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May 7, 1982

Docket Officer
Docket H-022
U.S. Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue, N.W.
Room S-6212
Washington, D.C. 20210

Re: Hazard Communication: Notice of Proposed Rulemaking
47 Fed. Reg. 12,092 (March 19, 1982)

Dear Sir:

The following comments are submitted on behalf of Conoco Inc. in response to the proposed rulemaking on hazard communication. Conoco is committed to the goal of the Occupational Safety and Health Administration (OSHA) to provide a safe workplace for all employees. Conoco has had the best overall safety record of the fourteen largest oil companies for the last eight years. Since Conoco strives for improvement for itself and the industry, the following comments are offered to help OSHA achieve a practicable labeling standard that will provide actual safety advantages for all employees.

Conoco favors the inclusion of a preemption provision to avoid the economic burden of federal as well as state regulation. Dual regulation can lead to conflicting provisions and costly compliance. Employees and the economy can be better served by a uniform and federal standard.

The purpose of hazard communication is to protect employee health and safety. In most instances the OSHA proposed rule succeeds in pursuing this goal. However, two important factors must be kept in mind: (1) whether the standard or its specific provisions will actually protect employee health and safety and (2) whether the authority of the Occupational Safety and Health Act has been exceeded. Employees are not aided by a confusing, duplicative system which is more likely to be ignored than read and digested. Consequently, an overall streamlining of the standard is necessary so that information is most effectively communicated. The standard should be a true performance one: it should direct employers to identify and warn of hazards but allow employers to determine the most effective manner in which to do so, given

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the employer's knowledge of its employees and its workplace. Secondly, the Act expressly addresses safety and health in the context of the employer-employee relationship. It does not contemplate the obligations of a manufacturer to the employees of another entity.

The studies which OSHA has utilized for its cost-benefit analysis have been seriously questioned by the scientific community. For example, H. B. Demopoulos and E. G. Gutman have posited one to five percent as the range of cancer incidence related to occupational exposure,^{1/} rather than the twenty to forty percent suggested by the Health and Human Services study. Conoco respectfully recommends that the cost-benefit analysis be reworked using a figure that is considered to be credible.

I. SCOPE AND APPLICATION

Section 1910.1200(a)(3) provides that mixtures containing at least one percent of a hazardous chemical are to be considered hazardous unless the mixture is evaluated and found not to be hazardous. It is recommended that the language be changed to read:

(3) Any mixture that is comprised of at least one (1) percent (by weight or volume) of any chemical determined to present a serious chronic health effect shall be considered hazardous for the purposes of this section unless the mixture has been evaluated as a whole and the data indicates it is not hazardous.

It is not clear what is required in terms of the necessary evaluation; preferably, the manner of evaluation should be determined by the manufacturer. It may include testing, reference to scientific literature, results of the testing of similar substances, or other alternatives.

^{1/} Demopoulos and Gutman, Cancer in New Jersey and Other Complex Urban-Industrial Areas, 3 #4 J. Environ. Pathol. & Toxicol. 219-35 (1980).

Section (a)(5) exempts chemicals developed and used in research laboratories from coverage under this rule. It is suggested that the exemption should read: "This section does not apply to chemicals being developed and used by qualified personnel in laboratory settings." This avoids the confusing delineation of research activities from other laboratory activities, such as quality control, which also involve small quantities of chemicals being handled by knowledgeable personnel. The administrative and economic burden of labeling of chemicals in other laboratory settings is not justified since the personnel is aware of the potential hazards and has access to the material safety data sheets (MSDS) on the various chemicals.

Conoco agrees with the Chemical Manufacturers Association that the hazard communication rule should also exempt chemicals purchased by the employer for consumption in the workplace. Many substances are purchased by each employer for use in its workplace, such as various cleansers or fire-fighting chemicals. Unless these products are altered by the employer, the consuming employer should not be required to list the chemicals or label the containers. The employer can make available to its employees the MSDS of the manufacturer, and the information therein adequately informs and protects the employees.

Conoco further agrees with the American Petroleum Institute that all chemical substances already subject to hazard communication regulation by other federal agencies, such as the Atomic Energy Commission or the Department of Transportation, should be exempted from coverage under this standard. Compliance with different, and possibly conflicting, labeling and educational provisions would be costly and would yield no additional benefit to employees.

II. DEFINITIONS

Section 1910.1200(b) defines "container" in an extremely broad manner. The express exclusion of "pipes or piping systems" should include process and storage vessels that are an integral part of the process piping system. These, too, can be located in remote locations, affording minimal opportunities of exposure.

The definition of "hazardous chemical" is likewise overly broad. It is suggested that the inclusion of compressed gas and its separate definition be deleted. Gas of a hazardous nature that is compressed is covered by the rest of the hazardous chemical definition since the definition addresses the hazardous nature of the material, rather than the state in which it is found. This would eliminate the necessity of labeling compressed air containers, for example, which clearly do not contain a hazardous chemical.

III. HAZARD DETERMINATION AND COMMUNICATION PROGRAM

Section 1910.1200(c)(2)(ii) requires each manufacturer to prepare a list of all "hazardous chemicals known to be present in the workplace". This is a burdensome and costly requirement that does not afford health and safety advantages to employees. The vital information to be conveyed is the hazards involved; those should be identified and communicated to employees.

IV. LABELS AND PLACARDS

Section 1910.1200(d)(2) states that the "employer shall ensure that each container of hazardous chemicals" is labeled. Conoco agrees that the employer should shoulder the obligation to communicate information on hazardous chemicals to its employees but the manner in which it can most effectively do so varies with the product and work area involved. A true performance standard would require the employer to make such communications to the employees, but leave the method of communication to the employer's informed discretion. It is further inappropriate to place the employer into a position of insuring that labels used to inform employees stay in place. For example, if the employer labels the container and the employee discards the label, the employer should not be in violation of this provision. Consequently, it is suggested that the provision read:

The employer shall label, tag or mark each container of hazardous chemicals, provide material safety data sheets, oral or written instructions, or use any other appropriate form of communication to inform employees of the hazards of substances and mixtures to which they are exposed.

If labeling is still required, it is considered unnecessary to require the chemical names on the label. The goal of providing additional information to employees for their safety is furthered by communicating the hazard; the names of the chemicals is not information that provides a safer work environment. This requirement is burdensome without yielding any clear benefit to employee health and safety. Identifying the hazard without listing each chemical name would also eliminate the problem presented by tank farms with changing contents. The placard should identify the hazards of any chemicals that may be present in that work area. Under the current scheme, changing tank contents would necessitate posting a different sign each time; posting only the hazard would somewhat diminish that problem.

Section (d)(3) requires labeling of each hazardous chemical container "leaving the workplace." This provision exceeds the authority granted by Congress to OSHA because it imposes an obligation on the manufacturer to non-employees.

The section (d)(5) small container exemption should be changed. It would be administratively easier to have a small container exemption across the board rather than trying to interpret the current limiting language and apply it to each individual situation.

V. MATERIAL SAFETY DATA SHEETS

Section 1910.1200(e)(2)(i) requires the chemical and common names, the CAS number, and the label identity "for all hazardous ingredients which comprise greater than one (1) percent of the chemical" to be listed on the MSDS. This would necessitate the identification of chemicals that may be hazardous when isolated or in a greater concentration but are not hazardous in the specific mixture. Such identification would not provide health or safety protection since the mixture is not hazardous. To avoid the costs of this additional reporting, the following language is recommended: "The chemical and common name(s) or CAS number(s) for all ingredients which comprise greater than one (1) percent of any chemical determined to present a serious chronic health effect, except as provided by paragraph (g) of this section on trade secrets;".

Section (e)(2)(iv) necessitates the inclusion of "medical conditions which may be aggravated by exposure to the chemical". Since physical reaction is a highly individualistic matter, it is impracticable to determine and list all medical conditions which may be aggravated by such exposure. It is suggested that the language be deleted. Recognized acute and chronic health effects is the critical information that should be conveyed for employee protection.

Section (e)(5) provides that chemical manufacturers "shall ensure" that an MSDS is sent with the initial shipment and that an updated MSDS is sent with the first shipment after updating. The most practical and practicable method of furnishing an MSDS is by mail to the purchaser upon the purchaser's request. It is much more likely to reach the purchaser, in readable condition, and be properly made available by the purchaser to its employees. Updated MSDS's can be mailed to the requesting purchaser when reorders are made. Even with the mail as the effective way to convey the MSDS, it is inappropriate to impose the role of insurer upon the manufacturer. The MSDS could be lost in the mail or in shipment without any manufacturer negligence. The recommended language for this provision is: "Chemical manufacturers shall provide manufacturing purchasers of hazardous chemicals an appropriate material safety data sheet and updated versions of same upon request." This change eliminates the problem of holding the producer responsible to downstream employees; instead the purchaser would be responsible for conveying the MSDS to its own employees. This change also eliminates the possibility of the OSHA standard overlapping with regulations of the Department of Transportation.

VI. EMPLOYEE INFORMATION AND TRAINING

Section 1910.1200(f) requires employee training on "hazardous chemicals in the workplace". It is recommended that "work area" should be substituted for "workplace". This would make the scope of the initial training consistent with subsequent training, which recognizes that information and training on hazardous chemicals in one's work area is the more appropriate manner to protect workers. This section also requires employee training on hazardous chemicals "whenever a new

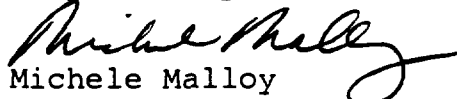
hazardous chemical is introduced". In some facilities, there can be a constant interchange of products; the rule should allow a reasonable amount of time to train employees on newly introduced chemicals. This would allow for a more adequate training program rather than an immediate and cursory one.

VII. EFFECTIVE DATES

The schedule of effective dates does not take into consideration that larger employers with more and larger facilities will have a much greater burden in achieving initial compliance with the standard. The compliance timetable should logically be reversed. Absent reversal of the timetable, the amount of time in which to comply should be equal for all employers.

Conoco again affirms its support of OSHA's attempt to better protect employee safety and health by hazard communication. Conoco trusts that OSHA will consider the above comments and that the final rule will be both an effective and efficient solution.

Respectfully submitted,


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