PLAINTIFF'S
EXHIBIT
AL-1273

Current Report

Lead

LONG-RANGE OPTIONS FOR CONTROLLING LEAD CAN BE CONSIDERED IN EVALUATING COMPLIANCE

Citations for failure to meet the deadline for preparing compliance plans under the Occupational Safety and Health Administration's lead standard will not be issued to employers in the primary and secondary smelting and battery manufacturing industries if the employer has initiated a study of long-range control options and has met other requirements, according to a draft field directive by OSHA.

Under a schedule set by OSHA June 5 pursuant to its earlier lifting of a stay of the lead standard for those industry sectors, companies in the primary and secondary smelting and battery manufacturing industries must have compiled all information for their compliance plans by July 1 and they must have updated plans available by Aug. 1 (Current Report, June 7, p. 3).

The field directive is an attempt to provide guidance regarding the agency's enforcement policy for the compliance plan provisions of the lead standard. OSHA noted that a citation would not be issued for failure to meet the Aug. 1 deadline if the employer's compliance plan met the guidelines described in the field directive.

OSHA's draft directive particularly deals with paragraph (e)(1)(i) of the standard which states that "wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposure to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest feasible level."

The guidelines set out in OSHA's draft field directive would require an employer to have initiated a long-range study option, "either on its own or through active participation in a cooperative assessment with OSHA and employee representatives, such as the Cooperative Assessment Program (CAP)." OSHA has been attempting to encourage and develop formalized cooperative programs between unions, the government, and the various sectors and companies within the lead industry (Current Report, Feb. 2, p. 947).

In addition to the long-range option, an employer's compliance plan would have to include the following:

- The control option under consideration.
- A description of the study, including the study design, the name of the organization performing the study, the study's anticipated completion date, and any appropriate interim deadlines.
- The specific reasons why the study will be delayed beyond the Aug. 1 deadline.
- A statement of the employer's intention to incorporate the control into its compliance plan, "if it is found by the employer to be feasible and effective in the employer's workplace."
- A tentative schedule for implementation.

Additional Review of Citations

The agency has also recommended in the draft field notice, which is sent out to all regional administrators and area directors, that citations based on alleged violations of this portion of the standard should be sent to the Office of Health Compliance Assistance for review before issuance. This is to assure "consistent application of this enforcement policy," the draft OSHA notice said.

Michael Wright, industrial hygienist for the United Steelworkers of America, maintained that the field directive should handle any "legitimate complaints" from industry organizations on the compliance plans. He added that there is no indication that the cooperative assessment program will slow down the implementation of companies' compliance programs.

Robert Wilbur, director of government relations for the Battery Council International, said the draft field directive explained some "common sense procedures" for dealing with long-range studies. He said the Battery Council doesn't have any major problems with the draft directive.

The directive is expected to be issued in final form in August, an OSHA staff member told BNA July 10.

Asbestos

ENGINEERING, WORK CONTROLS SHOULD BE USED TO ATTAIN LOWEST FEASIBLE LEVEL, AIA SAYS

The permissible exposure limit for asbestos should be reduced to the lowest level feasible through engineering and work practice controls, representatives of the Asbestos Information Association testified July 6 at Occupational Safety and Health Administration rulemaking hearings on asbestos.

AIA's testimony came in the third week of the hearings, which began June 19 and which have featured presentations by other industry groups and by organized labor and government agencies (Current Report, June 21, p. 35; June 28, pp. 60, 61; July 5, pp. 140, 141).

OSHA should not rely on respirator use when engineering and work practice controls can feasibly achieve the PEL, B.J. Pigg, executive director of AIA, stated. He maintained, however, that in some settings it may be desirable to supplement such controls and urged OSHA to consider the following options:

- A requirement that feasible engineering and work practice controls that are shown to yield significant exposure reduction benefits be implemented even in workplaces that are achieving the new PEL.
- A program to reduce substantially or eliminate smoking among asbestos workers.
- A program to achieve respirator use even where the PEL has been achieved through feasible engineering and work practice controls.

Pigg also recommended a separate standard for asbestos in the construction industry. "We cannot, however, in general, support the Building and Construction Trades Department's proposed construction standard because its underlying premise is that OSHA should eliminate *all* exposures to asbestos," he said. Pigg explained that, although OSHA is mandated to eliminate significant risks to the extent feasible, a standard that attempts to eliminate all workplace risks is just as unreasonable for asbestos as it would be for any workplace hazard.

'Simple' Standard Needed

The AIA maintained that significant risks can be eliminated in the installation of new asbestos-containing products through the use of recommended work practices since "almost all asbestos products marketed today occasion only very low exposures and then only for brief periods." Pigg stated that, in urging OSHA to focus on work practice requirements for the installation of new products as well as in regulating renovation and demolition activities, the association is expressing its belief that the agency can develop a simple but effective standard for the control of asbestos exposures.

"We are concerned that if OSHA regulations impose a multitude of additional ancillary requirements, such as extensive monitoring and reporting, the regulation will be too complex for contractors to follow, too difficult for OSHA to enforce, and ultimately ineffective," according to Pigg. "No standard is of any usefulness to protection of worker health, regardless of how comprehensive, unless compliance is achieved on the worksite."

Marcel Cossette, director of research and technology for Societe Nationale de L'Amiante, a state corporation wholly owned by Quebec which operates most of the asbestos mines and milling operations in Quebec, also offered testimony concerning asbestos measurement and monitoring on behalf of the Asbestos Information Association. He recommended that any proposed substitute analytical procedure must be proven suitable by formal trials prior to its adoption. He asserted that the National Institute for Occupational Safety and Health had admitted that it has not tested its new asbestos analytical method, Method 7400, but has merely constructed it based on extrapolation from the current method.

Asbestos measurements made through phase contrast microscopy do not reflect the true airborne concentration of all asbestos fibers regardless of size, but rather represent only a small subset of all fibers meeting a generally defined size and shape criteria, according to Cossette. The lower bound on the diameter of a countable fiber is unspecified and consequently depends on the limit of visibility of the slide-/microscope/counter combination, he asserted.

'Unpredictable' Changes

"This limit of visibility along with other factors such as the graticule size and the counting rules affect the level of the index obtained on a sample," he noted. "A series of contemporaneous changes in the method as has been made by NIOSH will result in completely unpredictable changes in measured results." For this reason, Cossette advocated a requirement by OSHA for testing of the method.

Another reason for OSHA to require testing is NIOSH's admission that in some undefined circumstances, the method cannot be used over its entire working range due to nuisance dust loading, according to Cossette. Other issues of practical field application of the method also need exploration, such as the effect of higher pumping rates on the capture efficiency of large agglomerates, he noted.

"It is likely that Method 7400 will leave a large measure of inter-laboratory variation," he stated. Prior to adopting Method 7400, OSHA should obtain testing information confirming or denying the claims for the new method, Cossette maintained. He suggested that OSHA particularly determine the inter-filter, intra-laboratory, and inter-laboratory variabilities associated with the existing and candidate methods, the realistic limits of reliable detection for each, and the comparability of measurement results between the old method and the candidate methods.

Cossette suggested that a small round-robin exchange of optimally loaded filters from various sectors should provide the needed variability and comparability information, assuming a proper experimental design is followed.

In presenting conclusions of a feasibility study conducted earlier this year for the Asbestos Information Association on occupational asbestos dust controls, Gordon M. Bragg, a professor of engineering at the University of Waterloo, stated that a PEL established at 0.5 fibers per cubic centimeter is likely to result in indefinite full-shift respirator use at a few work stations in each major asbestos industry sector. In addition, he asserted that a PEL established at 0.2 f/cc is likely to result in indefinite full-shift respirator use in a large majority of primary industry work stations.

"Unless appropriate provisions are made for necessary lead time to produce exposure reductions through engineering controls and work practices, temporary full-shift respirator use will be widespread for one or two years even in those workplaces that will ultimately be able to consistently achieve the new PEL," Bragg said.

He suggested that OSHA incorporate a realistic variability model of exposure incidences into its feasibility determination. "Without this conceptual framework, OSHA cannot clearly assess the implications for employers and the effects on employees of establishing a PEL at any particular level," Bragg asserted.

Variability in exposure conditions from one day to the next is a fact that employers "must explicitly consider" in designing their dust control programs, he said. Maintaining that employers generally aim to achieve average airborne asbestos levels between one-half and one-quarter of the PEL to assure compliance, Bragg complained that establishment of the PEL at the lowest level that can be achieved on average deprives employers of their operating margin and exposes them to a "constant fifty-fifty chance of citation" by an OSHA inspector.

Establishing the PEL above the lowest achievable average level by a fair operating margin will reduce markedly the frequency of unjust citations to complying employers, produce significant differentials in citation frequency between employers using "best" controls and those using less than "best" controls, and consequently, will provide a sensible incentive for all employers to achieve "best" control status, Bragg contended.

Formaldehyde

UAW APPLAUDS COURT DECISION REQUIRING OSHA TO RECONSIDER FORMALDEHYDE ETS, RULEMAKING

The United Auto Workers said a July 2 federal district court ruling, which requires the Occupational Safety and Health Administration to reconsider the need for an emergency temporary standard (ETS) for formaldehyde, is a recognition by the court that OSHA is violating its duty to protect workers against job hazards.

In *International Union, United Automobile, Aerospace, and Agriculture Implement Workers of America, UAW, et al. v. Raymond J. Donovan, et al.* (No. 82-2401), the U.S. District Court for the District of Columbia required the agency to reconsider the need for an ETS and permanent rulemaking proceedings. However, the court declined to compel OSHA to issue an ETS (Current Report, July 5, p. 139).

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