

Attachment 1

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Organization Resources Counselors, Inc.

Memorandum

August 8, 1989

To: ORC Asbestos Task Force

From: Darrell K. Mattheis

Subject: OSHA Asbestos Issues Update

In the enforcement of the Asbestos Standard, OSHA has had a difficult time dealing with the small removal contractor who does not follow procedures as prescribed in the standard. The requirements for the use of a negative pressure enclosure for all removal jobs, and the proscription against the use of glove bags for the removal of pipe insulation, have caused particular problems.

Negative Pressure Enclosures

There is still an argument inside OSHA over whether the standard applies only when the PEL is exceeded or whether it, and its requirement for negative pressure enclosures, applies immediately whenever a removal job is started. At present, the sloppy contractor using poor procedures and work-practice controls, can simply shut down operations when OSHA appears on the scene, and OSHA's monitoring will show little or no exposure. When OSHA leaves, the job begins again with the same poor procedures. OSHA inspectors have been writing citations if negative pressure enclosures are not in use, regardless of the airborne levels measured.

OSHA wants the authority to require that negative pressure equipment be used regardless of what the airborne levels may be so long as it is a removal job, large or small, no exemptions given. Thus, OSHA could determine immediate compliance with the standard, without the necessity to monitor. Monitoring would only be performed (by OSHA) if the CSHO judged that the operation was poorly controlled. The required use of negative pressure enclosures, coupled with the prohibition on the use of glove bags for removal operations, has caused great expense and operational difficulties for many in the industrial community.

Glove Bag Use

Under the small job exemption written into the Asbestos Standard, if a small amount of asbestos is being removed, and its removal is secondary to the performance of the operation, than glove bags may be used. If, however, asbestos insulation is being removed from pipes, and that is the main purpose of the job, then glove bags are not allowed under the present standard.

For many small removal jobs, the use of glove bags results in lower exposures than the use of negative pressure enclosures, at a far lower expense. OSHA has cited a number of employers for the use of glove bags for what are pipe insulation removal jobs, even though the exposure level is less than 0.2 f/cc. Several of these citations have been challenged and will soon be in court, and OSHA is concerned that it will lose these cases.

Negative Pressure Glove Bags

OSHA has recognized that glove bags are often the best available technology to reduce employee exposures, but as described above, has had increasing difficulty accepting their use for removal. A relatively new development, negative pressure glove bags, has allowed the OSHA National Office to once again encourage the use of the best technology. OSHA believes that the use of negative pressure glove bags, so long as the other provisions of the standard are complied with, meets the requirements of its Asbestos Standard.

An OSHA Letter Of Interpretation Supporting The Use of Negative Pressure Glove Bags

As OSHA began to allow the use of negative pressure glove bags for the removal of asbestos containing materials, it began to receive requests for formal letters of approval. On May 3, 1989, The Brand Companies Inc., as a result of a joint OSHA-EPA meeting on the use of glove bags, wrote OSHA describing its equipment and procedures and asked for an interpretation as to whether it meets the requirements of 1926.58. On July 5, 1989, OSHA responded saying:

> "It is the opinion of the Occupational Safety and Health Administration (OSHA) that the use of "Negative Air Bags" as described in your letter meets the requirement for establishing a negative pressure enclosure pursuant to 29 CFR 1926.58(e)(6), provided that all of the other provisions of the construction asbestos standard are met."

An OSHA Letter of Interpretation on Competent Persons and the Requirements of the Asbestos Standard

Recently ORC has received a number of calls asking whether OSHA interpreted the competent person requirement of its Asbestos Standard to mean that the competent person had to be on site at

all times when the job was in progress. Joanne Linhard checked this out, and digging in the file of letters of interpretation, found that in January of 1987, OSHA had received a letter asking:

> "Is a competent person required to be at the job-site at all times when supervising the abatement process?"
>
> OSHA's answer was:
>
> Yes, a competent person is required to be at the job-site at all times when supervising the abatement process. OSHA's Directorate of Field Operations interprets abatement as covering removal, demolition, and renovation operations to meet the requirements of 1926.58 (e)(6)(ii).

Copy of these two letters are attached.

Unions File Suit To Force Action on Asbestos Remand

OSHA's Asbestos Standard was remanded back to it in February of 1988 as a result of a suit filed by the Building and Construction Trades Department, AFL-CIO. The Court had a lengthy list of things it wanted OSHA to consider. One item, the Short-Term Exposure Level (STEL) had a 60-day response time. OSHA met that deadline with the publication of its "Excursion Limit" but for the rest of the items in the remand, OSHA has not responded.

On June 12, 1989, the Building and Construction Trades (BCT) union of the AFL-CIO petitioned the Court to force OSHA to respond to the 1988 Asbestos Remand by July 5, 1989. OSHA asked for a 45-day extension of time to prepare its response, and the union has opposed it. In their petition, the unions concentrated on a number of the key issues discussed in the February 1988 Remand.

> (a) PEL: "Within thirty days promulgate PELs of less than 0.2 F/cc for those operations in the construction industry "where they are feasible," or provide the Court with an explanation for declining to do so."
>
> (b) Respirator Classification: "Within thirty days, assign lower protection factors to respirators permitted for exposure to asbestos in accord with the evidence in the rulemaking record, and the best evidence otherwise available."
>
> (c) Monitoring: "Within seven days add a provision to the construction industry asbestos standard that explicitly requires resumption of periodic monitoring where a change in workplace conditions may result in exposures above the action level."

(d) Warnings and Labels: "Within thirty days add to the construction industry asbestos standard a requirement that employers utilize warnings and labels in those languages that are spoken by a substantial portion of the employer's workforce. Ten percent of the employer's workforce constitutes a substantial portion."

(e) Reporting and Record Transfer: "1) Within thirty days, require all construction industry employers to file reports with OSHA before engaging in any asbestos project. 2) Within thirty days, require all construction industry employers contracting or subcontracting asbestos-related work to establish, maintain and transfer to building owners written records of the presence and location of any asbestos products in the workplace."

(f) Competent Person: "Within fifteen days expand the scope of the competent person requirement to cover all asbestos related work, or provide a persuasive explanation for not doing so.

(g) Small-Scale Short-Duration Operations: "1) Within seven days, include in the asbestos standard appropriate language stating that for removal, demolition, and renovation, the exemption from the negative pressure enclosure requirement for small-scale short-duration operations is limited to situations where it is impractical to construct a negative pressure enclosure because of the configuration of the work environment.

2) Within seven days, remove the exemption from the competent person requirement for small-scale short-duration operations."

OSHA's Response To The Petition

OSHA, in its response to the Court, said that it intended to open the record and publish a proposal in January of 1990. The Agency has been accelerating its work on the Remand, but does not seem to be in a good position to make a substantive reply to the Court before this fall.

OSHA has (I believe) identified three response strategies:

1. Reject all of the points raised in the remand, and defend the original standard with the addition of the STEL.

2. Make all of the changes requested by the Court and the unions, but not open the record.

3. Open the asbestos record, hold hearings, make selective changes in the standard to resolve the negative pressure enclosure, glove bag use and small job exemptions, and other Remand issues.

<u>OSHA Enforcement Considerations on Remand Response (DKM opinion)</u>
OSHA would like to resolve the enforcement issues related to glove bag use and the PEL, and, at the same time, move to a more specification approach. That would involve:

a. Opening the record for additional comment on the issues raised by the Remand questions.

b. Eliminating the small job exemption.

c. Require the use of negative pressure equipment, including negative pressure glove bags, for all jobs involving removal of asbestos. This would allow the use of negative pressure glove bags for the removal of pipe insulation.

d. Require the use of glove bags inside full size negative pressure enclosures, where feasible, to maintain airborne exposures below the PEL.

e. Allow some maintenance jobs, such as the removal of gaskets, to be performed without negative pressure enclosures of any kind, and with the use of negative pressure respirators or PAPRs.

f. Selectively lower the PEL for some kinds of operations in some industries.

The first and second approaches speak for themselves, but for No. 3, some additional problems are raised. The unions in the Remand wanted to have some different (PELs) for particular industry groupings. Potentially, this could result in a PEL as low as 0.01 f/cc for some operations. The unions would like OSHA to eliminate the use of any respirators other than supplied air or SCBA where asbestos was being worked with, regardless of the level of exposure. My reading at present is that OSHA is not likely to go the route of eliminating all use of negative pressure respirators, but will, in fact, reduce some protection factors, and more carefully define when and where they may and may not be used.

To sustain the third option, OSHA will need data on the levels of exposure that are created during the operation of negative pressure glove bags in a good operation. OSHA will also need to know what can be expected during maintenance operations on, for instance,

furnaces in foundries, and gasket removal. The unions can be expected to oppose these positions, and without good monitoring data, OSHA probably could not sustain them.

Stay of the Standard for Actinolite, Anthophyllite & Actinolite
Responding to comments from interested parties, OSHA granted a temporary stay of the effective dates of the current standard as they apply to the non-asbestiform varieties of asbestos listed. OSHA has been reviewing data submitted by the R. T. Vanderbilt Company, and others, as well as the latest scientific publications on the subject. The key issue is whether there is a "non-asbestiform" variety of tremolite, anthophyllite and actinolite.

R.T. Vanderbilt filed a petition with the Appeals Court in the District of Columbia to reopen its case against OSHA's 1986 Asbestos Standard. On June 29, the Court denied the Petition, and on July 7, 1989, Vanderbilt announced its intention to re-file its petition within 45 days. Vanderbilt complained that OSHA has not conducted rulemaking on the issue as it agreed to in 1986. R.T. Vanderbilt's case to have non-asbestiform varieties of asbestos excluded from the 1986 OSHA Asbestos Standard rests on the fine points of disputed mineralogical definitions.

OSHA Extends Partial Stay Again
On July 21, 1989, OSHA published in the Federal Register notice of an "Extension of Partial Stay and Amendment of Final Rule," (54 FR 30704.) The partial stay of 1910.1001 & 1926.58 has been extended until November 30, 1990.

DKM3:lgs

Darrell K. Matthews

Attachment 2

MAY 26 1987

Mr. Kurt C. Jones
American Speciality Contractors, Inc.
Post Office Box 66375
Baton Rouge, Louisiana 70896

Dear Mr. Jones:

This is in response to your letter of January 20, 1987 requesting an interpretation of the Occupational Safety and Health Administration's (OSHA) Asbestos standard for construction, 29 CFR 1926.58. Please accept my apology for the delay in response. The overwhelming number of letters and telephone calls regarding the asbestos standard has caused unavoidable delays in responding to the public's concern.

Your letter specifically refers to 29 CFR 1926.58(e)(6)(ii) where you asked the following question:

> Is a competent person required to be at the jobsite at al times when supervising the abatement process?

Yes, a competent person is required to be at the jobsite at all times when supervising the abatement process.

If we may be of further assistance, please do not hesitate to contact us again.

Sincerely,

Leo Carey, Director
Directorate of Field Operations

SCA:ROGERS:bar:5/14/87
cc:Rogers/Smith/Carey/Anderson/Caron. File/Asbestos file

87 #532

Attachment 3

JUL 5 1982

Mr. Alfred I. Greenfeld
Corporate Manager, Occupational Safety
and Health
The Brand Companies, Inc.
1420 Renaissance Drive
Park Ridge, Illinois 60068

Dear Mr. Greenfeld:

This is in response to your letter of May 3, regarding the use of a "Negative Air Bag" in the removal of asbestos pipe insulation.

It is the opinion of the Occupational Safety and Health Administration (OSHA) that the use of "Negative Air Bags" as described in your letter meets the requirement for establishing a negative-pressure enclosure pursuant to 29 CFR 1926.58(e)(6), provided that all of the other provisions of the construction asbestos standard are met.

If we may be of further assistance concerning this matter, please feel free to contact us.

Sincerely,

Alan C. McMillan
Acting Assistant Secretary