

IM-95-05

November 14, 1994

Jim Chartier

GJC Inc.

P.O. Box 25016

Eugene, Oregon 97402

Dear Mr. Chartier:

This is in response to your November 9, 1994 letter requesting an interpretation of the Lead in Construction regulations. You were concerned that by providing an "observer" with a respirator as required by 1926.62(o)(2) there may be a possibility of a fatality and criminal negligence lawsuit against your firm. You felt the "observer" could incur injury while in an area with high lead exposure. You also expressed concerns that the "observer" is not required by this regulation to be properly fit tested, trained, or receive a favorable medical evaluation prior to wearing a respirator.

The intent of 1926.62(o)(1) is to provide *affected employees or their designated representatives* an opportunity to observe the lead exposure monitoring required by the regulation. Any affected employee or group of employees may choose to designate a representative to observe this monitoring. Such a representative may be a union steward, a safety committee member, or a legal counselor. A consultant or air technician hired by the owner or prime contractor is not a "designated representative" of the affected workers unless the workers specifically choose to so designate that individual. A designated representative must have some authority and responsibility to represent the safety and health interests of the affected employee(s).

Although you suggest that an 80 year old grandmother of an employee may have interest and concern regarding the lead exposure monitoring, such persons were not necessarily intended by the authors of this safety and health regulation to be included as "designated representatives." Similarly, casual acquaintances, friends, or visitors to the work site are not "designated representatives" of the affected employees.