitution Ave., N.W., Washington, D.C. 20210.

South Carolina**STANDARDS ON COTTON DUST, PRESERVING RECORDS GIVEN APPROVAL, OSHA REPORTS**

The Occupational Safety and Health Administration July 15 announced approval for a series of South Carolina safety and health standards.

The regulations determined to be identical to federal regulations on the same subjects cover cotton dust, preservation of records, toxic and hazardous substances, lead, and special air contaminants, according to the OSHA notice (45 FR 47547).

Copies of the South Carolina standards supplement, along with the approved plan, are available for inspection and copying at these locations:

- Office of the Commissioner of Labor, South Carolina Department of Labor, 3600 Forest Drive, Columbia, S.C., 29211.
- Office of the Regional Administrator, Suite 587, 1375 Peachtree St., N.E., Atlanta, Ga., 30309.
- Director of Federal Compliance and State Programs, Room N-3112, 200 Constitution Ave., N.W., Washington, D.C., 20210.

Procurement**CONTRACTS ON ASBESTOS WORKER STUDY, STATE MORTALITY DATA AWARDED BY NIOSH**

A contract for developing and maintaining a recordkeeping system for asbestos-exposed workers was awarded by the National Institute for Occupational Safety and Health.

Under the agreement, the Western Institute for Occupational Environmental Sciences, Inc., Berkeley, Calif., will process data from the records of 2,300 workers employed in shipyards or longshoring during World War II and shortly thereafter. Information from 2,300 histories and 800 questionnaires will be entered and verified on mag tapes, and the tapes matched with each other and with an X-ray evaluation tape processed under a previous NIOSH agreement according to the contract.

A continuing record of contacts with each examined worker will be maintained, the contract noted. The document also specified that, where appropriate, workers should be referred to the Asbestos Awareness Resource Center, conducted by the Western Institute under a National Cancer Institute grant.

The contractor also agreed to send a mailing to each of the workers in July or August 1980, including general information on the Worker Institute program to date and the activities of the Resource Center.

According to the contract, the \$17,305 agreement will expire December 26, 1980.

Washington State Mortality

NIOSH awarded a \$98,896 contract to the Washington State Department of Social and Health Services for a study

of occupational mortality in the state from 1950 through 1979.

The contract, scheduled to expire December 28, 1981, calls for a proportionate mortality analysis of Washington residents 20 years of age and older. The study, NIOSH stated, must be capable of providing proportionate mortality ratios for workers in specified age groupings according to the age at death.

Also, an expanded study must be conducted to examine the proportionate mortality experience of males and females. For males, the contract said, the analysis must examine the period from 1950 through 1979, and determine proportionate mortality ratios for the periods 1950-59, 1960-69, and 1970-79, as well as for the entire 29-year time frame.

For female workers, the study must determine mortality ratios for the period from 1974 through 1979, the contract specified.

The contract stated that, from the proportionate mortality data processed, a report is to be prepared for submission to NIOSH.

Occupational Health Guidelines

Arthur D. Little, Inc., Cambridge, Mass., will prepare a series of publications providing information on occupational hazards, under a \$46,494 agreement with NIOSH.

The documents, collectively titled the NIOSH Occupational Health and Guidelines series, will deal individually with guidelines for occupational health, medical surveillance, respiratory protection, and personal protection and sanitation. In addition, the company will prepare a pocket guide to chemical hazards.

Similar publications currently are being developed by NIOSH under the Standards Completion Project, the contract noted. It added that the Arthur Little project will deal with 20 substances which were excluded from the SCP after the Occupational Safety and Health Administration initiated rulemaking on them.

Among these substances, NIOSH noted, are asbestos, vinyl chloride, inorganic arsenic, coke oven emissions, and beryllium and its compounds.

The contract called for Arthur Little to furnish the necessary personnel, material, services, and facilities to prepare a separate guidelines series for each of the 20 substances.

The contract expiration date is December 30, 1980.

Safety Information

Safety information profiles on five subjects are to be written by JRB Associates, Inc., McLean, Va., under a \$76,667 NIOSH contract effective for one year from June 30, 1980.

According to the agreement, the profiles will cover oil and gas field operations, use of personal protective equipment, use and handling of liquified natural gas, hazards of flammable and combustible liquids in plastic containers, and use and hazards of flammable solids.

Each profile, NIOSH stated, should include information on potential hazards, occupations at risk, number of persons oc-

cupationally exposed, control technology, accident favors, and the names and addresses of companies involved in relevant operations.

According to the terms of the agreement, each profile should be written in a "narrative, informative, and concise manner," and should include tables and graphs.

North Carolina

LEGISLATURE APPROPRIATES FUNDS TO HIRE SIX ADDITIONAL INDUSTRIAL HYGIENISTS

RALEIGH, N.C. — (By an OSHA staff correspondent) — The North Carolina General Assembly in June provided funds to hire six additional industrial hygienists for the state Occupational Safety and Health Division, bringing to 13 the total number of industrial hygienists employed by the state.

North Carolina Labor Commissioner John C. Brooks July 23 told OSHA he will ask the General Assembly to appropriate \$994,000 for 44 more industrial hygienists when the legislature convenes next January.

The six positions to be filled this year will represent an 85 percent increase in the industrial hygienist staff.

Brooks said the state labor department will request additional hygienists each year, but rapid increases are impossible because of the lack of available industrial hygienists.

"We think six is about as many as we can get in a 12-month period," he said.

The state has filled three of the six positions created in June and may set up an in-house training program for the other three.

North Carolina also has six vacancies in its enforcement program and may start a training course to fill four of those positions.

Publications

POTENTIAL LIQUEFACTION HAZARDS. PLANT SURVEY DATA REPORTED BY NIOSH

A report on potential safety and health hazards in coal liquefaction processes is available from the National Institute for Occupational Safety and Health.

Included in the study (Current Report, May 15, p. 1163) is a review of current information on worker health aspects of coal liquefaction, as well as a survey of two liquefaction pilot plants. Sampling at the plants found worker exposure to "low concentrations" of polynuclear aromatic hydrocarbons and aromatic amines, some of which are suspected carcinogens, NIOSH stated.

Other hazards associated with constituent chemicals in the liquefaction process are acute effects from inhalation, severe respiratory irritation, and chemical and thermal burns, NIOSH noted.

Copies of the special technical report, "Coal Liquefaction: Recent Findings in Occupational Safety and Health" (No. 80-122), are available from NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.



Review Commission Activity

ACTIVITY OF OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

This Section includes —

Review Commission Decisions: Decisions and orders of the full commission.

Review Commission Final Orders: Judges' reports which have become final, with date of finality.

Judges' Reports Ordered Reviewed: Date ordered reviewed, judge's report, and issues on review.

Court Cases: Filings and dispositions of appeals from commission decisions in the federal courts.

Notices of Contest: Notices of contest to Labor Department citations.

REVIEW COMMISSION DECISIONS

Georgia Highway Express, Inc., 7/18/80 — citation for violation of 1910.132(a), for failure to require employees working on loading dock to wear steel tipped safety shoes, is affirmed; evidence proved that employees routinely handled items weighing between 25 and 50 pounds and that full load of such items often weighed as much as 700 pounds; employer's argument, that facts did not show hazard of process or environment within meaning of cited standard, is rejected; facts prove that employees were subject to possibility of foot injuries due to falling freight, and Review Commission and appellate court cases have held safety shoes to be required on similar freight docks (No. 76-4146).

Red Lobster Inns of America, Inc., 7/18/80 — judge's decision vacating citation for violation of 1926.401(c), for operating electric generator without fastening ground connection, is reversed and citation is affirmed; evidence showed that employer's jobsite superintendent, responsible for operations of subcontractors, rented electric generator for use at site; compliance officer observed ungrounded generator in use by two carpenters and issued citation to jobsite superintendent; employer argued that none of its employees were exposed to hazard and that jobsite superintendent had no supervisory authority over employees of subcontractors; these arguments are rejected because employer is responsible for violations of other employers where it could reasonably be expected to prevent or abate violations due to its supervisory authority and control over worksite; jobsite superintendent had substantial authority to assure that construction work was completed successfully; his knowledge of violation is properly imputed to employer (No. 79-5519).

Stone & Webster Engineering Corporation, 7/18/80 — judge's decision to affirm citation for willful violation of 1926.500(d)(1), for failure to guard opensided platform 18 feet above concrete floor of trench, as serious violation because employer's action could not be characterized as deliberate, conscious, intentional conduct, is affirmed; Secretary argued that judge's decision was erroneous and unduly restrictive in that it imposed upon Secretary additional burden of proving that employer's disregard for legality of its actions was conscious, deliberate, intentional, and voluntary; Secretary's argument, that erection of protective guardrail and its subsequent removal demonstrated willfulness, is rejected; knowledge of standard and subsequent violation of standard do not in themselves prove willful violation; Secretary failed to demonstrate that conduct in question reached level of intentional disregard, reckless or plain indifference necessary to sustain willful violation; employer's belief that guardrail

would interfere with installation of waterproof membrane and its subsequent dismantling of that protective barrier was not devoid of reason (No. 15314).

Sunrise Plastering Corporation, 7/18/80 — citation for violation of 1926.500(b)(1), for failure to guard several floor openings with standard guardrails or covering, is affirmed; employer's argument, that it is not proper party to correct the cited conditions under *Anning-Johnson/Grossman Steel*, is rejected; under that affirmative defense, employer must prove that it is a subcontractor that neither created nor controlled the violative conditions and therefore lacks the ability to correct the violative conditions; testimony of employer's president established that employer was "controlling employer" within meaning of Review Commission cases deciding that issue; evidence proved that employer's contract required it to perform all work necessary to bring worksite into compliance with Occupational Safety and Health Administration regulations; facts of case show that employer did provide guarding for all cited openings but that these guards were removed by other subcontractors at site; facts prove, however, that employer knew of the guardings' removal but failed to remedy the violations; accordingly, it is found that employer knew of cited conditions, that it could have corrected those conditions, and that it had contractual responsibility for doing so (No. 78-846).

REVIEW COMMISSION FINAL ORDERS

Anderson-Tully Company, 7/17/80 — citation for violation of Section 5(a)(1) of Occupational Safety and Health Act, for allowing crossties in process of moving from cut-off saw to tumble in manner presenting hazard to employees, is affirmed with penalty reduced from \$360 to \$25; employer did not contest citation but only the penalty proposed by the Secretary; evidence proved that employer took all steps in order to ensure safety of its employees, including changing of work stations to minimize any employee exposure to hazard; evidence proved that hazard existed only for short period of time while employer awaited shipment of equipment needed to abate hazard; evidence was unclear as to whether there was any actual exposure to hazard and as to the number of employees so exposed (Brenton, Judge; No. 79-6907).

Bergeron Marine, Inc., 7/18/80 — citation for violation of 1910.252(a)(2)(iv)(c), for failure to separate oxygen cylinders in storage from fuel-gas cylinders by minimum distance of 20 feet or by noncombustible barrier, is vacated; cylinders were not in storage but were ready for use in location where welding and burning was performed on daily basis; citation for violation of 29 CFR 1916.42(a)(2), for

failure to secure portable ladder, is affirmed; though employees were familiar with workrule requiring tying off or lashing portable ladder, evidence failed to show employer had effective method of enforcing rule; citation for violation of 1916.43(c), for failure to erect guardrail around deck edges of barge, is vacated; evidence established that nature of work prohibited installation and use of guardrails; compliance with standard was not economically feasible as additional \$53,300 product cost was not shown to significantly benefit employee safety; installation and maintenance of guardrails would create hazard not previously in existence (Brenton, Judge, No. 79-5493).

Bultema Dock & Dredge Company, 7/14/80 — citation for violating 1910.410(c)(1), for failing to provide employee in charge of safety and health aspects of dive team members at dive location is affirmed as a serious violation and penalty of \$300 is assessed; citation for violating 1910.410(a)(4), for failing to require compressor operator to be trained in diving-physics and physiology, is vacated; employer's shift supervisor had adequate authority and responsibility to satisfy requirements for designated person-in-charge, but he was not present at dive location frequently enough to satisfy the standard, nor did two-way radio compensate for this deficiency; compressor operator does not have sufficient control over exposure of others to hyperbaric conditions to require training in diver physics and physiology (Brady, Judge, No. 79-731).

Bunge Corporation (Indiana), 7/14/80 — citation for violation of 5(a)(1) of Occupational Safety and Health Act, for requiring employees to enter unpurged compartments of desolventizer-toaster (DT) without first testing atmosphere to assure that hexane level was below explosive limit and for failing to monitor confined space to assure that hexane-air mixture remained below explosive limit, is vacated; Secretary failed to show presence of ignitable source necessary for explosion to occur; citation for violation of 1910.134(a)(2), for requiring employees to enter unpurged compartments of DT without being equipped with supplied air respirator or self-contained breathing apparatus, is affirmed; employer's argument, that hazardous concentration of hexane was not shown and so standard was not applicable, is rejected; evidence established that employees entering DT suffered headaches, dizziness, nausea, and rubbery legs caused by exposure to hexane laden atmosphere; employer's subsequent direction that employees wear proper respiratory equipment showed recognition of hazard; citation for violation of 1910.134(e)(3)(i) and 1910.134(e)(3), for failing to ensure that personnel was familiar with written respirator procedures, for failing to prepare emergency procedures in area where, with failure of respirator, employee could be overcome by toxic or oxygen-deficient atmosphere, is affirmed.

Employer's argument, that record did not substantiate finding that atmosphere within DT was dangerous, is rejected; standard applies in situations where dangerous atmospheres might be encountered, either in normal operations or in emergencies and employer had knowledge that dangerous atmosphere might be encountered in course of its operations; employer's placement of written safety procedures in management level offices instead of employee bulletin board did not effectuate familiarization of employees with procedures; record did not indicate that written procedures were discussed at safety meetings; citation for violation of 1910.1001(g)(2)(i), in that asbestos waste was placed and stored in trash receptacle which did not have caution label affixed, and citation for violation of 1910.1001(h)(2), in that asbestos waste was not collected and sealed in impermeable

containers, are vacated; applicability of two standards in question is predicated upon presence of asbestos fibers and record was devoid of evidence showing asbestos in employer's laboratory (Abels, Judge, No. 79-2205).

Crane Service, Inc., 7/11/80 — citation for serious violation of 1926.550(a)(15)(iv), for failure to provide designated person to warn of proximity of power line, is vacated; evidence showed that concrete truck driver was attempting to clean out concrete bucket suspended from crane as accommodation to crane operator when he swung bucket into 7200 volt power lines and was electrocuted; since job being done by crane didn't require boom to swing in direction of power line, no hazard was reasonably foreseeable and no signalman was designated; in exercise of reasonable diligence, employer could not have anticipated any reason for boom of crane to be swung toward power lines (Blythe, Judge, No. 79-5507).

Main Tubular Products, Inc., 7/18/80 — citation for violation of 1910.212(a)(3)(ii), in that press brake was used without any point of operation guard, is vacated; employer who had never been cited for violation of any standard did not know, and could not have known that cited standard was applicable to its press brake; guarding of press brakes by industry in metal fabrication business in employer's area was non-existent; there was no history of injury due to unguarded press brakes; language of regulation would have led employer to believe that press brakes had been specifically exempted from guarding requirements; use of two or more guarding devices on employer's machine was not feasible, was too expensive and would interfere with employer's production capabilities (O'Connell, Judge, No. 78-327).

Metz Contracting, Inc., 7/17/80 — citation for alleged violation of 1926.652(c), for failure to slope or shore sides of trench located in hard or compact soil, is vacated; evidence proved that employer did slope the trench wall above five-foot level; Secretary failed to measure trench's width at bottom or at five foot level so that no degree of slope of the trench walls could be computed; Secretary therefore failed to meet its burden of proving that cited trench was insufficiently sloped; citation for nonserious violation of 1926.651(i)(1), for failure to store and retain excavated materials at least two or more feet from edge of excavation, is affirmed; Secretary's compliance officer testified that excavated material was stored at trench's edge and employer's witnesses made no effort to refute this testimony (McQuade, Judge, No. 79-5789).

Thomas Construction Company, Inc., 6/27/80 — citation for repeated violation of 1926.56(a), in that employees were not provided with adequate illumination within four story structure, is vacated; employer had ceased performing work in building so it had no knowledge of lighting conditions therein; employer, as one of several prime contractors, had no duty to furnish lighting to other trades working within building; citation for violation of 1926.451(d)(10), in that scaffold platform did not have standard guardrail installed on openside and ends, is vacated; no evidence that employer failed to provide feasible protection for workers during erection stage; citation for nonserious violation of 1926.150(a)(1), for failing to develop fire protection program, is vacated; employer's workers were not working within main building and employer did not create fire hazard therein, employer had no duty to furnish fire equipment in building (O'Connell, Judge, No. 77-3646).

Wray Electric Contracting, Incorporated, 7/16/80 — citation for violation of Section 5(a)(1) of Occupational Safety and Health Act, for reinstalling wires into control panel

without locking out safety switch when panel was not readily visible from electrician's working position, is vacated; lock-out requirements were not recognized for employer's procedures; other means of protection negated contention that workplace was unsafe; electrician entered shed periodically and would see workman entering shed; guards were present on lead in wires connected to starter box; alternative allegation of 1926.400(g)(1) violation, in that deenergized equipment did not have tags attached where equipment could be energized, is vacated; proposed amendment related back to date of issuance of citation so six month limitation provision is inapplicable; however record did not show whether tags were or were not attached to switch (Larkin, Judge: No. 79-2973).

JUDGES' REPORTS ORDERED REVIEWED

Leone Industries, Inc., 7/16/80 — citation for repeat, serious violation of 1910.212(a)(1), for failure to guard machine's point of operation, is affirmed as serious violation with \$1,000 penalty; citation for repeat, serious violation of 1910.219(f)(3), for failure to guard exposed star wheels on machinery, is affirmed as serious violation with \$1,000 penalty; undisputed evidence established violative conditions as alleged by Secretary; employer successfully argued that machinery involved in present citation was "on loan" while its own machinery was being serviced; employer conceded that machinery being serviced was machinery originally cited by Secretary; employer proved that unless it used loaned machinery in unguarded condition it would have to suspend operations and temporarily lay off its employees, accordingly, citations were reduced from repeat to serious classification and were affirmed as such (Fier, Judge).

Issue on review: whether judge erred in failing to rule on Secretary's allegation that serious violation found by judge was repeat violation (No. 79-5276).

Williams Enterprises of Georgia, Inc., 6/26/80 — citation for violation of 1926.28(a) and 1926.105(a), for failure to require employees exposed to fall hazard to use personal protective equipment or provide alternate protection including safety nets and connector's toggles, is affirmed; evidence proved that employees were exposed to 20 to 90 foot fall hazard and that they failed to remain hooked up to safety lines while moving from work station to work station; employer's argument, that doctrine of res judicata applies in this case to prevent employer from relitigating issue of whether cited standards are applicable to steel erection, is rejected; significant developments in legal principles applicable to this case mitigate against application of doctrine of res judicata; employer's argument, that Subpart R preempts application of cited standard because Subpart R specifically concerns steel erection, is rejected; although Review Commission was unable to agree regarding applicability of Subpart R, appellate court decision has held that general safety requirements were not preempted by Subpart R.

Employer's argument, that industry custom did not require use of fall protection devices by Secretary and therefore Secretary could not sustain a finding of violation of 1926.28(a), is rejected; evidence of industry practice, although persuasive, is not conclusive with regard to finding violation of cited standard; evidence proved that safety belts and lines could be used by employees while moving from one work station to another; employer's argument, that Secretary failed to establish that use of safety nets or other fall protection measures were feasible, is rejected; burden of proving feasibility is not on Secretary, but on employer to

prove their infeasibility; citation for nonserious violation of 1926.750(b)(1)(i), for failure to solidly plank or deck floor except for access openings, is affirmed; employer's argument, that openings in decking were access openings and permitted under cited standard, is rejected; evidence proved that openings were maintained far longer than needed for "legitimate" access openings; citation for alleged violation of 1926.750(b)(1)(iii), for failure to maintain safety railing at 42 inch height, is rejected; evidence proved that although employer originally installed cited railing, responsibility shifted to general contractor; evidence fails to establish that employer had knowledge of violative condition at time of inspection (Sparks, Judge).

Issues on review: whether judge erred in concluding that res judicata was not applicable to facts of this case; whether judge erred in concluding that Subpart R precluded finding of 1926.28(a) violation; whether evidence supports judge's finding of 1926.28(a) and 1926.105(a) violation; whether judge erred in finding violation of 1926.750(b)(1)(i); whether judge erred in reducing violation of 1926.750(b)(1)(i) to nonserious; whether judge erred in vacating citation for violation of 1926.750(b)(1)(iii) on ground that employer was not responsible for maintaining cited safety cable (No. 79-4618).

COURT CASES

Brunswick Corporation, appeal filed by Secretary, 7/7/80, 8th Cir., No. 80-1580 (RevComm: No. 79-569, 8 OSHC 1708).

Capital Electric Line Builder of Kansas, Inc., appeal filed by employer, 7/14/80, 10th Cir., No. 80-1711 (RevComm: No. 79-2328, 8 OSHC 1707).

International Harvester Company, affirmed, 6/16/80, 7th Cir., No. 79-2035 (RevComm: No. 76-4388, 7 OSHC 1742).

J.I. Hass Company, Inc., appeal filed by employer, 7/15/80, 3rd Cir., No. 80-2017 (RevComm: No. 79-6864, 8 OSHC 1711).

NOTICES OF CONTEST

AAA Action Rental's, Inc., Columbus, Ohio, is contesting a \$700 additional penalty for failure to correct a violation of 1910.22(d)(1) for failure to ensure that floor load capacities were marked and securely affixed in a conspicuous place (No. 80-3209).

ABC Paving Company, Inc., and Frank Ciminelli Construction Company, Inc., West Seneca, N.Y., is contesting a serious citation and a \$200 penalty for 1926.28 a for failure to ensure employees' use of appropriate personal protective equipment where required.

The company also is contesting a \$150 penalty for 1926.500 (d)(2) for failure to guard open-sided runways (No. 80-3107).

Acme Engineering Company, Scarborough, Maine, is contesting a \$180 penalty for serious citation for 1926.400 (c) for failure to ensure that employees did not work in proximity to unguarded electrical power circuits (No. 80-3012).

Anchor Hocking Corporation, Lancaster, Ohio, is contesting a repeated citation and a \$3,060 penalty for 1910.23 (c)(1) for failure to guard open-sided floors, 1910.212 (a) for failure to guard machinery blades, and 1910.219 (f) for failure to enclose sprocket wheels and chains.

The company also is contesting a seven-item nonserious citation, including 1910.179 (b)(5) for failure to ensure that rated load markings on cranes were legible from the ground, 1910.179 (j) (4) (i) for failure to inspect cranes idle for

month or more before use, and 1910.215 (b)(9) for failure to ensure proper distance between abrasive wheels and the end of safety guards on bench grinders (No. 80-2995).

W.A. Arnold & Sons, Three Rivers, Tex., is contesting a \$210 penalty for a serious citation for 1910.309 (a) for failure to ground plug- and cord-connected equipment (No. 80-3381).

Bauer Radiator, Inc., DePew, N.Y., is contesting a serious citation and a \$180 penalty for 1910.107 (b)(1) for failure to ensure that a spray booth was constructed of steel, concrete, or masonry (No. 80-3139).

Bridgeport Brass Company, division of National Distillers and Chemical Corporation, Bridgeport, Conn., is contesting a serious citation and a \$910 penalty for 1910.179 (d)(3) and 1910.23(c)(2) for failure to guard bridge footwalks adequately and 1910.309(a) for failure to guard electrical equipment against accidental contact with live parts.

The company also is contesting a 15-item citation and an \$80 penalty, including 1910.212 (a)(1) for failure to guard machinery nip points and pinch points, 1910.22 (a)(1) for failure to maintain a workplace in a clean and orderly condition, and 1910.22 (b)(1) for failure to keep an access way clear where mechanical handling equipment was used (No. 80-3124).

Burndy Corporation, Norwalk, Conn., is contesting a serious citation and a \$350 penalty for Section 5 (a)(1) for failure to ensure that power was locked out of a press before maintenance, inspection, cleaning, adjusting, or servicing (No. 80-3009).

C & D Batteries, division of Eltra Corporation, Conshohocken, Pa., is contesting a seven-item serious citation and a \$4,770 penalty, including 1910.1025(c)(1) for failure to ensure that employees were not overexposed to lead, 1910.1025(d)(b)(ii) for failure to conduct air monitoring for lead exposure as required, and 1910.1025 (g)(1)(i) for failure to provide and require the use of full-body protective clothing for employees exposed to lead.

The company also is contesting a willful citation and a \$1,200 penalty for 1910.151 (c) for failure to provide quick drenching facilities for employees exposed to corrosive materials (No. 80-3296).

Calumet Wilbert Vault Corporation, Gary, Ind., is contesting a serious citation and a \$320 penalty for 1910.309 (a) for failure to ensure a permanent and continuous grounding path from equipment (No. 80-2896).

Campbell Soup Company, Inc., Napoleon, Ohio, is contesting a 16-item serious citation and a \$5,040 penalty, including 1910.178(k)(2) for failure to ensure that railroad cars did not move during loading, 1910.309(a) for failure to guard live parts of equipment against accidental contact, and 1910.23(c)(1) for failure to guard open-sided platforms adequately (No. 80-3002).

Capitol Steel Construction, Inc., Hillcrest Heights, Md., is contesting a serious citation and a \$200 penalty for 1926.250(a) for failure to secure material stored in tiers against sliding, falling, or collapse (No. 80-3183).

J & R Carrozza Plumbing Company, Chicago, Ill., is contesting a serious citation and an \$80 penalty for failure to ensure employees' use of protective helmets (No. 80-2992).

Chromalloy Research and Technology Division, Chromalloy American Corporation, Orangeburg, N.Y., is contesting a serious citation and a \$1,600 penalty for Section 5(a)(1) for failure to equip laser systems with at least two safety interlocks and for failure to establish and maintain

safety procedures to protect employees from possible radiation exposure (No. 80-3131).

G. and W. H. Corson, Inc., Plymouth Meeting, Pa., is contesting a serious citation and a \$720 penalty for Section 5(a)(1) for failure to properly safeguard a grade crossing (No. 80-3297).

Dayton Forging & Heat Treating Company, Dayton, Ohio, is contesting a serious citation and a \$290 penalty for 1910.215(a)(4) for failure to ensure that grinding machinery was used with work rests to support off-hand grinding work (No. 80-3093).

DeSoto, Inc., Chemical Coating Division, Columbus, Ohio, is contesting a serious citation and a \$1,260 penalty for 1910.132(a) for failure to ensure employees' use of protective equipment where required and 1910.1000(a)(2) for failure to ensure that employees were not overexposed to carbon monoxide (No. 80-2528).

Falls Church Construction Corporation, Falls Church, Va., is contesting a five-item serious citation and a \$1,450 penalty, including 1926.28(a) for failure to ensure employees' use of fall protection equipment, 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring, and 1926.500(c)(1) for failure to guard wall openings (No. 80-3292).

Federal Die Casting Company, Chicago, Ill., is contesting a willful citation and a \$20,000 penalty for Section 5(a)(1) for failure to train and instruct employees in safe operation of hydraulic trim presses and for failure to equip a hydraulic trim press with filters, a lubricator, a pressure regulator, and a pressure gauge for air supply lines.

The company also is contesting an 11-item serious citation and a \$9,900 penalty, including Section 5(a)(1) for failure to take precautions against molten aluminum mixing with water near melting furnaces, for failure to establish a routine checking and cleaning program for hydraulic trim presses, and for failure to maintain safe air temperatures for control valves to operate.

The company also is contesting a five-item repeated citation and a \$5,400 penalty, including 1910.217(e)(1)(ii) for failure to inspect and test mechanical power presses as required, 1910.217(c)(3)(viii)(a) for failure to design mechanical power presses to ensure that controls were not accidentally operated, and 1910.219(e)(1)(i) for failure to guard horizontal belts as required.

The company also is contesting a nonserious citation and a \$100 penalty for 1910.242(b) for failure to reduce compressed air used for cleaning purposes to less than 30 psi (No. 80-2903).

Fibre-Metal Products Company, Concordville, Pa., is contesting a serious citation and a \$400 penalty for 1910.212(a)(3)(ii) for failure to guard machinery points of operation (No. 80-3309).

Foreman Industries, Inc., Dayton, Ohio, is contesting a seven-item repeated citation and a \$28,000 penalty, including 1926.28(a) and 1926.105(a) for failure to provide fall protection for employees, 1926.28(a) for failure to ensure that an employee was wearing eye protection where required, and 1926.450(a) for failure to withdraw defective ladders from service.

The company also is contesting an 11-item serious citation and a \$5,800 penalty including 1926.152(g)(9) for failure to post "No Smoking" signs in service and refueling areas, 1926.102(a)(1) for failure to ensure an employee's use of eye protection, and 1926.152(g)(11) for failure to provide an adequate fire extinguisher where required.

The company also is contesting a willful citation and a \$4,200 penalty for 1926.451(e)(10) for failure to guard a scaffold adequately.

The company also is contesting a nonserious citation for 1926.350(h) for failure to ensure that an oxygen-cylinder gauge was in proper working order (No. 80-2923).

Foreman Industries Inc., Dayton, Ohio, is contesting a five-item citation and a \$3,000 penalty, including 1926.400(a) for failure to guard electrical equipment from physical damage, 1926.401(c) for failure to ensure a permanent and continuous ground path from equipment, and 1926.602(c)(1)(vi) for failure to ensure that an employee operating a powered industrial truck was trained and authorized for such work.

The company also is contesting a nonserious citation for 1926.152(a)(1) for failure to ensure use of approved metal safety cans for handling and use of flammable liquids and 1926.350(a)(9) for failure to secure compressed-gas cylinders in an upright position (No. 80-2924).

Garlock, Inc., Mechanical Packing Division, Palmyra, N.Y., is contesting a seven-item citation and a \$1,980 penalty including 1910.242(b) for failure to ensure that compressed air used for cleaning purposes was reduced to less than 30 psi, 1910.212(a)(3)(ii) for failure to guard machinery points of operation, and 1910.217(c)(2)(i)(d) for failure to ensure that point-of-operation guards did not utilize fasteners readily removable by the operator so as to create the possibility of misuse or removal of essential parts (No. 80-3105).

General Motors Corporation, Rochester Products Division, Detroit, Mich., is contesting a serious citation and a \$630 penalty for Section 5(a)(1) for failure to ensure that employees did not ride a lift platform designed for carrying material only (No. 80-3130).

Grives-Atkinson Joint Venture, Vancouver, Wash., is contesting a repeated citation and a \$1,260 penalty for 1926.300(b)(2) for failure to guard moving parts of equipment.

The company also is contesting a serious citation and a \$720 penalty for 1926.550(a)(9) for failure to barricade areas to prevent employees from being struck or crushed by a crane (No. 80-3215).

Grobet File Company, New Hampshire, Inc., Charlestown, N.H., is contesting a serious citation and a \$360 penalty for 1910.217(b)(3)(ii) for failure to ensure that mechanical power presses using full-revolution clutches incorporated a single-stroke mechanism (No. 80-3225).

Grunau Sprinkler Company, Inc., Milwaukee, Wis., is contesting a serious citation and a \$420 penalty for 1926.450(a)(1) for failure to provide safe access to all elevations.

The company also is contesting a nonserious citation for 1926.451(a)(12) for failure to secure planking of platforms from movement (No. 80-3204).

Hamer Lumber Company, Ronceverte, W. Va., is contesting a nine-item serious citation and a \$3,050 penalty, including Section 5(a)(1) for failure to institute an effective preventive maintenance program requiring predetermined replacement of hydraulic lines, 1910.265(c)(12)(v) for failure to lock out power on equipment before maintenance and repair, and 1910.265(g) for failure to provide personal protective equipment where required (No. 80-3290).

Harrison Iron & Metal, Inc., Chicago, Ill., is contesting a 19-item serious citation and a \$9,030 penalty, including 1926.21(b)(2) for failure to instruct employees in the recognition and avoidance of unsafe conditions and applicable

regulations, 1926.352(i) for failure to clean, test, and ventilate a tank which had contained a toxic or flammable substance before an employee began torchcutting, and 1925.401(c) for failure to ensure a permanent and continuous grounding path from equipment.

The company also is contesting a nine-item nonserious citation and a \$395 penalty, including 1926.350(g)(2) for failure to remove defective gas torches from service, 1926.350(a)(9) for failure to secure compressed gas cylinders in an upright position, and 1926.24 for failure to take responsibility for maintenance of an effective fire protection and prevention program (No. 80-3218).

Kokosing Construction Company, Inc., Fredericktown, Ohio, is contesting a serious citation and a \$560 penalty for 1925.28(a) and 1926.105(a) for failure to provide fall protection to employees where required (No. 80-3233).

Leather Shop Inc., Concord, Mass., is contesting a serious citation and a \$280 penalty for 1910.212(a)(3)(ii) for failure to guard machinery points of operation.

The company also is contesting an eight-item nonserious citation, including 1910.2(a)(1) for failure to post a notice informing employees of their rights and responsibilities under the Occupational Safety and Health Act, 1910.212(a)(1) for failure to guard machinery nip points, and 1910.215(a)(2) for failure to ensure that double wheel grinders were guarded properly (No. 80-3228).

Lee's Log Cabin, Inc., d/b/a Log Cabin Kitchen, Schofield, Wis., is contesting a serious citation and a \$360 penalty for 1910.309(a) for failure to ground volt receptacles as required and 1910.309(a) for failure to ground plug- and cord-connected equipment (No. 80-2922).

Lincoln Pulp and Paper Company, Lincoln, Maine, is contesting a 27-item repeated citation and a \$26,230 penalty, including 1910.309(a) for failure to guard live parts of electrical equipment, 1910.309(a) for failure to ground plug- and cord-connected equipment, and 1910.309(a) for failure to provide a permanent, continuous grounding path from equipment.

The company also is contesting a 27-item serious citation and a \$23,100 penalty, including 1910.261(b)(11) for failure to cover revolving surfaces of shaft couplings with safety sleeves, 1910.261(b)(1) for failure to guard sprocket wheels and chains, and 1910.261(a)(3)(xiii) for failure to ensure that a crane was not operated under known unsafe conditions.

The company also is contesting a \$29,300 additional penalty for failure to correct nine violations, including 1910.261(g)(9) for failure to provide the required number of exits, 1910.309(b) for failure to provide disconnecting means for wooden fuse boxes, and 1910.309(a) for failure to ensure a permanent and continuous grounding path from equipment.

The company also is contesting a 24-item nonserious citation and a \$1,965 penalty, including 1910.216(a)(3)(ii) for failure to guard open-sided platforms, 1910.216(a)(3)(vi) for failure to maintain ladders in a safe condition, and 1910.261(a)(3)(xv) for failure to withdraw defective powered industrial trucks from service (No. 80-3205).

Majestic Industries, Inc., Teterboro, N.J., is contesting a \$2,520 penalty for a nine-item serious citation, including 1910.309(a) for failure to ground plug- and cord-connected equipment and for failure to guard live parts of electrical equipment from accidental contact, and 1910.212(a)(3)(ii) for failure to guard machinery points of operation (No. 80-3129).

Daniel Marr & Son Company, South Boston, Mass., is contesting a serious citation and a \$120 penalty for

1926.500(e)(1)(iii) for failure to guard open-sided stairways adequately (No. 80-3010).

Mechanicals, Inc., Cincinnati, Ohio, is contesting a serious citation and a \$1,680 penalty for Section 5(a)(1) for failure to ensure adequate means of support for piping being installed by employees and for failure to ensure that adequate equipment was supplied and used properly for pipe installation, and 1926.21(b)(2) for failure to instruct employees in the recognition and avoidance of unsafe conditions and applicable regulations (No. 80-3095).

Metropolitan Edison Company, Reading, Pa., is contesting a 14-item serious citation and a \$3,660 penalty, including 1910.309(a) for failure to guard live parts of electrical equipment from accidental contact, 1910.252(b)(3)(iii)(a) for failure to provide a disconnect switch with overload protection for an outlet connected to a portable arc welder, and 1910.309(a) for failure to ensure that current-carrying parts of plugs and connectors were enclosed.

The company also is contesting a 13-item nonserious citation, including 1910.22(a)(2) for failure to maintain floors in a dry condition, 1910.37(a) for failure to ensure that exit components were constructed as integral parts of the building, and 1910.37(k)(2) for failure to maintain means of egress free of obstruction (No. 80-3261).

Midwest Steel Erection, Inc., Southfield, Mich., is contesting eight items of a 10-item serious citation and a \$5,320 penalty, including 1926.451(a)(4) for failure to guard a scaffold adequately, 1926.451(a)(15) for failure to ensure that upright members of a scaffold were plumb, and 1926.451(e)(4) for failure to ensure that scaffold platforms were tightly planked.

The company also is contesting a nonserious citation for 1926.451(e)(8) for failure to lock the wheels of a mobile scaffold (No. 80-3008).

Monongahela Power Company, Fairmont, W. Va., is contesting a serious citation and a \$420 penalty for 1926.955(a)(6)(i) for failure to ensure that an employee standing on the ground was wearing suitable protective equipment to avoid making contact with equipment while working beside energized lines (No. 80-3231).

George Moore Incorporated, Manassas, Va., is contesting a \$2,500 penalty for a six-item serious citation, including 1926.500(b)(1) for failure to guard floor openings, 1926.450(a)(9) for failure to ensure that side rails of ladders extended more than 36 inches above landings, and 1926.451(b)(15) for failure to guard a scaffold adequately (No. 80-3310).

NL Industries, Inc., New York, N. Y., is contesting a serious citation and a \$180 penalty for 1910.132(a) for failure to ensure employees' use of personal protective equipment (No. 80-3272).

National Engineering & Contracting Company, Strongsville, Ohio, is contesting a serious citation and a \$700 penalty for 1926.600(a)(3)(ii) for failure to ensure that equipment parked on an incline had wheels chocked and the parking brake set (No. 80-3267).

Nursery Supplies, Inc., Fairless Hills, Pa., is contesting a seven-item serious citation and a \$3,220 penalty, including 1910.95(a) for failure to protect employees against the effects of noise, 1910.212(a)(3)(ii) for failure to guard machinery points of operation, and 1910.219(f)(3) for failure to enclose sprocket wheels and chains (No. 80-3299).

Oakley Pattern and Foundry Company, Cincinnati, Ohio, is contesting a six-item serious citation and a \$3,570 penalty,

including 1910.1025(c)(4) for failure to complete training of employees exposed to lead within 180 days of the standard's effective date, 1910.1025(e)(2) for failure to provide employees with respirators where engineering controls to reduce exposure to lead are absent, and 1910.134(a)(2) for failure to establish and maintain an effective respiratory protection program as required.

The company also is contesting a repeated citation and a \$1,400 penalty for 1910.134(a)(2) for failure to establish and maintain an effective respiratory protection program as required (No. 80-3007).

Ohio Brass Company, Mansfield, Ohio, is contesting a willful citation and a \$2,000 penalty for Section 5(a)(1) for failure to ensure that employees were wearing approved personal protective equipment while pouring molten metal.

The company also is contesting a serious citation and an \$800 penalty for Section 5(a)(1) for failure to ensure that employees did not work within the operating radius of a crane boom and 1910.23(c)(3) for failure to guard an open-sided platform (No. 80-2529).

Charles Parker Company, Meriden, Conn., is contesting a \$420 penalty for a serious citation for 1926.28(a) for failure to ensure employees' use of personal protective equipment (No. 80-3015).

J. C. Penney Company, Inc., Oklahoma City, Okla., is contesting a serious citation and a \$380 penalty for 1926.401(a)(1) for failure to ground plug- and cord-connected equipment (No. 80-3308).

Leon H. Perlin Company, Inc., Newport News, Va., is contesting a serious citation and a \$480 penalty for 1926.550(b)(2) for failure to ensure that cranes were not loaded beyond their rated load (No. 80-3303).

Precision Tool and Production, Dayton, Ohio, is contesting a \$350 penalty for a serious citation for 1910.1001(j)(2) for failure to make available initial medical examinations to employees exposed to airborne asbestos fiber (No. 80-3274).

Pullman Power Products, Inc., Williamsport, Pa., is contesting a serious citation and a \$2,600 penalty for Section 5(a)(1) for failure to ensure that employees did not use an elevator before it had been inspected, tested, or licensed for use and before safety switches and interlocks had been connected, for failure to ensure that employees working in a chimney were protected from falling objects overhead, and for failure to provide safe access to a work area (No. 80-2928).

Reflector Hardware Corporation, Melrose Park, Ill., is contesting a serious citation and a \$400 penalty for 1910.212(a)(3)(ii) for failure to guard machinery points of operation.

The company also is contesting a willful citation for Section 5(a)(1) for failure to ensure that a mechanical press brake did not repeat when set in the "once" or "inch" modes (No. 80-2751).

Research-Cottrell, Inc., Somerville, N. J., is contesting a serious citation and a \$720 penalty for 1926.451(e) for failure to guard a scaffold adequately (No. 80-3302).

Daniel J. Rice, Inc., Long Island City, N. Y., is contesting a serious citation and a \$240 penalty for 1926.100(a)(2) for failure to ensure employees' use of protective helmets as required and 1926.500(b)(1) for failure to guard floor openings (No. 80-3109).

Riley Stoker Corporation, Erie, Pa., is contesting a serious citation and a \$60 penalty for 1910.132(a) for failure to ensure employees' use of personal protective equipment (No. 80-3304).

to ensure employees' use of personal protective equipment where required (No. 80-3298).

Leo B. Schroeder, Inc., Dayton, Ohio, is contesting a serious citation and an \$850 penalty for Section 5(a)(1) for failure to ensure that employees had information necessary to determine the counterweight for safe erection of a scaffold, 1926.400(a) for failure to guard electrical equipment against physical damage, and 1926.500(b)(1) for failure to guard floor openings.

The company also is contesting a repeated citation and a \$980 penalty for 1926.21(b)(2) for failure to instruct employees in the recognition and avoidance of safe conditions and applicable regulations.

The company also is contesting a \$980 penalty for a repeated citation for 1926.401(c) for failure to ensure a permanent and continuous grounding path from equipment (No. 80-2536).

Sedalia-Marshall-Boonville Stage Lines, Inc., Des Moines, Iowa, is contesting an \$800 penalty for a serious citation for 1910.219(d)(1) for failure to guard pulleys, 1910.309(a) for failure to guard live parts of electrical equipment from accidental contact, and 1910.309(a) for failure to ground plug-and cord-connected equipment (No. 80-3307).

Stirling's One-Hour Martinizing Cleaners, Beaumont, Tex., is contesting a serious citation and a \$420 penalty for 1910.309(a) for failure to guard live parts of electrical equipment from accidental contact (No. 80-3380).

Stobs Bros. Construction Company, Miami, Fla., is contesting a serious citation and a \$240 penalty for Section 5(a)(1) for failure to protect employees from possible hazard of falling materials from a building entrance where upper-level formwork was conducted.

The company also is contesting a nonserious citation for 1926.125(a) for failure to keep work areas free of debris and 1926.500(b)(1) for failure to guard a floor opening (No. 80-3136).

Stringert and Bowers, Inc., McKees Rocks, Pa., is contesting a serious citation and a \$630 penalty for Section 5(a)(1) for failure to guard a roof edge or provide fall protection for employees working there (No. 80-3301).

Tate Brothers Manufacturing, Inc., Durant, Okla., is contesting a repeated citation and a \$160 penalty for 1910.95(b)(3) for failure to administer a continuing, effective hearing conservation program.

The company also is contesting a six-item nonserious citation, including 1910.1025(c)(1) for failure to ensure that employees were not overexposed to lead, 1910.1025(d)(2) for failure to conduct initial monitoring to determine employees' exposure to lead, and 1910.1025(f)(3)(ii) for failure to perform quantitative face fits for negative-pressure respirators (No. 80-3176).

Treasure Chest Advertising Company, Inc., Columbus, Ohio, is contesting a \$1,380 penalty for a serious citation for 1910.24(b) for failure to provide fixed stairs where required, 1910.212(a)(3)(ii) for failure to guard machinery points of operation, 1910.219(c)(3) for failure to enclose vertical shafting with stationary casing, and 1910.309(a) for failure to guard live parts of electrical equipment from accidental contact (No. 80-3092).

Union Carbide Corporation, Metals Division, Marietta, Ohio, is contesting a serious citation and a \$1,680 penalty for Section 5(a)(1) for failure to keep a railroad bed dry to allow locomotives to stop in an emergency, for failure to equip a locomotive with a proper sanding apparatus, and for failure to maintain proper openings in flangeways at turnouts in track crossings.

The company also is contesting a nonserious citation for 1910.22(a)(2) for failure to keep a rail yard dry to prevent employees from slipping (No. 80-3208).

United Drilling Company, Oklahoma City, Okla., is contesting a serious citation and a \$1,440 penalty for Section 5(a)(1) for failure to secure a drilling hose, 1910.23(c)(3) for failure to guard open-sided walkways, 1910.133(a)(1) for failure to provide eye and face protection where required, and 1910.219(e)(1)(i) for failure to enclose horizontal belts as required (No. 80-3270).

Vanco Ring Gasket Specialty, Inc., Stafford, Tex., is contesting a \$280 additional penalty for failure to correct a violation of 1910.95(b)(3) for failure to administer a continuing, effective hearing conservation program (No. 80-3273).

Wrecking Corporation of America, Cleveland, Ohio, is contesting a serious citation and a \$1,620 penalty for 1926.28(a) for failure to ensure employees' use of personal protective equipment, 1926.152(d)(4) for failure to provide a fire extinguisher for a diesel fuel tank truck, 1926.302(b)(7) for failure to equip a hose with a pressure-reduction safety device, and 1926.850(h) for failure to ensure that debris was not dropped through floor holes without shutes or a barricaded area (No. 80-3285).

Copies of court opinions reported in Occupational Safety & Health Reporter and not yet published in OSHR Decisions are available on loan to subscribers by contacting BNA's Opinions Clerk, (202) 452-4202. Review Commission rulings and other documents may be obtained by contacting BNA's Research and Special Projects Division, (202) 452-4324.

MCD 000013488



**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION NOTICE
OF PARTIAL SUSPENSION OF COTTON DUST STANDARD ENFORCEMENT
[45 FR 50328, July 29, 1980]**

DEPARTMENT OF LABOR

**Occupational Safety and Health
Administration**

29 CFR Part 1910

**Occupational Safety and Health
Standards; Occupational Exposure to
Cotton Dust in Warehousing and
Classing Industries**

AGENCY: Occupational Safety and
Health Administration, Department of
Labor.

ACTION: Suspension of enforcement of
rule in certain industries.

SUMMARY: Pending further
administrative reconsideration, OSHA
has suspended enforcement of its
occupational safety and health standard
for exposure to cotton dust (29 CFR
1910.1043) in the cotton classing and
cotton warehousing industries. During
this period, the preexisting standard for
exposure to cotton dust in 29 CFR
1910.1000 will be enforced.

DATE: Enforcement of the standard will
be suspended in the warehousing and
classing industries as of July 25, 1980.

FOR FURTHER INFORMATION CONTACT:
Dr. Bailus Walker (202) 523-7075.

SUPPLEMENTARY INFORMATION: OSHA
issued a final occupational safety and
health standard for occupational
exposure to cotton dust on June 19, 1978
(codified at 29 CFR 1910.1043; published
at 43 FR 27350-399, June 23, 1978). The
standard applied to textile
manufacturing and non-textile industries
such as cottonseed processing, furniture
and mattress manufacturing, cotton
waste recycling, cotton warehousing,
and classing offices. (A separate
standard was issued to regulate
exposure to cotton dust in cotton gins.
(29 CFR 1910.1046 and 1928.113; 43 FR
27434, June 23, 1978).)

Petitions for review of the standard
were consolidated in the U.S. Court of
Appeals for the District of Columbia
Circuit and a stay of the standard

pending judicial review was issued on
October 20, 1978. Petitions filed by
representatives of the cotton waste
processing industries and purchasers
and users of cotton batting were severed
from the main action on November 1,
1978. On October 24, 1979, the D.C.
Circuit affirmed the standard except as
it applied to cottonseed oil mills. It
subsequently denied petitions for
rehearing, suggestions for rehearing en
banc, and motions to continue the stay
(except for cottonseed oil mills), and the
standard became effective and
enforceable on March 27, 1980. See 45
FR 12416, February 26, 1980. The case
involving the waste processing
industries and purchasers and users of
cotton batting is still before the D.C.
Circuit, and the judicial stay of the
standard as to those industries remains
in effect. A stay of the cotton ginning
standard issued by the Court of Appeals
for the Fifth Circuit also remains in
effect.

Petitions for Supreme Court review of
the D.C. Circuit's October 24, 1979
decision were filed by the American
Textile Manufacturers Institute and
several individual textile manufacturers,
the Cotton Warehouse Association and
American Cotton Shippers Association
(representing the cotton warehousing
industry and cotton classing offices),
and the National Cotton Council of
America (representing the entire cotton
industry). The Secretary of Labor's brief
in opposition to these petitions will be
filed with the Supreme Court on July 28,
1980.

On July 2, 1980, the Supreme Court
affirmed the judgment of the Court of
Appeals for the Fifth Circuit invalidating
OSHA's standard for occupational
exposure to benzene. *Industrial Union
Department, AFL-CIO v. American
Petroleum Institute* (Nos. 78-911 and 78-
1036). Briefly, the Supreme Court ruled
that when regulating a toxic substance,
the Secretary of Labor must find, as a
threshold matter, that the substance
poses a significant risk of material
impairment and that the new, lower

standard will eliminate or reduce that
risk.

After reviewing the Supreme Court's
benzene decision, the administrative
rulemaking record on cotton dust, and
the preamble to the cotton dust
standard, OSHA has made a
preliminary determination that the
statement of basis and purpose in the
cotton dust preamble may not
adequately describe the rationale for
including cotton warehousing and cotton
classing offices. OSHA is now
undertaking a more extensive review
and analysis of the preamble and
rulemaking record to determine the
possible regulatory options with respect
to cotton warehousing and cotton
classing offices. Given the likelihood of
further administrative action on the
standard as it applies to these two
industries OSHA is suspending
enforcement of the standard in these
two industries until this reconsideration
is completed. Public notice will be given
if further administrative proceedings are
undertaken.

During this period when enforcement
of the new standard is suspended,
OSHA will enforce the preexisting
national consensus standard for
exposure to cotton dust (29 CFR
1910.1000, Table Z-1) in the cotton
warehousing and cotton classing
industries. This is in accordance with
OSHA's express intent to provide
continued protection to workers until
the provisions of the new standard are
fully effective and enforceable. See 43
FR 27350, Column 2.

This action does not affect the
enforcement of the new standard in the
textile manufacturing industry, as to
which a determination has been made
that the standard meets the Supreme
Court's requirements, or in any non-
textile industries other than classing and
warehousing.

Signed at Washington, D.C. this 25th day of
July 1980.

Eula Bingham,
Assistant Secretary of Labor.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH NOTICE ON GRANTS FOR STUDIES OF REPRODUCTIVE EFFECTS

PROGRAM ANNOUNCEMENT

GRANTS ADMINISTRATION AND REVIEW BRANCH,
OFFICE OF EXTRAMURAL COORDINATION AND
SPECIAL PROJECTS, NATIONAL INSTITUTE FOR OC-
CUPATIONAL SAFETY AND HEALTH, CENTER FOR
DISEASE CONTROL.

TITLE: REPRODUCTIVE EFFECTS FROM OC-
CUPATIONAL HAZARDS.

Application receipt dates: November 1, March 1, and July 1.

Altered fertility, low birth weight, spontaneous abortion, transplacental carcinogenesis, congenital malformation, mutagenesis, and developmental abnormalities are among the effects on reproduction that have been recognized to result from toxic occupational exposure. Exposure of both men and women can produce these effects. The knowledge base in the area of toxic reproductive hazards is relatively small. The National Institute for Occupational Safety and Health (NIOSH) would like to expand its involvement in the identification and prevention of reproductive effects from occupational hazards. The scope of this announcement is flexible to encourage various interactive combinations of research approaches that might yield insight into the issues and problems surrounding reproductive effects as a consequence of physical and chemical occupational hazards. The Institute is seeking applications for research and demonstration grants concerned with basic and applied projects in areas such as epidemiology, toxicology, control technology, and health education.

I. BACKGROUND INFORMATION

The current responsibilities of NIOSH were established by the Public Health Service Act, the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Amendments Act of 1977. A major NIOSH responsibility under those Acts is to conduct research necessary to ensure, insofar as possible, that no worker will suffer diminished health, reduced functional capacity, or decreased life expectancy as a result of his or her work experience. As a part of this responsibility NIOSH is concerned with discovering the identity and, if possible, the prevalence of physical and chemical hazards to which male and female workers who are exposed that might affect the development of their unborn children. While a relatively few chemical and physical agents are generally accepted as proven mutagens, teratogens, or carcinogens in humans, over a thousand agents are reported to have these effects in animals. Furthermore, many of these agents are reported to be mutagenic in biologic test systems and thus must be suspected as capable of causing reproductive effects in humans.

Over the past several decades there has been a threefold increase in the number of women employed in the U.S. workforce. During this period women have been employed in more hazardous occupations including those traditionally restricted to men. In recent years an increasing number of pregnant women have remained on the job until near the end of pregnancy. Thus, many more women and their unborn children are being exposed to chemical, physical, and psychological hazards of the workplace. Despite this fact, very little is known about the impact of such exposures on fetal wastage and growth and development.

Because of the unique role of women in the reproductive process, exposure to chemical and physical hazards has targeted attention on the risks to the offspring of maternal exposure. In so doing, we tend to forget that the working male exposed to mutagenic agents also places the health of his offspring at risk.

Other areas of concern are:

(1) Recognition of the potential that exists for harm to the germ cells of parents of both sexes signals a need to investigate the possibility that occupational hazards might affect the fertility of both men and women;

(2) The realization that significant quantities of industrial materials may be brought home in clothing resulting in the potential exposure of non-working pregnant women, makes studies of teratogenicity of agents to which male workers are exposed as important as studies of infertility and mutagenicity; and

(3) The possibility that childhood cancers may be related to pre-natal environmental exposures.

NIOSH is offering both a *challenge* and an *opportunity* to talented researchers interested in the study of reproductive effects from occupational exposures.

II. AREAS OF RESEARCH INTEREST

The goal of this announcement is to stimulate and encourage *high quality* research and demonstration grants in the areas of research listed below. These areas are not mutually exclusive. It is anticipated that a given research study may cut across several areas. Included under each listed area are examples of the types of studies which would be of interest to NIOSH. They are not meant to be restrictive and are cited for illustrative purposes only.

A. EPIDEMIOLOGY AND BIOMETRY: Projects which consider the *epidemiology* of reproductive effects, including altered fertility, spontaneous abortion, fetal deaths, genetic diseases and disorders and childhood cancer, resulting from chemical and physical occupational hazards. Of particular interest are studies where dose-effect relationships are identified or determined. NIOSH is interested in epidemiological research using a variety of methods or approaches. Such methods include those which *generate hypotheses* and typically use registries, medical records or statistics as the primary data source and those methods which tend to confirm hypotheses by demonstrating dose-effect relationship or the prevention of an effect by interruption of exposure. Specific examples of epidemiology studies include:

► Studies which identify groups of workers with abnormal reproductive experience and determine probable cause.

► Studies to determine whether an incidence of infertility, spontaneous abortion, or fetal mortality in the reproductive experience of a specific group of workers and/or spouses is abnormal.

► Studies to assess the parental employment relatedness of cancer in childhood.

► Studies on known reproductive hazards to evaluate and compare methodologies and to determine association between endpoints of the methodologies.

B. TOXICOLOGY: Projects to identify reproductive (mutagenic, teratogenic, etc.) hazards of chemicals to workers and to provide an early warning of the possible deleterious effects. Specific examples include:

► Research which develops test systems to detect mutagenic activity of air particulates, chemical mixtures or complexes found in the workplace.

► Projects which study the possible synergistic effect of mutagenic and teratogenic chemicals produced in workplaces.

► Research to validate human cell mutagenic assay systems.

► Studies which evaluate the usefulness of body fluid analysis and cytogenic assay systems for the assessment of the mutagenic hazard of chemicals to workers.

C. EXPERIMENTAL LABORATORY INVESTIGATIONS: Projects to elucidate the biochemical and physiological mechanisms of activity and nature of reproductive hazards in the workplace. Examples include:

► Studies to develop and validate screening systems based upon biochemical, enzymatic, or hormonal components of body fluids (e.g., blood, urine, semen) that can be used as reliable indices of the functional state of the reproductive system.

► Investigations to develop, improve, or validate short-term or *in vitro* methods for teratogenesis testing.

► Studies of mechanisms of teratogenesis, with the goal to improve the ability to predict relative teratogenic potential of chemically related compounds or to make inter-species extrapolations of teratogenesis data.

► Research on the mechanisms by which abnormalities are induced in sperm head morphology and the implications of morphological changes as indicators of induced mutations or of impaired reproductive capacity.

D. CONTROL TECHNOLOGY: Projects to develop new and improved methods or equipment to prevent reproductive effects from occupational hazards.

► Studies which identify workers potentially or actually exposed to reproductive hazards and design new or improved controls for the hazards.

► Research which adapts existing methods, as well as develop new methods of monitoring and controlling reproductive hazards in the workplace.

► Research which seeks to use innovative approaches, such as alternative materials, engineering controls, process modification and protective equipment to prevent known or suspected reproductive problems.

E. HEALTH EDUCATION RESEARCH AND DEMONSTRATION PROJECTS: Projects to increase awareness of the importance of reproductive hazards in the workplace. Examples include:

► Development of educational programs for health professionals, and worker educators to increase their awareness of the issues and problems surrounding reproductive effects from occupational hazards.

MECHANISM OF SUPPORT

The traditional grant-in-aid mechanism will be used to support grants pursuant to this Program Announcement.

Nonprofit organizations and institutions, State and local governments and their agencies, are eligible to apply.

Grants may be supported for up to three years, and may be renewed for an additional period, subject to the competitive review procedure and availability of funds.

Awards will be made based on priority score ranking, as well as availability of funds for this Program.

Grantees will be required to cost share a minimum of five percent.

Grants will be made under the legislative authorization in Section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 USC 669 (a)(1), Public Law 91-596. The Catalogue of Federal Domestic Assistance Citation is Section 13.262.

REVIEW PROCEDURES AND CRITERIA

The initial review of applications responsive to this Program Announcement will be arranged by the Division of Research Grants. Major factors considered in evaluating each application include:

► training, experience, and research competence, or promise, of the applicant(s) to carry out the proposed investigations, and the adequacy of effort (time) to be devoted to the project.

► the scientific merit of the proposal: the questions proposed for study, the research design, the proposed methodology, the proposed methods for analysis and interpretation of data.

► adequacy and suitability of the existing and proposed facilities and resources.

► appropriateness of the requested budget relative to the work proposed.

► adequacy of collaborative arrangement(s), if applicable.

A secondary review process will be conducted by NIOSH. Factors considered in this review include:

► the results of the initial review;

► the significance of the proposed research to the research program of NIOSH.

► national needs and program balance, and

► policy and budgetary considerations.

Applications responsive to this Program Announcement are not subject to OMB Circular A-95 Clearinghouse and/or Health Systems Agency review.

Proposals considered to be non-responsive to the terms outlined in this Program Announcement will be appropriately reassigned for review or returned to the investigator, as indicated. Returned proposals may be revised and resubmitted.

METHOD OF APPLYING

Applications should be submitted on a form PHS 398 (State and local governments use form PHS 5161-1). Application kits may be obtained from:

Office of Grants Inquiries
Division of Research Grants
National Institutes of Health
Westwood Building, Room 448
Bethesda, Maryland 20205
Telephone: (301) 496-7441

Care should be taken in following the instructions included with the application form making certain to fulfill the points identified under the heading "REVIEW CRITERIA."

An original and six copies (original and two copies for State and local governments) must be received no later than: November 1, March 1, and July 1 as applicable. Applications received after the designated deadline will be considered with the applications received for the following deadline. Completed applications must be sent or delivered to:

Application Receipt
Division of Research Grants
National Institutes of Health
Westwood Building, Room 240
Bethesda, Maryland 20205

A brief covering letter must accompany the application indicating that it is submitted in response to this program announcement. A carbon copy of this covering letter along with an additional copy of the application should be sent to the Chief, Grants Administration and Review Branch (see below).

IDENTIFICATION OF CONTACT POINT

Questions related to this announcement should be addressed to:

Faye Calhoun
Chief, Grants Administration and Review Branch
National Institute for Occupational Safety and Health
Parklawn Bldg., Room 8-63
5600 Fishers Lane

Rockville, Maryland 20857

Telephone: (301) 443-4493

or

Mr. Joseph West
Grants Management Officer, NIOSH
Parklawn Bldg., Room 8-29
5600 Fishers Lane
Rockville, Maryland 20857
Telephone: (301) 443-3122



Journal

August 14-15 — Pulmonary Function Testing for Industrial Nurses, Houston, Tex. (Occupational Lung Clinic, Inc., 7777 Southwest Freeway, Suite 442, Houston, Tex. 77704; tel: (713) 777-4399).

The course also will be held September 11-12.

August 14-15 — Hazardous Chemical Safety, Atlanta, Ga. (Carol Morris, J.T. Baker Chemical Company, Phillipsburg, N.J. 08865; tel: (201) 454-2500).

The course also will be held August 18-19 in Seattle, Wash., August 21-22 in San Francisco, Calif., and September 8-9 in Boston, Mass.

August 18-19 — Toxic Chemical Safety, Wayne, N.J. (Registrar, Starson Corp., NHC Div., P.O. Box 133, Stanton, N.J. 08885; tel: (215) 258-7045).

The course also will be held Sept. 11-12 in Cleveland, Ohio.

August 18-21 — Hazardous Chemical Safety Management, Minneapolis, Minn. (Short Course Registrar, Eastek Corp., 3543 Baldwin Drive, Easton, Pa. 18042; tel: (215) 252-1737).

August 18-22 — Fundamentals of Modern Safety Management, Sacramento, Calif. (International Loss Control Institute, P.O. Box 345, Loganville, Ga. 30249; tel: (404) 466-2208).

August 18-22 — Development and Growth of a Modern Safety Program, Sacramento, Calif. (Ernest Chaney, International Loss Control Institute, P.O. Box 345, Loganville, Ga. 30249; tel: (209) 485-3720).

August 19-21 — Recognition, Evaluation, and Control of Occupational Health Hazards, Monroeville, Pa. (Michael Russak, Industrial Health Foundation, 5231 Centre Ave., Pittsburgh, Pa. 15232; tel: (412) 687-2100).

August 20-21 — Hazardous Material Safety, Wayne, N.J. (Registrar, Starson Corp., NHC Div., P.O. Box 133, Stanton, N.J. 08885; tel: (215) 258-7045). The course also will be offered September 11-12 in Cleveland, Ohio.

August 25-29 — Occupational Respiratory Protection (NIOSH 593), Park City, Utah (Katharine Bloesch, RMCOEH, Bldg. 112, Univ. of Utah, Salt Lake City, Utah 84112; (801) 581-5710).

August 25-29 — Advanced Occupational Respiratory Protection, Park City, Utah (Katharine C. Bloesch, RMCOEH, Bldg. 112, Univ. of Utah, Salt Lake City, Utah 84112; tel: (801) 581-5710).

August 25-29 — Applied Industrial Hygiene, Los Angeles, Calif. (Institute of Safety and Systems Management, Univ. of Southern Calif., University Park, Los Angeles, Calif. 90007).

August 25-29 — Professional Consulting in Safety and Loss Control, Atlanta, Ga. (Frank E. Bird, Jr., International Loss Control Institute, P.O. Box 345, Loganville, Ga. 30249; tel: (404) 466-2208).

September 3 — How to Implement a Safety Program, Burbank, Calif. (Training Institute, 616 South Westmoreland Ave., Los Angeles, Calif. 90005; tel: (213) 385-6461).

September 4 — Safety Management by Objectives, Burbank, Calif. (Training Institute, 616 South Westmoreland Ave., Los Angeles, Calif. 90005; tel: (213) 385-6461).

September 8 — Reproductive Hazards, Cherry Hill, N.J. (Mary S. Hill, New Jersey State Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 8-12 — Fundamentals of Modern Safety Management, Atlanta, Ga., (International Loss Control Institute, P.O. Box 345, Loganville, Ga. 30249; tel: (404) 466-2208).

September 8-12 — Basic Safety Management, Houston, Tex. (International Safety Academy, P.O. Box 19600, 10575 Katy Freeway, Houston, Tex. 77024; (713) 932-9400).

September 8-12 — Occupational Respiratory Protection (NIOSH 593), Cincinnati, Ohio (J.S. Ferguson, Kettering Laboratory, Univ. of Cincinnati, 3223 Eden Ave., Cincinnati, Ohio 45267; tel: (513) 872-5733).

September 8-19 — Industrial Hygiene Measurements, Cincinnati, Ohio (J.S. Ferguson, Kettering Laboratory, Univ. of Cincinnati, 3223 Eden Ave., Cincinnati, Ohio 45267; tel: (513) 872-5733).

September 9-10 — Respiratory Hazards, Morristown, N.J. (Mary S. Hill, New Jersey State Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 10-11 — OSHA and the Hazard Recognition Concept for General Industry, Blacksburg, Va. (Adult Registrar, Donaldson Brown Center for Continuing Education, Virginia Polytechnic Institute and State University, Blacksburg, Va. 24061; tel: (703) 961-5182).

September 11-12 — Occupational Health for the 1980s, Salt Lake City, Utah (Katharine C. Bloesch, RMCOEH, Bldg. 112, Univ. of Utah, Salt Lake City, Utah 84112; tel: (801) 581-5710).

September 15-17 — Oil Spill and Hazardous Materials Control Technology, East Brunswick, N.J. (Rosanne Razzano, Dept. NR, Center for Professional Advancement, P.O. Box H., East Brunswick, N.J. 08816; tel: (201) 249-1400).