

April 26, 2019

Eric Berg, Deputy Chief of Research and Standards  
Amalia Neidhardt, Senior Safety Engineer  
Division of Occupational Safety and Health  
Department of Industrial Relations

Via email

Dear Eric and Amalia,

Thank you for all the work reviewing the petition for an emergency standard to protect outdoor workers from exposure to wildfire smoke and preparing a discussion draft. We greatly appreciate the Division's speedy turn-around on producing this discussion draft to protect workers from the exposure of wildfire smoke before the next fire season.

We also support the Division's usage of the Air Quality Index (AQI) for PM<sub>2.5</sub> as the measurement to trigger this standard's applicability. We feel strongly that the AQI is the best measurement to use as the basis for application of this standard. We also appreciate the language requiring employers to check AQI before worker shifts and periodically since AQI can quickly rise above the threshold at any point during the day. It will be important for employers to understand their obligation in reviewing the AQI not only before workers start a shift but also throughout the day. Generally, the sections outlined in the standard set an important framework for a standard that includes at minimum a requirement that employers identify harmful exposures, develop a communication plan, provide training, and control harmful exposures to employees.

While the draft provides a sound foundation for initiating discussion, the following areas must be strengthened to provide clarification of employers' responsibilities and adequate protection for workers during wildfires.

#### **5141.1 (a) Scope**

The trigger for application of this section to a workplace must be a local AQI for PM<sub>2.5</sub> of 101 or greater.

A trigger at this level, rather than the higher AQI of greater than 150, is needed because the warning levels in the AQI are based on protecting the general public who spend little time outdoors, not workers who are performing strenuous outdoor work for 8 or more hours a day, and therefore have greater exposures. In addition some workers are sensitive to wildfire smoke because they have asthma or other health conditions.

The section should apply whenever the AQI for PM<sub>2.5</sub> exceeds the threshold of PM<sub>2.5</sub> of 101 or greater, vulnerable workers should not have to wait until the AQI for PM<sub>2.5</sub> surpasses 150 before receiving some minimal protections from a standard.

The regulation should reference regulations that require protection of firefighters and emergency response personnel. Short term respirator use provisions would not apply to employees whose exposures are due to work tasks such as wildfire prevention, response, containment or recovery operations, and should not apply if the exposures continue for a period of more than two weeks.

Under (a)(2) workplaces and operations exempt from this section must demonstrate that their filtration system is operating and maintained to provide the required level of filtration pursuant to Title 8 California Code of Regulations §5141(a)(2).

Under (a)(2)(E) emergency response personnel performing lifesaving emergency rescue and evacuation is too broad. This is in addition to the exclusion of fire fighters. We believe this is too broad and could potentially exclude a lot of people. Additionally, workers who would fall under this exemption would not be eligible for the short term respirator use since they are reasonably anticipated to use respirators as part of their jobs.

**(c) Identification of harmful exposures**

We believe the term “reasonably expected” will be a barrier to enforcement and compliance. We suggest the following language instead: “The employer shall check AQI forecasts and the current AQI on the AirNow website, whenever it reasonably anticipates any employee exposure to an AQI for PM2.5 greater than 101.”

**(d) Communication and increased supervision**

This section is well written but the trigger for this communication should be an AQI for PM2.5 greater than 101 rather than 150. Employees should also be informed of the level of health concern of the PM2.5 level.

We suggest: (A) The current PM2.5 levels and corresponding levels of health concern

Under this subsection, employees should be encouraged both to report any adverse symptoms resulting from wildfire exposure and to seek first aid.

Employers whose employees are working outdoors in an area impacted by wildfire smoke when AQI meets the threshold (PM2.5 of 101 or higher) should be required to provide increased supervision and a means of communication. This is extremely important because many supervisors are not on site and must be accessible, especially during a wildfire.

**(e) Training**

Training should be required when the AQI for PM2.5 exceeds 101 rather than 150. Training should also include how to determine when a respirator or respirator filters need to be changed and encourage employees to ask for replacement respirators or filters when needed.

The training must be in a language and literacy level workers understand and can access. Training must also be in-person and interactive.

Training must also inform workers that it is their employer's responsibility to pay for respirators and replace when they become soiled, clogged or at the end of the 8 hour work shift, whichever comes first.

Appendix A training requirements for voluntary respirator use should be written at a low literacy level, be made available in both English and Spanish and include graphics illustrating how to properly place straps on an N95 filtering facepiece respirator. Ideally, this would be at minimum with the hope that audio visual materials in other languages could be developed and made available to workers, especially for those workers, primarily, low-wage and immigrant workers, who are not fluent in English or Spanish, but rather speak indigenous languages.

**(f) Control of harmful exposures to employees**

We support the inclusion of language related to engineering and administrative controls. However, these controls of harmful exposures to employees must be required when the AQI for PM2.5 exceeds 101 rather than 150.

**(f)(3) Control by Respiratory Protection Equipment**

We strongly support the requirement to provide rather than just offer respirators to all employees because this requires the employer to take some affirmative steps in ensuring a worker knows they have the right to the respirator and can access and use it. 'Offer' is not as protective and is not as clear as provide.

This section could be improved by adding:

(3)(A) Where the AQI exceeds ~~101~~ 150 and is less than 301, . . . Respirators shall be cleaned, stored and maintained so they do not present a health hazard to users. Single use respirators and cartridges for elastomeric facepiece respirators must be replaced when they become soiled, clogged or at the end of an 8 hour work shift, whichever comes first.

The exception to fit testing and medical evaluation would also not apply to the use of self-contained breathing apparatus or to respirator use where gases and vapors from fire are present at hazardous levels.

We appreciate the great amount of work that has gone into reviewing this discussion draft. **We strongly urge the Division to incorporate our suggested changes** and move forward with this necessary and urgent emergency wildfire smoke exposure standard so that minimum, common sense protections can be in place by the next fire season.

Sincerely,

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