

Standard Interpretations / Clarification of the provision banning smoking in the OSHA asbestos standards.

- **Standard Number:** 1910.1001 ; 1910.1001(i)(4) ; 1915.1001(j)(4) ; 1926.1101 ; 1926.1101(j)(4)

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

September 25, 2008

Mr. L. Tom Czehowski
Chief Administrative Officer, Nevada OSHA
Division of Industrial Relations
Nevada Department of Business and Industry
1301 N. Green Valley Pkwy., Suite 200
Henderson, NV 89074

Dear Mr. Czehowski:

This is in response to your letter to the OSHA San Francisco Regional Office, asking for clarification of a 1990 letter of interpretation regarding OSHA's asbestos standards. We understand that the State of Nevada has adopted standards identical to those of Federal OSHA and intends to follow the Federal enforcement policy. Your letter was forwarded to OSHA's national office for response; we apologize for the long delay of this reply. You asked that we review our interpretation concerning identical provisions banning smoking found in the OSHA asbestos standards for general industry, 29 CFR 1910.1001, and construction, 29 CFR 1926.1101. Our response also applies to the identical provision in the asbestos standard for the shipyard industry, 29 CFR 1915.1001. This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question not detailed in your original correspondence. Your paraphrased question and our reply are below.

Question: You asked whether federal OSHA is enforcing OSHA's letter of interpretation to Mr. C.R. Sledge, September 4, 1990, concerning the asbestos standards' no-smoking provision. You stated that this OSHA interpretation is ambiguous and seems to imply that a work area's airborne asbestos level, no matter how small a concentration of airborne fibers, such as background levels from installed asbestos-containing building material, could be considered an "occupational exposure" and, therefore, smoking would not be allowed.

Reply: Paragraphs 1910.1001(i)(4), 1926.1101(j)(4), and 1915.1001(j)(4) all provide:

The employer shall ensure that employees do not smoke in work areas where they are occupationally exposed to asbestos *because of activities in that work area.* (emphasis added)

As we explained in our 1990 letter to Mr. Sledge, the Agency determined that the health risk for smoking employees exposed to asbestos is substantially higher than nonsmoking ones. We explained in the preamble to the rule that "[t]his is an expansion of the present smoking ban, which, as in most OSHA health standards, is confined to regulated areas where exposures are elevated." (55 *FR* at 3726, February 5, 1990). The smoking ban in the asbestos standards does not specify a level of exposure. However, the exposure must have its source in the workplace. We have explained that this means that an employee who works in areas where there are operations that disturb asbestos, such as asbestos abatement and renovation activities, may be occupationally exposed, regardless of whether that employee disturbs or handles the asbestos. (55 *FR* 3726, February 5, 1990, 51 *FR* 22677, June 20, 1986). For your information, we are attaching two OSHA memoranda from 1990 which provide further background on our enforcement policies for this no-smoking provision. It should be understood that the method prescribed for measuring employee exposure to airborne asbestos is the method in the OSHA asbestos standards, Phase Contrast Microscopy (PCM), and this method's limit of detection is about 0.01 f/cc.

It should also be understood that the no-smoking provision would not apply to employees who occupy an area where some of the building materials contain asbestos but no materials are being disturbed and no fibers are being released into the air that the employee breathes. OSHA's preamble to its earlier 1986 asbestos standard briefly discussed the complex area of low-level asbestos contamination in buildings and concluded that other federal agencies, particularly the EPA, already address this area. (See 51 *FR* 22677.) We recommend that building owners and employers with employees working in buildings with installed asbestos-containing materials refer to the EPA's publication number 20T-2003, *Managing Asbestos in Place, A Building Owner's Guide to Operations and Maintenance Programs for Asbestos-Containing Materials*, July 1990, commonly known as "The Green Book."

We hope this provides the clarification you were seeking and will assist you in your enforcement of the asbestos standards. We apologize for any confusion our earlier letter may have caused. As this letter demonstrates, OSHA's re-examination of an issue may result in the clarification or correction of previously stated enforcement guidance. As you know, our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. If you have any further questions, please feel free to contact the OSHA Office of Health Enforcement at 202-693-2190.

Sincerely,

Richard E. Fairfax, Director
Directorate of Enforcement Programs