Welding Rod Litigation

Challenge To American Welding Society’s Role In Health Monitoring And Voluntary Standard Development

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Major Policy Issue

The easier it is for plaintiffs to sue standard setting organizations …

the greater the danger that society will ultimately lose the benefit of safety standards
Sec. 102. The Congress finds the following:

* * * *

(5) Technical standards are written by hundreds of nonprofit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A-119, as revised February 18, 1998, of the Office of Management and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

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(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

(8) Private developers of the technical standards that are used as Government standards are often not similarly protected leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.
“Furthermore, we have some concern that requiring Pfizer to stand trial for civil conspiracy and concert of action predicated solely on its exercise of its First Amendment freedoms could generally chill the exercise of the freedom of association by those who wish to contribute to, attend the meetings of, and otherwise associate with trade groups and other organizations that engage in public advocacy and debate.”

*In re Asbestos School Litigation,* 46 F.3d 1284, 1295-96 (3d Cir. 1994).
History of AWS and American National Standards Institute (ANSI) Involvement with Z49.1 Committee

1919 AWS Founded
1943 AWS asks American Standards Association (ASA) to initiate development of American War Standard for welding safety
1944 American War Standard Z49.1 published
1946 ASA Sectional Committee Z49 organized under sponsorship of AWS
1966 ASA name changed to ANSI
1983 Accreditation Standards Committee (ASC) Z49 accredited by ANSI
1991 AWS accredited as an ANSI organization
AWS/Z49 Standards Are Voluntary

Policy Statement on Use of AWS Standards

All standards of the American Welding Society (codes, specifications, recommended practices, methods, etc.) are voluntary consensus standards that have been developed in accordance with the rules of the American National Standards Institute.

ANSI/ASC Z49.1 - 1983
An American National Standard
Safety in Welding and Cutting
8.1.8.1 All filler metals and fusible granular materials shall carry the following notice, as a minimum, on tags, boxes, or other containers:

**CAUTION**

Welding may produce fumes and gases hazardous to health. Avoid breathing these fumes and gases. Use adequate ventilation. See ANSI Standard Z49.1, "Safety in Welding and Cutting" published by the American Welding Society.
249.1 Incorporated into OSHA Regulations for Welding in 1971
29 C.F.R. § 1910 subpart Q

- Requires Z49.1 General CAUTION Notice for all exposures
- Requires Z49.1 Special WARNING Notice for Cadmium
- Requires Z49.1 special CAUTION notice for fluorides
- OSHA separately highlights the “Major Six” (fluorine, zinc, lead, beryllium, cadmium, mercury)
- No separate mention of manganese or any of the “Other Twelve”
The “Top Two”
-- First paired for special warnings Z49.1 (1967)

The “Major Six”
-- First highlighted together for Z49.1 (1958) focused concern:

The “Other Twelve”
-- First grouped together as “Other Materials of Toxic Significance”: Z49.1 (1958)

The “Other Fifteen”
-- First grouped together as “Special Ventilation Concerns”: Z49.1 (1983)
AWS Is A Professional Society, Not A Trade Association

Mission: “… to advance the science technology and application of welding and allied processes including: joining, brazing, soldering, cutting and thermal spray.”

Membership: 50,000

“Membership consists of engineers, scientists, educators, researchers, welders, inspectors, welding foremen, company executives and officers, and sales associates.”

Source: www.aws.org/about
Effects of Welding on Health Vols. I-XII

- Series begun with first edition in 1979
- Collects and summarizes all significant published literature on welding and health
- Updated every few years
- Available in AWS catalog
Effects of Welding on Health I (1979)

- Prepared by AWS Safety and Health Committee
- Based on research performed at Franklin Research Center
- Includes lengthy section on “Nervous System” effects
- Includes sub-section on “manganese intoxication”
- Cites Beintker (1932) and multiple other published case studies
- Describes symptoms of manganese intoxication