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RE: Emergency Regulation re Wildfire Smoke Protections –Comments re Appendix A

We, the undersigned organizations (“Coalition”) thank the staff of the Division of Occupational Health and Safety (“Division”) and of the Standards Board (“Board”) for the opportunity to review and comment on the draft training document, Appendix A, which is referenced in the text of the draft regulation¹ (“Draft Rule”) and was provided in paper form at the May 16, 2019 Board Meeting.

Order of Issues within Appendix A:

Appendix A does not, in our opinion, need to provide information in the order of items identified in the Draft Rule. Some information is necessary to understand the context of the risk, and correspondingly the benefits of respirators. As a result, if Appendix A is to be actually helpful to employees, we would urge the Board to consider re-ordering its elements. Notably, we believe a more logical and helpful sequence is below:

1. Health effects of wildfire smoke
2. Air Quality Index (AQI) and How to Obtain It
3. Requirements for Employers regarding Wildfire Smoke
4. Employer’s Methods to Protect Employees from Wildfire Smoke
5. How to put on, use, and maintain respirators.
6. Importance, Limitations, and Benefits of Using a Respirator When Exposed to Wildfire Smoke
7. Right to obtain medical treatment in the event of injury or illness.
8. Employer’s Communications System

Our comments below are provided in this order, for your ease.

Requirements of Section (e): Training

As staff indicated at the May 8th advisory meeting, the purpose of Appendix A is to provide a clear document to meet the requirements of Section (e) of the Draft Rule, such that employers may distribute Appendix A with respirators or once the Draft Rule is triggered in order to meet employers’ obligations and avoid employers’ being forced to improvise appropriate notices. We hope that goal will be maintained going forward.

Section 1: Health effects of Wildfire Smoke

¹ The initial draft text of the regulation, which has not yet been revised, is available at:
<https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/Discussion-Draft-2019-05-08.pdf>

In order to clarify Section (1) and express the hazards of wildfire smoke, we recommend the following text:

Smoke from fires, including wildfires, can be hazardous to your health. Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air. Particulate matter can irritate the lungs and cause persistent coughing, phlegm, wheezing, or difficulty breathing.

Particulate matter can also cause more serious problems, such as reduced lung function, bronchitis, exacerbation of asthma, heart failure, and early death. People over 65 and people who already have heart and lung problems are the most likely to suffer from serious health effects.

The smallest - and usually the most harmful - particulate matter is called PM2.5 because it has a diameter of 2.5 micrometers or smaller. Bandannas, surgical masks, or cloth items will not provide protection against wildfire smoke's hazards, and particularly will not provide protection against small particulate matter such as PM2.5.

These changes provide slightly more context, and incorporate the important risks of wildfire smoke to help workers' comprehension.

Section 3: Air Quality Index (AQI) and How to Obtain It

In order to clarify Section (3), which we would renumber as Section (2), we would propose the following text:

Airborne hazards caused by wildfire smoke, including PM2.5 levels, are measured by various government agencies monitor the air at locations throughout California and are reported the Currents as an air quality index (AQI) for those places. The AQI is a measurement of how polluted the air is.

When reviewing AQI ratings, be aware that An AQI over 100 is unhealthy for sensitive people and an AQI over 150 is unhealthy for everyone. For select, sensitive individuals, An AQI over 100 is unhealthy.

Although there are AQIs for several pollutants, Cal/OSHA's regulation about wildfire smoke only uses relies on the AQI for PM2.5.

The easiest method to find the current and forecasted AQI for PM2.5 is to go to www.AirNow.gov and enter the zip code of the place where you will be working. The current AQI is also available from the U.S. Forest Service at <https://tools.airfire.org/> or a local air district, which can be located at www.arb.ca.gov/capcoa/dismap.htm.

Employees who do not have access to the internet can contact their employer for the current AQI at the start of their shift or periodically thereafter. Employers are not required to provide access to, or information regarding, every website providing an AQI, so long as one local or regional air quality agencies' rating is provided. The EPA website www.enviroflash.info can transmit daily and forecasted AQIs by text or email for particular cities or zip codes.

These changes clarify the relation of the AQI measure to the hazards mentioned in Section 1, and clarify when an employee can seek information from their employer. As the Coalition raised in prior comments to the Division, we have concerns that, unless how often an employer must inform an employee of AQI is clarified, the Draft Rule will create a minute-to-minute obligation, which is not feasible in many areas.

In addition, these amendments correspond the training to the scope of the rule, which begins at an AQI of 150, by emphasizing the standard of 150, but still including mention of the AQI 100 standard.

Section 4: Requirements of this Section

In order to clarify Section (4), which we would renumber as Section (3), we would propose the following text. However, the below text should be altered if, as below, the scope section of the Draft Rule is adjusted. For example, if the scope will require a smoke advisory be issued, then it must be included in this section. Additionally, if the “realistic possibility” language of the scope section is removed, the language here must be adjusted. Furthermore, if the Draft Rule is altered to provide that respirators are the only manner of protection, we would urge it be reflected here. If not, and they are only one option, this section should be clarified to reflect that respirators may, or may not, be required.

If ~~employees may be exposed to wildfire smoke~~ a local smoke advisory has been issued, and the work area has a current AQI for PM2.5 of 150 or more, Cal/OSHA requires employers to take several actions:

1. Find out what the current AQI is at the location of its employees.
2. Provide training to employees.
- ~~3. Lower employee exposures~~ to PM2.5 hazards via one of the methods discussed below, which may include-
- ~~3. p~~ Providinge respirators and encouraginge their use.

These changes will:

- Clarify and match this section to the “Scope” section of the Draft Rule, depending on the version adopted.
- Clarify the limitations of the requirements of this section and its intent to the extent it is focused on PM2.5 hazards.
- Clarify that respirators are, in the present draft, only one manner of protection which may be provided.

Section 6: Employer’s Methods to Protect Employees From Wildfire Smoke

As an initial point, we reiterate our concern that the hierarchy of treatment, prioritizing engineering and administrative controls as reflected in the Draft Rule, is not feasible. Should the Standards Board agree, we would urge that the language of this section reflect that equality of options.

Similarly, if the Draft Rule is to only apply to outdoor workers, as we believe it should, we would urge this section be revised to exclude irrelevant comments, such as the portions of the second sentence which discusses working in enclosed structures, which is irrelevant to outdoor work such as agriculture.

Also, we believe this section should at least mention respirators as a permissible method of control, so that employees are aware that they are a permissible solution.

In order to clarify Section (6), which we would renumber as Section (4), we would propose the following text:

Each employer must take action to protect employees from PM2.5 in wildfire smoke once the AQI of particulate matter (PM2.5) reaches a level of 150. Examples of protective methods include locating work in enclosed structures or vehicles where the air is cleaner; changes in procedures such as moving workers to a place with a lower AQI, reducing work time in areas with unfiltered air, increasing rest time and frequency, providing a rest area with filtered air, and reducing the physical intensity of the work to help lower the breathing rate and heart rate. Alternatively, employers may provide respirators to filter the air and remove the PM2.5 hazard.

The employer's control system at this worksite is: _____.

Section 7: Importance, limitations, and benefits of using a respirator when exposed to wildfire smoke

In order to clarify Section (7), which we would renumber as Section (5), we would propose the following text:

When the current AQI for PM2.5 is over 150 and employees are working outside, employers must provide their workers with proper respirators for voluntary use. If the AQI is over ~~530~~1, respirator use is mandatory.

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke when they are properly selected and worn. ~~Respirator use can be beneficial even when the AQI for PM2.5 is less than 150, to provide additional comfort and protection.~~

Both the employer and employee should ensure thatA respirators ~~are~~should be used properly and kept clean.

The following precautions must be taken:

1. Choose respirators certified for use to protect against the contaminant of concern – here, small particles resulting from wildfire smoke, known as PM2.5. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging ~~that~~–It will list what the respirator is designed for and how much it will protect the user. Surgical masks or items worn over the nose and mouth such as scarves shirts, and bandannas will not provide protection against smoke. An N95 filtering facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.
2. Read and ~~heed~~obey all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirators limitations. Notably, not all respirators require ongoing maintenance, as some are meant to be used and discarded. Obey manufacturer's instructions.

3. Do not wear a respirator into atmospheres containing contaminants for which the respirator is not designed to protect against. A respirator designed to filter particles will not protect employees against gases or vapors, and it will not supply oxygen. N95 respirators, which may be provided to employees to protect against wildfire smoke and PM2.5 hazards, may not protect employees from other hazards and may not supply oxygen.
4. Employees should keep track of their respirator so that they do not mistakenly use someone else's respirator.
5. Employees who have a heart or lung problem should ask their doctor before using a respirator.

These changes address the following issues:

- Clarifying the AQI identified as "501" – which we presume is a typographical error for "301".
- Removing discussion below AQI 150 because employers are not required to provide respirators below an AQI for PM2.5 of 150, and may not be allowed to pursuant to Section 5144. As such, this can only serve to confuse employees.
- Clarifying maintenance obligations.
- Clarifying protection afforded by respirators and its limitations.

Section 8: How to put on, use, and maintain respirators.

In order to clarify Section (8), which we would renumber as Section (6), we would propose the following text:

Section 8: How to put on, ~~use,~~ and ~~maintain use~~ respirators.

The proper way to put on a respirator can depend on the type and model of the respirator. To get the most protection from a respirator, there must be a tight seal around the face. A respirator will provide much less protection if facial hair interferes with the seal. However, if the AQI for PM2.5 is between 150 and 300, you are not legally required to remove facial hair in order to wear a respirator to protect you from wildfire smoke. If the AQI for PM2.5 rises above 300, you will need to shave your facial hair in order to continue working with a respirator, among other requirements. ~~The proper way to put on a respirator can depend on the type and model of the respirator.~~

For those who use an N95 or other "filtering facepiece respirator," a mask that is made of filter material, it is important to do the following when putting on the respirator, unless otherwise directed by manufacturer instructions:

1. Place the mask over the nose and under the chin, with one strap placed below the ears and one strap above.
2. Pinch the metal part (if there is one) of the respirator over the top of the nose so it fits securely.

Regardless of the type of respirator, check how well it seals to the face by following the manufacturer's instructions for user seal checks. Adjust the respirator if air leaks between the ~~seal~~ respirator and the face. The more air leaks ~~under the seal,~~ around the edges of the respirator, the less protection the user receives.

Replace the respirator filter if it gets damaged, soiled, or difficult to breathe through.

~~Go to an area with cleaner air, take off the respirator, and get medical help~~ if dizziness, nausea, or other adverse symptoms occurs while wearing a respirator, inform your employer, take off the respirator, and get medical help. If possible, proceed to an area with cleaner air before removing the respirator.

These changes are intended to clarify:

- That employees are not compelled to shave when provided a respirator between 150 and 300, but are compelled to shave at higher AQI levels.
- Clarify the requirements for putting on and wearing a respirator.
- Clarify actions to be taken if the respirator appears to be causing negative effects for the individual, and particularly clarify that, in the short-term, it may be important to remove the respirator immediately rather than wait until cleaner air can be reached.

Section 2: Right to obtain medical treatment in the event of injury or illness.

We are concerned that Section 2 appears to reference a compliance obligation which is not presently expressed in the Draft Rule – preparation to treat victims of smoke inhalation. Such treatments may require providing oxygen or other treatments which employers do not keep on site and are not required to procure and provide pursuant to the Draft Rule.

As a result, we would ask that Section 2, if it is not removed, needs be clarified to reflect the substance required by Section (e) of the Draft Rule – that employees have the right to seek medical treatment, and that employers, though they will not necessarily be able to provide treatment, will not punish the employee for doing so. Section 2 should not create a new obligation to provide medical treatment of lung injuries which is not feasible for employers, particularly dealing with outdoor, potentially mobile employees.

In the event Section (2) is not removed, we would renumber as Section (7), and, we would propose the following text:

Employees are entitled to seek medical treatment in the event of injury or illness resulting from wildfire smoke. Employers cannot punish or discipline an injured or ill employee for seeking medical treatment related to wildfire smoke. ~~must have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.~~

Section 5: Employer's Communications System

We are concerned that Section 5, which we would renumber as Section (8), is not clear as to when this system must be in effect, and whether it extends beyond wildfires. The below language clarifies that concern.

Employers must establish a two-way communication system to communicate with employees about air quality issues, which will be put into effect while wildfire smoke is a hazard. Employers must alert employees when the air quality is harmful, if conditions are likely to worsen, and what protective measures are available to employees.

Employers must also have a system that encourages employees to inform their employers if they notice the air quality appears unhealthy, if conditions are worsening, or if they are suffering from any symptoms due to the air quality, without fear of reprisal.

The employer's communication system is: _____

Thank you for your time and attention to detail in this process. Please don't hesitate to reach out if you have any questions regarding the above comments.

Signed,



Robert Moutre
California Chamber of Commerce

California Association of Winegrape Growers
California Professional Association of Specialty Contractors
California Framing Contractors Association
Residential Contractors Association
Western Growers Association
Western Steel Council

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