WHO SHOULD TELL THE WORKER?

a talk by

RICHARD FLEMING
EXECUTIVE VICE PRESIDENT
AIR PRODUCTS AND CHEMICALS, INC.

presented at

CHEMICAL MANUFACTURERS ASSOCIATION
SYMPOSIUM ON
INFORMING EMPLOYEES ABOUT HAZARDS IN THE WORKPLACE

September 14, 1979

Hyatt on Union Square
San Francisco, California

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Hazard in the workplace is far from a modern invention. Work, like every other form of human activity, has always involved the confrontation of hazard, i.e., a source of danger, by the worker. As a biological mechanism, man has proven as successful as he is because of his ability to recognize hazard, and to reduce the risk, i.e., the probability of loss or injury, from such hazards to generally acceptable levels. This success has not always come easily or without grievous loss, but it is the character of man's intellect that he can analyze and learn from bad experiences and utilize that newly won knowledge to better inform, train and safeguard those who would carry on the endeavor, whatever it may be.

From his earliest days as a hunter, man has utilized his unique skills to overcome a hostile environment and to compete successfully, and ever more safely, with other creatures bigger, stronger, faster than he. He mastered the use of fire, a fearful hazard then and even now, and began a lengthy evolution of tools and safety devices and techniques that continues into today and will continue tommorrow. In the course of these developments, the complexity of man's society has naturally increased many fold, and greater and greater specialization has been required of every individual. As this complexity and specialization have grown, they have created new hazards as well as comforts and these hazards in turn have had to be recognized and overcome. It is characteristic of this process of development that many new things were tried, and the price for innovation, in part, has had to be paid in confronting and learning to limit the effects of new and uncommon hazards peculiar to the new development itself. In the highly developed and specialized world of the modern day workplace, there is usually very little of the new worker's prior

experience in his more normal environment that sensitizes him to, or trains him to, perceive the hazards he may now confront. Furthermore, a number of these hazards may in fact be unperceivable by the use of his ordinary senses, or even his common sense.

There is, then, no substitute for direct, specific information about the special, and inevitable, hazards confronted by a worker in a new work assignment. Nothing short of specific knowledge and experience in carrying out the job and the circumstances surrounding it is capable of fully teaching the safety needs of that job. It may take more than this, but it cannot take less. Thus, a new worker must rely on adequate and appropriate information and training from those who know the job best. This should be, indeed must be, the person who teaches and supervises the performance of the job and selects the person to fill it.

Who, then, should tell the worker about hazards in the workplace, and how he may appropriately control risks? It should be perfectly clear that this is a prime and nondelegable responsibility of the employer. The employer, after all, is the architect of the work environment. He should be uniquely aware of the characteristics and limitations of the equipment involved, the materials to be handled, the conditions of processing and so on, and should be in the best position to assess and explain the sources of potential trouble and safe operating procedures to minimize risk from them. Since no job can be designed to be hazard-free, it necessarily follows that it cannot be risk-free. It is both morally right and equitably necessary that the employee understand and accept the risks he assumes as a condition of his employment. Since the hazards and risks involved are likely to be of consequence to both the employee and the employer, there is a clear commonality of interest and purpose in this

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issue. A single uninformed or careless employee can substantially increase the risk to all other employees, and to the employer's business security as well.

All too often this issue of personal responsibility of the individual worker for his own safety, and that of his fellow workers and his plant, is under-emphasized. Just as a work environment cannot be made risk-free, it cannot be made foolproof against an uninformed, unthinking, uncaring worker nor from every conceivable human error on the part of an otherwise conscientious individual. For this reason it is absolutely essential that safety training become and remain a significant and continuing part of every work environment. It is mandatory that workers understand and conform to approved safety practices, as a matter of habit, through repetitive training that establishes such habits. It is vital that each workplace and work assignment be designed as reasonably as we know how to prevent severe penalty by reason of equipment or human malfunction.

Well, now we have said the easy things to say and to agree upon on this topic. If you are one who does not feel that we are in clear agreement up to this point, hang on - we may be about to get quite a bit further apart.

Clearly, if every employer and employee agreed with what I have thus far said, we would be in better shape than we are. While I sincerely believe that the vast majority of both groups do agree, and act, in accordance with that general understanding, there are exceptions. And, as usual, it is these exceptions that cause the trouble. There are a very few employers who do not properly discharge their responsibility and so our industrial injury and illness count is higher than it should be. There are employees who violate or ignore safety rules and training, and so our statistics are poorer than they should be.

And, there are unrecognized hazards that catch us, and there are recognized hazards for which our control measures are inadequate. In November of 1978 the Bureau of Labor Statistics of the Department of Labor published the results of its on-the-job injuries and illness survey for 1977. Here is what the report said:

- 5.3 MM people were injured on the job in 1977
- This is an increase of 300,000 over 1976
- Injury rate rose from 9.2 in 1976 to 9.3 in 1977 per 100 full-time workers (third annual increase in a row)
- Number of lost workdays to work-related accidents continued its gradual increase reaching 36.1 million or about 60 days per 100 workers
- Estimated accidental deaths in establishments with more than 11 employees increased by 20% over '76 to about 4,800 people
- The industries with the biggest increases in these figures were:

  agriculture

  forestry

  fishing

  construction

  wholesale & retail trade

  services industries

declines were shown for:

  mining

  transportation

  public utilities

Apparently chemicals remained about level.

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Bear in mind that these figures are obtained by sampling techniques, not a full incident counting system, and have been criticized by some as being inaccurate on this basis. For the remainder of our discussion we will use them, however, since they are the best available compilation of workplace injuries in multi-employee endeavors, and they are issued by the Department of Labor.

And, oh yes, one more point from the BLS -

- These figures include nearly 162,000 workers who were subjected to recognized occupational diseases, down from 168,000 the previous year.

These statistics are not good. They represent a real cause for concern and we should be doing much better.

Other segments of our society also think we should be doing better and so they have decided that they, not employers, must tell the worker. Such intervenors come from all directions, but the more important include the following:

a) Government - Federal, State, Local
b) Labor unions
c) Self-appointed public advocacy groups
d) Environmentalists
e) Politicians
f) Lawyers (especially class action types)
g) Others too numerous to mention.

It may be redundant to say that not all of these are the greatest of friends of industry. That they are often much more poorly informed themselves than they should be, that accuracy in their statements may not be the most important thing to them, and that they may have other motives in attempting to intervene than they claim, or should have, is frequently all too apparent. Indeed, you may have already concluded that, based on the fact that industry's hazard and risk control program is not functioning perfectly in spite of strenuous effort, and because some few employers have not met their responsibilities, that many of these intervenors are determined to use this issue to embarrass, punish, harass, accuse, and blame industry and to demand that it be regulated to death, a goal to be achieved by fair means or foul, in the guise of protecting the worker. If you have concluded anything so rash, you are very close to the mark.

You see in our earlier discussion about the philosophy of telling the worker about the hazards in the workplace, we glossed over an almost unending series of questions of detail that present many areas of potential conflict made to order for the outside meddler. The questions could be grouped according to classes. Here are some examples:

Class I - How is a hazard to be defined?

At what level of concern does it become important, i.e., a priority item?

With what degree of factual support?

By whom should hazards be defined?

According to what criteria?

Class II - What information on the hazard should be collected?

From what sources?

Who will fill information gaps?

How? At what cost? How fast? Why?

Who will validate the information?

Class III - How will risk be assessed?

What risk abatement means are to be used?

What risk level is acceptable?

How is this to be determined?

By whom?

According to what criteria?

Will cost be a consideration?

How will risk/benefit/cost balance be achieved?

Class IV - What should be told to the worker and in how much detail?

When? Where? Why?

At what level of sophistication? How often? Orally or in writing?

And again, by whom?

And who should decide these things and according to what criteria?

What legal liability problems does all this impose and for whom?

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Class V - What records must be kept concerning employee health experience - re accidents, illnesses, fertility, mental acuity, emotional state, physical condition, etc., etc.?

By what physical tests? Administered by whom?

How often? Where?

How long must records be kept?

What exposures must be measured?

To what degree of accuracy?

How is this information to be related to health history?

By whom? Under what circumstances?

To whom will these records be available?

Under what circumstances?

Who will decide these things?

According to what principles?

Class VI - How will the employer's proprietary business information be protected?

How much of this must be given to the employee?

the union?

the regulator?

the self-appointed advocate?

the environmentalist?

Although that list is not complete by any means, it may suffice to illustrate the point. You see, so many of these questions are answerable only on the basis of subjective judgments, and there are no definitive answers for any of them, that a determined adversary, willing to play loose with the few available facts, can wreak havoc on our industry. And they already are doing this.

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We could spend nours together discussing examples of the activity of our adversaries in this regard, but we do not have the time for that. Rather, I wish to talk about only one, relatively trivial, example that bears directly on telling the worker, and the public, and then I will close.

Today in Chicago the second day of a two day meeting is drawing to a close. I do not know how many of you have seen the publicity on this meeting since it is being held primarily for the reporters of the public media, who have been extensively recruited to attend this meeting from all over the nation. I want to read to you from the program sent out as pre-meeting publicity. The meeting is called "Lost In The Workplace: Is There an Occupational Disease Epidemic?" I now quote from the program:

> "Sometimes death strikes swiftly in the workplace. More often, it is an insidious process. Workers exposed to multiple hazards - sometimes dozens of chemicals at a time - usually do not die suddenly and dramatically. But each year at least 100,000 Americans die from the accumulation of daily exposures, while countless others are left disabled or sterile.
>
> "While occupational death and disease represent a tremendous tragedy to the affected families, this massive yet silent slaughter is too often a story lost in the workplace. Nonetheless, no one is immune to the consequences of occupational disease. They affect business, jobs, the economy, and ultimately every community.

"'Lost in the Workplace: Is There an Occupational Disease Epidemic?' is an attempt to provide some of the answers and to provoke new questions. Secretary of Labor Ray Marshall will be joined by other government officials and many of the nation's most knowledgeable scientists and business and labor representatives for this two-day seminar.

"Among the topics will be such vital and controversial subjects as the nature and extent of occupational disease, the cause of workplace cancer, the debate over reproductive hazards, and the role of government regulatory policy. Journalists who have regularly tackled these issues will discuss the problems of covering occupational disease issues and offer 'how to' advice. There will also be a showing of the much-praised film, 'Song of the Canary.'

"This conference offers journalists the opportunity to listen and talk to some of the most important spokespersons in an increasingly important field. There are stories to be found in Chicago on September 13-14, 1979."

Perhaps you already know that this meeting is being organized, sponsored and conducted by OSHA. Perhaps you know that these flyers were sent out to all parts of the country by letters addressed to "Dear Journalist" and signed by Eula Bingham urging attendance. A quick glance at the lineup of speakers and topics is interesting and informative. Here is a copy of the program:

Sometimes death strikes swiftly in the workplace. More often, it is an insidious process. Workers exposed to multiple hazards—sometimes dozens of chemicals at a time—usually do not die suddenly and dramatically. But each year at least 100,000 Americans die from the accumulation of daily exposures, while countless others are left disabled or sterile.

While occupational death and disease represent a tremendous tragedy to the affected families, this massive yet silent slaughter is too often a story lost in the workplace. Nonetheless, no one is immune to the consequences of occupational disease. They affect business, jobs, the economy, and ultimately every community.

Reporting on these workplace issues is a challenging and important job—but in the maze of tongue-twisting chemicals complex industrial processes and conflicting scientific reports, it is often difficult to find the answers.

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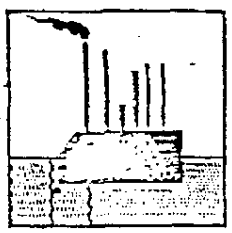
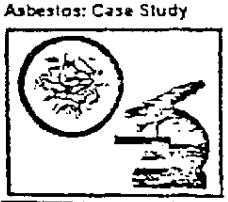
Thursday, September 13, 1979

Welcome		Dr. Eula Bingham, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor
Protecting the American Worker		Ray Marshall, Secretary of Labor
	Questions and Answers	
Behind the Factory Gate: Disease on the Job	Overview	Dr. Bertram Carnow, Professor, Occupational and Environmental Medicine, School of Public Health, University of Illinois
	Controlling Known Hazards	Dr. John Fromes, Deputy Director, National Institute for Occupational Safety and Health
	Chemical Hazards: When to Act	Dr. David Rall, Director, National Institute of Environmental Health Sciences
	Political Issues of Protection	Anthony Mazzocchi, Vice President, Oil, Chemical and Atomic Workers Union
	Problems of Health Care and Protection	Dr. Bruce Karrh, Corporate Medical Director, E.I. du Pont de Nemours and Company
	Questions and Answers	
Luncheon:	Worker Health—Personal Testimony	**Moderators:** Studs Terkel, author, *Working*; and Franklin Wallick, Editor, UAW *Washington Report*, United Auto Workers; author, *The Endangered Worker* Workers from Cotton, Steel, Chemical and Lead Industries
Asbestos: Case Study		Dr. Irving Selikoff, Professor of Community Medicine and Professor of Medicine, Mount Sinai School of Medicine, City University of New York
		Barry Castleman, environmental engineer, public interest consultant
		Dr. Paul Kotin, Senior Vice President, Johns-Manville Corporation
Future Generations: Reproductive Health		Dr. Peter Infante, Director, Office of Carcinogen Identification and Classification, Occupational Safety and Health Administration
Media Workshop		**Moderator:** Rachel Scott, author, *Muscle & Blood* Paul Brodeur, author, *Expendable Americans*, The New Yorker Phil Lewis, producer, ABC Tom Curtis, freelance writer, former editor, Houston City Magazine Michael Flannery, The Chicago Sun-Times Tom Horton, The Baltimore Sun Bill Richards, The Washington Post
	Questions and Answers	
Reception		
Film:		Song of the Canary

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Of Mice and Men: Cancer in the Workplace	Overview	Dr. Thomas F. Mancuso, Research Professor, Industrial and Environmental Health Sciences, Graduate School of Public Health, University of Pittsburgh
	Carcinogens: Their Nature and Identification	Dr. Umberto Saffiotti, Chief, Laboratory of Experimental Pathology, Division of Cancer Cause and Prevention, National Cancer Institute
	Cancer Prevention	Dr. Marvin Legator, Professor and Director, Division of Environmental Toxicology, Preventive Medicine and Community Health, University of Texas
	Politics of Cancer	Dr. Samuel Epstein, Professor, School of Public Health, University of Illinois, author, *The Politics of Cancer*
	Questions and Answers	
Lunch Break		
The Government Role: How it Works		Dr. Eula Bingham, Assistant Secretary for Occupational Safety and Health Dr. Anthony Robbins, Director, National Institute for Occupational Safety and Health Timothy Cleary, Chairman, Occupational Safety and Health Review Commission
Wealth and Health: Economic and Policy Issues of Regulation		Moderator: Franklin Greer, Special Assistant to the Secretary, U.S. Department of Labor Grover Wrenn, Director, Federal Compliance and State Programs, Occupational Safety and Health Administration Peter Lowry, former Chief Counsel, Council on Wage and Price Stability Dr. Nicholas Ashford, Associate Professor of Technology and Policy, and Assistant Director of The Center for Policy Alternatives, Massachusetts Institute of Technology
	For Further Information, Contact:	David Bourdon or Carol Parker (202) 523-8615 Office of Information and Consumer Affairs Occupational Safety and Health Administration U.S. Department of Labor Washington, D.C. 20210
	U.S. Department of Labor Occupational Safety and Health Administration	

Lost in the Workplace:

Is There an Occupational Disease Epidemic?

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If you are familiar with the litany of "industrial abuse" and misinformation on the health and safety issue that has poured out of OSHA and its consultants, you will see that the bulk of the cast of characters who provide it are on this program. There are at least two of the authors of the infamous "Estimates Paper" which was prepared hastily and without any peer review for HEW Secretary Califano to support a speech he made before an AFL-CIO convention in which he claimed 25-38% of all future cancer cases would be due to occupational exposure to chemicals. This paper, when finally made available for review, long after Califano had captured the desired headlines, was ridiculed and denigrated by responsible scientists all over the world. It was an advocacy paper of the worst kind, and has made Government epidemiology a laughing stock in scientific circles. The program includes several persons who have been pushing the scare story that there is a cancer epidemic in the nation caused and fueled by workplace exposure, all in the face of incontrovertible statistics that show that only lung cancer, attributable almost entirely to smoking, is increasing noticeably and, on an age adjusted basis, almost all other cancers are level or declining over the last 50 years, and total age-adjusted cancer incidence has not changed over that time period.

The program includes a man in government employ who has made a career of claiming, and attempting to prove, that there is an excess of cancer and birth defects among people living in the vicinity of industrial plants, only to see his every report in this regard thoroughly debunked by other government groups or independent scientific groups. Note the titles of the symposia and the people involved in them, and note the showing of one of several professionally developed films by OSHA which are part of their publicity campaign, produced at very high cost.

How does that program sound for balance? If we exclude the workers providing personal testimony, there are two of the 27 people on this program from industry and both of those are medical doctors. It may not be too presumptuous to assume the workers' testimony will not be pro-industry.

Following the publication of this program, the American Industrial Health Council protested to OSHA on the design of this meeting and its publicity, and was able, by considerable arm twisting, to get additional industry representation on the program. An attempt to add one or two more objective scientists on the program as well was refused.

I do not know how much attendance this meeting has generated but there will be some industry people there, now that the program is known about, you may be sure. Early information indicated press attendance would be light, however.

Before we leave this outstanding example of your government at work, a few more comments may be in order. Remember the Bureau of Labor Statistics figures I quoted earlier in this talk? Those figures said total deaths were 4,800 in establishments with over 11 employees in 1977 as part of 5,300,000 workplace injuries or illnesses. Those figures were also said to include 162,000 persons who contracted recognized occupational diseases in 1977. How then does one rationalize those figures with the "massive yet silent slaughter" in which "each year at least 100,000 Americans die from the accumulation of daily exposures while countless others are left disabled or sterile?" It seems abundantly clear they cannot be rationalized. As you heard from Dr. O'Connell this morning, extensive searching of the literature reveals in a NIOSH report published in 1972 a statement that "there may be as many as 100,000 deaths per

year from occupationally caused disease." This conjecture is based on the most trivial and inappropriate of extrapolations of very skimpy data. Studies of three sample groups of workers were made by government people at quite different times:

Underground metal miners in 1963
Copper smelter workers in 1969
Uranium Miners in 1971

Perhaps you will recognize these as industries with greater than average health hazards. Total violent and nonviolent deaths reported in these three studies were totalled, and the ratio of these was determined. That ratio of nonviolent/violent workplace-related deaths for the three groups studied was 7:1: 422 violent deaths; 2,800 nonviolent deaths. The NIOSH report does not state how the nonviolent deaths were defined. Another estimate taken from a National Health Survey conducted by the Health Services and Mental Health Administration's National Center for Health Statistics showed that, in 1971, a total of 14,000 violent occupational deaths occur per year for the nation as a whole. This total of 14,000 was then multiplied by the derived ratio from the three selected industries to get 7 x 14,000 = 98,000 deaths/yr claimed to be caused by occupational disease. Incidentally, a significant portion, approximately 5,000, of the reported 14,000 violent deaths were due to motor vehicle accidents. This figure, without any other known substantiation, has been used so frequently by OSHA and other government agencies that any casual observer surely considers it by now to be incontrovertible fact. That is why I say even your government is playing loosely with the facts. And as you heard from Dr. O'Connell, this is no isolated example of malperformance by government agencies.

What is the bottom line of all of this? Our society is playing adversarial games of politics and bureaucratic aggrandizement and power seeking with the legitimate concerns we all should have for the safety and health of our work-force. We are permitting nonsense and irrationality to weigh down our economic strength and to misdirect appropriate disposition of our resources in very wasteful ways. We are dissipating our energies in needless wrangling, and destroying our faith in each other because of uselessly adversarial postures on matters where our interests are identical. We all want the safest workplace environment reasonably attainable based on the best knowledge available. We need to find a way to devote the necessary resources to gaining better knowledge on how to do this in a cost-efficient way rather than wasting those resources in expensive regulations which produce no benefit for anyone. These things have happened, in part, because we in industry have not yet done a good enough and uniform enough job in understanding job safety thoroughly and then "telling the worker" in candid, complete terms. Nor have our workers done a good enough job in their observance of their personal responsibility for safety. One concrete step we all in this room can take to improve the whole scene is to assure that industry is less subject to criticism on our performance by performing better. Who should tell the worker? That, ladies and gentlemen, is your job, and mine.

Thank you very much.

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RECEIVED
JAN 17 1995
LAW DEPT.

January 12, 1995

Bruce Whitney, Esq.
Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501

Dear Bruce:

Attached for your information is a copy of my first invoice letter to Andy Hanen.

As we discussed, because of my deep personal involvement in the industry efforts in the debate on the OSHA standard and the work to comply with it after it was promulgated, I am quite interested in helping the industry in general in the defense of this suit, as well as Air Products. If in your work with the litigation group you see the opportunity to suggest that possibility to others who might have an interest, I hope you will do that. Of course, no such other activity should work to interfere with the Air Products defense. Furthermore, as I told you, if I am approached by others, I will consult with you before any decisions are taken to assure there would be no adverse implications.

While I deplore the bringing of these claims against Air Products, I am pleased to have the opportunity to work with you.

Best wishes,

Dick

Richard Fleming

RF/ta
Enclosure

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January 11, 1995

Andrew S. Hanen, Esq.
Hanen, Alexander & Spalding
3850 Texas Commerce Tower
600 Travis
Houston, TX 77002

Dear Andy:

I enjoyed the opportunity to meet and talk with you, Thorne, Bruce and Mayo Smith during our meetings of January 3 and 4. It seems very clear that the Air Products defense against this ill-considered suit will be a very strong one and that it is in good hands. While I certainly cannot speak for other individual companies, I can speak to the efforts of Air Products, and of the industry as a whole, to deal forthrightly and openly with the issues involved, as I have told you. Because of my personal involvement on behalf of both Air Products and the industry beginning in 1973, I am anxious to do all I can to help both on this matter.

It is my understanding that I am to submit my invoices for my efforts to you for payment. Accordingly, I attach Invoice 95-1 to cover my work to date. Since the schedule for my future efforts remains uncertain, my billings are bound to be somewhat sporadic in nature. I trust this creates no problems for you.

I look forward to working with Thorne and you.

Best wishes,

Dick

Richard Fleming

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