



OCCUPATIONAL SAFETY & HEALTH REPORTER

A weekly review of occupational safety and health developments

Volume 10, Number 11

THE BUREAU OF NATIONAL AFFAIRS, INC.

August 14, 1980

HIGHLIGHTS OF CURRENT REPORT

POSSIBLE OCCUPATIONAL CANCER hazards in 107 workplace chemicals need more study, the Occupational Safety and Health Administration says in publishing its "candidates list" as the first step in potential regulation of carcinogens under the agency's new cancer policy. The substances named are in addition to those on an Environmental Protection Agency list to which OSHA may refer when making decisions on what substances to regulate (p. 285; OSHA and EPA lists, pp. 300, 305).

A U.S. DISTRICT COURT DISMISSES, for lack of jurisdiction, industry complaints against the OSHA cancer policy, finding that the policy is "a nationally applicable standard" and that the appropriate forum for relief is an appeals court. Two industry groups appeal the ruling to the Fifth Circuit Court of Appeals (p. 285).

A SURVEY OF 1979 FACE INJURIES by the Bureau of Labor Statistics shows that only slightly more than 1 percent of workers participating in the survey were wearing face protection at the time of their accidents (p. 286).

PROPOSED AMENDMENTS TO OSHA'S regulations concerning basic program elements for federal employee safety and health programs are expected to be published in the Federal Register shortly, according to an OSHA official (p. 287).

NIOSH RECORD SYSTEMS may be used for two new purposes, disclosure to private firms for data entry, computer analysis, and programming; and disclosure to the Justice Department to assist in NIOSH-initiated litigation, under an August 11 proposal by the Public Health Service (p. 288).

THE ECONOMIC IMPACT of regulations on small businesses would have to be considered by OSHA and other federal agencies under a measure passed by the Senate August 5. Agencies would be required to publish a "regulatory flexibility analysis" for each regulation, stating why

it was chosen, and what alternatives were considered (p. 289).

SOME 16 INDUSTRIAL CHEMICALS, groups of substances, and processes are noted in a National Toxicology Program report on substances known or reasonably believed to be carcinogens (p. 289).

THE CALIFORNIA OCCUPATIONAL Safety and Health Appeals Board insists it has authority to modify civil penalties assessed against employers for failure to report use of asbestos, despite the contention of the state's Division of Occupational Safety and Health that the minimum penalty of \$500 for failure to report is fixed by statute and not subject to change by the board (p. 291).

MARYLAND STANDARDS for worker exposure to inorganic arsenic, found to provide worker protection identical to that provided by federal standards, are approved by OSHA (p. 292).

LITIGATION OF OCCUPATIONAL SAFETY and health standards may increase because of the Supreme Court's ruling on OSHA's benzene standard, Solicitor of Labor Carin Clauss tells the American Bar Association at its annual meeting. But the ruling will not result in a substantial change in agency policy towards toxic substance standards setting (p. 286).

OCCUPATIONAL SAFETY AND HEALTH REPORTER invites you to visit the exhibits of The Bureau of National Affairs, Inc., at the American Chemical Society Convention in Las Vegas, Nev., and to pick up a free copy of an exclusive analysis of the Resource Conservation and Recovery Act hazardous waste requirements. The BNA booth (#12) will be located in the MGM Grand Hotel. OSHR will provide coverage of the conference in subsequent weekly Current Reports.

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OCCUPATIONAL SAFETY & HEALTH REPORTER

Published at Washington, D.C., every Thursday except the year-end issue by The Bureau of National Affairs, Inc., Washington, D.C. 20037. Telephone: 452-4200 (Area Code 202)

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First year subscription rate (payable in advance) \$327, renewal \$316 per year.

Correspondence concerning editorial content should be directed to the managing editor.

Second Class postage paid at Washington, D.C., and at additional mailing offices.

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Code: ISSN 0095-3237

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Printed in U.S.A.



Current Report

Carcinogens

107 WORKPLACE CHEMICALS LISTED BY OSHA AS CANDIDATES FOR MORE SCIENTIFIC STUDY

The Occupational Safety and Health Administration August 12 named 107 workplace chemicals for more intensive study to determine if they pose an occupational cancer hazard.

The publication of the "candidates list" of chemical substances was the expected first step in potential regulation of carcinogens under the agency's January 22 generic carcinogens standard, the "cancer policy" (Reference File, 41:7301). Candidates were named to the list on the basis of a "brief scientific review" of literature on the substance's possible carcinogenicity.

However, OSHA emphasized that publication of the list "does not mean that OSHA has determined that a substance on the list is carcinogenic or that regulatory action on the substance is necessary." OSHA also stressed that the listing of a particular substance is not intended as a "preclassification warning."

"We are making the list available to let the scientific community know of our interest in further research and testing on these substances and to encourage all interested persons to provide us any information available on these chemicals and their effects," OSHA Administrator Eula Bingham said in announcing the list.

"In this way, we are offering the public the opportunity to get involved in setting priorities and selecting substances appropriate for regulation at the earliest possible point in the process," she added. Comments on the candidates list will be accepted by OSHA until October 14.

At least one industry association urged manufacturers and users of chemical substances to comment on the list.

"We regret that OSHA decided to list these substances on the basis of a 'brief' scientific review of selected research," Ronald Lang, executive director of the American Industrial Health Council, said.

"It is very important, therefore, that manufacturers of substances on the list supplant OSHA files with additional research data before the agency puts together its priorities list," he said. The priority lists would be compiled by OSHA at a later date based on evidence accumulated primarily about substances on the candidates list.

EPA List Referenced

According to OSHA, all of the substances listed are found in U.S. workplaces, and have some evidence of carcinogenicity. Not on the list, however, are many substances already targeted by OSHA for regulation before the cancer policy was issued, including asbestos, hexavalent chromium, beryllium, and cadmium.

Those substances, and more than 100 others, are found on an Environmental Protection Agency list reviewed by OSHA and to which the agency may refer in making decisions on what substances to regulate.

The EPA list, prepared by that agency's Carcinogen Assessment Group for use in EPA labeling and hazardous waste regulations, includes substances which EPA considered as having "substantial evidence of carcinogenicity."

OSHA said that although it had not concluded that the substances indeed are carcinogenic, it "respects EPA's

evaluation" and may turn to the EPA list, as well as the candidates list, for choosing substances for further review. Both the OSHA candidates list and the EPA list are published in the Full Text section of this Current Report.

Procedure Used

In its announcement of the list, (45 FR 53672) OSHA described the procedure by which it developed the candidates list. The agency first compiled a broad list of substances for which there is some evidence of carcinogenicity, using information from the National Institute for Occupational Safety and Health, the International Agency for Research on Cancer, EPA's Inventory of Chemical Substances, and Department of Health and Human Services reports.

After verifying use of the substances in U.S. workplaces by checking a number of other sources, those substances were subjected to a "brief scientific review" by government scientists. Available scientific literature on each substance was reviewed to determine whether the substance should undergo, at a later time, more detailed review. Only positive evidence of carcinogenicity was considered, OSHA said, adding that non-positive data could be considered in later stages of review.

OSHA emphasized that while inclusion of a substance on the list does not necessarily mean that the substance is carcinogenic, neither does exclusion mean that the substance is not carcinogenic.

Publication of the list, which is to be updated annually, is only the first step in screening toxic substances for potential regulation, OSHA explained. Priority lists will be drawn, primarily from the candidates list and EPA list, by considering factors such as the number of workers exposed to a substance, the levels of exposure, molecular similarity of the substance to a known carcinogen, and availability of safe substitutes. Before substances are placed on a priority list, however, OSHA said it will conduct a thorough analysis of all available scientific data relevant to the potential carcinogenicity of the substance.

Finally, substances may be selected from the priority lists for regulation, OSHA said.

Litigation

DISTRICT COURT DISMISSES INDUSTRY SUIT AGAINST OSHA CANCER POLICY; APPEAL FILED

A federal district court judge August 5 dismissed for lack of jurisdiction industry complaints against the Occupational Safety and Health Administration's cancer policy, stating that review of the policy belongs in an appeals courts.

Industry officials expressed disappointment with the court's ruling, and two of the three industry groups involved quickly appealed the ruling to the U. S. Court of Appeals for the Fifth Circuit, where other challenges to the policy still are unresolved.

In his ruling, Judge Carl O. Bue, Jr., of the U.S. District Court for the Southern District of Texas said the OSHA cancer policy is "a nationally applicable standard addressed to regulation of toxic substances," not merely a set of general, nonbinding regulations. Because it is a standard, it

must be reviewed by an appeals court as specified in the Occupational Safety and Health Act of 1970, the court ruled.

The OSHA cancer policy, announced January 22 (Reference File, 41:7301), was challenged in U.S. District Court by several industry groups, led by the American Industrial Health Council, the Scurlock Oil Company, and the American Iron and Steel Institute (Current Report, March 13, p. 947).

Although some of the groups also sought review of the policy in the appeals courts, the district court action was taken because of industry's contention that the policy was not a standard as defined in the Act, and thus should be reviewed by a district court.

Calling the industry's position "unpersuasive," the court said that although the policy does establish general procedures for OSHA to issue substance-specific standards, the policy establishes "binding substantive limitations" on OSHA and industry, such as limiting exposures to Category I substances to the lowest feasible level and using engineering and work practice controls as the primary means of compliance.

The court also found that the policy sets binding criteria for identification, classification, and regulation of potential occupational carcinogens.

Section 6(b) Status

Judge Bue further held that while an agency "cannot prescribe a court's jurisdiction by the characterization of a given policy," the fact that OSHA issued the policy under Section 6(b) of the Act and concluded it was a standard, "is entitled to some deference."

"The court concludes that the generic standard is so closely related to substance-specific standards which will be promulgated that it is part of a unitary process of setting standards," Judge Bue wrote, adding that it "would be anomalous to have their review bifurcated between different courts."

OSHA had urged the court not to rule on the case, but to delay proceedings until the appeals court ruled on the jurisdiction question. But the court, citing an "obligation" to decide whether it had jurisdiction, concluded that it did not, and said it saw no reason to postpone its order.

Spokesmen for the American Industrial Health Council and the American Petroleum Institute, a party in the Scurlock Oil Company case, said their associations have appealed the ruling, while a spokesman for the American Iron and Steel Institute said that group has not yet decided whether to appeal.

The Fifth Circuit Court has taken no action yet on other challenges to the policy (Current Report, March 6, p. 923).

The ruling will appear in a future Decisions issue.

Litigation

NO SUBSTANTIAL OSHA POLICY CHANGE FROM BENZENE RULING SEEN BY SOLICITOR

HONOLULU — (By a BNA staff correspondent) — The Supreme Court's ruling in the benzene case will have little practical effect on the way the Occupational Safety and Health Administration does business, Solicitor of Labor Carin Clauss told the Labor and Employment Law Section of the American Bar Association at the ABA's annual meeting.

Because of the ruling in *Industrial Union Department, AFL-CIO v. American Petroleum Institute et al.* (8 OSHC 1586), "we expect to get litigated to death," Clauss asserted, but there will be no substantial change in agency policy toward the promulgation of standards for toxic substances.

In the case, the Supreme Court invalidated the OSHA benzene standard and declared that the Secretary of Labor must show that a "significant risk" exists before issuing a health and safety standard.

According to Clauss, the decision revealed "an increasing tension between courts and agencies over the proper role of courts in reviewing new scientific evidence."

Clauss argued that the Supreme Court had departed from the traditional role of the courts in simply examining agency decisions to determine whether procedural and statutory rights had been followed.

All the Supreme Court decision will mean, Clauss asserted, was that OSHA would have to promulgate the same standards for toxic substances again, "but do them the way the Court said they had to be done."

One issue that remains to be decided, Clauss said, is whether OSHA can set a standard for a toxic substance at its lowest safe level or whether it can establish or reduce a standard to its lowest feasible level. Overall safety considerations may make this an "academic question," she concluded.

Research

FEW INJURED EMPLOYEES SURVEYED WORE FACE PROTECTION, BLS REPORTS

Slightly more than 1 percent of workers participating in a survey of 1979 face injuries were wearing face protection at the time of their accidents, according to a Bureau of Labor Statistics report released August 11.

When asked in the survey to explain why they were not wearing face protection at the time of the accident, workers indicated that face protection was not normally used or practical in their type of work, or it was not required for the type of work performed at the time of the accident, the report stated. Few workers, BLS said, complained about poor vision or discomfort.

The survey was based on workers' compensation data obtained from 20 cooperating states. Data covered a five-month period last year. The report, "Accidents Involving Face Injuries," was issued as part of a series of summaries of injury statistics compiled by BLS during 1979.

Lacerations, fractures, broken teeth, and contusions were the most common types of injuries found in the survey. Flying or falling blunt metal objects caused the "typical injury," according to the report.

The survey also found that most workers were injured while performing their normal jobs at worksites, usually production areas, construction sites, or outdoors.

Impact Injuries, Chemical Burns

The survey's sample was limited to impact injuries and chemical burns to the face among workers in selected industries. Of occupations studied, craft workers — primarily mechanics or repairers — accounted for 42 percent of the injured workers. Laborers accounted for 30 percent, operatives 23 percent.

Some 41 percent of the injured workers were employed in manufacturing and 22 percent in construction, the survey reported.

Of 774 face injuries studied, 44 percent resulted from flying or falling objects striking the face. Swinging objects caused 20 percent, and objects or tools pulled into the face accounted for 15 percent of the injuries, BLS said.

The report also showed that, although few injured workers wore face shields, over a third were equipped with eye protection. One-fifth of the surveyed workers felt that the eye protection minimized their injuries by protecting their eyes, the report noted.

Some 18 workers, however, were injured by broken frames or lenses, and eight received nose or cheek injuries when objects forced the frames of their glasses into their faces, BLS said.

Company Policy

Half the workers surveyed reported company policy requiring face protection for certain types of work at specific job locations, BLS noted. Most employers made face protection equipment available at no cost to workers, the report showed. Three-quarters of the injured workers reported that they were not personally required to wear face protection, however.

Copies of the survey are available from the Office of Occupational Safety and Health Statistics, BLS, Room C-4311, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone (202) 523-9286. Surveys in the series reporting on foot, head, and eye injuries also are available.

Litigation

COMMISSION FINDING OF FEASIBILITY OF NOISE CONTROLS AFFIRMED BY COURT

The Occupational Safety and Health Review Commission's finding that engineering controls are economically and technologically feasible for the employer's production engine test department is supported by substantial evidence, the U.S. Court of Appeals for the Seventh Circuit ruled.

This decision in *International Harvester Company v. OSAHRC and Secretary of Labor* (No. 79-2035) affirmed a ruling of an OSAHRC administrative law judge (7 OSHC 1742).

The case arose out of a finding by OSAHRC that the employer was in violation of the noise standard, 29 CFR 1910.95(b)(1), at its Melrose Park, Ill., manufacturing plant. The judge also decided, in that case, that the Secretary of Labor's proposed engineering controls to abate the noise violations were both economically and technologically feasible. The employer appealed that decision.

The appellate court, in its decision, characterized the employer's argument on the technological feasibility issue as "little more than an attempt to relitigate this dispute and to convince this court to substitute its judgment for that of the OSAHRC."

The employer based its attack on the technological feasibility issue on the fact that the OSAHRC judge decided to credit the Secretary's witness's testimony rather than that of the employer's witnesses. According to the appellate court, "agency credibility resolutions are essentially non-reviewable unless contradicted by uncontrovertible documentary evidence or physical facts."

Since the employer failed to point to "uncontrovertible documentary evidence or physical facts undercutting OSAHRC's resolution," the appellate court affirmed OSAHRC's finding of technological feasibility.

Significant Savings Seen

The employer's argument concerning the economic feasibility of the proposed engineering controls also was re-

jected by the court. The appellate court, in its review of the trial record, found that the proposed engineering controls would yield "significant savings over time in terms of increased productivity, reduced maintenance expenses, energy conservation and reduced manpower requirements."

The court also found that "the benefits to employees from implementation of engineering noise controls will be substantial."

This decision, which was originally announced as an unreported order, was subsequently issued as an opinion dated June 16 and written by Circuit Judge Robert A. Sprecher joined by Circuit Judge William J. Bauer and Senior District Judge William G. East of the District of Oregon sitting by designation.

The ruling will appear in a future Decisions issue.

Federal Agencies

DRAFT RULES FOR SAFETY, HEALTH TO APPEAR SOON IN FEDERAL REGISTER

Proposed amendments to the Occupational Safety and Health Administration's regulations concerning basic program elements for federal employee safety and health programs, 29 CFR 1960, are expected to appear in the Federal Register shortly.

Robert Broderick, acting director, OSHA office of federal agency safety and health programs, told OSHR August 12 that he expected that the revised draft would appear in the Federal Register for public comment on August 15 or August 19.

Revisions to Part 1960 were added by OSHA in order to more effectively carry out the directives contained in Executive Order 12196, which requires federal agencies to comply with the same safety and health requirements as private sector employees (Current Report, February 28, p. 901).

President Carter delayed the effective date of the executive order from July 1 to October 1 stating that the extension was necessary "to provide sufficient time for the development of adequate implementing instructions" for putting the new requirements into effect (Current Report July 10, p. 152).

Under the order, the Office of Management and Budget is responsible for coordinating the basic program elements between OSHA and the other federal agencies.

A revised draft of Part 1960 was sent to 17 federal agencies in June with their comments due at OMB on August 8. The draft included new subparts dealing with administration, occupational safety and health committees, responsibilities of the General Services Administration and other federal agencies, training requirements, discrimination complaints, and evaluation of federal occupational safety and health programs (Current Report, June 12, p. 51).

The proposed version that will appear in the Federal Register essentially follows what was sent to the 17 agencies, Broderick said, with the addition of a section on food counsels, revisions in the record keeping provisions to reflect changes as approved by the Federal Advisory Commission on Occupational Safety and Health, and expansion of the section on the responsibilities of the GSA and other federal agencies to include specifications on assistance to be provided OSHA by the National Institute for Occupational Safety and Health.

Litigation

COURT RULES GUARDRAILS NOT NEEDED FOR PERIMETER WALL CONSTRUCTION WORK

Enforcement of a requirement that guardrails be installed on perimeters of an open-sided floor 19-1/2 feet above the ground for the protection of employees engaged in the construction of a wall, where the wall also would provide perimeter protection for employees, would be unreasonable, the U.S. Court of Appeals for the Eighth Circuit ruled August 8.

This decision, in *H.S. Holtze Company v. Marshall and OSAHRC* (No. 79-1957), reversed, in part, an Occupational Safety and Health Review Commission decision, which had affirmed a citation for violation of 29 CFR 1926.500(d)(1), and affirmed the remainder of the decision (7 OSHC 1753).

Subsequent to an inspection of its worksite, the employer was cited for a violation of 29 CFR 1926.500(d)(1) for failing to install guardrails on the perimeter of an open-sided floor six feet or more above the next adjacent level.

The evidence revealed that employees were engaged in construction of an exterior wall on a floor located 19-1/2 feet above the ground level of an apartment building under construction. It also indicated that no perimeter guardrails were present on the floor where employees worked.

The employer contended successfully, at a hearing before an Occupational Safety and Health Review Commission's administrative law judge, that guardrail installation work would create an increased fall hazard and that in any event, the wall, when erected, would provide protection equivalent to that of standard railings. The judge, finding this reasoning persuasive, vacated the citation.

Subsequently, after review of the judge's decision, the Review Commission affirmed the citation on the ground that the employer had failed both to establish a greater hazard or impossibility of compliance defense. The employer appealed to the Eighth Circuit Court.

Wall Seen Best Safeguard

The court held that the commission's findings were not supported by substantial evidence in the record, and that, furthermore, to require compliance with the cited standard in this case would be unreasonable.

The court indicated that protection for employees would be served best by erection of the wall, which would take less time than that required for erection and removal of guardrails, would not require the provision of alternative means of protection for employees, including scaffolding and safety devices for erecting the scaffolding, and would not expose employees to increased fall hazards which would accompany erection of scaffolding.

"There is a point at which the impracticality of the requirement voids its effectiveness and that point has been reached . . . [in this case]," the court stated. "We agree . . . that some demarcation line must be drawn between that which is genuinely aimed at the promotion of safety and health and that which, while directed at such aims, is so imprudent as to be unreasonable," the court added.

The court rejected the argument that the employer's failure to prove the elements necessary to sustain the affirmative defense of greater hazards required affirmance of the citation. It pointed to the fact that this case was distinguishable from cases involving conditions which posed a permanent hazard due to the absence of guarding. It then vacated the citation, after expressing its opinion that employees were better protected during wall construction work than they would have been during erection and removal of a guardrail.

This decision, which was written by Circuit Judge Donald R. Ross, and joined in by Floyd R. Gibson, Senior Circuit Judge, and William R. Hanson, District Judge for the Southern District of Iowa sitting by designation, will appear in a future Decisions issue.

Recordkeeping

PUBLIC HEALTH SERVICE PROPOSES NEW USES FOR NIOSH RECORD SYSTEMS

The Public Health Service proposed August 11 to authorize two new uses for 17 record systems maintained by the National Institute for Occupational Safety and Health.

The company also is contesting a repeated citation and a Privacy Act would be disclosed to private firms for data entry, computer analysis, and computer programming. All records would be returned promptly, and all computer work would be done on government-owned computers, the notice said, adding that contractors using the information would be required to maintain Privacy Act safeguards.

Also, in the event of litigation initiated at NIOSH's request, the institute would be authorized to disclose to the Department of Justice any records needed by Justice to represent NIOSH effectively.

According to NIOSH, the first use would allow more effective utilization of contractor personnel for data programming and analysis. The institute's workload "has grown significantly without a matching growth in the personnel ceiling," forcing NIOSH to make more use of contractors, the announcement indicated.

Contractors chosen for the work, NIOSH emphasized, would be required to comply with the same security standards as institute personnel.

The reason for authorizing the second use is that, in carrying out its responsibilities for health hazard evaluations and workplace investigations, NIOSH may need to subpoena a company's medical records or obtain a warrant to enter the workplace, the notice stated.

In these activities, NIOSH would enlist the aid of the Department of Justice. Therefore, the institute needs to be able to provide data to Justice so that the NIOSH case can be presented in court, the notice maintained.

Record Systems Affected

The record systems that would be affected by the proposal, according to NIOSH, are:

- ▶ File of physicians certified to interpret X-rays under the Federal Coal Mine Health and Safety Act.
- ▶ Radiation exposure records for NIOSH personnel.
- ▶ Application files for research, demonstration, and training grants.
- ▶ NIOSH training division mailing list.
- ▶ Records on diagnosis of occupational disease by analysis of body fluids or tissues through biochemical or clinical chemical analysis.
- ▶ Medical and test record results of individuals involved in NIOSH laboratory studies.
- ▶ Study at worksites where agents suspected of being occupational hazards exist.
- ▶ NIOSH occupational health epidemiological studies.
- ▶ Results of division of biomedical and behavioral sciences hearing studies.
- ▶ General industry morbidity studies.
- ▶ Coal mining morbidity studies.
- ▶ Mortality studies in coal mining.
- ▶ Mortality studies in noncoal-mining activities.
- ▶ General industry mortality studies.

■ Division of respiratory disease medical and laboratory studies.

► Division of respiratory diseases morbidity studies in metal and nonmetal mining activities.

According to the notice, the proposed uses will be adopted without further notice on September 10, unless comments are made which would "result in a contrary determination."

Comments should be submitted to the Director, National Institute for Occupational Safety and Health, Room 8-05, 5600 Fishers Lane, Rockville, Md. 20857. For further information, contact Darlene Christian, NIOSH privacy act coordinator, Room 8-48, at the same address, telephone (301) 443-4220.

Legislation

SENATE PASSES MEASURE TO REQUIRE LOOK AT BURDENS ON SMALL BUSINESS

The Senate passed a measure August 6 that would require the Occupational Safety and Health Administration and other federal agencies to consider the economic impact of proposed rules on small businesses, organizations, and governmental jurisdictions.

Under the bill (S 299), agencies would have to publish a "regulatory flexibility analysis" for each regulation stating why the particular regulation was chosen, and what alternatives were considered that would minimize the impact on "small entities."

Each analysis, the bill stated, would discuss significant alternatives such as:

► The establishment of differing compliance or reporting requirements or timetables designed to "take into account the resources available to small entities."

■ Clarification, consolidation, or simplification of compliance or reporting requirements for small businesses, organizations, or government jurisdictions.

► Use of performance rather than design standards.

► Exemption from the regulation, or portions of it, for small entities.

The agency also would be required to estimate the number of small entities that would be affected by the rule, and to identify all other rules with which the regulation might conflict or overlap.

Further, agencies would be required to notify small businesses and organizations directly about impending regulations, and to hold open conferences and hearings for the organizations, the bill specified. These actions would help ensure small business involvement in the standards-setting process, the bill explained.

Periodic review of existing regulations also would be mandated, to determine whether the standards should be amended to "minimize any significant economic impact" upon small businesses. Among the factors to be evaluated would be "the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule."

'Burdenome Demands' Seen

According to the measure, the uniform application of regulations to both large and small businesses has imposed "unnecessary and disproportionately burdensome demands" on small businesses, in many cases. This situation also has "adversely affected competition in the marketplace, discouraged innovation, and restricted improvements in productivity," it asserted.

Senator John C. Culver (D-Iowa), sponsor of the bill, told his colleagues that the intent of the measure is not to "undermine" the "important achievements" made under federal

regulation. Instead, the bill is "a recognition that we can do better in implementing these laws," he stated.

In many cases, existing regulations have created conflicting standards and "needlessly complex" recordkeeping and reporting requirements for small businesses, Culver maintained. Under S 299, agencies would have to "address that problem squarely and directly," he added.

A similar regulatory flexibility bill (HR 4660) has been reported out of the House Small Business Committee, but is awaiting action by the Rules Committee before going to the floor. The Small Business Committee is seeking a rule that would keep "killer amendments" such as a legislative veto provision from being attached to the bill when it goes to the floor, a committee staff member stated.

Appointments

WEINER NAMED ACTING DIRECTOR OF OSHA PHYSICAL AGENTS OFFICE

Sheldon Weiner was appointed acting director of the Occupational Safety and Health Administration's Office of Physical Agents Standards.

Weiner, who formerly worked in the office in the area of ionizing radiation, assumed the position in mid-June. He said he will continue work on ionizing radiation and also will coordinate activity on the revision of the workplace noise standard.

The agency has been filling the position on a rotating basis since last fall when the late John O'Neill, the former office director, vacated the position due to illness.

Weiner will be acting director for a 60-day tenure, according to Bailus Walker, OSHA director of health standards. Alice Suter, senior scientist in the office of physical agents, held a similar tenure as acting office director last fall following O'Neill's death.

Carcinogens

16 INDUSTRIAL CHEMICALS, PROCESSES LISTED AS CARCINOGENS IN NTP REPORT

RESEARCH TRIANGLE PARK, N.C. — (By a BNA staff correspondent) — Some 16 industrial chemicals, groups of substances, and processes were noted in a National Toxicology Program report on substances known or reasonably believed to be carcinogens.

The document, known as the "Maguire Amendment Report," was issued August 6 by the Department of Health and Human Services pursuant to a 1978 amendment to the Public Health Service Act. The first in an intended series of annual reports, the document also provided information on the nature and degree of exposures to the carcinogens listed, and the extent to which federal regulations are effective in reducing health hazards from the substances.

According to the department, the listings were drawn from monographs published in 1978 by the World Health Organization's International Agency for Research on Cancer. The substances listed have been associated with cancer in humans, the report said.

Industrial chemicals and substances listed in the report included aminobiphenyl, arsenic, asbestos, benzidine, bis-Chloromethyl ether and methyl chloromethyl ether, naphthylamine, and vinyl chloride. The existing Occupational Safety and Health Administration standards for these substances are effective, the report found.

Also listed were auramine, for which a National Institute for Occupational Safety and Health special hazard review is

under way, the report noted: benzene; and soots, tars, and oils.

Industrial processes cited were those involving cadmium and cadmium compounds, chromium and chromium compounds, and nickel and nickel compounds. Existing OSHA standards for these substances were judged effective. Also listed in the report was hematite, or iron oxide.

Future Annual Reports

DHHS noted that the report issued August 6 did not include all substances confirmed or suspected to be carcinogens. Future annual reports, it added, will deal with chemicals more recently identified as carcinogens, usually through animal studies.

It is important to use animal data to identify potential carcinogens because "society cannot wait until cancer occurs in a population to learn that there is a serious health problem," the report asserted.

DHHS characterized the initial report as the beginning of a "long and difficult process of systematically gathering and analyzing significant information about cancer-causing agents in the environment." In addition to industrial substances, the report also listed naturally occurring chemicals, industrial by-products, and pharmaceuticals.

It is difficult to assess the effectiveness of federal regulations in reducing risks from these substances, because of the "long period between exposure to a carcinogen and onset of disease," the report stated. Most laws concerned with reducing risks from carcinogens, such as the Occupational Safety and Health Act, were only enacted in the last 10 years, it noted.

Also, little information is available on past exposure levels which could be used as a baseline for estimating future risk reduction, the document added.

Meetings

INDUSTRY, LABOR, GOVERNMENT SPEAKERS TO DISCUSS ASBESTOS REGULATION AND USE

A panel discussion among the heads of federal agencies, and industry and labor groups concerned with the use and regulation of asbestos is on the agenda for the 10th annual meeting of the Asbestos Information Association/North America September 17 and 18 in Washington, D.C.

Scheduled to participate in the September 17 panel are Eula Bingham, assistant secretary of labor for occupational safety and health; Douglas M. Costle, administrator of the Environmental Protection Agency; and Susan Bennett King, chairperson of the Consumer Product Safety Commission.

Also participating will be John A. McKinney, chairman of the board of the Johns-Manville Corporation; J. D. Little, president of Cassiar Asbestos Corporation; and Thomas O. Mathues, vice-president, manufacturing staff, General Motors Corporation. Labor representative Andrew T. Haas, president of the International Association of Heat and Frost Insulators and Asbestos Workers, also is scheduled to appear.

Panel on asbestos and health will be presented September 17, featuring Paul Kotin, senior vice-president for health, safety, and environment at Johns-Manville Corporation; Hans Weill, professor of medicine at Tulane University; and Kenneth S. Crump, Science Research System, Inc.

Representative Donald Ritter (R-Pa) is scheduled to speak to the conference September 18, followed by other representatives of the U.S. and Canadian asbestos industry.

The meeting will be held at the Twin Bridges Marriott Hotel in Washington, D.C. More information can be secured by contacting the Executive Director, Asbestos Information Association/North America, 1745 Jefferson Davis Highway, Suite 509, Arlington, Va. 22202.

Washington

PLAN SUPPLEMENTS ON EXEMPTIONS, RECORDS ACCESS APPROVED BY OSHA

Approval of three supplements to the Washington job safety and health plan was announced August 12 by the Occupational Safety and Health Administration.

According to the agency announcement (45 FR 53459), the supplements approved provide for:

- The exemption of employers with 10 or fewer employees from requirements to maintain a log, summary, and supplementary record of injuries and illnesses, unless selected to participate in a statistical survey.
- Use of the revised OSHA Form 200 by employers for recordkeeping and participation in a statistical survey.
- ▶ Access by employees to employer medical and exposure records.

The plan supplements are substantially identical to the comparable federal provisions, OSHA noted.

Copies of the Washington state plan and its supplements are available for inspection at these locations:

- ▶ Office of State Programs, OSHA, Room N-3613, 200 Constitution Ave., N.W., Washington, D.C. 20210.
- Office of the Regional Administrator, OSHA, Room 6048, 909 First Ave., Seattle, Wash. 98174.
- Department of Labor and Industries, General Administration Building, Olympia, Wash. 98504.

The approved change, which adds a new Section 1952.125 to the state plan, will be reflected in a future Reference File supplement.

Meetings

HEALTH, SAFETY AREAS TO BE COVERED IN INTERNATIONAL CADMIUM CONFERENCE

Health and safety aspects of cadmium will be among topics discussed at the Third International Cadmium Conference, scheduled for February 3-5, 1981, in Miami, Fla., the Lead Industries Association, Inc., announced.

Keynote speakers for the first day of the conference will highlight health and environmental aspects of cadmium, along with economic, research, and marketing factors, the announcement stated.

Presentations on the second day are expected to concentrate on techniques and technology for controlling cadmium exposure, and on the effects of new standards on the industry. Results of epidemiological studies on populations exposed to unusual cadmium levels also will be presented.

On the third day, the meeting will focus on health questions, with reports on carcinogenicity studies, the critical concentration of cadmium in the kidney, and the health maintenance of cadmium-exposed workers, according to the notice.

Persons wishing additional information should contact any of the three conference co-sponsors: International Lead Zinc Research Organization, or Cadmium Council, Inc., both at 292 Madison Ave., New York, N.Y. 10017; or the Cadmium Association, 34 Berkeley Square, London W1X 6AJ, U.K.

Procurement**NIOSH AWARDS \$295,455 CONTRACT TO STUDY CEMENT INDUSTRY CONTROLS**

The National Institute for Occupational Safety and Health awarded a \$295,455 contract to A.T. Kearney, Inc., Alexandria, Va., to conduct a control technology assessment of the cement manufacturing industry, the management consulting firm announced.

Kearney noted that the contract (No. 210-80-0069) calls for providing a data base for a criteria document on the industry, measuring the potential for exposure to carcinogens, and identifying research needs in the industry. Kearney also will gather technical information concerning occupational health engineering controls and offer examples for voluntary use in industry, under the terms of the contract.

Respirator Study

NIOSH also awarded an \$80,043 contract (No. 210-80-0075) to Moleculon Research Corporation of Cambridge, Mass., to develop methods for monitoring worker exposure to toxic gases and vapors in respirator masks, the institute announced July 30.

NIOSH also announced the award of a \$49,711 contract (No. 210-80-0100) to Tracor Jitco, Inc., of Rockville, Md., to add reproductive effects data to the NIOSH register of toxic effects of chemical substances.

Further information may be obtained from NIOSH, Procurement and Grants, Parklawn Building, Room 8-29, Rockville, Md. 20857.

Regulatory Reform**REGULATORY VETO ISSUE 'COP-OUT' BY CONGRESS. PETKAS TELLS ABA SESSION**

HONOLULU — (By a BNA staff correspondent) — "The legislative veto is a cop-out on the part of Congress," Peter Petkas, director of President Carter's Regulatory Council, told the Section of Administrative Law of the American Bar Association at the ABA's annual meeting in Honolulu.

Speaking at an educational program on regulatory reform sponsored by the section, Petkas said the legislative veto allows congressional committees and their staffs to "wield enormous new control" over the regulatory progress. He rhetorically asked whether congressional committees would be any more interested in reducing the regulatory burden at the time of a legislative veto than when they passed the legislation. Congressional committees are historically unequipped and disinterested in dealing with regulatory reform, Petkas submitted.

Petkas's Regulatory Council consists of the heads of the major regulatory agencies who attempt to coordinate federal regulatory policy, including Eula Bingham, director of the Occupational Safety and Health Administration.

The legislative veto is a provision for invalidating executive agency action, primarily rulemaking, by resolution of one or both houses of Congress. One of the variants of the legislative veto is the "report and wait" proposal, whereby agency rules would not take effect until Congress has the opportunity, within a prescribed time, to invalidate the rules by a legislative act.

In one of the most publicized recent cases involving the legislative veto, Congress vetoed four sets of Education Department regulations. Upon advice from Attorney General Benjamin Civiletti, Education Secretary Shirley Hufstедler told her staff to ignore the vetoes and treat the regulations as final. Ultimately, however, Hufstедler, after

receiving strong rebukes from key congressional education leaders, reached an accord with Congress over the regulations.

Richard A. Wegman, chief counsel for the Senate on Governmental Affairs Committee, told the ABA panel that the legislative veto was an example of Congress attempting to hold executive agencies accountable for their actions.

"The issue is not whether agencies should be accountable but whether more layers of checks and reviews are needed in the regulatory process," Wegman concluded.

Richard B. Smith, of Davis Polk & Wardell, of New York City, noted that over 100 pieces of legislation currently carry some form of the legislative veto. "However misguided this may be," it represents congressional attempts to gain more of a hold over federal agency activities, he said.

Smith said there are numerous forms of the legislative veto, involving vetoes by one or both houses of Congress and the President as well. An issue yet to be resolved by the Supreme Court, he pointed out, is whether it is constitutionally necessary for both houses of Congress to invalidate agency regulations — since both houses must pass the original bill before it becomes effective.

Congress has also evidenced its concern, Smith said, for overseeing agency action through the promulgation of sunset legislation, which calls for the end of all agency action unless Congress extends its life.

Wyoming**DECISION NOT TO ISSUE STANDARD ON COTTON DUST GIVEN OSHA APPROVAL**

The Occupational Safety and Health Administration August 12 approved a state plan for Wyoming which excludes a standard for exposure to cotton dust.

According to the OSHA notice (45 FR 53614), it was determined that it was not necessary to incorporate the cotton dust standard in the state plan since "there currently are not worksites in the state where employees are exposed to the hazard covered by this standard." Thus, enforcement of the cotton dust standard, the notice stated, "will be the responsibility of Federal OSHA, until such time as the state adopts the standards."

Copies of the letter, along with the approved state plan, are available for inspection and copying from:

► Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1554, Federal Building, 1961 Stout St., Denver, Colo. 80294.

► Occupational Health and Safety Department, 200 East Eighth Ave., Cheyenne, Wyo., 82001.

► Technical Data Center, Room N-2439R, Third and Constitution Ave., N.W., Washington, D.C. 20210.

California**APPEALS BOARD INSISTS IT HAS POWER TO CHANGE CARCINOGEN CIVIL PENALTIES**

SAN FRANCISCO — (By an OSHA staff correspondent) — In two decisions after reconsideration, the California Occupational Safety and Health Appeals Board insisted that it has authority to modify civil penalties assessed against employers for failure to report use of asbestos.

The unanimous rulings by the board rejected the contentions of the Division of Occupational Safety and Health (DOSH) that the minimum penalty of \$500 for failure to report is fixed by statute and not subject to change by the board.

The cases involved *Barnett Tool & Engineering, Vernon* (Docket No. 916-78), and *Dorothy C. Thorpe, Inc., Sun Valley* (No. 045-79), both of which admitted they failed to report asbestos use to DOSH as required by 8 CAC 5208(1)(1)(A). In each case the employers contested the \$500 fine proposed by DOSH and Appeals Board law judges cut the final penalties to \$25 in the Thorpe case and \$0 in that of Barnett Tool.

DOSH petitioned the board to reconsider the rulings on the issue of the penalty reductions. It argued that the amount of the fine for failure to report is fixed by law at "not less than \$500" (Health and Safety Code section 24260). Because the penalty amount is set by statute, the board has no authority to modify it, DOSH maintained.

The board disagreed, however, and insisted that the state Labor Code gives it the power to review penalties proposed by the division and modify them if appropriate. Labor Code sections 660 et seq. "clearly establish the express statutory scheme that all civil penalties assessed by the division (including civil penalties assessed under the Health and Safety Code) are initially proposed civil penalties until affirmed, modified, or vacated by the Appeals Board," the board stated.

The board also observed that stripping it of authority to review civil penalties would render meaningless an employer's appeal of the amount of the fine. Such a result would be inconsistent with the statutory scheme of the state Occupational Safety and Health Act, it said.

"It is further noted that the legislature could have exempted carcinogen civil penalties from the appeals procedures if the intent of that body was to prevent any modifying of the proposed carcinogen penalties by the Appeals Board," the board stated.

Concluding that it does have authority to modify the fines, the board set penalties of \$100 against each employer.

Central Coast Pipeline Construction

DOSH may amend a citation at any time in the appeals process before the matter is submitted for decision so long as the employer is not misled or prejudiced in preparing or maintaining a defense, the board ruled after reconsideration of the case of *Central Coast Pipeline Construction Company, Spreckels* (Nos. 1342-76 and 1343-76). It rejected the contention of the company that the division improperly was allowed to amend a citation at a hearing before an administrative law judge.

Central Coast Pipeline Construction complained that after both it and the division had presented their cases to the law judge, the division amended its citation to change the standard cited from 8 CAC 1541(b) to 8 CAC 1541(b)(2) at the suggestion of the law judge. The company said the law judge acted improperly and the amendment was untimely, constituting, in effect, a new citation.

The board denied the firm's contentions, noting that the board's rules permit amendments at any time before the matter is submitted for decision. "As long as an employer is not misled nor prejudiced in preparing and maintaining its defense and is aware of the situation, amendments that relate to the same general set of facts may be granted at the hearing, including amendments that allege violation of a particular subsection or a different but related safety order altogether," the board explained.

The company also attacked the citation on the ground that the cited standard is vague and its section title, "Protection While Installing Shoring," is misleading. The board rejected this contention, too, finding that the rule "is not vague, ambiguous, or in need of interpretation and the title of the subsection shall not be used to govern or limit the meaning of the regulation."

"The Appeals Board holds that an adequate means of exit shall be provided at all times when employees are required to be in trenches four or more feet in depth," the ruling stated.

Producers Cotton Oil

An employer of non-English-speaking employees must assure that its safety instructions are communicated effectively to those employees and understood by them, the board ruled after reconsidering the appeal of *Producers Cotton Oil Company, Fresno* (No. 1282-76). The company violated 8 CAC 3438 because it lacked a procedure for assuring that its translators did their job responsibly, the board concluded.

The case arose from an investigation by DOSH of an accident in which a Spanish-speaking employee had an arm caught between two rollers of a cotton gin. The probe indicated that the employer provided bilingual safety instructions but it had no procedure to assure that the employee designated as translator was capable of doing the job responsibly or did not have other job duties that might interfere with the translating.

The Appeals Board also found that the company had no way of verifying whether its employees attended safety meetings. "An employer's responsibility to monitor employee attendance at bilingual safety meetings is especially important in an industry, such as cotton ginning, where the work is seasonal and the turnover rate high as such meetings may be the only effective way of guaranteeing that employees receive basic safety instructions," the board noted.

Merely assigning a bilingual employee to translate the safety instructions is not enough, either, the board continued. The employer must assure that the translator knows English well and is willing to translate correctly. The translators also must be free enough of other duties to be available for adequate translating. Based on these tests, Producers Cotton Oil did not comply with 8 CAC 3438, the board concluded.

Maryland

OSHA APPROVES STATE REGULATIONS COVERING INORGANIC ARSENIC EXPOSURE

The Occupational Safety and Health Administration August 12 approved Maryland standards for worker exposure to inorganic arsenic.

According to the OSHA notice (45 FR 53613), the state standards were found to provide worker protection identical to that provided by federal standards.

Copies of the Maryland state supplement, along with the approved state plan, are available for inspection and copying from:

► Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pa. 19104.

► Office of the Commissioner of Labor and Industry, 203 East Baltimore St., Baltimore, Md. 21202.

► Technical Data Center, Room N2439, Third St. and Constitution Ave., N.W., Washington, D.C. 20210.

California

CONTRACTOR NOT IMMUNE FROM CITATION IF SUBCONTRACTORS DENIED WALKAROUND

SAN FRANCISCO — (By an OSHR staff correspondent) — A general contractor may not object to a citation on the ground that its subcontractors were denied the right to par-

ticipate in a walkaround inspection, unless the denial prejudiced the contractor, an administrative law judge of the California Occupational Safety and Health Appeals Board ruled.

Finding that such prejudice was absent, Adolf Loeb, law judge of the board, sustained a serious violation charged against *The Knoll Company*, Santa Clara (Docket No. 410-80) and approved a \$225 civil penalty.

The case arose when an inspector from the State Division of Occupational Safety and Health (DOSH) observed from a public street that guardrails were absent from an upper floor of a nine-story building under construction. The inspector entered the site and asked to see the general contractor. He was directed to an upper floor and on the sixth level he found Koll's project manager and construction superintendent standing near the edge of an unguarded floor.

DOSH cited Koll for an alleged serious violation of 8 CAC 1670(a) for failure to provide additional protection such as safety belts in the absence of guardrails. Koll challenged the citation on several grounds, including a contention that subcontractors at the site were not asked to participate in the walkaround inspection. Koll also said the infraction was due to an isolated act by its two employees.

Loeb rejected both arguments and affirmed the citation. "Employer has no standing to raise a denial of walkaround rights to its subcontractors as a ground for striking a citation against itself unless of course, it was prejudiced thereby, but this was not shown to be the fact," he said.

The isolated employee act defense also was weak, Loeb found. It failed to include proof that employees are sanctioned for disregarding safety rules, he observed.

Department of Transportation

A general duty provision of the Construction Safety Orders is not unenforceably vague as it applies to employees required to work near highway traffic, according to a decision by Administrative Law Judge Douglas M. Phillips. He ruled that the state Department of Transportation, City of Commerce (No. 1039-79), violated 8 CAC 1511(b) because highway maintenance employees were endangered by the proximity of their work to highway traffic.

The department was cited by DOSH for alleged serious violation of the standard because employees were assigned to work in what the division considered an obviously unsafe environment. The employees were removing raised pavement markers called buttons from the roadway and the work area was delineated by cones and barricades to divert traffic around it. However, the work sometimes required employees to reach beyond the marked off area, into traffic lanes, to retrieve the buttons.

Phillips did not find the standard cited by DOSH to be vague as it applied to the facts of the case. The department knew that employees removing buttons occasionally reached into traffic lanes to retrieve them, he noted.

"These employees were clearly exposed to a critical danger of being struck by vehicular traffic and this was patently and obviously an unsafe workplace for these employees," he observed. "In this factual setting and in this context, it is concluded that 8 CAC 1511(b) is not so vague as to be unenforceable and does not require the violation of another safety standard as a condition to the establishment of a violation of its own provisions," he said, affirming the citation.

Pacific Gas & Electric

Pacific Gas & Electric Company, San Francisco, (No. 067-80), violated 8 CAC 2941(d) when it failed to require employees to make an adequate inspection of utility poles before they are climbed, Loeb found. The pole inspection

procedure should have included excavation around the base of the pole, he said.

DOSH cited PG&E for alleged serious violation of the standard after investigating an accident in which an employee fell when a pole snapped at its base due to termite damage. The employees had made a visual inspection of the pole and a sound test using a hammer from the base of the pole to as high as the employee could reach from the ground. An excavation was not made around the base to check for damage, nor were bore holes drilled into the pole.

PG&E has adequate pole inspection procedures, but they are not enforced, Loeb noted. The company's safety manual only advises excavation around the pole base; it does not require it to check for soundness. "If this safety order is to provide a safe work environment its mandate cannot be satisfied with any inspection except one that reasonably will disclose such imperfections in the pole as to permit a judgment to be made concerning its capacity for the work to be done upon it," he said.

In this case, PG&E's failure to enforce its excavation rule caused a violation of the standard, Loeb concluded, affirming the violation as a nonserious one and vacating the division's proposed \$300 fine.

Publications

AUDIOVISUAL CENTER PUBLISHES LIST OF INDUSTRIAL SAFETY PRESENTATIONS

A total of 138 industrial-safety audiovisual materials available for purchase are included in a list published by the National Audiovisual Center.

The collection consists of slide sets, audiotapes, filmstrips, multimedia kits, videotapes, and 16mm films. Films also are available for rentals of up to four weeks.

Topics are divided into general groupings of agriculture, construction, first aid, industry, laboratories, materials handling, and mining.

Listings include date of issue, price, length, producers and sponsors, purchase and rental information, and brief descriptions of content. Separate sections of the publication explain ordering procedures and give background information about the center.

The center, which is a division of the National Archives and Records Service, General Services Administration, also provides free loan referral service upon request, the publication said.

The listing may be obtained by contacting the National Audiovisual Center, General Services Administration, Reference Section, Washington, D.C. 20409; telephone (301) 763-1896.

Publications

FEDERAL, STATE, LOCAL AGENCIES LISTED IN SAFETY, HEALTH DIRECTORY

A directory of federal, state, and local agencies responsible for occupational safety and health is available from the National Institute for Occupational Safety and Health.

Listings are included for the Occupational Safety and Health Administration, the Mine Safety and Health Administration, the Occupational Safety and Health Review Commission, NIOSH, and state and local agencies.

Interested persons may obtain the directory (DHHS/NIOSH Publication No. 80-124) by writing NIOSH, Robert A. Taft Laboratories, Mail Stop R-6, 4676 Columbia Parkway, Cincinnati, Ohio 45226.



Review Commission Activity

ACTIVITY OF OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

-This Section includes —

Review Commission Decisions: Decisions and orders of the full commission.

Review Commission Final Orders: Judges' reports which have become final, with date of finality.

Notices of Contest: Notices of contest to Labor Department citations.

REVIEW COMMISSION DECISIONS

Austin Road Company, 7/31/80 — citation for serious-repeat violation of 1926.652(c), for failure to support or slope sides of trench more than five feet deep and eight feet long, is reviewed on issue of whether it is repeated violation, and is remanded in part and affirmed in part; since judge issued his decision, commission has definitively identified circumstances under which violation is properly classified as repeated; accordingly, case is recommend for reconsideration under current commission precedent; employer also advanced three other arguments that warrant consideration: that prior nonserious violation cannot be basis for serious-repeated violation; that Section 9(c) of Occupational Safety and Health Act, which requires issuance of citation within six months of violation, prohibits issuance of repeat violation when prior violation occurred three years ago; and, alternatively, that if Section 9(c) statute of limitations did not apply, then Texas civil code statute of limitations of two years applies; these arguments are rejected because: repeat violation issue is whether same hazard persists, not whether same degree of gravity persists; Section 9(c) limits issuance of current citation, not historical period since last violation, in determining repeat violation; and state statute of limitations does not apply since OSH Act has its own limitation in Section 9(c) and, in addition, state statute applies to personal injury actions (No. 77-2752).

Car and Truck Doctor, Inc., 7/30/80 — judge's order, dismissing notice of contest related to several citations for violations of Occupational Safety and Health Act, is vacated and case is remanded for purposes of ordering employer to post notice of contest at worksite and to submit proof of posting thereof; record establishes that subsequent to Secretary's filing of motion to withdraw citations pending against employer, judge ordered employer to show cause why notice of contest should not be dismissed because of employer's failure to certify that copy of notice had been posted at worksite; employer's failure to respond to show cause order resulted in dismissal of notice of contest; evidence, which indicated that employer's omission, in not posting notice, may have been a reaction to Secretary's motion to withdraw action, and need to protect employees' rights to notice of the pending action requires vacation of judge's order and remand for purposes of allowing employer to post notice (No. 79-454).

S. J. Groves and Sons Company, 7/30/80 — citation for violation of 1926.602(a)(9)(i) for failing to equip scraper, which was capable of moving in either forward or reverse directions, with an operable horn, affirmed without penalty;

judge's decision that cited standard was inapplicable to employer's scraper, is reversed since Review Commission precedent establishes that scrapers are bidirectional machines to which standard applies; evidence which established that scraper possessed inoperable horn at time of inspection requires affirmance of citation (No. 78-5084).

Highway Motor Company d/b/a Park Price Motor, 7/30/80 — citation for violation of 1910.107(d)(5), for allowing paint build up on fan used to disperse paint fumes in spray paint booth to extent fan might overheat its motor and cause a fire, is affirmed without penalty; Secretary based citation on compliance officer's theory that such paint build-up could cause a fire despite lack of any knowledge to support that theory; Review Commission affirms citation on ground that cited standard presumes that presence of electrical motor within spray booth is hazardous unless that motor fits within exceptions to cited standard; cited standard excepts motors specifically approved for use within spray paint booths by either Underwriters' Laboratories or Factory Mutual Engineering Corporation; employer failed to prove that its electric motor was approved by either UL or FMEC (No. 77-242).

Johnson Steel & Wire Company, Inc., 7/31/80 — citation for violation of machine guarding standard 1910.212(a)(1) is vacated and accorded precedential value of unreviewed judge's decision; record established that commissioner directed review of judge's decision despite fact that neither party had petitioned for review in this case; furthermore, in response to direction for review, employer filed brief in support of judge's decision, which had vacated decision, and Secretary filed letter stating that in view of record in case review was not deemed to be appropriate; commission precedent establishes that commission will not decide issues directed for review in absence of either party interest or compelling public interest in review of these issues; since neither of these two elements are present, judge's decision vacating citation is affirmed (No. 77-643).

Ladish Company, Tri-Clover Division, 7/31/80 — citation for violation of 1910.309(b), for failure to provide sufficient access and working space for certain electrical equipment with result that safe operation and maintenance of equipment could not be performed, is affirmed; employer's argument, that section 110-18(a) of National Electrical Code which was basis of citation, was not incorporated by reference into 1910.309(b) and is therefore inapplicable to facts of this case, is rejected; Review Commission has held that 1910.309(b) incorporates by reference the entire NEC with respect to equipment installed, replaced, modified, repaired, or rehabilitated after 3/15/72; evidence in this

case proves that electrical equipment at issue was installed in 1976 (No. 78-2499).

Mayhew Steel Products, Inc., 7/31/80 — judge's decision vacating citation for violation of 1910.212(a)(3)(ii), for failure to guard point of operation of stamping machine, is reversed and remanded; judge based his decision on testimony of machine's operator to effect that during normal course of operation there was no exposure of employee's hands to danger; Secretary argued successfully that Review Commission precedent holds that machines operated in manner similar to employer's method exposed employees to hazards within meaning of cited standard; fact that during normal operation employee's hands would not come within machine's point of operation is immaterial; purpose of standard is to ensure that hands never come within machine's point of operation; in addition, evidence in this case proved that employee's hands were within a few inches of machine's point of operation and Review Commission precedent holds that such proximity alone constitutes hazard requiring protection. (No. 77-3970).

National Roofing Corporation, 7/31/80 — judge's decision granting Secretary's motion to dismiss employer's notice of contest as untimely filed, is set aside and case remanded; judge's decision was based on his conclusion that employer had not shown that late filing was due to deception on part of Secretary; employer asserts that its notice of contest was filed late because of such deception on part of Secretary's compliance officer who personally delivered citation to employer; according to employer, the compliance officer delivered citation and told employer to "put it away and forget about it;" judge's failure to make any inquiry into this allegation requires his decision to be set aside and case remanded for inquiry and determination into those allegations and facts surrounding filing of the employer's notice of contest (No. 79-1158).

OSCO Industries, Inc., 7/30/80 — citation for violation of 1910.132(a), for failing to require that employees engaged in pouring molten metal wear adequate personal protective equipment, is vacated; evidence established that employees who poured molten iron by ladles into molds wore leather leggings and protective glasses and gloves, but not flame retardant jackets and trousers; Secretary's argument, that employees were exposed to hazardous condition necessitating wearing of protective clothing which extended above their knees due to hazard presented by iron spills from tipping ladles, which were chest high, as well as sparking of metal and potential for employee falls into metal, is rejected; evidence fails to support finding that reasonable person familiar with circumstances in this industry would recognize a hazard warranting use of protective clothing other than that already worn by employees; evidence showed that ladles could not tilt in direction of employees and that counterbalancing of ladles kept them upright, thereby preventing accidental spilling of metal onto employees; furthermore, hazard of burns from sparking which was minor, did not warrant protection beyond leggings and gloves, and falls into metal were not possible; accordingly, citation is vacated (No. 76-2383).

Prestressed Systems, Inc., 7/30/80 — judge's decision affirming citation for violation of 1926.21(b)(2) is affirmed and awarded precedential value of unreviewed judge's decision; employer had withdrawn its notice of contest to citation and judge severed that citation from docket; employer later, in its petition for discretionary review, sought review of that citation; employer failed to brief any issue involved in that citation; since neither employer or Secretary briefed any issues in that citation and that citation does not involve

any issue of compelling public interest, citation is affirmed without review (No. 76-662).

Pullman Power Products, Inc., 7/31/80 — judge's decision to vacate citations for violations of 1926.500(d)(2), for failure to guard open-sided walkway, and 1926.25(a), for failure to keep walkway free of debris, is set aside and citations are affirmed with \$560 penalty; judge based his decision on employer's argument that Occupational Safety and Health Administration compliance officer did not identify himself to employer and therefore deprived employer of its rights under Section 8(e) of Occupational Safety and Health Act; Secretary successfully argued that Review Commission and appellate courts have held that employer must prove prejudice in preparation of its defense before citation will be vacated due to Secretary's noncompliance with Section 8(e); employer failed to prove any prejudice to its defense; employer's argument, that Secretary's compliance officer failed to present his credentials to employer before commencing his inspection, is rejected; evidence proved that compliance officer presented his credentials to owner of construction project and was escorted during inspection by representative of another employer; in any event, employer again failed to prove actual prejudice to its defense by Secretary's actions (No. 78-4988).

REVIEW COMMISSION FINAL ORDERS

Roger J. Au & Son, Inc., 7/25/80 — citation for violating 1926.800(c)(1)(ii), for failure to use suitable device to test for oxygen deficiency, is vacated since Secretary's evidence went to manner in which device was operated rather than suitability of device itself, in that Tritector was set to sound alarm when air's oxygen content went below 18% rather than prescribed 20%; citation for violating 1926.800(c)(1)(i), for failure to provide measuring instruments to test for nitrogen dioxide, for failure to test atmosphere as frequently as necessary, and for failure to accurately maintain record of tests, is affirmed; employer's argument that there was little likelihood of nitrogen dioxide in excavation is rejected since standard requires test for possibility of its presence; medical technician testified that he didn't take atmospheric test on every shift, therefore tests were not conducted as frequently as possible as standard requires; the failure to operate Tritector correctly establishes that record of tests was not kept accurately; citation for violating 1926.800(e)(1)(xii), for failure to provide a rescue crew at jobsite of tunnel operation, is affirmed; employer's argument, that excavation 33 feet in diameter, 180 feet deep, leading to 230 foot long excavation at one end and 160 foot long at other end, is not tunnel operation until equipment known as "mole" began operating, is rejected; citation for violating 1926.800(b)(3), for failure to make self-rescuers available near the advancing face where employees might be trapped by smoke or gas, is affirmed; employer's argument, that jobsite was not tunnel, is rejected; employer's argument, that self-rescuer location in surface trailer 50 yards from head of shaft was approved by Army Corps of Engineers, is rejected since that approval was given some months after this inspection; employer's argument, that there was no carbon monoxide at this jobsite is rejected since equipment, machinery and explosives used at jobsite establishes possibility that employees might be trapped, which is all that is required to apply this standard; Secretary failed to establish willful disregard of hazards in question, however employer's knowledge of conditions and risk of serious injury or death require finding that violations were serious with penalty of \$500 assessed for each affirmed citation (Furcolo, Judge; Nos. 79-2210 and 79-2211).

NOTICES OF CONTEST

Crest Lock Company, Inc., 7/28/80 — citation for violation of 1910.212(a)(1), for failure to provide machine guarding on exposed portion of saw blade on horizontal band saw, is vacated since Secretary failed to prove manually adjustable guard exposed employees to hazard; citation for violation of 1910.217(c)(2)(i)(A), for failure to provide point of operation guard on mechanical power press, is vacated; power press operator's testimony that existing guard on machine prevented any access to danger area is more persuasive than compliance officer's speculation that this machine needed additional guarding; citation for violation of 1910.242(b), for failure to reduce compressed air to less than 30 psi, is vacated; written interpretation by OSHA, explaining application of this standard, requires less than 30 psi at nozzle in static condition; since Secretary's evidence only referred to high pressure from open valve, there is failure of proof; citation for violation of 1910.107(g)(2), for accumulation of combustible lacquer residue in spray booth, is affirmed; Secretary's evidence was uncontradicted by employer, and penalty of \$25 is assessed for this non-serious violation; citation for violation of 1910.217(b)(4)(i), for failure to protect pedal mechanism on mechanical power press from unintended operation, is affirmed as *de minimis* violation with no penalty or abatement requirement; evidence that pedal mechanism guards were missing was uncontradicted, but it was established also that employees were adequately protected from danger of operating machines by point of operation guards, and no access to hazard was proven (O'Connell, Judge; No. 78-332).

Kaiser Aluminum and Chemical Corporation, and United Steelworkers of America, Local 5668, 7/28/80 — citation for serious violation of 1910.102(a), for storing acetylene cylinders in locations where moving objects may strike or fall against them, and citation for serious violation of 1910.252(a)(2)(ii)(d), for failing to use valve protection caps on compressed gas cylinders not in use or connected for use, are affirmed with \$270 penalty assessed; evidence established that uncapped and unsecured acetylene cylinders were stored in roadway where forklifts were operated within two feet of cylinders; employer's argument, that violation resulted from isolated employee misconduct, is rejected; evidence failed to establish that any corrective action was taken against employee who violated work rule relating to proper handling and use of acetylene cylinders; employer's argument, that violation resulted from acts of independent contractor, is rejected; employer failed to establish that it could not have effectively coped with problem in its dealings with contractors (Cutler, Judge; No. 79-4435).

Union Carbide Corporation, and United Steelworkers of America, Local 3081, 7/28/80 — citation for serious violation of 1926.400(a), for failing to guard live parts of flexible cord on portable fan, is vacated; employer's argument, that employees were not exposed to hazard, is accepted; fan was clearly located out of employees' way as they entered or exited from room; since back of fan was located against wall and bare wires were within fan casing at rear, employees had no direct exposure to bare wires; citation for serious violation of 1926.400(c)(1), for permitting an employee to work in close proximity to live terminal leads on transformer in electrical control box, is affirmed and penalty of \$560 is assessed; employer's argument, that violation was due to unpreventable employee misconduct, is rejected; although employer had work rule with regard to working around live parts, record did not establish effective enforcement of rule; employer's policy to allow "A" electricians to use their own judgment did not ensure that sound judgment was being utilized (Burroughs, Judge; No. 79-5933).

AC & S, Dedham, Mass., is contesting a \$150 penalty for a serious citation for 1926.451(d)(10) for failure to guard a scaffold adequately (No. 80-3568).

John Amentas Decorators, Inc., Woodside, N.Y., is contesting a serious citation and a \$480 penalty for 1926.100(a) for failure to ensure employees' use of protective helmets (No. 80-3342).

Andersen Interiors, Inc., Elmwood Park, N.J., is contesting a serious citation and a \$630 penalty for 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring (No. 80-3323).

Archer Daniels Midland Company, Decatur, Ill., is contesting a willful citation and a \$4,000 penalty for Section 5(a)(1) for failure to ensure that untrained employees were not permitted to attempt to repair benzene leaks and spills, to instruct employees in the safe handling of benzene, and to supervise adequately and enforce job safety rules.

The company also is contesting a serious citation and an \$800 penalty for 1910.134(b)(2) for failure to select respirators on the basis of hazards to which workers were exposed and 1910.151(c) for failure to provide suitable quick drenching facilities to employees exposed to corrosive materials.

The company also is contesting a repeated citation and a \$100 penalty for 1910.134(b)(6) for failure to store respirators in a convenient, clean, and sanitary location (No. 80-3519).

Bachi, Inc., Itasca, Ill., is contesting a \$560 penalty for a serious citation for 1910.309(a) for failure to ensure a permanent, continuous grounding path from equipment (No. 80-3275).

Barrett Wrecking Inc., New Berlin Wis., is contesting a five-item serious citation and a \$1,080 penalty, including 1926.251(c)(4)(iv) for failure to ensure that a defective wire rope was not used, 1926.251(c)(5)(i) for failure to ensure that the U section of a U-bolt wire rope clip was in contact with the dead end of the rope, and 1926.550(a)(7)(i) for failure to remove frayed wire ropes from service.

The company also is contesting a repeated citation and a \$60 penalty for 1926.550(a)(6) for failure to maintain an inspection record of hoisting machines.

The company also is contesting a nonserious citation for 1926.350(a)(9) for failure to secure compressed gas cylinders in an upright position, 1926.450(a)(2) for failure to withdraw defective ladders from service, and 1926.500(b)(6) for failure to guard a manhole opening adequately (No. 80-3439).

E.J. Bartells Company, Billings, Mont., is contesting a serious citation and a \$2,000 penalty for 1926.21(b)(2) for failure to instruct employees in the recognition and avoidance of unsafe conditions and 1926.352(c) for failure to ensure that cutting and welding were not performed near flammable compounds.

The company also is contesting a serious citation and a \$1,000 penalty for 1926.352(i) for failure to ensure that cutting and welding was not undertaken on a flammable-substance tank before it was cleaned, ventilated, and tested (No. 80-3356).

Bath Iron Works Corporation, Bath, Maine, is contesting a serious citation and a \$700 penalty for 1915.43(c) for failure to guard a flat deck.

The company also is contesting a nonserious citation and a \$100 penalty for 1915.43(e) for failure to plank open sections of bilges adequately (No. 80-3358).

Bethlehem Steel Corporation, Bethlehem, Pa., is contesting a serious citation and a \$600 penalty for 1910.212(a)(1) for failure to guard machinery rotating parts (No. 80-3244).

Bowlin Engineering Company, Fort Worth, Tex., is contesting a serious citation and a \$200 penalty for 1910.219(d)(1) for failure to guard pulleys (No. 80-3531).

Bridgeport Brass Company division of National Distillers and Chemical Corporation, Bridgeport, Conn., is contesting a serious citation and a \$180 penalty for 1910.94(d)(9)(vii) for failure to ensure adequate and properly located eyewash and shower facilities for employees exposed to liquids harmful to skin (No. 80-3428).

Camden Refrigerating & Terminals Corporation, Camden, N.J., is contesting a serious citation and a \$560 penalty for Section 5(a)(1) for failure to provide an elevator operating procedure in conformity with ANSI standards, 1910.132(a) for failure to ensure employees' use of personal protective equipment, and 1910.176(b) for failure to ensure that material stored in tiers was secure and stable (No. 80-2937).

Canal Barge Company, Inc., New Orleans, La., is contesting a serious citation and a \$560 penalty for 1915.47(d) for failure to ensure employees' use of personal flotation devices when working on small boats or floats (No. 80-3563).

Central Plastics Distributors Company, Chicago, Ill., is contesting a serious citation and a \$180 penalty for 1910.212(a)(1) for failure to guard machinery inrunning nip points, 1910.212(a)(3)(ii) for failure to guard machinery points of operation, and 1910.219(d)(1) for failure to guard pulleys (No. 80-3372).

Columbus Jack Corporation, Columbus, Ohio, is contesting a \$4,620 penalty for an eight-item serious citation, including 1910.1000(b)(1) for failure to ensure that employees were not overexposed to lead, 1910.1025(d)(2) for failure to conduct initial lead monitoring, and 1910.1025(e)(3)(ii)(f) for failure to establish a written work practice program as required for an employee working in a spray booth.

The company also is contesting a \$900 penalty for a serious citation for 1910.106(e)(2)(iv)(d) for failure to ensure safe transfer of flammable liquids and 1910.132(a) for failure to ensure employees' use of personal protective equipment (No. 80-3453).

Concrete Building Systems, Arlington, Tex., is contesting a serious citation and a \$240 penalty for 1926.859(g) for failure to make continuing inspection of demolition operations and to prohibit employees from working where hazards existed from weakened floors or walls, or loosened materials.

The company also is contesting a nonserious citation for 1904.8 for failure to report an employment accident resulting in a fatality within 48 hours to the nearest Occupational Safety and Health Administration area office and 1926.850(a) for failure to make available evidence in writing that an engineering survey had been performed prior to permitting employees to begin demolition operations (No. 80-3533).

Cornell Underhill, Hoboken, N.J., is contesting a five-item serious citation and a \$5,810 penalty, including 1910.1000(b)(1) for failure to ensure that employees were not overexposed to beryllium, 1910.1025(c)(1) for failure to ensure that employees were not overexposed to lead, and 1910.1025(d)(2) for failure to conduct initial lead exposure monitoring.

The company also is contesting a nonserious citation for 1910.1000(c) for failure to ensure that employees were not

overexposed to nuisance dust, 1910.1025(g)(1) for failure to make available suitable protective clothing, and 1910.1025(j)(2)(i) for failure to make available biological monitoring of employees exposed to lead (No. 80-3326).

Decatur Glass Works, division of Kidde Consumer Durables Corporation, Decatur, Tex., is contesting a repeated citation and a \$160 penalty for 1910.134(b)(7) for failure to inspect, maintain, and repair respirators as required (No. 80-3514).

Dominick Milone, Inc., Rockville Centre, N.Y., is contesting a serious citation and a \$160 penalty for 1926.500(d)(1) for failure to guard open-sided floors (No. 80-3340).

Douglas Company, Toledo, Ohio, is contesting a serious citation and a \$350 penalty for 1926.401(a)(1) for failure to ground plug- and cord-connected equipment (No. 80-3566).

Esco Elevators, Inc., Fort Worth, Tex., is contesting a serious citation and a \$300 penalty for 1926.500(d)(1) for failure to guard an open-sided platform (No. 80-3535).

Etier Construction, Weslaco, Tex., is contesting a \$150 penalty for a serious citation for 1926.100(a) for failure to ensure employees' use of protective helmets (No. 80-3534).

Farwell Auto Body, Inc., Nampa, Idaho, is contesting a nonserious citation for 1910.107(b)(5)(i) for failure to ensure that average air velocity in a spray booth was at least 100 linear feet per minute and that the booth was equipped with warning devices or gauges to indicate air velocity (No. 80-3522).

Florida Drum Company, Inc., Pensacola, Fla., is contesting a \$540 penalty for a serious citation for 1910.219(d)(1) for failure to guard pulleys and 1910.219(f)(1) for failure to guard gears adequately (No. 80-3536).

Fountain Valley Gas Shop, Colorado Springs, Colo., is contesting a serious citation and a \$140 penalty for 1926.651(i)(1) for failure to retain excavated material at least two feet from the edge of an excavation (No. 80-3249).

GWP Industries, Inc., Deer Park, N.Y., is contesting a \$200 penalty for a serious citation for 1926.100(a) for failure to ensure employees' use of protective helmets and 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring (No. 80-3332).

Gardner-Zemke Company, subsidiary of Aztec Electrical Engineering Company, Albuquerque, N.M., is contesting a serious citation and a \$280 penalty for 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring (No. 80-3542).

Garsite Products, Inc., Deer Park, N.Y., is contesting a serious citation and a \$320 penalty for 1910.212(a)(3) for failure to guard machinery points of operation.

The company also is contesting a nonserious citation for 1910.22(a)(1) for failure to keep the workplace clean and orderly, 1910.37(q)(1) for failure to mark exits visibly, and 1910.212(a)(1) for failure to guard a saw blade (No. 80-3112).

General Motors Corporation, New Departure Wheel Bearings division, Detroit, Mich., is contesting a willful citation and a \$1000 penalty for 1904.2 for failure to maintain a log of occupational illnesses and injuries.

The company also is contesting a nonserious citation for 1910.95(b)(1) for failure to reduce noise (No. 80-3345).

Granite State Erectors Company, Inc., Nashua, N.H., is contesting a \$320 penalty for a serious citation for 1926.451(a)(4) for failure to guard scaffolding adequately.

The company also is contesting a five-item nonserious citation, including 1926.400(a) for failure to ensure that portable outlet boxes were approved, 1926.400(a) for failure to ensure that a power supply cable situated in a damp or wet location was approved for that location, and 1926.400(a) for failure to protect conductors from physical damage (No. 80-3224.)

Grunau Company, Inc., Milwaukee, Wis., is contesting a serious citation and a \$360 penalty for 1926.500(d)(1) for failure to guard an open-sided platform (No. 80-3512).

HBA Cast Products Company, Springfield, Mass., is contesting a serious citation and a \$640 penalty for 1910.95(a) for failure to reduce noise.

The company also is contesting a nonserious citation for 1910.219(d)(1) for failure to guard pulleys (No. 80-3516).

Hanna Furnace Corporation, Division of National Steel Corporation, Buffalo, N.Y., is contesting a serious citation and a \$400 penalty for 1910.179(b)(4) for failure to provide outdoor storage bridge cranes with automatic rail clamps (No. 80-3257).

ITO Corporation of New England, Boston, Mass., is contesting a serious citation and a \$720 penalty for 1918.83(b) for failure to take precautions against cargo falling in the process of unlashings (No. 80-3363).

Illinois Central Gulf Railroad Company, an IC Industries Company, Chicago, Ill., is contesting a serious citation and a \$1,200 penalty for Section 5(a)(1) for failure to provide a mobile hydraulic crane with a load rating chart as required and for failure to ensure that a hydraulic crane clevis pin was not replaced by a common nut-and-bolt assembly, 1926.300(b)(2) for failure to guard equipment moving parts, and 1926.550(a)(5) for failure to repair or replace deficient parts of crane and derrick machine and equipment (No. 80-3448).

Interstate Insulation Company, Inc., Arlington Heights, Ill., is contesting a serious citation and a \$60 penalty for 1926.500(d)(1) for failure to guard an open-sided floor (No. 80-3426).

John J. Kirlin, Inc., Rockville, Md., is contesting a serious citation and a \$480 penalty for 1926.500(b)(1) for failure to guard floor openings as required (No. 80-3538).

Licon Associates, Inc., Deer Park, N.Y., is contesting a serious citation and a \$300 penalty for 1926.652(c) for failure to shore trench sides adequately (No. 80-3146).

Magic Marker Corporation, Cherry Hill, N.J., is contesting a 10-item serious citation and a \$3,600 penalty, including 1910.309(a) for failure to ground fixed equipment, 1910.219(f)(3) for failure to enclose sprocket wheels and chains, and 1910.212(a)(1) for failure to guard machinery rotating parts and flying chips.

The company also is contesting a repeated citation and a \$180 penalty for 1910.22(a)(1) for failure to keep the workplace clean and orderly (No. 80-2697).

Majestic Industries, Inc., Texarkana, Tex., is contesting a \$1,260 penalty for a serious citation for 1910.184(e)(1) for failure to affix durable identification on alloy steel slings, 1910.212(a)(1) for failure to guard a rotating saw blade, and 1910.309(a) for failure to ensure a permanent, continuous grounding path from equipment (No. 80-3544).

McWane Cast Iron Pipe Company, Birmingham, Ala., is contesting a serious citation and a \$420 penalty for Section

5(a)(1) for failure to ensure adequate braking power on a dumpster truck (No. 80-3199).

Meaott Construction Corporation, Fishers, N.Y., is contesting five items of a seven-item serious citation and a \$1,880 penalty, including 1926.451(m)(5) for failure to ensure that a scaffold platform consisted of at least two planks of the required size, 1926.700(a) for failure to provide safe access to concrete forms over 10 feet above ground level, and 1926.304(f) for failure to guard the lower exposed portion of a radial saw blade.

The company also is contesting a \$980 penalty for a serious citation for 1926.500(d)(2) for failure to guard an open-sided runway and 1926.700(d)(7)(ii) for failure to ensure that a crew did not work underneath concrete buckets suspended from cranes (No. 80-3344).

Mechanical Contractors, Venice, Fla., is contesting a serious citation and a \$240 penalty for 1926.401(a)(1) for failure to ground plug- and cord-connected equipment (No. 80-3354).

Media-Stack, Vineland, N.J., is contesting a willful citation and a \$980 penalty for 1910.217(c)(1)(i) for failure to guard mechanical power press points of operation (No. 80-3333).

New England Telephone, Boston, Mass., is contesting a nonserious citation for 1926.651(1) for failure to ensure that shoring materials met minimum requirements and 1926.651(y) for failure to ensure minimum ladder side-rail extension above street level from an excavation (No. 80-3515).

Omaha Steel Castings Company, Omaha, Neb., is contesting a repeated citation and a \$7,000 penalty for 1910.95(a) for failure to protect employees against the effects of noise, 1910.134(a)(2) for failure to provide respirators where required, 1910.243(c)(1) for failure to guard abrasive wheels of portable grinders, and 1910.179(e)(4) for failure to equip bridge trucks with an adequately extending and projecting sweep.

The company also is contesting a \$2,000 additional penalty for failure to correct a violation of 1910.95(a) and 1910.95(b)(3) for failure to reduce noise and to administer a continuing, effective hearing conservation program.

The company also is contesting a serious citation and a \$1,300 penalty for 1910.23(c)(1) for failure to guard open-sided floors and 1910.23(c)(2) for failure to guard a runway.

The company also is contesting a \$1,000 additional penalty for failure to correct a violation of 1910.179(b)(2) for failure to provide safe access to overhead-crane cabs.

The company also is contesting a nonserious citation for 1910.24(b) for failure to provide safe access to a structure level to which employees climb regularly, 1910.184(d) for failure to inspect slings and fastenings daily, and 1910.184(e)(3)(ii) for failure to make available alloy-steel chain sling inspection records (No. 80-3355).

Pantasote Inc., Passaic, N.J., is contesting a willful citation and a \$9,000 penalty for Section 5(a)(1) for failure to instruct employees in the recognition and avoidance of hazards from handling and use of sodium hydroxide.

The company also is contesting a ten-item serious citation and a \$7,020 penalty, including 1910.101(b) for failure to ensure that compressed gas cylinders were not stored where heavy moving objects could strike or fall on them, 1910.309(a) for failure to guard live parts of electrical equipment against accidental contact, and 1910.219(b)(1) for failure to guard flywheels.

The company also is contesting an 18-item nonserious citation and a \$990 penalty, including 1910.23(c)(2) for failure to provide toeboards on runways, 1910.37(f)(1) for failure to

ensure access to exits, and 1910.176(c) for failure to keep storage areas free of accumulated materials (No. 80-3316).

Paper Mill Fibers Company, San Antonio, Tex., is contesting a serious citation and a \$700 penalty for 1910.261(b)(4) for failure to equip machinery with lockout devices and 1910.309(a) for failure to provide adequate access to a working space adjacent to electrical equipment (No. 80-3304).

Peabody Galion Division, Peabody International Corporation, Mount Vernon, Ohio, is contesting a repeated citation and a \$3,060 penalty for 1910.95(a) for failure to protect employees against the effects of noise and 1910.184(i)(9)(iii) for failure to remove frayed synthetic web slings from service (No. 80-3452).

John B. Pike and Son, Inc., Rochester, N.Y., is contesting a serious citation and an \$840 penalty for 1926.401(a)(1) for failure to ground plug-and cord-connected equipment and 1926.500(d)(1) for failure to guard an open-sided floor (No. 80-3251).

Powell Electrical Manufacturing Company, subsidiary of Powell Industries, Inc., Houston, Tex., is contesting two items of an eight-item serious citation and a \$1,120 penalty, for 1910.212(a)(3)(ii) for failure to guard machinery points of operation and 1910.217(c)(1)(i) for failure to guard mechanical power press points of operation (No. 80-3543).

Roesch, Inc., Belleville, Ill., is contesting a serious citation and a \$1,890 penalty for Section 5(a)(1) for failure to ensure that a press could not be operated in the foot-trip mode without proper safeguards, 1910.217(c)(2)(i)(a) for failure to ensure that point-of-operation guards on a mechanical power press prevented entry of hands or fingers, 1910.217(d)(q)(iv) for failure to use safety blocks when mechanical power press dies were being repaired, and 1910.217(f)(2) for failure to ensure adequate supervision of mechanical power press operating procedures.

The company also is contesting a willful citation and a \$1,260 penalty for 1910.217(c)(1)(i) for failure to guard mechanical power press points of operation.

The company also is contesting a nine-item nonserious citation, including 1910.309(a) for failure to guard live parts of electrical equipment against accidental contact, 1910.217(e)(1)(i) for failure to maintain mechanical power press inspection and maintenance records, and 1910.132(a) for failure to ensure employees' use of personal protective equipment (No. 80-3561).

St. Marys Foundry Company, St. Marys, Ohio, is contesting a willful citation and a \$9,000 penalty for 1910.184(c)(9) for failure to ensure that employees were kept clear of loads suspended or about to be lifted by slings.

The company also is contesting a nine-item serious citation and a \$7,700 penalty, including Section 5(a)(1) for failure to train employees in safe procedures for rigging loads to be handled by cranes and chain slings, 1910.23(a)(5) for failure to guard infrequently used pit openings, and 1910.184(e)(3)(ii) for failure to make available alloy steel chain sling inspection records.

The company also is contesting a nonserious citation for 1904.6 for failure to retain Occupational Safety and Health Administration records for five years, 1910.179(n)(3)(xi) for failure to ensure that warning signals on cranes could be heard from the floor level, and 1910.184(e)(1) for failure to affix identification to alloy steel slings (No. 80-3564).

St. Regis Paper Company, Container Division, Grafton, W.Va., is contesting a serious citation and a \$400 penalty for 1910.22(c) for failure to guard an employee banding cartons from a passing powered industrial truck (No. 80-3549).

Roy A. Scheperle Construction Company, Inc., Jefferson City, Mo., is contesting a serious citation and a \$300 penalty for 1926.400(h)(1) for failure to use an assured grounding conductor program for temporary wiring.

The company also is contesting a repeated citation for 1926.50(f) for failure to post telephone numbers of physicians, hospitals, or ambulances (No. 80-3325).

Sea-Land Service, Inc., Anchorage, Alaska, is contesting a serious citation and a \$210 penalty for 1918.33(a) for failure to prohibit employees from passing fore and aft or around deck loads where there was no safe passage (No. 80-3524).

Servisteel Corporation, Lorain, Ohio, is contesting a serious citation and a \$1,540 penalty for 1910.133(a)(1) for failure to require protective eye equipment, 1910.212(a)(1) for failure to guard machinery, 1910.212(a)(3)(ii) for failure to guard machinery points of operations, and 1910.215(a)(4) for failure to ensure that the distance between a grinder abrasive wheel and the safety guard did not exceed the maximum.

The company also is contesting a nonserious citation for 1910.179(j)(2) for failure to inspect cranes as required, 1910.219(f)(3) for failure to guard sprocket wheels and chains, and 1910.179(g)(2)(i) for failure to protect live parts of electrical equipment from accidental contact (No. 80-3526).

South Texas Steel Company, Inc., Karnes City, Tex., is contesting a \$160 penalty for a serious citation on 1910.243(c)(3) for failure to guard abrasive wheels on grinders (No. 80-3513).

Southwest Machine and Manufacturing, Inc., Irving, Tex., is contesting a serious citation and a \$120 penalty for 1910.212(a)(3)(ii) for failure to guard machinery points of operation (No. 80-3530).

Southwestern Laboratories, Inc., Houston, Tex., is contesting a serious citation and a \$1,120 penalty for 1910.212(a)(1) for failure to guard machinery to protect employees against flying chips, 1910.133(a)(1) for failure to require employees' use of protective eye equipment where required, and 1910.132(a) for failure to ensure employees' use of personal protective equipment where required (No. 80-3528).

Spectra Polymer Inc., Ashburnham, Mass., is contesting a \$650 penalty for a serious citation for 1910.212(a)(5) for failure to guard fan blades and 1910.309(a) for failure to guard live parts of electrical equipment against accidental contact.

The company also is contesting a \$100 penalty for a repeated citation for 1910.110(f)(2)(i) for failure to protect low-pressure gas containers against physical damage.

The company also is contesting a \$100 penalty for a nonserious citation for 1910.23(c)(1) for failure to guard an open-sided platform and 1910.23(c)(2) for failure to guard a runway (No. 80-3586).

United Transportation, Inc., Bethel, Alaska, is contesting a serious citation and a \$280 penalty for 1915.13(a)(1)(i) for failure to ensure that welding was not conducted on a tank barge used to carry fuel oil and gasoline before a hot-work certificate had been issued (No. 80-3523).

K.R. Wilson, Inc., Arcade, N.Y., is contesting a serious citation and an \$800 penalty for 1910.23(a)(5) for failure to guard an infrequently used pit adequately, 1910.94(c)(2) for failure to use a spray booth to enclose spray-finishing operations, 1910.107(c)(6) for failure to ensure that spray-area electrical wiring conformed to specifications.

and 1910.212(a)(1) for failure to guard a moving saw blade on bandsaws.

The company also is contesting a five-item nonserious citation, including 1910.107(e)(2) for failure to ensure that the quantity of stored flammable liquids did not exceed approved limits, 1910.107(g)(2) for failure to keep spray areas free of accumulated deposits of combustible residues, and 1910.179(j)(2)(iii) for failure to perform monthly inspections of hooks (No. 80-3312).

H.E. Wright and Company, Inc., Texarkana, Tex., is contesting a serious citation and a \$1,330 penalty for 1926.300(b)(2) for failure to guard moving parts of equip-

ment, 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring and 1926.401(c) for failure to ensure a permanent, continuous grounding path from equipment (No. 80-3547).

Zimair Welded Wire Products, Inc., Fort Worth, Tex., is contesting a \$7,000 additional penalty for failure to correct six violations, including 1910.217(c)(1)(i) for failure to guard mechanical power press points of operation, 1910.212(a)(3)(ii) for failure to guard machinery points of operation, and 1910.217(c)(3)(iv)(d) for failure to maintain inspection and maintenance records of mechanical power press pullout devices as required (No. 80-3546).



Full Text

CANDIDATES LIST UNDER WORKPLACE CARCINOGENS POLICY

[45 FR 53672, August 12, 1980]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

A List of Substances Which May Be Candidates for Further Scientific Review and Possible Identification, Classification, and Regulation as Potential Occupational Carcinogens

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Publication of a list of substances which may be candidates for further scientific review.

SUMMARY: OSHA is today publishing a list of substances which may be considered candidates for further scientific review and possible identification, classification, and regulation as potential occupational carcinogens. This listing of substances which is required by the OSHA standard for the identification, classification, and regulation of potential occupational carcinogens does not mean that OSHA has determined that a substance on the list is carcinogenic or that regulatory action on the substance is necessary, nor is such a listing intended as a preclassification warning. It is OSHA's view that the compilation and publication of the list of substances accomplishes the following: informs the public at the very first step in OSHA's standard-setting process that a substance is a candidate for closer scientific review; makes available to the public the data base for substances OSHA is considering for further scientific review; reduces the number of

substances to be subjected to such a review; guides the research community in focusing its resources on those substances for which there is a need for testing and further research; stimulates early public comment regarding the availability and appropriateness of new or additional scientific data; and, overall, assists OSHA in its setting of priorities and selecting of substances for regulation.

DATE: All comments and requests for relevant data must be received in the Docket Office by October 14, 1980.

ADDRESSES: Comments on the Candidate List and requests for relevant data should be mailed to the Docket Office, Room S6212, Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 (202/523/7894).

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Department of Labor, OSHA Office of Public Affairs, Room N3641, 200 Constitution Avenue, NW., Washington, D.C. 20210 (202/523-8151).

SUPPLEMENTARY INFORMATION:

A. Background Information:

One of the most critical health problems which OSHA must deal with today is the prevention of occupationally-related cancers. Moreover, OSHA recognizes its obligation to minimize the inherent social and economic impact of these dreaded diseases, and since 1970 has initiated rulemaking proceedings on the following occupational carcinogens: asbestos, "fourteen carcinogens," vinyl chloride, coke oven emissions, arsenic,

benzene, acrylonitrile, and beryllium. More recently, OSHA proposed on October 4, 1977 (42 FR 54148) a general standard to assist in expediting the identification, classification, and regulation of potential occupational carcinogens. Extensive public comments were submitted and a lengthy hearing was held on the proposal. Then on January 22, 1980, OSHA promulgated its general standard for the identification, classification, and regulation of potential occupational carcinogens, the "Cancer Standard" (45 FR 5002, January 22, 1980). The first action to be taken by OSHA in following the procedures set forth by the Cancer Standard is the publication of this list of substances which are candidates for further scientific review.

B. The List of Substances Which Are Candidates for Further Scientific Review:

(1) *Discussion of the List of Candidate Substances in the Proposal:* The proposed regulation included OSHA's definition and criteria for classification of a potential occupational carcinogen. The proposal also included a statement of OSHA's intent of "devising its own system for the orderly, systematic classification of the large number of potential carcinogens already identified by NIOSH" (42 FR 54169, October 4, 1977). In addition, OSHA solicited public comment as to how to best handle the 1500 to 2000 substances for which some evidence of carcinogenicity existed, according to the National Institute for Occupational Safety and Health (NIOSH)'s list of "suspected

carcinogens" (HEW Publication No. 77-149, December, 1978). OSHA received many requests from the public that it prepare a preliminary version of the list of candidate substances. OSHA complied with these requests and subsequently released such a tentative list for public comment in 1978. That list is available in the OSHA Docket Office.

A large number of participants also urged OSHA to adopt a specific screening process for "suspected carcinogens" and suggested a variety of screening procedures to be used by OSHA. After extensive review and deliberation of the various screening procedures submitted, OSHA selected those which it considered the most effective. By combining these selected procedures, OSHA has developed what it believes to be a most efficient three-step screening and priority-setting process. The three-steps are:

Step No. 1—publication of a list of substances which may be candidates for further scientific reviews;

Step No. 2—publication of two priority lists, one for Category I and one for Category II substances; and

Step No. 3—selection of one or more substances from the priority lists for full scientific review with a view to subsequent rulemakings.

(2) *Procedures Stated in the Cancer Standard Final Rule concerning the List of Candidate Substances:* After a thorough and conscientious analysis of the Hearing Record (see the discussion at 45 FR 5207-5211, January 22, 1980), OSHA arrived at the screening procedure it would use and this procedure has been followed in the compilation of this list of candidate substances—the first step in OSHA's screening process.

(a) Substances for which there was some evidence of carcinogenicity would be drawn from such well-known lists as the NIOSH Registry of Toxic Effects of Chemical Substances (RTECS), the U.S. Public Health Service, Publication No. 149, the Environmental Protection Agency (EPA)'s Inventory of Chemical Substances, the Monographs of the International Agency for Research on Cancer (IARC), and the Annual Report of the Secretary of the United States Department of Health and Human Services (HHS) to the President and Congress. These compiled substances would be verified as being present in the American workplace by using the EPA's Pesticides-Registered Active Ingredients List, the National Occupational Hazard Survey (NOHS), the EPA Inventory of Chemical Substances, the Food and Drug Administration (FDA)'s Food Additives List, and the FDA's Approved Drug Products List. The substances

which are found in American workplaces and for which there is some evidence of carcinogenicity will be subjected to a brief scientific review.

(b) A "brief scientific review" has been interpreted to mean a review by senior government scientists of a sufficient quantity of available literature to determine whether or not a substance should be subject to a more thorough scientific review under the Cancer Standard. Based on the more detailed review a determination may then be made as to whether a substance meets OSHA's definition of a potential occupational carcinogen (29 CFR 1990.103 (45 FR 5283, January 22, 1980)).

(c) Only positive data would be considered for the substances which would be subjected to a brief scientific review. OSHA believes that consideration of all available scientific evidence (positive and non-positive) should be done in the later stages of classification.

(d) Substances on this list will not be tentatively classified into Category I or Category II at this early screening stage. Such categorization will be made only after a more extensive scientific review.

(e) The candidate list will be made public and will be updated annually.

OSHA emphasized in the Cancer Standard Final Rule that the inclusion of a substance on the candidate list did not signify a scientific determination that the substance was a potential occupational carcinogen, nor was it to be considered as a preclassification warning. Most importantly, the candidate list carries no regulatory effect. By the same token, the exclusion of a substance from the candidate list does not mean that a substance is non-carcinogenic. The candidate list includes substances that OSHA believes require a more detailed scientific review to determine whether they should be identified and classified as potential occupational carcinogens. The publication of the candidate list has several benefits. For instance, in conjunction with EPA's Carcinogen Assessment Group (CAG) "List of Carcinogens," it informs all interested parties as to which substances OSHA is reviewing for possible identification and classification as potential occupational carcinogens.

EPA's CAG List includes substances which were reviewed extensively by CAG and considered by CAG as having "substantial evidence of carcinogenicity." OSHA also reviewed many of these substances and will make available to interested parties the data base it used for each substance. Although at this stage of review OSHA has not reached a conclusion as to the

potential carcinogenicity of these substances, it respects EPA's evaluation. Therefore, in a spirit of inter-agency coordination and co-operation, consistent with the objectives of the RLG, OSHA has referenced EPA's CAG List of Carcinogens rather than relisting on the candidate list those substances OSHA reviewed. The substances from EPA's CAG List which OSHA reviewed will be considered for listing on the OSHA priority lists.

Publication of the candidate list also stimulates employers and employees, as well as the general public to comment on the available scientific data and to inform OSHA of additional relevant data concerning any substance on the candidate list. OSHA further believes that the scientific community will benefit from the publication of the candidate list because it will help to identify the substances for which additional research may be appropriate. These conclusions are reflected in 29 Code of Federal Regulations (CFR) 1990.121 (45 FR 5284, 5285, January 22, 1980) which requires the Secretary to publish a candidate list annually. The list published below is issued pursuant to those requirements.

(3) *Utilization of the List of Candidate Substances in the Priority Setting Process:* The compilation and publication of the candidate list is only the first step in the screening of toxic substances which might be potential occupational carcinogens. The second step in OSHA's screening procedure involves the application of several priority factors (29 CFR 1990.131-132, 45 FR 5285, January 22, 1980) primarily to the list of candidate substances, as well as to EPA's CAG List, in order to screen out those substances which should be more seriously considered for regulation. In other words, OSHA is attempting to identify and classify "the worst first" in the most efficient and effective way. Some of the factors that may be considered by OSHA in its priority setting are: (a) The estimated number of exposed workers, (b) the estimated levels of workers' exposure, (c) the molecular similarity of the substance to a known carcinogen, and (d) the availability of safe substitute substances (45 FR 5210, 5285, January 22, 1980). That group of substances which remains after the application of the priority factors will then be considered for placement on the priority lists. At this point in the screening process, OSHA intends to perform a thorough analysis of all available scientific data relevant to the potential carcinogenicity of a substance. Two priority lists will be published and, subsequently, updated approximately every six months, one list

for Category I candidates and one, for Category II candidate substances.

The third step in OSHA's screening procedure will be selecting those substances from the priority lists that are, in fact, potential occupational carcinogens and are to be regulated on a substance-by-substance basis as outlined in the Cancer Policy (45 FR 5284, January 22, 1980).

(4) *References Cited in the Text of the Supplementary Information Section:* (a) 42 FR 54148, Identification, Classification and Regulation of Toxic Substances Posing a Potential Occupational Carcinogenic Risk, October 4, 1977.

(b) 45 FR 5002, Identification, Classification and Regulation of Potential Occupational Carcinogens, January 22, 1980.

(c) National Institute for Occupational Safety and Health (NIOSH) *Suspected Carcinogens*, Health, Education and Welfare Publication No. (NIOSH) 77-149, December, 1978.

(d) Registry of Toxic Effects of Chemical Substances (RTECS) NIOSH, the version of RTECS as contained in the Environmental Protection Agency-National Institutes of Health Chemical Information System, July, 1979.

(e) United States Public Health Service, Publication No. 149, Original, Supplement II, 1961-1967, 1970-1971, 1972-1973.

(f) Environmental Protection Agency (EPA)'s Carcinogen Assessment Group (CAG) "List of Carcinogens," April 22, 1980.

(g) Environmental Protection Agency (EPA)'s Inventory of Chemical Substances, compiled pursuant to the Toxic Substances Control Act, the Inventory as of 1979.

(h) Monographs of the International Agency for Research on Cancer (IARC) Vols. 1-19, 1972-1979.

(i) Annual Report of the Secretary of the United States Department of Health and Human Services (HHS) to the President and Congress, 1979.

(j) Environmental Protection Agency (EPA)'s Pesticides-Registered Active Ingredients List, July 1974.

(k) National Occupational Hazard Survey (NOHS), 1976.

(l) Food and Drug Administration (FDA)'s Food Additives List, April, 1979.

(m) Food and Drug Administration (FDA)'s Approved Drug Products List, January, 1979.

Authority: This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, and by Basilus Walker, Jr., Director of Health Standards Programs, for the Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 4th day of August 1980.

Eula Bingham,

Assistant Secretary of Labor for Occupational Safety and Health.

A List of Substances Which May Be Candidates for Further Scientific Review

Acenaphthene, 5-nitro- Syn: 1,2-Dihydro-5-nitro-acenaphthylene	602-97-9**	Aniline, N-methyl-N-nitroso- Syn: N-Methyl-N-nitrosobenzeneamine	614-00-6**
Acetamide Syn: Methanecarboxamide	60-35-5**	Aniline, 4,4'-methylenebis(N,N-dimethyl)- Syn: Michler's Base	101-61-1**
Acetanilide, 4'-phenyl- Syn: 4-Acetylaminohiphenyl	1075-79-0**	Aniline, 4,4'-sulfonyldi- Syn: Dapsone	30-08-0**
Acetic acid, bromo-, ethyl ester Syn: Antol	105-36-2**	Aniline, 4,4'-thiodi- Syn: p,p'-Diaminodiphenyl sulfide	139-55-1**
p-Acetophenetidide, 3'-amino- Syn: 3-Amino-4-ethoxyacetanilide	17026-81-2**	Aniline, 2,4,6-trichloro- Syn: 2,4,6-Trichloroaniline	634-93-5**
p-Acetophenetidide, 3'-nitro- Syn: 3-Nitro-p-acetophenetide	1777-44-0**	Aniline, 2,4,6-trimethyl- Syn: Aminomesitylene	88-05-1**
Aniline Syn: Benzeneamine	62-63-3**	o-Anisidine, 5-methyl- Syn: p-Lresidine	120-71-8**
Aniline, N,N-dimethyl-p-nitroso- Syn: 4-Nitrosodimethylaniline	138-89-6**	o-Anisidine, 5-nitro- Syn: 2-Amino-4-nitroanisole	99-59-2**
Aniline, N,N-dimethyl-p-(m-tolylazo)- Syn: N,N-Dimethyl-4-((3-methylphenyl)azo) benzeneamine	55-80-1**	Anthraquinone, 2-amino- Syn: 2-Amino-9,10-anthracenedione	117-79-3**
Aniline hydrochloride Syn: Benzeneamine hydrochloride	142-04-1**	Asphalt Syn: Petroleum pitch	3052-42-4**
		Azobenzene Syn: Benzeneazobenzene	103-33-3**

1,3-Benzenediamine, 4-methoxy-, sulfate (1:1) Syn: 2,4-Diaminoanisole sulfate	39156-41-7**	C.I. Solvent Yellow 3 Syn: o-Toluidine, 4-(o-tolylazo)-	97-56-3**
Benzidine dihydrochloride Syn: (1,1'-Biphenyl)-4,4'-diamine dihydrochloride	531-85-1**	C.I. Solvent Yellow 34 Syn: Aniline, 4,4'-(imidocarbonyl)bis (4,4'-dimethyl-	192-80-8**
Benzimidazole, 5-nitro- Syn: 6-Nitro-benzimidazole	94-52-0**	Cyclohexane, 1,2,3,4,5,6-hexachloro- Syn: Benzene hexachloride	608-73-1**
Benzoic acid, 3-amino-2,5-dichloro- Syn: Anthen	133-90-4**	Diethylamine, 2,2'-dichloro-N-methyl-, hydrochloride. Syn: Mechlorethamina hydrochloride	55-85-7**
Benzoic acid, hydrazide Syn: Benzoyl hydrazide	613-94-5**	m-Dioxan-4-ol, 2,6-dimethyl-, acetate Syn: Acetomethoxan	828-00-2**
Benzophenone, 4,4'-bis(dimethylamino)- Syn: Michler's Ketone	90-94-8**	Diphenylamine, 4-nitroso- Syn: p-Nitroso-N-phenylaniline	156-10-5**
p-Benzoquinone dioxime Syn: Quinone dioxime	105-11-3**	Diphenylamine, N-nitroso- Syn: Diphenylnitrosamine	86-30-6**
4,4'-Biacetanilide Syn: Diacetylbenzidine	613-35-4**	Ethane, 1,2-bis (chloromethoxy)- Syn: Ethylene glycol bis (chloromethyl) ether	13483-18-6**
3,3',4,4'-Biphenyl-tetramine tetrahydrochloride Syn: 3,3'-Diaminobenzidine tetrahydrochloride	7411-49-6**	Ethane, 1,1-dichloro-2,2-bis(p-chlorophenyl)- Syn: DCE	72-54-8**
Butyric acid, 2-amino-4-(ethylthio)-, DL- Syn: DL Ethionine	67-21-0**	Ethane, 1,1-dichloro-2,2-bis(p-ethylphenyl)- Syn: p,p'-Ethyl-DDD	72-56-0**
Butyric acid, 2-amino-4-(ethylthio)-, L- Syn: Ethionine	13073-35-3**	Ethanol, 2-hydrazino- Syn: beta-Hydroxyethylhydrazine	109-84-2**
Carbamic acid, bis(2-hydroxyethyl)dithio-, ammonium salt Syn: Potassium bis(2-hydroxyethyl)dithiocarbamate	2716-33-1**	Ethor, 2,4-dichlorophenyl p-nitrophenyl Syn: 2,4-Dichloro-1-(4-nitrophenoxy)benzene	1333-75-5**
Carbazole, 3-amino-2-ethyl Syn: 3-Amino-N-ethylcarbazole	132-32-1**	Ethylene, bromo- Syn: Vinyl bromide	593-50-2**
C.I. Azoridine component II Syn: o-Toluidine, 4-chloro-, hydrochloride	3155-91-3**	Ethylene, 1,1-dichloro-2,2-bis(p-chlorophenyl)- Syn: p,p'-DDE	72-55-3**
C.I. Direct Black 38, disodium salt Syn: 2,7-Naphthalenesulfonic acid, 4-amino-3- ((4'-((2,4-diaminophenyl)azo) (1,1'-biphenyl)-4-yl) azo) 5-hydroxy-5-(phenylazo), disodium salt	1937-37-7**	Fluoren-9-one, 2,4,7-trinitro- Syn: 2,4,7-Trinitro-9H-fluoren-9-one	129-79-3**
C.I. Direct Blue 5, tetrasodium salt Syn: 2,7-Naphthalenesulfonic acid, 3, 3'-((4,4'- biphenylene)bis(azo)) bis (5-amino-4-hydroxy-, tetrasodium salt	2502-45-2**	Fluorene, 2-nitro- Syn: 2-Nitro-9H-fluorene	607-57-8**
C.I. Direct Brown 95 Syn: Copper, (5-((4'-((2, 5-dihydroxy-4- ((2-hydroxy-5-sulfophenyl)azo) phenyl)azo) (1,1'-biphenyl)-4-yl) azo) 2-hydroxybenzoate(2-))-disodium salt	15071-46-5**	2-Furaldehyde, 5-nitro-, semicarbazone Syn: Nitrofurazone	59-87-0**
C.I. Disperse Black 4, dihydrochloride Syn: Gentidine, 3,3'-diethoxy, dihydrochloride	20325-40-9**	Hydrazine, 1,2-dimethyl-, dihydrochloride Syn: sym-Dimethylhydrazine dihydrochloride	305-37-5**
C.I. Disperse Orange II Syn: Anthranquinone 1-amino-2-methyl-	32-23-9**	Hydrazine, methyl- Syn: Hydrazomethane	50-34-4**
C.I. Solvent Orange 2 Syn: 1-(n-Tolylazo)-4-ethoxy-2-naphthol	2544-17-5**	Hydrazine methyl-, sulfate(1:1) Syn: Methylhydrazine monosulfate	302-15-8**
C.I. Solvent Yellow 1 Syn: Aniline, o-(phenylazo)-	50-09-3**	Hydrazine, monohydrate Syn: Hydrazine hydrate	7803-57-8**
		Hydrazine, phenyl-, monohydrochloride Syn: Phenylhydrazine hydrochloride	53-98-1**

Hydrazine, sulfate (1:1) Syn: Hydrazine hydrogen sulfate	10934-91-7**	Semicarbazide Syn: Carbamylhydrazine	57-55-7**
Hydroxylamine, N-nitroso-N-phenyl-, ammonium salt Syn: Cufergon	135-70-6**	Semicarbazide monohydrochloride Syn: Carbamylhydrazine hydrochloride	553-41-7**
Imidazole-4-carboxamide, 5-(3,3'-dimethyl-1-triazene)- Syn: Oacarbazine	4342-03-4**	Semicarbazide, 1-phenyl- Syn: Cryogenamine	103-03-7**
Isophthalonitrile, tetrachloro- Syn: m-Tetrachlorophthalonitrile	1997-45-5**	4,4'-Stilbenediol, alpha, alpha'-diethyl-, dipropionate, (E)- Syn: Diethylstilbestrol dipropionate	130-92-3**
1,3,4-Metheno-1H-cyclobuta(cd)pentalene, 1,1a,2,2,3,3a,4,5,5a,5b,6-dodecachlorooctahydro- Syn: Mirex	2385-85-5**	Strophane Syn: Terpene polychlorinate	8991-60-1**
2-Naphthylamine, N,N-bis(2-chloromethyl) Syn: Naphthylamine mustard	494-03-1**	Succinic acid, mono (2,2-dimethylhydrazide) Syn: Oasinozide	1596-81-5**
Peroxyacetic acid Syn: Peracetic acid	79-21-0**	Sulfanilamide, N'-(5-methyl-3-isoxazolyl)- Syn: Sulfamethoxazole	723-46-5**
Phenol, 4-amino-2-nitro- Syn: C.I. 76555	119-34-6**	Sulfuric acid, diethyl ester Syn: Ethyl sulfate	64-57-5**
m-Phenylenediamine, 4-chloro- Syn: 4-Chlorophene-1,3-diamine	5131-60-2**	Tellurium, tetrakis(diethyldithiocarbamate)- Syn: Ethyl tellurac	20941-55-5**
o-Phenylenediamine, 1-chloro- Syn: 4-Chloro-1,2-benzenediamine	95-83-0**	Terphenyl, chlorinated Syn: PCT	5178-13-9**
o-Phenylenediamine dihydrochloride Syn: 1,2-Benzenediamine dihydrochloride	615-29-1**	Thiazole, 2-amino-5-nitro- Syn: Entramin	121-66-4**
p-Phenylenediamine, 7-nitro- Syn: C.I. 76070	5307-14-7**	o-Toluidine, N-isopropyl-alpha-(2-methyl- hydrazino)-monohydrochloride Syn: Procarbazine hydrochloride	365-70-1**
Phosphoric acid, 7-chloro- 1-(7,4,5-trichlorophenyl)vinyl dimethyl ester Syn: Tetrachlorvinphos	951-11-5**	Toluene-2,4-diamine Syn: m-Toluenediamine	95-90-7**
Phosphoric acid, trimethyl ester Syn: Methyl phosphate	512-55-1**	o-Toluidine Syn: 1-Amino-2-methylbenzene	95-51-4**
Phosphoric triamide, hexamethyl- Syn: HMPA	180-31-9**	o-Toluidine, 4-chloro- Syn: 1-Amino-3-chloro-6-methylbenzene	95-79-4**
Picolinic acid, 4-amino-3,5,6-trichloro- Syn: Picloram	1919-07-1**	p-Toluidine, alpha, alpha, alpha-trifluoro- 2,6-dinitro-N,N-dipropyl- Syn: Trifluralin	1582-09-8**
Piperazine, 1,4-dinitroso- Syn: N,N'-Dinitrosopiperazine	140-79-1**	Uracil, 7-thio- Syn: 2-Mercapto-4-hydroxyuracil	141-90-3**
Propane, 2,2-bis(o-(7,3-epoxypropoxy)phenyl)- Syn: Bisphenol A diglycidyl ether	1575-54-3**	Urea, 3-(o-chlorophenyl)-1,1-dimethyl- Syn: Monuron	150-63-4**
Propane, 2-nitro- Syn: Isotilpropane	79-46-9**	Urea, 1,3-diethyl-2-thio- Syn: N,N'-Diethylthiourea	105-55-4**
Pyritine, 2,6-diamino-3-(phenylazo)-, monohydrochloride Syn: Phenazopyridine hydrochloride	136-40-1**	Urea, 1,1,3,3-tetramethyl-2-thio- Syn: MTU	2782-91-4**
Quinoline Syn: 1-Azaphthalene	91-22-5**	Urea, 1,1,3-trimethyl-2-thio- Syn: N,N,N'-Trimethylthiourea	2489-77-2**
Quinoline, 8-nitro- Syn: No synonym	607-35-2**		

**Confirmed in workplace + positive evidence.

EPA CARCINOGEN ASSESSMENT GROUP CARCINOGENS LIST REFERENCED IN CANCER POLICY CANDIDATES NOTICE

CHEMICALS HAVING SUBSTANTIAL EVIDENCE OF CARCINOGENICITY¹

2-Acetylaminofluorene
 Acrylonitrile
 Aflatoxins²
 Aldrin³
 4-Aminobiphenyl
 Amitrole
 Aramite
 Arsenic and Arsenic Compounds
 Asbestos
 Auramine and the manufacture of Auramine
 Azaserine⁴
 Benz(c)acridine⁵
 Benz(a)anthracene
 Benzene
 Benzinide
 Benzo(a)pyrene
 Benzo(b)fluoranthene
 Benzo(j)fluoranthene⁶
 Beryllium and Beryllium Compounds
 N,N-Bis(2-Chloroethyl)-2-Naphthylamine (Chlor-naphazine)⁷
 Cadmium and Cadmium Compounds
 Carbon Tetrachloride
 Chlorambucil⁸
 Chloroalkyl Ethers
 Bis(2-chloroethyl) ether (BCEE)⁹
 Bis(chloromethyl) ether (BCME)
 Chloromethyl methyl ether (CMME), technical grade
 Chlordane
 Chlorinated Ethanes
 1,2-Dichloroethane [Ethylene Chloride, Ethylene Dichloride (EDC)]
 Hexachloroethane
 1,1,2,2-Tetrachloroethane
 1,1,2-Trichloroethane¹⁰
 Chlorobenzilate
 Chloroform
 Chromium Compounds, Hexavalent
 Chrysene¹¹
 Citrus Red No. 2
 Coal Tar and Soot
 Coke Oven Emissions [Polycyclic Organic Matter (POM)]
 Creosote
 Cycasin
 Cyclophosphamide¹²
 Daunomycin¹³
 DDT (Dichlorodiphenyltrichloroethane)
 Diallate¹⁴
 Dibenz(a,h)acridine
 Dibenz(a,j)acridine
 Dibenz(a,h)anthracene
 7H-Dibenzo(c,g)carbazole
 Dibenzo(a,e)pyrene
 Dibenzo(a,h)pyrene
 Dibenzo(a,i)pyrene
 1,2-Dibromo-3-chloropropane (DBCP)
 1,2-Dibromoethane [Ethylene Bromide, Ethylene Dibromide (EDB)]
 3,3'-Dichlorobenzidine (DCB)
 Dieldrin
 Diepoxybutane
 1,2-Diethylhydrazine
 Diethylstilbestrol (DES)
 Dihydrosafrole
 3,3'-Dimethoxybenzidine (o-Dianisidine)
 p-Dimethylaminoazobenzene
 7,12-Dimethylbenz(a)anthracene
 3,3'-Dimethylbenzidine (o-Tolidine)
 Dimethylcarbamoyl Chloride
 1,1-Dimethylhydrazine
 1,2-Dimethylhydrazine
 Dimethyl Sulfate
 2,4-Dinitrotoluene
 1,4-Dioxane
 1,2-Diphenylhydrazine
 Epichlorohydrin
 Ethylenebisdithiocarbamate (EBDC)
 Ethyleneimine (Aziridine)¹⁵
 Ethylene Oxide
 Ethylenethiourea
 Ethyl Methanesulfonate
 Formaldehyde
 Glycidaldehyde
 Heptachlor
 Hexachlorobenzene
 Hexachlorobutadiene
 Hexachlorocyclohexane (HCH)
 Hydrazine
 Indeno(1,2,3-cd)pyrene
 Iron Dextran¹⁶
 Isosafrole
 Kepone (Chlordecone)
 Lasiocarpine
 Melphalan¹⁷
 Methapyrilene¹⁸
 3-Methylcholanthrene
 4,4'-Methylenebis(2-Chloroaniline) (MOCA)
 Methyl Iodide
 Methyl Methanesulfonate
 N-Methyl-N'-nitro-N-nitrosoguanidine
 Methylthiouracil¹⁹
 Mitomycin C²⁰
 Mustard Gas
 1-Naphthylamine, technical grade
 2-Naphthylamine
 Nickel and Nickel Compounds
 Nitrogen Mustard and its hydrochloride
 Nitrogen Mustard N-oxide and its hydrochloride
 5-Nitro-o-toluidine
 4-Nitroquinoline-1-oxide
 Nitrosamines
 N-Nitrosodiethanolamine
 N-Nitrosodiethylamine (DNA)
 N-Nitrosodimethylamine (DMNA)
 N-Nitrosodi-n-butylamine
 N-Nitrosodi-n-propylamine
 N-Nitrosomethylethylamine
 N-Nitrosomethylvinylamine
 N-Nitroso-N-Ethylurea (NEU)
 N-Nitroso-N-Methylurea (NMU)
 N-Nitroso-N-methylurethane
 N-Nitrosomorpholine
 N-Nitrosornicotine

Nitrosamines (continued)

N-Nitrosopiperidine
N-Nitrosopyrrolidine
N-Nitrososarcosine
Pentachloronitrobenzene
Phenacetin¹
Polychlorinated Biphenyls (PCBs)
Pronamide
1,3-Propane Sultone
B-Propiolactone
Propylthiouracil¹
Reserpine¹

¹ This is not a comprehensive list of all chemicals having substantial evidence of carcinogenicity. Other chemicals will be added. No attempt has been made to select chemicals based upon appropriateness for regulation by EPA. The list is intended to be a basis for selection by the various program offices according to their specific needs.

¹ Fungal toxin, not an industrially manufactured product.

¹ Used as a drug.

¹ Evaluated by IARC as not having sufficient evidence of carcinogenicity.

¹ Used as a food.

Saccharin¹
Safrole¹
Selenium Sulfide
Streptozotocin¹
2,3,7,8-Tetrachlorodibenzo-*p*-dioxin (TCDD)
Tetrachloroethylene (Perchloroethylene)
Thioacetamide
Thiourea
o-Toluidine Hydrochloride
Toxaphene
Trichloroethylene
2,4,6-Trichlorophenol
Tris (1-aziridinyl)phosphine sulfide (Thio-TEPA)¹
Tris (2,3-dibromopropyl)phosphate
Tris (2,3-dibromopropyl)phosphate
Trypan Blue, commercial grade
Uracil Mustard¹
Urethane (Ethyl carbamate; ethyl ester of carbamic acid)
Vinyl Chloride
Vinylidene Chloride



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MEETINGS SCHEDULED

September 3 — How to Implement a Safety Program, Burbank, Calif. (Training Institute, 616 South Westmoreland Ave., Los Angeles, Calif. 90005; tel: (213) 385-6461).

September 3-5 — NIOSH Safety Research Symposium, Morgantown, W.Va. (Nick Blaskovich, NIOSH Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, W.Va. 26505; tel: (304) 599-7595).

September 4 — Safety Management by Objectives, Burbank, Calif. (Training Institute, 616 South Westmoreland Ave., Los Angeles, Calif. 90005; tel: (213) 385-6461).

September 4-5 — Health Risk Management: Electronic and Semiconductor Industry, Denver, Colo. (WORKSMART, Center for Toxicology, Man and Environment, Inc., 6825 E. Tennessee Ave., Suite 365, Denver, Colo. 80224; tel: (303) 399-2700).

The course also will be held September 18-19 in Palo Alto, Calif.

September 8 — Reproductive Hazards, Cherry Hill, N.J. (Mary S. Hill, New Jersey State Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 8-9 — Hazardous Chemical Safety, Boston, Mass. (Carol Morris, J.T. Baker Chemical Company, Phillipsburg, N.J. 08865; tel: (201) 454-2500).

The course also will be held September 11-12 in Saddlebrook, N.J., September 15-16 in Minneapolis, Minn., and September 18-19 in Detroit, Mich.

September 8-12 — Fundamentals of Modern Safety Management, Atlanta, Ga., (International Loss Control Institute, P.O. Box 345, Loganville, Ga. 30249; tel: (404) 466-2208).

September 8-12 — Basic Safety Management, Houston, Tex. (International Safety Academy, P.O. Box 19600, 10575 Katy Freeway, Houston, Tex. 77024; tel: (713) 932-9400).

September 8-12 — Occupational Respiratory Protection (NIOSH 593), Cincinnati, Ohio (J.S. Ferguson, Kettering Laboratory, Univ. of Cincinnati, 3223 Eden Ave., Cincinnati, Ohio 45267; tel: (513) 872-5733).

September 8-19 — Industrial Hygiene Measurements, Cincinnati, Ohio (J.S. Ferguson, Kettering Laboratory, Univ. of Cincinnati, 3223 Eden Ave., Cincinnati, Ohio 45267; tel: (513) 872-5733).

September 9-10 — Respiratory Hazards, Morristown, N.J. (Mary S. Hill, New Jersey Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 10-11 — OSHA and the Hazard Recognition Concept for General Industry, Blacksburg, Va. (Adult Registrar, Donaldson Brown Center for Continuing Education, Virginia Polytechnic Institute and State University, Blacksburg, Va. 24061; tel: (703) 961-5182).

September 11-12 — Toxic Chemical Safety, Cleveland, Ohio (Registrar, Starson Corp., NHC Div., P.O. Box 133, Stanton, N.J. 08885; tel: (215) 258-7045).

The course also will be held September 15-16 in Pittsburgh, Pa.

September 11-12 — Pulmonary Function Testing for Industrial Nurses, Houston, Tex. (Occupational Lung Clinic, Inc., 7777 Southwest Freeway, Suite 442, Houston, Tex. 77704; tel: (713) 777-4399).

The course also will be held October 23-24.

September 11-12 — Occupational Health for the 1980s, Salt Lake City, Utah (Katharine C. Bloesch, RMCOEH, Bldg. 112, Univ. of Utah, Salt Lake City, Utah 84112; tel: (801) 581-5710).

September 15-16 — Health Risk Management: Paint and Solvent Industry, Palo Alto, Calif. (WORKSMART, Center for Toxicology, Man and Environment, Inc., 6825 E. Tennessee Ave., Suite 365, Denver, Colo. 80224; tel: (303) 399-2700).