

industry line

MANAGING THE HAZARDS OF ENVIRONMENTAL TOXIC AND TORT LITIGATION

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OSHA Rejects Tougher Standards For Metalworking Fluids

By Jennifer McMann

On December 9, 1993, the International Union of United Automobile, Aerospace & Agricultural Implement Workers of American (“UAW”) petitioned the Occupational Safety and Health Administration (“OSHA”) to take “immediate action to protect workers from the health effects of occupational exposure to machining fluids.” Specifically, the UAW wanted OSHA to change the existing exposure level for metalworking fluid, issued in 1971, to a more stringent standard. The current exposure level for metalworking fluid is 5.0 milligrams per cubic meter of air (5.0 mg/m³) during an eight-hour day, and UAW urged for a standard ten times more stringent, of 0.5 milligrams (0.5 mg/m³).

In 1997, OSHA impaneled a Metalworking Fluids Standards Advisory Committee to issue a report and recommendations regarding the effects of exposure to metalworking fluids. The Committee consisted of 15 members: five industry representatives, five labor representatives, and five public representatives. The Committee unanimously recommended that OSHA take action to limit worker exposure to metalworking fluids, based upon what they believed to be “demonstrated health effects” of exposure, such as dermatitis, asthma, hypersensitivity pneumonitis, and other respiratory disorders. A minority of the Committee concluded that there was adequate evidence to link metalworking fluid exposure to skin cancer or cancer at other sites. The committee was unable to unanimously agree on a recommendation. A majority of the committee wanted OSHA to promulgate a new rule lowering the exposure levels, while the minority thought that non-mandatory guidelines and educational programs were adequate. Responding to the Committee’s recommendations, OSHA created a “MWF Best Practices Guide” in 2001. This guide is non-binding and unenforceable.

OSHA formally responded to UAW on December 16, 2003, denying its petition. OSHA concluded that the regulation of metalworking fluid was not appropriate because the conclusion that metalworking fluid caused cancer was not scientifically

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Although the current information regarding metalworking fluids benefits manufacturers, the absence of scientific evidence establishing a causal relationship between metalworking fluid and medical ailments does not mean that one does not exist. As suggested by OSHA, there have been no significant epidemiological studies to date regarding this issue. As studies are conducted, the presumptions on these relationships are subject to change.

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supported. OSHA found that the studies undertaken by the Committee did not quantitatively assess the risk of metalworking fluids. To conduct studies to determine the precise health effects of metalworking fluid exposure would be an “enormous resource commitment” on OSHA’s part. Rather than make that commitment, OSHA decided to focus its attention on toxic substances that pose more serious health risks.

The UAW petitioned the United States Court of Appeals for the Third Circuit under the Occupational Safety & Health Act of 1970 and the Administrative Procedure Act, to determine whether or not OSHA made a decision which was both arbitrary and capricious. *UAW v Chao*, 361 F3d 249 (3rd Cir, 2004). The Third Circuit supported OSHA’s findings and denied the UAW’s petition for review, in a written opinion dated March 22, 2004. While the court acknowledged that some evidence does exist to establish that metalworking fluid causes respiratory disorders and dermatitis, the severity and prevalence of these medical conditions is hotly debated. In fact, the UAW has only documented 16 recorded outbreaks of hypersensitivity pneumonitis in United States factories since the union first petitioned OSHA in 1993. The court also found that the evidence supporting a connection to cancer is equivocal.

On February 9, 2004, OSHA issued a news release stating that it was going to align itself with the Independent Lubricant Manufacturers Association. The two groups plan to work together to protect workers from the industrial hazards of metalworking fluids. The goal of the Alliance is to educate employees and customers on the safe handling of lubricant products, and to adopt preventative measures that will reduce the risks of exposure.

OSHA’s findings, and recent court opinions, are indicative of what is well known throughout the metalworking fluid industry: evidence of the medical effects of metalworking fluid exposure is a contested issue with no definite answers. OSHA and courts have been reluctant to acknowledge that metalworking fluids are related to cancer and other life threatening diseases. In addition, OSHA has not found existing scientific research reliable enough to justify implementation of more stringent standards.

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