FILE NAME: Insulation Contractors & Distributors (ICD)

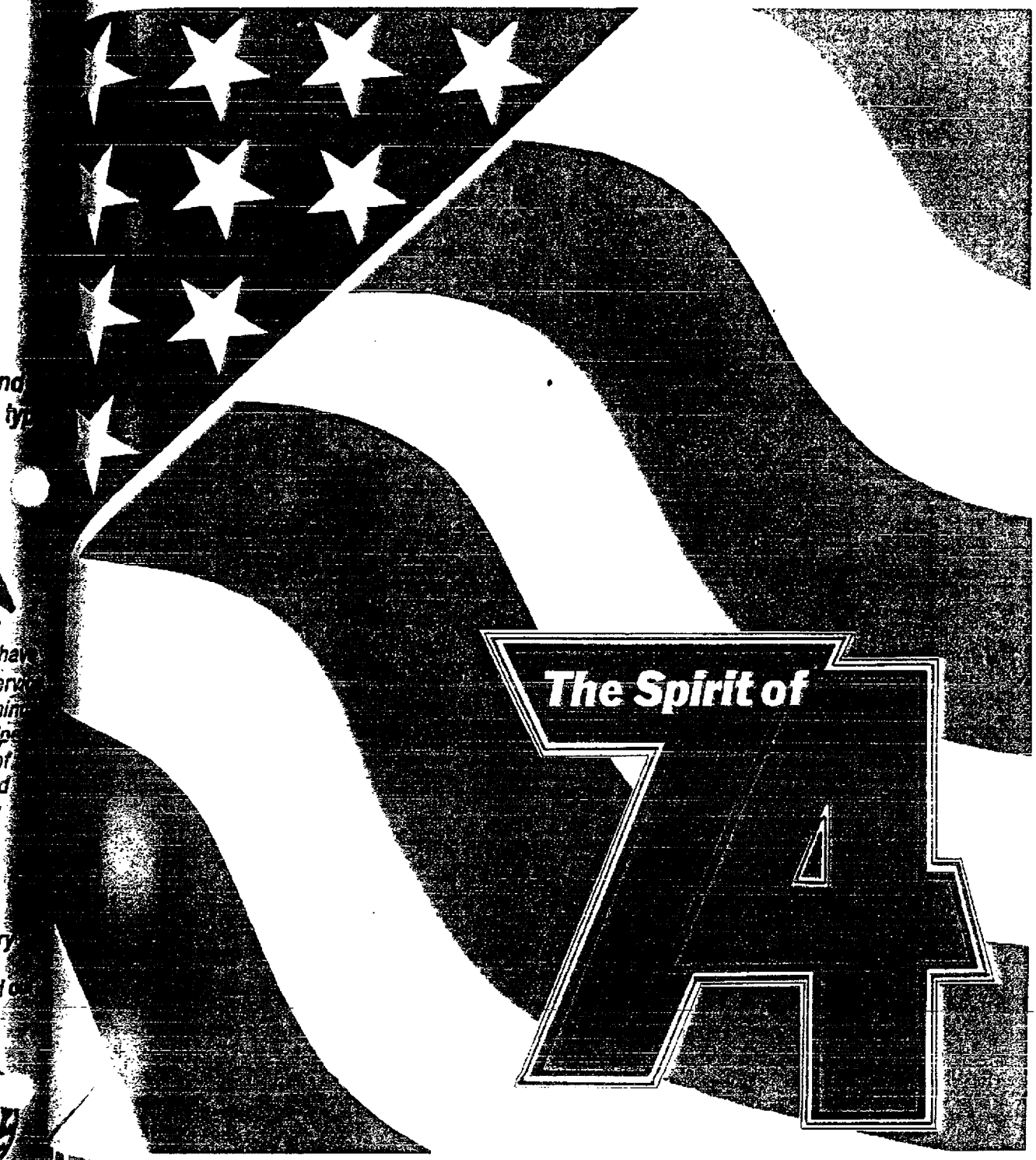
DATE: 1974 June

DOC#: ICD030

DOCUMENT DESCRIPTION: Trade Journal - NICA

NIA OUTLOOK

1974 Vol. 19 No. 6



NATIONAL INSULATION CONTRACTORS ASSOCIATION

NICA
OUTLOOK
National Insulation Contractors Association

COPYRIGHT OFFICE
JUL 3 - 1974
Copy
LIBRARY OF CONGRESS

Our "Outlook" has Changed!

As you noticed on the front cover, our "Outlook" has changed!

No association can afford to stay the same forever. It must move aggressively forward to meet today's needs, always keeping in mind yesterday's lessons and tomorrow's challenges. The energy crisis swept us into a new era. Our outlook has broadened as insulation contractors work together to increase energy conservation.

The new cover design is intended to reflect the insulation industry's expanded outlook. We hope it causes all NICA members to reflect on how they can become more active participants in the new, aggressive spirit of the association.

National Insulation
Contractors Association
Montgomery Center
8630 Fenton Street - Suite 506
Silver Spring, Maryland 20910
telephone 301-585-8441

John C. Pollock, Executive Director
A. H. Wotherspoon, Chairman
NICA Publications Committee

Officers 1974

W. Robert Murfin, President
William A. Bayer, President-Elect
Herbert Mellgren, Vice-President
I. C. Long, Treasurer
C. B. Wheatley, Secretary

Board of Directors

Terms Ending 1974

Robert Bright, CSICA
Dee C. Lose, MICA
Palmer Covil, SIICA
Leroy Whitaker, WICA

Terms Ending 1975

Walter Shipe, EASICA
Herbert McLaughlin, NYSICA
Wayne W. Killion, SIICA
L. N. Dillard, SWICA
Ralph L. Sartori, WICA
James W. Liddell, At-Large

Terms Ending 1976

L. Rouger Harvey, CSICA
Cullen Johnson, EASICA
William O. Mauldin, MICA
Raymond U. Wopperer, NYSICA
Charles B. Morton, SWICA
J. S. Rover, At-Large

Immediate Past President

W. F. Munsey

Annual Subscription $30 [which is included in the Membership Dues] Single copy $1.50 Controlled circulation paid at Silver Spring, Md. Statements of fact and opinion are made on the responsibility of the author alone and do not necessarily express the opinions of the Association. Material may not be reproduced without written consent.

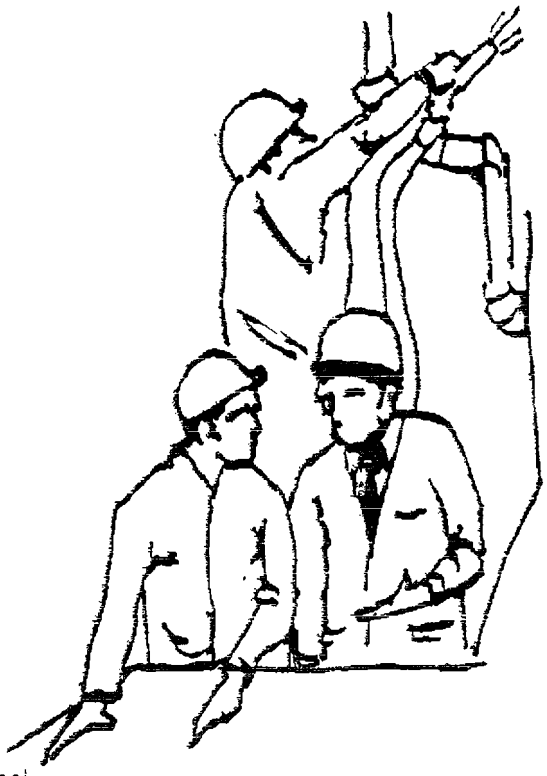
Copyright National Insulation Contractors Association - 1973

TABLE OF CONTENTS

VOL. 19 JUNE 1974 NO. 6

The President's Letter	2
Your Executive Director's Report	4
Spirit of '74	8
Working With You and For You	10
Three-Legged Stool	14
Ferguson Brings Impressive Credentials to NICA Labor Relations Post	16
Our Job Safety Law	20
NICA's 19th Annual Convention Registration Form	27
NICA's 19th Annual Convention Tentative Program	32
How To Conduct An Energy Audit	36
TIMA Introduces ECON II	44
What's New From Manufacturers	45
ECON I Provides Detailed Information	46
Calendar of Coming Events	49
Revised Construction Forecast Shows Impact of Inflation for 1974	52
NICA Mail Box	53
Technical Challenge	54
Working Cash vs. Capitol Cash	56

Our Job Safety Law Should Say What It Means



By Robert D. Moran, Chairman, Occupational Safety and Health Review Commission

Reprinted from Nation's Business

In 1970, Congress enacted a law to protect the health and safety of American workers.

Surely, no one could quarrel with that. Yet the law was greeted instantly with a chorus of boos and a barrage of brickbats.

Nor has time stilled its critics. Today, almost four years later, the Occupational Safety and Health Act has about as many warm friends as acne has.

Why did legislation so well intended misfire so badly?

In this article, an expert gives his answer. He is head of an independent agency created by Congress to hear and decide appeals from rulings by Occupational Safety and Health Administration inspectors

It is generally agreed that the objectives of the Occupational Safety and Health Act of 1970 can be fully achieved only when all employers are persuaded to comply voluntarily with its requirements.

I share this belief

But I also believe that many of the existing job safety standards, as written, don't clarify what must be done to achieve compliance.

Before I get down to specific cases, let me state what I think these standards should do .

A standard is developed—and promulgated—because of the existence or the potential existence of a condition that's dangerous to the safety or health of workers. The purpose of the standard is to tell employers what they must do to eliminate, , reduce or prevent the hazardous condition.

For example: Experience has shown it is dangerous to work as a painter on the Golden Gate Bridge—or other bridges like it. The hazard is that you could easily fall several hundred feet to almost certain death.

We know this hazard could be reduced if a net, capable of catching falling workers, were strung under the bridge. Or else, if we required the painters to wear safety belts hitched in such a manner that a fall wouldn't mean a plunge into the depths of the strait that the bridge spans.

Now, writing a safety standard for this is not an insurmountable problem. The hazard to be prevented is falling from the bridge to the water below. The standard should specify what must be done to prevent the fall or to interrupt it before it can cause injury or death.

We, therefore, can see that there are two rather basic ingredients which are essential to every valid job safety and health standard:

First, identify the hazard.

Second, specify what must be done to prevent its occurrence.

If all standards included these two fundamentals in understandable language, I am sure the number of job safety inspections which result in citations for alleged violations thereof would be dramatically reduced.

And that, of course, is what everybody wants: More compliance and fewer violations.

Even if the Labor Department's Occupational Safety and Health Administration (OSHA) tripled its staff of inspectors, a rather unlikely prospect, they could inspect only 10 percent of America's workplaces—and do so only once a year. This wouldn't go far enough toward achieving the Act's purpose of eliminating injuries and diseases which workers receive from their jobs.

The vast majority of America's employers don't want their employees hurt and don't want to violate the law.

Riddles for the employer

So OSHA hopes for voluntary compliance with federal job safety and health standards. But far too many standards are, to paraphrase Winston Churchill, "riddles wrapped in mysteries inside enigmas." They don't give the employer even a nebulous suggestion of what he should do to protect his employees from whatever-it-is, also left unexplained which represents a hazard to their safety and health.

For example, what does the following standard tell you to do in order to avoid conditions at your place of employment which are potentially hazardous?

> "No contractor or subcontractor . . . shall require any laborer or mechanic . . . to work in surroundings or under any working conditions which are unsanitary, hazardous or dangerous to his health or safety."

These are laudable sentiments, but nowhere does the standard hint at what these unsanitary, hazardous or dangerous conditions might be. Apparently, that has been left to the employer to guess, and for OSHA to decree with hindsight, if he guesses wrong.

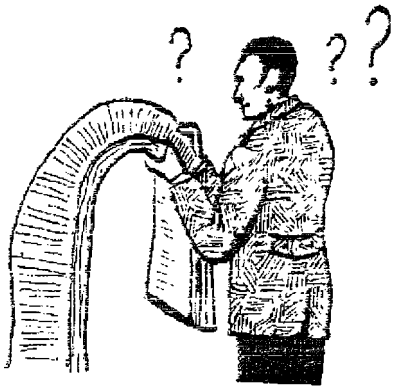
With this sort of direction, the most safety-conscious employer could have no idea what to do to meet the requirements. Perhaps, such a standard can be complied with by saying "Amen" and hoping for the best.

Unfortunately, however, OSHA has issued at least one citation against an employer for the alleged failure to satisfy this standard, proposing a $500 penalty. His alleged offense was that his employees were "required to work under the unsupported concrete placing pipeline."

Clearly, there isn't an employer in the world who can look at this standard and know that it tells him to keep his employees out from under unsupported concrete placing pipelines.

Fortunately, in this case, the employer contested the charge and the Review Commission dismissed it. But this standard is still on the books and I wouldn't be the least bit surprised to see OSHA use it again—and in a case which doesn't involved unsupported concrete placing pipelines.

What can happen when someone takes steps which he thinks meet the requirements of one of these vague standards was illustrated in a case decided by the Commission last August.



"Other means"

The standard prohibits an employee from working "in such proximity to any part of an electric power circuit that he may contact the same in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding it by effective insulation or other means...."

In this case an employee spliced a live electrical power line, a line neither owned nor controlled by his employer, and in performing this job he protected himself from shock by placing a piece of plywood on the ground and standing on it while he made the splice.

The means he chose were successful, since he suffered no ill effects. OSHA charged his employer with a violation because the splice was allegedly made in a manner inconsistent with the standard's requirements.

This charge, of course, was the result of hindsight. OSHA gave no hint in advance that plywood was not a means of obtaining effective insulation when splicing wire.

It seems to me that when a standard simply lists "other means" as an acceptable criterion for

BRUSHES for the insulation trade

IMMEDIATE DELIVERY ON LOW PRICED ADHESIVE BRUSHES
WRITE FOR FREE SAMPLE AND QUOTATION

MARCUS BRUSH COMPANY
444 West 23rd Place Chicago, Illinois 60616
Phone 312-326-2707

meeting its requirements, and does not precisely list or limit the "other means" contemplated, that standard provides no guidance for employers who want to know what OSHA expects them "voluntarily" to do.

If we don't get more specific, no one will know what will and what won't prevent the existence of the hazard. In addition, the employer is left at the mercy of the inspector whose interpretation of what constitutes "other means" is never known in advance and will, of course, vary from inspector to inspector.

In this particular case, OSHA claimed, in effect, that the standard means the guarding shall be by using effective insulation or other methods as determined by whatever OSHA inspector conducts the investigation.

There is no way under the sun that an employer can voluntarily comply with a standard applied in this manner.

Before voluntary compliance can become fully realized, OSHA will have to heed the words of Benjamin Cardozo, the famed jurist, who stated in a decision issued over 50 years ago: "A prohibition so indefinite as to be unintelligible is not a prohibition by which conduct can be governed. It is not a rule at all; it is merely exhortation and entreaty."

(Almost) anything goes

Let me turn now to one of OSHA's favorite standards—it must be a favorite for it turns up in so many of our cases. This particular standard is so nebulous that almost anything is covered by its umbra. I apologize for asking you to read it in full, but one has to see its full text to appreciate its all-encompassing richness:

> "Protective equipment, including personal protective equipment for eyes, face, head and extremities, protective clothing, respiratory devices and protective shields and barriers, shall be provided, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact."

What do you think it tells us to do?

I have no idea—and I don't think OSHA could tell you, either, before an inspection, citation, complaint, hearing and post-hearing brief.

Some people may read it and conclude it requires that hard hats be worn by construction workers. But can you be sure it doesn't also require something else? I submit that there isn't a person on earth who can be certain he is compliance with the requirements of this st at any particular point of time.

If you have some knowledge of profes baseball, football, hockey or basketball— which must comply with this standard—ca be sure that all employees (players) are alw full compliance? How about umpires, referee other officials?

Once you are satisfied with your answer, p consider circus performers: the high-wir trapeze artist or the lion tamer.



If you are a farmer or lifeguard or othe employee who works out-of-doors, what needed to protect you from skin cancer or sunbur caused by the sun's rays? What protection i needed from other "hazards of . . . environment' such as rain, wind, snow, ice, air pollution?

The answers to these questions are difficult, but bear in mind that an employer who comes up with wrong answers is subject to monetary penalties.

This particular standard has already been applied in one case which has been decided by the Review Commission.

An OSHA inspector looked at a freight-loading operation at one employer's terminal. He then made an *ad hoc* and, I think, purely subjective determination that there was "a hazard of environment" (boxes of freight that might be dropped and wheels of various kinds of material-handling equipment that could possibly roll over someone's toes) for which "extremities" (feet) required "protective equipment."

He said that meant safety shoes, but although there are many different kinds of safety shoes he didn't get more specific.

Thus, although "freight" and "wheels," "feet" and "safety shoes" are nowhere mentioned in the standard, OSHA charged that the employer violated its requirements because the employees did not have their feet covered by safety shoes.

Due process is your due

Now you've all heard about the due process clause of the Constitution. It requires that a potential offender have fair warning that the conduct he engages in is a violation of law. To me, the substance of this regulation simply does not afford any advance notice of the conduct which it either requires or prohibits.

To permit enforcement of so vague a standard is to subject the employer to the unbridled discretion of OSHA inspectors in the determination of what constitutes compliance.

How can an employer voluntarily comply with standards that he could not possibly understand until after he has been cited for a particular inspector-determined infraction? And what must he do to satisfy the interpretations of the next inspector?

There are many kinds of protective equipment for one's feet. For example, stockings may guard against infections such as athlete's foot and sandals will protect you against picking up cuts on the bottom of the foot, but neither will help your toes if they come in contact with a dropped brick or an immovable object.

One inspector could say that neither stockings nor sandals constitute protective equipment for extremities but that only leather shoes with iron toes meet the requirements of this occupational safety and health standard. The next could specify that only shoes with certain nonskid soles would suffice. Another could hold that only shoes bought from a named manufacturer or retailer qualify.

I think you can see the danger in this type of yardstick. The inspector tells you what the hazard of the environment is—then he tells you what protective equipment your employees should have been wearing when he made his inspection.

Before anyone says that it is up to the Review Commission and its judges to interpret whether any particular charge constitutes a violation of this standard, let me quote from the Supreme Court's 1966 decision in the case of Giaccio v. Pennsylvania:

> "It is established that a law fails to meet the requirement of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits, or leaves judges and jurors free to decide, without any legally fixed standard, what is prohibited and what is not in each particular case."

One of the principal evils of vague regulations is that they leave the definition, and therefore the creation of crimes, to the unbridled discretion of cops on the beat or local inspectors or trial court judges.

Police state tactics?

I submit that this is one reason why OSHA has been criticized for police state tactics.

The generally accepted definition of the term "police state" is a place where the police decide what the law is—and the law may vary from policeman to policeman and from victim to victim.

We have always prided ourselves on having a government of laws, not men. This means the laws must be exact enough so that individual police officers cannot improvise upon them, amplify them or apply them differently.

Until all occupational safety and health standards are thus, employers are likely to be at the mercy of the inspectors and cries of police state will no doubt continue.

But let's not forget the employer's plight for the moment.

The purpose of this law is to protect employees. This will be accomplished by providing safe and healthful working conditions for all. Unfortunately, however, such a state of affairs cannot be achieved until employers are regulated by job safety standards which set forth meaningful and clearly discernible requirements by which they can guide their conduct; and the full scope of these requirements must be obvious to every prudent employer upon a reading of the standard.

Presenting employers with a quicksilver of standards, such as those described here, cannot save a limb and will not save a life.

Indeed, such standards may serve to delay improvements in job safety and health conditions, as puzzled employers either await clarification of what is expected of them or think they are presently doing all that such standards require.

So long as job safety and health standards remain shrouded in ambiguity, the gains we make in safety and health conditions on the job will be equally ambiguous.

