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Litigation Could Delay Hazard Communication Standard

The fate of OSHA's new standard on chemical hazard communication is uncertain in some states due to litigation over pre-emption of state and local statutes. The first stage of the standard -- a requirement that chemical manufacturers label shipped containers of hazardous materials and provide safety data sheets -- is scheduled to take effect on November 25, 1985. The full standard, including requirements that employers provide information and safety training to employees, is scheduled to take effect May 25, 1986. An OSHA official said that in the face of pending lawsuits, those dates are now uncertain.

The lawsuits are expected in at least 17 states and eight cities and counties that have chemical right-to-know statutes. The United Steelworkers of America -- along with New Jersey, New York and Connecticut -- has already filed suit. Other unions and advocacy groups, who view OSHA standards as too lenient compared to state and local standards, are expected to start additional litigation. OSHA officials say the matter of pre-emption will ultimately be scheduled in the courts.

Meanwhile, the hazard communication standard has been called OSHA's "single most important, far-reaching regulatory action" in the agency's history by former health standards director Grover Wrenn, now with Environ Corporation. Wrenn told participants at a briefing session that companies should be aware of the far-reaching standard's focus on chronic health hazards.

OSHA has designated more than 600 important industrial chemicals as hazardous. The agency provided procedural guidelines in the hazard determination process, but most of the responsibility falls on manufacturers to evaluate chemicals. Wrenn said manufacturers will have to use their most competent professional judgment in determining how complete their evaluations are.

Separate Asbestos Standard For Construction Possible

The deputy assistant administrator of OSHA has said the construction industry has a "fair chance" of getting the separate asbestos standard it has been seeking. Agency official Pat Tyson added that since OSHA is under pressure to have a permanent standard in place by May, a separate construction standard may be proposed later.

Because of the unique problems construction operations pose for controlling asbestos, several organizations have called for a separate standard. Among those organizations is the International Brotherhood of Teamsters. Teamster safety and health director R.V. Durham said in a letter to OSHA chief Thorne Auchter that the industry requires "unique protections" for workers. Durham also expressed support for the proposal submitted by the AFL-CIO's Building and Construction Trades Department, which calls for a limit of 0.1 fibers per cubic centimeter.

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PLAINTIFF'S EXHIBIT

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Newly Hired Workers At Risk In Growth Industries, Auchter Warns

New and inexperienced workers are at increased risk regarding job-related injury and illness, OSHA chief Thorne Auchter has warned in a letter to some 19,000 manufacturers in high-hazard growth industries. A similar letter was sent to about 100 trade associations, unions and publications in the construction industry.

"We are in the second year of a solid economic recovery," Auchter stated. "Millions of workers have been hired or recalled to work in the past year, and the outlook is good for more employment gains in the coming months. While this is heartening news, we must be aware that new and inexperienced workers contribute disproportionately to the number of on-the-job accidents and injuries."

Auchter noted that BLS statistics show that 40 percent of all injuries reported to state workers' compensation agencies occur during the first year of employment.

Heat, Flame, Chemicals Can Damage Respirators, NIOSH Warns

In two recent Respirator User's Notices, NIOSH has warned that heat, flames, and concentrations of chemicals can damage the rubber and plastic parts of self-contained respirators. Fire fighters, who can now remain in areas of higher heat and flame exposures because of new turnout gear, have reported damage to their respirators, NIOSH says. Accidental chemical vapor releases or discharges have been reported to cause damage to respirators, making them unserviceable.

The notice said that fire fighters should avoid overexposure to high heat and that those who are involved in emergency response activities should be equipped with chemical-protective clothing. Respirator manufacturers have told NIOSH they are developing new materials that have greater resistance to heat and flames.

Industry, Labor Agree On Benzene Issues

Representatives of industry and labor involved in OSHA's expedited rulemaking on benzene have reached agreement on a number of issues. Industry representatives agreed to present a five ppm short-term exposure limit as a 30-minute TWA to their principals, although they were originally in favor of an STEL of 10 ppm for a 15-minute TWA.

Labor and industry representatives agreed to a provision calling for "suitable precautions against dermal contact with liquids containing more than 0.5 percent benzene, but not an absolute ban." Labor, however, maintained that it would like to see the limit gradually lowered if NIOSH studies indicate this is necessary to protect workers.

Labor agreed to exempt retail gasoline stations and bulk gasoline marketing facilities from coverage because these fall more under the EPA's jurisdiction. Both factions agreed that monitoring should take place within 60 days after the standard takes effect in all workplaces where there is a potential for exposures exceeding the action level. It was also agreed that routine monitoring should be performed quarterly or semi-annually for all jobs and all shifts except when an employer can show there is no significant variation between shifts.

All participants agreed that engineering and work practice controls will be used to achieve exposures below the PEL, except to the extent that the employer shows that such aren't feasible. Respirators will be used only as a last resort, labor and

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industry agreed. The participants agreed to disagree on periodic testing provisions, with labor wanting periodic exams for former employees who had been exposed to benzene and industry saying this would be too burdensome. Industry did agree to provide coverage for current employees formerly exposed.

The meetings have been taking place in an effort to see if a negotiation process is useful in resolving the differences between those affected by regulations.

Asbestos ETS Draws Mixed Reviews

OSHA's emergency temporary standard lowering permissible workplace exposures to asbestos to 0.5 fibers per cubic centimeter of air has drawn mixed comments. The ETS, which was stayed by the Fifth Circuit Court of Appeals pending a decision on a challenge filed by the Asbestos Information Association, would permit employers to achieve the reduced level through any combination of engineering controls, work practices, and personal protective equipment.

The Associated General Contractors of St. Louis questioned whether full compliance with the existing standard is possible, and said making requirements more stringent will not increase compliance. William Weiss, of the Division of Occupational Medicine, Hahnemann University School of Medicine, asserted that studies showing little worker risk have been minimized, while those reporting high risk have been emphasized. Some companies that have endorsed the ETS have urged OSHA not to impose more stringent regulations without giving industry time to develop and test new materials.

Unions, including the United Brotherhood of Carpenters and Joiners of America, have commended the agency for issuing an ETS, but asserted that a limit of 0.1 fibers per cubic centimeter is needed. The union also said that engineering controls are feasible for most asbestos dust-producing operations and should be mandated by law before respirators are used. The protective qualities of respirators are "dubious," the union said.

Meanwhile, NIOSH has announced that it has improved analytical and sampling methods, allowing for statistically reliable measurements of asbestos below the 0.1 level, which the institute recommends. Filters that effectively reduce the area on which fibers are deposited and a standardization of microscopes will both lead to more accurate testing, a NIOSH spokesman said.

OSHA Proposes Grain Elevator Standard

OSHA has proposed new safety requirements designed to reduce risks of fire and explosion and other hazards at 16,000 grain handling facilities employing 200,000 workers. OSHA says the new standard could reduce deaths and injuries at the facilities by as much as 50 percent.

OSHA chief Thorne Auchter said the standard, if implemented immediately, would lead to 38 fewer deaths and 767 fewer injuries each year among workers at grain elevators. In addition, the proposal would save $98 million in property damage and business interruption loss caused by fires and explosions, Auchter said.

OSHA says the standard is designed to be performance-oriented, giving employers the flexibility to protect workers effectively at the lowest cost. The proposal would require employers to develop their own housekeeping plans to control and remove grain dust accumulations to minimize the risk of explosion, choosing one of three options. Employers could require a once-per-shift dust cleaning, install a pneumatic dust

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collection system, or plan to take immediate action to remove dust when levels reach an action level of one-eighth inch layer of dust average over a 200-square-foot floor area. OSHA is seeking comments on the effectiveness of these options and their economic and technological feasibility for various sizes and types of grain handling facilities.

The proposal also specifies ways to increase safety in elevator legs inside the main elevator structure, where the potential for explosion is greatest. Also, the proposal would require employers to develop an emergency action plan, a performance-oriented training program for employees and a permit system for employees doing hot work, such as welding, or entering confined spaces.

Small grain elevators, those that hold less than one million bushels and process less than four million bushels a year, would have a longer time to implement the dust control measures. OSHA estimates yearly costs of $122.5 million for the standard.

After the standard was proposed, Rep. Bruce Vento (D-Minn.) charged that OSHA bowed to pressure from the Office of Management and Budget by allowing the daily-sweeping method of keeping dust levels down. This option represents a "retreat from responsible protection for workers," Vento charged.

Buckley Appointed to OSHRC

E. Ross Buckley has been appointed as a member of the Occupational Safety and Health Review Commission by President Reagan. The Review Commission is an independent federal agency established to rule on job safety and health disputes arising from OSHA inspections.

Buckley, who has been the Commission's General Counsel since April 1982, joins Robert Rowland and Timothy Cleary on the three-member tribunal. Buckley's term expires on April 27, 1989.

As General Counsel, Buckley was responsible for drafting the Commission's decisions and for representing the agency before the courts, Congress, and other federal agencies. He also counseled Rowland on administrative matters and shared responsibility with other departments and agencies of the executive branch.

NIOSH Lists Certified Equipment

NIOSH is making available a list of personal protective and monitoring devices certified by the institute. The list includes coal mine personal sampler units and various types of respiratory devices, such as self-contained breathing apparatus; gas masks; supplied air respirators; dust, fume, and mist respirators; chemical cartridge respirators, and vinyl chloride respirators. The names and addresses of manufacturers and distributors are also included.

"NIOSH Certified Equipment List as of September 1, 1983" (No. 83-122) is available from NIOSH Publications Dissemination, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226.

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