



AMERICAN FOUNDRY SOCIETY, INC.  
publishers of MODERN CASTING



CAST METALS INSTITUTE, INC.

May 22, 2006

Ms. Sue Izumi,  
FOIA Officer  
U.S. Department of Labor  
Occupational Safety and Health Administration  
200 Constitution Ave., NW  
Room N3647  
Washington, D.C. 20210

**Re: Disclosure of Air and Other Types of Sampling Data**

Dear Ms. Izumi:

The American Foundry Society (AFS) is submitting the following comments to the Occupational Safety and Health Administration (OSHA) on its notice concerning the lawsuit filed in the United States District Court for the District of New Jersey to compel the agency to disclose of all air and other sampling data (*Adam M. Finkel v. United States Department of Labor, Occupational Safety and Health Administration*, No. 3:03-cv-05525-MLC-TJB).

AFS is the oldest and largest metal casting trade association in North America. Our association represents over 9,000 members from all 50 states. Today, 2,336 foundries, the majority which are small businesses, employ over 220,000 people in the U.S. AFS works with its members companies to ensure safe and healthful working conditions.

The release of all of OSHA's sampling records could have a devastating commercial impact on AFS members, in part because of trade secret information contained therein, but primarily because of the exposure to massive litigation costs.

Air sampling records can indicate use of certain chemicals which may constitute a trade secret. Most sampling in the foundry industry involves substances that are common across many foundries, such as crystalline silica or various metals, for which trade secrecy is not an issue. However, some foundries use advanced process technology with complex and experimental resin systems and release of sampling data would compromise trade secrets.

Under current law, OSHA sampling results generally are considered medical records by the agency, and others, entitled to privacy protection, and made available only to the involved employees and the employer.

In addition, we are concerned that the sampling data from the 1970's and even 1980's are simply outdated and don't reflect the current conditions inside a foundry. With the implementation of new equipment, such as air ventilation systems and more efficient pollution control devices, as well as the increased use of personal protective equipment and more comprehensive worker training and maintenance plans, the conditions in a foundry are completely different from 20 and 30 years ago.

The most compelling commercial concern for the foundry industry and for many other businesses is the predictable use of sampling data by plaintiff's attorneys to solicit alleged victims for lawsuits.

Trial lawyers currently place advertisements in radio, television, print and billboard media seeking people who have been exposed to various agents, such as prescription medications, asbestos, silica, manganese, etc. Release of OSHA's air sampling data will likely open the door to a whole new round of litigation targets.

One concern with potential litigation involves employees who have worked in a facility where a targeted chemical has been used. Another concern is with so-called "premises" cases involving visitors or contractors who have been on site for as little as one day. Such "premises" cases are common with asbestos. It is quite likely that every company with sampling data on asbestos could be the target of a "premises" lawsuit. Regardless of the merit of such cases, the cost to investigate and defend them can exceed \$10,000 per case.

It should be noted that preventing release of air sampling data will not compromise the ability of an injured employee to seek due compensation. Limiting release according to the rules of discovery in individual cases would allow a fair discussion of sampling problems, interferences and other issues related to data quality. Massive release of data, on the other hand, will lead to overwhelming litigation costs.

The experience with asbestos presents a compelling warning for the present situation and illustrates the critical commercial importance of the information. Over the past 30 years 60 companies have been bankrupted by asbestos litigation, even though many of them were only briefly or tangentially involved in asbestos related businesses. Many other companies have paid out large amounts to settle numerous suits, often of questionable merit. Now that asbestos litigation is waning for lack of remaining targets, new compounds are appearing in legal solicitations (manganese, vinyl chloride, lead, silica, benzene, butadiene, fluoride, creosote). Opening up the OSHA sampling data will create new targets for asbestos litigation, as well as provide a direct link to targets for a new array of lawsuits.

Because of the potential economic devastation that unfounded lawsuits may have on its members, AFS hereby asks OSHA to determine that air sampling data, some of which contains trade secret information, is for the most part highly sensitive commercial information that is exempt from release. Moreover, release of data with individual identification would constitute a clearly unwarranted invasion of privacy of medical records.

We ask that the Department of Labor exercise its authority under the Freedom of Information Act to deny the requested disclosure. Thank you for your consideration of these comments. Please feel free to contact me or Fred Kohloff ([fredk@afsinc.org](mailto:fredk@afsinc.org)) of my staff at 847/824-7848 if you have any questions or require additional information.

Sincerely,



Jerry Call  
AFS Executive Vice President