



NATIONAL SAFETY COUNCIL OSHA UP TO DATE

VOL. XI, NO. 9 - AUGUST 1982

Experts Disagree at Hazard Communication Standard Hearings

Hearings on the proposed OSHA standard for hazard communication centered on debate of the enforceability of the standard as proposed, the trade secrets question, and how employers should evaluate health hazards. The standard, proposed in March 1982, is designed as a flexible, performance-oriented rule in keeping with current OSHA aims.

Comments from Arthur Olenick, associate professor of public health law at the University of Michigan and the main author of an earlier labeling proposal, asserted that the standard as proposed would be virtually unenforceable because of vague wording. OSHA health standards director R. Leonard Vance rebutted this position, stating that if the draft standard were adopted without change, it would be enforceable, and that field directives and additional training of industrial hygienists would provide all necessary information for enforcement.

Witnesses testifying on behalf of the Chemical Manufacturers Association, a trade group, estimated that only 4 percent to 15 percent of its member companies' products would fall under the trade secrets provision. The National Association of Manufacturers' testimony raised the question of costs to small companies for proving trade secret claims.

Health hazard evaluations should be performed by producers, stated CMA witnesses, and the procedures should be at the discretion of the professional judgment of each producer. AFL-CIO industrial hygienist Margaret Seminario questioned the proposed standard's lack of specific guidelines for hazard evaluation.

George H. R. Taylor, AFL-CIO safety and health director, announced that the member unions will continue to seek state and local labeling laws because of perceived weaknesses in the federal ruling. Union witnesses also expressed their opposition to the trade secrets provision as a whole. But manufacturers argued that while a name of a substance may not be a secret, it could be protected if the use of that chemical in a particular process were not known to the competitors.

Labor representatives also opposed the rule's provisions that require each employee to provide written consent before a union could get access to hazard information. Not only would the provision prove troublesome and time-consuming to the union, but the signed consent forms could lead to retaliation against those workers who signed.

OSHA Approves Ten State Plans for Standards

OSHA approved ten state plans for enforcement of their own safety and health standards under Section 18(e) of the OSHAct. The ten states would operate without concurrent enforcement activity by the federal OSHA.

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Arizona, Indiana, Minnesota, Iowa, Nevada, New Mexico, Puerto Rico, Virginia, the Virgin Islands and Wyoming all were found to meet the criteria for approval.

All ten state plans provide for: legislation that will ensure conformity with the federal OSHA Act; state standards comparable with federal standards; enough qualified staff to enforce state standards; and provisions for review of citations issued and penalties assessed. New federal standards and areas not covered by the state plans will continue under OSHA's jurisdiction.

Labor Department Study Foresees Asbestos-Linked Cancer Death Peak in 1990

A recently released study by the Department of Labor says that the cancer deaths attributed to exposure to asbestos in the 1940s and 1950s will peak in 1990, with an estimated 9,700 excess cancer deaths. The total deaths by 1999 is expected to be 200,000, around 2 percent of total cancer deaths.

The study, "Disability Compensation for Asbestos-Associated Diseases in the U.S.," estimated that 8,200 excess deaths from cancers linked to exposure occur each year, based on an examination of 1,150 asbestos workers who died between 1967 and 1975. Lung cancer and mesothelioma claimed some 1,000 of these workers; the balance died of asbestosis.

The study also revealed a trend in lawsuits against manufacturers of asbestos products. Only about 3 percent of those who died in 1967 filed product liability suits against manufacturers, while 32 percent of those who died in 1975 and 1976 did so.

Auchter Asks Advice and Data for Health Inspection Targeting

OSHA head Thorne Auchter announced that he is calling on top experts in the workplace health field to help in a major effort to improve the agency's health inspection system. Auchter also announced that a pilot study would be launched in ten OSHA area offices to gather data and information to supplement the effort.

"As we have with the targeting of our safety inspection, we expect to increase the efficiency and effectiveness of our health inspection as part of this administration's overall effort to provide workers with the best safety and health programs," Auchter said.

Auchter wrote to state job safety and health program designees, and to labor, management, professional and public interest groups for nominees to attend an OSHA-sponsored conference to be held in late summer, seeking their input in developing practical criteria for evaluating workplace health programs. "We need advice as to what comprises an effective health program at the worksite," Auchter said. "At the conference, the participants, we hope, will arrive at a consensus as to which elements are of greatest importance and general applicability."

The pilot field study will be conducted from July 1 through September 30 in Dover, Philadelphia, Pittsburgh, Wilkes-Barre, Harrisburg, Cleveland, Cincinnati, Milwaukee, Kansas City and St. Louis. Preliminary data will be examined at the conference to evaluate the current health inspection targeting system.

In the pilot study areas, all routine health inspections on the agency's current inspection schedule as well as all complaint inspections will be preceded by an examination of the company health records and a projection of inspection results. The results of the actual inspection will then be compared to the projected results to ascertain whether a health inspection should indeed have been conducted.

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"The overall effort," Auchter said, "is not only to explore new ways to conduct health inspections to focus on facilities where the most significant health hazards are present, but to recognize facilities that have good occupational health programs. Thus we will be able to concentrate our health inspections where they are needed most."

Auchter Criticism Brings NIOSH Study to Temporary Halt

A NIOSH study of the causes of traumatic injuries and deaths, which had only investigated one accident, was brought to a near standstill by a letter from OSHA head Thorne Auchter to NIOSH director J. Donald Millar.

Auchter's letter expressed his contention that the project "threatens to undermine the integrity" of OSHA's own investigation of worker deaths. Auchter also warned that the project may exceed the authority of NIOSH because of the section of the OSHAct that "explicitly requires prior consultation with the secretary of labor before any research project is undertaken."

Yet another objection voiced by the assistant secretary of labor was that the project wasted resources by duplicating OSHA's own efforts. Both agencies expressed a wish for further talks to resolve the dispute.

The NIOSH study had only examined a single incident, the death of a construction superintendent at a Boston project, before Auchter expressed his criticism.

AIHC Speakers Project Changed Future for Industrial Hygienists

Some 4,000 industrial hygienists, gathered in Cincinnati for the American Industrial Hygiene Conference earlier this summer, heard that their role will change in the future to concentrate on local activities and to provide scientific data to be used in the regulatory process.

E. E. Christofano, manager of industrial hygiene for the Hercules Corp., told the audience that local business and community activities will be their focus in the next decade. Noting that the membership of the association has almost tripled in the last decade, Christofano drew a parallel with the proliferation of rules and standards under the OSHAct. Christofano predicted that hygienists will experience more training in industrial settings and will be more involved in collective bargaining and legal affairs. Christofano reminded his audience of their responsibility to protect workers, while still remaining involved in the area of public policy.

George Taylor, AFL-CIO safety and health director, also addressed the conference, saying that while current trends toward reducing regulatory reform personnel mean that workers can no longer rely on OSHA for protection, the same trends could be interpreted as meaning that industrial hygienists are no longer in demand.

Edward Behrens, associate director of technical affairs for national government relations, Proctor & Gamble Co., reminded the conference that the regulatory process stands in need of their services to provide sound scientific data. He endorsed a centralized panel of experts, either within or outside the government, to make decisions on such matters as carcinogenicity, and reminded the meeting that science and social policy should be separated.

Undersecretary of Labor Malcolm R. Lovell Jr. told the conference that OSHA will concentrate efforts in 1982 on following up regulatory reform, reviewing standards and issuing new ones, and continuing to develop programs for consultation, training and education. Lovell listed OSHA's accomplishments over the last year and named among them a better targeting system and better use of state resources.

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Simplified Voluntary Compliance Proposal Is on Its Way

Frank Frodyma, director of OSHA's office of policy, analysis, integration and evaluation, told those attending the American Industrial Hygiene Conference that OSHA will issue a revised proposal for voluntary compliance programs late this summer.

Speaking as a member of a panel seminar at the conference, Frodyma said that voluntary compliance programs may not be suitable for all industry, and that OSHA will not require them. OSHA will continue to concentrate on enforcement.

More than 200 comments have been received since the agency proposed the voluntary safety and health programs in January 1982. Analysis of the comments had not yet been completed, but some early decisions as to revisions have been reached, he said.

Some of the acronyms coined to describe various programs will be dropped in order to clear up confusion. The provision calling for joint labor-management committees to funnel employee complaints will be omitted. And, said Frodyma, the final draft will emphasize that the responsibility for providing a safe and healthful workplace is firmly placed upon management, instead of being held by the joint labor-management committee.

OSHA Proposes Revoking 194 "Unenforceable" Standards

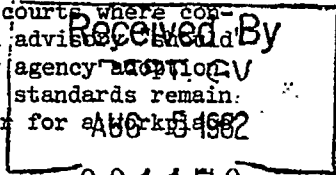
OSHA has proposed revoking almost 200 General Industry Safety and Health Standards (Part 1910) that have been unenforceable in the courts because they contain the advisory word "should" instead of the mandatory word "shall."

"Not only have these standards been unenforceable," said OSHA head Thorne Auchter, "but the independent Occupational Safety and Health Review Commission (OSHRC) has repeatedly dismissed OSHA 'general duty' citations alleging violations of these standards. OSHA's inability either to directly or indirectly enforce these standards jeopardizes worker safety and health."

Auchter said that revocation of the standards would facilitate OSHA's enforcement responsibilities and allow the agency to propose specific rules under Section 6(b) where necessary to replace any of the 194 deleted "should" standards that covered recognized hazards that might cause death or serious harm to employees.

When OSHA was begun in 1971, Congress directed the agency to adopt verbatim existing national consensus standards and federal standards to ensure immediate worker protection. The consensus standards were mostly derived from the American National Standards Institute and National Fire Protection Association, many of which were meant to be advisory, and thus recommended that an employer "should" take a particular action.

OSHA had maintained that the adopted standards, regardless of which of the terms "should" or "shall" is used, created mandatory compliance responsibilities, but employers have consistently challenged this position. OSHA's enforcement of "should" provisions has repeatedly been denied by OSHRC and most appellate courts, where contested cases have been heard. These courts have ruled that an old advisory "should" provision cannot be transformed into a "shall" provision merely by agency action. In addition, OSHRC has recently ruled that as long as the "should" standards remain, in effect, OSHA cannot issue a general duty citation to an employer for a hazard addressed by that standard.



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Printed in U.S.A.

Stock No. 099.41 OSHA