UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

NL INDUSTRIES, INC.	:	
Petitioner	:	
v.	:	OSHRC DOCKET NO. 77-2539-P
SECRETARY OF LABOR	:	
Respondent	:	

PETITIONER'S REPLY TO RESPONDENT'S OBJECTION TO PETITION FOR MODIFICATION OF ABATEMENT DATE

Petitioner, NL Industries, Inc., by its attorney, hereby submits its Reply to Respondent's Objection to Petition for Modification of Abatement Date.

1. This matter involves a request for an extention of the abatement date for Item 1(a-g) of Citation K9638 No. 63 dealing with the airborne lead standard, and about which Petitioner has been sending monthly progress reports since issuance of the citation.
2. By petition dated March 14, 1977, a copy of which is attached as Exhibit A, Petitioner requested a one year modification of the abatement date. The petition, prepared by a layman, although not complying in form or organization with the requirements of 29 CFR Section 2200.34, nevertheless contains the necessary elements for establishing Petitioner's case. Specifically, the

petition extensively and candidly details the progress made toward abatement, points out the need for further time due to circumstances beyond Petitioner's control (the newly perceived requirement for further investment and installation of additional technology and controls), and describes the full range of all the available interim steps being taken to protect employees during the abatement period.

3. 29 CFR 2200.34 establishes the requirements for petitions for modification of abatement. Under this regulation, OSHA must wait 15 working days before it can approve the petition and then, where the Agency or affected employees object, the petition, citation and objection are to be forwarded to the Commission within three working days after expiration of the 15 working day period prescribed for expeditious handling. The regulation clearly sets specific time requirements with the obvious intent of expediting the entire matter.

4. Despite these directives, Respondent filed a Motion on April 4, 1977 for a 45-day enlargement of time to consider this issue. On May 16th, Respondent filed another Motion for a further enlargement of 30 days, citing a need for a "careful evaluation". On June 13th, Respondent filed yet a third Motion for further time requesting 60 days, citing its heavy work load.

5. During this period Respondent's inspector made at least four separate visits to Petitioner's Philadelphia plant. An inspector appeared on May 19th citing as the basis for the modification request inspection, an employee representa-

tive's complaint of October 5, 1976 concerning alleged improper respirator use and housekeeping. The inspector was informed the representative had already stated that the complaint had been withdrawn. Following the first visit, by letter dated May 26, 1977, Respondent requested substantial amounts of information concerning blood lead and urine lead analyses, coproporphyrin measurements, personnel and area monitoring samples (already given in quarterly reports), results of prophylactic use of chelation, and information about the plant respirator program. Petitioner, by its attorney, responded by letter of June 16th attached hereto as Exhibit B, indicated that most of the information would be provided and that Petitioner strictly prohibits the prophylactic use of chelation. This is in conformity with guidelines issued by its nationally recognized medical consultant, and essentially involves a matter for the judgment of physicians and not the plant. Respondent was also informed that Petitioner does not disseminate blood lead data.

6. Further, during visits on July 1 and July 6, 1977, Respondent's inspector took photographs and sought: a review of various records, air sampling data for areas not involved in the citation, flow process diagrams, weekly overtime lists, minutes of safety and health meetings, written training and hygiene programs, further engineering control information, and wanted to know why the plant administered vitamin B_{12} injections to employees (it does not). The inspector also admitted that Petitioner needed

additional time to effectuate further engineering control as requested in its original petition.

7. The inspector asked about and was reminded about Petitioner's policy with respect to dissemination of blood lead data. The inspector then requested a private meeting with employees and Petitioner's plant manager acquiesced, although he was not required to do so. Later, Petitioner learned that the inspector had distributed to Petitioner's employees a questionnaire, attached hereto as Exhibit C, which seeks to elicit the very information and the only information the inspector knew Petitioner did not want to, and is not required to provide. No mention of the intent to distribute the questionnaire was ever conveyed to Petitioner's representative, and the plant manager was clearly mislead about the existence of the questionnaire, the inspector's intent, and the fact that detailed information would be sought about management practices, management statements, employee habits, medical examinations and specific blood lead information. Such conduct can charitably be described as highly improper and unfair.

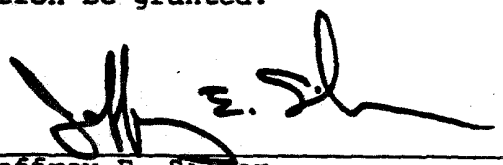
8. By letter dated July 27, 1977, Respondent effectively informed Petitioner that the four-month history described above and the specific written requests for information are based upon the authority contained in 29 CFR 1903.14a(b)(4).

9. Respondent's Objection to the Petition for Modification of Abatement concludes that Petitioner has had enough time to abate and then, conversely, states that Respondent "cannot evaluate Petitioner's success in abating the hazard, nor can the Secretary of Labor make any determination as to

the safety of NL's employees from lead intoxication". Apart from Petitioner's objection to the use of the loaded word "intoxication" which is not at issue, Petitioner respectfully contends that the conclusion as stated by Respondent is not and cannot be an issue in this proceeding. The requirements for a PMA are clearly and narrowly defined in Section 1903.14a and 2200.34. Respondent's extraordinary effort to harass the Philadelphia plant, as set forth above, not only went beyond the clear scope of these sections, they are contrary to the intent of the regulation to expedite the issue, and to the purposes of the Occupational Safety and Health Act. In fact, Respondent has essentially made clear that its sole remaining purpose is to obtain blood lead information. Since Petitioner is unaware of a regulation requiring Petitioner or any employer to record, keep and submit such information, it seems clear that Respondent effectively distorts the scope of the applicable regulations in this case to achieve its purpose.

10. Petitioner fully intends to comply with the Act and its implementing regulations and is most anxious to get on with business at hand - to make every feasible effort to continue to ensure the health and safety of its employees at the plant. Petitioner respectfully contends that the sole issue at stake in this proceeding involves whether Petitioner is required to submit blood lead information sought by the Respondent under color of authority of the applicable regulations. Therefore, Petitioner respectfully requests the Commission to rule on this issue. Petitioner further respectfully contends that the submission of sub-

stantial information, its full cooperation with Respondent during what must be characterized as the unprecedented (five-month "no stone left unturned") handling of a petition of this nature, and the facts submitted in its original Petition for Modification of Abatement, fully satisfy its burden under 20 CFR Section 2200.34 and respectfully urges that the petition be granted.



Jeffrey E. Silver
Attorney for NL Industries, Inc.
Petitioner

NL Industries, Inc.
Office of General Counsel
1230 Avenue of the Americas
New York, New York 10020

bc: T. Anderson
D. W. Hurley
J. L. Jacobs
J. W. Roper

NL 000041296

CERTIFICATE OF SERVICE

I, Jeffrey E. Silver, hereby certify that I served today the Petioner's Reply to the Respondent's Objection to Petition for Modification of Abatement Date, by sending a true and correct copy thereof, by air courier service, to the following:

Regina M. Kossek
Regional Solicitor's Office
U.S. Department of Labor
14480 Gateway Building
3535 Market Street
Philadelphia, Pa. 19104

Dated: November 11, 1977

Jeffrey E. Silver
Attorney

N 27291.01

NL 000041297

pm11 Exhibit A

4-4-77

NL Industrial Chemicals

RECEIVED
MAR 15 1977
E D A
ATLANTIC REGIONAL OFFICE
PHILADELPHIA, PA.

RECEIVED
MAR 25 1977
OSHA-USDL
PHILA.

March 14, 1977

Mr. William E. Corrigan
Acting Area Director
Occupational Safety and Health Administration
Philadelphia, Pa. 19106

SDHO No. K9638 OSHA01
No. 63 FY76 - Area 6540, Region 3

Dear Mr. Corrigan:

Since reporting our progress to your office on June 14, 1976, concerning the status of the above-captioned citation, the Philadelphia Plant of N. L. Industries, Inc. Industrial Chemical Division has continued to place a major emphasis on a program for complete abatement by March 22, 1977.

At this time, it may be helpful to review our progress during the period of June 1976 - March 1977. I have attached copies of our correspondence for the record, if you wish to review details.

A central vacuum system for our #2 building has been completely installed at a cost of $50,000 and operational since July of 1976. We are now investigating special bag packing units such as a St. Regis Beat/Sealer Open Head bag automatic system. These units are costly, $80,000 each, (we would need 6), therefore, we have engineering consultants examining the merits of the systems.

We continued personal cassette testing in the cited areas. Each month, the data obtained was reported to the Area Director.

see page 3

Industrial Chemicals Division/NL Industries, Inc.
2545 Aramingo Avenue, Philadelphia, Pa 19125 Tel. (215) 426-0600

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The following is a summary of the data presented:

Area	OSHA Ref.	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb
Oxide Millman	a		.15		.20	.10		.20		---
Building #9										
Packer 13 - Blender 3	b	No		Lead	Production			Planned		---
Building #2										
Packer 5	c	.16	.07	11	.19	.28	.25			---
Packer 1	d	.27		.20	.19	.12	.23	.09		.20
Continuous Dryer	e	.25		.18	.11	.20	.12	.16		.18
Building #18										
Blender 2	f	.04		.08	.25	.11				.10
Packer 12	g									

Weather and Construction Problems

Bag packers continue to cause us problems and as I mentioned earlier, we are looking into the latest technology for relief. This investigation will take about a year. Meanwhile, constant maintenance attention is required on rotary valves, blender seals, shakers and related equipment to minimize dust leaks.

Appropriations have been requested for a new pulverizing and dust collection system for our #1 continuous dryer ($50,000) and for dust collection hoods for both the #1 and #2 continuous dryers ($70,000). Both dryers had been overhauled and sealed in September - October at a cost of $56,000. The #1 dryer was totally repaneled.

Demonstration units using "Air-Pallets", a bulk bag reusable container, were installed in December at a cost of $80,000 to determine if bulk containers other than paper bags and drums can be successfully adopted by the manufacturing unit and the customer. We are evaluating these systems now and are giving customer demonstrations. We are also preparing a request for monies to install a pallet shrink-wrap system to minimize dusting from packed pallets.

We are also continuing our efforts in the technology of treating powders to render them dustless. This effort is being carried out at the Philadelphia Plant and will probably cost in excess of $250,000. To aid cleaning efforts, a "ride-on" vacuum sweeper/scrubber was purchased at a cost of $12,000 for control of dust on floors.

With respect to administrative procedures, we have hired a safety/environmental specialist to take charge of all programs. We are continuing our respirator rule for all lead chemical producing areas and compliance with OSHA administration's published recommended lead control guidelines. Respirator washing stations have been set up and are in use for both the Lead Oxide and the Chemicals Depts.

Our safety/environmental specialist has given seminars on supplied air respirator use and the maintenance and cleaning of respirators. He is also examining novel interim respirator equipment such as fresh air supplied helmets. For 1977, we are planning a major improvement of locker room/cafeteria facilities which will include a programmed traffic flow for the worker to minimize or negate contamination from work clothes.

Dispite the fact that total expenditure to attain the present threshold limit value has been impossible to determine, (or if in fact it can consistantly be met), our management have given us their fullest cooperation in our compliance efforts. Improvements have been accomplished in the cited areas (Re: letter of 6/14/76). Our progress thus far has been positive and we are determined to exhaust every means of meeting the standard. Because of the significant economic and time impact, however, we respectfully request a twelve (12) month extension of our abatement period.

In summary, the reasons for our request for an extension of the abatement period are:

(a). Delays in locating firms that can improve upon the air packers we presently use.

(b) Time intensive engineering studies to determine the best type of pulverizer for our continuous dryers.

(c) The need for additional time to evaluate the newly installed bulk handling systems as improvements over bags and drums.

(d) Installation of pallet shrink wrap system.

A copy of this letter has been sent to the President of IAM Lodge 2568, Mr. George Smigo, and also posted in the required areas per Federal Register 1903.14c(1).

D. W. Hurley
Plant Manager

cc: Mr. George Smigo

Exhibit B

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June 16, 1977

Mr. William E. Corrigan
Area Director
Occupational Safety and
Health Administration
Suite 4256
600 Arch Street
Philadelphia, Pennsylvania 19106

NL Industries, Inc.
Industrial Chemicals Division
Philadelphia Plant

Dear Mr. Corrigan:

NL has had an opportunity to review your letter of May 26, 1977 in which you request various data and information concerning the above plant.

As you know, on March 14, 1977, NL requested an extention of the abatement date for the citation issued the plant on December 22, 1975. In compliance with the regulations, NL's letter discussed the numerous abatement steps taken to date, the reasons why additional time is necessary in light of circumstances beyond our control, and the available interim steps which we are taking to continue protection of our employees.

In the absence of any objection by union representatives, as is the case here, normally OSHA reaches its determination with dispatch, as required by the regulations. In this instance, the Agency has filed three consecutive motions for extensions of time, has made additional comprehensive visits to the plant, and has requested the information contained in your letter, all ostensibly in connection with a routine abatement extension request.

Continued protection of our workers and additional abatement efforts are important objectives of NL and we are anxious to get on with the job. The Agency already has a great deal more information than required to reach its decision. Nonetheless, NL has sought and will continue to cooperate further concerning the information you request as follows:

A copy of the respirator program for the Philadelphia plant has already been furnished. Results of personal and area monitoring samples have been provided in quarterly reports and these will continue to be provided. Of course, we are pleased with the downward progression of values I understand they indicate. We do not perform coproporphyrin measurements and urine lead analyses.

In accordance with our corporate policy, NL does not disseminate the results of blood lead analyses for our workers, nor are we required to do so by the Occupational and Safety Health Act, its implementing regulations, or the principles protecting the right of privacy. However, I wish to assure you that NL follows a strong policy prohibiting the prophylactic use of chelating agents.

In light of the foregoing, I respectfully request that you expedite your decision on our abatement extension petition. Of course, I would be pleased to answer any questions you may have about this matter.

Sincerely,

Jeffrey E. Silver
Counsel - Governmental Affairs

JES:sp

bc: D. W. Hurley
J. L. Jacobs
J. W. Roper
R. W. Vath

Exhibit C

I _____ hereby state:

I reside at _____

_____ phone no. _____

I am employed by NL Industries as a _____ and have been for

_____ years.

I was provided the following respirator by management: _____.

I received respiratior training(Date) _____ Instructor _____.

	Yes	No
Management explained to me why I need this respirator:	_____	_____
Management explained to me the way this respirator protects me and its limitations:	_____	_____
Management trained me how to use this respirator(fit, storage, maintenance):	_____	_____
My respirator is regularly cleaned and disinfected:	_____	_____
During cleaning my respirator is checked for defects:	_____	_____
Replacement parts are available for my respirator:	_____	_____
Management checks to see if I am using my respirator properly:	_____	_____

I refrain from eating except in _____

I keep my food and drink containers _____

I refrain from smoking except in _____

I shower at the end of the shift	_____	_____
I wash my hands before eating	_____	_____
I wash my face before eating	_____	_____

I receive clean set of clothes from the company _____

I keep my street clothes and work clothes separate	_____	_____

I have received _____ hours of training in the last year about the hazards of lead and how to protect myself

Instructor _____ (last date) _____

I am regularly notified of the results of the company's air monitoring of my lead exposure _____ _____

I was last seen by the company doctor _____ (date)

for _____

My last blood lead level was _____ (date)

I have had a blood lead level greater than "6.0" _____	_____	_____
I have had the symptoms of lead poisoning	_____	_____

Symptoms _____ (date)

I have had chelation therapy from _____ (date)

I have received workmen's compensation for lead poisoning

date _____

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