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From: DanMcKeel2@aol.com
Sent: Tuesday, September 06, 2011 8:21 AM
To: pl.ziemer@comcast.net; Hinnefeld, Stuart L. (CDC/NIOSH/DCAS); Allen, David (CDC/NIOSH/DCAS); jmauro@scainc.com; Katz, Ted (CDC/NIOSH/OD); NIOSH Docket Office (CDC); NIOSH Docket Office (CDC)
Cc: danmckeel2@aol.com
Subject: New GSI related 1978 report (PDF): OSHA regulates betatrons & accelerators
Attachments: Std01-04-001_OSHA_RadSources.pdf

September 6, 2011

Dear Dr. Ziemer, DCAS Director Hinnefeld, Mr. Allen, Dr. Mauro, and Ted Katz (DFO), NIOSH Docket 140 (GSI),

I ask that Ted Katz please distribute this memo including the attached report to all members of the TBD-6000 work group and to the full Board.


I want to bring to everyone's attention a fact that I am not aware has been discussed at any EEOICPA covered site that hosted particle accelerators, x-ray devices and Betatrons. The attached directive from OSHA dated 1978 indicates that OSHA at that time had responsibility for regulating all radiation devices that are not specifically regulated under the A.E.C. and the Atomic Energy Act of 1954. This policy apparently applied to both agreement and nonagreement states.

Because of the obvious possible relevance to General Steel Industries (GSI) and to other covered EEOICPA facilities, I request that NIOSH investigate when this regulatory policy was put into place. More specifically, it is imperative to know whether the policy applied to GSI during the 1953-1966 covered period? Also, do GSI related records exist pertinent to GSI source terms (24 and 25 Mev particle accelerators and three conventional medical industrial 250 KVP x-ray machines) at OSHA and/or related State of Illinois agencies? It is important that these documents be sought as soon as possible while the David Allen Path Forward newest white papers are being considered by Dr. Ziemer and the TBD-6000 work group. I expect the August 2011 white paper on portable GSI sources will be a major item on the September 20, 2011, work group meeting agenda.

Thank all of you for your attention to this matter.

-- Dan McKeel

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[Directives - Table of Contents](#)

- **Record Type:** Instruction
- **Directive Number:** STD 01-04-001
- **Old Directive Number:** STD 1-4.1
- **Title:** OSHA Coverage of Ionizing Radiation Sources Not Covered by Atomic Energy Act of 1954
- **Information Date:** 10/30/1978
- **Standard Number:** 1910.96

OSHA Instruction STD 1-4.1 October 30, 1978

June 26, 1973

OSHA PROGRAM DIRECTIVE #73-5

To: All National Office Executive Staff and Regional Administrators

Subject: OSHA Coverage of Ionizing Radiation Sources Not Covered by Atomic Energy Act of 1954

Documentation Affected: None

1. Explanation

A. The U.S. Atomic Energy Commission (AEC) has the authority to regulated source, by-product, and certain special nuclear materials. OSHA's authority to regulate radiation sources does not include those regulated by the A.E.C.

B. OSHA covers all radiation sources not regulated by A.E.C.

Examples of non-A.E.C. regulated radiation sources include X-ray equipment, accelerators, accelerator-produced materials, electron microscopes, betatrons, and some naturally occurring radioactive materials.

C. Where a State has an approved 18(b) plan the following will apply (any State that covers occupational health issues in their plan, will be required to cover radiation):

(1) States that have radiation coverage in their plan:

- Concurrent Federal and State coverage until Secretary of Labor relinquishes this enforcement authority under section 18(e) of the Act.

OSHA Instruction STD 1-4.1 October 30, 1978

-2-

(2) States that do not have an approved plan or do not have radiation coverage in their plan:

- Only OSHA will apply to occupational radiation hazards, except that States with radiation standards directed primarily to public protection may also apply them to workplace hazards.

2. Action

All Regional Administrators and their Area Directors will consider the above explanation as guidelines in determining OSHA coverage of radiation sources. Where OSHA coverage applies (Item B above), inspections will be scheduled according to the general OSHA priorities. Any radiation hazards, covered by OSHA, discovered in the course of any inspection will be handled in the same manner as other hazards.

In States which have an agreement in effect with the Atomic Energy Commission (States listed in 29 CFR

1910.96(p)(3)(ii), plus Delaware and Nevada), employers may claim they are not subject to OSHA citation because of the provisions of 29 CFR 1910.96(p)(3)(ii). However, it is our understanding that State provisions under their A.E.C. agreements are at least as stringent as OSHA's. Hence, any violation of the OSHA standard will be presumptively considered a violation of a relevant State standard. Where the presumptions may be questionable in particular cases, consultation should be held with the State. Paragraph (p)(3)(ii) will not generally protect the employer from OSHA citation. A proposal to revise the radiation standard in 29 CFR 1910.96 is expected in 1973 and will include a proposal to delete paragraph (p)(3)(ii) from the standard to eliminate any confusion which it may now cause.

For example, a complaint to OSHA on excessive radiation exposure from an industry X-ray machine will be investigated by OSHA, even in A.E.C. Agreement States. The OSHA radiation standard, 29 CFR 1910.96, will apply in the Agreement States because any violation of this standard will be a violation of the States' laws, regulations or standards as well. Violation of the OSHA radiation standard discovered in the course of this or any other inspection will be cited just as any other hazard is cited.

OSHA Instruction STD 1-4.1 October 30, 1978

-3-

(Three lines of text unreadable) geographical areas and should attempt to a close working relationship with them. Should there be any doubt that an employer in violation of 29 CFR 1910.96 is also in violation of State provisions, the Regional Administrator or Area Director may verify the violation with the State.

3. Filing

This directive is in effect immediately and will remain in effect until further notice.

Chain Robbins Deputy Assistant Secretary

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OSHA Instruction STD 1-4.1 October 30, 1978

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OSHA Instruction STD 1-4.1 October 30, 1978

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OSHA Instruction STD 1-4.1 October 30, 1978

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[Directives - Table of Contents](#)

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