

July 11, 1972

TO: ✓ Mr. L. J. Dreyling
Mr. J. J. Marino
Mr. J. F. Major

FROM: Dean R. Thacker

SUBJECT: Safety (OSHA)

The attached document by Mr. C. W. Smith and Mr. C. F. Hagan to Executive Vice President Dr. G. D. Laubach summarizes the status of the activities of the Chemicals, Pharmaceuticals, and Agricultural Divisions of Pfizer Inc. relative to the Occupational Safety and Health Act (OSHA). It is most concise and informative and is sent to you for your information and future guidance.

Dean R. Thacker

Dean R. Thacker

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Att.

DR. LAUBACH:

The Occupational Safety and Health Act -
Status of Activities of Chemicals,
Pharmaceutical and Agricultural Divisions (PAC)

Background of the Law

The main thrust of the Occupational Safety and Health Act of 1970 (OSHA), which became effective April 28, 1971, is to assure insofar as possible, safe and healthful working conditions for every working man and women in the United States.

To carry out this purpose, the Act requires that each employer

- (1) furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm;
- (2) comply with occupational safety and health standards promulgated under the Act.

Occupational Safety and Health Standards

On May 25, 1971, the Secretary of Labor issued as "interim standards" for occupational safety and health certain national consensus standards and certain established Federal standards, so as to establish as rapidly as possible standards with which industry was generally familiar.

The standards, which are very detailed, extend over 248 pages of the Federal Register. A partial list of the topics covered will furnish some insight into their scope: "Walking - Working Surfaces"; "Means of Egress"; "Powered Platforms"; "Manlifts And Vehicle-Mounted Work Platforms"; "Occupational Health And Environmental Control"; "Hazardous Materials"; "Personnel Protective Equipment"; and "General Environmental Controls".

Actions Taken By PAC With Regard To OSHA

With the standards as a guide, each of our major plants began an intensive examination into the state of its compliance with the requirements of the Act.

Reports from the plant managers were received and evaluated by the Divisional Production Vice President. Based on these reports our current status with regard to OSHA can be said to be as follows:

- (1) There are, and were, no "imminent danger" situations, involving working conditions which were such that we would anticipate that serious injury or death would result to an employee.
- (2) In most instances where we did not conform to the standards, and it appeared that compliance would improve the health or safety of our employees, corrections were made promptly to bring us into conformity with the standards. Other discrepancies which are more costly and time-consuming are being corrected as rapidly as possible.
- (3) Where it was not too costly or time-consuming to do so, a number of minor discrepancies were corrected so as to conform to the standards, whether or not the change appeared to increase the safety of our employees.
- (4) In some situations it is still not clear whether the plants are in compliance with the requirements of the Act and additional review of the matter is now in progress.
- (5) There are some situations in which (a) it appears that we are not in compliance, (b) it would be very costly to come into complete compliance, and (c) we feel that our conditions afford equal or superior protection to our employees.

Analysis of Unclear and "Technical" Violation Areas

With regard to categories (4) and (5) above, a Headquarters OSHA Committee has been formed consisting of representatives of Legal, Engineering, Corporate Safety and Chemicals and Pharmaceuticals Production to review each such situation on site. (See Attachment A, July 5, 1972 memorandum of Mr. Adams)

It is anticipated that by August 1, 1972 this Committee will have completed its review and will be in a position to recommend appropriate action.

The Company's Experience With OSHA Inspections

To date, the Company has undergone OSHA inspections at Groton and at Brooklyn.

The inspection at Brooklyn was carried out by a representative of the OSHA regional office. It lasted for three and a half days over a one week period in February and resulted in the Company's being cited for 13 specific violations of the Act. None were serious and most were quite minor. These citations were corrected and the \$300 proposed penalty paid.

In Groton, following a fatality in March, an inspection was conducted by OSHA. Following a thorough review, the OSHA inspectors seemed satisfied and concluded that it would not be necessary for them to conduct a plant-wide inspection.

A memorandum has been circulated to the plant managers of the Pharmaceutical, Agricultural and Chemicals Divisions, outlining procedures to be followed in the event of an OSHA inspection. (See Attachment B)

Sanctions

A number of sanctions can be imposed upon an employer who does not comply with the requirements of the Act. (See Attachment C) The most severe applies to a wilful violation of a standard, rule, or order promulgated under the Act which causes the death of an employee. In such an instance the employer can be punished by a fine of up to \$10,000 and by imprisonment of up to six months. For a second such offense the limits are doubled.

Since written reports of certain instances of non-compliance are in the Company's files, the potential for a finding of a wilful violation appears to exist, in the event that it is determined that no action will be taken to bring these situations into line with the OSHA regulations, despite the fact that the operating people feel that there is almost no possibility that a fatality could occur with regard to any of these situations.

Possible Courses of Action With Regard to Unresolved Areas

In situations of the category 5 type described on page 2 hereof, it is presently estimated that in order to achieve complete compliance, the Company would have to spend from \$3 to 4 million. Several options appear to be available in these situations:

- (1) Comply with the regulations, which is what has been done, or is being done, in all cases except those where excessive costs are involved and it has been determined that the present situation, while not complying to the letter of the regulations, does provide equal, adequate protection to our employees.

- (2) Attempt to obtain a variance from the regulations. Under the Act when an employer seeks a variance, notice thereof and an opportunity to participate in the hearing must be given to his employees who are affected. When a variance is granted, the decision of the Secretary of Labor, stating his reasons, must be published in the Federal Register. It should be noted that very few variances have been granted so far. Also, the Act provides that a variance may be modified or revoked at any time after six months from its issuance. Therefore, even if we were successful we would not be sure of achieving a permanent solution. On the other hand, if we were unsuccessful we would have made out the case against ourselves and it can be assumed that we would then have to comply with the regulations, no matter how costly, troublesome and non-productive that might be.
- (3) Do nothing unless and until cited. This would not preclude the possibility of obtaining a variance; however, to seek a variance at that point would seem to insure that our application would be viewed skeptically.
- (4) Attempt to change the regulations. While it is always difficult to change rules set down by an administrative agency in the area of its supposed expertise, it appears that in those instances where we would be resisting compliance with the regulations a compelling case for our having equal or superior health and safety standards can be made.

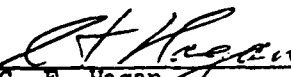
Our position would be that it was unnecessary for the Company to make these changes for health or safety reasons because no additional protection would be afforded to our employees and the cost of compliance would be very high. Since, if we were unsuccessful before the agency we would be in the same position as having a request for a variance turned down, this course, if decided upon, should be undertaken with the thought that we would be prepared to press our appeal through the courts.

From a legal standpoint, it is felt that openly and publicly pursuing this course would tend to improve the chance of a successful defense against an allegation of a willful violation.

- (5) Spend the money required to come into compliance in some of these cases and press our resistance with regard to others.

This memorandum was prepared to summarize the overall OSHA compliance program of PAC, and to respond to some questions with respect to this program that arose during a long-range planning discussion of the Chemicals Division. However, with the thought that knowledge of the PAC program may be useful to other divisions of the company, copies of this memorandum are also being furnished to appropriate management personnel of those divisions.


C. W. Smith


C. F. Hagan

cc: Mr. Powers
Mr. Pratt
Mr. Lum
Mr. Quinn
Mr. Heiges
Mr. Ross
Mr. Hendrickson
Dr. Gilgore

Mr. F. Adams
Mr. Bartels
Mr. Benning
Mr. Brooks
Mr. Ensminger
Mr. Guercio
Mr. Osti
Mr. Thacker

July 5, 1972

MR. BENNING
MR. BROOKS
MR. ENSMINGER

Occupational Safety and Health Act

All plant OSHA Committees have completed their surveys to locate those items that may not be in compliance with OSHA regulations. All plants are proceeding to comply with all OSHA regulations in those areas where we do not comply. However, each plant has some items that fall into one of the following categories:

1. Certain items may not be in compliance with all details of the OSHA regulations but are equivalent or superior to the OSHA requirements.
2. It is not clear whether certain items are in compliance with OSHA regulations. Either more data is necessary to determine whether the item is in compliance or some interpretation of the regulation may be necessary.

In order to insure consistent action in our major plants and to aid the plant OSHA Committees in making decisions in the above areas, a Headquarters OSHA Committee, consisting of representatives of Legal, Engineering, Corporate Safety, and Chemicals and Pharmaceuticals Production Headquarters, will consult with the plant OSHA Committees on the following dates: Brooklyn - July 19; Groton - July 21; and Vigo - July 25.

F. Adams, Jr.
F. Adams, Jr.

FA/rf

CC - Mr. Agostini
Mr. Farley
Mr. Hagan
Mr. Harger
Mr. Kehoe
Dr. Laubach
Mr. McCreery
Mr. Osti
Mr. Pehdorf
Mr. C. W. Smith
Mr. Stone
Mr. Tevebaugh

Inspection Under the Occupational
Safety and Health Act

The declared purposes of the Occupational Safety and Health Act of 1970 (OSHA), which went into effect last year, are "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources".

In carrying out the purposes of the Act representatives of the U.S. Department of Labor upon presenting appropriate credentials are authorized:

(1) To enter upon at reasonable times any work place where work is performed to which this Act applies; and

(2) To inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such place and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and to question any such employer, owner, operator, agent or employee.

There is no requirement for pre-notification that an inspection is to take place and none can be expected.

As you are aware, your plant is subject to OSHA inspections.

In the event that such an inspection should arise, it is recommended that the following procedures be followed:

Review of Inspector's Credentials

The Plant Manager (which as used in this memo will be understood to include the designated representative of the Plant Manager) should attempt to ascertain whether or not the inspector has any special knowledge relating to the type of operations conducted at the plant by reviewing to the extent possible without offending the inspector and getting the inspection off on the wrong foot - the inspector's credentials as well as his education, experience and training. If the inspector is joined by another outside person, such as an industrial hygienist or a safety engineer, a similar review of such person's background should be attempted.

Ascertain Reason for Inspection

The Plant Manager should ascertain the reason for the inspection and its contemplated scope, e.g., which buildings, what records, what working conditions, etc. Note that, if the inspection arose from an employee complaint, the inspector must give you a copy of the written complaint unless it was previously provided to Pfizer.

Accompaniment of the Inspector During the Inspection

Plant Manager

The Plant Manager should remain with any person who is

making an OSHA inspection at all times while he is on the premises.

Employee Representative

As a general rule a representative authorized by the plant employees is also allowed to accompany the inspector. The exception to the rule concerns the areas of the plant containing trade secrets and is covered below.

If no employee representative is designated, the inspector is allowed to consult with a "reasonable number" of employees concerning matters of health and safety to learn of all possible work hazards, and to apprise workers of the fact that an inspection is taking place. In addition, the inspector is allowed to question any employee privately. Although you may not interfere with this right of consultation and interrogation of employees, you can certainly object if it begins to unreasonably interfere with normal operations.

Third Party

During the course of an inspection, if in the judgement of the inspector accompaniment by a third party, who is not an employee, is reasonably necessary to the conduct of an effective and thorough physical inspection, such a third party, such as an industrial hygienist or a safety engineer, may accompany the inspector during the inspection.

Inspection and Copying of Company Records

Under the general provisions of the statute calling for employers to maintain records regarding an employer's activities relating to the Act, certain regulations have been issued which require that an employer maintain a log of occupational injuries and illnesses, a supplementary record for each occupational injury or illness and an annual summary of occupational injuries and illnesses for each establishment. These records are to be available for inspection and copying by the inspecting officer.

The issued regulations also seem to indicate that other records which are directly related to the purposes of the inspection are likewise available for review by the inspector. For the present, the availability to the inspector of any records other than the log, the supplementary record and annual summary referred to above should be reviewed with the Legal Division.

Photographs and Environmental Samples

There is some uncertainty on the question of whether the inspector should be able to take photographs and environmental samples, which uncertainty the regulations issued by the Secretary of Labor have resolved in his favor. For the present, prior to allowing the inspector to take any photographs or environmental samples the matter should be reviewed with the Legal Division.

Areas Containing Trade Secrets

The law is not clear with reference to a Company's right to protect its trade secrets, in that it permits information learned by OSHA investigators to be disclosed "to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act". This restriction does not limit the disclosure to other OSHA employees in the course of their duties.

In general, the inspector has the same rights to inspect trade secret areas as he does other areas. However, there are certain important exceptions to this rule.

Identification of Trade Secret Areas

The regulations provide that if at the commencement of the inspection an employer identifies the areas of his establishment which contain or might reveal trade secrets, and the inspector has no clear reason to question such identification, information contained in these areas, including all negatives and prints of all photographs and environmental samples shall be labeled as trade secrets and shall not be disclosed except in accordance with the Act. The earlier comments with regard to checking with the Legal Division prior to allowing the inspector to take photographs and/or environmental samples are doubly important when areas containing trade secrets are involved.

Employee Representative Must be Authorized to Enter Trade
Secret Area

Upon the request of the employer, the person who is to be the authorized representative of the employees in an area containing trade secrets must be an employee who works in that area, or an employee authorized by the employer to enter that area. Where there is no such representative, or employee, the inspector may not be accompanied by an employee or representative but instead is limited to consulting with a reasonable number of employees who work in that area concerning matters of their safety and health.

Preliminary Procedures to be Followed with Regard to Areas
Which Contain Trade Secrets

It would seem that the first task for the Plant Manager would be to identify those areas of his Plant which he believes contain important Company trade secrets, which should be treated as trade secret areas for purposes of an OSHA inspection. Having done so, it would be well, prior to the advent of an inspection, to consider the nature of those trade secrets and to decide whether to mark off the areas involved or to leave them unmarked so as not to call attention to them. Since it appears that the Plant Manager could, even after the inspection has begun, call attention to the fact that a certain area contains trade secrets, it would seem that in the usual case he might best refrain from marking off trade secret areas at the outset so as to avoid calling undue attention to such areas.

Refusal to Grant Access to Inspector

The regulations contemplate the possibility that the Plant Manager may refuse to allow access to a certain part of the establishment which is being inspected. If this happens, the inspecting officer shall terminate the inspection (presumably this will occur if he has been denied access to the entire establishment), or confine his inspection to the other areas concerning which no objection has been raised.

Denying access to an OSHA inspector is to be avoided if at all possible and is a step which should be taken only after consultation with the Legal Division.

Determination of Imminent Danger

As soon as an inspector concludes that there are conditions or practices which could reasonably be expected to cause an imminent danger of death or serious injury, he must inform both Pfizer and the affected employees of the danger and the fact that he is recommending to the Secretary of Labor that correction be sought. The Plant Manager should immediately telephone such information to the Vice President - Production, who will immediately notify the Legal Division, the Corporate Safety Office, and the Divisional President by telephone.

Finding of Less Serious Violations

If the inspector finds less serious safety or health violations, he must advise you at the conclusion of his inspection and you will have an opportunity to provide him with any pertinent information.

Plant Manager's Report

After the inspector has left, promptly submit a written report of the entire inspection to Division Headquarters with a copy to the Legal Division and the Corporate Safety Office.

State Participation

The Federal statute provides that any State which desires to assume responsibility for occupational safety and health standards can submit a plan for approval by the Secretary of Labor. Among other things, such plan must provide for a right of entry and inspection at least as effective as Federal law. It is therefore possible that inspectors from some agency in your State will at some future date visit your plant on this subject. Until further notice treat all such inspections in the same manner as those conducted by representative of the U.S. Department of Labor.

HEW Participation

Similarly the U.S. Secretary of Health, Education and Welfare is given responsibility to conduct studies and research on occupational safety and health matters, and he is given the same authority to inspect as the Department of Labor. If Health, Education and Welfare inspectors, (probably from the newly created National Institute for Occupational Safety and Health) should visit your plant for this purpose, follow the procedures set forth above.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Summary of Section 17

PENALTIES

(Wilful Violations)

- (a) Employer who wilfully or repeatedly violates Act may be assessed civil penalty of not more than \$10,000 for each violation.

(Serious Violations)

- (b) Employer who has received citation for a serious violation shall be assessed civil penalty of up to \$1,000 for each such violation.

(Serious violation deemed to exist where there is substantial probability that death or serious physical harm could result from a condition which exists... unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation)

(Non-Serious Violations)

- (c) Employer who has received citation which is specifically determined not to be of serious nature may be assessed civil penalty of up to \$1,000 for each violation.

(Failure to Correct Violation)

- (d) Any employer who fails to correct violation for which citation has been issued within the period permitted may be assessed civil penalty of not more than \$1,000 for each day during which such failure continues.

Note: Where employer initiates review proceeding in good faith and not solely for delay or avoidance of penalties, the period does not begin to run until date of final order of the Commission.

(Wilful Violations Causing Death)

- (e) Employer who wilfully violates Act "and that violation caused death to any employee" shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or by both. For a violation committed after the first conviction, the punishment shall be a fine of not more than \$20,000 or imprisonment of not more than one year, or both.

(Advance Notice of Inspections)

- (f) Any person who gives unauthorized advance notice of any OSHA inspection shall upon conviction be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or by both.

(Filing False Documents)

- (g) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both.

(Assaulting or Killing Enforcement Personnel)

- (h) Any person who kills person while engaged in the performance of his duties under the Act shall be punished by imprisonment for a term of years or for life.

(Violation of Posting Requirements)

- (j) Employer who violates posting requirements of Act shall be assessed civil penalty of up to \$1,000 for each such violation.