OSHA Notice CPL 2-2
AUG 2 6 1985
Office of Health Compliance Assistance

Subject: Enforcement Policy for Compliance Plan Provisions of the Lead Standard as Related to Primary and Secondary Smelting and Battery Manufacturing

A. Purpose. This notice provides guidance for compliance determinations regarding paragraphs (e)(3)(i) and (e)(3)(ii)(B) and (E) of the lead standard, 29 CFR 1910.1025, for primary and secondary smelting and battery manufacturing industries.

B. Scope. This notice applies OSHA-wide.

C. References.

1. OSHA Instruction STP 2-1.94, Occupational Exposure to Lead, Final Standard, February 14, 1979.

2. OSHA Instruction STP 2-1.102, Occupational Exposure to Lead, Amendment to Final Rule, May 17, 1982.

D. Expiration Date. This notice expires September 30, 1985.

E. Action. OSHA Regional Administrators and Area Directors shall ensure that the policy and procedures established in this notice are followed during the effective time period of this notice.

F. Federal Program Change. This notice describes a Federal program change. Each Regional Administrator shall:

1. Ensure that this notice is forwarded to each State designee.

2. Provide a copy of the pertinent Federal Register notice to the State designee upon request.

3. Explain the technical content of the Federal Register notice, 49 FR 23175, June 5, 1984, that lifts OSHA's administrative stay of paragraphs

(e)(3)(ii)(B) and (E) of the lead standard, 29 CFR 1910.1025, for primary and secondary lead smelting and battery manufacturing. OSHA did not require States to stay provisions in State lead standards comparable to provisions stayed in the Federal standard, although States were encouraged to take similar action.

4. Inform the State that if the referenced provisions of the State's lead standard were administratively stayed, it should take action to lift the stay as soon as possible so that the effective dates for compliance with 29 CFR 1910.1025(e)(3)(ii)(B) and (E) will be the same as those in the Federal lead standard.

5. Encourage the State to follow the enforcement guidelines established in paragraphs G. and H. of this notice.

6. Ensure that each State designee acknowledges receipt of this notice in writing, within 15 days of notification, to the Regional Administrator. The acknowledgment should include: (a) the status of the State's lead standard with respect to implementation of the federally stayed requirements and their effective dates, and (b) the State's intention to follow the enforcement guidelines established in this notice, or a description of the State's alternative plan which is as effective as the Federal procedures.

7. If a State has responded to the OSHA Notice CPL 2-2 which was issued on July 24, 1984, a further response is not necessary.

G. Background.

1. 29 CFR 1910.1025(e)(3)(ii)(B) and (E) of the lead standard are provisions that require employers to establish a written compliance program which includes a description of the specific means that will be employed to achieve compliance with the standard, including engineering plans and studies used to determine methods selected for controlling exposure to lead, and a detailed schedule for implementation of the program.

2. On December 3, 1982, OSHA administratively stayed these provisions for primary and secondary lead smelters and battery manufacturers in a notice published at 47 FR 54433. The stay was subsequently vacated as of June 1, 1984, by order of the United States Court of Appeals for the District of Columbia Circuit.

3. However, the Court's order authorized OSHA to conduct rulemaking with respect to the date by which employers in the affected industries must complete their written compliance plans in accord with the full requirements of paragraph (e)(3). After notice and comment, OSHA established that employers in the primary and secondary smelting and battery manufacturing industries shall develop compliance plans containing all information in their possession by July 1, 1984, and that they come into full compliance with paragraphs (e)(3)(ii)(B) and (E) by August 1, 1984.

4. OSHA recognizes that some engineering studies of long-range control options may not be complete by August 1, 1984. On the other hand, some of this work may have been partially completed when the compliance plan stay went into effect.

5. 29 CFR 1910.1025(e)(3)(i) requires employers to have a written compliance program to meet the permissible exposure limit for lead "...solely by means of engineering and work practice controls...." However, paragraph (e)(1)(i) of the standard states "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...." Thus, compliance with (e)(3)(i) must be assessed in light of (e)(1)(i).

H. Enforcement Guidelines.

1. If an employer's compliance plan shows that it will implement engineering controls to reduce air lead levels to what it reasonably believes to be the lowest feasible level, the employer shall be considered to be in compliance with 1910.1025

(e)(3)(i), even if air lead levels are not in fact reduced to 50 ug/m^3 without regard to the use of respirators.

2. A citation shall not be issued to an employer in the primary and secondary smelting and battery manufacturing industries for failure to meet the August 1, 1984, date for compliance with 29 CFR 1910.1025(e)(3)(ii)(B) and (E) if both of the following conditions are satisfied with respect to a particular source of exposure:

   a. The employer has, by August 1, 1984, initiated a study of a long-range control option for that source of exposure, either on its own or through active participation in a cooperative assessment with OSHA and employee representatives, such as the Cooperative Assessment Program (CAP).

   b. The employer's compliance plan includes the following information:

      (1) A description of the control option under consideration.

      (2) A description of the particular study, including the study design, the name of the organization undertaking the study (if not the employer), the deadline for completion of the study, and interim deadlines where appropriate.

      (3) A description of the factors which will delay the study beyond August 1, 1984.

      (4) A statement of the employer's intention to implement the control, if it is reasonably found by the employer to be feasible and effective in the employer's workplace, and a tentative schedule for such implementation.

      (5) Any preliminary reports or findings of the study in the employer's possession.

(6) Any other information in the employer's possession meeting the requirements of (e)(3)(ii)(B) and (E) with respect to other control options under consideration.

I. National Office Review. To ensure consistent application of this enforcement policy with respect to the provisions which were the subject of the stay, copies of citations for alleged violations of 1910.1025(e)(3)(ii)(B) and (E) shall be sent to the Office of Health Compliance Assistance for review before issuance. This review of citations applies only to primary and secondary smelting and battery manufacturing industries. State plan States are encouraged similarly to coordinate issuing of citations with the National Office through the Regional Office.

J. Explanation. Expiration of this notice is being extended in order to permit employers nearing the final stages of CAP agreements to reach completion.

Patrick R. Tyson
Deputy Assistant Secretary

DISTRIBUTION: National, Regional and Area Offices
All Compliance Officers
NIOSH Regional Program Directors
State Designees
7(c)(1) Project Managers

CYANAMID

To:	H. C. Gaffney	Date:	June 30, 1986	
Location:	Chicago	Copy to:	J. C. Caporossi	NA
From:	N. D. Yin		J. Lindsay	NA
Location:	Wayne		E. Malone	NA
Extension:	2708			
Subject:	OSHA_MRP_Variance			
Reference:				

Attached is the response letter from OSHA on the subject application. It seems that we still have to wait for OSHA to make their final decision on the MRP variance.

[redacted] has returned to his old job based on his two (2) consecutive blood lead levels which were below 40 mcg/100g. Meanwhile, continue to provide weekly blood tests to [redacted] and [redacted] This is recommended on a continual basis until either OSHA grant us the variance or their blood lead is below 40 mcg/100g consecutively.

N. D. Yin

NDY:kn

Attachment

ndy0630a

JUL 7

CONFIDENTIAL INFORMATION REDACTED

NA 839-03 REV. 7-85 7-85

CYWI 3-001019

N14543.01

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:

JUN 24 1986

Mr. N. D. Yin
Manager
Industrial Hygiene Program
American Cyanamid Company
One Cyanamid Plaza
Wayne, New Jersey 07470

Dear Mr. Yin:

This is in response to your letter date June 19, concerning your request for an extension of the temporary variance from Section 1910.1025(k)(1)(i)(D) Medical Removal Protection (MRP), of the standard for Occupational Exposure to Lead.

As discussed, OSHA will advise you of any change in policy which would allow consideration to extend further temporary relief from the MRP provisions of the lead standard. You will be notified immediately. In the interim, no further action will be taken on your request.

Sincerely,

James J. Concannon

James J. Concannon
Director
Office of Variance Determination

CYWI 3-001020
N14543.02

DIRECTORS
ROBERT E. BOYD, M.D.
RICHARD THORS, M.D.
SENIOR CONSULTANT
PHILIP FALK, M.D.
I.D. #36-2945134

CLEARING INDUSTRIAL CLINIC

5548 West Sixty-Fifth Street / Chicago, Illinois 60638 / 767-6600-01-02-03

June 30, 1986

Mr. Gaffney
American Cyanamid
4500 West 15th. Street
Chicago, Illinois 60623

JUL 1 1986

Re: [redacted]

Dear Sir:

This subject reported to our office on June 27, 1986 for his two month consultation examination under the Varience requirements as instructed by OSHA.

His recent blood levels and zinc protoporphyrins were reviewed as well as his hemoglobin levels.

Date Drawn	Lead Blood mcg/dl	Hemo Gms/dl	FEP mcg/dl	ZPP mcg/dl
5/15/1986	38	12.3	70	86
5/22/1986	44	13.1	80	70
5/30/1986	38	13.4	67	62
6/06/1986	44	14.0	60	58
6/13/1986	45	13.7	67	61.0
6/23/1986	39	14.0	90	

Urine negative for albumin and sugar.

PRESENT COMPLAINTS: At the time of this consultation the subject indicates that he feels fine and has no complaints.

GASTROINTESTIAL REVIEW: He denies any GI complaints. He denies feeling tired or weak.

RENAL: He denies any urinary complaints.

CARDIOVASCULAR: He denies shortness of breath, ankle edema or any discomfort in his chest.

NEUROLOGICAL: He denies any neurological symptoms.

EXAMINATION: There are no abnormal findings in the mouth or of the gums. There is no abdominal tenderness on palpation. The bowel sounds are normal. On neurological examination the patellar and achilles reflexes are normal. The Romberg test was normal. There was no evidence of a wrist drop or weakness. There was no impairment

CONFIDENTIAL
INFORMATION
REDACTED

CYWI 3-001021

N14543.03

Continued

Page two

Re: [redacted]
American Cyanamid

of the sensations.

Cardiovascular examination revealed the blood pressure to be 124/80. The pulse rate was 76. There was no ankle edema or dyspnea.

From this examination and review of his laboratroy results it is my opinion there is no medical condition which would place the employee at increased risk or impairment of health from returning to his regular work.

Very truly yours,

Robert E Boyd MD

Robert E. Boyd, M.D.

REB/pm

CONFIDENTIAL
INFORMATION
REDACTED