PLAINTIFF'S EXHIBIT WRG-1054

H. A. ESCHENBACH 6/4/84

JUN - 1984

To: [redacted]

JUN 6 1984

F.Y.I.

Harry

Harry Eschenbach

are you or one of your staff attending these hearings?

Fred 6/5/84

over.

10002215

10002216

I doubt that anyone will attend except for more than a day or so. At this point, the A/A testimony will take 3-4 days and labor at least 2. Others will be scheduled at about 8/day. so two weeks will be a likely length. I can't spare anyone for that time. I will try to get to DC to review the written comments. Harry

Not only did the standard at 29 CFR 1926.450(a)(1) apply to different circumstances than those at issue in this case, there was no reference made to this provision in 29 CFR 1926.451(a)(13), the court stated.

Given these facts, the court concluded, there is no need "to look beyond the face" of the cited regulation to interpret its meaning or to disturb the determination in *Kennecott* that to "provide" safe access is limited to its plain meaning.

The full text of this decision, which was written by Circuit Judge James K. Logan and joined by Chief Judge Oliver Seth and Circuit Judge William J. Holloway Jr., will appear in a future Decisions issue.

Risk Management

NEW HEALTH PROTECTION PROCEDURE DESCRIBED BY SHELL OFFICIAL AT AIHC

DETROIT — (By a BNA Staff Correspondent) — A new procedure for establishing adequate occupational health protection in situations in which no standards exist, or in which there are questions about the adequacy of existing occupational health standards or guidelines, was described May 21 at the annual American Industrial Hygiene Conference by Paul F. Deisler, Jr., Shell Oil Company, Houston, Texas.

Speaking at the opening general session of the conference, which is co-sponsored by the American Industrial Hygiene Association and the American Conference of Governmental Industrial Hygienists, Deisler said that the procedure, which has been under development and has been utilized at Shell, when properly used, can be an effective method for identifying risks which are unexpectedly high, for ensuring that the most serious risks are dealt with early, and that, therefore, the largest number of people are protected from harm as soon as possible.

Consequently, he stated, the procedure offers a way of improving workplace safety when the need to do so arises without necessarily having to wait for the regulatory process to act.

Deisler said that this procedure consists of a series of discrete steps and includes: (1) a method for categorizing risk when quantitative risk assessment is in fact possible and in spite of the large uncertainties which usually accompany risk assessment data; (2) a determination of how the characterization of risk can lead to the development of a response to that risk, even when quantitative risk assessment is not possible; (3) what is needed in the way of follow-up.

Steps to Be Followed

In the first major step, hazard identification, he told the attendees, the industrial hygienist has a relatively small role to play, but his role becomes more significant in the second stage, hazard evaluation. While these stages are going forward — if the hazard identification stage has given positive identification of a hazard — the industrial hygienist is actively involved in the exposure assessment stage, according to Deisler.

Once the hazard has been evaluated and if a risk is thus indicated, the Shell official stated, the next stage — risk evaluation — follows. This stage, he said, involves combining the results of the hazard evaluation with the results of the exposure assessment to determine what level of risk to people may exist in an actual exposure situation.

The ultimate product of risk evaluation, Deisler emphasized, is a characterization of the risk associated with the hazard — i.e., the risk that potential harm will be realized.

Among major tools for risk assessment, he stated, are epidemiology and toxicology. Only occasionally is it currently possible to include other kinds of information such as pharmacokinetic studies or metabolic studies to help in characterizing risk, he contended.

Risk Responses

The Shell official asserted that when it is possible to characterize risk as lying in one of three categories, the risk responses then are determined by the following criteria:

- For risks lying in the high category, the objective of risk response, whether carried out in one or more steps over time, is to reduce that risk to one which is below the high category — that is, to ensure that it lies no higher than the low category and ideally, that it lies in the insignificant category.
- For risks lying in the low category, whether because they have been reduced from the high category or because of other factors, the objective is to move the risk downward in that category to the extent that it is reasonably feasible to do so. However, he added, expending substantial efforts to attempt to achieve near zero risk in the face of the enormous uncertainties attended upon risk assessment is a serious waste of resources which would better be employed in reducing some other risk.
- If it is possible to conclude that a risk lies in the insignificant category or that exposures are below a reasonably determined threshold of action for the adverse effect considered — then no further action need be taken other than to ensure that appropriate monitoring programs are maintained in order to keep the risk within the insignificant category.

Deisler stated that a reasonable approach dealing with risk can be deduced where a qualitative examination indicates that a risk exists which is worthy of attention but where no satisfactory quantitative risk evaluation can be made. Under these circumstances, he said, the risk response program should be geared to treating the risk as though it were in the lower category — that is, to lowering the risk to the extent reasonably feasible.

At the same time, he added, a program to better define the risk, by gathering further toxicological or epidemiological data, or by other means, should be launched.

Asbestos

REDUCTION OF WORKER ASBESTOS EXPOSURE LIMITS CALLED FOR IN COMMENTS TO OSHA

The permissible exposure limit for asbestos should be reduced to an eight-hour time weighted average of 0.2 fibers per cubic centimeter of air, according to comments received by the Occupational Safety and Health Administration from an Army industrial hygiene specialist, concerning OSHA's proposed rulemaking on worker exposure to asbestos.

The rulemaking (Current Report, April 12, p. 1210) proposes alternative exposure limits for asbestos of 0.2 f/cc, or 0.5 f/cc. The current permissible exposure limit is two f/cc.

"Reducing the limit to 0.2 fibers/cc would result in approximately a 90 percent decrease in asbestos related mor-

tality rates from lung cancer, mesothelioma and gastrointestinal cancer, as compared to a reduced PEL of 0.5 fiber/cc which would result in a 73 percent reduction," according to Maj. David Kluck, chief of preventive medicine at Kirk Army Health Clinic in Maryland.

"Although asbestosis and other site cancer mortality rates have not been calculated at the lower PEL's, the estimated incidence for asbestosis of approximately 50 per 1000 workers exposed to 2 fibers/cc for 45 years is clearly a significant and unacceptable risk. It is further recommended that new guidelines be issued on acceptable ceiling limits with the level reduced to 2.0 fibers/cc, which would aid in insuring worker protection against dangerous concentrations of asbestos fibers, enhance the Standard's effectiveness, and provide a hedge against the intensity contribution to carcinogenic risk," he continued.

Kluck added that an action level of 0/1 fiber/cc should be established for medical surveillance. With regard to proposed methods of compliance, he advocated a combination of engineering controls, work practices, and personal protective equipment. He also called for revocation of the provision allowing disposable worker respirators, on the grounds that the face seals on such equipment were impossible to maintain or properly fit test. Kluck also endorsed revocation of the standard's personnel rotation requirement on the grounds that personnel rotation increased the population at risk from asbestos exposure.

Definition of Fiber

The director of a private laboratory that conducts microscopic examinations of asbestos fibers called for a change in the definition of an asbestos fiber, noting that, "If the airborne asbestos happen to be less than 5 microns long or less than 0.3 microns wide, they will not be counted or resolved by the current method, even though it can be shown that the smaller fibers are asbestos." James R. Kessler, director of a Tucson laboratory specializing in microscopy, continued that the "major glaring defect in the standard" was that it could not distinguish between an asbestos and a non-asbestos fiber by using OSHA's 3:1 aspect ratio identification criteria alone. Kessler noted that many other types of airborne fibers were present in industrial environments.

The safety coordinator of DAP Inc., an Ohio manufacturer of paint products and related items, also called for a revision of the asbestos definition to achieve conformity with the mineralogical definition, including the addition of the adjective "asbestiform" in front of the noun "tremolite," which would eliminate the regulation on non-asbestiform tremolite as asbestos. David Harrison, the company's safety and regulatory affairs coordinator, also joined others in calling for more uniform analytical procedures concerning the mineral.

A University of Iowa associate professor in industrial hygiene noted findings of chrysotile asbestos above the proposed 0.2 f/cc standard in the ambient air of a vehicular recreation area as evidence that, in some industrial situations, incoming air might not be sufficiently asbestos-free to comply with the standard. William Poppendorf, Ph.D., observed that some variance be allowed for work in existing ambient airborne asbestos concentrations.

OSHA hearings on the proposed asbestos rulemaking are scheduled to begin June 19.

Respirators

COMPLIANCE WITH RAM-5 RECALL URGED BY NIOSH; LEAKS IN AUDIT TESTS NOTED

Users of the Robertshaw Controls Company RAM-5 respirator were urged by the National Institute for Occupational Safety and Health May 9 to comply with a current recall of the product.

Audit testing of two of the respirators found a leak in the bulkhead disconnect which connects the hose from the start valve assembly to the hose leading to the mask assembly, NIOSH noted in a notice to respirator users. The respirator is a combination five-minute emergency escape self-contained breathing apparatus.

Investigation by Robertshaw indicates that the leak was caused by inadequate engagement between the internal hose fitting and the bulkhead disconnect, the institute reported. Three other RAM-5 units subsequently were found to have leakages in the same area.

The problem will result in a reduction in the service time of the self-contained air supply, the users notice warned. It added that the units also could malfunction when used with supplied air.

Robertshaw advised its customers of the problem by telephone and by a January 1984 recall notice, NIOSH stated. However, the company has been able to recover or account for only 117 out of 700 possible units.

In view of the "critical nature" of the equipment failure, RAM-5 units should not be used until they have been tested thoroughly by an authorized Robertshaw representative, or by the company itself, the notice cautioned.

NIOSH urged all RAM-5 owners to contact Robertshaw Controls Company, Ray Rateike, 333 North Euclid Way, Anaheim, Calif. 92803; tel. (714) 535-8151.

Risk Assessment

HOUSE SCIENCE PANEL URGED TO PASS BILL TO ENSURE 'APPROPRIATE' HAZARD REGULATION

Rep. Don Ritter (R-Pa) urged a subcommittee of the House Science and Technology Committee May 17 to pass legislation (HR 4192) that would allow federal regulatory agencies to better assess hazards that endanger Americans, including hazards in the workplace.

Under Title I of HR 4192, eight federal agencies — the Occupational Safety and Health Administration, the Food and Drug Administration, the Environmental Protection Agency, the Food Safety and Inspection Service of the Agriculture Department, the Nuclear Regulatory Commission, the Department of Energy, the Consumer Product Safety Commission, and the Department of Transportation — would be required to prepare studies assessing the risks of environmental, health, and other types of hazards in the U.S.

Individual studies would be coordinated by an already-existing agency named by the President. That agency, in turn, would then make recommendations for future research or subsequent action and report the results to Congress.

At a hearing of the Natural Resources, Agriculture Research and Environment Subcommittee, Rep. Ritter, a member of the House Energy Committee who also holds a doctorate degree in science, warned that the federal government must consider the importance of controlling dangers in the workplace and in the environment. Ritter introduced the measure last October.

"Appropriate regulation of hazards based on risk assessment is needed by many of our older, smokestack industries that are struggling to survive. We cannot afford to lose jobs through burdensome regulations that really have no effect on people's health," Ritter warned.

Decisions 'Critical'

Subcommittee Chairman James Scheuer (D-NY) added, "How federal agencies determine the seriousness of risks

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