

Department of Justice, a proposed form of written notification to be provided to Acquiring Banks for distribution to Merchants:

a. describing the Rules changes each made pursuant to this Final Judgment; and

b. informing Merchants that they are permitted to engage in any of the practices enumerated in Sections IV.A.1 through IV.A.8 of this Final Judgment.

Within five business days after receiving the approval of the Department of Justice, the Defendant shall direct its Acquiring Banks to furnish to each of the Merchants in the United States with which the Acquiring Banks have entered an agreement to accept the Defendant's General Purpose Cards as payment for goods or services (i) a paper or electronic copy of the approved notification and (ii) a paper or electronic copy of this Final Judgment (or an Internet link to this Final Judgment). MasterCard and Visa shall direct the Acquiring Banks to provide such information in their next billing statement or within thirty days of their receipt of MasterCard's or Visa's direction, whichever is shorter.

2. Within five business days after entry of this Final Judgment, MasterCard and Visa shall each adopt a Rule forbidding its Acquiring Banks from adopting, maintaining, or enforcing Rules with respect to MasterCard or Visa General Purpose Cards that the Defendant would be prohibited from adopting, maintaining, or enforcing pursuant to Section IV of this Final Judgment.

F. MasterCard and Visa shall each notify the Department of Justice and the Plaintiff States, within five business days of such adoption or modification, if it adopts a new Rule that limits or restrains, or modifies an existing Rule in a manner that limits or restrains how Merchants accept, process, promote, or encourage use of Forms of Payment other than General Purpose Cards or of General Purpose Cards bearing the Brand of another General Purpose Card Network.

#### VI. Compliance Inspection

I. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department of Justice, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust

Division, and on reasonable notice to MasterCard or Visa, be permitted:

A. access during the Defendant's office hours to inspect and copy, or at the option of the United States, to require the Defendant to provide to the United States and the Plaintiff States hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of the Defendant, relating to any matters contained in this Final Judgment; and

B. to interview, either informally or on the record, the Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Defendant.

II. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, MasterCard and/or Visa shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States, require a Defendant to conduct, at its cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

III. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of (i) the executive branch of the United States or (ii) the Plaintiff States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IV. If at the time information or documents are furnished by a Defendant to the United States and the Plaintiff States, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States and Plaintiff States shall give the Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### VII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### VIII. No Limitation on Government Rights

Nothing in this Final Judgment shall limit the right of the United States or of the Plaintiff States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any Rule of MasterCard or Visa, including any current Rule and any Rule adopted in the future.

#### IX. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

#### X. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Date: \_\_\_\_\_

United States District Judge  
[FR Doc. 2010-25655 Filed 10-12-10; 8:45 am]

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#### DEPARTMENT OF LABOR

##### Occupational Safety and Health Administration

[Docket No. OSHA-2010-0011]

##### Keystone Steel and Wire Company; Grant of a Permanent Variance

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Notice of a grant of a permanent variance.

**SUMMARY:** This notice announces the grant of a permanent variance to Keystone Steel and Wire Company. The permanent variance addresses the provisions that regulate occupational exposure to lead and arsenic, specifically paragraph (h)(2)(i) of 29 CFR 1910.1025 and paragraph (k)(2) of 29 CFR 1910.1018. These provisions prohibit the use of compressed air to clean floors and other surfaces where lead and arsenic particulates accumulate. As an alternative to complying with these provisions, Keystone Steel and Wire Company may instead comply with the conditions listed in this grant; these alternative conditions regulate the use of compressed air in combination with a vacuum-containment system to remove particulates containing lead and arsenic from inside crane-motor housings during periodic maintenance operations. Accordingly, OSHA finds that these alternative conditions protect workers at least as well as the requirements specified by 29 CFR 1910.1025(h)(2)(i) and 29 CFR 1910.1018(k)(2). This permanent variance applies only in Federal OSHA enforcement jurisdictions.

**DATES:** The effective date of the permanent variance is October 13, 2010.

**FOR FURTHER INFORMATION CONTACT:** *General information and press inquiries.* For general information and press inquiries about this notice, contact MaryAnn Garrahan, Acting Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999.

*Technical information.* For technical information about this notice, contact Stefan Weisz, Office of Technical Programs and Coordination Activities, Room N-3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2110; fax: (202) 693-1644.

*Copies of this Federal Register notice.* Electronic copies of this notice are available at <http://www.regulations.gov>. Electronic copies of this notice, as well as news releases and other relevant information, are available on OSHA's Web site at <http://www.osha.gov>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Keystone Steel and Wire Company (hereafter, "KSW"), 7000 S. Adams Street, Peoria, IL 61641,<sup>1</sup> submitted an application for a permanent variance

under Section 6(d) of the Occupational Safety and Health Act of 1970 ("OSH Act"; 29 U.S.C. 655) and 29 CFR 1905.11 ("Variances and other relief under section 6(d)") for a permanent variance, and for an interim order pending a decision on the application for a variance, from the safety standards prescribed in 29 CFR 1910.1025(h)(2)(i) and 29 CFR 1910.1018(k)(2). The Agency published KSW's variance application and a grant for an interim order in the **Federal Register** on July 1, 2010 (75 FR 38130).

KSW operates a melt shop where it processes scrap steel into a molten state. The equipment used to accomplish the melting process consists of: an electric-arc furnace, which uses an electric arc generated from electrodes to melt the scrap steel; and a ladle metallurgy furnace, which uses electrodes to maintain the molten steel at a constant temperature to produce the proper consistency of steel. The melting process requires the use of two overhead cranes to haul the scrap to the furnaces, and to transport the molten steel for further processing. Ten large, direct-current electric motors power each crane.

During the melting process, fugitive emissions containing trace amounts of lead and arsenic accumulate inside the motor housings of the overhead cranes.<sup>2</sup> To prevent electric arcing, KSW must remove the accumulated particulates from inside the crane-motor housings. To accomplish this task, KSW uses compressed air supplemented by a vacuum-containment system.

As an alternative to complying with the housekeeping requirements specified by 29 CFR 1910.1025(h)(2)(i) and 29 CFR 1910.1018(k)(2), KSW proposed to adopt an alternative means of compliance that consists, in part, of a compressed-air vacuum-containment (CAVC) system mounted on a truck. A worker begins the crane-motor cleaning operation by inserting the nozzle of the compressed-air gun into an opening in the housing, then triggers the compressed air. The vacuum-containment system, which the worker activates prior to beginning the motor-cleaning operation, generates exhaust airflow inside the crane-motor housing. The vacuum, delivered through a hose, has an exhaust volume of 5,000 cubic feet per minute, and collects the lead and arsenic particulates that the worker removes with compressed air from the interior components of the crane motor. The system then deposits the

particulates in a hopper, also mounted on the truck.

KSW designed a flanged end that fits over an opening in a housing that covers each crane motor. The vacuum hose is connected to, and is supported by, this flange. Thus, the combination of the housing, flanged end, compressed air, and the vacuum-containment system captures most of the fugitive particulates released during the motor-cleaning operation, thereby reducing worker exposure to airborne lead and arsenic.

In support of its variance application, KSW submitted the following data and information demonstrating the effectiveness of the alternative means of compliance:

1. KSW administered several rounds of personal-exposure monitoring to workers who used compressed air while cleaning the crane motors. The results for the last two rounds of sampling for both lead and arsenic were below the action levels for these substances.

2. KSW performed several rounds of medical surveillance, including biological monitoring for blood lead and zinc protoporphyrin concentrations, on workers who cleaned crane motors. Blood-lead monitoring results were well below the allowable concentration of 40 µg lead/100 g whole blood.

3. KSW developed and implemented a *Respiratory Protection Program* designed to meet the requirements specified by 29 CFR 1910.134, 29 CFR 1910.1025(f), and 29 CFR 1910.1018(h).

4. KSW developed and implemented an *Arsenic, Lead, & Cadmium Control Program* to meet the requirements specified by 29 CFR 1910.1018, 29 CFR 1910.1025, and 29 CFR 1910.1027, respectively.

5. KSW developed and implemented a *Safe Job Procedure* incorporating key elements of a job-hazard analysis. This document provides affected workers with a description of the steps required to complete the cleaning task, and the hazards associated with, and control methods used for, each of these steps (e.g., using vacuum exhaust in conjunction with compressed air, the type of protective clothing and other PPE to wear).

6. KSW developed and implemented a program to instruct affected workers about the hazards associated with performing motor-cleaning operations, and the hazard controls used while performing these operations.

In addition to the CACV, KSW proposed to include the following conditions in its alternative means of compliance:

<sup>1</sup> This address also is the place of employment described in the application.

<sup>2</sup> The facility has local exhaust ventilation on the furnaces, and a canopy hood for the entire melt shop that captures most of the fugitive emissions.

### Engineering Controls and Related Conditions

1. Implement engineering controls (*i.e.*, a compressed-air vacuum-containment (CAVC) system) that maintain negative pressure inside the housing enclosing each crane motor when using compressed air to clean crane motors; this condition ensures that the exhaust airflow leaving the enclosure exceeds the inflow of compressed air by maintaining the volume of compressed air below 5,000 cubic feet per minute. This condition effectively prevents escape of lead and arsenic particulates from the crane-motor housing.

2. To prevent the spread and recirculation of captured lead and arsenic particulates from the vacuum truck, ensure that: (a) The exhaust air in the CVAC system passes through a high-efficiency particulate air (HEPA) filtration system prior to discharge; and (b) this filtered exhaust does not reenter the work areas inside the plant.

3. Ensure the continued effectiveness of the alternative means of compliance by: (a) Performing a pre-use or yearly inspection (whichever occurs more frequently) of all equipment and components used in the cleaning operations;<sup>3</sup> (b) documenting such inspections using a checklist; (c) replacing or repairing all defective parts and components; and (d) maintaining records of inspections and corrective actions. This condition ensures that the equipment performs continuously at optimum effectiveness, thereby minimizing release of lead and arsenic particulates into the ambient atmosphere during the crane motor-cleaning operation.

4. Before implementing revisions to the motor-cleaning process, modify the *Safe Job Procedure* accordingly, and inform affected workers of the modifications. This condition promptly informs and updates workers performing the crane motor-cleaning operation of revisions to work procedures and safety practices, thereby reducing the possibility that they could compromise the effectiveness of the CACV system and other protective measures.

### Exposure Monitoring

5. Perform personal-exposure monitoring (*i.e.*, Breathing-zone

sampling) of the workers for lead and arsenic particulates during the entire period they use compressed air to clean crane motors. For multiple crane motor-cleaning operations during the same maintenance cycle, perform such monitoring on at least two operations that are representative of exposures for all affected workers performing cleaning operations during the cycle. This condition allows KSW to monitor worker exposure to lead and arsenic particulates outside the crane-motor housing during the cleaning operation. KSW would use these monitoring results to determine the effectiveness of the CACV system, and to take corrective action if exposures are at or above the action levels for lead or arsenic.

6. Conduct breathing-zone sampling of affected workers for the entire work day (full shift) on days when workers use compressed air to clean crane motors. The full-shift sampling must include a separate sampling for the crane motor-cleaning operation, and a separate sampling for the portion of the shift that does not involve motor cleaning. This condition would assist KSW in identifying the source of elevated exposures (*i.e.*, at or above the action level) that occur during the shift so that it can correct or implement appropriate exposure-control measures to reduce worker exposures below the action levels for lead and arsenic.

7. Ensure that results for the two most recent rounds of full-shift sampling remain below the action levels for arsenic and lead. This condition ensures that KSW can maintain worker exposure levels below the action levels for lead and arsenic, thereby providing them with a safe and healthful workplace.

8. Submit the breathing-zone samples for lead and arsenic particulates to an analytical laboratory that meets and complies with the certification criteria of the American Industrial Hygiene Association's Industrial Hygiene Proficiency Analytical Testing Program. This condition provides assurance that the laboratory is performing the testing of breathing-zone samples in accordance with recognized analytical standards to maintain the accuracy, reliability, and reproducibility of the sampling results. Accurate, reliable, and reproducible sampling results ensure that worker exposure determinations are valid.

### Biological Monitoring

9. Within 30 calendar days after workers perform a motor-cleaning operation, conduct biological monitoring for blood-lead and zinc-protoporphyrin concentrations on every worker involved in that motor-cleaning operation. Blood-lead sample analysis

must be performed by a laboratory licensed by the U.S. Centers for Disease Control and Prevention (CDC), or a laboratory that obtained a satisfactory grade in blood-lead proficiency testing from CDC within the prior 12 months and has an accuracy (to a confidence level of 95 percent) within  $\pm 15$  percent or 6  $\mu\text{g}/100\text{ ml}$ , whichever is greater. This condition provides information (in addition to exposure monitoring) regarding worker exposure to lead particulates while involved in the crane motor-cleaning operation, and demonstrates the effectiveness of the alternative means of compliance. This condition also provides assurance that the laboratory is performing the analysis of blood-lead samples in accordance with recognized analytical standards to maintain the accuracy, reliability, and reproducibility of the sampling results.

10. Ensure that blood-lead results remain at or below 40  $\mu\text{g lead}/100\text{ g whole blood}$ . This condition supplements other conditions in providing information on the effectiveness of the alternative means of compliance, in addition to signaling the need to remove affected workers from the crane motor-cleaning operations in accordance with 29 CFR 1910.1025(k) should the blood-lead results exceed 40  $\mu\text{g lead}/100\text{ g whole blood}$ .

11. Whenever KSW assigns a new worker to perform the crane motor-cleaning operation, conduct biological monitoring of the worker prior to the worker beginning the cleaning operation. This condition establishes a baseline blood-lead level against which to compare subsequent biological samples and, thereby, assess the effectiveness of the alternative means of compliance.

12. KSW will not assign any worker to the crane motor-cleaning operation who declines to undergo the biological-monitoring procedures. This condition prevents worker exposure to the motor-cleaning operation without the benefit of biological monitoring to assess over-exposure to lead particulates.

### Notifications

13. Provide written notification to affected workers of the results of their individual personal-exposure and biological-monitoring results in accordance with the requirements of the arsenic and lead standards (29 CFR 1910.1018(e)(5), 29 CFR 1910.1018(n)(6)(iii), 29 CFR 1910.1025(d)(8) and 29 CFR 1910.1025(j)(3)(v)(A)(4)) within 15 working days from receipt of the results. The information provided to the affected workers will enable them to assess the effectiveness of the

<sup>3</sup> Examples of the equipment or components listed on the checklist include: air compressors; pressure regulators; gages; compressed-air hoses; nozzle-pressure reducer; crane-motor enclosures; flanges; vacuum-system operations, including the HEPA filtration system and replacement of used filters; vacuum hoses; and electric outlets and extension cords used during the cleaning process.

alternative means of compliance, *i.e.*, the adequacy of existing controls or the need for additional controls.

14. Whenever (a) personal-exposure monitoring results are at or above the action levels for lead (30 µg/m<sup>3</sup>) or arsenic (5 µg/m<sup>3</sup>), or (b) blood-lead monitoring results are above 20 µg lead/100 g whole blood, provide these results to OSHA's Peoria, IL, Area Office, OSHA's Chicago, IL, Regional Office, and OSHA's Office of Technical Programs and Coordination Activities within 15 working days of receiving the results, along with a written plan describing how KSW will reduce exposure levels or blood-lead levels. This condition will ensure that OSHA remains informed regarding the effectiveness of the alternative means of compliance, and will provide OSHA with an opportunity to assess KSW's plan to reduce exposures to lead and arsenic below the action levels for these substances. Under this condition, OSHA also can evaluate KSW's progress in restoring the effectiveness of the alternative means of compliance, and, if necessary, revise the conditions or revoke the variance should KSW not attain exposure levels below the action levels in a timely manner.

15. At least 15 calendar days prior to commencing any operation that involves using compressed air to clean crane motors, inform OSHA's Peoria, IL, Area Office and OSHA's Chicago, IL, Regional Office of the date and time the operation will commence. This condition provides OSHA with an opportunity to conduct on-site assessments of KSW's compliance with the conditions of the variance, and to ascertain directly the effectiveness of the alternative means of compliance.

16. Notify in writing OSHA's Office of Technical Programs and Coordination Activities as soon as KSW knows that it will: (a) Cease to do business; or (b) transfer the activities covered by the variance to a successor company. This condition allows OSHA to determine whether to revoke the variance or transfer the variance to the successor company.

#### Training

17. Implement the worker-training programs described in 29 CFR 1910.1018(o) and 29 CFR 1910.1025(l), including: (a) Initial training of new workers prior to their beginning a crane motor-cleaning operation; (b) yearly refresher training of all other workers involved in crane motor-cleaning operations; (c) documentation of this training; and (d) maintenance of the

training records.<sup>4</sup> This condition ensures that workers are knowledgeable regarding the hazards and corresponding hazard-control measures KSW implements to prevent worker exposure to harmful levels of airborne lead and arsenic particulates while engaged in the crane motor-cleaning. Training also provides workers with information necessary for them to assess KSW's compliance with the conditions of the variance and the effectiveness of the alternative means of compliance.

#### Miscellaneous Program Conditions

18. Implement the: (a) *Respiratory Protection Program* that meets<sup>5</sup> the requirements specified by 29 CFR 1910.134, 29 CFR 1910.1025(f), and 29 CFR 1910.1018(h); (b) provisions of KSW's *Arsenic, Lead, & Cadmium Control Program*; and (c) provisions of the *Safe Job Procedure*. This condition ensures that KSW will implement the programs and associated safe-work practices that prevent worker exposure to harmful levels of airborne lead and arsenic particulates while engaged in crane motor-cleaning operations, which are necessary for the continued effectiveness of the alternative means of compliance.

#### Monitoring Work Practices

19. Ensure that supervisors observe and enforce applicable safe-work practices<sup>6</sup> while workers are cleaning crane motors, document these supervisor observations and enforcement activities, and maintain these records. This condition ensures that affected workers implement the required safe-work practices during crane-motors cleaning operations. This condition will permit OSHA, KSW managers, workers, and worker representatives to assess compliance with the conditions of the variance and, therefore, determine the effectiveness of the alternative means of compliance.

#### Record Retention and Availability

20. Retain any records generated under these conditions for a minimum period of five years, unless an applicable OSHA standard specifies a

<sup>4</sup> As described by KSW's *Arsenic, Lead, & Cadmium Control Program* (see Exhibit 19).

<sup>5</sup> The term "meets" means that the *Respiratory Protection Program* must meet the requirements of 29 CFR 1910.134 and 29 CFR 1910.1025(f), not that OSHA determined that the program meets these requirements.

<sup>6</sup> Examples of safe-work practices include use of personal-protective equipment (including respirators, gloves, protective clothing) as defined by (a) KSW's *Respiratory Protection Program*; (b) provisions of KSW's *Arsenic, Lead, & Cadmium Control Program*; and (c) provisions of KSW's *Safe Job Procedure*.

longer period,<sup>7</sup> and make these records available to OSHA, affected workers, and worker representatives on request. This condition allows OSHA, KSW managers, workers, and worker representatives to assess the effectiveness of the alternative means of compliance over an extended period, and provides baseline measurements against which to evaluate the effectiveness of subsequent revisions made to the alternative means of compliance.

#### II. Variance From 29 CFR 1910.1025(h)(2)(i) and 29 CFR 1910.1018(k)(2)

KSW seeks a permanent variance from the provisions of the OSHA standards that regulate occupational exposure to lead and arsenic, specifically paragraph (h)(2)(i) of 29 CFR 1910.1025 and paragraph (k)(2) of 29 CFR 1910.1018. These paragraphs prohibit use of compressed air to clean floors and other surfaces where lead and arsenic particulates accumulate. These paragraphs specify the following requirements:

*29 CFR 1910.1025(h)(2)(i):* Floors and other surfaces where lead accumulates may not be cleaned by the use of compressed air.

*29 CFR 1910.1018(k)(2): Cleaning floors.* Floors and other accessible surfaces contaminated with inorganic arsenic may not be cleaned by the use of compressed air, and shoveling and brushing may be used only where vacuuming or other relevant methods have been tried and found not to be effective.

As an alternative to complying with housekeeping requirements as specified by 29 CFR 1910.1025(h)(2)(i) and 29 CFR 1910.1018(k)(2), KSW proposed to use compressed air supplemented by a vacuum-containment system discussed in section I ("Background") of this notice to perform cleaning of crane-motor housings. KSW asserted that use of the proposed compressed air supplemented by a vacuum-containment system protected its workers as least as effectively as the housekeeping requirements of 29 CFR 1910.1025(h)(2)(i) and 29 CFR 1910.1018(k)(2).

#### III. Comments on the Variance Application

The **Federal Register** notice (75 FR 38130) invited interested parties, including KSW and affected employees, to submit written data, views, and arguments regarding the grant or denial of the variance application submitted by

<sup>7</sup> For example, § 1910.1025(n)(1)(iii) and (n)(2)(iv) require employers to retain lead exposure-monitoring records and medical records for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

KSW. In addition, the **Federal Register** notice notified KSW and affected employees of their right to request a hearing on the application for a variance. OSHA received no comments on the variance application, nor did it receive any requests for a hearing.

#### IV. Decision

Keystone Steel and Wire Company seeks a permanent variance from the provisions of the OSHA standards that regulate occupational exposure to lead and arsenic, specifically paragraph (h)(2)(i) of 29 CFR 1910.1025 and paragraph (k)(2) of 29 CFR 1910.1018. These paragraphs prohibit use of compressed air to clean floors and other surfaces where lead and arsenic particulates accumulate. Paragraph (h)(2)(i) of 29 CFR 1910.1025 states that employers cannot use compressed air to clean floors and other surfaces where lead accumulates, while paragraph (k)(2) of 29 CFR 1910.1018 prohibits employers from using compressed air to clean floors and other accessible surfaces contaminated with inorganic arsenic, and permits the use of shoveling and brushing for this purpose only after employers try vacuuming or other relevant methods and find these methods to be ineffective.

As an alternative to complying with the housekeeping requirements specified by 29 CFR 1910.1025(h)(2)(i) and 29 CFR 1910.1018(k)(2), KSW proposed to adopt an alternative means of compliance that consists, in part, of a compressed-air vacuum-containment system mounted on a truck. A worker begins the crane-motor cleaning operation by inserting the nozzle of the compressed-air gun into an opening in the housing, then triggers the compressed air. The vacuum-containment system, which the worker activates prior to beginning the motor-cleaning operation, generates exhaust airflow inside the crane-motor housing. The vacuum, delivered through a hose, has an exhaust volume of 5,000 cubic feet per minute, and collects the lead and arsenic particulates that the worker removes with compressed air from the interior components of the crane motor. The system then deposits the particulates in a hopper, also mounted on the truck.

KSW designed a flanged end that fits over an opening in a housing that covers each crane motor. The vacuum hose is connected to, and is supported by, this flange. Thus, the combination of the housing, flanged end, compressed air, and the vacuum-containment system captures most of the fugitive particulates released during the motor-cleaning operation, thereby reducing

worker exposure to airborne lead and arsenic.

Under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the Agency finds that when KSW complies with the conditions of the following order, the working conditions of the KSW's workers will be at least as safe and healthful as if KSW complied with the working conditions specified by paragraphs (h)(2)(i) of 29 CFR 1910.1025 and (k)(2) of 29 CFR 1910.1018. This decision is applicable in all States under Federal OSHA enforcement jurisdiction.

#### V. Order

OSHA issues this order authorizing the Keystone Steel and Wire Company (hereafter, "the employer") to comply with the following conditions instead of complying with paragraphs (h)(2)(i) of 29 CFR 1910.1025 and (k)(2) of 29 CFR 1910.1018. This order applies only in Federal OSHA enforcement jurisdictions, and does not permit the employer to vary compliance with any other provisions of 29 CFR 1910.1025 and 29 CFR 1910.1018.

##### 1. Scope of the Permanent Variance

This permanent variance applies only at the employer's melt shop when using compressed air to clean crane motors during maintenance operations.

##### 2. Engineering and Related Conditions

(a) The employer must:

(1) Use engineering controls (*i.e.*, a compressed-air vacuum-containment (CAVC) system) that maintain negative pressure inside the housing enclosing each crane motor when using compressed air to clean crane motors, and ensure that the vacuum-exhaust airflow leaving the enclosure exceeds the inflow of compressed air by maintaining the volume of compressed air below 5,000 cubic feet per minute.

(b) Ensure that the:

(1) Exhaust air in the CAVC system passes through a high-efficiency particulate air (HEPA) filtration system prior to discharge; and

(2) Filtered exhaust does not reenter the work areas inside the plant.

(c) Ensure the continued effectiveness of the alternative means of compliance by:

(1) Performing a pre-use or yearly inspection (whichever occurs more frequently) of all equipment and components used in the cleaning operations;<sup>8</sup>

<sup>8</sup> Examples of the equipment or components listed on the checklist include: air compressors; pressure regulators; gages; compressed-air hoses;

(2) Documenting such inspections using a checklist;

(3) Replacing or repairing all defective parts and components; and

(4) Maintaining records of inspections and corrective actions.

(d) Before implementing revisions to the motor-cleaning process, modify the *Safe Job Procedure* accordingly, and inform affected workers of the modifications.

##### 3. Exposure Monitoring

*The employer must:*

(a) Perform personal-exposure monitoring (*i.e.*, breathing-zone sampling) of the workers for lead and arsenic particulates during the entire period they use compressed air to clean crane motors. For multiple crane motor-cleaning operations during the same maintenance cycle, perform such monitoring on at least two operations that are representative of exposures for all affected workers performing cleaning operations during the cycle.

(b) Conduct breathing-zone sampling of affected workers for the entire work day (full shift) on days when workers use compressed air to clean crane motors. The full-shift sampling must include separate sampling during the crane motor-cleaning operation, and a separate sampling for the portion of the shift that does not involve motor cleaning.

(c) Ensure that results for the two most recent rounds of full-shift sampling remain below the action level for arsenic and lead.

(d) Submit the breathing-zone samples for lead and arsenic particulates to an analytical laboratory that complies with the certification criteria of the American Industrial Hygiene Association's Industrial Hygiene Proficiency Analytical Testing Program.

##### 4. Biological Monitoring

*The employer must:*

(a) Within 30 calendar days after workers perform a motor-cleaning operation, conduct biological monitoring for blood-lead and zinc-protoporphyrin concentrations on every worker involved in that motor-cleaning operation. Blood-lead sample analysis must be performed by a laboratory licensed by the U.S. Centers for Disease Control and Prevention (CDC), or a laboratory that obtained a satisfactory grade in blood-lead proficiency testing from CDC within the prior 12 months

nozzle-pressure reducer; crane-motor enclosures; flanges; vacuum-system operations, including the HEPA filtration system and replacement of used filters; vacuum hoses; and electric outlets and extension cords used during the cleaning process.

and has an accuracy (to a confidence level of 95 percent) within  $\pm 15$  percent or 6  $\mu\text{g}/100$  ml, whichever is greater.

(b) Ensure that blood-lead results remain at or below 40  $\mu\text{g}$  lead/100 g whole blood.

(c) Whenever the employer assigns a new worker to perform the crane motor-cleaning operation, conduct biological monitoring of the worker prior to the worker beginning the cleaning operation.

(d) Not assign any worker to the crane motor-cleaning operation who declines to undergo the biological-monitoring procedures.

#### 5. Notifications

(a) *The employer must:*

(1) Provide written notification to affected workers of the results of their individual personal-exposure and biological-monitoring results in accordance with the requirements of the arsenic and lead standards (29 CFR 1910.1018(e)(5), 29 CFR 1910.1018(n)(6)(iii), 29 CFR 1910.1025(d)(8), and 29 CFR 1910.1025(j)(3)(v)(A)(4)) within 15 working days from receipt of the results.

(2) Whenever personal-exposure monitoring results are at or above the action levels for lead (30  $\mu\text{g}/\text{m}^3$ ) or arsenic (5  $\mu\text{g}/\text{m}^3$ ), or blood-lead monitoring results are above 20  $\mu\text{g}$  lead/100 g whole blood, provide these results to OSHA's Peoria, IL, Area Office, OSHA's Chicago, IL, Regional Office, and OSHA's Office of Technical Programs and Coordination Activities within 15 working days of receiving the results, along with a written plan describing how the employer will reduce exposure levels or blood-lead levels.

(3) At least 15 calendar days prior to commencing any operation that involves using compressed air to clean crane motors, inform OSHA's Peoria, IL, Area Office and OSHA's Chicago, IL, Regional Office of the date and time the operation will commence.

(b) Notify in writing OSHA's Office of Technical Programs and Coordination Activities as soon as the employer knows that it will:

(1) Cease to do business; or

(2) Transfer the activities covered by this grant to a successor company.

#### 6. Training

The employer must implement the worker-training programs described in 29 CFR 1910.1018(o) and 29 CFR 1910.1025(l), including:

(a) Initial training of new workers prior to their beginning a crane motor-cleaning operation;

(b) Yearly refresher training of all other workers involved in crane motor-cleaning operations;

(c) Documentation of this training; and

(d) Maintenance of the training records.<sup>9</sup>

#### 7. Miscellaneous Program Conditions

*The employer must implement the:*

(a) *Respiratory Protection Program* that meets the requirements specified by 29 CFR 1910.134, and 29 CFR 1910.1025(f), and 29 CFR 1910.1018(h);

(b) Provisions of the employer's *Arsenic, Lead, & Cadmium Control Program*; and

(c) Provisions of the *Safe Job Procedure*.

#### 8. Monitoring Work Practices

*The employer must ensure that supervisors:*

(a) Observe and enforce applicable safe-work practices<sup>10</sup> while workers are cleaning crane motors;

(b) Document these supervisor observations and enforcement activities; and

(c) Maintain these records.

#### 9. Record Retention and Availability

*The employer must:*

(a) Retain any records generated under the conditions specified in this grant for a minimum period of five years, unless an applicable OSHA standard specifies a longer period;<sup>11</sup> and

(b) Make these records available to OSHA, affected workers, and worker representatives on request.

#### VI. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC, directed the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 4-2010 (75 FR 55355), and 29 CFR part 1905.

<sup>9</sup> As described by KSW's *Arsenic, Lead, & Cadmium Control Program*.

<sup>10</sup> Examples of safe-work practices include use of personal-protective equipment (including respirators, gloves, protective clothing) as defined by (a) KSW's *Respiratory Protection Program*; (b) provisions of KSW's *Arsenic, Lead, & Cadmium Control Program*; and (c) provisions of KSW's *Safe Job Procedure*.

<sup>11</sup> For example, § 1910.1025(n)(1)(iii) and (n)(2)(iv) require employers to retain lead exposure-monitoring records and medical records for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

Signed in Washington, DC, on October 7, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

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**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption No. 2010-30; Application No. L-11568]

#### Individual Exemption Involving General Motors Company, General Motors Holdings LLC, and General Motors LLC, Located in Detroit, MI

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Grant of individual exemption.

**SUMMARY:** This document contains an exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). The transactions involve the UAW GM Retiree Medical Benefits Plan (the New UAW-GM Retirees Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust) (collectively the New Plan).<sup>1</sup> The exemption will affect the New Plan, and its participants and beneficiaries.

**DATES:** *Effective Date:* This exemption is effective as of July 10, 2009.

**SUPPLEMENTARY INFORMATION:** On September 18, 2009, the Department published in the **Federal Register** a notice of proposed individual exemption from the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of ERISA (the Notice).<sup>2</sup> The proposed exemption was requested in an application filed by General Motors Corporation (Old GM) pursuant to section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990). Subsequent to the submission of its application, Old

<sup>1</sup> In the notice of proposed exemption published with respect to the exemption granted herein (74 FR 47963, September 18, 2009), the Department referred to UAW GM Retiree Medical Benefits Plan as "the New GM VEBA Plan" and collectively referred to the New GM VEBA Plan and the VEBA Trust as the "VEBA." At the request of the Applicant, the Department has substituted the terms "the New UAW-GM Retirees Plan" and "the New Plan," respectively, therefor.

<sup>2</sup> 74 FR 47963.