

12/12/74

→ OSHA/VCMS Standard

handwashing facility for each 40 workers or fraction thereof, located within a five-minute walk from the work area. If compliance were made impossible by geographical conditions, toilet and handwashing facilities could be located "at the point of vehicular access closest to the workers."

Toilet facilities, the committee recommended, could include fixed or portable units and could consist of waterflushed toilets, chemical toilets, or sanitary privies. Employers would be required to keep all toilets clean and in good working order. Water-flushed toilets should be constructed and maintained in accordance with Section 1910.141 (c) (1) (iii) and (v), (c) (2), and (c) (3), and portable toilets with Section 1910.143, according to the recommendations.

Recommendations for handwashing facilities included these: sufficient potable water, a cleansing agent, single-use hand towels, and disposal containers should be provided; waste water should be disposed of in a way not creating a health hazard; separate taps for washing and drinking water should be provided and marked; and handwashing facilities should be located in the immediate vicinity of the toilet facility.

Drinking water, the committee recommended, should be potable and safe for use. Water piping systems, containers, fountains, and single service cups should be maintained in a clean and sanitary condition. Any food dispensed in the field should be wholesome and free from contamination or spoilage.

Hand Tools

In regard to hand tools, the committee recommended that employees be made knowledgeable in the use and hazards of unfamiliar tools and that only tools which may be easily and securely gripped and controlled be used. Personal protective equipment, holsters for sharp tools, and safe storage facilities were recommended.

Hand-held power driven tools, according to the recommendations, should be stopped when not in use, have controls located to prevent accidental operation, and be grounded. Projections, blades, and abrasive wheels should be guarded.

The recommendations covered a variety of power driven tools, such as handsaws, grinders, impact tools, and staplers. Included also were internal combustion engine powered tools, which should be stopped while being fueled, should be equipped with mufflers, and should be free of leaks in the fuel system, the recommendations said.

Recommendations were made also for the inspection, servicing, and load-rating of jacks.

Other Discussions

Discussions of noise hazards, ladders, and airborne hazards were held also during the meeting. In connection with noise research, the committee toured the Callier Center for Communication Disorders while in Dallas.

Presentations were made by the Migrant Legal Action Program (field sanitation) and by Michigan Legal Services (ladders and airborne hazards).

The next meeting of the committee is scheduled tentatively for February 5-6 in Washington, D.C.

Vinyl Chloride

END-OF-SERVICE-LIFE INDICATORS WILL NOT BE REQUIRED UNTIL JUNE 30

Cartridge and canister-type respirators without end-of-service-life indicators will be accepted for certification by the National Institute for Occupational Safety and Health until June 30, 1975.

They will be certified for use only through December 1975, and must be adequate for 150 percent of the time specified.

If a respirator is to be used for four hours, it must, therefore, be adequate for use for six hours, according to a NIOSH spokesman. The spokesman said because of the unavailability of needed respirators with end-of-service-life indicators before January 1975, NIOSH will certify respirators without the indicators in order to make the standard enforceable.

Vinyl Chloride

SECRETARY WILL EXPEDITE APPLICATIONS FOR TEMPORARY VARIANCES FROM VC STANDARDS

The Secretary of Labor will address expeditiously all applications for a temporary variance from the vinyl chloride standard, the Justice Department, for the Department of Labor, said on December 9, in a brief in answer to various suits filed by industry against the standard.

The brief includes the Government's answer to arguments made against the standard by industry in the U.S. Court of Appeals for the Second Circuit (Current Report, November 7, p. 651).

The brief states also that with respect to the claimed unavailability of respirators, the Secretary will consider all applications for a temporary variance order on an expedited basis and will grant or deny interim orders to those who apply "in the shortest time consistent with reasoned decision."

The final vinyl chloride standard is justified fully by the facts of record, the Government stated. Referring to exposure limits, the brief said "it is also known that when establishing safe levels of human exposure to simply toxic but nonmalignant chemicals it is considered sensible and good practice to specify a safety factor of at least 100 times less than the concentration which did not cause any ill effects on laboratory animals. Some suggestions, including those advanced from industry, recommended that one take the lowest level at which any response occurs and divide that by roughly 5,000. With VC, a no-effect level has not yet even been demonstrated for laboratory animals, let alone for man," the brief stated.

Feasibility

The brief continued "the Secretary was under no false illusions as to the effort which would be required for industry to engineer down to 1 part per million. He correctly found on the record evidence that the effort especially for PVC manufacturers, might take years, and even then not every worker might be assured of adequate protection without the use of a respirator. But he was also aware of the fact, again amply supported by the record, that initial industry efforts by those most vigorous had resulted in substantial reductions in vinyl chloride exposure, indeed, for some job classifications the permissible exposure level had already been reached. That much could be done by way of technological innovation was apparent. But Congress had mandated that it be done, and industry had given a commitment to exert its fullest technological effort. The Secretary was free to take both at their word."

Respirators

The Government stated respiratory protection has "drawbacks." "But absent engineering and work practice advances there is nothing else to protect workers against vinyl chloride concentrations in excess of the permissible level, and thus no other adequate protection to counter vinyl chloride's carcinogenic hazard."

In addition, the brief said "few among the many hundreds of thousands of workers in fabrications, processing, and compounding of VC will need respiratory protection. Much of that segment of the industry is already below the one ppm permissible level. Its inclusion in the standard is justified since there have been two confirmed deaths from angiosarcoma of the liver among fabrication workers, not all of those plants are below the 1 ppm level." Also, "the universe of anticipated respiratory use is quite narrow," and at most a total of 6,500 workers will need this protection.

Again addressing feasibility, the Government stated "it comes as something of a surprise that industry should claim the Secretary has acted unconstitutionally in imposing as a requirement what industry committed itself to accomplish . . . the vinyl chloride standard contains the built-in escape hatch that industry is obligated to achieve only what its best efforts prove feasible of achievement. That is a criterion capable of enforcement . . . The constitutionality of the standard is beyond reproach."

IUD Intervention

George H. Cohen, Bredhoff, Cushman, Gottesman & Cohen, representing the Industrial Union Department, AFL-CIO intervention in the case (Current Report, October 31, p. 22) filed a brief in support of the standard. The brief stated "on the basis of the best available evidence, the Secretary exercised reasoned judgments in promulgating the instant standard," and Cohen recommended the standard be affirmed on review.

Oral argument in the case is scheduled for December 13. The Society of the Plastics Industry, Inc., heading industry's argument against the standard, filed petition for stay of the standard with the Second Circuit after receiving no response from OSHA on the same motion (Current Report, December 5, p. 784).

Variances

ALLIS-CHALMERS APPLIES FOR RULE VARIANCE, RECEIVES INTERIM ORDER

Allis-Chalmers Corporation, West Allis, Wis., received an interim order from the Occupational Safety and Health Administration on December 10, pending final action on the firm's application for a permanent variance.

The company is seeking a variance from the requirements in 1910.107 (b) (5) (i) concerning spray booths dry type overspray collectors.

The OSHA announcement of application for variance and grant of interim order appears in the Full Text of this report.

Variances

VESTAL MANUFACTURING RECEIVES OSHA VARIANCE FROM DIP TANK RULE

Vestal Manufacturing Company, Sweetwaters, Tenn., was granted a variance from the requirements in 1910.108 (c) (3) by the Occupational Safety and Health Administration on December 4.

The standard requires bottom drains in dip tanks of over 500 gallons liquid capacity. OSHA determined that the company's work procedure would provide a degree of safety equal to or greater than what would be achieved if the standard were complied with.

The variance will appear in a future supplement to the OSHR Reference File.

Litigation

COAL OPERATORS ASK HIGH COURT REVIEW OF SAFETY COMPLAINT CASE

The Kentucky Carbon Corporation and the Bituminous Coal Operators' Association are seeking review by the U.S. Supreme Court of a decision of the U.S. Court of Appeals for the District of Columbia Circuit that held the anti-retaliation provision of the Federal Coal Mine Health and Safety Act applicable to a coal miner's safety complaint to his foreman and the mine safety committee.

The case, listed on the High Court's docket as *Kentucky Carbon Corporation v. Interior Board of Mine Operations Appeals*, was filed November 21 and has been assigned docket number 74-623. The circuit court's decision was titled *Franklin Phillips v. Interior Board of Mine Operations Appeals* (2 OSHC 1017; Current Report, June 27, p. 89).

The petition for review asserted that the case "involves an important issue of first impression . . . which . . . affects thousands of persons in the coal industry as well as persons in other industries." The statutory provision in question, Section 110 (b) (1) of the Federal Coal Mine Health and Safety Act, prohibits retaliation against an employee for exercising his rights under the Act. Similar provisions appear in Section 11 (c) (1) of the Occupational Safety and Health Act, in the Fair Labor Standards Act, and the National Labor Relations Act, the petition notes. The circuit court's decision is not supported in the language of the statute or its legislative history, the petition continued, and is contrary to accepted principles of judicial review of administrative actions. Therefore, exercise of the High Court's supervisory power is appropriate, the petitioners argued.

The court will decide whether to accept the case for review after the Government and complainant Phillips have had an opportunity to respond to the petition.

Enforcement

INTER-AGENCY AGREEMENT DOES NOT INVALIDATE INSPECTION, OSAHRC RULES

The Labor Department's failure to follow an agreement with the Department of Transportation's Federal Railroad Administration (FRA) does not invalidate an inspection of a railroad yard by a DOL compliance officer, the Occupational Safety and Health Review Commission ruled.

The commission's 2-1 decision in *Union Pacific Railroad Company* (No. 1697, decided November 26) affirmed a ruling of Review Commission Judge Jerry W. Mitchell.

Following an inspection of its railroad yard office at Pocatello, Idaho, Union Pacific contested three alleged violations of fire extinguisher and egress standards. The railroad contended that the citation should be vacated because Section 4 (b) (1) of the Occupational Safety and Health Act exempts the railroad industry generally from the Act, and because the inspection was conducted without any participation by the FRA, allegedly in violation of the agreement with DOL.

Judge Mitchell rejected the railroad's claim to industry-wide exemption, finding that the statute requires exercise of the agency's authority, and that the FRA had no regulations governing the cited conditions. He also concluded that the conduct of the inspection was not affected by the inter-agency agreement because the Labor Department had jurisdiction over the working conditions involved, and, according to the memorandum, would have conducted the in-