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Asb-1-3

PLAINTIFF'S EXHIBIT

SH-1310

JUNE 18, 1981

SEE ATTACHED DISTRIBUTION LIST

The attached Note for File which discusses a February 18 OSHA field instruction regarding medical surveillance for asbestos workers may be of interest.

Ken Crawford

Attachment

cc - C. F. Phillips
J. D. Ransdell
J. L. Rivard

K. C. CRAWFORD

LAM 025294

ENVIRONMENTAL	
DATE	6-19-81
NAME	P.J. Snyder
	RETURN TO EVC FILE
X	COPY IN EVC FILE
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COPY	(H)
CIRC.	

ABS-008469

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MOBILE CHEMICAL PLANT
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NOTE FOR FILE

SUBJECT: MEDICAL SURVEILLANCE FOR ASBESTOS WORKERS

An article in the March 12, 1981 issue of the Occupational Safety & Health Reporter, page 1325, discusses OSHA Field Instruction CPL 2-2.21A. The stated purpose of this Field Instruction is to provide uniform inspection and compliance procedures for the medical examination requirement in the asbestos standard. In substance it is a reissue of OSHA Program Directive No. 300-16 dated October 11, 1978, with the addition of procedures for documenting past exposures.

This article raised a question from a field location regarding the legal basis for the OSHA use of 0.1 fibers/cc as an exposure criterion for requiring medical examinations. The following information is pertinent:

The OSHA regulation for asbestos (1910.001) relates the requirement for medical examinations to "employment in an occupation exposed to airborne concentrations of asbestos fibers." No specific exposure level is quoted.

In a 1977 decision of a case (GAF Corporation vs. OSAHRC and Dunlop) confirmed by the U.S. Court of Appeals for the District of Columbia Circuit, the following finding was upheld. "Asbestos standard, 29 CFR 1910.1001(j) requires employers to provide medical examinations for all workers in occupations exposed to airborne asbestos in any measurable concentration." This case is reviewed in BNA 5OSHC 1555.

In a later case against GAF Corporation, a citation was upheld because GAF did not make medical surveillance examinations available even though the exposures did not exceed 0.10 fibers per cu cm. This case (6OSHC 1206) was prior to the 1978 OSHA Program Directive.

K. C. Crawford
4/30/81

Attachments:
BNA Article
OSHA Program Directive 300-16

LAM 025296

ABS-008471

rule "is far too restrictive and invalidates alternative dosimeter types which would be equivalently effective," de Bernardo said. Regarding testing booths, the Chamber attorney said that "essentially laboratory conditions" would be required to meet the low frequency noise specifications for the booths, which he called an "impractical and unworkable requirement."

▸ There is confusion in the standard of the terms "noise" and "dose" which causes "significant ambiguity."

▸ Training program requirements are excessive and present "the potential for harassment of employers."

▸ Recordkeeping requirements are "far too excessive and costly," particularly for small and medium-sized businesses.

▸ The calibration requirements for dosimeters and audiometers are "exhaustive" and require more testing than necessary to ensure accuracy.

▸ Projections of the number of workers covered by the amendment, the overall cost of compliance, and the cost per worker for compliance are "badly underestimated."

▸ The requirements that only audiologists, qualified physicians, and otolaryngologists evaluate audiograms and perform certain duties is "excessively costly and an inefficient use of limited professional resources since trained technicians and qualified nurses could adequately perform such responsibilities."

▸ The agency miscalculated the effect of impulse noise on measurements.

The Chamber has sought to stay the rule since it was issued on Jan. 16 (Current Report, Jan. 22, p. 833). Last month, the Chamber proposed to Reagan's task force on regulatory reform that the eight-hour time-weighted noise exposure to which workers must be exposed to be included in industrial hearing conservation programs under the new rule be raised from 85 dB to 90 dB (Current Report, Feb. 19, p. 1266).

ORC Petition

A similar petition requesting suspension of the effective date of the Occupational Safety and Health Administration's new hearing conservation amendment, full review of the record compiled on the amendment, and a reopening of the record also was submitted March 2 to Secretary of Labor Raymond J. Donovan by the Organization Resources Counselors, Inc.

ORC criticized the amendment for relying on specification rather than performance criteria and for being too technically complex for most employers. "In our view, OSHA can solve the broad problem and many of the specific problems [contained in the amendment] only if it substitutes a performance standard for the excessively specification-oriented amendment," the organization stated.

ORC shares similar concerns with the Chamber of Commerce about a number of issues, including specifications for test booths, recordkeeping requirements, specifications required for dosimeters, whether dosimeters are reliable under the requirements of this program, definitions of significant threshold shift and revised baseline in the program, enforcement and need for the 14-hour quiet period, requirements for audiometer calibration, training requirements, effect of impulse noise on measurements, and limitation of audiogram review to certain physicians.

In addition, ORC requested that several issues, such as the cost effectiveness of the amendment, the number of workers covered and the resulting overall cost of the amendment, the provision for employee monitoring of the program, possible confusion between the requirements of the amendment and those of the old standard, the handling of computer programs, and the requirement that noise levels as low as 80 dBA be included in the time weighted average, receive additional consideration and review before the amendment becomes effective.

LAM 025297

Asbestos

OSHA INSTRUCTION GIVES PROCEDURES FOR DOCUMENTING PAST EMPLOYEE EXPOSURE

Procedures for documenting past employee exposure to airborne asbestos fibers when concentrations can not be measured by taking of air samples on the day of the inspection or thereafter were detailed in an Occupational Safety and Health Administration instruction issued Feb. 18.

The instruction, CPL 2-2.21A, sets guidelines for determining whether asbestos had been used or handled regularly at the workplace — or, if it had been used or handled on an irregular basis, whether employees were exposed to "significant amounts" of asbestos-containing dust — for the purposes of the medical examination requirements of the asbestos standard (Reference File, 31:8306).

Compliance officers are instructed to obtain monitoring results from the employer or contractor, or from other sources. Information necessary to document asbestos use or handling is to be obtained through employee, employer representative, or union interviews, and through written employer information if it exists.

The instruction cancels a similar document issued in October 1978 but, except for the addition of the procedures for documenting past exposure, leaves it essentially unchanged (Current Report, Nov. 2, 1978; Reference File, 21:9158).

Text of the instruction follows.

Text of OSHA Instruction CPL 2-2.21A

Subject: 29 CFR 1910.1001(j)(2), (3) or (4), Minimum Airborne Fiber Concentration for Initiating and Continuing Asbestos Medical Examinations.

A. *Purpose.* This instruction provides uniform inspection and compliance procedures for the medical examination requirement in the asbestos standard.

B. *Scope.* This instruction applies OSHA-wide.

C. *Cancellation.* OSHA Instruction CPL 2-2.21, October 11, 1978, is canceled.

D. *Action.* OSHA Regional Administrator and Area Directors shall assure that enforcement of 29 CFR 1910.1001 (j)(2), (3) or (4) is consistent with the guidelines in G. of this instruction.

E. *Federal Program Change.* This instruction describes a Federal program change which affects State programs. Each Regional Administrator shall:

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

2. Explain the technical content of the change to the State designee as requested.

3. Ensure that State designees are asked to acknowledge receipt of this Federal program change in writing, within 30 days of notification, to the Regional Administrator. This acknowledgement should include a description either of the State's plan to implement the change or the reasons why the change should not apply to that State.

4. Review policies, instructions and guidelines issued by the State to determine that this change has been communicated to State program personnel. Routine monitoring activities (accompanied inspections and case file reviews) shall also be used to determine if this change has been implemented in actual performance.

F. *Background.* OSHA has determined that generally citations should, as a matter of policy, be issued for

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iolations of 29 CFR 1910.1001(j)(2), (3) or (4), only when nployees are exposed to a minimum of 0.1 asbestos fibers longer than 5 micrometers per cubic centimeter of air, as determined by the sampling method prescribed in section G.2. of this instruction. [The phrase "fibers longer than 5 micrometers per cubic centimeter of air" shall hereafter be abbreviated as "fibers/cc."] However, for situations in which sampling of exposure is infeasible, citations may be issued as provided in G.5. of this instruction.

G. *Enforcement Guidelines.*

1. Medical examinations as per 29 CFR 1910.1001 (j)(2), (3) or (4) will be required for any 7- to 8-hour time-weighted average concentration of 0.1 fibers/cc, or for a greater concentration.

2. Sampling procedures will follow Chapter X of the IHFOM with the additional guidelines of G.3 and 4. of this instruction.

3. *Sampling for Exposures to Asbestos Dust with Low Levels of Contamination (e.g., Mixed with Other Minerals).*

a. For exposure to dust that is mostly asbestos and is expected to be below the permissible exposure limit, the same filter should be used for the entire shift, but no longer than 8 hours.

b. For exposure expected to be at or above the permissible exposure limit, several samples may be required during the shift to avoid overloading the filters.

4. *Sampling for Exposure to Asbestos Dust with High Levels of Contamination.*

a. Several samples of exposure may be required during the shift to avoid overloading the filter.

b. Filters should be changed only after a minimum of 1 hour of sampling time for exposures expected to be close to 0.1 fibers/cc. Seven or eight 1-hour samples can be collected during the day.

5. *Past Exposures.* When employees have been exposed to asbestos but air samples cannot be taken on the day of the inspection or thereafter, citations for serious violation of 29 CFR 1910.1001(j)(2), (3) or (4) should be issued according to the following procedures:

a. Determine that employees were exposed to airborne concentrations of asbestos, and that the use or handling of asbestos was performed on a regular basis; or that the use or handling of asbestos was performed on an irregular basis, but employees were exposed to significant amounts of dust containing asbestos.

NOTE: Compliance officers shall obtain monitoring results from the employer (contractor) or other source (e.g., insurance company; company or plant for whom contracting work is being done; building owner/building management; other Federal, State or local agency), and shall indicate exposure levels above 0.1 fibers/cc of asbestos.

b. Document, by employee, employee representative, and union interviews, that this work was performed routinely, on a repeated basis; or that the use or handling of asbestos was performed on an irregular basis, but employees were exposed to significant amounts of dust containing asbestos. In addition, obtain documentation from written employer information on these routine operations, if it exists.

c. The violative conditions must have occurred at least within the previous 6 months to meet the requirements of Section 9(c) of the Occupational Safety and Health Act.

6. *Types of Violations.*

a. A "serious" violation of 29 CFR 1910.1001(j)(2), (3) or (4) would exist where an employer does not provide the required medical examinations, and an employee is exposed to 0.1 or more fibers/cc.

b. For definitions and guidance on "repeated", "willful" or a "failure to correct" violation, see the FOM, Chapter VIII.

Litigation

COURT RULES GRAIN DUST ACCUMULATION VIOLATES OSHA HOUSEKEEPING STANDARD

An employer that has been cited twice for violation of the Occupational Safety and Health Administration's housekeeping standard, for failure to prevent accumulations of grain dust in its grain elevator, is in repeated, serious violation of that housekeeping standard, the U.S. Court of Appeals for the Fifth Circuit, Unit A, ruled March 5.

This decision in *Bunge Corporation v. Secretary of Labor and OSAHRC* (No. 79-1906) affirmed a ruling of the Occupational Safety and Health Review Commission (7 OSHC 1326).

The case arose out of the inspection of the employer's Destrehan, La., grain elevator. During that inspection, the OSHA compliance officer found 42 locations where dust and grain had accumulated. The citation charged that this condition was in violation of 29 CFR 1910.22(a)(1) and that it created a fire hazard. This citation was the third such citation issued to the employer for violation of the same housekeeping standard. The first and third citations involved dust accumulations and the second involved material and ropes left in walking areas.

After a hearing on the merits of the case, an OSAHRC judge found the employer to be in repeated, serious violation of the housekeeping standard and assessed a $10,000 penalty. This appeal followed.

The employer did not dispute the existence of the dust accumulations at the grain elevator but, instead, argued that the housekeeping standard had been impermissibly expanded to include fire and explosion hazards. According to the employer, grain dust fire and explosion hazards can only be addressed by promulgating a specific rule covering those hazards. The appellate court rejected that argument, stating, "[w]hile a specific rulemaking may be preferable, OSHA is by no means obligated to countenance dangerous conditions pending the promulgation of a regulation that specifically addresses one of the hazards that the condition generates."

This opinion, which was written by Circuit Judge Sam D. Johnson, who was joined by Circuit Judges Irving L. Goldberg and Henry Politz, will appear in a future Decisions issue.

LAM 025298

State Plans

MONETARY PENALTIES AGAINST WORKERS SUBJECT OF OSHA INSTRUCTION TO FIELD

States are not absolutely prohibited from leveling economic penalties against workers who fail to comply with job safety and health standards, but any state considering the inclusion of such sanctions in its state plan should evaluate the action carefully to determine whether it "weakens the effectiveness of the overall enforcement program," according to an Occupational Safety and Health Administration field directive.

The document, OSHA Instruction STP 2-1.8A, dated Feb. 24, also said that a state which includes such penalties in its plans "must show how these sanctions would *not* reduce the overall effectiveness of the state's enforcement program below that of the federal enforcement program."

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(3) Magnesium arsenate.
(4) Sodium arsenite.
(5) Zinc arsenate.
(6) Zinc arsenite.
(7) Zinc fluoroarsenate.
f. Manufacturers of desiccants.
Example : Orthosarsenic acid.
g. Manufacturers of wood preservatives.
Some examples of these products are as follows:
(1) Ammoniacal copper arsenite.
(2) Chromated copper arsenate.
(3) Mixture of chlorinated arsenate, fluoride and phenolic salts in aqueous solution.
(4) Zinc-chromium arsenate.
(5) Copperized zinc-chromium arsenate.
(6) Fluorchrome arsenate phenol.
h. Manufacturers of feed additives.
Some examples of these products are as follows:
(1) Arsanilic acid.
(2) 3-Nitro-4-hydroxyphenylarsonic acid.
(3) 4-Nitrophenylarsonic acid.
(4) 4-Ureido-1-phenylarsonic acid.
i. Manufacturers of pharmaceuticals for use in veterinary medicine.
Some examples of these products are as follows:
(1) Acetarsamide.
(2) Carbarsone.
(3) Dichlorophenarsine.
(4) Lead arsenate.
(5) Melarsonyl.
(6) Neoarsphenamine.
(7) Thiacetarsamide (Caparsolate).
j. Manufacturers of glass that use arsenic trioxide as a refining agent and a decolorizer.
k. Manufacturers of alloys of nonferrous metals and arsenic.
Some examples of products manufactured from these alloys are as follows:
(1) Lead shot.
(2) Cable sheathing (lead and arsenic).
(3) Battery grids (lead and arsenic).
(4) Battery electrodes (lead and arsenic).
(5) Speculum metal.
(6) Boiler tubes (Copper and arsenic).
(7) Arsenic bronze.
(8) Special solders such as used on body joints and seams in the automobile industry.
(9) Arsenic brass.
(10) Arsenical Babbitt.
l. Users of solders that contain arsenic as a component in the alloy.
Example: Automobile and truck body manufacturers.
m. Manufacturers and/or users of arsenic-based flotation reagents.
n. Miscellaneous.
Arsenic and/or arsenic-containing, inorganic compounds are used in each of the following types of establishments. However, every employer does not necessarily use them.
(1) Leather tanneries.
(2) Manufacturers of ceramics and ceramic or vitreous enamel.
(3) Manufacturers of analine colors.
(4) Manufacturers of pyrotechnics.
(5) Manufacturers of semiconductors.

OSHA PROGRAM DIRECTIVE #300-16
October 11, 1978

TO: REGIONAL ADMINISTRATORS/OSHA

Subject: 29 CFR 1910.1001(j)(2) or (3) or (4), Minimum Airborne Fiber Concentration for Initiating and Continuing **Asbestos Medical Examinations.**

1. *Purpose*
The purpose of this directive is to provide uniform inspection and compliance procedures for the medical examination requirement in the asbestos standard, 29 CFR 1910.1001(j)(2), or (3) or (4).
2. *Documentation Affected*
This directive supplements and provides reference for the OSHA Industrial Hygiene Field Operations Manual (IHFOM) and the OSHA Field Operations Manual (FOM).
3. *Background*
In 29 CFR 1910.1001(j)(2), or (3) or (4), Medical examinations, the term ". . . exposed to airborne concentrations of asbestos fibers. . . ." has been the subject of considerable discussion and debate as to the meaning or interpretation of "airborne concentrations."
4. *Action*
a. Definition.
In 29 CFR 1910.1001(j)(2), or (3) or (4), Medical examinations, the term ". . . exposed to airborne concentrations of asbestos fibers. . . ." is administratively interpreted to mean exposed to a minimum of 0.1 asbestos fibers longer than 5 micrometers per cubic centimeter of air, as determined by the sampling method prescribed in section 4.c. of this directive. The phrase "fibers longer than 5 micrometers per cubic centimeter of air" shall hereafter be abbreviated as "fibers/cc."
b. Scope and applicability.
Medical examinations as per 29 CFR 1910.1001(j)(2), or (3) or (4) will be required for any 7- to 8-hour time-weighted average concentration of 0.1 fibers/cc, or for a greater concentration.
c. Sampling information.
(1) Sampling procedures will follow Chapter X of the IHFOM., with the additional guidance of 4.c.(2) and (3) of this directive.
(2) Exposure to asbestos dust with low levels of contamination (e.g., mixed with other minerals).
(a) For exposures to dust that is mostly asbestos and is expected to be below the permissible exposure limit, the same filter should be used for the entire shift, but no longer than 8 hours.
(b) For exposures expected to be at or above the permissible exposure limit, several samples may be re-

quired during the shift to avoid overloading the filters.

(3) Exposures to asbestos dust with high levels of contamination.

(a) Several samples may be required during the shift to avoid overloading the filter.

(b) Filters should be changed only after a minimum of 1 hour of sampling time for exposures expected to be close to 0.1 fibers/cc. Seven or eight 1-hour samples can be collected during the day.

d. Examples of types of violations.

(1) Where an employer does not provide the required medical examinations, and an employee is exposed to 0.1 or more fibers/cc, it would be considered a "serious" violation of 29 CFR 1910.1001(j)(2), or (3) or (4).

(2) For definitions and guidance on "repeated," "willful," or a "failure to correct" violation, see the FOM, Chapter VIII.

5. *Effective Date*

This directive is effective immediately and will remain in effect until further notice.

OSHA Instruction CPL 2-2.20
April 2, 1979

Subject: Industrial Hygiene Field Operation Manual

A. *Purpose.* This instruction establishes the revised Industrial Hygiene Field Operation Manual (IHFOM) and incorporates it into the OSHA Directives System.

B. *Scope.* This instruction applies OSHA-wide.

C. *Cancellation.* This directive cancels OSHA-Instruction CPL 2-2.10, CPL 2-2.14 and the IHFOM dated June 1976.

D. *Action.*

1. All policies and procedures described in the IHFOM should be initiated as of April 30, 1979.

2. Two copies of this instruction appear in the IHFOM. One of these should be filed in new OSHA Directives System Binders.

E. *Federal Program Change.* This directive describes a Federal program change which affects State programs. Each Regional Administrator shall:

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

2. Explain the technical content of the change to the State designee as requested.

3. Ensure that the state, within 30 days, submits a plan supplement, a timetable for adoption of such a supplement, or reasons why it is not necessary for the State to change its plan. States must not be allowed more than 6 months from the date of notification to formally submit the plan change supplement to the Region.

4. Review policies, instructions, and guidelines issued by the State to determine that this change has been communicated to state program personnel. Routine monitoring activities (accompanied inspections, spot check visits, and case file reviews) shall also be used to determine if this change has been implemented in actual performance.

OSHA Instruction CPL 2-2.25
May 8, 1979

Subject: Sampling Techniques and Laboratory Submittal Strategies

A. *Purpose.* This directs OSHA Compliance Officers to take samples in an efficient manner and prioritize samples submitted to the laboratory. It directs laboratory personnel to be selective about the samples analyzed and establishes a quality control program to ensure meaningful samples are not disregarded. It also establishes procedures to submit screening data to OMDS.

B. *Scope.* This instruction applies OSHA-wide.

C. *Action.*

1. *Field Compliance Officers.*

a. *Determining Types of Samples.* Before conducting full shift sampling for chemicals identified in Table 1, screening samples should be taken with detector tubes or other currently available direct reading instruments. When screening samples indicate exposures of less than 50 percent of the PEL, further sampling shall not be required. Detector tubes in Table 1 will be made available to the Regions from the Cincinnati Maintenance and Calibration Laboratory.

Table 1

Detector Tubes Available from MCL	*Substance Code #*
1. Acetone	0040
2. Benzene	0320
3. Ethyl Alcohol	1060
4. Formaldehyde	1290
5. Isopropyl Alcohol	1560
6. Methyl ethyl Ketone	0430
7. Methyl isobutyl Ketone	1385
8. Perchloroethylene (tetrachloroethylene)	2020
9. Trichloroethane (methyl chloroform)	1720
10. Trichloroethylene	2490
11. Toluene	2460
12. Vinyl Chloride	2580
13. Methylene chloride	1730
14. Xylene	2590

b. *Recording Screening Results.* The total number of screening tests taken for the above substances must be recorded and transmitted to the National Office for MIS purposes. As an interim measure, the Direct Reading Data OSHA-93 Form will be used for this purpose (see IHFOM Chapter 14). Although the Direct Reading Data Form was not designed with screening in mind, this form lends itself to recording the data required to determine by substance the total number of screening samples taken.

When the Direct Reading Data OSHA-93 Form is used to report screening tests the following information will be recorded on the form:

1. Print the word "SCREEN" at the top of the form.

2. Complete the following items on the form. See the example on Attachment A.

Item 7. Establishment Name

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