

The association originally requested a stay of the standard with the U.S. Court of the Appeals for the District of Columbia Circuit pending OSHA's decision on the need for a short term exposure limit (STEL) for EtO and a court decision on whether the final rule is arbitrary and capricious as critics charge (Current Report, Aug. 16, p. 244).

At the same time, the association petitioned the agency for an administrative stay and reconsideration of the final rule (Current Report, Aug. 23, p. 259), which established a permissible exposure level of one part per million parts of air as an eight-hour time-weighted average and left open the rulemaking to determine the need for a STEL (Current Report, June 28, p. 59).

Although Larry said he has been assured by the agency that the stay response will be issued soon, he claimed he is "real concerned" that the agency has not issued anything yet. Larry, an attorney with Epstein, Becker, Borsody and Green, noted that "time is ticking" on the date that compliance with the engineering controls portion of the standard would be due. One of the arguments that the association used in calling for the OSHA and court stays is that, until the agency conclusively decides whether to mandate a short term limit for EtO, it is difficult for affected companies to determine what sort of engineering controls would be needed.

Laura Fargas, the Labor Department attorney representing OSHA in this case, told BNA Oct. 5 that she was uncertain as to when the agency would be issuing its decision on the stay.

One source close to the case claimed the agency had promised to respond to the stay request by Labor Day.

#### Public Citizen Response, OMB

David Vladeck, an attorney representing Public Citizen Health Research Group, said he is confused as to why the agency has not responded to the association's stay request. HRG was the organization which originally took the issue of the need for an EtO standard to court, resulting in OSHA's final rule.

Vladeck had argued for Public Citizen to OSHA that the association's stay request was invalid because the appeals court is not likely to overturn any portion of OSHA's final rule, and because the STEL decision will not affect most of the standard (Current Report, Sept. 6, p. 300). Vladeck told BNA Oct. 4, "It's an embarrassment that it has taken up so much time."

Vladeck claimed further that in reality OSHA has "little option but to oppose the stay" because of the court order which originally required the agency to issue a rule by June 15 (11 OSHC 1907).

Another area involving the EtO standard about which HRG is unhappy, Vladeck said, is OSHA's "dragging its feet" in sending the paperwork requirements of the standard for approval to the Office of Management and Budget. Under federal law, OMB can review and approve any portion of a standard that would require companies to complete forms or keep records.

Vladeck said he had been "assured" that OSHA had sent the standard for review to OMB under the paperwork reduction law in mid-July. In fact, he said, the agency didn't send it over until mid-August. Although Vladeck said he does not anticipate that OMB will not approve the paperwork requirements in the rule, it does not have to make a decision until mid-October or mid-November. Further, he explained, until OMB signs off on the paperwork requirements, standards such as those calling for companies to monitor the levels of EtO will not become effective.

#### Asbestos

##### REPAIR, DEMOLITION OPERATIONS POSE MOST SERIOUS POTENTIAL HAZARDS, MILES SAYS

The most serious potential hazards to federal workers from asbestos exposure appear to exist when asbestos is disturbed in buildings or ships undergoing repair, renovation, or demolition, John Miles Jr., director of field operations for the Occupational Safety and Health Administration, stated in testimony submitted to a House subcommittee Oct. 2.

Miles told the House Public Works and Transportation Subcommittee on Public Buildings and Grounds that in instances where demolition or renovation operations may pose a potential threat to employees, OSHA "is making every effort to limit and control the exposure." Of the 112 federal workplace asbestos inspections conducted by OSHA in fiscal 1984, no asbestos fibers were found in 91 percent of the samples taken, Miles said.

"In addition, no sample exceeded 0.5 fibers per cubic centimeter of air, and only 1.5 percent of the samples exceeded 0.1, a level below the lowest limit in the proposed new standard and far below the current permissible exposure limit," he stated. Virtually all workplace asbestos exposures in the federal facilities surveyed by OSHA in the past year are below the lowest limit suggested in the agency's proposed new standard, according to Miles.

Further, Miles stressed that OSHA's role as an enforcer in federal workplaces is different from its role in the private sector since primary responsibility for workplace conditions in the federal sector is delegated to the individual agencies.

Agencies are required to conduct annual self-inspections of all workplaces and to correct any hazards that are identified, he explained. OSHA then evaluates the safety and health programs of the agencies to assure that the self-inspection mechanism is working and that hazards are abated.

#### San Francisco Building

James J. Melius, chief of the hazard evaluation and technical assistance branch of the National Institute for Occupational Safety and Health, testified on his agency's investigation of the potential exposure to asbestos in the Phillip Burton Federal Building in San Francisco. When NIOSH was asked to evaluate potential asbestos exposures during renovation work in 1976, monitoring revealed asbestos levels well above the OSHA standard and the agency recommended that appropriate steps be taken to reduce exposure, according to Melius.

Last March, NIOSH conducted limited sampling in the lobby of the building at the request of representatives of the building employees and found no airborne asbestos in these samples. In addition, NIOSH conducted a risk evaluation throughout the building. This consisted of a site visit, meetings with local General Services Administration management, Tri-Agency Asbestos Study Committee representatives, and union representatives to obtain information, and a walk-through tour to inspect the fireproofing and mechanical system, Melius stated.

Investigators also obtained copies of all pertinent reports, memoranda, letters, and raw data generated in previous evaluations of the building by GSA and other groups.

"After reviewing this information, we prepared a report outlining our findings and recommending a series of steps which should be taken by GSA to develop a sound program for handling the potential asbestos exposure in the San Francisco building," he said. "We believe that by incorporat-

ing our recommendations into the existing asbestos control program at the Phillip Burton Federal Building and Court-house, GSA can develop a program which will adequately protect the building employees during the abatement operations."

### Appropriations

#### STOPGAP MEASURES KEEP OSHA IN OPERATION AS WORK ON FUNDING RESOLUTION CONTINUES

A series of stopgap measures kept the Occupational Safety and Health Administration and related agencies in operation for most of the first week of fiscal 1985 as the House and Senate continued efforts to reach an agreement on a 1985 funding measure.

Most employees of OSHA and other agencies in the Departments of Labor and Health and Human Services were given a one-day furlough Oct. 4 as one stopgap measure ended before another could be enacted, and all but "essential" government personnel were sent home.

Congress began work on a continuing appropriations resolution in September for agencies such as OSHA for which no regular appropriations bills had been passed (Current Report, Sept. 20, p. 336). When action on the resolution stalled Oct. 1 because of disagreement over the attachment of non-spending issues to the bill, the House and the Senate passed a measure (HJRes 653) to provide funds through Oct. 3.

On Oct. 4, unsure whether Congress would pass a funding measure that day, the Office of Management and Budget ordered federal agency heads to send "non-essential" employees home by 1 p.m. At OSHA, only 22 employees categorized as "essential" — including Assistant Labor Secretary Robert A. Rowland and heads of the various agency divisions — remained on the job in the national office, and skeleton crews remained in the 10 regional offices.

Later that day, a stopgap measure (HJRes 656) was passed to keep affected agencies in operation through Oct. 5, and funding then was continued through Oct. 11 under two further resolutions. The stopgap measures all continued funding for OSHA, the National Institute for Occupational Safety and Health, and the Occupational Safety and Health Review Commission at fiscal 1984 levels.

The continuing resolution for fiscal 1985 (HJRes 648) would fund the agencies at levels specified in the regular fiscal 1985 appropriations bill (HR 6028) — \$219.6 million for OSHA, \$66.7 million for NIOSH, and \$6.1 million for the review commission (Current Report, Aug. 9, p. 232).

Although conferees Oct. 2 resolved differences that had existed between the House and Senate versions of the regular appropriations bill, their report has not yet been approved by the Senate or the House. A Senate subcommittee staff member told BNA Oct. 9 that Congress probably will enact the continuing resolution instead of the regular appropriations bill as the funding vehicle for fiscal 1985.

### Oil and Gas

#### OIL DRILLING GROUP QUESTIONS WITNESSES ON TESTIMONY AT HEARING ON PROPOSED RULE

As a followup to the Occupational Safety and Health Administration's hearing on the oil and gas well drilling and servicing proposed rule, the International Association of Drilling Contractors asked the National Institute for Occupational Safety and Health to explain its position on confined spaces and its respiratory protection program for the industry.

NIOSH testified at OSHA's hearings on the proposed rule, which is intended to lower the high accident and fatality rate within the industry (Current Report, Aug. 23, p. 260).

IADC pointed out that, in NIOSH's recommendation, the institute discussed confined spaces but did not define what confined spaces are or the difference between confined spaces on an oil and gas well drilling site and those on a servicing site. Further, W. Scott Railton, asking questions as legal counsel for IADC, asked what data NIOSH used "to support its statement that '[t]anks, cellars, and enclosures are all examples of areas that can be subject to accumulation of toxic gases.'"

Noting NIOSH's position on the use of respiratory protection equipment, Railton said, "The respiratory protection required for exploratory wells seems overly protective apparently based on NIOSH's assumption that exploratory equates with drilling into unknown formations."

Railton claimed that the two types of drilling should not be compared because exploratory wells are usually drilled in areas where the geology is well known and, if there is no evidence of the existence of hydrogen sulfide, then the respiratory protection program would not need to be as stringent. He then asked if, based on this analysis, NIOSH would agree to change its recommendation.

In another area, Railton challenged the testimony of Donald Gasaway of E-A-R Division of Cabot Corporation. Railton asked, "Isn't it true that you have no factual basis concerning hazards in the oil and gas well drilling industry for your conclusion that the industry's concern that employees wearing hearing protection may not hear danger signals is in part unfounded?" During the hearings, a number of witnesses expressed concern that the use of hearing protectors on drilling sites would prevent workers from hearing noises indicating a hazard, or voice warnings on the sites.

Railton also asked if it was "correct to conclude" that Gasaway had no experience with the type of noise exposure occurring on an oil and gas well drilling site; had not personally measured noise levels on a site; and had not developed audiometric data for the sites.

### More Noise-Related Questions

Putting similar questions to Jeff Morell, president of Impact Hearing Conservation, Inc., Railton asked if it is "reasonable to subject employees to the potential dangers" which exist if an employee fails to hear voice signals during a pipe removing operation called tripping, in order to protect them against potential hearing loss. He also asked if noises may sound different to workers wearing hearing protection devices, especially at longer distances.

Railton also questioned Ken Eldred, of Ken Eldred Engineering, on how long it would take an employee performing a tripping operation to "adapt to or learn the sounds generated during tripping, after they start wearing hearing protectors?" Eldred was a part of a panel of noise consultants organized by OSHA to help in determining whether the oil and gas industry should be subject to the hearing conservation rule.

Railton asked Eldred whether employees would be exposed to "potential physical dangers," such as being struck by swinging pipes during the tripping operation, while learning to wear the hearing protectors. He questioned further, "Since you lack experience with drilling rigs and the noises generated during tripping operations, how do you rationalize the fact that [Bill Pierce of Pierce and Associates] who does have some experience on rigs thinks hearing protectors should not be worn during tripping?" Pierce was also on OSHA's hearing conservation panel.