inspections following death or serious injury. If the confidentiality requirement overrides the posting requirement, this would violate criterion under Part 1902, Title 29, Code of Federal Regulations. There does not appear to be any provision for an inspector to obtain a court order to compel entry where it has been refused.

If the director of the Department of Labor and Industries assumes jurisdiction over a citation, there is apparently no explicit provision for further review of his ruling by the Board of Industrial Insurance Appeals or by the courts. If the director can decide what goes to the appeals board and what does not, this may yield an uneven administrative review process.

Advance Notice

Exceptions to the advance notice prohibition are clearly contemplated in the proposed state safety and health act and in explanatory notes in the state plan. "We would point out that the director is not authorized to grant such exceptions. In the event that such authorization is found, its limitations, i.e., conditions under which exceptions may be granted, must be spelled out."

All public employees are to be treated the same as private employees, except that they cannot be fined for violations other than failure to abate. Lack of any kind of sanction upon discovery of a violation virtually precludes any incentive to abate a hazard before a citation is issued and an abatement period is set.

Emergency standards may be adopted if the agency finds a hazard to public health or safety. Interpretation of the term "public" could foreseeably be troublesome. In addition, there is no provision that the director will adopt a permanent standard to replace the temporary standard before it expires.

The state act would provide that any employer or workman who knowingly removes, displaces, damages, or destroys a safety device or safeguard will be guilty of a misdemeanor. "It would be unconscionable to approve such a provision which allows both the employer and that state to punish a worker for a violation of the statute."

The general duty clause requires each employer to furnish a place of employment free from recognized hazards. The federal act refers to employment and a place of employment in its general duty clause. To the extent of this distinction, a critical part of the enforcement program fails to be at least as effective as that provided in the Act.

AGC Views

Although penalty sections of OSHA and the state act differ to some degree, the state plan will be as effective as and in some areas even more so than OSHA, R. Charles Short, director of safety, and Frank N. Young, chairman, Accident Prevention Committee, Associated General Contractors of America, Inc., said.

The Seattle Northwest Chapter of the AGC has worked closely for many years with the state Department of Labor and Industries, adopting effective safety and health rules and regulations, and these rules and regulations have been acceptable to both labor and management. In all important areas labor and management are in agreement with the state program under the proposed act.

The state Workmen's Compensation Advisory Committee, composed of labor and management representatives, endorses the philosophy adopted in the penalty section of the proposed legislation for a nonmandatory penalty for serious violations and fully endorses the rationale behind this proviso, Philip T. Bork, chairman of the committee, said.

The state Health Facilities Association recommends that at least 20 percent of the budget for the state program be devoted to providing education and technical consultation needed to help businesses with the regulations, Sharon Winn said on behalf of the Association.

The proposed state law does not specify information must be collected on the increase and/or decrease of the incidence of accidents and injuries as related to specific standards. It is imperative that some attempt be made to collect information on the effectiveness of specific standards for reducing accidents.

The proposed act does not make it explicit that the state fire marshal is the main enforcer of fire safety standards. From testimony at the hearing on this subject, it appeared that the distinction had been made. This issue should be clarified to prevent later confusion.

Litigation

IUD REQUESTS COURT TO SET ASIDE LABOR SECRETARY'S ASBESTOS STANDARD

The Secretary of Labor's standard for occupational exposure to asbestos dust does not comply with the requirements of the Occupational Safety and Health Act, the Industrial Union Department, AFL-CIO, argued in its brief to the U.S. Court of Appeals for the District of Columbia.

In its suit against the Secretary of Labor, the IUD requested that the court set aside the standard and remand the case to the Secretary with instructions to modify the standard.

The standard's four-year delay in implementation of the two-fiber standard is unsupported by record evidence; the monitoring, recordkeeping, and medical examination provisions of the standard are inadequate; and the standard's labeling provisions fail to satisfy the requirements of the Act, according to the union's brief.

The Secretary's four-year "feasibility" delay was not supported by substantial evidence, in the IUD's opinion, because the National Institute for Occupational Safety and Health criteria which recommended a two-fiber standard stated that the recommended standard was "amendable to techniques that are valid, reproducible, and available to industry and official agencies and . . . attainable with existing technology. In addition, NIOSH recommended a two-year delay in implementation of the two fiber standard "to permit installation of necessary engineering controls." The Secretary's Advisory Committee suggested a two-year delay in that same standard.

No Harm Expected

The Secretary's determination that "no harm is reasonably expected to result from exposures during the transitional period" of four years was also disputed by the IUD. The effects of asbestos exposure on human lungs are cumulative and far too much suffering will continue under the two-fiber standard, the IUD said. Both NIOSH and the advisory committee recognized this and recommended that methods of control be implemented to further reduce exposure regardless of whether the two-fiber standard was being met, the IUD added.

The monitoring standard is deficient in that even where employees are confronted with grave danger to their health, the employer is not required to conduct follow-up monitoring on a periodic basis to insure that the compliance program is producing the desired result of lowering the dust count, according to the IUD. Even if the Secretary is administering the standard to require monitoring once every six months this is not frequent enough to provide all employees – especially those in high risk areas subject to peak concentrations – the necessary protection which the Act entitles them to, the IUD argued.

The recordkeeping provisions of the standard are also inadequate in the IUD's opinion. The standard requires that "every employer shall maintain records of any personal or environmental monitoring required by this section . . . for a period of at least 3 years." With this language, the Secretary exempted from the recordkeeping requirement the results of all monitoring other than that "required" by this standard and placed his sanction on the destruction of records more than three years old, the IUD stated. On this subject, the IUD said:

"But a 3-year rule for maintaining records of monitoring smacks of abdicating enforcement of OSHA. The practical effect is that records may not be available either to key Federal Government officials or employee representatives for use in connection with their enforcement efforts or studies concerning occupational health hazards which the Act was designed to encourage . . . It also means that for employees who frequently move from one employer to another, as in the construction industry, no one may ever be privy to permanent records concerning their exposure to asbestos dust over extended periods."

The standard's requirement that medical records need only be retained by employers "for at least 20 years" simply does not assure that the optimum quantity of data and information will be available, the IUD argued. Also, to assure that government researchers are accorded all the necessary data with which to work in their quest to understand the fatal diseases associated with asbestos, the standard should include a requirement either that the employer or the government continue annual physical examinations, at no cost to the employees, the IUD said.

The labeling provisions of the standard fail to satisfy the requirements of OSHA, according to IUD's brief. The required warning that "Breathing Asbestos Dust May Be Hazardous To Your Health" grossly understates the true nature of the threat, the IUD said. At the very least, some reference to asbestosis and cancer should be obligatory, the IUD contended.

"With respect to each of the five major component parts of the asbestos standard the Secretary has failed to meet the mandate of the Act," the IUD said in conclusion.

Arbitration

ARBITRATOR APPROVES "DIRTY WORK" DIFFERENTIAL FOR EXPOSURE TO CHEMICAL

An employee who was exposed to a chemical known to have cardiovascular effects on human beings was entitled to a four percent dirty work differential for all the time he worked and was not provided with overalls by the employer, Arbitrator Paul D. Hanlon ruled.

The ruling involved Naval Torpedo Station, Keyport, Wash. (59 LA 325).

An employee of the naval station filed a grievance alleging that he was entitled to an "environmental pay" differential for working in an area in which he was exposed to high levels of Otto Fuel II. The employee also claimed that he was entitled to "dirty pay" since he was not provided with protective equipment while working in the cleaning room.

The union presented several witnesses who had worked with the chemical, and who testified that they had experienced periodic headaches and mild nausea afterwards. However, the employer presented evidence to show that its ventilation system had been improved so that tests just prior to the arbitration hearing indicated that the level of Otto Fuel II in the air was below the threshold limit.

The uncontradicted evidence of the employer's medical experts established that the chemical cannot be removed from clothing completely by wash-injury, which was a prerequisite under the contract for an environmental pay differential, the arbitrator found. On the other hand, the evidence showed that Otto Fuel II cannot be removed from clothing completely by washing, Hanlon found. Therefore, the arbitrator ruled that the employer must pay the employee a dirty work differential.

Research

HEW ISSUES FINAL REGULATIONS FOR RESEARCH-DEMONSTRATION GRANTS

Final regulations setting forth the conditions and procedures for awarding grants for research and demonstration projects under Section 20 (a) (1) of the Occupational Safety and Health Act were issued by the Department of Health, Education, and Welfare on October 26.

The regulations will appear in a future supplement to the OSHR Reference File. The rules, proposed April 19, 1972, were adopted without change, adding a new Part 87 to Title 42 of the Code of Federal Regulations.

Industry submitted several comments on the proposed rules objecting to the prohibition on making grants to profit making organizations. It is HEW's policy that profit making organizations are not eligible for grants except where specifically permitted by statute. Federal support of research activities by profit making organizations may be carried out by contract.

Since the National Institute for Occupational Safety and Health conducts a substantial contract research program, the government will not be deprived of the benefits to be obtained from the expertise in the profitmaking