

job SAFETY & HEALTH report

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SLANTS & TRENDS

OSHA WILL CONTINUE to be able to conduct job safety and health compliance inspections in railroad facilities, as a result of Supreme Court's unanimous refusal Dec. 6 to hear arguments in *Southern Railway Co. v. OSHRC and Brennan* (No. 76-100). In refusing to hear the case, High Court let stand an earlier ruling by the Fourth U.S. Circuit Court of Appeals that the railroad industry is not exempted from the Occupational Safety and Health Act. Only after Federal Railroad Administration promulgates specific standards covering safety and health conditions in environmental work areas of railroad yards can there be an exemption, lower court held.

EVALUATION OF INFLATIONARY IMPACT of proposed OSHA regulatory actions should continue even if Executive Order 11821 -- requiring such evaluations -- expires as now planned on Dec. 31, 1976, President-elect Jimmy Carter's transition team has been advised in an agency position paper. OSHA should "define and defend an appropriate economic analysis procedure" by early 1977, in the event E.O. 11821 expires, Carter's organization was told. Analysis of the inflation impact of safety and health regulations serves useful purposes in developing productive standards and defending against criticisms of arbitrary actions, paper said.

FINAL SAFETY STANDARD requiring either use of ground fault circuit interrupters or implementation of an assured equipment grounding conductor program on construction sites will be published by OSHA Dec. 21.

LAM 004796

EMERGENCY STANDARD FOR PBNA URGED BY NIOSH

An emergency temporary standard for phenyl-beta-naphthylamine (PBNA) should be issued by the Labor Department, National Institute for Occupational Safety and Health recommended Dec. 15. In a memorandum from NIOSH Director Dr. John Finklea to Dr. Morton Corn, Assistant Secretary of Labor for Occupational Safety and Health, institute transmitted a bulletin reporting that PBNA, which is not currently regulated by OSHA, is converted by the human body into beta-naphthylamine (BNA), a known human carcinogen. An estimated 15,000 workers are potentially exposed to PBNA.

In addition to an emergency standard, NIOSH recommended that OSHA consider developing a new general regulatory concept addressing the need to control all substances which can be metabolized by humans into any material already regulated by Federal occupational health standards. Under such an approach, Finklea said, any

(Continued on following page)

EMERGENCY STANDARD FOR PBNA URGED BY NIOSH (Cont.)

substance which can be metabolized by humans into a regulated carcinogen or the active metabolites of regulated carcinogens, would be regulated as a carcinogen.

In the intelligence bulletin transmitted to OSHA, NIOSH said it has recently learned that both PBNA and 2-nitronaphthalene are metabolized to BNA. Bulletin emphasizes the potential problem of metabolic conversion of materials believed to be relatively innocuous into known human carcinogens. Bulletin was released Dec. 17.

PBNA is widely used in the rubber industry as an antioxidant and is also used in the petroleum industry, where it is formulated into greases and oils as an antioxidant, NIOSH said. It is also used as an intermediate in the synthesis of dyes. On Oct. 8, 1976, B.F. Goodrich Co. informed NIOSH that, based on evidence it had obtained that PBNA could be metabolically converted into BNA by workers, it had suspended PBNA manufacturing and was making changes in equipment and work practices to reduce potential exposures to the substance. NIOSH has already written letters to other major PBNA producers -- Du Pont and Uniroyal -- requesting information on occupational exposure. Goodrich said it will continue to use existing PBNA.

Bulletin also contains information indicating 2-nitronaphthalene, an unmarketed by-product produced during the commercial preparation of alpha-naphthylamine, has also been shown to be metabolized to BNA in dogs and monkeys. On Aug. 19, 1976, Du Pont informed NIOSH of unpublished studies regarding the carcinogenic potential and the metabolism of 2-nitronaphthalene in laboratory dogs.

Fact that certain unregulated substances can be metabolized to known carcinogens "lends a new perspective to controlling workplace hazards," NIOSH said in the bulletin. Institute recommended that industrial hygiene practices be followed to minimize exposure to PBNA in the workplace, including establishment of regulated areas where the chemical is manufactured, processed, used, repackaged, released, handled or stored. In addition, all employees potentially exposed to PBNA should be placed under a medical monitoring program. Substitution of another antioxidant for PBNA is also a possible control measure, although alternatives should be fully evaluated with regard to possible human effects.

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✓ ALL FORMS OF ASBESTOS ARE CARCINOGENS, NIOSH TELLS OSHA

All forms of asbestos, both commercial and noncommercial, are carcinogenic, according to an evaluation of data on health effects of asbestos exposure and revised recommended numerical environmental exposure limits prepared for Occupational Safety and Health Administration by National Institute for Occupational Safety and Health. All forms of asbestos have the capacity to induce pleural and peritoneal mesotheliomas and/or lung cancer in man, and all have been found to cause asbestosis in man, NIOSH said in a Dec. 15 memorandum to OSHA.

Since it is not yet possible to specify a safe exposure level for the carcinogenic activity of asbestos, NIOSH said, "only a ban on its use can ensure complete protection against this mineral's carcinogenic effect." Therefore, memorandum continued, "emphasis should be placed on prohibiting the occupational use of asbestos in other than completely closed operations and on substituting other products whenever possible." Asbestos should be replaced by substitutes with the lowest possible chronic toxicities, where technically feasible, NIOSH said.

Institute has recommended an eight-hour, time-weighted average standard of 100,000 fibers over five micrograms in length per cubic meter of air to (1) protect against noncarcinogenic effects of asbestos, and (2) materially reduce risk of asbestos-induced cancer, memorandum explained. Proposed standard also states that no worker should be exposed to peak concentrations of asbestos in excess of 500,000 fibers per cubic meter of air based on a 15-minute sampling period. These exposure levels are based on the lowest concentration at which asbestos fibers can be monitored reliably using phase-contrast fiber counting procedures.

Present indications are that concentrations of asbestos fibers of 100,000 per cubic meter will occur rarely except in the asbestos-processing industry, NIOSH said. Asbestos-containing fireproofing and anechoic linings of air-ducts and plenums, although they are possible sources of asbestos fiber, probably are not major polluters of air within buildings, institute said.

LAM 004797

DPMC-02434

APPEALS COURT RULES ALL WORKERS EXPOSED TO ASBESTOS MUST BE GIVEN MEDICAL EXAMS

Medical examinations must be provided for all workers exposed to airborne asbestos in any measurable quantity, U.S. Court of Appeals for the District of Columbia Circuit ruled June 28.

In handing down its decision in *GAF Corp. v. Occupational Safety and Health Review Commission* (Docket No. 76-1028), court rejected GAF's contention that medical examinations need only be provided if asbestos levels exceed the maximum permissible exposure limit set by Occupational Safety and Health Administration. Court upheld Labor Secretary's interpretation of the asbestos standard, noting that because final standard makes no reference to a specific quantity of asbestos needed to trigger medical examination provisions, "the disputed regulations require medical examinations for all those in occupations exposed to airborne asbestos in any measurable concentration."

Court also rejected GAF's claim that Labor Secretary's interpretation of the medical provision was inconsistent with his approval of a California occupational safety and health plan. California only requires asbestos examinations in workplaces in which employees are exposed to asbestos concentrations greater than one fiber per cubic centimeter. Court stated that in approving the California standard, Labor Secretary noted that California would provide more enforcement personnel than the Federal program. Therefore, court said it was "reasonable for the Secretary to conclude that the California standards as enforced would be "at least as effective as the Federal standards despite differences in the triggering concentrations of asbestos."

In addition, court rejected GAF's claims that the asbestos regulation is arbitrary and unsupported by evidence; that it is inconsistent with the job safety and health act because it requires medical examinations designed to further medical research rather than to protect workers; and that it was improperly promulgated.

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OSHRC CANNOT REVIEW ADEQUACY OF EMPLOYER'S NOISE ABATEMENT PLAN, COURT SAYS

The adequacy of an employer's workplace noise abatement plan which has been approved by the Secretary of Labor is not subject to review by employees, their union, or the Occupational Safety and Health Review Commission, the U.S. Court of Appeals for the Seventh Circuit held June 24. Under a "plain reading" of Section 10(c) of the Occupational Safety and Health Act, the court said, only the reasonableness of the period of time fixed in a Labor Department citation for abatement of the violation of the occupational noise standard is subject to review by the commission.

Appellate court's decision fully upheld the review commission's 2-1 ruling a year ago in *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Its Local 588 v. OSHRC* (No. 76-1718). OSHRC, with Commissioner Timothy Cleary dissenting, held that neither it nor UAW Local 588 could modify the approved noise abatement plan prepared by Ford Motor Co. for its Chicago Heights, Ill., metal stamping plant.

Court said the commission correctly agreed with its Administrative Law Judge, George Otto, who had ruled that the one-year abatement period originally prescribed by the Occupational Safety and Health Administration was unreasonably short. That determination was based on fact, and was even supported by the union's own expert witness, who had testified during the administrative hearing that two years would be needed to implement the measures contained in the approved compliance plan. The commission set June 25, 1978, as the final abatement date for Ford, the date two years after its order became final. The court said setting of the date was supported by substantial evidence.

LAM 004798

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FORMATION OF A SECRETARY'S COMMITTEE ON CONSTRUCTION has been announced by Labor Secretary Ray Marshall. Committee is designed to assist labor and management in resolving some of the industry's problems through a coordinated approach. Committee will be composed of Marshall, as chairperson, and top department officials whose agencies affect construction. Officials include assistant secretaries for occupational safety and health, labor-management relations, employment standards and employment and training. Committee does not replace OSHA's existing Construction Advisory Committee.

DPHC-02435