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PLAINTIFF'S EXHIBIT
DOW-591

Organization Resources Counselors, Inc.

Memorandum

September 11, 1987

To: ORC Occupational Safety and Health Group
Western Occupational Safety and Health Group
ORC Asbestos Task Force

From: Darrell K. Mattheis

Subject: OSHA CPL 2-2.40 Field Inspection Procedures for 29 CFR 1910.1001 and 29 CFR 1926.58

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On September 1, 1987, OSHA released its instructions to the field for asbestos inspections. This CPL is much less specific than the previous draft, and does not address many subjects covered in the earlier document. Most sections seem reasonably clear, but the shower requirements may cause some concern (Section 6).

The main sections of CPL 2-2.40 are as follows:

1. CSHO Personal Protective Equipment (PPE) and Decontamination Procedures: This 4 page section covers protective actions that the OSHA CSHOs are supposed to take to protect themselves from overexposure to asbestos.

2. Scope and Application: Emphasizes that the Construction Standard (1926.58(a) is the main standard covered here.

3. Regulated Areas:

   a. Distinguishes between the kinds of regulated areas required for the two standards.

   b. Requires negative pressure enclosures for asbestos removal, demolition and renovation operations. Enclosures must be constructed before starting the job, wherever feasible. Negative pressure enclosures are considered feasible in all cases except where precluded by space limitations or greater hazards.

   c. Negative pressure enclosures are not needed if the job is "small-scale, short duration"; it defines such jobs in some detail.

d. Set requirements for evaluating an employer's regulated areas, and for the use of objective data compiled by the employer in the same or similar kinds of operations.

4. Pre-entry appraisal: If the job appears to involve asbestos, and the employer has taken none of the actions required by the standard, the CSHO is to take a bulk sample, obtain expedited analysis, and if positive, consider using the imminent danger procedures from the OSHA Field Operations Manual.

5. Establishing the Presence of Asbestos: These procedures are to be used when the basis for an imminent danger notice is being investigated.

6. Hygiene Facilities and Practices: Discusses showers and finds them feasible, except where space is limited, or water is not available. It recommends the use of mobile decontamination units.

If you have any comments on this document, please let me know.

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U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

OSHA Instruction CPL 2-2.40
SEP 1 1987
Office of Health Compliance Assistance

SUBJECT: Inspection Procedures for Both 29 CFR 1910.1001 and 29 CFR 1926.58--Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Final Rules, General Industry and Construction Standards, Respectively

A. Purpose. This instruction establishes policies and provides clarification to ensure uniform enforcement of the above stated standards.

B. Scope. This instruction applies OSHA-wide.

C. References.

1. General Industry Standards, 29 CFR 1910.1001; 1910.134(b), (d), (e) and (f); 1910.141(e) and (d)(3); 1910.1101 and 1910.20.

2. OSHA Instruction CPL 2.45A, April 18, 1983, Field Operations Manual (FOM).

3. OSHA Instruction CPL 2-2.30, November 14, 1980; CPL 2-2.32, January 19, 1981; and CPL 2-2.33, February 8, 1982.

D. Cancellation. OSHA Instructions CPL 2-2.2, October 30, 1978, CPL 2-2.21A, February 18, 1981, and CPL 2-2.21A CH-1, June 3, 1985, are canceled.

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.

ST0071205

377823

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 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 standards are similar to many other OSHA expanded health standards. Published on June 20, 1986, these standards replace the existing standard recodified as 29 CFR 1910.1101 and add a separate standard for construction, 29 CFR 1926.58.

1. The new asbestos standards incorporate 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 instruction is to supplement the guidance that is already present in the two standards.

2. Compliance Safety and Health Officers (CSHOs) must look to the standards for much of the guidance necessary for the implementation of these standards. The standards are generally written in specification language providing clear goals.

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

1. CSHO Personal Protective Equipment (PPE) and Decontamination Procedures.

a. Respiratory Protection.

(1) Respirators will be selected in accordance with Table D-4 of 29 CFR 1926.58 and Table 1 of 29 CFR 1910.1001, or in accordance with any regional guidance which requires a more protective respirator.

(2) If the CSHO uses negative-pressure respirators to perform asbestos inspections, the Regional Administrator must ensure that semiannual fit tests are provided in accordance with 29 CFR 1926.58(h)(4)(ii) and 1910.1001(g)(4)(ii).

b. Protective Clothing.

(1) For inspections conducted under either standard requiring the CSHO to enter into a regulated area or negative-pressure enclosure, disposable coveralls, head coverings, foot coverings, and gloves shall be worn.

(2) Clothing such as bathing suits may be worn beneath the disposable garments, for circumstances where the CSHO has obtained the employer's permission to use his or her decontamination facilities, and the decontamination area complies with 29 CFR 1926.58(j) or 1910.1001(i).

c. Decontamination Procedures.

(1) For any investigation where the presence of airborne asbestos

ST0071207

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fibers in concentrations above the action level is suspected, only experienced and properly trained CSHOs shall perform the site evaluation. Inexperienced or untrained CSHOs shall submit a referral to his or her supervisor in the event that the presence of asbestos is discovered during the course of an inspection.

(2) If the site evaluation indicates that personal protective equipment is required to conduct the inspection, then the CSHO shall determine if two CSHO's will be necessary to conduct the inspection and to perform the requisite decontamination procedures.

(3) For OSHA inspections of removal, demolition, and renovation operations, the CSHO shall not enter into the negative-pressure enclosure unless it is absolutely necessary to document a violation of an OSHA standard.

(4) If it is determined to be necessary to enter into the negative-pressure enclosure, the CSHO shall enter through the employer's decontamination area's clean room. If the employer denies the CSHO entry through the decontamination unit, then the CSHO shall consider this to be a denial of entry and the requisite warrants shall be obtained.

(5) Prior to entering into the negative-pressure enclosure or regulated area, the CSHO shall determine if the employer has a decontamination area which complies with 29 CFR 1926.58(j) or 1910.1001(i), and obtain the employer's permission to use the decontamination unit. Upon

ST0071208

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exiting from the negative-pressure enclosure or regulated area, the CSHO shall follow the exiting procedures required by 29 CFR 1926.58(j)(2)(vi) or 1910.1001(j)(2)(i), to avoid contaminating the employer's clean room.

(6) The Area Director shall be consulted if the CSHOs have difficulty complying with the required decontamination procedures.

(7) For construction activities not requiring hygiene facilities (viz.: small-scale, short-duration operations) or where the employer's hygiene facilities are inadequate, or where the employer refuses to allow the CSHO to use their hygiene facilities; CSHOs shall first use a HEPA-equipped vacuum to remove gross contamination from their protective clothing and equipment. Further suppression of the contaminants may be achieved by applying a water mist to the entire outer surface of the protective clothing. The disposable items of PPE shall then be removed and placed in 6-mil polyethylene bags, sealed, labeled, and disposed of following the applicable Federal, State or local guidelines. Nondisposable equipment (e.g.,respirators, pumps, etc.) where feasible, shall be wiped off with premoistened towelettes, or sprayed with water and placed in polyethylene bags, for transport, if further washing is required. Any exposed skin areas shall be wiped clean with premoistened towelettes. Upon the removal of contaminated PPE, fresh disposable coveralls shall be donned by the CSHO prior to travel to a remote location for showering.

ST0071209

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.

3. Regulated Areas. Paragraph 29 CFR 1926.58(e)(1) requires employers to establish regulated areas where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals exceed or can be expected to exceed the PEL. Paragraph 29 CFR 1910.1001(e) of the General Industry Standard requires the same.

   a. The construction 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).

   b. 29 CFR 1926.58(e)(6) requires employers performing asbestos removal, demolition, and renovation operations to establish negative-pressure enclosures before starting their work, wherever feasible.

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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).

c. 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 1926.58(e)(6).

(4) Nonrepetitive operations (viz.: not a series of small-scale jobs, which if performed at one time would have resulted in a large-scale removal).

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d. The CSHO shall evaluate the employer's program for establishing the requisite regulated areas under both standards by examining the following:

(1) If the employer has designated a competent person to setup and manage the regulated areas in accordance with 29 CFR 1926.58(e)(6)(ii)(A-H) (for construction only).

(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 (construction only).

4. Pre-entry Appraisal. In situations where the work activities apparently involve asbestos and the employer has not done the initial monitoring or followed any of the requirements of 29 CFR 1926.58, or 29 CFR 1910.1001, the CSHO shall obtain a bulk sample of the material(s) that are suspected of being asbes-

ST0071212

tos and obtain an expedited analysis of the material(s). An expedited analysis may be achieved by:

a. K-2 tests.

b. Contracting with a local laboratory.

c. Requesting an expedited analysis from the Salt Lake City Analytical Laboratory.

d. If the results are positive, the CSHO shall consider this to be an imminent danger situation and follow the procedures established in OSHA Instruction CPL 2.45A, Chapter VII.

5. Establishing the Presence of Asbestos. In cases where there is a delay in obtaining bulk samples or in having them analyzed alternate methods shall be used to verify the presence of asbestos.

a. Alternate methods for identifying the presence of asbestos include:

(1) The review of building plans.

(2) Previous inspection files by OSHA and other State, local and Federal agencies.

(3) Age of building.

b. The methods discussed above shall be used only when basis for an imminent danger notice is being investigated.

6. Hygiene Facilities and Practices. Shower facilities erected in accordance with the construction asbestos standard shall be considered to be feasible except:

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

ST0071213

377831

b. Where water is not available at the jobsite.

c. 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.

7. Stays. Enforcement of 29 CFR 1910.1001, and 29 CFR 1926.58 as they apply to nonasbestiform tremolite, anthophyllite, and actinolite has been administratively stayed until July 21, 1988. In the interim, the nonasbestiform varieties of tremolite, anthophyllite, and actinolite are covered under the old asbestos standard which has been recodified as 29 CFR 1910.1101. There have been no judicial stays issued regarding this standard.

John A. Pendergrass
Assistant Secretary

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APPENDIX A

ASBESTOS START-UP DATES AND TRIGGERING EVENTS (GENERAL INDUSTRY)

1910.1001(d)(2) INITIAL MONITORING (OCTOBER 20, 1986)

ABOVE ACTION LEVEL	BELOW ACTION LEVEL
1910.1001(j)(5) INFORMATION Training - OCT. 20, 1986 1910.1001(l) MEDICAL SURVEILLANCE - NOV. 17, 1986	No action required

ABOVE THE PEL

1910.1001(e) Regulated Areas
- November 17, 1986

1910.1001(f)(2) Compliance Plans
- July 20, 1987

1910.1001(f)(1) Engineering Controls
- July 20, 1988

1910.1001(g) Respiratory Protection
- greater than 2 f/cc: 7/21/86
- greater than PEL but less than 2 f/cc 10/17/86
- PPAR from (g)(2)(ii): 1/16/86

1910.1001 Hygiene Facilities, Lunchrooms
- 7/20/87 unless below PEL by 7/20/88; then 7/20/89 at latest

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APPENDIX B

ASBESTOS START-UP DATES
AND TRIGGERING EVENTS
(CONSTRUCTION)

1926.58(c) Through (N)
(JANUARY 16, 1987)

ST0071216

1926.58(f) INITIAL MONITORING

IMMEDIATE REQUIREMENTS ABOVE THE PEL

1926.58(e) REGULATED AREAS

1926.58(f)(3) PERIODIC MONITORING

1926.58(g) METHODS OF COMPLIANCE

1926.58(h) RESPIRATORY PROTECTION

1926.58(i) PROTECTIVE CLOTHING

1926.58(j) HYGIENE FACILITIES AND PRACTICES

IMMEDIATE REQUIREMENTS ABOVE THE ACTION LEVEL

1926.58(k)(3) EMPLOYEE INFORMATION AND TRAINING

ABOVE ACTION LEVEL 30 DAYS OR MORE PER YEAR, OR NEGATIVE-PRESSURE RESPIRATORS

1926.58(m) MEDICAL SURVEILLANCE

REGARDLESS OF LEVEL

1926.58(k) LABELS

1926.58(l) HOUSEKEEPING