



Organization Resources
Counselors, Inc.

Memorandum Task Force

April 27, 1987

To: ORC Occupational Safety and Health Group
ORC Occupational Safety and Health Lawyers Group
ORC Occupational Safety and Health Physicians Group
ORC Mine Safety and Health Group

From: Darrell K. Mattheis

Subject: Health Standards Update - May 1987

ASBESTOS

OSHA's Office of Field Coordination has not yet released its finished Guidelines to the field for the enforcement of the Asbestos Standards. ORC has received copies of OSHA's draft asbestos standard compliance field guides, for both Construction and General Industry, and has distributed them to members. While this draft is not final, it is unlikely that there will be MAJOR revisions in the final.

OSHA is preparing to extend for one year the stay on enforcement of its New Asbestos Standards for tremolite and other non-asbestiform minerals.

★ Alcoa will be participating in this Asbestos Data Collection Task Force

This Task Force was initiated to facilitate the collection of accurate data on the levels of airborne asbestos generated by a variety of operations across a broad spectrum of industries. The operations that will be monitored range from outright removal operations to the installation of phone lines and computer cables. This data, collected in the chemical, petro-chemical, telecommunications, and utility industries will then be used to establish an historical data base of exposures generated by particular operations. This database can then be used in place of continual monitoring of each removal operation by those companies that participated in the exercise. The Task Force has developed a special form to collect the monitoring data, and is having the project reviewed by well respected university-based biostatisticians. The actual data collection should start around the end of May, 1987. There is a copy of the data collection form and a short summary of the project in the meeting folder.

PLAINTIFF'S
EXHIBIT
AL-943

ACCESS TO MEDICAL RECORDS

OSHA still intends to come out with a revised Access to Employee Exposure and Medical Records Standard, but its time table will depend on the progress made in the expansion of the Hazard Communication Standard.

A number of companies have been approached by unions using this standard to demand copies of thousands of employee medical records within the 15 day response period set in the standard. So far, OSHA has been taking a reasonable position, stating that the employer need not hire extra people to meet this deadline. So long as the employer can show that a "good faith" effort is being made by existing staff in the unit that would normally do such copying, they should not be cited for violating the standard.

BENZENE

OSHA is under a court order to complete a Benzene Standard, but did not make the informal February deadline. OSHA asked for more time, which the Court granted. OSHA set May-June 1987 as the estimated time for completion. OSHA may make the May-June 1987 date, but it will be a difficult task.

At present the Benzene Standard is at the Policy Review Board in the Department of Labor, and has not yet gone to OMB, and that review is likely to take two months, perhaps more. The Permissible Exposure Limit is still 1.0 ppm, the Action Level 0.5 ppm and it looks like there will be a Short Term Exposure Limit. At this point the standard is close to final, and ORC has heard that it is not significantly different from the proposal.

OSHA does not want to bring any new elements into the Benzene Standard that would complicate its enforcement. This may mean that the provision allowing the employer to use his own monitoring data to supplement the compliance officer's data may not be included in the standard.

In a decision that may be important for future occupational health litigation, a California court in Barth v. Firestone Tire & Rubber Co. (No. C-85-20534-RPA) held that employees exposed to benzene and who have not yet developed diagnosable physical disease symptoms may sue their employers outside the California Workers Compensation System.

The Court reasoned that while current medical science cannot state whether or how exposure to toxic chemicals affects individuals, injuries to the immune system and latent diseases are present, physically and legally cognizable. For more details on this decision, see the May 1987 "ORC Legal Update".

1-3, BUTADIENE

OSHA is finishing up its Notice of Proposed Rulemaking for this substance, and expects to have it done by early fall of 1987.

CANCER POLICY

OSHA is being pushed on a revision of its Cancer Policy by the Administration who would like to have this important regulation out in a final form before they leave office. At present, however, it is not considered a priority item by OSHA.

CADMIUM

OSHA has made the decision to go ahead with a standard on Cadmium, and at present is working on the Notice of Proposed Rulemaking. Now is the time for industry to begin collecting exposure data if it is not already available. OSHA is collecting information on exposures, finances, processes, control technology, and other aspects of cadmium's use in this country.

DIMETHYL FORMAMIDE

OSHA has received a number of reports on problems with this substance in recent months. NIOSH is actively investigating problems that may be attributable to DMF. OSHA is actively gathering data on this substance, and is particularly interested in acute and chronic toxicology, carcinogenicity, and male reproductive problems.

ETHYLENE OXIDE

OSHA is still working on a Short Term Exposure Limit (STEL) for this substance.

FIELD SANITATION

This document cleared OMB in record time, and was published in the Federal Register during the week of April 27, 1987. OSHA was pushed into doing this standard, and was never happy about it, feeling that this area should be handled by health departments in the individual states. Secretary of Labor Brock, however, has publicly given strong support to the Field Sanitation Standard.

FORMALDEHYDE

OSHA is still working on its standard, and is looking at a 1 ppm PEL with a 2 ppm STEL. Right now there is an on going debate over the carcinogenicity of formaldehyde. There have been several reexaminations of the NCI formaldehyde study, several of which seem to indicate a significant increased risk of lung cancer over the background level at the 1 ppm level. Organized labor is not happy with a 1 ppm PEL, they would rather see a lower number, such as 0.5 ppm, for a PEL.

OMB has been working closely with the Department of Health and Human Services (DHHS) on the formaldehyde issue. OMB and DHHS support the regulation of formaldehyde only as an irritant, not a carcinogen. OSHA has not made up its mind as yet, but thinks that you cannot disregard the evidence produced by the new studies.

GLYCOL ETHERS

OSHA published an Advance Notice of Proposed Rulemaking (ANPR) for glycol ethers on Thursday, April 2, 1987, (52 FR 10587) OSHA is still gathering data on these substances, and is planning to publish a Notice of Proposed Rulemaking early in 1988. OSHA has contracted with Meridian Inc. to do much of the data collection work. OSHA is also interested in regulating glycol ethers other than the four listed in the ANPR.

HAZARD COMMUNICATION

On March 31, 1987 OSHA released to the Construction Advisory Committee, a draft proposal for the expansion of the Hazard Communication Standard; ORC made this document available to its members in early April. OSHA has been under pressure to complete this expansion from business, labor and the courts. If the court forces OSHA to come out with a standard in a short time frame, it may just publish changes to the standard, extending it to virtually all businesses with ten or more employees, with no pre-amble to discuss the regulatory text.

If the courts do not do not set a date, OSHA will publish a whole new standard with the changes incorporated into the body of the document and a matching preamble. Without pressure from the courts, it is likely to be October 1987 before the expanded Hazard Communication Standard is published by OSHA. The present document is unlikely to go to OMB before the end of May, and it will probably be at OMB for at least two months before it is returned to OSHA.

METHYLENE CHLORIDE

OSHA is continuing to collect data on exposure levels, physiological effects and economic costs of exposure to methylene chloride. OMB has been putting restrictions on OSHA's use of surveys because of paperwork burdens, but they may be coming to an agreement that will allow the data collection to proceed at a faster rate. OSHA expects to publish a Notice of Proposed Rule-making (NPR) in the late fall of 1987.

The ORC Methylene Chloride Task Force has submitted its comments to OSHA for the record, and will meet to prepare comments once the NPR is published.

MAN-MADE MINERAL FIBERS (MMMF)

This problem continues to be examined at OSHA, but for the moment they are only looking at the literature, and talking to prominent researchers working in this area. At least one major multinational corporation (also an ORC member) has set an internal standard of 0.2 f/cc for this class of fibers.

NOISE

The Occupational Safety and Health Review Commission (OSHRC) recently made an important decision on the monitoring of impulse noise in the work environment. This case is Secretary of Labor v. Collier-Keyworth Company (OSHRC Docket No. 80-2848). In this case, OSHRC determined that Table G-16 of 1910.95 was not intended to cover impulse noise, and therefore, impulse noise must be excluded when determining whether Table G-16 limits have been exceeded. OSHRC states: "But in the absence of an OSHA standard, we do not have the authority to regulate exposure to impulse noise", (p.9). Bill Ament has a lucid discussion of this decision in his "Legal Update" for May 1987 and we highly recommend it for those wanting more information on this important case.

RESPIRATORS

OSHA released a draft copy of its respirator standard revision to the OSHA Construction Advisory Committee, and eventually ORC received a copy. A copy of this draft was sent to the ORC Respirator Task Force, and is available to other ORC members for the asking.

OSHA has finished its internal review of this standard, it has passed the labor Department Policy Review Board, and should go to OMB around the first of May, 1987.

This standard is certainly an improvement over the earlier version. OSHA's newest revision of 1910.134 is shorter and more performance oriented than the earlier draft, but still has a number of things that industry will want to comment on. For instance, OSHA's newest draft assigns the same protection factor to negative pressure half or quarter face air-purifying respirators (10) as it does to supplied air, (demand) respirators!

Any employee required to wear a respirator for more than five hours a week must have a written opinion from a licensed physician stating whether the employee has any detected medical condition which would place the employee's health at increased risk of material impairment from respirator use and any recommended limitations upon the use of respirators.

It is expected that OMB will take the full two months to review this standard, perhaps more, so we should see it published in July or August 1987 with a hearing scheduled 90 to 120 days later.

ORC has heard that NIOSH's Revision of its respirator testing and certification regulation, 30 CFR 11, is having a difficult time gaining the necessary approvals within the Department of Health and Human Services (DHHS). NIOSH's revision of 30 CFR 11 has not managed to gain the support of the Mine Safety and Health Administration or of OSHA. Lacking support from these two key agencies, it will be more difficult for NIOSH to persuade DHHS to give its approval. If the NIOSH revision is unable to gain needed approvals, we may not see another attempt until after a new administration takes office in 1989.

WOOD DUST

OSHA will probably write an ANPR for wood dust in the late Fall of 1987. At present OSHA is still waiting for the NIOSH research report on this problem.

OSHA REVISION OF THE Z-TABLES IN 1910.1000

OSHA is planning to have a rulemaking on a one time wholesale revision of the Permissible Exposure Limits for the substances listed in its 1910.1000 Z Tables. OSHA will be considering all published and well supported values in this exercise, and hopes to publish an ANPR within several months.

ORC supports OSHA's effort to revise the Z Tables, and would like to encourage all ORC members who think that this is a wise move on OSHA's part, to write Mr. Pendergrass and let him know that you support it.

Legislation that would force OSHA to bring all PELs listed in the Z Tables into conformity with the 1987 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) is being considered. To mandate wholesale revision of OSHA standards by legislative fiat would be an extremely bad precedent. A wholesale revision of OSHA standards through legislation would weaken the long term effect of such standards since they could be changed frequently and on short notice.

In the past, the major argument against OSHA's attempting a revision of the PELs in the Z-Tables was that it would encourage the use of the TLVs as enforcement tools through Section 5(a)(1) of the Act.

A recent case, William E. Brock v. General Dynamics, should cause those who hold such opinions to reconsider. In this case, the Court found that even if an employer is in compliance with a specific standard mandated by Section 5(a)(2) of the Act, it does not relieve the 5(a)(1) requirements. Thus, any time there is an injury, or the claim of an injury, the employer can be cited under Section 5(a)(1). (U.S. Court of Appeals No. 85-1826)

This means that even if you are in compliance with the applicable OSHA standards, if someone can show that better knowledge is available to you, you can be cited in violation of Section 5(a)(1). Thus, OSHA adherence to standards has all at once become much less of a protection against a General Duty Citation.

OSH must still prove its case in court, and this means the careful collection of evidence and witnesses, but it is a very bad precedent. Under a different administration, Section 5(a)(1) could be badly abused! For more information, see Bill Ament's "Legal Update" for May 1987.

PROPOSITION 65 TOXIC CHEMICALS LIST

A California Court recently ordered the Governor of California to add some 200 toxic chemicals to the list of 29 that the state had originally drawn up in response to passage of "Prop 65" in November 1986. The suit was brought by a coalition that included the AFL-CIO the Environmental Defense Fund and other activist groups. The Governor's original list excluded chemicals that had not been shown to cause cancer in humans. Animal carcinogens were not included in the list. Under "Prop 65" disposal of these toxins is prohibited unless an exemption is granted by the state.

If anybody doubts that the Environmental, Public Interest, Labor Coalition (EPIL) is alive and well, this should be taken as evidence of its good health!

David H. Matthews

DKM:jkj