

June 29, 2009

Mr. James L. Hillman
President
Safer And Greener America, Inc.
P.O. Box 265
Gardnerville, NV 89410

Dear Mr. Hillman:

Thank you for your letter dated April 29, 2009 to the Occupational Safety and Health Administration (OSHA). You have called for OSHA to enforce its Chromium (VI) standards that were issued on February 28, 2006 in the *Federal Register* (71 FR 10099-10385). You also want employers to be compelled to stop using hexavalent chromium or chromium (VI), as there are already less hazardous chemical substitutes available. Furthermore, you have suggested a nationwide ban of hexavalent chromium from all use in the metal finishing industry.

We agree that product substitution is the best solution to eliminating the hazards from hexavalent chromium, and we do encourage employers to consider this option foremost. In some cases, however, product substitution is not possible, such as is the case when hexavalent chromium is formed when performing "hot work" such as welding on stainless steel, melting chromium metal, or heating refractory bricks in kilns. In these situations, the chromium is not originally hexavalent, but the high temperatures involved in the process result in oxidation that converts the chromium to a hexavalent state. For employers that need to install engineering controls, such as ventilation systems, the Final Rule provided a deadline of May 31, 2010. This four-year phase-in period ensures that employers have sufficient time to design, obtain, and install the necessary control equipment and to develop and train workers on proper work practices. However, during the period in which employers are implementing these controls, respirators must be used to comply with the new permissible exposure limit (PEL).

Concerning enforcement of the Chromium (VI) standards, we disagree with your opinion that OSHA "does nothing" regarding hexavalent chromium. During the first three years enforcing OSHA's new Chromium (VI) standards, 29 CFR 1910.1026, 1926.1126, and 1915.1026, OSHA's Area Offices reported over 250 inspections where hexavalent chromium violations were cited, mostly in general industry (e.g., sheet metal, electroplating, and boiler shops), with initial penalties totaling about \$300,000. The most common violation has been lack of exposure monitoring. For additional information, OSHA has a safety and health topics webpage for Hexavalent Chromium at <https://www.osha.gov/SLTC/hexavalentchromium/index.html>.

Furthermore, OSHA is currently developing a national emphasis program (NEP) to focus on stronger enforcement of the Chromium (VI) standards. This NEP will also follow-up OSHA's 2008 compliance directive that provided inspection procedures for the Chromium (VI) standards. The NEP will direct OSHA Area Offices towards industries and establishments where exposures are likely, including those that perform welding on stainless steel, plus electroplating shops, and painting contractors.

Finally, while the Occupational Safety and Health Act of 1970 (the OSH Act) does not give OSHA authority to ban the use of hazardous materials, that authority has been delegated to the U.S. Environmental Protection Agency (EPA) through laws such as the Toxic Substances Control Act (TSCA) of 1976. Your letter highlights many sound arguments for considering the ban of hexavalent chromium in metal finishing and other industries. We appreciate your interest in occupational safety and health.

Sincerely,

Jordan Barab
Acting Assistant Secretary