Labor Perspective on Hexavalent Chromium Rule

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Labor Perspective on Hex Chrome Rule

- Litigation pushed OSHA to promulgate a standard.
- Construction unions participated in the formal rulemaking process.
- Final Rule fell short in several areas.
Construction Unions Sued

- Building and Construction Trades Department, AFL-CIO
  - Representing 11 construction unions
- Laborers’ International Association of North America
- International Brotherhood of Teamsters
Lawsuit Issues

- Exclusion of Portland Cement
- Four years to get engineering controls
- Worker notification of sampling results
- Permissible exposure limit
Portland Cement Exclusion

- Evidence in docket supported inclusion
- BCTD recommended coverage where hex chrome content exceeded 2 ppm
- Jobsite controls required
- OSHA explained decision to exclude based on airborne hazard potential
What Skin Problems Does Cement Cause?

Four are most common among construction workers exposed to wet portland cement:

- **Irritation** – dry skin, scaling, itchiness, burning, redness.

- **Irritant Dermatitis** – same as above. Also stinging, pain, dead skin, blisters, scabs, fissures, swelling, bumps, dry or watery discharge.

- **Allergic Dermatitis** – an immunologic reaction. Once sensitized, small amounts trigger a strong reaction. May result in a life-long disability.

- **Cement (Caustic/Chemical) Burns** – Refer to a specialist without delay.
46b. Median number of days away from work for nonfatal skin disorders, by construction industry, 1995

<table>
<thead>
<tr>
<th>Industry</th>
<th>Median Days Away from Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concrete</td>
<td>13</td>
</tr>
<tr>
<td>Masonry</td>
<td>5</td>
</tr>
<tr>
<td>Highway</td>
<td>3</td>
</tr>
<tr>
<td>Misc spec trade</td>
<td>3</td>
</tr>
<tr>
<td>Rfng, sdng, shmtl</td>
<td>3</td>
</tr>
<tr>
<td>Residential bldr</td>
<td>2</td>
</tr>
<tr>
<td>Heavy non-hwy</td>
<td>2</td>
</tr>
<tr>
<td>Construction</td>
<td>3</td>
</tr>
</tbody>
</table>

46c. Rate of work-related allergic dermatitis among construction workers in Finland, before and after reduction of chromium content in cement (3-year averages)

Example of Allergic Contact Dermatitis
4 Years for Engineering Controls?

- Construction industry engineering controls are LEV’s
- LEV’s are not capital expenditures
- Not supported by the rulemaking for this industry
Worker Notification of results

- Only above the PEL. (1926.1126 (d)(4)(i))
- Different from GI/construction proposed rules
- Departure from typical health standards
PEL too high

- Proposed rule: 1 microgram/cubic meter
- Final rule: 5 micrograms/cubic meter
### OSHA Estimates of Cancer Deaths with New PELs
(excess per 1,000 workers, 45-year exposure)

<table>
<thead>
<tr>
<th>Substance</th>
<th>Year Passed</th>
<th>Est. Deaths</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethylene Oxide</td>
<td>1984</td>
<td>1.2 to 2.3</td>
</tr>
<tr>
<td>Asbestos</td>
<td>1986</td>
<td>6.7</td>
</tr>
<tr>
<td>Cadmium</td>
<td>1992</td>
<td>3 to 15</td>
</tr>
<tr>
<td>Chromium VI</td>
<td>2006</td>
<td>10 to 45</td>
</tr>
<tr>
<td>Chromium VI (proposed)</td>
<td>(2004)</td>
<td>2.1 to 9.1</td>
</tr>
</tbody>
</table>

Source: 02/28/2006 Federal Register pg. 10225

June 5, 2007
AlHoe Session 217
April 2007 Settlement Agreement
April 2007 Settlement Agreement

- Addresses portland cement exposure
- Clarifies OSHA standards and policies
- Calls for OSHA to issue inspection procedures
Portland Cement Inspection Procedures

- CHSO’s must code OSHA-1
- Explains the hazards
- Provides CSHO’s with inspection checklist
Inspection Checklist

- PPE
  - Appropriate and clean
- Sanitation
  - Washing facilities with non-alkaline soap
- Airborne exposures
  - Terrazzo, mixing mortar, mixing concrete
Inspection Checklist

- HazCom
  - MSDS/Labels—Hex chrome content
  - Training on hazards of portland cement/hex chrome
  - Training on protective measures

- Recordkeeping
  - Record cases of occupational dermatitis
  - Inform employees how to report
Other settlement agreement provisions

- Resolved entire building trades’ challenge to standard
- Allows for look back in IMIS database of enforcement actions
- Requires OSHA to encourage adoption by state plan states
- Requires OSHA to notify the public
Litigation Continues

- USW/Public Citizen
- Issues
- PEL
- Employee Notification