

Health and Safety Commission Paper		HSC/04/89	
Meeting Date:	9 November 2004	Open Gov. Status:	Fully open
Type of Paper:	Below the line	Paper File Ref:	PG/313/1000/03
Exemptions:	None		

HEALTH AND SAFETY COMMISSION

Control of Substances Hazardous to Health (Amendment) Regulations 2004 – Cement aspect

A Paper by Michael J Ryan, PG CFPD2

Advisor(s): Bill Macdonald, PG CFPD2; Cesare Ferrari, Solicitor's Office

Cleared by Nick Starling, Co-Director Policy Group on 14 October 2004

Issue

1. Proposed Control of Substances Hazardous to Health (Amendment) Regulations 2004 (COSHH 2004) that would, among other things, implement an EC Directive on cement.

Timing

2. Urgent. The Directive must be implemented by 17 January 2005.

Recommendation

3. The Commission is invited to:
 - (a) note the responses received to public consultation on the proposals (Annex A) and the revised Regulatory Impact Assessment (RIA) (Annex E);
 - (b) agree the draft Regulations (Annex C) and approve, subject to the consent of the Secretary of State, the updated ACOP paragraphs (Annex D); and
 - (c) note the intention to issue a certificate of exemption in respect of oil-well cement.

Background

4. COSHH 2004 will implement an EC Directive on cement and introduce a new occupational exposure limit framework. These two matters are unrelated and were consulted on separately. They are presented under cover of separate papers; **HSC/04/06** deals with the framework, and this paper with cement. In addition, this paper covers some other minor changes which will be included in COSHH 2004.

5. The Consultative Document (CD195) was published in March 2004 with 3 months for comment. A full background was given in paper **HSC/04/14** but, in brief, it proposed:
 - (a) a ban on the supply and use of high chromium (VI) cement and cement preparations, and a package marking requirement for reduced chromium (VI) cement and cement preparations, stemming from an EC marketing and use Directive (2003/53/EC);
 - (b) extending the existing disapplication of COSHH and the Control of Lead at Work Regulations 2002 (CLAW) from sea-going merchant ships to all merchant ships, in line with a recommendation of Lord Clarke's Thames Safety Inquiry; and
 - (c) revised wording of COSHH and CLAW to clarify that the duty to maintain exposure control measures extends to working procedures and not just machinery, as recommended by HSE occupational hygienists.

In addition, the CD proposed some revisions to the COSHH and CLAW ACOPs reflecting (c) above or making other minor improvements.

Argument

6. Thirty responses (see Annex A) were received to the CD. There was overall support for the cement proposals with some reservations on details (see paras 7 to 10). There was good support for the other two proposals, and for the consequential changes to the COSHH ACOP.

Implementation of cement Directive: cement preparations

7. The CD proposed full implementation of the Directive. However, some preparations manufacturers pointed out an apparent anomaly in the Directive that they claimed made compliance unduly onerous for their products and lacked any justification in health protection. (Annex B gives detail on this issue.) They asked that the implementing legislation correct the anomaly by departing from the Directive. HSE agreed to consider this if evidence of serious business impact was offered, or if "faithful" implementation were shown to impact seriously on the quality or workability of their products. However, little evidence was received and further contacts disclosed that preparations manufacturers were taking steps to successfully comply with the Directive. Additionally, the British Cement Association (BCA), a key stakeholder, opposes under-implementation. Consequently, HSE proposes faithful transposition of the Directive, as set out in the CD.

Certificate of exemption: oil-well cements

8. The British Cement Association has also raised the case of specialist cements used in oil-wells. The practical effect of the proposed legislation is to oblige cement manufacturers to add an agent to reduce chromium (VI) content. The technical specification for oil-well cements states that they must be free from additives (including reducing agents) in order to ensure that they continue to function properly in extreme conditions. Consequently, the BCA has requested that a certificate of exemption be issued by HSE under the COSHH Regulations to exempt oil-well cement from the chromium (VI) ban. (Annex B also gives detail on this issue.)
9. Any exemption would have to extend to suppliers and users of oil-well cement, and the cementing contractors they employ. The petroleum extraction companies are

represented by the UK Offshore Operators Association (UKOOA), who have indicated that they support the BCA's request for an exemption.

10. Granting a certificate would amount to creating a derogation not in the Directive. However, in light of its key role in the safe operation of oil wells and the unknown effect on its performance of reducing agents, HSE is considering the case for issuing a certificate of exemption in respect of oil-well cement in time for the coming into force of the Regulations (expected to be on 17 January 2005). In line with advice from the Solicitor, the certificate will be time-limited and impose strict conditions to protect health. There are some indications that a similar certificate may be needed by the nuclear industry. If this is the case, HSE will consider it on the same basis.

Changes to Regulations and ACOP

11. HSE proposes that the amendments to the COSHH and CLAW Regulations should now proceed. These are contained in the Control of Substances Hazardous to Health (Amendments) Regulations 2004 (see Annex C). Similarly, HSE proposes publication of a revised edition of the COSHH ACOP containing the paragraph changes described in the CD but with adjustments to take accounts of comments received (see Annex D).
12. HSE now withdraws its CD proposal for a revised edition of the CLAW ACOP. This is because dutyholders would have to buy a new ACOP for the sake of a few paragraphs offering clarificatory improvements. Instead, HSE will hold these changes until the next occasion when changes are made to the CLAW ACOP. (Note that this argument does not apply to the COSHH ACOP as it contains much new or revised material relating to the new occupational exposure limit framework (described in HSC/04/06)).

Coming into force dates

13. Although member States were required to have measures in place by 17 July 2004, the Directive does not have to be implemented until 17 January 2005. HSE chose to continue discussions with stakeholder groups beyond the 17 July deadline. However, HSE proposes that the Control of Substances Hazardous to Health (Amendment) Regulations 2004 come into force on 17 January 2005 and that the provisions relating to cement, and the provisions disapplying COSHH and CLAW to all merchant ships, have effect from that date. However, in respect of the provisions relating to the new occupational exposure limit framework and those clarifying the duty to maintain exposure control measures (ie those which have associated COSHH ACOP changes), it is proposed that they have effect from a suitable date in April. At that time the new edition of the COSHH ACOP would also be published.

Consultation

14. We have consulted relevant HSE stakeholders, including HID, LAU, PEFD, Solicitor's Office, Economic Advisers, FOD, and OGD stakeholders including DTI, DEFRA, HSENI and the Maritime and Coastguard Agency.

Presentation

15. HSE has worked closely with industry, including the British Cement Association (BCA), the British Adhesives and Sealants Association (BASA) and other company representatives. HSE and BCA are setting up a joint working group to publicise the changes and advise on compliance. HSE will also be using the opportunity offered by these changes to re-emphasise the continuing risks of irritant dermatitis and burns from uncontrolled exposure to wet cement.

Costs and Benefits

16. The final Regulatory Impact Assessment is at Annex E. The benefits of the proposals are valued at £53 million (max) and the costs at £89 million (max) over 10 years, a significant increase from the preliminary RIA which put costs at £29 million. This reflects the large amount of information received from industry during and following consultation, which revealed downstream costs which were not apparent before.

Financial/Resource Implications for HSE

17. HSE costs are minimal and can be met from within existing budget allocations.

Environmental Implications

18. The use of ferrous sulfate in cement dosing will reduce the amount of this material which is land-filled or dumped at sea. While the new regime is settling in there may be some disposal to waste of non-compliant material.

Other Implications

19. (a) European – See paragraph 10 in connection with the grant of an exemption certificate from Directive requirements in respect of one class of cement.
(b) SMEs – Costs related to achieving/confirming compliance of formulated products may disproportionately affect companies with limited in-house technical resource.

Action

20. If you agree the recommendations in paragraph 3, we shall arrange:
 - (a) for the Chair to submit the draft Regulations to the Minister of State (Annex F); and
 - (b) for publication of the ACOP.