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PLAINTIFF'S EXHIBIT

CEL-1368

OSHA Instruction CPL
4 29 1967
Office of Health Compliance Assistance

SUBJECT: Inspection Procedures for 29 CFR 1926.58--
Asbestos, Tremolite, Anthophyllite, and
Actinolite Standard

- A. Purpose. This instruction establishes policies and provides clarification to ensure uniform enforcement of 29 CFR 1926.58--Asbestos, tremolite, anthophyllite, and actinolite.
- B. Scope. This instruction applies OSHA-wide.
- C. References.
- D. Cancellation.
- E. Action. OSHA Regional Administrators and Area Directors shall ensure that the guidelines presented in this instruction are followed. The Directorate of Field Operations shall provide whatever support is necessary to assist the Regional Administrators and Area Directors to enforce the asbestos, tremolite, anthophyllite, and actinolite standard.
- F. Federal Program Change. This instruction describes a Federal program change which affects State programs. Each Regional Administrator shall:
1. Ensure that this change is forwarded to each State designee.
 2. Provide a copy of the Federal Register notice to the State designee upon request.
 3. Explain the technical content of the Federal Register notice to the State designee upon request.
 4. Ensure that State designees acknowledge receipt of this Federal program change in writing, within 30 days of notification, to the Regional Administrator. This acknowledgment should include the State's intention to follow the enforcement policies described in

HNA SH STEW 1667

OSHA Instruction CPL

Office of Health Compliance Assistance

this instruction, or a description of the State's alternative policy which is "at least as effective" as the Federal policy.

5. Review policies, instructions and guidelines issued by the State to determine that this change has been communicated to State personnel. Routine monitoring activities shall also be used to determine if this change has been implemented by actual performance.
- G. Background. The organization of the new Asbestos standard is similar to many other OSHA expanded health standards. Published on June 20, 1986, this standard replaces the existing standard recodified at 29 CFR 1910.1101.
1. The new asbestos standard incorporates a much improved set of criteria against which employers can be evaluated on compliance inspections. Every attempt has been made to develop a clear standard that will result in uniform application. The purpose of this directive is to supplement the guidance that is already present in the standard.
 2. Compliance Safety and Health Officers (CSHOs) must look to the standard for much of the guidance necessary for the implementation of this standard. The standard is generally written in specification language providing clear goals.
- H. Organization of this Instruction. Compliance guidelines and policy considerations are addressed following a brief summary of each major section of the standard. Appendices including major interpretations and specific industry inspection guidelines will be added as enforcement experience with this new standard builds.
- I. Regional Input. Regional Administrators and Area Directors shall communicate all related difficulties to the Office of Health Compliance Assistance, Directorate of Field Operations.

DRAFT

OSHA Instruction CPL

Office of Health Compliance Assistance

J. Inspection Guidelines. The following guidance provides a general framework that is designed to assist the CSHO with inspections.

1. CSHO Protective Equipment. Personal protective equipment for CSHO's shall be provided in accordance with Chapter III, Section B.4, of the Field Operations Manual.
2. Scope and Application. The construction standard applies to all operations specified in 29 CFR 1926.58(a), which includes but is not limited to demolition, renovation, and maintenance of structures, as well as, removal of asbestos, tremolite, actinolite or anthophyllite containing materials. The application of the standard is not restricted by the SIC code of the employer. Therefore, if a manufacturer uses his employees to remove asbestos from a building, piping system, boiler system or the like, those employees are covered under the asbestos standard for construction. The general industry standard applies to the manufacturers of products which contain asbestos, tremolite, actinolite, or anthophyllite, automotive repair, ship repair and other general exposures. Inspection procedures for the general industry standard are established in a separate instruction.
3. Definitions -- 1926.58(b). The definition now specifies that in addition to chrysotile, amosite and crocidolite only the asbestiform varieties of tremolite, anthophyllite, and actinolite will now be referred to as tremolite asbestos, anthophyllite asbestos, and actinolite asbestos. Although the other varieties (nonasbestiform) of tremolite, anthophyllite, and actinolite are still covered by the new standard, the nonasbestiform varieties are no longer defined as asbestos as in the old standard. The words tremolite, anthophyllite and actinolite now mean the nonasbestiform varieties of

OSHA Instruction CPL

Office of Health Compliance Assistance

these minerals.

4. Communication Among Employers. 29 CFR 1926.58(d) requires employers engaged in asbestos work which requires the establishment of a regulated area to inform other employers on the worksite of the nature of the asbestos work and the requirements regarding regulated areas, no later than January 16, 1987.
5. Regulated Areas. Paragraph 29 CFR 1926.58(e)(1) requires employers to establish regulated areas by January 16, 1987 where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals exceed or can be expected to exceed the PEL.
 - a. The standard describes two distinctly different types of regulated areas which must be established based on the type of work being performed. Employers performing general construction operations, such as the cutting of asbestos-cement sheets, the lathing of asbestos-cement pipes or the removal of asbestos-containing floor tiles, are required to establish regulated areas in accordance with 29 CFR 1926.58(e)(1) and demarcated in accordance with 29 CFR 1926.58(e)(2). However, employers performing removal, demolition or renovation operations, are required to establish the regulated area in the form of a negative pressure enclosure in accordance with 29 CFR 1926.58(e)(6).
 - b. 29 CFR 1926.58(e)(5) prohibits employees from eating, drinking, smoking, chewing tobacco or gum, or applying cosmetics in the regulated area.
 - c. 29 CFR 1926.58(e)(6) requires employers performing asbestos removal, demolition, and renovation operations to establish

DRAFT

Office of Health Compliance Assistance

negative pressure enclosures before starting their work, wherever feasible. Negative pressure enclosures are considered to be feasible in all situations, except where space limitations prohibit the construction of the enclosure, or where the erection of a negative pressure enclosure would create a greater hazard (e.g., toxic gases present in area). The enclosure must be established and managed by a competent person as defined in 29 CFR 1926.58(b) and (e)(6)(iii).

- d. 29 CFR 1926.58 (e)(6)(iv) grants exceptions from the requirements of establishing negative-pressure enclosures and designating a competent person, if the operation is small-scale and of short duration. For the purposes of this standard a "small-scale, short duration" operation is defined as:

1. maintenance or renovation tasks, where the removal of asbestos containing materials is not the primary goal of the job (e.g.; repairing a valve which entails the removal of asbestos, installing electrical conduit which must be fastened to asbestos-cement siding, etc.)
2. activities where employees' exposures to asbestos can be kept below the action level via worker isolation techniques, such as glove bags or other methods described in Appendix G.
3. an operation which has been included in the employer's asbestos maintenance program as required in Appendix G of all employers who are claiming an exemption from the requirements of 29 CFR

OSHA Instruction CPL

Office of Health Compliance Assistance

1926.58(e)(6).

4. non-repetative operations (viz.; not a series of small-scale jobs, which if performed at one time would have resulted in a large-scale removal)
- e. The CSHO shall evaluate the employer's program for establishing the requisite regulated areas by examining the following:
 - (1) If the employer has designated a competent person to set-up and manage the regulated areas in accordance with (e)(6)(ii)(A-H).
 - (2) If the employer's initial monitoring data, or objective data was obtained in accordance with the prescribed sampling and analytical methods.
 - (3) If monitoring data from a similar work situation is used in lieu of monitoring the current worksite, the CSHO must evaluate and compare the reported conditions and data, and conclude whether or not it is acceptable.
 - (4) If the employer has failed to establish a negative-pressure enclosure, the CSHO must document that such an enclosure is in fact feasible, and that the project is not a small-scale, short-duration operation. If the employer asserts that the activities are small-scale, short-duration, then the CSHO shall review the employer's asbestos maintenance program required by Appendix G of the standard.
- f. If the CSHO finds that the employer has not established the regulated areas or

DRAFT

OSHA Instruction CPL

Office of Health Compliance Assistance

negative-pressure enclosure, a serious citation shall be issued for violation of 29 CFR 1926.58(e)(1) or 29 CFR 1926.58(e)(6) as appropriate.

6. Exposure Monitoring. This section requires employers to perform employee exposure monitoring by January 16, 1987. Personal monitoring is to be performed within the breathing zone of the employee. Samples taken must be representative of all potentially exposed employees in each work area.

- a. Initial monitoring. Each employer whose workplace or work operation falls under the scope of this standard is required to perform initial monitoring upon the inception of the asbestos work operation in order to assess the concentrations of asbestos, tremolite anthophyllite, or actinolite to which employees may be exposed. The standard contains the following exceptions to the initial monitoring provisions:

- (1) Objective data which shows that the asbestos containing materials cannot release airborne fibers in concentrations exceeding the action level. Objective data includes data gathered by the manufacturer of a product which contains asbestos, tremolite, anthophyllite, or actinolite, and demonstrates that under the worst conditions of normal use of the product that exposures will be less than 0.1 f/cc.
- (2) Monitoring data from similar asbestos jobs may be used in lieu of the initial monitoring requirements. Criteria to be considered in evaluating the appropriateness of data from the past jobs include: building material, type of

OSHA Instruction CPL

Office of Health Compliance Assistance

asbestos, percentage of asbestos, work practices, amount of asbestos handled, employee training, engineering controls, and number of employees involved.

- b. Periodic monitoring. The employer must conduct daily monitoring which is representative of the exposure of each employee assigned to work in the regulated area except when all of the employees in the regulated area are equipped with supplied-air-respirators operated in the positive pressure mode.
- c. Termination of Monitoring-1926.58(f)(4). Monitoring may be terminated whenever the results of statistically reliable sampling indicate that an employee's exposure is below the action level.
- d. Sampling Methods. Employers may use the OSHA Reference Method (ORM) or any other equivalent method. 29 CFR 1926.58 (f)(5) of the standard provides equivalency criteria that are used to evaluate alternative sampling techniques.
- e. Evaluating Employer Monitoring Data. Paragraph 29 CFR 1926.58(f)(4) indicates employer monitoring may be terminated whenever air sampling statistically indicates that an employee's exposure is below the action level. OSHA Compliance Officers (CSHO's) shall use the following criteria to evaluate the employer's monitoring determinations.
 - (1) Examination of Monitoring Protocol. CSHO's shall closely examine the employer's sampling methodology paying special attention to the technical reliability of the method. Assurance that proper calibration, both pre and post, proper sampling

OSHA Instruction CPL

Office of Health Compliance Assistance

pattern and frequency, and documentation concerning the representativeness of samples must be available before samples can be relied upon.

- (2) Statistical Indications. Employer data will be considered unreliable unless the examination indicated under paragraph J.5.e.(1) of this directive reveals that sampling has been adequately conducted.

f. Observation of Monitoring.

- (1) The standard requires employers to afford employees or their designated representatives an opportunity to observe any monitoring which is required under 29 CFR 1926.58 (d) of the standard.
- (2) The observer must be provided with all required protective clothing and/or equipment. The observer may need to be trained in the use of such protective equipment and where exposure levels will be at or above the action level to receive training in accordance with 29 CFR 1926.58(j)(5) of the standard.

7. Methods of Compliance. This section requires employers to implement all feasible engineering and work practice controls to reach the PEL or the lowest feasible level, whichever is higher, by January 16, 1987. The most significant changes from 29 CFR 1910.1101 regarding the engineering control provisions are as follows:

- a. Paragraph 29 CFR 1958(g)(1)(i) lists the controls that employers are to use in order to reach the PEL.
- b. Where all feasible engineering and work practice controls have been implemented

DRAFT

OSHA Instruction CPL

Office of Health Compliance Assistance

but are still not capable of reaching the PEL, the controls shall be used, and supplemented with respiratory protection in accordance with 29 CFR 1926.58(h).

c. Paragraph 29 CFR 1926.58(g)(2) prohibits:

- (1) the use of high-speed abrasive disc saws unless equipped with proper exhaust ventilation.
- (2) the use of compressed air to remove asbestos unless used in conjunction with an enclosed ventilation system.
- (3) the spraying of materials containing asbestos, tremolite, anthophyllite or actinolite.

d. Paragraph 29 CFR 1926.58(g)(3) prohibits the use of employee rotation to meet the PEL.

8. Respiratory Protection. 29 CFR 1926.58(h) of the standard requires employers to provide and ensure the use of respirators where employees are exposed in excess of the PEL by January 16, 1987. Some of the significant changes from the requirements of 29 CFR 1910.1101 are as follows:

a. Respirator selection. The respirator selection table is presented in the standard as Table D-4. In addition, 29 CFR 1926.58(h)(2)(iii) requires employers to furnish employees with powered air purifying respirators whenever:

- (1) The employee chooses to use this type of respirator, and
- (2) The powered air purifying respirator will provide adequate protec-

OSHA Instruction CPL

Office of Health Compliance Assistance

tion to the employee.

- b. Respirator program. 29 CFR 1926.58 (h)(3) requires the employer to establish a respirator program. The respirator program must:

- (1) Be in accordance with 29 CFR 1910.134(b), (d), (e) and (f).
- (2) Allow employees to leave the regulated area to wash their faces and respirator facepieces.
- (3) Provide for the removal of employees from the regulated area if an examining physician determines that the employee will be unable to function normally, while wearing a respirator. The employee shall be assigned to another job, if available, and will retain the same seniority, status, and rate of pay as before the removal from the regulated area.

- c. Respirator fit testing. 29 CFR 1926.58 (h)(4)(ii) requires employers to conduct either quantitative or qualitative fit tests for all employees wearing negative pressure respirators. The test must be performed upon initial fitting and at least every six months thereafter. Qualitative fit test may only be used for negative pressure half-mask respirators.

9. Protective work clothing and equipment. 29 CFR 1926.58(i) (1) requires employers to provide and require the use of protective clothing when the employee is exposed to asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals above the PEL.

- a. Laundering. 29 CFR 1926.58(i)(2)(i) requires employers to ensure that laun-

OSHA Instruction CPL

Office of Health Compliance Assistance

dering of contaminated clothing is done so as to prevent the release of asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals in excess of the PEL.

- b. Contaminated Clothing. All contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers. Containers not properly labeled will result in a violation of 29 CFR 1926.58(k)(2)(i).
- c. Protective clothing for removal, demolition, and renovation operations. 29 CFR 1926.58(i)(4) requires a competent person to periodically examine worksuits worn by employees for rips or tears that may occur during performance of work. All rips or tears detected while an employee is working in a negative-pressure enclosure shall be mended immediately, or the protective clothing shall be replaced immediately.

10. Hygiene Facilities and Practices.

- a. 29 CFR 1926.58(j)(1)(i) requires the employer to provide clean change areas for employees who work in regulated areas or for employees who are required to wear protective clothing.

Exception: In lieu of change areas, employees engaged in small-scale, short duration operations, as described in 29 CFR 1926.58(e)(6)(iv), may clean their protective clothing with a portable HEPA-equipped vacuum before they leave the area where maintenance was performed.

- (1) All change areas must be equipped with separate storage facilities for protective clothing and street clothing in accordance with 29 CFR

DRAFT

OSHA Instruction CPL

Office of Health Compliance Assistance

1910.141(e).

- (2) Whenever food or beverages are consumed at the worksite and employees are exposed to asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals above the PEL, the employer shall provide lunch areas in which the airborne concentration is below the action level.
- b. Requirements for removal, demolition, and renovation operations. All small scale, short duration operations, as described in 29 CFR 1926.58(e)(6)(iv) of the standard are exempted from this requirement.
- (1) Decontamination units are to be established adjacent and connected to the regulated area, they shall consist of an equipment room, shower area, and clean room in series. All employees shall enter and exit the regulated area through the decontamination unit.
- (2) Clean rooms shall be equipped with a locker or appropriate storage container
- (3) Shower facilities shall be provided and must comply with 29 CFR 1910.141(d)(3) where feasible.
- (a) Where feasible, showers shall be contiguous to both the equipment room and the change room.
- (b) Where this is not feasible, the employer shall ensure that employees:
- 1 Remove contamination from

DRAFT

OSHA Instruction CPL

Office of Health Compliance Assistance

worksuits using a HEPA vacuum before going to a shower on the jobsite that is not contiguous to the work area; or

- 2 Remove their contaminated worksuits, don clean worksuits and proceed to a shower on the jobsite that is not contiguous to the work area.

(c) Shower facilities erected in accordance with the construction asbestos standard shall be considered to be feasible except;

- 1 Where space limitations prohibit locating the shower facilities adjacent to the equipment room.

- 2 Where water is not available at the jobsite.

- 3 In these situations, however, the use of mobile decontamination units (trailers) equipped with an equipment room, a shower room, and a change room may be appropriate.

(4) 29 CFR 1926.58(j)(2)(iv) requires equipment rooms to be supplied with impermeable, labeled bags and containers.

(5) 29 CFR 1926.58(j)(2)(v) and (vi) outline specific procedures to be followed by employees when entering and exiting decontamination areas.

11. Communication of hazards to employees. The

1000

OSHA Instruction CPL

Office of Health Compliance Assistance

hazard communication standard (HCS) does not currently apply to the construction industry. The labeling requirements of 29 CFR 1926.58(k)(2)(iii), however, specify that the labels shall be used in accordance with 29 CFR 1910.1200(f) of the HCS. The start-up date for these requirements are January 16, 1987.

- a. Labels. 29 CFR 1926.58(k)(2) of this standard establishes uniform "appropriate hazard warnings" for asbestos containing products. The phrase "appropriate hazard warning" is a requirement for labels from the HCS, reference 29 CFR 1910.1200(f). In addition to the specific warnings provided under 29 CFR 1926.58(k)(2) of this standard the following is required:

- (1) Identity of the product, reference 29 CFR 1910.1200(f)(i)(ii) and
- (2) The name and address of the chemical manufacturer or importer, reference 29 CFR 1910.1200 (f)(1)(iii).
(Note: for shipped products only.)

- b. Transmission of MSDS and Labels. 29 CFR 1926.58(k)(2)(vi) of the standard establishes different criteria than the HCS for the creation of labels for the asbestos constituent of a product. Essentially the asbestos constituent of a product does not have to be communicated by labels unless:

- (1) Exposure above the action level can occur during any foreseeable use or,
- (2) Asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals are present in the product at 0.1 percent or above, by

weight.

- c. Employee Information and Training. 29
CFR 1926.58(k)(3)(i) requires employers
to implement a training program by
January 16, 1987.

- (1) The employer needs to institute a training program only when employees are exposed to asbestos at or above the action level. The training program shall be produced in english, however, where conditions warrant, the employer may provide training in a language other than english as well.
- (2) The effectiveness of the training program must be evaluated through a review of the program and discussion with employees. The following questions provide a general outline for CSHO's to use when evaluating the program:
 - (a) Has a training and information program been established for employees exposed at or above the action level?
 - (b) Is training provided prior to or at the time of initial assignment, for those employees not receiving training in previous 12 months, and at the least annually thereafter.
 - (c) Has the training program been conducted in a manner which the employee is able to understand:
 - 1 In a language the employee readily understands,
 - 2 At a level the employee

OSHA Instruction CPL

Office of Health Compliance Assistance

can comprehend.

- (3) Employee information. Have employees been informed of:
- (a) Methods of recognizing asbestos, tremolite, anthophyllite, and actinolite.
 - (b) The health effects associated with asbestos, tremolite, anthophyllite, and actinolite exposure.
 - (c) The relationship between smoking and exposure to asbestos, tremolite, anthophyllite, and actinolite in producing lung cancer.
 - (d) The nature of operations that could result in exposure to asbestos, tremolite, anthophyllite, and actinolite, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures, and any necessary instructions in the use of these controls and procedures.
 - (e) The appropriate work practices for performing the asbestos, tremolite anthophyllite, or actinolite job.
 - (f) The purpose, proper use, fitting instructions, and limitations of respirators.

OSHA Instruction CPL

Office of Health Compliance Assistance

- (g) The medical surveillance program requirements.
 - (h) A review of this standard, including appendices.
 - d. Access to information and training requirements. 29 CFR 1926.58 (k)(4)(i) requires the employer to make available without cost, a copy of the standard and its appendices to all employees exposed at or above the action level.
12. Housekeeping. Paragraph 29 CFR 1926.58(l) specifies the housekeeping requirements of the standard.
- a. Vacuum cleaners must be equipped with HEPA filters.
 - b. All waste materials containing asbestos must be disposed of in sealed, labeled impermeable bags or other closed, labeled impermeable containers.
13. Medical Surveillance. 29 CFR 1926.58(m) requires employers to implement a medical surveillance program and to provide medical examinations. Some of the significant changes regarding medical surveillance are:
- a. All employees that are exposed to asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals at or above the action level for 30 days or more per year, or who are required to wear negative pressure respirators must be provided medical surveillance.
 - b. Examinations must be performed by or under the supervision of a licensed physician and given on the following schedules:

OSHA Instruction CPL

Office of Health Compliance Assistance

- (1) Prior to assignment to an area where negative pressure respirators are worn;
- (2) Where the exposure level may be at or above the action level for 30 or more days per year. In this case, medical examinations are to be given within 10 working days following the thirtieth day of exposure.
- (3) And at least annually thereafter.
- (4) Where the physician determines that any of the examinations should be provided more frequently than specified.
- (5) Exception: No medical examination is required if adequate records show that the employee has been examined in accordance with 29 CFR 1926.58(m)(2)(i)(A) thru (m)(2)(i)(C) within the past 1 year period.

- c. The employer must obtain a written opinion from the examining physician. A copy of the physician's written opinion shall be provided to the affected employee within 30 days of receipt.

14. Recordkeeping. 29 CFR 1926.58(n) requires the employer to maintain records of employee exposure measurements, of objective data on which an exemption from the standard is based under 29 CFR 1926.58(f)(2)(ii), of employee medical surveillance, and of employee training. CSHO's shall examine the employer's records to determine, if they are being maintained accurately, completely and in accordance with this standard.

- a. Exposure records. The CSHO shall examine employer exposure data as well

OSHA Instruction CPL

Office of Health Compliance Assistance

as OSHA air sampling results to determine if the employer is in compliance with all of the provisions of the standard that are triggered by the action level and the PEL.

- b. Medical Records Examination. The CSHO shall examine a representative number of employee medical surveillance records to ensure that the medical records are complete, are accurate, and are up to date. 29 CFR 1926.58(n)(5)(iii) requires the employer to furnish the records to OSHA upon written request. When the requested medical records are employee identifiable, the records shall be obtained in accordance with the requirements of 29 CFR 1912.10, CPL 2-2.30, CPL 2-2.32, CPL 2-2.33 and the Field Operations Manual (FOM).
- c. Effective Date. The effective date for the recordkeeping requirements of the standard is January 16, 1987. However, records still have to be developed and maintained pursuant to 29 CFR 1910.1101 and 29 CFR 1910.20 prior to the start-up dates of this standard.