PLAINTIFF'S EXHIBIT

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August 29, 1985

K.C. Crawford
J.L. Rivard

Re: OSHA's Hazcom Regulation

A copy of the OSHA field compliance manual on Hazcom is provided for your information. Distribution to other locations may be useful. John, see pages A4, for their position on "tank trucks", and A6. Interesting reading.

Phil Snyder

P. J. SNYDER

cc: ~~ECB~~ Satellite
PJS Chron

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pending in the D.C. District Court is closely looking at the assets of the respondents and if successful, can distribute to consumers any assets that might be subsequently discovered. Further investigation by the Commission of the financial status of respondents is unwarranted, since it would largely duplicate the efforts of the class action suit.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Emily H. Rock,
Secretary.

[FR Doc. 85-28333 Filed 11-26-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H-22D]

Hazard Communication; Advance Notice of Proposed Rulemaking

AGENCY: Occuptional Safety and Health Administration (OSHA); Labor.

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: OSHA is hereby requesting comments and information on expanding the scope of industries covered by its Hazard Communication Standard (HCS) (29 CFR 1910.1200), which currently covers the manufacturing division, to other industries where employees are exposed to hazardous chemicals. In addition, the Agency is also considering re-opening the rule to clarify several specific issues relating to its scope, and is hereby requesting further information regarding these items.

DATE: Comments must be received on or before February 25, 1986.

ADDRESS: Written comments must be submitted, in quadruplicate, to the Docket Officer, Docket No. H-022D, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-7394. Written comments received, as well as all other information in Docket H-022, will be available for inspection and copying at this address, Monday through Friday, 8:15 a.m. to 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-8148.

SUPPLEMENTARY INFORMATION: On November 25, 1983, OSHA published a final rule in the Federal Register entitled "Hazard Communication" (29 CFR 1910.1200; 43 FR 53230). The standard requires chemical manufacturers and importers to assess the hazards of chemicals which they produce or import, and to transmit information on such hazards to employees and employers in the manufacturing sector, Standard Industrial Classification (SIC) Codes 20 through 39, by means of container labels and material safety data sheets. Employers in the manufacturing sector, are required to provide information concerning hazardous chemicals to their employees by means of hazard communication programs. These programs are to include container labels, material safety data sheets, training, and access to written records.

The underlying purpose of the rule is to reduce the incidence of chemical source illnesses and injuries through increased availability of information about the hazards of the chemicals. If employers have move information about the hazards, they will be able to design and implement better protective measures for their employees. If employees have such information, they will be better able to protect themselves, and to support and participate in their employer's protective programs.

Although employees in many industries are exposed to hazardous chemicals, OSHA determined that the need for hazard communication programs to alleviate the risks of such exposures was greatest in the manufacturing sector. (For a detailed discussion of this determination, please see the preamble to the final rule, 48 FR 53284-86, November 25, 1983). Although manufacturing constitutes about 30% of total employment, its employees account for more than 50% of the chemical source illnesses and injuries that are reported each year, Thus there appears to be a disporportionate need for having information about hazards in the manufacturing sector.

In addition, since the chemicals are developed and produced in the manufacturing sector, the hazard information has to be generated there first, regardless of which other industries are covered. The producers of the chemicals are in the best position to ascertain the hazards, and to pass that information on to their customers using the materials. OSHA believes that much of this hazard information will soon be available in the industrial sectors outside of manufacturing just by virtue of the fact that it will have to be generated by manufacturers to comply with the requirements of the current rule. In addition, the HCS requires labels to be placed on containers of hazardous chemicals regardless of where the container is being shipped. Thus the label information is already mandated throughout all industrial sectors. The Agency anticipated that once the rule goes into effect, the situation in the non-manufacturing industries could be assessed to verify whether the information is actually becoming available, or whether additional rulemaking would be required to ensure that it is transmitted.

The Agency's determination of the appropriate scope of industries to be covered was challenged in the United States Court of Appeals for the Third Circuit (*United Steelworkers of America v. Auchter*, 763 F.2d 728 (3d Cir. 1985)). The petititoners argued that other employees should be explicitly covered by the rule, and that OSHA had inappropriately drawn a distinction in terms of protection offered to employees in the various non-manufacturing industries where employees are exposed to hazardous chemicals.

The Third Circuit issued its opinion on May 24, 1985. The Court essentially agreed with OSHA's analysis that, based upon the rate of chemical source illnesses and injuries, the need for hazard communication programs may be greatest in manufacturing, but the Court did not concur that this determination should be used to support not explicitly covering the other industries. The Court was also unpersuaded by OSHA's arguments that information will become available in the non-manufacturing sector when the current rates is in place, an that the particular circumstances justified a differentiation between industries in terms of coverage under the priority-setting discretion given to the Secretary of Labor by section 6(g) of the Occupational Safety and Health Act, 29 U.S.C. 655(g). Although the Court acknowledged that "Section 6(g) clearly permits the Secretary to set priorities for the use of the Agency's resources, and to promulgate standards sequentially," the Court found that OSHA "failed" to explain "why coverage of workers outside the manufacturing sector would have seriously impeded the rulemaking process" or "why it is not feasible for the same standard to be applied in other sectors where workers are exposed to similar hazards." 763 F. 2d at 738.

Therefore, in light of the Court's

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decision OSHA is reconsidering the application of the HCS to employees in non-manufacturing sectors.

The reconsideration of this issue had already been initiated by OSHA prior to the issuance of the Court's opinion. On March 4, 1985, the Assistant Secretary of Labor for OSHA asked the National Advisory Committee on Occupational Safety and Health (NACOSH) to give OSHA its recommendation on the need and feasibility of expanding the scope of coverage of the Hazard Communication Standard. On June 21, 1985 NACOSH adopted the following recommendation:

[NACOSH] strongly endorses the OSHA effort to promulgate a Hazard Communication Standard and selection of the manufacturing sector for its initial scope of coverage. It is the consensus recommendation of the Committee that the scope of the current Hazard Communication Standard should be expanded to cover all employees in all industries at as early a time as possible. Complete implemenation may require phasing in gradually. The BLS incidence rates of occupational illnesses, and other appropriate factors, should be primary considerations in expanding the coverage. The Committee further recommends that OSHA establish a task force to address these issues.

A review of the rulemaking record developed for Hazard Communication (Docket H-022) reveals that while there is considerable information concerning worker exposure to hazardous chemicals in industries other than manufacturing, there is very little information concerning current practices of employers in those industries, or the applicability of the provisions as presently drawn when considering the diverse types of workplaces that may be encountered.

The purpose of this notice is to re-open the record to collect specific information in these areas so that the Agency can respond to the Court's direction. In order not to unnecessarily delay the regulatory process, the comment period established is relatively short (60 days), and the questions are specific to those areas where information is lacking. OSHA requests that respondents address these questions, keying each response to the number of the question it applies to, and provide as much substantive data as possible. Although all information is welcome, an extensive record already exists, and all information in that record will be used. It should also be noted that the need for the standard has already been demonstrated, and the information required at this point is to establish the current status of hazard communication within the industries outside manufacturing, and the appropriateness of covering those industries in a manner similar to the coverage of manufacturing in the current rule. Duplicate submissions of information previously placed in the record are not necessary. The questions are as follows:

1. Please indicate the industry or industries to which the information supplied applies (by SIC Code if possible).

2. What is the current industry practice regarding hazard communication? Do employers generally have written hazard communication programs? Are containers labeled? Are material safety data sheets available for the hazardous chemicals? Are employees trained regarding the hazards and appropriate precautionary measures?

3. What are the costs associated with the aspects of hazard communication that are currently implemented in the industry? Please indicate by specific activity if possible, i.e. costs for training, labels, etc. Based on the present provisions of the Hazard Communication Standard, what additional costs are estimated to be incurred if the standard were extended to your industry?

4. If OSHA extended the provisions of the Hazard Communication Standard to this industry as written, what problems might arise in obtaining or transmitting hazard information? (For example, are there special problems associated with the agricultural industry or small businesses?) What solutions to these problems can you suggest that would still result in employees getting the information they need?

5. Does this industry have fixed work sites? If not, is there some central point where information could be made accessible?

6. Does this industry have transient workers? What current practices are used to ensure such workers are apprised of the hazards they may encounter on the site? Is there training or information specific to the types of jobs performed?

7. To what extent are hazardous chemicals purchased from retail distributors? How is information obtained about these chemicals when purchased from these types of establishments? Do the retail distributors provide hazard information? Are manufacturers contacted directly for the information? If so, has this been a successful approach? Are employees exposed to the chemical involved without receiving information about the specific hazards? How is a determination made regarding the appropriate protective measures to be implemented in this situation?

8. Are "consumer products" used in this industry in a manner that results in different exposure levels than would be encountered in consumer usage? What types of products are these? How is hazard information obtained for these products?

9. Is this industry subject to state-initiated "right-to-know" laws? What has been the industry's experience under such state laws? Are there particular provisions that have been difficult to implement in this industry? If so, what alternative provisions are suggested to ensure employees receive the necessary information? To what extent is the industry complying with the state laws?

In addition to these questions regarding extending the scope to cover other industries, there are several areas in the current standard where a number of questions have been raised concerning interpretations and clarifications. OSHA is considering re-opening the rule on these issues, and is hereby inviting comment on the appropriateness of doing that, as well as the specific way in which the problems may be addressed.

10. The standard includes an exemption for "articles". There have been many questions regarding this exemption, and apparent confusion about the application of the provision as written. Does the "article" definition and exemption in the current rule apply to products produced or used in your industry? If so, has it been difficult to apply the definition to these products? What suggestions do you have for modifying or clarifying the definition and exemption to address these difficulties?

11. The Hazard Communication Standard exempts wood and wood products, such as lumber and paper, from coverage. Although these products may be flammable or combustible, this potential hazard is considered to be unmistakable, and provision of information for this type of hazard was thought to be unnecessary. OSHA did not intend that this exemption include "wood dust", a substance for which the American Conference of Governmental Industrial Hygienists has established exposure limits, but some have interpreted it that way. Would it be appropriate to clarify that the "wood and wood products" exemption does not

apply to "wood dust"? What problems might result from this clarification, i.e., is there any situation where coverage of wood dust would not be appropriate?

12. The rule includes a "floor" of hazard chemicals, that is, it incorporates by reference several lists of chemicals and states that the substances on these lists are to be considered hazardous in all situations. Nuisance dust appears on these lists. Since any dust can be considered a nuisance dust in some situations, OSHA futher clarified this coverage in its compliance directive on the rule (CPL 2-2.38) by stating that only those dusts listed by the American Conference of Governmental Industrial Hygienists in the nuisance particulate appendix of its annual Threshold Limit Value publication would be covered by the Hazard Communication Standard. Would it be appropriate to remove nuisance dust from the chemicals covered by the standard as a health hazard? Are there situations where labels, material safety data sheets, and training would be useful to employees exposed to these chemicals?

Public Participation

All written comments in response to this notice must be received on or before February 25, 1986, in quadruplicate, addressed to the Docket Officer, Docket No. H-022D, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-7894. All written submissions, as well as other information gathered by the Agency, will be considered in any action taken. Written comments and materials submitted in response to this notice will be available for inspection and copying in the Docket Office, Room N3670, at the above address, between the hours of 8:15 a.m. and 4:45 p.m.

Authority and Signature

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) and 8(g) of the Occupational Safety and Health Act (29 U.S.C. 655, 657).

Signed at Washington, DC, this 22nd day of November, 1985.

Patrick R. Tyson,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. 85-28354 Filed 11-25-85; 11:17 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2927-1]

Approval and Promulgation of Implementation Plans: Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to approve certain emissions limitations and compliance techniques contained in operating permits for three coke oven batteries located at Citizens Gas and Coke Utility in Indianapolis (Marion County), Indiana, but to disapprove two limits for Coke Battery No. 1. Citizens Gas and Coke is located in a portion of Marion County which is designated as a primary nonattainment area for particulates (40 CFR 81.315). Indiana submitted these limits as a revision to the Indiana State Implementation Plan for Marion County.

DATE: Comments on this action are due by January 27, 1986.

ADDRESSES: Copies of this proposed revision are available for inspection at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Written comments should be sent to: Gary Culezian, Chief, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller Regulatory Analysis Section (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On January 18, 1984, the State of Indiana (State) submitted as a revision to the Indiana State Implementation Plan (SIP) for total suspended particulates (TSP) certain operating conditions and limits. These were contained in Certification of Operation (operating permits) Nos. 06895, 06896, and 06897 and are applicable to three coke batteries at Citizens Gas and Coke Utilities, the only coke batteries in Marion County, Indiana.[1] These operating permits were issued by the City of Indianapolis Air Pollution Control Division, were subsequently adopted by the State, and contain emission limitations and compliance techniques for coke oven doors and pushing and quenching operations. Citizens Gas and Coke is located in Marion County's Center Township, which is designated as a primary nonattainment area for TSP (40 CFR 81.315).

The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979) 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). For a TSP SIP revision to be acceptable in meeting the applicable requirements of Part D, unless a completely approvable modeled attainment demonstration is submitted, all emission points at industrial sources must be governed by approvable reasonably available control technology (RACT) emission limitations, and all other applicable Section 110 requirements must be met, e.g., test methods, inspection procedures, compliance schedules. Additionally, present emission limits in these areas cannot be relaxed without an attainment demonstration.

Specifically, for the coke batteries at Citizens Gas and Coke Utility, two of the three units at the Utility (Batteries H and E) are currently Federally regulated by SIP regulations only. However, the third unit at the Utility, Coke Battery No. 1, is additionally regulated by construction permits issued by the State and the City of Indianapolis in 1978. The requirements in these construction permits are also Federal enforceable. In 1983, the City of Indianapolis issued the operating permits referenced above, which added certain, identical emission limitations and operating conditions at all three units for doors, pushing operations, and quenching operations. The limits in the operating permits and

[1] Operating permits in Indiana are issued for a limited period of time. These three Citizens Gas and Coke operating permits expired in June 1984. On October 29, 1984, the City of Indanapolis issued new operating permits to Citizens Gas and Coke which contain similar requirements for Batteries E and H to those on which USEPA is proposing rulemaking today. For Battery 1, the new operating permits does not reflect the State's SIP submittal, but the underlying construction permit. These new, enforceable permits must be submitted to USEPA, before will go to final rulemaking on the actions in today's proposal. If similar requirements for Batteries E and H are not submitted, USEPA will disapprove all items in today's proposal, because they do not meet the State (local) enforcability requirements of 40 CFR 51.22.

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