

PLAINTIFF'S EXHIBIT

BIR-451

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Employee exposure means that exposure to airborne asbestos that would occur if the employee were not using respiratory protective equipment.

Fiber means a particulate form of asbestos 5 micrometers or longer, with a length-to-diameter ratio of at least 3 to 1.

High-efficiency particulate air (HEPA) filter means a filter capable of trapping and retaining at least 99.97 percent of 0.3 micrometer diameter mono-disperse particles.

Industrial hygienist means a professional qualified by education, training, and experience to anticipate, recognize, evaluate and develop controls for occupational health hazards.

PACM means thermal system insulation, sprayed on or troweled on surfacing material and debris in work areas where such material is present.

Regulated area means an area established by the employer to demarcate areas where airborne concentrations of asbestos exceed, or there is a reasonable possibility they may exceed, the permissible exposure limits.

(c) **Permissible exposure limit (PELS)**—(1) Time-weighted average limit (TWA). The employer shall ensure that no employee is exposed to an airborne concentration of asbestos excess of 0.1 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(2) **Excursion limit.** The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes.

(d) **Exposure monitoring.**—(1) General. (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and 30-minute short-term exposures of each employee.

(ii) **Representative 8-hour TWA** employee exposures shall be determined on the basis of one or more samples representing full-shift exposures for each shift for each employee in each job classification in each work area. Representative 30-minute short-term employee exposures shall be determined on the basis of one or more samples representing 30 minute

exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

(2) **Initial monitoring.** (i) Each employer who has a workplace or work operation covered by this standard, except as provided for in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, shall perform initial monitoring of employees who are, or may reasonably be expected to be exposed to airborne concentrations at or above the TWA permissible exposure limit and/or excursion limit.

(ii) Where the employer has monitored after March 31, 1992, for the TWA permissible exposure limit and/or the excursion limit, and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(iii) Where the employer has relied upon objective data that demonstrate that asbestos is not capable of being released in airborne concentrations at or above the TWA permissible exposure limit and/or excursion limit under the expected conditions of processing, use, or handling, then no initial monitoring is required.

(3) **Monitoring frequency** (periodic monitoring) and patterns. After the initial determinations required by paragraph (d)(2)(i) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than six months for employees whose exposures may reasonably be foreseen to exceed the TWA permissible exposure limit and/or excursion limit.

(4) **Changes in monitoring frequency.** If either the initial or the periodic monitoring required by paragraphs (d)(2) and (d)(3) of this section statistically indicates that employee exposures are below the TWA permissible exposure limit and/or excursion limit, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(5) **Additional monitoring.** Notwithstanding the provisions of paragraphs (d)(2)(ii) and (d)(4) of this section, the employer shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the production, process, control equipment, personnel or work practices that may result in new or additional exposures above the TWA

permissible exposure limit and/or excursion limit or when the employer has any reason to suspect that a change may result in new or additional exposures above the action level or excursion limit.

(6) **Method of monitoring.** (i) All samples taken to satisfy the monitoring requirements of paragraph (d) of this section shall be personal samples collected following the procedures specified in Appendix A.

(ii) All samples taken to satisfy the monitoring requirements of paragraph (d) of this section shall be evaluated using the OSHA Reference Method (ORM) specified in Appendix A of this section, or an equivalent counting method.

(iii) If an equivalent method to the ORM is used, the employer shall ensure that the method meets the following criteria:

(A) Replicate exposure data used to establish equivalency are collected side-by-side field and laboratory comparisons; and

(B) The comparison indicates that 90% of the samples collected in the range 0.5 to 2.0 times the permissible limit have an accuracy range of plus or minus 25 percent of the ORM result, a 95% confidence level as demonstrated by a statistically valid protocol; and

(C) The equivalent method is documented and the results of the comparison testing are maintained.

(iv) To satisfy the monitoring requirements of paragraph (d) of this section, employers must use the results of monitoring analysis performed by laboratories which have instituted quality assurance programs that include the elements as prescribed in Appendix A of this section.

(7) **Employee notification of monitoring results.** (i) The employer shall, within 15 working days after receipt of the results of any monitoring performed under the standard, notify the affected employees of these results in writing either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (d)(7)(i) of this section shall contain the corrective action taken by the employer to reduce employee exposure to or below the TWA and/or excursion limit, where monitoring results indicated that the TWA and/or excursion limit had been exceeded.

(e) **Regulated Areas.**—(1) Establishment. The employer shall establish regulated areas wherever airborne concentrations of asbestos or PACM are in excess of the TWA

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and required by work duties to be present in regulated areas.

"Director" means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Employee exposure" means that exposure to airborne asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals that would occur if the employee were not using respiratory protective equipment.

"Fiber" means a particulate form of asbestos, tremolite, anthophyllite, or actinolite, 5 micrometers or longer, with a length-to-diameter ratio of at least 3 to 1.

"High-efficiency particulate air (HEPA) filter" means a filter capable of trapping and retaining at least 99.97 percent of 0.3 micrometer diameter mono-disperse particles.

"Regulated area" means an area established by the employer to demarcate areas where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals exceed, or can reasonably be expected to exceed, the permissible exposure limit.

"Tremolite, anthophyllite, or actinolite" means the non-asbestos form of these minerals, and any of these minerals that have been chemically treated and/or altered.

(c) *Permissible exposure limits (PELS)*—(1) *Time-weighted average limit (TWA)*. The employer shall ensure that no employee is exposed to an airborne concentration of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of 0.2 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(2) *Excursion limit*. The employer shall ensure that no employee is exposed to an airborne concentration of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals, in excess of 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes.

(d) *Exposure monitoring*—(1) *General*. (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and minute short-term exposures of each employee.

(ii) Representative 8-hour TWA employee exposures shall be determined on the basis of one or more samples representing full-shift exposures each shift for each employee in each job classification in each work area. Representative 30-minute short-term employee exposures shall be determined on the basis of one or more samples representing 30 minute exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

(2) *Initial monitoring*. (i) Each employer who has a workplace or work operation covered by this standard except as provided for in paragraph (d)(2)(ii) and (d)(2)(iii) of this section shall perform initial monitoring of employees who are, or may reasonably be expected to be exposed to airborne concentrations at or above the action level and/or excursion limit.

(ii) Where the employer has monitored after December 20, 1985, for the TWA and after March 14, 1988, for the excursion limit, and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(iii) Where the employer has relied upon objective data that demonstrate that asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals is not capable of being released in airborne concentrations at or above the action level and/or excursion limit under the expected conditions of processing, use, or handling then no initial monitoring is required.

(3) *Monitoring frequency (periodic monitoring) and patterns*. After the initial determinations required by paragraph (d)(2)(i) of this section samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall

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^aBoth concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:
^bContaining <1% quartz; if 1% quartz, use quartz limit.

Aerodynamic diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

The measurements under this note refer to the use of an AEC instrument. The respirable fraction of coal dust is determined with a MRE; the figure corresponding to that of 2.4 Mg/M³ in the table for coal dust is 4.5 Mg/M³.

[39 FR 23502, June 27, 1974. Redesignated and amended at 40 FR 23072, 23073, May 28, 1975; 42 FR 22525, May 3, 1977; 43 FR 2600, Jan. 17, 1978; 43 FR 5963, Feb. 10, 1978; 43 FR 13563, Mar. 31, 1978; 43 FR 19624, May 5, 1978; 43 FR 27394, June 23, 1978; 43 FR 45809, Oct. 3, 1978; 43 FR 53007, Nov. 14, 1978; 43 FR 57602, Dec. 8, 1978; 46 FR 32022, June 19, 1981; 49 FR 25796, June 22, 1984; 50 FR 51173, Dec. 13, 1985]

§ 1910.1001 Asbestos, tremolite, anthophyllite, and actinolite.

(a) *Scope and application.* (1) This section applies to all occupational exposures to asbestos, tremolite, anthophyllite, and actinolite, in all industries covered by the Occupational Safety and Health Act, except as provided in paragraph (a)(2) of this section.

(2) This section does not apply to construction work as defined in 29 CFR 1910.12(b). [Exposure to asbestos, tremolite, anthophyllite, and actinolite in construction work is covered by 29 CFR 1926.58.]

(b) *Definitions.* "Action level" means an airborne concentration of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals, of 0.1 fiber per cubic centimeter (f/cc) of air calculated as an eight (8)-hour time-weighted average.

"Asbestos" includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated and/or altered.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Authorized person" means any person authorized by the employer

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and required by work duties to be present in regulated areas.

"Director" means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Employee exposure" means that exposure to airborne asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals that would occur if the employee were not using respiratory protective equipment.

"Fiber" means a particulate form of asbestos, tremolite, anthophyllite, or actinolite, 5 micrometers or longer, with a length-to-diameter ratio of at least 3 to 1.

"High-efficiency particulate air (HEPA) filter" means a filter capable of trapping and retaining at least 99.97 percent of 0.3 micrometer diameter mono-disperse particles.

"Regulated area" means an area established by the employer to demarcate areas where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals exceed, or can reasonably be expected to exceed, the permissible exposure limit.

"Tremolite, anthophyllite, or actinolite" means the non-asbestos form of these minerals, and any of these minerals that have been chemically treated and/or altered.

(c) *Permissible exposure limit (PEL).* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of 0.2 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(d) *Exposure monitoring.*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA of each employee.

(ii) Representative 8-hour TWA employee exposures shall be determined on the basis of one or more samples representing full-shift exposures for

TABLE G-3—MINERAL DUSTS

Substance	Mppcf *	Mg/M ³
Silica:		
Crystalline:		
Quartz (respirable).....	250 [†]	10mg/M ³ = %SiO ₂ +2 30mg/M ³
Quartz (total dust).....		%SiO ₂ +2
Cristobalite: Use ½ the value calculated from the count or mass formulae for quartz.		
Tridymite: Use ½ the value calculated from the formulae for quartz.		
Amorphous, including natural diatomaceous earth.....	20	80mg/M ³ %SiO ₂
Silicates (less than 1% crystalline silica):		
Mica.....	20	
Soapstone.....	20	
Talc (non-asbestos-form).....	20 [‡]	
Talc (fibrous). Use asbestos limit.		
Tremolite (see talc, fibrous)		
Portland cement.....	50	
Graphite (natural).....	15	
Coal dust (respirable fraction less than 6% SiO ₂).....		2.4mg/M ³ or 10mg/M ³ %SiO ₂ +2
For more than 6% SiO ₂		
Inert or Nuisance Dust:		
Respirable fraction.....	15	5mg/M ³
Total dust.....	50	15mg/M ³

NOTE: Conversion factors—
mppcf/35.3 = million particles per cubic meter
= particles per c.c.

* Millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques.

† The percentage of crystalline silica in the formula is the amount determined from air-borne samples, except in those instances in which other methods have been shown to be applicable.

‡ As determined by the membrane filter method at 430X phase contrast magnification.

§ Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

• Containing < 1% quartz; if > 1% quartz, use quartz limit.

Aerodynamic diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

The measurements under this note refer to the use of an AEC instrument. If the respirable fraction of coal dust is determined with a MRE the figure corresponding to that of 2.4 Mg/M³ in the table for coal dust is 4.5 Mg/M³.

§ 1910.93a Asbestos.

(a) **Definitions.** For the purpose of this section, (1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Asbestos fibers" means asbestos fibers longer than 5 micrometers.

(b) **Permissible exposure to airborne concentrations of asbestos fibers—**(1) *Standard effective July 7, 1972.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed five fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(2) *Standard effective July 1, 1976.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(3) **Ceiling concentration.** No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(c) **Methods of compliance—**(1) *Engineering methods.* (i) *Engineering controls.* Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in paragraph (b) of this section.

(ii) *Local exhaust ventilation.* (a) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2-1971, which is incorporated by reference herein.

(b) See § 1910.6 concerning the availability of ANSI Z9.2-1971, and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in § 1910.100.

(iii) *Particular tools.* All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with subdivision (ii) of this subparagraph.

(2) **Work practices—**(i) *Wet methods.* Insofar as practicable, asbestos shall be

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TABLE 1-3-MINERAL DUSTS

Substance	Mppcf*	Mg/M ³
Silica:		
Crystalline:		
Quartz (respirable):	250	10mg/M ³ =
Quartz (total dust):	%SiO ₂ +5	%SiO ₂ +2
		%SiO ₂ +2
Crystalline: Use 1/2 the value calculated from the count or mass formulae for quartz. Use 1/2 the value calculated from the formula for amorphous, including natural diatomaceous earth.		
	20	80mg/M ³
		%SiO ₂
Silicates (less than 1% crystalline silica):		
Alumina:	20	
Swartzstone:	20	
Talc:	20	
Portland cement:	20	
(Trappite) (natural):	15	
Coal dust (respirable fraction less than 6% SiO ₂):		2.4mg/N ³ or 10mg/N ³
For more than 5% SiO ₂ :		%SiO ₂ +2
		8mg/N ³
Inert or Nuisance Dust:	15	
Respirable fraction:	50	15mg/N ³
Total dust:		

Note: Conversion factors—
mppcf x 36.3 = million particles per cubic meter
= particles per c.c.

* Millions of particles per cubic foot of air, based on samples counted by light-field techniques. Is the percentage of crystalline silica in the formula determined from air-borne samples, except in those instances in which other methods have been shown to be applicable. As determined by the membrane filter method at 430X phase contrast magnification. = Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

Aerodynamic diameter (unit density sphere)	Percent passing selector
2.5	90
5.0	75
10	50

The measurements under this table refer to the use of an AEC instrument. If the respirable fraction of coal dust is determined with a MRE, the figure corresponding to that of 2.4 Mg/N³ in the table for coal dust is 4.5 Mg/M³. [36 F.R. 15101, Aug. 13, 1971, as amended at 36 F.R. 23208, Dec. 7, 1971]

§ 1910.93a Asbestos dust.

(a) The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed

shall not exceed 5 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400-450X magnification (4 millimeter objective) phase contrast illumination. Concentrations above 5 fibers per milliliter but, not to exceed 10 up to a total of 15 minutes in an hour for up to 5 hours in an 8-hour day.

(b) Engineering methods, such as but not limited to, enclosure, vacuum sweeping, and local exhaust ventilation, shall be used to meet the exposure limits prescribed in paragraph (a) of this section. Where such engineering methods are not feasible, or do not otherwise reduce the concentrations below those prescribed in paragraph (a) of this section, respiratory protective devices shall be provided and used in accordance with paragraph (c) of this section.

(c) (1) (i) When the limits of exposure to asbestos dust prescribed in paragraph (a) of this section are exceeded and when engineering controls required by paragraph (b) of this section are not feasible or do not otherwise reduce the concentration of asbestos dust below those prescribed in paragraph (a) of this section, the employer shall require the use of respiratory protective devices. The selection of respiratory protective devices shall be limited to those specified in the remaining subparagraphs of this paragraph (c).

(ii) The employer shall require that each employee test his respiratory protective device before each use in order to insure a proper fit according to the manufacturer's instructions. The employer shall further provide for effective training or supervision of employees in the testing of respiratory protective devices for fit before their use.

(2) For an atmosphere containing not more than 25 fibers per milliliter greater than 5 microns in length over an 8-hour average, or more than 50 fibers per milliliter over any period of 15 minutes, a reusable or single-use filter type respirator, operating with negative pressure during the inhalation phase of breathing, approved by the U.S. Bureau of Mines under the provisions of 30 CFR Part 14 (Bureau of Mines Schedule 21B), or a valveless respirator providing equivalent protection, shall be used.

(3) For an atmosphere containing not more than 250 fibers per milliliter greater than 5 microns in length over an 8-hour average, or more than 500 fibers per

milliliter over any period of 15 minutes, a powered filter positive pressure respirator approved by the U.S. Bureau of Mines under the provisions of 30 CFR Part 14 (Bureau of Mines Schedule 21B) shall be used.

(4) For an atmosphere containing more than 250 fibers per milliliter greater than 5 microns in length over an 8-hour average a type C positive pressure supplied-air respirator approved by the U.S. Bureau of Mines under the provisions of 30 CFR Part 12 (Bureau of Mines Schedule 19B) shall be used.

(5) The employer shall establish a respirator program in accordance with the requirements of American National Standard Practice for Respiratory Protection Z88.2-1969.

(6) The respirators provided each employee shall be properly inspected, cleaned, repaired and stored.

(d) (1) When an employer has employees who are exposed to asbestos dust exceeding the limits prescribed in paragraph (a) of this section and the exposure results from the operations described in the remaining subparagraphs of this paragraph (d), the employer shall comply with the requirements of these subparagraphs relating to the operations involved. The requirements of this paragraph are in addition to those prescribed in paragraph (b) of this section.

(2) All hand- or power-operated tools which produce asbestos dust such as, but not limited to, saws, sorters, abrasive wheels, and drills shall be provided with local exhaust ventilation and dust collectors in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems; ANSI Z9.2-1971.

(3) Employees exposed to the spraying of asbestos or the demolition of pipes, structures, or equipment covered or insulated with asbestos shall be provided with respiratory protective devices in accordance with paragraph (c) (4) of this section.

(e) Asbestos cement, mortar, coatings, grout, and plaster shall be mixed in closed bags or other containers.

(f) Asbestos waste and scrap shall be collected and disposed of in sealed bags or other containers.

(g) All cleanup of asbestos dust and blowing shall be performed by vacuum cleaners. No dry sweeping shall be performed.

[36 F.R. 23208, Dec. 7, 1971]

§ 1910.94 Ventilation.

(a) *Passive blasting*—
Applicable to this part. A solid substance abrasive blasting operator

(ii) *Abrasive-blasting*—
continuous flow air-line re-
constructed so that it will cover
head, neck, and shoulders from
rebounding abrasive.

(iii) *Blast cleaning barrier*—
enclosure which rotates or
tumble the parts, in order to
clean the surfaces of the parts by
an automatic blast spray.

(iv) *Blast cleaning room*—
enclosure in which blasting
are performed and where
works inside of the room are
blasting nozzle and direct
abrasive material.

(v) *Blasting cabinet*—
where the operator stands
operates the blasting nozzle
opening or openings in the

(vi) *Clean air*. Air of such
quality that it will not cause harm or discomfort
individual if it is inhaled
periods of time.

(vii) *Dust collector*. A
combination of devices for
removing dust from the air
handled in a ventilation
system.

(viii) *Exhaust ventilation*—
system for removing dust
from a space, comprising
of the following elements:
(a) hood, (b) duct work, (c)
or hood, (d) dust work, (e)
ing equipment, (f) exhaust
discharge stack.

(ix) *Particulate-filter*
air purifying respirator,
ferred to as a dust or a filter
which removes most of the
from the air passing through
(x) *Respirable dust*. A
size capable of passing through
per respiratory system
lower lung passages.

(xi) *Rotary blast clean*
enclosure where the pieces
are positioned on a rotating
passed automatically through
blast sprays.

(xii) *Abrasive blasting*—
application of an abrasive
by pneumatic pressure,
sure, or centrifugal force.

(2) *Dust hazards from*
ing. (1) Abrasives are

29 C.F.R. § 1910.93a Jan 1, 1972

