

# **SPECIAL Report**



NATIONAL ROOFING CONTRACTORS ASSOCIATION

## **ASBESTOS UPDATE: OSHA ENFORCEMENT MEMORANDUM TIES ENCLOSURE REQUIREMENT TO EXPOSURE LEVEL**

In its interpretation of its 1986 asbestos standard, OSHA had taken the position that the requirement for erecting a negative-pressure enclosure was not necessarily triggered by the level of exposure to asbestos fibers. In other words, so long as asbestos-containing materials were present, the requirements applied, even if air monitoring showed fiber counts below the Permissible Exposure Limit of 0.2 fibers per cubic centimeter calculated on an eight-hour, time-weighted average basis, or below the Excursion Limit of 1.0 fibers per cubic centimeter over a thirty-minute period.

OSHA did permit exceptions to the negative-pressure rule, when an employer could show that an enclosure was infeasible to erect, or when it would create more immediate health or safety hazards to employees.

OSHA has now apparently changed its position, due in large measure to a recent case, *Secretary of Labor vs. Nimco, Inc.*, where an Occupational Safety and Health Review Commission Administrative Law Judge found:

"A reasonable person reading the standard would assume that paragraph E addresses regulated areas and sub-paragraphs (e) (1) - (e) (6) address specific aspects of the general subject."

In other words, the establishment of the negative-pressure enclosure is dependent upon whether or not the airborne concentration of asbestos would exceed or reasonably be expected to exceed the permissible exposure limits. In the *Nimco* case, the judge found that fiber levels monitored by the employer were shown to be below the permissible exposure levels; therefore, the judge ruled that a negative-pressure enclosure and decontamination facilities were not required.

In a memorandum dated October 15, 1990, to all OSHA Regional Administrators, Patricia Clark, Director Designate of the Directorate of Compliance Programs, says, in part:

"Before issuing a citation for not establishing a regulated area or a negative-pressure enclosure, a compliance officer must document the likelihood or potential of an operation exceeding the permissible exposure levels (8 hour TWA or 30-minute excursion limit). The standard as written compels the agency to carry the burden of proving that the employer exposed employees or potentially could have exposed employees to airborne concentrations of asbestos above the permissible exposure limits (PELs) before any of the provisions of 1926.58 (e) (1) through (e) (6) may be cited."

The memorandum speaks specifically to roofing, further clarifying that the employer's responsibility is to institute engineering controls and work practices to prohibit the release of asbestos fibers in excess of the PEL:

"The negative-pressure enclosure requirement also applies to roofing operations, unless the construction of the enclosure is infeasible due to physical obstruction or that the enclosure would create a more immediate health or safety hazard to employees, i.e., heat stress or confined toxic gases. Where the employer has instituted engineering and work practice controls that restrict the spread of asbestos and protect bystanders during the entire work process, the intent of requiring the negative-pressure enclosure under 1926.58 (e) (6) would be met. The effectiveness of the controls must be supported by employer's exposure data."

In the memorandum, Ms. Clark also says that she believes "there is little basis upon which a successful appeal of the decision could be sustained."

Should you have questions regarding the memorandum, or if you are involved in a dispute with OSHA regarding the requirement for negative-pressure enclosures, please call. And please remember that we are still interested in obtaining air monitoring test results for our data base. (Please use the NRCA/SRI International protocol for conducting the air sampling.)

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