

American Petroleum Institute
2101 L Street, Northwest
Washington, D.C. 20037



interoffice

memo

Date: October 26, 1977

From: David F. Zoll

To: Stark Ritchie

Re: OSHA Generic Rulemaking -- Status of API Preparations

This is to provide you with additional information in your efforts to clear the way for the selection of counsel in the OSHA generic rulemaking proceeding.

As you and I have discussed, it is past the time when we should have organized ourselves for this matter, e.g., retained medical and economic witnesses. While our initial efforts at stimulating an awareness of and interest in this rulemaking were ahead of other industry groups, we have now been eclipsed. Further delay may prejudice our ability to participate effectively in the proceeding.

The Synthetic Organic Chemical Manufacturers Association (SOCMA) and MCA have established and funded a separate organization to challenge OSHA's proposal. The two trade associations will be providing support services as requested by counsel. Exxon and Shell chemical companies are apparently actively involved.

The new organization has retained the firm of Cleary, Gottlieb, Steen & Hamilton as counsel, with Don Morgan, Bob Barnard, Chuck Lettow and Eric Schwartz assuming lead roles, together with support from various associates. The firm has been active in health matters since 1970. It participated in OSHA's 14 carcinogen rulemaking, was involved in TSCA legislative efforts for SOCMA and has participated in various TSCA regulatory proceedings. They were involved in the periphery of the vinyl chloride proceeding, representing fabricators, and were more actively involved in the PCB and fluorocarbon proceedings and various matters at EPA and OSHA relating to vapor degreasing solvents.

In connection with the OSHA generic rulemaking they have been interviewing or have retained expert economists and toxicologists, begun the preparation of Freedom of Information Act requests and developed a preliminary strategy on the legal, economic and scientific issues. They have scheduled first drafts of their direct and rebuttal testimony for review in early November. They have an appointment with Secretary of Labor Marshall and Assistant Secretary Bingham on November 2 to request a 90-day extension of the proceeding.

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In short, the chemical industry has a good start on its preparation.

At API the following persons have been selected to serve on a policy making steering committee:

<u>Expertise</u>	<u>Staff</u>	<u>Member</u>
1. Chairman/coordinator	1. Steve Swanson	1. _____
2. Medical	2. Dr. Neill Weaver	2. a) Dr. John Thorpe - Exxon b) Dr. W.A. McClellan (alternate) - Gulf
3. Legal	3. David Zoll	3. William Schweinle, Jr. (Gulf)
4. Economic	4. Dr. John Scarbrough	4. _____
5. Production	5. Rob Tremble	5. _____
6. Refining	6. Ray Wright	6. _____
7. Public Relations	7. Robert Stoepker	7. _____

It has been my "assignment" to prepare a list of legal issues to be addressed by counsel and the steering committee (separate cover); the Medical Department has been asked to provide a list of medical issues.

It is my understanding that Steve Swanson hopes to call a meeting of the full Task Force for November 3, 1977.

It is also my understanding that he is asking Henry Lum of the Federal Agencies' staff to contact certain of his former colleagues at OMB to see what OMB's disposition might be to require OSHA to conduct an inflationary impact analysis of the generic rulemaking proposal. As you probably know, OSHA has indicated that it will be issuing economic impact analysis for the specific rulemaking proceedings on specific substances, not for the generic rulemaking on the classification of carcinogens.

Efforts are underway within API and apparently in other industry groups to bring the generic proposal to the attention of the oversight committees of Congress.

As of this date I have asked David Giamporcaro to become familiar with certain of the legal issues involved in this proceeding and Jay Schaudies to become familiar with the medical issues. Martha Beauchamp is preparing a memorandum on what she views as those lessons learned in the benzene proceeding which would be of assistance in this matter, most notably scheduling and review procedures.

I am requesting your permission to conduct further discussions with Dr. Ed Burger, M.D., S.D., relative to his serving as a consultant to the OGC staff on the generic rule-making proceeding. Dr. Burger would be providing us with services which would not duplicate or conflict with the services to be provided by API or company medical personnel. His area of expertise is focussed upon federal policy making in health regulation, an expertise potentially of great value to us in our preparation for the OSHA rulemaking.

May I pursue discussions with Dr. Burger?

Finally, a point which, as you know from my prior memoranda, has been of continuing concern -- the need to begin the hard work of assembling documentary evidence, and interviewing, retaining and preparing consultants and witnesses.

We need a catalyst to advance our organization in this matter. In large measure the delay has resulted from API's failure to have an ongoing, agreed upon structure by which to respond to agency matters such as this one. Retention of counsel is one of the catalysts we need so that this failure will not prejudice our industry in this proceeding.

cc: William E. Schweinle, Jr.
Martha Beauchamp
David Giamporcaro
Jay Schaudies
Steve Swanson