

Date 11 December 1974

INTEROFFICE
MEMORANDUM

Subject Application for Variance from
OSHA PVC Standard

To J. T. Sebastianelli

(Location, Organization, or Department)

From J. T. Barr

(Location, Organization, or Department)

cc: A. R. Adams

J. D. Kramer

G. B. H. Speed

T. L. Carey

A. K. McMillan

E. Steck

R. Fleming

J. Novak

H. L. Watson

~~R. E. Jones~~

E. A. Primeau

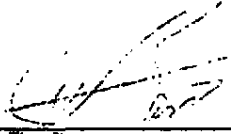
My reading of the OSHA brief, pages 106-110 inclusive, says that if the court denies a stay of the standard we must apply for a temporary variance by 23 December or forfeit our rights. It is hard for me to understand how this can be done in such an arbitrary manner, but that is their stated intention.

Therefore, failing to get a stay in the court, we must proceed at once to apply for a temporary variance. Our grounds will be that lacking approved cartridge respirators, we have no way of preventing exposure to employees while proceeding from the entrance to the regulated area to their work station, or while going up and down stairs, or other places where air hose connections are not possible, such as on fork trucks. (Scott Air Paks are impractical to use for this because of the short air supply.)

In addition, at Pace we have only 50 type C masks, not enough to comply fully with 1910.134 on issuing masks to each individual. Twenty more were ordered in August, but have not been delivered yet. Ray Lynch is pursuing this problem.

By copy of this memo I am asking any other person who knows of additional reasons to advise you promptly.

A copy of the pertinent part of the brief is attached.


J. T. Barr

/dlv

RECEIVED

DEC 14

J. T. BARR

(320)

AP00051753

In particular, the stay motions now pending before this Court, state that the petitioners will be unable to comply with the respirator requirements of the standard due to the present unavailability of respirators. ^{40/} This claim should be addressed to the Secretary in the first instance, by an application for a variance order in accordance with 29 U.S.C. 655(b)(6)(A), so that he may fully investigate the claim.

Petitioners can suffer no prejudice whatsoever from this procedure. I am authorized to state that the Secretary of Labor will expeditiously address himself to all applications for a temporary variance from the vinyl chloride standard. I am also authorized to state, that with respect to the claimed unavailability of respirators the Secretary of Labor will consider all

^{40/} The permissible respirators are set forth in the standard itself. Those that have been approved by NIOSH are listed in "NIOSH Certified Personal Protective Equipment" (HEW Publication No. (NIOSH) 75-119 (July, 1974) (as supplemented in Sept. 1974).

Basically, respirators which are permissible, have been approved by NIOSH, and are commercially manufactured, are those set forth at 29 C.F.R. 1910.93(g)(4) subparts (i), (iii), (iv)(a) - (iv)(b), (iv)(c), (vi)(a) and (vi)(b). See pp. 18-19, *supra*. These include the Type C, supplied air respirator, continuous flow type, with full or half facepiece, helmet or hood, one currently in use by the vinyl chloride industry. 29 C.F.R. 1910.93(g)(4)(iii). That respirator, which is permissible for vinyl chloride concentrations not exceeding 1,000 ppm, had been inadvertently omitted from the standard and was added by a correction notice. 39 Fed. Reg. 41848 (Dec. 3, 1974). Counsel for respondents advised petitioners' lead counsel of that correction notice the day prior to its publication.

applications for a temporary variance order on an expedited basis and will grant or deny interim orders to those who apply in the shortest time consistent with reasoned decision. I am further authorized to state that:

Until such interim orders are granted or denied no applying employer will be cited for failing to comply with the permanent standard's respirator requirements unless exposure levels are above 50 ppm. It is expressly contemplated that these interim orders will be decided with rapidity; that any applicant's failure to comply with 29 U.S.C. 655(b)(6)(B) and implementing regulations by December 23, 1974 will result in dismissal of his application.

The Assistant Secretary of Labor for Occupational Safety and Health, will issue a document to this effect, with copies to all petitioners, and publish that document in the Federal Register. Copies of the document will also be delivered to this Court no later than December 13, 1974.

There is therefore no valid reason for this Court to grant a stay of any part of the Secretary's standard. Should the Secretary deny an application for a variance order, then at that point petitioners can renew their stay motions before this Court. A stay should not now be issued.