

A G E N D A
CMA EXECUTIVE COMMITTEE MEETING
10:00 a.m., Tuesday, February 12, 1980
CMA Headquarters (Room 407)
Washington, D. C.

1. Call to order - Chairman Morley
2. Administrative Matters:
 - a. Approval of Minutes of January 7, 1980 meeting
 - b. Approval for membership: American Chrome & Chemicals, Inc.,
and West Design Chemical Group, West Chemical Products, Inc.
3. Introduction of Issue: Superfund - L. Fernandez
 - a. Legislative Update - W. M. Stover and J. T. Estes
 - b. New inventory data on sites - C. Sercu
 - c. Scope of Legislative Proposals - E. B. Frost
 - (1) Release concept
 - (2) Degree of cleanup
 - (3) Natural resources repair
 - (4) Spills
 - (5) Pre and post RCRA
 - (6) Third party damages
 - d. Liability issues: - C. Kent
 - (1) Causation
 - (2) Joint and several
 - (3) Strict liability
 - (4) Defenses
 - (5) Limits on Liability
 - (6) Conrad Kent/CMA Proposals
 - e. Funding Concepts - R. A. Roland
4. New Business
5. Adjourn

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MINUTES OF MEETING
CMA EXECUTIVE COMMITTEE
CMA Headquarters, Washington, D. C.
February 12, 1980

1. The meeting was called to order at 10:00 a. m. by the chairman.
There were present:

H. Barclay Morley, Chairman	
J. Earl Burrell	L. John Polite, Jr.
Louis Fernandez	Robert A. Roland
Vincent L. Gregory, Jr.	William G. Simeral
John M. Henske	Raymond C. Tower

Bruce M. Barackman, Secretary
Edmund B. Frost, General Counsel

By Invitation:

Timothy F. Burns, CMA
Geraldine V. Cox, CMA
John T. Estes, Allied Chemical Corporation
Donald D. Evans, CMA
Richard F. Gold, Stauffer Chemical Company
Stephen L. Goldstein, Olin Corporation
Carl A. Gosline, CMA
Juliane B. Harvey, CMA
Conrad S. Kent, Stauffer Chemical Company
Keith R. McKennon, The Dow Chemical Company
Victor H. Peterson, CMA
James C. Rowland, Union Carbide Corporation
Charles L. Sercu, Dow Chemical U. S. A.

2. Minutes of the Last Meeting The minutes of the January 7, 1980 meeting, as distributed, were approved.
3. Membership Applications On the recommendation of the Membership Committee, West Design Chemical Group, Division of West Agro-Chemical, Inc.; and American Chrome & Chemicals, Inc. were elected to membership in the Association.
4. Report on Conseil Européen des Fédérations de l'Industrie Chimique (CEFIC) Mr. Henske described a recent meeting at Brussels involving

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himself, Mr. Morley and Messrs. Solvay and Lanz, president designate and president, respectively, of CEFIC, to explore how our International Advisory Group could better relate to CEFIC on issues concerning health and environmental regulations on both sides of the Atlantic. CEFIC intends some organizational modifications so that they can better interface with us. Informal meetings will continue at periodic intervals to ensure that the two organizations don't work at cross purposes.

5. Superfund Mr. Morley introduced the subject by emphasizing the importance of Superfund to the chemical industry, stressing the necessity for everyone to understand the issues involved, and suggesting the desirability of considering a special committee to respond to day-to-day developments, possibly along the lines of the Association's committee established at the time TSCA was before the Congress.

Dr. Fernandez, concurring, described recent meetings of the Superfund Steering Committee to discuss strategy regarding the three major issues -- scope, liability, and funding. Up front throughout the deliberations was the official position of CMA which remains unchanged.

Mr. Burns reported on the present status of proposed legislation, Exhibit A. Mr. Estes observed that while a bill may be reported out of subcommittee this congressional session, it is too early to judge the probability of its enactment. He noted that the legislation proposed is so unacceptable that it is almost unamendable.

By means of a VuGraph presentation, Mr. Sercu provided estimates, derived from various surveys, of the size of the problem relating to hazardous substances spills and disposal sites. He noted that, based on available data, it is estimated that it could cost up to \$300 million to clean up orphan disposal sites.

Mr. Frost addressed the scope of S. 1480, inviting attention to the "Staff Working Paper" on the bill distributed to those present, and discussed certain of its provisions comparing them to the CMA position on Superfund, Exhibit B.

For a better understanding of his comments on liability issues relating to S. 1480 which were to follow, Mr. Kent presented a Glossary of Terms, Exhibit C. He then commented on the onerous concepts contained in S. 1480 concerning causation, joint and several, strict liability, defenses, and limits on liability. He concluded with a review of Liability Principles, Exhibit D, proposed for CMA's endorsement. It was received without objection. A background paper discussing in depth the liability/causation issues in Superfund was distributed to those present.

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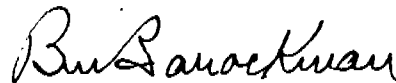
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After excusing invitees and staff, except for Messrs. Barackman, Frost, Gold, and Goldstein, the committee convened in executive session to consider further the implications of pending Superfund legislation. The previously established Association position in regard to Superfund concerning scope, liability and funding was reviewed and reaffirmed. Reflecting the importance of the Superfund issue, it was agreed to establish an ad hoc Superfund Policy Group reporting to the Executive Committee. It would be composed of about six members, two of whom would be from the Executive Committee. Dr. Fernandez was appointed group chairman with authority to speak for CMA on Superfund policy matters within policy limitations to be determined. The need for a charter and mode of operation was recognized. The committee then adjourned for lunch, after which it continued in regular session.

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Mr. Morley reviewed the establishment of the Executive Committee Superfund Policy Group and the appointment of Dr. Louis Fernandez as the group chairman. Other members of the group would include Messrs. Robert A. Roland, John T. Estes, Allied Chemical Corporation, Conrad S. Kent, Stauffer Chemical Company, and Charles L. Sercu, Dow Chemical U.S.A. (Mr. W. C. Krumrei was named subsequently to complete the group.) Discussion then followed relating to policy guidance for the group. The sense of the discussion was that the group, working with the CMA structures already in place, could speak for the Association through the group's chairman in regard to Superfund policy matters as circumstances may require. It was understood that any posture taken would reflect the established official position of CMA and that contemplated changes in strategy and actions considered to be appropriate and in the Association's best interest could be directed subject to prior consultation with the Executive Committee.

A concern was then expressed regarding CMA's posture vis-à-vis initiatives at the state level in connection with disposal sites. The Executive Committee was advised that the mechanism is being developed for CMA to interface with states in regard to hazardous waste matters.



Bruce M. Barackman
Secretary

Certified correct:



H. Barclay Morley, Chairman
CMA Executive Committee

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SUPERFUND: LEGISLATIVE STATUS UPDATE

Congressional activity on Superfund proposals have moved into the legislative stage of Subcommittee markups.

The Senate Environment and Public Works' Subcommittees on Environmental Pollution and Resource Protection released, January 31, 1980 a "Staff Working Paper" on S. 1480. The "Staff Working Paper" was the focus of the Subcommittees markups held February 5, 6, 7, and 8, 1980. The Subcommittees are scheduled to continue markup February 19, 20, 21, 1980.

In the House

The Interstate and Foreign Commerce Subcommittee on Transportation and Commerce still has the Superfund issue listed as a top priority for 1980, but no action is scheduled at this time. Representative James Florio (D-NJ), Subcommittee Chairman, has initiated meetings with CMA and other industry groups to study possible solutions to the Superfund issue.

Representative Bob Eckhardt (D-TX), Chairman of the Subcommittee on Oversight and Investigations, is about to release a third draft of his Superfund proposal. Representative Eckhardt is not on the Subcommittee with jurisdiction, thus he will wait for full Committee consideration before he advances his Superfund concept.

The House Public Works and Transportation Subcommittee on Water Resources has taken no further action to date on H.R. 85, the oil spill Superfund Bill. Key questions before the Subcommittee will be the creation of a Superfund for hazardous substances spills, and whether or not to meld such a fund with the ocean oil spills bill.

The Merchant Marine and Fisheries Committee, which originated H.R. 85, is thought to prefer enactment of a separate oil spill Superfund.

The Administration and the Environmental Protection Agency (EPA) continue to pursue a Superfund that would include coverage of oil spills, hazardous substances spills and abandoned and inactive waste disposal sites. EPA continues to come under attack for its failure to provide concrete figures to justify its complex and massive approach. EPA still views Superfund as a top priority issue.

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DIMENSIONS OF THE SCOPE ISSUE
IN THE SUPERFUND DEBATE

Exhibit B

S.1430

CMA Position

S I T U A T I O N S C O V E R E D	Any Release*	H A Z A R D P R E S E N T E D	Zero Risk*	N A T U R E M A T E R I A L	Toxic Under*
	Permitted Air Emissions				ANY Circumstance
	Air Spills				Marginal Toxicity
	402 Effluent				
	Water Spills		Marginal Risk		Chronically* Toxic
	Land Spills				
	Oil Spills				
	Any RCRA Landfill				
	Any Non RCRA Landfill		Substantial Risk		Acutely* Toxic
	Orphan* Dumpsite		Imminent* Risk		Ultra* Hazardous

SCOPE OF THE PROBLEM
SUBJECT MATTER COVERAGE

I N T E R E S T P R O T E C T E D	Ecology* In General	T Y P E O F R E M E D Y	Retributions* Punishment	T I M E P A R A M E T E R S	Perpetual* Care
	Aesthetic Interests		Restoration		
			Personal Injury Compensation		
	Natural Resources		Third Party Economic Damages		
	Lost Income*		Cleanup		Anticipate
	Property* Damage		Containment*		
	Human* Health		Emergency* Response		Relieve*
					Past Problems

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SCOPE OF RESPONSE
EXTENT OF RELIEF

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Glossary of Terms

- I. Responsible vs. Liable
- A. Responsible - May be accountable as the primary cause, motive or agent; moral, legal or mental accountability
 - B. Liable - obligated according to law; compelled or answerable to make satisfaction, compensation or restitution.
- II. Tort - a private or civil wrong or injury; there must be a breach or violation by one party of a legal duty imposed by general law (not by contract) which is owed to another party.
- III. Causation - The conduct in question was a factor in bringing about the harm
- A. Proximate Cause - defendant's conduct was a substantial factor in causing the injury
 - B. Direct Cause - Generally a component of proximate cause; defendant's conduct sets into motion a chain of events leading to the injury, without any intervening cause
 - C. Intervening Cause - Unanticipated or unforeseeable event or conduct of another which interrupts the chain of events between defendant's conduct and the injury.
- IV. Negligence vs. Strict Liability
- A. Negligence - requires proof of 3 elements: (i) Lack of reasonable care by defendant, (ii) which creates a foreseeable unreasonable risk of injury, and (iii) defendant's breach of due care was the proximate cause of injury.
 - B. Strict Liability - does not involve fault, lack of care or state of mind of defendant
 - (1) For product liability cases -- requires unreasonable hazard by virtue of a defective "condition" in product (including design, hazard warnings, labeling and packaging) and injury proximately caused by the defective condition
 - (2) For other cases -- the activity itself is abnormally dangerous and such activity was the proximate cause of the injury; since no question of "defect" or standard of care arises, the liability is said to be "absolute".

Superfund
Liability Principles

1. The imposition of a federal tort law system is unwarranted for private injuries
2. Joint and several liability is unacceptable as a principle for apportionment of responsibility
3. Strict liability for one's conduct in an area involving "hazardous substances" is acceptable as basis for governmental recovery, provided that:
 - (a) "Hazardous Substance" definition is reasonable
 - (b) Causation principle is adopted based on a liable party's conduct being a substantial factor in creating the harm ("tight" causation)
 - (c) Adequate defenses, as close to Sec. 311 of the Clean Water Act as may be achievable
 - (d) Limited to emergency containment and essential clean-up
4. Liability limits would be desirable -- although not likely to be set at a level which can be expected to apply very often -- if no significant "trade-off" is required.