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Open Source America's Operating System

"It's Not Just A Good Idea—It's The Law!"

September 18, 2013

Ms. Rita L. Williams
Communications Manager
ACGIH®
1330 Kemper Meadow Drive
Cincinnati, Ohio 45240-1634

Dear Ms. Williams:

I am receipt of your communication of September 17 regarding the publication of the ACGIH® publication, "Industrial Ventilation: A Manual of Recommended Practice," 23rd Edition at <http://archive.org/details/gov.law.acgih.manual.1998>. We are responsible for uploading this document. In addition, you will find this document on our web site at <https://law.resource.org/pub/us/cfr/ibr/001/acgih.manual.1998.pdf>.

The 23rd Edition of "Industrial Ventilation: A Manual of Recommended Practice" was Incorporated by Reference by the Environmental Protection Agency at 40 CFR 63.1506(c)(1) and 40 CFR 63.2984(e) and by HHS/PHS at 42 CFR 52b.12(c)(9). Incorporation by reference is not a casual affair and requires a carefully followed procedure by the governmental agency and the explicit approval of the Director of the Office of the Federal Register.

As this vital public safety standard has been incorporated into law, the standard contained in this document is the law of the United States, and people in the United States are compelled to obey it. Long-standing precedent of the United States Supreme Court holds that copyright claims cannot prevent citizens from reading and speaking the law. See *Wheaton v. Peters*, 33 U.S. 591 (1834); *Banks v. Manchester*, 128 U.S. 244 (1888).

While the standards drafted by the American Conference of Governmental Industrial Hygienists, now known as ACGIH®, were entitled to copyright protection when issued, once they were incorporated into regulations these standards became the law, and thus have entered the public domain. Chief Judge Edith H. Jones of the 5th Circuit expressed this principle clearly in her opinion in *Veeck v. Southern Building Code Congress*, which concerned a model building code incorporated in the law of two Texas towns:

"The issue in this en banc case is the extent to which a private organization may assert copyright protection for its model codes, after the models have been adopted by a legislative body and become "the law." Specifically, may a code-writing organization prevent a website operator from posting the text of a model code where the code is identified simply as the building code of a city that enacted the model code as law? Our short answer is that as law, the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives. As model codes, however, the organization's works retain their protected status." 293 F.3d 791 (5th Cir. 2002) (en banc).

As you can see by looking at the document in question, a cover sheet has been prepended to each clearly spelling out the section of the Code of Federal Regulations that has incorporated by reference this document into law. Please note that we were careful to only publish the specific document incorporated by law, and that ACGIH® sells the 25th and subsequent editions of the Manual but does not appear to sell the 23rd Edition. As the 23rd Edition is the one required by law and as it has been duly incorporated into law, we respectfully decline to remove this document and respectfully decline to request permission.

Sincerely yours,



Digitally signed by Carl
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