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Court modifies asbestos regulation

Methods of compliance to the new provisions are specified for the construction industry in the OSHA regulation

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The U.S. Court of Appeals upheld most aspects of the Occupational Safety & Health Administration (OSHA) regulation regarding occupational exposure to asbestos. The rule continues to specify a permissible time weighted average (TWA) of airborne asbestos of 0.2 fibers per cubic centimeter (f/cc) of air and an action level of 0.1 f/cc (as an eight-hour TWA), which triggers certain compliance measures by employers (such as employee training and medical surveillance).

The 1986 OSHA regulation is divided into two sections—one section for general and maritime industries and one section for the construction industry. Because of differences in exposures in workplace conditions, the agency believed that separate treatment was warranted in the construction industry, where demolition, renovation and repair dominate.

A significant portion of the 178-page document gives instructions to the construction industry (*Federal Register*, 20 June 1986, pp. 22612-22790). Requirements for methods of compliance are specified, addressing items such as personal protective equipment, employee monitoring, medical surveillance, communication of hazards to employees, regulated areas, housekeeping procedures and recordkeeping.

Discontinuance of monitoring

The court ordered OSHA to add to the construction industry regulation a provision that would require the resumption of monitoring for exposure to asbestos fibers under conditions similar to those specified for general industry. The original rule for the construction industry allowed "employers to discontinue monitoring if reliable measurements indicate that employee exposures are below the action level."

The parallel provision for general industry, which now applies to the construction industry as well, states that even if the employer has controlled exposures to below the action level, exposure monitoring would be reinstituted "when there has been a change in the production process, control equipment, personnel or work practices that may result in new or additional exposures to asbestos or when the employer has any reason to suspect that a change may result in new or additional exposures," (*Federal Register*, 20 December 1989, pp. 52024-52028).



Exemptions for small jobs

The OSHA regulation permits exemption of small-scale, short duration projects. The court ordered OSHA to clarify the "small-scale" exemption by limiting the exemptions to operations where it is "impractical to construct a negative-pressure enclosure" because of the configuration of the work environment. Previously, OSHA had provided examples of "small-scale" projects that included pipe repair, valve replacement or installation of electrical conduit where negative-pressure enclosures are commonly impractical.

The agency has provided field guidance indicating the requirements for compliance: the primary goal is not the removal of asbestos; an employee's exposure is maintained below the action level; the operation is part of the employer's asbestos maintenance program; and it is a non-repetitive operation. OSHA informed the court that this issue will be addressed in a separate rulemaking process.

Smoking restrictions

Because smoking may increase the risk in asbestos exposure environments, the court specified that OSHA should add a provision prohibiting smoking in all work areas where there is "occupational exposure to asbestos." OSHA is also requiring that employers augment their training programs by offering smoking cessation assistance and self-help materials, and that physicians certify they have informed employees of the health risks (*Federal Register*, 5 February 1990, pp. 3724-3732).

Short-term exposures

OSHA had previously modified its exposure limits on the 1986 rule for short-term exposures to high levels of asbestos concentrations. Workers who are involved in asbestos removal, who drill or saw pipe, who install cement pipe or who work on brake repairs are frequently exposed to short-term bursts of asbestos. Such workers might experience a high level of asbestos for a short duration and still be under the eight-hour TWA limit. Therefore, OSHA specified a maximum short-term exposure limit (STEL) of 1.0 f/cc averaged over a 30-minute sampling period (*Federal Register*, 14 September 1988, pp. 35609-35629).

The court refused to accept OSHA's ban on spraying asbestos-containing materials. OSHA determined that deletion of the ban would not significantly increase risk to employees since many asbestos-containing materials have been banned by the Environmental Protection Agency (EPA) and the remaining materials are formulated by encapsulating any asbestos content (which limits asbestos release to undetectable amounts). In 1989, the EPA banned most remaining uses of asbestos (see *ASHRAE Journal*, September 1989, pp. 15). ■

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