Right-to-Know

OSHA GIVING LEEWAY TO PLAN STATES ON STANDARDS DEADLINE, OFFICIAL SAYS

"Some leeway" in meeting the deadline for adopting a hazard communication standard is being given by the Occupational Safety and Health Administration to states which are operating under state plans, an OSHA health scientist told BNA.

Jennifer Silk, who drafted much of the federal hazard communication standard and has been closely involved in its implementation, noted that state plan states were required to issue their own comparable standards six months after issuance of the federal rule last November (Reference File, 31:8751).

However, because there is a "phase-in period for compliance" with the federal standard, the state standards are not required to be in effect until the federal standard becomes effective in 1985. Therefore, OSHA has not insisted strictly that the May 1984 deadline for adopting a standard be met. "Six months isn't very much time for a state to be able to do that," Silk remarked.

The comments came during an extensive BNA interview with Silk on issues, controversies, and questions connected with enforcement of the OSHA hazard communication standard.

Standards issued by state plan states have to be as effective as the federal rule, Silk noted. At least one state, Iowa, has adopted the provisions of the federal standard, but broadened them to cover other industries in addition to manufacturing.

Expanding the scope of state standards in this way "would not be any problem," but specific requirements of state rules must be consistent with federal provisions, so as not to impose a "burden on interstate commerce," the OSHA official added.

Silk reiterated OSHA's contention that the federal standard pre-empts right-to-know laws in states without state plans. She acknowledged that the agency would not be able to exert pre-emption if the standard, in the course of current litigation (Current Report, June 14, p. 19), is determined to be a "regulation" issued under Section 8 of the Occupational Safety and Health Act, rather than a "standard" issued under Section 6.

However, when a similar issue was considered by a U.S. appeals court in 1981 in regard to the medical records access rule (10 OSHC 1017), the court indicated that the medical records rule was a regulation because "it really only dealt with existing records. It didn't make people do anything. You didn't have to evaluate the hazard, you didn't have to go out and do exposure monitoring," Silk remarked.

In contrast, the hazard communication standard "makes you go out and evaluate hazards, prepare labels and data sheets, and do training," the OSHA health scientist continued. "So it's a much more positive type action and that's why we consider it to be a standard and not a regulation."

Regarding current controversy over the pre-emption issue, Silk stated that OSHA intends "to enforce our standard unless the court stays it." She noted that some industry observers have recommended that companies be in compliance with all hazard communication standards to the extent possible. "Obviously there are some things that companies won't be able to do. But they should really make an effort and realize that right-to-know is not a subject that's going to go away," she stated.

The text of the BNA interview with Silk appears as a Special Report in this issue.

Testing Laboratories

OSHA SETS SEPTEMBER HEARING DATE FOR RULE ON TESTING, CERTIFICATION

An informal public hearing on the Occupational Safety and Health Administration's proposal to revise the rules covering the safety testing and certification of certain workplace equipment and materials has been set for Sept. 25, OSHA announced July 16 (49 FR 28739).

OSHA's March 6 proposal has the potential of increasing the number of testing laboratories recognized as competent to certify workplace equipment for safety and also to increase the number of organizations authorized to accredit the testing laboratories (Current Report, March 8, p. 1053).

In its notice announcing the public hearing, OSHA specifically requested comments on proposals submitted by the Industrial Safety Equipment Association, the Safety Equipment Institute, and the International Brotherhood of Electrical Workers which recommended that third party certification requirements be added to the personal protective equipment regulations covered under Subpart I of 29 CFR Part 1910 (Current Report, July 5, p. 145). OSHA asked whether a direct third party certification requirement and the updating of the corresponding standards should be included in this rulemaking or in a separate rulemaking.

OSHA also asked potential respondents to consider whether the third party certification programs are too restrictive as claimed by Factory Mutual, and to react to the "far reaching objections" contained in comments submitted by the National Electrical Manufacturers Association.

Notices of intention to appear at the public hearings, which OSHA said may carry over to Sept. 26 and Oct. 1 and 2, should be submitted to Tom Hall, Division of Consumer Affairs, Room N-3662, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210; tel: (202) 523-8024. Questions about the hearings also should be directed to Hall. For further information about the proposal, contact James F. Foster, Office of Information, OSHA, Room N-3637, same address; tel: (202) 523-8151.

The notice announcing the hearings appears in the Full Text section of this issue.

Asbestos

TEXTILE WORKERS URGE OSHA TO ISSUE 'MOST STRINGENT STANDARD CONCEIVABLE'

In testimony given at an Occupational Safety and Health Administration rulemaking hearing July 12, representatives of the Amalgamated Clothing and Textile Workers Union urged the agency to issue "the most stringent standard conceivable" to regulate workplace exposure to asbestos.

OSHA issued its proposed asbestos standard in April (Current Report, April 12, p. 1195), and hearings began June 19 (Current Report, June 21, p. 35; June 28, pp. 60, 61; July 5, pp. 140, 141; July 12, pp. 155, 157).

Eric Frumin, occupational safety and health director for ACTWU, stated that OSHA's proposal to allow employers the option of adopting respirators rather than engineering controls to reduce worker exposure to asbestos was "a political decision, not one based on its scientific or technical merits" as required by Section 6(b)(5) of the Occupational Safety and Health Act. "How else can one explain a policy which protects a cotton weaver from a disabling but usually not fatal disease like brown lung through ventilation controls, and then allows that same weaver to work in an environment as toxic as an asbestos textile factory with nothing but a flimsy disposable respirator?" Frumin asked.

Attributing this change in policy to the "methodical efforts" of the Office of Management and Budget, he urged OSHA to allow the use of respirators only where ventilation, stringent work practices, and other control measures are virtually impossible to implement.

Further, Frumin asserted that a permissible exposure limit of 0.1 fibers per cubic centimeter of air is feasible both technically and economically for the asbestos textile manufacturing industry. Citing exposure data for the wet asbestos textile production operation at the Raymark Industrial Products Company in Charleston, S.C., he stated that employee exposures were below 0.1 f/cc in 23 out of 30 samples in 1981, and in eight out of 12 samples in 1982.

OSHA Proposal 'Cruel Hoax'

Frumin concluded that the discrepancy between these data and those offered by OSHA in its regulatory impact analysis and proposal is due to the agency's failure to adequately investigate the feasibility of reducing the exposure limit when it proposed the 0.5 and 0.2 f/cc fiber limits. "OSHA's proposed reduction in the permissible exposure limit is a cruel hoax," he maintained. "While appearing to offer asbestos-exposed workers some hope of reduced exposure, it is in fact a masterpiece of deceit." In proposing to give employers the choice of using respirators rather than engineering controls to reduce employee exposure to asbestos, OSHA is "completely at odds with the accepted definition of a PEL in the medical, scientific, and legal communities."

He also stressed the need for a comprehensive wage-retention provision, asserting that if workers are to receive the limited benefit which this protection offers, they must participate and cooperate fully in the medical surveillance program. Frumin stated that "OSHA's findings in the lead standard are equally applicable to asbestos workers — if not more so due to the substantially greater severity of the risk."

Describing how it feels to suffer from asbestosis, Shirley Thomas, an employee of Raymark and a victim of the disease, testified that "it's just like telling you that you have cancer." She talked about the "burden that your family will have to bear for your suffering, and the costs to them, the effects on their lives, the disorientation of their families — knowing that their mother will be slowly dying from a work hazard disease."

Thomas stated that she had worn four or five different types of respirators and had been told that they would prevent her from inhaling dust. She asserted, however, that she developed asbestosis while wearing a respirator. "It did not protect me," she said. "It did not stop the dust from getting in my nostrils and my mouth, and spreading into my lungs."

"It is painful to wear a respirator — the sweat, the difficulty of trying to get them to fit," Thomas testified. "Sometimes I had to put tissue under the respirator to try to keep out the dust — it gives you rashes."

Asbestos

NCA URGES SEPARATE ASBESTOS STANDARD FOR CONSTRUCTION BASED ON WORK PRACTICES

The construction industry unanimously agrees that existing Occupational Safety and Health Administration policies are inadequate to safeguard construction employees from the hazards of working with asbestos materials, a representative of the National Constructors Association testified July 12 at a rulemaking hearing on an occupational exposure standard for asbestos.

NCA's testimony came in the fourth and final week of the hearings, which began June 19 and which have featured presentations by other industry groups and by organized labor and government agencies (Current Report, June 21, p. 35; June 28, pp. 60, 61; July 5, pp. 140, 141; July 12, pp. 155, 157). Testimony also was heard from the Amalgamated Clothing and Textile Workers Union during the week (see related article in this issue).

The construction association's major concern with the proposed revision of the asbestos standard is the intended use of a single set of health standards for controlling occupational exposure to asbestos which does not distinguish between manufacturing plant procedures and construction operations, according to Fred Graham, chairman of NCA's safety and health committee. "This lack of differentiation is why the construction industry is struggling to comply with the current asbestos standard," he said.

Graham stated that "adding stringent provisions and requiring compliance methods that are totally inappropriate for construction will simply increase our difficulty in the implementation of control measures with little difference in the reduction of risk to employees."

Emphasizing that it is necessary, appropriate, and cost-effective for OSHA to develop a separate standard for construction, Graham suggested that this be accomplished by simply modifying the existing standard to apply to construction activities. According to him, the provisions requiring modification deal with methods of compliance, personal protective equipment, monitoring, housekeeping, recordkeeping, and medical examinations.

"The concept calls for development of a performance-oriented standard with reliance on a work practice approach," Graham said. He questioned OSHA's use of a linear model for the purpose of establishing a new permissible exposure limit for asbestos. "Emerging scientific knowledge indicates that linear extrapolation of high-dose cancer rates to low-doses may well be invalid," he said.

In addition, he stated that it is "illogical" for OSHA to state that there will be no difference in costs to comply with a PEL set at 0.2 fibers per cubic centimeter as compared with the costs with the PEL set at 0.5 f/cc. Current information from NCA members indicates a 12 to 16 percent increase in the airborne concentration of asbestos fibers between 0.5 and 0.2, according to Graham. He suggested that the economic impact of these added costs should be evaluated, especially since NCA members have found that at the current PEL of two f/cc, construction labor costs for an asbestos project are almost twice the costs of a non-asbestos project.

Further, the suggestions that employers be required to report to OSHA prior to performing asbestos activities and that employers and employees be certified in order to work with asbestos are "unnecessary," according to Graham. He asserted that when OSHA publishes a standard, employers are notified of the requirements to be met. "OSHA is able to 'certify' whether or not an employer is complying with the requirements by performance of an inspection," Graham said.

Oil and Gas

TESTIMONY OF OSHA EXPERT WITNESS OUTLINES COSTS, SAVINGS OF OIL, GAS DRILLING RULE

In testimony expected to be presented at the Occupational Safety and Health Administration's hearings on its oil and gas well drilling and servicing proposed standard, the Eastern Research Group estimated that implementation of the proposal would reduce the number of fatalities and injuries by 42 percent in the drilling industry and 28 percent in the servicing industry.

OSHA is scheduled to hold four sets of hearings on the proposal, the first being held in Washington, D.C., beginning on July 24 (Current Report, May 17, p. 1323). OSHA, which hired the consulting group to consider the impact of the proposed standard, has developed separate standards for this industry because it says the existing general industry standards do not adequately protect oil and gas well workers, leading to a continuing high fatality and injury rate (Current Report, Jan. 5, p. 811).

In reaching its injury/fatality figures, the Eastern Research Group, also known as ERC and formerly the Consulting Studies Division of Energy Resources Co., said it looked to probable reductions based on OSHA's general industry accident statistics, OSHA's fatal accident investigation reports, and the influence of training on accident reductions.

In calculating the costs of accidents in the oil and gas well drilling and servicing industries, ERC found that medical and indemnity costs along with costs from lost wages not covered by indemnity insurance accounted for a large part of its estimated total cost, which was $9,886 per drilling accident and $12,357 per servicing accident.

The total cost of complying with the OSHA proposed standard for the various industries would be as follows: $12.9 million for the servicing industry, $7.1 million for the drilling industry, $4.5 million for special service compliance costs, and $1.4 million for oil production companies.

ERC said the compliance costs are "potentially more significant" in the current "market slump," adding that it sees this impact "to be quite small due to the modest level of the compliance costs" on a per rig basis.

Techniques for gathering data for the study included conducting field visits; contracting with Safety International, Inc., a Texas-based consulting organization for compliance estimates; and preparing ERC's own compliance estimates. ERC said it prepared the independent cost analyses, separate from the field visits, because of the feeling that the contractors who allowed ERC to inspect their sites "appeared to run operations with above average safety controls and therefore were thought not to be representative of industry practice."

The baseline for determining the cost and benefit impacts of OSHA's proposal was current industry practices, according to the consulting group. ERC said attempts were made in its study not to include compliance costs or benefits for rigs "which had already made the necessary investments in equipment or which had made the necessary adjustments in work practices or training."

Other Testimony

In addition to asking ERC to consider the costs of complying with the general oil and gas proposal, OSHA also sought information on the predictability of noise levels in the rig area, what if any methods companies are employing to protect workers' hearing, and the costs of providing hearing protection. Field studies by ERC revealed that workers on both the drilling and servicing rigs were exposed to noise "consistently above the time-weighted average 85 dBA limit" per eight-hour exposure established by OSHA's general industry standard. Assuming the final noise rule for the oil and gas industry is similar to the general industry standard, ERC found that the first-year costs for complying with the standard are $2,010 and $1,350 for drilling and servicing rigs, respectively, with annual recurring costs of $1,010 and $350 per rig.

Another economic study, prepared by LaSalle Economics, Inc., New York, N.Y., said the "compliance costs associated with the proposed OSHA standard should not impose any significant financial hardship on the industry, and to a large extent should be able to be passed on to oil companies in the form of higher prices." LaSalle's analysis, which also is to be presented at the OSHA hearings, was prepared as an evaluation of Energy Resources Company's report and OSHA's revised estimates of the economic and financial impact of the agency's proposal.

Testimony prepared by two OSHA inspectors from the Columbus, Ohio, area office, stressed the need for separate standards for the oil and gas industry. Ray Mendenhall, a safety specialist who has worked in OSHA's special emphasis oil drilling program for four years, said he has used both construction and general industry standards to cite hazardous conditions at oil rigs. Mendenhall reported that the problem is that these two groups of standards "do not cover the hazards that are found."

Ronald Yarman, also a safety specialist, said, "Many times during the inspections it was difficult, if not impossible, to find any specific standards that applied to this specialized industry." He said his office has received many complaints from contractors who find it very difficult to work with the general industry standards.

Litigation

CITATIONS ISSUED 67 DAYS AFTER INSPECTION ARE NOT SUBJECT TO DISMISSAL, COURT RULES

The secretary of labor's delay in issuing a citation alleging violations of the Occupational Safety and Health Act until 67 days after a worksite inspection does not constitute a violation of the Act's requirement that citation items be issued with reasonable promptness and thus does not warrant dismissal of those charges pending against the cited employer, the U.S. Court of Appeals for the Tenth Circuit ruled July 9.

This decision in *Havens Steel Company v. Occupational Safety and Health Review Commission, et al. and Donovan* (No. 82-2261) affirmed a ruling of the review commission which found that Havens Steel had violated several Occupational Safety and Health Administration guardrail standards (10 OSHC 2102).

The OSHA inspection was prompted by employee complaints concerning working conditions at a multiemployer construction site in Holcomb, Kan. At the time of the

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