ARMCO

September 1, 1983

To: M. T. Bercilla - Hitco - Newport Beach, CA
S. W. Brown - Ashland Works
R. W. Chaney - Union Wire Rope - Kansas City
J. L. Cox - Middletown Works
J. W. Hensley - Houston Works
R. L. Kelley - Kansas City Works
J. R. Martin - Ladish, Cudahy, WI
B. L. Scudere - Baltimore Works
W. A. Smith - Ambridge Works
J. M. Sullivan - Middletown Works
G. R. Swalm - Butler Works

From: E. D. Gregory
Corporate Accident Prevention & Occupational Health

Subject: OSHA's Response to Questions Relating to Intermittent Asbestos Exposures Involving Maintenance Repair Jobs

In April, I submitted questions to OSHA involving the applicability of certain sections of the Asbestos Standard to insulation removal-type jobs that occur on an intermittent basis in some of our plants. Attached is a copy of my questions and a copy of their answers for your review.

I do not agree with their interpretations, but unfortunately they are taking this position. Our only recourse is to try our best to limit the number of maintenance employees that we have exposed to asbestos so that we can keep the number of required medical examinations to a minimum.

Earl Gregory

EDG:ph

Attachments

PLAINTIFF'S EXHIBIT
ARO-88

U.S. Department of Labor

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

Reply to the Attention of:

JUL 19 1983

Earl D. Gregory, Ph.D., CIH
Senior Industrial Hygiene Engineer
Armco Incorporated
Middletown, Ohio 45043

Dear Dr. Gregory:

This is in response to your inquiry of April 8, 1983, regarding the interpretation of 29 CFR 1910.1001(j), asbestos medical examinations, as it relates to employees exposed intermittently. Please accept my apology for the delay in our response.

We will answer your questions in the order that you presented them. We should also begin by stating that medical examinations must be provided or made available by the employer at least annually to each employee engaged in an occupation exposed to asbestos airborne concentrations greater than 0.1 fibers per cubic centimeter of air (fibers/cc) for an 8-hour, time-weighted average.

1. There is no intermittency exclusion in 29 CFR 1910.1001 (j) at the present time. For intermittently exposed employees where asbestos fibers are released there is still a requirement for the employer to provide or make available a medical examination to an employee who has worked 30 calender days or less. This is different from the medical examination requirements in the lead and coke oven emission standards, both of which use 30 days of exposure as the criterion. In addition, the concept that only employees exposed on a regular basis have the potential for developing disease is not true for asbestos. Short exposures to asbestos may trigger disease, although not immediately.

2. The employer has 30 calender days to provide or make available a medical examination to affected employees regardless of whether the employees use a respirator, or whether airborne levels are within the protection factor of the respirator. The medical examination must also be repeated annually, within one year of the last medical examination, if the employee still works for the employer. If no further asbestos exposure occurs in subsequent years, no medical examination is necessary, except that a termination of employment medical examination would be due within 30 calender days before or after the employee's termination of employment.

3. 29 CFR 1910.1001(j)(3) requires annual medical examinations only when exposure to airborne asbestos occurs, as you note. If an employee has a one-time or very short exposure period the employee would not receive another medical examination if exposure does not recur. However, a termination of employment medical examination is still due at the end of his/her employment, as mentioned in 2., above, which should cover this situation, and an annual medical examination if the employee still works for the employer to cover the initial year.

4. 29 CFR 1910.1001(j) does apply to intermittent exposure situations, such as repair and maintenance employees who are only intermittently exposed to asbestos. This provision of the standard does not mean just day-to-day, routine asbestos exposures. Your point has some validity in that it may serve no purpose in the case of a one-time medical examination for employees exposed on a short-term basis. However, it is hoped that such employees would take their exposure history into consideration on their own regarding future medical examinations.

I hope this information answers your questions. If you have any further questions, please feel free to contact us again.

Sincerely,

Bruce Hillenbrand

Bruce Hillenbrand
Acting Director, Federal Compliance
and State Programs

ARMCO INC.
GENERAL OFFICES · MIDDLETOWN, OHIO 45043

April 8, 1983

Mr. John Miles, Director
Office of Field Coordination
Occupational Safety & Health Administration
Room N 3100
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Miles:

Our company would like an interpretation of OSHA's Standard 1910.1001 (j) which requires medical examinations of employees exposed to airborne asbestos. In particular, we would like to know if OSHA has interpreted an intermittency exclusion into this standard similar to what exists in the Lead and Coke Oven Emissions Standards. For example, in the Coke Oven Emissions and Lead Standards, employers are not required to give medical exams unless the employees are exposed to these contaminants for more than 30 days per year.

The concept of an intermittency exclusion makes good sense because only those employees exposed on a regular basis have the potential of developing diseases from compounds such as lead, coke oven emissions and asbestos. Requiring medical exams for employees exposed only a few days per year would be a waste of money and would serve no protective function.

In many of our plants and throughout industry in general, there are times when repairs must be made on steam lines where asbestos insulation may have to be removed. This may occur once a year and last a matter of minutes for many of our maintenance employees. When this occurs, we follow all of the protective measures listed in the OSHA Standard. However, it seems ludicrous to perform medical examinations on these employees when they may never perform the job again, and the medical examination will not reveal a disease which takes years to develop.

The particular questions which we would like addressed on Section 1910.1001 (j) of the Asbestos Standard are as follows:

1) Is there already an intermittency exclusion for medical examinations in the standard?
For example, in 1910.1001 (j)(2), the standard states that "the employer shall provide....to his employees, within 30 calendar days following his first employment in an occupation exposed to asbestos, a comprehensive medical examination."
Can this be interpreted to be an intermittency exclusion or triggering level whereby the exams are not required if the employees are exposed less than 30 days per year?

2) At what point should medical examinations be given? If employees are protected through respiratory protection during one day of working with asbestos per year, and air monitoring indicates that airborne levels were within the protection factor of the respirator, should medical examinations be given? If so, should they be repeated in following years even though no further work with asbestos is performed?

3) What purpose does the medical examination serve if the employee has a one time or very short exposure period and then does not receive another examination because his exposure does not reoccur? This would be in compliance with OSHA regulations since 1910.1001 (j)(3) requires annual examinations only when exposure to airborne asbestos occurs. Thus, after exposure ceases, examinations are no longer required even though the disease process may take years to develop.

4) Does 1910.1001 (j) apply to intermittent exposure situations such as we are concerned with? For example, we are concerned about repair and maintenance employees who are only intermittently exposed to asbestos. Could the OSHA Standard on medical examinations be interpreted to apply to occupations where day-to-day routine asbestos exposures occur and not to non-routine exposure situations? The standard does state that "medical exams are to be given to employees engaged in occupations exposed to airborne asbestos" which seems to support this interpretation. An interpretation of this type would have merit since medical examinations of routinely exposed employees would serve a purpose in detecting a disease before it reaches advanced stages. On the other hand, a one-time medical examination for employees exposed on a short-term basis would serve no purpose.

Thank you in advance for considering these questions, and feel free to contact me if you need further information.

Yours truly,

Earl Gregory

Earl D. Gregory, Ph.D., CIH
Senior Industrial Hygiene Engineer

EDG:ph