

PLAINTIFF'S
EXHIBIT
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The fine points of compliance with Walsh-Healey

An Exclusive Interview with Robert D. Gidel, Director of the
Office of Occupational Safety, U.S. Department of Labor

When the "Safety and Health Standards for Federal Supply Contracts" were published in the Federal Register May 20, 1969, regulations went into effect that directly touch over 70,000 plant locations and 27 million workers. An even greater number of plants and workers, who are not obliged under the Walsh-Healey Public Contracts Act to establish controls, undoubtedly will be swept into action by the force of the nationwide move.

It is expected that the greatest impact will be in the area of noise regulation. Control of toxic gases, vapors and dusts also require more stringent implementation. But Walsh-Healey ranges widely, covering material han-

dling, tools, machinery guarding, compressed air, radiation, transportation, first aid, personal protective equipment.

At present, there are only enough qualified inspectors to examine about one out of every 20 of the contractor plants each year. What plants will be seen first? Employee complaints and high injury rates are among the criteria governing the order of visitation.

Where contractors refuse to comply with regulations, the Secretary of Labor is empowered to recommend that government contracts be withheld from that company for three years, or even that an existing contract be cancelled.

It will be left to individual companies to hire their own examining and consulting experts, but the Federal government will help in securing corrective measures whenever possible.

How soon must companies meet the new regulations? What benefits will result from noise control? How precise are the rules concerning machine guards and the like? Questions arise from all sides.

We brought these questions to the attention of the U.S. Department of Labor's Director of the Office of Occupational Safety, Robert D. Gidel. Here are Mr. Gidel's answers, given in an Exclusive Interview.

GIDEL: The safety and health standards were approved by a Secretary's National Advisory Committee of representatives from labor, management and the public and chaired by Howard Pyle, President of the National Safety Council.

The format of the regulations is a new and unique departure from the historical form of governmental regulations development. Instead of writing out by sentence and paragraph every rule under the law, nationally recognized standards were adopted by reference as the standards to be met. This drew upon all the expertise in the country which has participated in standards development, and adopted the standards that enlightened and forward looking management voluntarily devised for their own guidance.

Environmental Control Management:
What will a company be expected to do to meet the noise regulations?

GIDEL: When employees are subjected to sound levels exceeding those listed in the regulations, feasible administrative or engineering controls shall be initiated and utilized. If such controls fail to reduce

sound to within the acceptable levels prescribed, personal protective equipment shall be provided and used to reduce sound to within the prescribed levels. In all cases, where sound exceeds acceptable levels, a continuing effective hearing conservation program shall be administered.

ECM: What is required in a continuing effective hearing conservation program?

GIDEL: Where noise levels in the working environment exceed those allowable, a program is necessary to assure that the personal protective equipment provided and used is effective in preventing deterioration of a worker's hearing. The most desirable program would include pre-employment hearing examinations and periodic audiometric tests and evaluations. Audiometry and the use and application of personal protective devices should be under medical supervision or be done by a nurse, audiologist or trained technician under medical direction.

ECM: Can a company which does not have A scale sound level meters but has

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octave band analyzers use them?

GIDEL: Yes. In the regulations is a chart graph on which octave band sound pressure levels may be converted to the equivalent A-weighted sound level corresponding to the point of highest penetration into the sound level contours.

ECM: What does the U.S. Department of Labor expect in the area of benefits in enforcing and implementing the noise control regulations?

GIDEL: We expect the technology which has been developed over the past 15 to 20 years to be applied now at work sites to protect workers from being exposed and suffering hearing losses. We expect designers and manufacturers to start reducing the noise levels generated by their products or to provide means for operators to be protected from the excessive noise levels. We expect better personal protective equipment and devices to be developed and made available. We expect some of the old, outmoded and obsolete noisy processes to be replaced with more modern, efficient and quieter processes. We expect the increased demand for expertise in this field to result in more students studying the subject and being trained in environmental control as a career. We expect more consultants and consulting firms to provide services in this subject and, of course, we expect fewer workers to end up with needless hearing disabilities.

ECM: Walsh-Healey states that "feasible administrative or engineering controls" must be determined and implemented when employees are subjected to excessive noise (and also to achieve compliance with TLV regulations). Will economic factors or the high cost of control be considered?

GIDEL: There was much discussion over whether to state that "economically feasible" controls should be determined and implemented. It was finally decided that the word "feasible" should be interpreted in the broadest possible sense and that economic factors should certainly be one of the major considerations—but not the only factor or the controlling factor. Economics may be considered in determining the time limits allowed an employer to come into full compliance with the law.

ECM: Turning to toxic contaminants of the air, does reference to exposures or contact at a concentration above those specified in the American Conference of Governmental Industrial Hygienists' "Threshold Limit Values of Airborne Contaminants for 1968" imply that the USDL accepts those as ceiling values?

GIDEL: We have adopted the TLV's as time weighted averages—for a 7-8 hour workday—not ceiling values. Time weighting, of course, was the explicit intent of the ACGIH in establishing the TLV's.

ECM: What is meant in the standard under the Gases, Vapors, Fumes, Dusts, Mists section when you state that in cases where protective equipment is used such protection must be approved for each specific application by a competent industrial hygienist or other technically qualified source?

GIDEL: Special knowledge is needed in determining the proper control measures and protective equipment and devices to be used when hazardous substances are used or generated. Access to such knowledge must be provided either by full time staff employees, consultants, or persons specifically trained in the subject area. Certain recognized agencies test and approve equipment and devices for use in specially hazardous situations. Persons competent to evaluate and prescribe appropriate approved control procedures and devices must be used to assure the meeting of the intent and purpose of the law.

ECM: What constitutes a "competent industrial hygienist or other technically qualified source"?

GIDEL: If a company does not have a certified industrial hygienist on its payroll, it must show it has access to—and utilize—the services of such expertise, or have persons specially trained to handle its hazard exposures.

ECM: Since the Atomic Energy Commission has already established standards for radiation, why are similar standards spelled out at length in Walsh-Healey?

GIDEL: We did adopt AEC standards where they apply and have jurisdiction. Where AEC does not have jurisdiction, we have spelled out the requirements to be met under WHPCA.

ECM: Where there are unclear areas in the regulations, or areas subject to different interpretations, what is the best advice to industry?

GIDEL: Clarification bulletins will be issued whenever questions arise for which they are needed. These bulletins will be made available and widely distributed and publicized. It is always impossible to cover every situation by regulations or standards. In such cases, good faith by the employer in applying the best available knowledge, techniques and concepts to control of the situation will be acceptable. The intent and objective of the standards is to provide for the health and safety of the worker. Actions taken to meet this intent and objective will indicate good faith on the part of the employer.

ECM: Will all companies be expected to meet the regulations immediately?

GIDEL: Good faith by an employer in attempting to meet the intent and purpose of the regulations will be the key test. In most industries and operations, technology has advanced to the point where the environment can be controlled to meet the standards. Reasonable time limits will be allowed where special costs and equipment or alterations are required. Where technology is not so advanced—as in noise control, for example—good faith can be shown by initiating hearing conservation programs, providing and requiring the use of personal protective equipment and initiating discussion with technicians, designers and machine manufacturers in order to set plans and completion date, if possible, for new machine designs and new methods and processes. When new machines are purchased and new facilities built or otherwise obtained for operations, specifications should include noise level limitations and control.

ECM: What should be done if workers refuse to use personal protection?

GIDEL: It is management's prerogative and duty to see that all means and measures are taken to assure that work is conducted in a safe and healthful manner. This will require good education and training techniques and effective and forceful supervision. The standards state that personal protection shall be provided and used. This puts a burden on the worker to cooperate and use what management provides. The U.S. Department of Labor will cooperate with the employers, whenever and however appropriate, to assure the cooperation of employees. However, the Federal government cannot become directly involved in labor-management relations of this sort.

ECM: If it is impossible to guard the point of operation on a machine, what action should be taken?

GIDEL: The intent and objective of the standard is that all effort be taken to prevent the operator from having any part of his body in the danger zone during the operating cycle. If by positioning of the part, holding of it, using remote control or by other means the operator is prevented from being in the danger

zone, the intent of the rule will be met.

ECM: Will the Walsh-Healey provisions specifically state the degree to which (1) machine and equipment are to be guarded and (2) what constitutes adequate medical and first aid facilities?

GIDEL: The body of the text of the regulations is somewhat detailed. In special cases all considerations will be based upon and drawn from provisions in appropriate national standards and recognized practices. Where standards do not specifically cover the subject, techniques and concepts covered in standards or recognized good practices will be adapted to the specific case. (Continued)

Just what does Walsh-Healey cover?

The Federal Walsh-Healey Public Contracts Act regulations that went into effect last May 20th are wide-ranging in their provisions. Because just a few of its sections captured the headlines, many environmental-safety managers are not aware of its comprehensiveness. It includes specific safety and health standards in each of the following areas:

Materials Handling & Storage Equipment and Methods

Provision of Safety Tools & Equipment

Guards for Machinery

Provision of Medical & First Aid Services

Provision of Personal Protective Equipment

Compressed Air for Cleaning (limited to 30 psi)

Control of Occupational Noise

Control of Nuclear Radiation

Toxic Gases, Vapors & Dusts (limited to the Threshold Limit Values established by the American Conference of Governmental Industrial Hygienists)

Inspection and Use of Compressed Gas Cylinders

Safety Relief Devices for Compressed Gas Containers

Welding or Cutting of Containers that Contained Combustibles

Transportation Safety

Maintaining of Injury Records

ECM: Does the Department expect to provide help to small companies who do not have full-time safety staffs and may not have access to all the standards adopted by reference?

GIDEL: An inspection survey guide is being developed for use by Department field personnel to guide them in the situations to look for while making plant surveys. It will be keyed to the standards applicable to each situation. These survey guides will be available to public contractors as a "do it yourself" inspection guide so that a continuing inspection program can be set up by any small contractor within his own organization to assure his meeting the requirements of the law.

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ECM: How will the standards which you have adopted be determined as applicable in any particular situation?

CIDEL: Field inspection personnel will survey operations under a contract according to organized survey procedures, which will be available also to public contractors to let them know ahead of time what is expected of them. Hazards will be categorized and keyed to applicable standards so that fairly uniform application of the law can be achieved nationwide. The applicable standards and sections thereof will be identified so that compliance with the ordinary employment situations will be simplified.

ECM: Under "Scope and Application," we read: "Whenever this part adopts by reference standards, specifications and codes published and available elsewhere, it only serves to adopt the substantive, technical portions of such standards, specifications and codes." What other portions of standards would be excluded?

CIDEL: In the text of many standards and codes there are statements that "this standard is not to be used for regulatory purposes" or other restricting statements not pertinent to the technical substance. Obviously we do not adopt these statements as part of the standards to be met.

ECM: Are sub-contractors of a government contractor subject to the standards?

CIDEL: Legally it may be possible to reach sub-contractors if major portions of the contract are sub-contracted and sub-standard safety and health measures are found after complaints are filed and investigated. In such cases, the sub-contractor may be considered a substitute manufacturer. As a practical matter, it is difficult to ferret out all possible sub-contractor operations for inspection. We are primarily concerned with prime contractors, but expect them to exert appropriate influence over their sub-contractors in order to keep their own eligibility for government contracts intact.

ECM: In a multi-plant organization, if only one plant is working on a government contract are all plants subject to the WHPCA safety and health standards?

CIDEL: Although there may technically be a legal reach to all parts of the corporate operation, we are primarily concerned with operations where the contract is being performed. It would seem to be poor management practice, however, to apply double stan-

dards to the safety and health of workers in various plants merely on the basis of where a Federal contract is being performed at the moment.

ECM: If only a part of a plant is working on a government contract, is the whole plant subject to the standards?

CIDEL: If there is an interchange of workers between contract and non-contract operations, and if those working on contracts are exposed to hazards created by the other operations in the general work areas, the whole plant is subject to the standards.

ECM: What will be the criteria considered for approving a variation from the regulations?

CIDEL: If equal or greater safety can be provided by a method which is different from that prescribed by the regulations, a request for a variation can be filed and will be evaluated. If technology has not progressed to the point where engineering and administrative controls are feasible, a request for variation may be considered if a plan for taking all actions possible to achieve the maximum control and improvement according to prescribed time limits is submitted.

ECM: The law says that where working conditions (not detailed in WHPCA) are "found to be unsanitary or hazardous or dangerous to the health and safety of employees, professionally accepted safety and health practices will be used." What are these practices?

CIDEL: These would include practices published in data sheets, manuals and handbooks by nationally recognized and technically competent organizations.

ECM: It is stipulated that "the employer shall ensure the ready availability of medical personnel for advice and consultation. . ." How available must such personnel be?

CIDEL: This cannot be defined precisely, but an employer must show that plans are in effect for treating any possible injury within a reasonable and practical time limit based on the type and location of the operation.

ECM: The rules state that "in the absence of an infirmary . . . a person or persons shall be adequately trained to render first aid." What training would be required?

CIDEL: American Red Cross certified training or the equivalent would be desirable. ■

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