

54-435



NATIONAL PEST CONTROL ASSOCIATION, inc.

8100 Oak Street • Dunn Loring, VA 22027
(703) 573-8330 • FAX (703) 573-4116

protecting food, health, property and the environment

May 8, 1995

The Docket Office
Docket No. H-049
U.S. Department of Labor
Occupational Safety and Health Administration
Room N2625
200 Constitution Ave. NW
Washington, DC 20210

OSHA
DOCKET OFFICER
DATE MAY 8 1995

re: Respiratory Protection; Proposed Rule
29 CFR Parts 1910, 1915 and 1926

The National Pest Control Association (NPCA) is a national trade association, which for legislative and regulatory purposes, represents approximately 10,000 companies that provide pest management services in an urban/suburban setting.

The structural pest control industry is largely comprised of small businesses committed to protecting food, property and public health. Industry services are principally rendered in buildings such as private residences, schools, offices, restaurants, health care facilities, and other commercial establishments for the management of pests such as cockroaches, fleas, stinging insects, rats, mice, termites and other wood destroying insects.

On behalf of the structural pest control industry, we welcome the opportunity to comment on OSHA's proposed rule to revise the agency's current respiratory standard. As an industry that uses respiratory protection, we have several concerns regarding the proposed regulations. First and foremost, NPCA wonders why such a broad revision is necessary. Although we strongly favor a basic respiratory protection regulation, we do not feel a comprehensive, detailed rule is needed. Nevertheless, we do wish to specifically address many provisions of the proposed rule and have done so by the order of the rule, not necessarily in the order of importance to the industry.

Respiratory Protection Program - 29 CFR 1910.134(c)

NPCA agrees that employers should provide a written respiratory program. As is noted, this is a current requirement and we believe it is a sensible one, largely for the reasons spelled out in the proposal's summary. We are also pleased that the agency has made the language requiring the designation of a person responsible for the management and administration of the respiratory program performance based rather than instructional. Different industries have different respiratory needs and specific language outlining a program wouldn't be feasible. NPCA is glad OSHA has recognized this and feels section 1934(c) is very reasonable.

Selection of Respirators - 29 CFR 1910.134(d)

As is noted in the summary of the regulation, the current standard already requires that only those respirators that are approved jointly by the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) be used by the employer when they exist. This requirement assures that respirators being used by pest control operators and their employees are capable of providing the needed protection. By updating the standard, NIOSH ensures that users are using the newest and most effective respiratory technology available. However, OSHA's proposed revisions try to guarantee that all respirators are worn properly. NPCA questions whether such a guarantee is feasible and does not see the need for such intricate instructions regarding the fit testing of respirators.

NPCA questions the agency's decision to include 1910.134(d)(2) in the proposed revisions. Requiring employers to "provide a selection of respirators from an assortment of at least three sizes for each type of facepiece and from at least two different manufacturers" is a rather burdensome requirement that provides no benefit to the employee. This would require employers to have at least six respirators available when they may only employ one or two persons. It does the employee no good to have five additional respirators that may or may not fit. A majority of structural pest control companies employ less than five employees, thus this becomes a burdensome requirement. NPCA also recognizes the importance of having the employee wear the best fitting respirator, but questions why OSHA must mandate employers to purchase at least six respirators, when one might suffice.

OSHA has wisely revised its section on respiratory use and allowed for those wearing respiratory protection to also wear contact lenses (1910.134(e)(5)(2)). In fact, NPCA believes this is the type of change OSHA should be looking at in its proposed revisions. Contact lens technology was not as sophisticated when the original regulation was implemented in 1971. Now, however, all parties seem to agree there is little if any danger in wearing contact lenses while wearing a respirator.

Medical Evaluation - 29 CFR 1910.134(e)

We agree that wearing respirators may be physically demanding. However, we disagree with OSHA about how to ensure that employees are physically fit. NPCA believes that the current language (29 CFR 1910.134(b)(10)) stating that "Persons should not be assigned to tasks requiring use of respirators unless it has been determined that they are physically able to perform the work and use the equipment," is straightforward and to the point.

The existing section continues "The local physician shall determine what health and physical conditions are pertinent. The respirator user's medical status should be reviewed periodically (for instance, annually)." This ensures that a physician sees the individual who will be wearing the respirator and has the opportunity to weigh in on the issue of whether that person is physically able to wear a respirator.

Page Three
May 8, 1995

In short, NPCA believes that the existing language needs only minor revisions not a major overhaul. Instead of making such a comprehensive revision, NPCA suggests that language be added to the existing regulation requiring employers to have their employees checked out by a doctor if they are having difficulty breathing while being fitted for a respirator or if the employees have developed heart or lung diseases. However, since the agency seems intent on receiving input regarding the three medical evaluation alternatives it has suggested, NPCA will provide feedback.

First of all, it will be rather difficult to measure how much time per week an employee in the pest control industry uses respiratory protection. The most common setting when a respirator is used in our industry is when the pest control product is being mixed. This involves mixing the concentrate with a diluent, usually water, according to the pesticide label. Although an employee may do this activity a few times a day, it is not time consuming. Another consideration for our industry is that we utilize seasonal employees. It does not seem appropriate to require a seasonal employee who happens to use a respirator more than five hours one week to undergo a medical evaluation.

NPCA also feels it is not necessary for employees to undergo an annual medical evaluation for respirator fitness if that employee only uses a cartridge respirator. As we stated earlier, we feel OSHA's existing language need only minor revisions. The other revision we would suggest is to amend the provision requiring "periodic" reviews and specify that respiratory clearance testing be done every other year.

NPCA would also like to comment on the issue of medical removal protection, which was raised in the proposal explanation, but not included in the proposal itself. Although we certainly sympathize with those who are physically unfit to wear respirators, it is unreasonable to require an pest control operator to keep someone employed who is unable to perform a major function of his or her job.

As we noted earlier, a typical pest control company is a very small operation. Most companies employ between one and five employees. In fact, NPCA's membership data reveals that 800 of our approximately 2,000 members gross less than \$50,000 annually. So, forcing a pest control operator to keep employed his or her only employee at the same pay despite the fact that individual is physically unable to do the job could financially bankrupt many pest control companies. Of course, large pest control companies would be severely affected as well since branch offices typically employ only a few employees.

NPCA's questions whether OSHA has the authority to guarantee someone's employment. While we acknowledge and respect OSHA's authority to promulgate rules and regulations that enhance the safety of the American workplace, we do not believe Congress passed the Occupational Safety and Health Act of 1970, so that workers deemed physically unfit to wear respirators would be guaranteed jobs. Certainly, we would hope some sort of arrangement could be worked out between the employer and the employee. However, that issue should be

Page Four
May 8, 1995

resolved by the employer and the employee not OSHA. We respectfully ask that the agency continue to remain silent on this issue.

Fit Testing - 29 CFR 1910.134(f)

NPCA does not believe annual fit testing is necessary for those wearing cartridge respirators. NPCA also believes that for respiratory protection to serve its intended purpose, qualitative fit testing should be accomplished to determine the appropriate respirator for each individual.

This procedure should be conducted anytime there is a change in respirator or any condition that may cause a change in the individual's ability to wear the respirator properly. However, we do question the need for quantitative fit tests for cartridge type respiratory protection since they are designed to provide protection in specific atmospheres and their life expectancy is usually measured by the detection of odor through the cartridge. The need for qualitative fit testing is questioned because at some point of saturation odors will be detected, this is a function of quantity and duration of exposure. Quantitative fit testing seems to serve no purpose with regard to this type of exposure.

Maintenance and Care of Respirators - 29 CFR 1910.134(h)

NPCA agrees with the agency that the current language (1910.134(f)) is entirely adequate. Therefore, we find it curious that OSHA feels it necessary to add language requiring respirators be cleaned after each use even when that respirator has been assigned to a single employee. This is an unnecessary and burdensome provision. OSHA itself hints this requirement might be overkill by stating in the summary that "Respirators which are not cleaned and disinfected - particularly those used by more than one employee - can cause skin irritation and dermatitis" (p. 58924). This statement seems to indicate the agency has data to show respirators used by more than one employee need to be cleaned after each use but not respirators used by a single individual. Instead of this provision, NPCA suggests language giving the individual managing the company respirator program discretion over when respirators used by a single employee need to be cleaned.

NPCA feels the agency has made a wise move in its deciding not to include language in the proposal mandating who should do the cleaning and disinfecting, but rather require that it be done.

Recordkeeping - 29 CFR 1910.134(m)

Lastly, we wish to comment on 1910.134(m), which relates to employer's recordkeeping requirements. Specifically, NPCA has serious concerns about OSHA's intention to expand 29 CFR 1910.20 to the respiratory protection standard. This standard requires that "employee medical records for each employee shall be preserved and maintained for at least the duration of employment plus 30 years." As a result, employers are required to maintain medical

Page Five
May 8, 1995

records for some employees for more than 50 years. NPCA would like to note that additional space and personnel will be needed to maintain such voluminous files.

Furthermore, NPCA feels there are a number of points that OSHA needs to clarify regarding 29 CFR 1910.20, particularly since most pest control companies have only a few full time employees and are heavily reliant on seasonal employees. Although 1910.20(i)(c) says that "the medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment," it is unclear how this provision addresses seasonal workers.

For instance, an employee may work for a company in Iowa for a few month of the year and for a company in Florida for the remainder and continue this pattern for 10 to 15 years. As we have noted, seasonal employment is commonplace in the pest control industry. Yet, 1910.20 is unclear as to what requirements employers have to meet regarding seasonal employees records. Also, the way 1910.20(i)(c) reads the employer is responsible for providing an employee with his or her records if that employee has worked for the employer for less than a year. What if an employee simply quits the company without getting his or her medical records? Does this mean that the employee then has to keep those records?

Shouldn't most of this recordkeeping burden be placed upon the shoulders of the employee? Certain, NPCA believes there should be some sort of recordkeeping requirement, but 30 to 50 years is a bit outrageous. We respectfully ask that OSHA seriously consider revising 29 CFR 1910.20 and have on a 5 year recordkeeping retention period for the respiratory protection standard.

Once again, we appreciate the opportunity to provide comment on this matter and look forward to testifying this summer.

Sincerely,



Gene Harrington
Manager of Government Affairs