



TO

LAURA RIPPEY

To SEE DISTRIBUTION

REC'D APR 25 1988

PITTSBURGH OFFICE -

April 6, 1988

PLAINTIFF'S
EXHIBIT
AL-932

RE: ASBESTOS STANDARDS - COURT MANDATED RECONSIDERATION

The attached bulletin from ORC lists some areas of the new OSHA asbestos rules which may be changed following a recent court ruling. This office will keep you informed of changes if and when they occur.

At this time, ORC is requesting member industries to submit data on the potential impact if a rule change mandated switching from negative pressure respirators to supplied air or SCBA (see p.3).

How many individuals at your facility use respiratory protection for asbestos work? *2-8-10 possible*

How many SCBA or supplied air units would be purchased by your facility if this respiratory protection change occurred? *4-5 possible*

If there are other proposed changes mentioned in this bulletin which would significantly affect your facility, please send your comments to this office.

LAURA RIPPEY

LLR/TP
ASBEST6.LLR
Att.

cc: L.F. Schneider, Pgh.-13
J. Damiano/C.F. DiMascio, Pgh.-6

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Organization Resources
Counselors, Inc.

Memorandum

March 24, 1988

To: ORC Occupational Safety and Health Group
ORC Western Occupational Safety and Health Group
ORC Occupational Safety and Health Physicians Group

From: Darrell K. Mattheis

Subject: Significant Elements in Court Decision on Suits
Against OSHA's Asbestos Standard

On February 2, 1988, the U.S. Court of Appeals for the District of Columbia issued a ruling on the suits that had been filed against OSHA's Asbestos Standard. On February 16, 1988, ORC distributed a short analysis of this decision to bring it to your attention. There are a number of significant issues in the Court's ruling, but I would like to direct your attention toward several issues in particular:

SIGNIFICANT ELEMENTS IN THE COURT'S DECISION

- ** The Court reversed OSHA's ban on spraying of asbestos containing products (pp. 21-22).
- ** The Court told OSHA it must reconsider additional smoking control measures (pp. 25-26).
- ** The Court required OSHA to consider setting lower PELs for some industry groupings (pp. 27-28).
- ** The Court ordered OSHA to complete reconsideration of a STEL for asbestos within 60 days (p. 29).
- ** The Court told OSHA it must reconsider requiring the use of supplied air respirators to achieve levels lower than the PEL (p. 32).

It must be noted that OSHA interprets the Courts remand in this instance as requiring the reconsideration of their whole respirator policy, but not specifically the use of supplied air equipment in place of negative pressure respirators.

- ** The Court ordered OSHA to clarify its Asbestos Standard as to when an employer must resume periodic monitoring, once it has been terminated because fiber concentrations were below the Action Level (p. 34).
- ** The Court thought more could be done to meet the needs of non-english speaking employees in the workplace, and ordered OSHA to reconsider its requirements for multilingual warnings and labels (pp. 37-38).
- ** The Court ordered OSHA to consider requirements that all construction industry employers file reports with it prior to engaging in any asbestos projects (p. 38-39).
- ** The Court ordered OSHA to explicitly consider requiring all employers contracting or subcontracting asbestos related work to establish, maintain and transfer to building owners written records of the presence and locations of any asbestos or asbestos products in any actual or prospective workplace (p. 39-40).
- ** The Court ruled that The Secretary must either expand the applicability of the competent person requirement or give a better explanation of why it is not necessary (pp. 40-41).
- ** The Court ordered OSHA to consider adding the following clarification of the "small-scale" exemption from the preamble of the standard to the rule itself: The exemption was meant to apply only to "those work operations where it is impractical to construct a negative pressure enclosure because of the configuration of the work environment" (pp. 42-43).

In a footnote on page 41 of the decision, the Court commented: "We observe that neither the record nor common sense provides clear support for the "small-scale short term operations" exception from the competent person requirement for removal, demolition and renovation operations,...".

Later, the court commented that: "Indeed, the exception as now worded seems to erase the rule" (p. 42). And finally: "In so far as the exemption applies to the competent person requirement, we can discern no logic whatever in OSHA's choice of language, with or without the preamble's gloss" (p. 43).

A RESPONSE IS NEEDED

The time that will be available for a response to the potential changes listed above is dependent upon both OSHA and the courts. It may be as long as 6 to 9 months, but eventually the unions will go back to the court in an attempt to force a response from OSHA in a short time frame. OSHA has not requested comments, but any sent in will be accepted and a special file started.



ASBESTOS TASK FORCE RESPONDING

The ORC Asbestos Task Force is presently gathering data on the potential costs of switching all respirators that may be used to protect against airborne asbestos fibers from negative pressure to either supplied air or Self-Contained Breathing Apparatus (SCBA). We are requesting data on the total numbers of people who may, in the course of normal duties, need to use a respirator, the cost of supplied air and SCBA units, and a program to maintain them, and the costs of training.

WRITE TO OSHA AND OMB

If you believe that your operations may be impacted by any of the changes in the Asbestos Standard that OSHA has been ordered to consider, you should make it known to OSHA and OMB. If you do not wish to write directly to OSHA or OMB, you may send your comments to ORC and we will incorporate them into our own comments. We have listed the addresses of the appropriate individuals at OSHA and OMB to whom comments should be sent.

Mr. Charles Adkins
Director of the Directorate of
Health Standards
U.S. Department of Labor - OSHA
Room N-3718
Washington, D.C. 20210

Mr. Scott Jacobs
Office of Management & Budget
726 Jackson, N.W.
N.E.O.B.
Room 3208
Washington, D.C. 20746

Barrell K. Mattheis
DKM3:lgs



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Jerry Eicher, Richmond
Brooks Parker, Rockdale
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J. EICHER
4/12/88

