

Date: July 15, 2005

**MINUTES
KENTUCKY OSH STANDARDS BOARD
PUBLIC MEETING**

May 10, 2005

A public meeting of the Kentucky Occupational Safety and Health Standards Board, hereinafter referred to as Board, was held at the Galt House East, Fourth Street and River Road, Louisville, Kentucky on May 10, 2005, with Mr. Philip J. Anderson, Board Chairman and Commissioner, Department of Labor, presided. In addition to Chairman Anderson, members present were Mr. Don Earl Goodman, Ms. Elizabeth Fay Jamison, Mr. David Dunlap, Ms. Joyce St. Clair, Ms. Terry Gilbert, Ms. Pamela K. Chappell and Ms. S. Savannah Wade. Also, present representing the Department of Labor were Ms. Beverly Gravitt, the Honorable Fred Huggins, Mr. Chuck Stribling, and Mr. David Stumbo.

Chairman Anderson called the meeting to order at approximately 1:35 P.M. E.T. The roll was taken and a quorum established.

Chairman Anderson asked for approval of the December 13, 2004 minutes. Mr. Dunlap made a motion, seconded by Ms. St. Clair, to approve the minutes. The motion passed unanimously.

Chairman Anderson asked Mr. David Stumbo, Health Standards Specialist, Office of Standards Interpretation and Development, to provide the Board an explanation of the items being considered.

Mr. Stumbo thanked Chairman Anderson and briefed the Board on the consideration of amendment to 29 CFR Part 1926, Subpart D, Occupational Health and Environmental Controls, as published in the December 6, 2004 Federal Register. Mr. Stumbo stated the standard that is amended by the Federal Register is 29 CFR 1926.60, Methylenedianiline, which corrects or updates a reference in this standard. It mentions that a change to exit routes, emergency action plans, and fire prevention plans published in the November 7, 2002 Federal Register that split out the requirements from 29 CFR 1910.38 into two separate standards, 1910.39 and 1910.38. This change updates a reference with no major change in requirements nor increased cost of burden to employers.

Chairman Anderson asked for a motion to approve the amendments. Ms. Gilbert made a motion, seconded by Mr. Dunlap. The motion passed unanimously.

Mr. Stumbo stated that the remainder of the items on the agenda are all found in the January 5, 2005 Federal Register. The next agenda item VI, is consideration of amendments to 29 CFR 1910.142 temporary labor camps; 1910.151, medical services and first aid; 1910.268, telecommunications; 1910.1003, 13 carcinogens; and 1910.1017, vinyl chloride.

Mr. Stumbo briefed the Board on 29 CFR 1910.141, temporary labor camps. He stated that formerly we had a provision that required labor camp superintendents to report to local health authorities by telegram or telephone the outbreak of an illness or major medical condition among employees. OSHA felt that this was antiquated and decided that it would amend the standard to permit any fast method of communication. Mr. Stumbo discussed 1910.151, medical services and first aid, which updates a nonmandatory reference to first-aid kit contents. Formerly, the reference was for American National

Standards Institute (ANSI) Standard Z308.1-1978, the standard for “Minimum Requirements of Industrial Unit-Type First-Aid Kits.” OSHA updated the reference to the 1998 version of the same ANSI standard. Mr. Stumbo also discussed 1910.268, telecommunications, which involves first-aid kits. The telecommunications standard required that an employer provide first aid kits as recommended by a consulting physician. The standard was changed to read that employers will provide first-aid kits as listed in the nonmandatory appendix to Appendix A to 1910.15, which points back to the same ANSI standard for what is in the minimum requirements that is in a first-aid kit. Mr. Stumbo discussed 1910.1003, 13 carcinogens. This requirement involved that an employer report to the nearest OSHA area office two separate reports on the occurrence of any incident that results in release of any of the 13 carcinogens listed in the standard where an employee may be potentially exposed. OSHA essentially eliminated the reporting requirements with the justification that the reports were of little or no value to the agency. Next, Mr. Stumbo discussed 1910.1017, vinyl chloride, paragraph (k)(6) of the vinyl chloride standard specified that clinical laboratories licensed by the U.S. Public Health Service had to analyze biological samples collected during medical examinations under the standard. The amendment, in this case, changes the requirement to specify the use of accredited laboratories for the medical tests. The reason for this was that the Public Health Service now addresses laboratory listing requirements under a new part of the Federal Regulations Part 493.

Chairman Anderson asked if there were any questions, being none, there was a motion to approve the amendments by Ms. Gilbert, seconded by Mr. Dunlap. The motion passed unanimously.

Mr. Stumbo discussed the next agenda item VII, which is consideration of amendments relating to the exposure monitoring requirements of 29 CFR 1910.1017, vinyl chloride; 1910.1044, 1,2-dibromo-3-chloropropane (DBCP); and 1910.1045, acrylonitrile as published in the January 5, 2005 Federal Register.

Mr. Stumbo stated that all amendments to these standards involve exposure monitoring. These three standards had exposure monitoring requirements that varied. OSHA revised all the paragraphs in each standard so that exposure monitoring would be performed at least quarterly if the results of an initial monitoring exposure showed that employee exposures were above the PEL and no less than semiannually if the results indicate that exposures are at or above the action level for the specific chemical. In summary, we have more uniform requirements across several different standards.

Chairman Anderson asked if there were any questions, being none, there was a motion to approve the amendments by Ms. Jamison, seconded by Ms. St. Clair. The motion passed unanimously.

Mr. Stumbo discussed the next agenda item VIII, which is consideration of amendments relating to the alternative control methods for class I asbestos removal requirements of 29 CFR 1915.1001 and 1926.1101, as published in the January 5, 2005 Federal Register.

Mr. Stumbo stated that 1915.1001 involves asbestos for shipyards, under the shipyard standards and 1926.1101 involves asbestos in construction. In both standards, there are requirements that an employer send an evaluation and certification of alternative control methods to OSHA Director of Technical Support when removing more than 25 linear feet or ten square feet of thermal system insulation or surfacing material. This is a reporting requirement. OSHA explained that it had not developed a database of alternative control methods nor does it plan to do so that this requirement was not useful or necessary so they deleted both requirements of reporting.

Chairman Anderson asked if there were any question, being done, asked for a motion. Mr. Dunlap made a motion to approve the amendments, seconded by Ms. Wade. The motion passed unanimously.

Mr. Stumbo discussed the next agenda item IX, which is consideration of amendments relating to the requirements for chest x-ray evaluation of 29 CFR 1910.1018, inorganic arsenic; and 1910.1029, coke oven emissions, as published in the January 5, 2005 Federal Register.

Mr. Stumbo stated in both standards, the current requirements are that employees receive chest x-rays and that the chest x-ray receive an International Labor Office (ILO) or Cincinnati rating (U/C). OSHA explained that this requirement, the ILO and U/C rating, was unsuitable to evaluate chest x-rays for lung cancer, lung cancer being the possible outcome of exposure to these two particular hazards. The specific rating is inappropriate because it addresses dust inhalation and pneumoconiosis which is unrelated to arsenic and coke oven emissions. OSHA deleted this requirement for the ILO and U/C rating. Essentially, chest x-rays would still be required but not under this rating system.

Chairman Anderson asked if there were any questions, being none, asked for a motion. Ms. St. Clair made a motion to approve the amendments, seconded by Mr. Dunlap. The motion passed unanimously.

Mr. Stumbo discussed the next agenda item X, which is consideration of amendments relating to the requirements for signed medical opinion of 29 CFR 1910.1001, asbestos; 1910.1027, cadmium; and 1926.1127, cadmium in construction, as published in the January 5, 2005 Federal Register.

Mr. Stumbo stated that all three standards require that an examining physician sign a written medical opinion which is part of the medical surveillance requirements of the standard. OSHA considered a written medical opinion unnecessary and cited that it precluded electronic transmission of the opinion from the physician to the employer and provided no additional benefits to employees. The medical opinion still must be produced and provided to the employer, but the signature requirement is being deleted.

Chairman Anderson asked if there were any questions, being none, asked for motion to approve the amendments. Ms. Wade made a motion to approve the amendments, seconded by Ms. St. Clair. The motion passed unanimously.

Mr. Stumbo discussed the next agenda item XI, which is consideration of amendments relating to the medical examination requirements of 29 CFR 1910.1017, vinyl chloride; 1910.1018, inorganic arsenic; and 1910.1029, coke oven emissions, as published in the January 5, 2005 Federal Register.

Mr. Stumbo stated that the vinyl chloride standard, 1910.1017, currently requires that employees exposed over the action level of ten years or longer receive a semi-annual medical examination. OSHA considered that a semi-annual medical exam is not necessary for employees with long-term exposures and it has been changed to an annual medical. Mr. Stumbo also stated that the inorganic arsenic standard, 1910.1018, requires a semi-annual medical exam who are over 45 years of age and who have been exposed over the action level for greater than 30 days per year or who have been exposed over the action level for at least ten years. Again OSHA felt like these requirements were not really necessary and did not provide any benefits so they have changed it to annual medical examinations. Mr. Stumbo stated that the coke oven emissions standard, 1910.1029, currently requires semi-annual medicals for employees who are 45 years of age, have had five or more years of employment in a regulated area, who have transferred into or out of a regulated area, and the duration of which is for as long as the employee is employed by the same employer or a successor employer who falls under the standard. OSHA felt like semi-annual medical examinations were not necessary and have changed the requirement to an annual medical examination.

Commissioner Anderson asked if there were any questions, being none, asked for a motion to approve the amendments. Ms. Jamison made a motion to approve the amendments, seconded by Mr. Goodman. The motion passed unanimously.

Mr. Stumbo discussed the next agenda item XII, which is consideration of amendments relating to the requirements for notification of 29 CFR 1910.1044, DBCP; 1910.1003, 13 Carcinogens; 1910.1017, vinyl chloride; 1910.1018, inorganic arsenic; and 1910.1045, acrylonitrile, as published in the January 5, 2005 Federal Register.

Mr. Stumbo stated that DBCP standard requires the employer to submit a report to the nearest OSHA area office which describes the employer's use of the chemical within ten days of introducing the substance to the workplace. This requirement was deleted and OSHA explained that DBCP is no longer used in the United States. Under the standard for 13 carcinogens, employers are required to notify the nearest OSHA area office or director if they are required to establish a regulated area in the workplace as required under the standard. OSHA concluded that this requirement did not add to worker protection and that OSHA has not been using these reports for enforcement purposes and decided to delete the reporting requirement. Under the standard for vinyl chloride, employers are required to notify the nearest OSHA area office or director if they are required to establish a work area for vinyl chloride. Under the same rationale, OSHA determined that the reports have not been used for enforcement purposes and OSHA decided to eliminate this reporting requirement. Under the standard for inorganic arsenic, employers are required to notify the nearest OSHA area office or director if they establish a regulated area for inorganic arsenic. This requirement has been eliminated as well. Under the acrylonitrile, employers are required to notify the nearest OSHA area office if they establish a regulated area for acrylonitrile. This requirement has been eliminated as well.

Commissioner Anderson asked if there were any questions, being none, asked for a motion to approve the amendments. Ms. Gilbert made a motion to approve the amendments, seconded by Mr. Dunlap. The motion passed unanimously.

Mr. Stumbo discussed the next agenda item XIII, which is consideration of amendments relating to the reporting requirements of 29 CFR 1910.1017, vinyl chloride; 1910.1045, acrylonitrile, as published in the January 5, 2005 Federal Register.

Mr. Stumbo stated that in both standards, employers who fall under the requirements of these standards had to report the occurrence of emergencies involving vinyl chloride and acrylonitrile substances to the nearest OSHA area office or director. OSHA explained that these emergency reports are rare, that it found them not to be useful, and that the various regions have not been utilizing these reports which have been filed. The requirement to report emergencies regarding these two substances has been deleted.

Commissioner Anderson asked if there were any questions. Mr. Dunlap asked how all of these regulations got on the books and all of a sudden we don't need them anymore? Mr. Stumbo stated that a number of these standards are old and that OSHA explains that very little rationale was given as to why we would do quarterly monitoring requirements, for example, as opposed to semi-annual or annual. Ms. St. Clair added that if you go back to the late 1970s, early 1980s, when the RIPA regulations came into being, we had serious problems in Kentucky with midnight dumpers, trucks unloading material that they wanted to get rid of and, as you know, vinyl chloride and acrylonitrile are potential explosives in the atmosphere when they are spilled in an uncontrolled environment. Also, Mr. Stumbo provided an example regarding the Hazardous Waste and Emergency Response Standard, which came along after a lot of these standards were written. OSHA mentioned that, years ago, some of these requirements were very relevant, but in

years since, engineering controls have come along, work practices have come along and some of these substances are used much less often and substituted and their relevancy has decreased substantially.

Commissioner Anderson asked for a motion to approve the amendments. Ms. Jamison made motion to approve the amendments, seconded by Mr. Dunlap. The motion passed unanimously.

Mr. Stumbo discussed agenda item XIV, which is consideration of amendments relating to updating compliance plans requirements of 29 CFR 1910.1017, vinyl chloride; 1910.1018, inorganic arsenic; 1910.1025, lead; 1910.1029, coke oven emissions; 1910.1044, DBCP; 1910.1045, Acrylonitrile; and 1926.62, lead in construction, as published in the January 5, 2005 Federal Register.

Mr. Stumbo stated that all of these standards require a semi-annual updating of a compliance plan required by each standard, which describes the means that employers are going to implement to keep exposures under permissible exposure limits. In its explanation, OSHA noted that most substance-specific standards specify that employer update these plans, at least annually, because OSHA believes that annual updating was sufficient to ensure continued effectiveness of the plan. Semi-annual updating of compliance plans was most useful in years immediately following the promulgation of these regulations. Now many years have passed and engineering control strategies have been well established and the need to evaluate twice a year is diminished and does not outweigh the benefits of consistency among OSHA's health standards. OSHA determined to change these requirements for semi-annual updating of the compliance plan to annual updating.

Commissioner Anderson asked if there were any questions, being none, asked for a motion to approve the amendments. Ms. Wade made a motion to approve the amendments, seconded by Ms. Jamison. The motion passed unanimously.

Mr. Stumbo discussed agenda item XV, which is consideration of amendments relating to employee notification requirements of 29 CFR 1910.1017, vinyl chloride; 1910.1018, inorganic arsenic; 1910.1025, lead; 1910.1028, benzene; 1910.1029, coke oven emissions; 1910.1043, cotton dust; 1910.1044, DBCP; 1910.1045, acrylonitrile; 1910.1051, butadiene; 1915.1001, asbestos under shipyards; 1926.60, methylenedianiline in construction; 1926.62, lead in construction; 1926.1101, asbestos in construction and 1926.1127, cadmium in construction; as published in the January 5, 2005 Federal Register.

Mr. Stumbo summarized in stating that the requirements are when an employer must notify an employee in writing of their exposure to the particular substance in question. From exposure monitoring, the employer must notify the employee of and how much of the specific substance they have been exposed to. What's being changed is only the method of notification or the period of time by which the employer has to be notified. In some cases, the current requirement was notification in writing within different timeframes. OSHA decided that for all the General Industry Standards, those will be changed to a fifteen-working-day period for notification by writing or posting. Mr. Stumbo stated that under the asbestos for shipyards, MDA for construction, lead for construction, asbestos for construction, and cadmium for construction, OSHA felt that because of the transient nature of the workforce in these industries that the requirement should be for notification in writing or by posting as soon as possible but not more than five working days.

Commissioner Anderson asked if there were any questions, being none, asked for a motion to approve the amendments. Mr. Goodman made a motion to approve the amendments, seconded by Ms. St. Clair. The motion passed unanimously.

There being no further discussion on old business, Chairman Anderson asked for discussion on new business. Chairman Anderson notified the Board that all of their terms would expire June 23, 2005. Chairman Anderson stated that the Governor made the appointments with three representing industry, three representing agriculture, three representing labor, and three representing the safety and health professions. Chairman Anderson asked the Board if they were interested in being reappointed, to notify him and he would put together a list from each of those four categories for submittal to the Governor's Office of Boards and Commissions.

Chairman Anderson informed the Board that there was a report issued in February by the U.S. Chemical and Safety Board concerning the CTA Acoustics, Inc., combustible dust fire and explosion. The report made certain recommendations to Kentucky OSH and the Kentucky Fire Marshal's Office. Both agencies are now participating in a joint emphasis program to try to prevent these types of accidents and that the emphasis program includes our publication of a hazard alert bulletin and also some training programs and worksite visits where there might be combustible dust referred by the Fire Marshal's Office. Chairman Anderson recommended to those Board members who are attending the Governor's Safety and Health Conference that a representative of the Chemical Safety Board will be presenting on Wednesday and on Thursday. Dr. Jack Valicenti of the Department of Labor, Division of Education and Training will be presenting a dust seminar on Wednesday.

Chairman Anderson asked the Board members if they would like to sign a card for Board Member Mike Davis due to an illness.

There being no further discussion, Chairman Anderson asked for a motion to adjourn. Mr. Dunlap made a motion to adjourn, seconded by Ms. St Clair. The meeting was adjourned at 3:00 p.m. E.T.