



Kelley Drye Represents Clients in Settlement with OSHA on the Final Rule on Occupational Exposure to Hexavalent Chromium

May 22, 2007

Washington, D.C. – On May 21, 2007, Kelley Drye clients the Specialty Steel Industry of North America (“SSINA”) and the National Association of Manufacturers (“the NAM”) executed a settlement agreement with the U.S. Occupational Safety and Health Administration (“OSHA”) on OSHA’s final rule regarding occupational exposure to hexavalent chromium. This settlement, which has been negotiated for several months by SSINA, the NAM, OSHA, Public Citizen Health Research Group (“Public Citizen”), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“Steelworkers”), provides necessary relief to businesses that produce or use stainless or alloy steel, while fully protecting worker safety.

As part of the Settlement, employers will be permitted to protect their employees with respiratory protection when the employee is welding on stainless or chromium-containing steel in an enclosed or confined space. Previously, under the Final Rule, the employer first had to use engineering and work practice controls to control the employee’s exposure. Then, if the employer determined that the employee was still exposed above the permissible exposure limit (“PEL”), the employer could protect the employee with a respirator.

Requiring engineering controls in confined or enclosed spaces is often impossible due to the size of the space. Additionally, because fumes can become trapped in an enclosed space, respiratory protection is often the most effective means of protecting employees. Under this Settlement Agreement, employers who make a determination that it is infeasible or unsafe to use engineering or work practice controls while welding on stainless or chromium-containing steel in a confined or enclosed space are permitted to protect their employees with respiratory protection without incurring additional expense for less-effective engineering controls.

The Settlement Agreement also provided necessary clarification to business owners regarding how much hexavalent chromium-containing dust can accumulate during manufacturing or fabrication processes. Additionally, the Settlement Agreement provided an important interpretation on how employers may dispose of hexavalent chromium-containing materials which are large or cumbersome. SSINA and the NAM had raised concerns that the minute amount of hexavalent chromium that may be contained in dust in a facility or on materials to be disposed of could trigger obligations under the rule that would be impossible to meet and unnecessary for worker protection.

As part of this settlement, SSINA and the NAM are withdrawing their petition for review of the Final Rule. SSINA and the NAM are now seeking to intervene in the action in support of OSHA.