PLAINTIFF'S EXHIBIT

SH-2453

TEXAS CHEMICAL COUNCIL

1000 BRAZOS, SUITE 200, AUSTIN, TEXAS 78701-2476, (512) 477-4465

To: TCC Members

From: S. E. Anderson

Attached you will find the Minutes of the Third Quarter Occupational Safety Committee Meeting which was held in Houston, Texas on Sept. 8 & 9.

This was another productive meeting. We formed a new committee to deal with Process Hazards Management, we formed a sub committee to work the issues on rapid response to regulatory issues, we adopted the performance/awards system for Board approval, and work continues on the ambulance issue. All of this in addition to beginning to break in a new Chairman. It looks like we're hitting our stride.

Begin to plan now to attend the Fourth Quarter meeting on December 8 & 9, 1988. Group VIII will host, coordinated by Dave Bremer of Hoechst-Celanese. We will meet at the Holiday Inn/Hobby Airport in Houston. It should be another great meeting! See you there!

SEAnderson

S. E. Anderson
Vice Chairman

SEA/km

LAM 010320

DPMC-06722

TEXAS CHEMICAL COUNCIL
OCCUPATIONAL SAFETY COMMITTEE
3RD QUARTER MEETING
SEPTEMBER 9, 1988

The 3rd quarter meeting convened at 8:00 a.m. September 9, 1988 at the Nasa Bay Hilton on Clear Lake. The attendance roster is included as Attachment I and an updated membership list as Attachment II. Items discussed are as follows:

I. Chairman's Report - Larry Lucchesi - Chevron Chemical Co.
(Jim Woodrick has been appointed by TCC to take over the chairmanship of the new SARA Title III Committee. Larry Lucchesi was appointed to take Jim's place as chairman of the Occupational Safety Committee.)

The TCC Executive Board met in June at which time future plans for TCC were approved. A mission statement was developed with the desired outcome to be favorable public opinion, favorable legislation, favorable tax rates and regulatory agencies that favor a global competitive position.

A staff expansion is projected to double the staff to 10 people by 1993. At that time there will be separate directors for TCC and ACIT. Other additions to the staff will be a new director of governmental affairs, a public relations and communications specialist and two additional clerks. As noted before, company dues will be doubled to bring about these improvements

II. Vice Chairman's Report - Stan Anderson, Rohm & Haas

Tom Gillespie received a promotion within Shell and will no longer be a member of this committee. A letter of commendation from Jim Woodrick to Tom Gillespie was read concerning Tom's accomplishments with the Occupation Safety Committee.

A. Stan presented information in the Health and Safety Newsletter, Volume 3, No. 1 from CMA. Items of interest in this newsletter were a view of SARA Title III, the use of magnetic media for submitting data to EPA, Emergency Response Planning Guidelines (ERPG's) being developed by members of the Organization of Resource Counselors, Inc. (ORC), the availability of the TRANSCAER video, preparations for the 1989 International Agency for Research and Cancer (IARC) meeting, OSHA's proposed lock-out/tagout rule, and the delay of HAZWOPER. The CMA contact, along with the CMA phone number, is noted for each of the items if additional information is needed (Attachment III).

B. Industrial Ambulance Update

LAM 010321

A tele-conference was held between John Fisher, Tom Dearing, and Stan Anderson concerning plans to get legislation to improve this untenable situation. Plans are to work with the next session of legislation to define emergency vehicles and develop language to allow voluntary permitting. Ed Watson will be the legislative sponsor. Our draft of this proposal is written. It will be distributed to OSC members.

Note: Charles Gilmore, one of the charter members of the Occupational Safety Committee, was present. He stated that this committee was formed 30 years ago with 18 members. We can be proud of the accomplishments of this group since that time.

III. Committee Reports

A. Ad Hoc Recordkeeping Committee/Safety Performance and Awards - Ron Starcher, Exxon

1. The OSC developed a position for TCC on OSHA recordkeeping that was submitted previously. In the past quarter there have been no new proposals on recordkeeping.

2. The Safety Award Program was presented (Attachment IV). A motion was made and carried to send this program to the executive board of TCC for approval. Since this completes the charter given to this ad hoc Committee, Ron Starcher resigned as chairman. A new chairman will be selected for the Safety Awards Committee.

LAM 010322

B. CAER/SARA Committee - Jim Woodrick, DuPont

No report from this committee since Jim Woodrick was not present. Stan Anderson will report on this subject at the next meeting.

C. Flag Waving - Charlie Craig, Mobay Synthetics

Lubrizol, Bayport - Completed one year without a lost workday injury on August 11, 1988. Celebrated with pizza party for all personnel.

Union Carbide Corp, Linde Division, Deer Park - Completed nine years without a lost workday injury. The Brown & Root Maintenance crew completed three years without a lost workday injury and they have only had one lost workday injury in the last eight years.

Cain Chemical, Bay City - On August 1, 1988 they completed seven years without a lost workday injury.

Texas Alkyls, Inc. - As of March 6 they have completed five years without a lost workday injury and the contract maintenance group (Brown & Root) have completed 15 years without a lost workday injury as of August 30, 1988.

Hoechst-Celanese, Bishop - Completed one million safe work hours without a lost workday injury.

Georgia Gulf Corp., Pasadena - They have completed 10 years and over 700,000 safe hours without a lost workday injury.

Dow Chemicals, Texas Operations - Exceeded their best previous safety performance record of 21.8 million safe work hours without a lost workday injury and as of September 9, 1988 have posted 22 million hours. This encompassed 500 days.

Chevron Chemical Co., Orange - On July 1, 1988 they completed one year and one million safe hours without a lost workday injury.

Goodyear, Houston - Completed over 1.2 million safe hours without a lost workday injury over a period of 367 days.

Mobil Chemical Co., Olefins/Aromatics Plant, Beaumont - Completed 3 million safe work hours and four years without a lost workday injury on June 22, 1988.

Amoco Oil Company, Texas City - Plant Central Maintenance Division completed over one year and one million safe work hours without a lost workday injury on August 19, 1988.

D. Drug Abuse - Fred Sigmon, Hoechst Celanese

In 1985, TCC took the stance that each member plant should have a pro-active drug abuse program with the goal of a drug-free chemical industry. A blue book entitled, "The Safety Considerations of Drug Abuse in the Workplace", developed by the Occupational Safety Committee is available from Faye Washington at TCC. Her phone number is (512) 477-4465.

Results of the latest survey of member companies is at TCC headquarters and should be mailed to the members soon. Responses were down from 101 in the last survey to 82 in this survey. Of the 82, 74 have drug and alcohol abuse programs. The percentage of plants participating is this type of a program has increased steadily since these surveys have been taken. Seventy-eight of the plants have screening programs for new employees and virtually 90% have an Employee Assistance Plan. Also, we are seeing an increase in number of contractors who have drug and alcohol abuse programs.

In a recent development, Phil Gramm has met with a group of 11 other Senators to set up a plan for eliminating drugs in the U.S. We are very supportive of his efforts.

E. Safety Standards - John Biggers, Dow **LAM 010323**

Items discussed are included in Attachment V. They were:

1. Department of Labor report stating that labor-management committees in safeguarding worker safety and health need to be strengthened. This item will merit close watching in the future.

2. Speech by Robert Smerko, President of the Chlorine Institute, calls for an all-out safety drive at chemical plant operations to preclude further Federal Government intrusions into the industry.

3. Lockout/Tagout - Unions in favor of lockout system. CMA and SOCMA support use of tags in addition to locks. Note: Public hearing on lockout/tagout will be held in Houston on October 12 and 13, 1988. Dow Chemical personnel will testify at the hearing. It was also recommended that TCC be represented as we have submitted written comments to the OSHA docket officer (Attachment VI). Stan Anderson will be available for the hearing. Other personnel who may attend will be Chairman Larry Lucchesi and the Lockout/Tagout Ad Hoc Committee members (Dennis Mitterlehner, Ed Harris, Walter Treybig and Wayne Wright).

4. Electrical Safety - The latest information on the proposed standard.

5. Display Terminals - New York union leaders organized to spur local and state VDT legislation. This looks like another pseudo-issue to assist in unionizing.

6. OSH ACT Reform - Representative Henry, the ranking minority member of the House Education and Labor Subcommittee on Health and Safety has assembled a formal task force to develop legislation to amend portions of this act. Need to work on influencing this committee.

7. Warning against using plastic PVC pipe in compressed air piping.

8. Asbestos - A partial stay of the OSHA asbestos standards as they apply to three non-asbestiform minerals was extended for another year.

9. Health Hazards - Possible future issue concerning carcinogenicity of diesel exhaust.

10. Drug Abuse - Senator Dole states that OSHA's authority should be expanded to insure drug-free workplaces.

11. Cumene Studies - EPA issued the final rule requiring studies on cumene.

12. Litigation - Briefs filed in appeal of a decision excusing Unocal Corp. from fire safety standard.

F. OSHA Star - Art Mundt, Dow

An explanation was given of the OSHA voluntary protection programs. This includes what's in it for the company, what it takes to comply with the program, and how to get started on the program. Additional information can be obtained by contacting either Dick Zier, VPP Coordinator, U. S. Dept. of Labor - OSHA, Dallas Regional Office, Phone (214) 767-4741 or Art Mundt, Dow Chemical U.S.A., Director of Safety and Loss Prevention, Texas Operations, Phone (409) 238-2467.

G. Texas Industrial Fire Board - Tom Dearing, Phillips 66

Updating the Industrial Fire Training Board - There have been three new directors elected and Ed Harris is the new Vice Chairman. Membership is up by 15%. A 15-minute video was produced which explains the purpose and function of the Industrial Fire Training Board. Copies will be made available.

There is a strong move in Texas to come up with state fire codes. The State Firemen's Association will push for this, but will work with the Industrial Fire Training Board to develop an industrial exemption.

ITSFA has been declaring itself an expert in fire protection and has written what it proclaims is a standard for industry without industry's input. Both NFPA and the Texas Industrial Fire Training Board (Tom Dearing) have written letters denouncing this publication. A copy of this letter is Attachment VII.

Problems concerning the development of emergency service districts have been discussed with Senator Buster Brown who will work on making legislative clarifications. As a result of the OSHA citation against Unocal Corp. they have requested that API give them a position statement on sub-part L.

Good HazMat training is available from Lamar University in Beaumont.

Anyone having unusual fire equipment that they are no longer planning to use is asked to donate it to the fire museum.

The next meeting of the Industrial Fire Training Board will be held at Texas Eastman in Longview on December 6, 1988.

H. TCC/TSA Safety Seminar - Walt Treybig, PD Glycol

LAM 010325

The 1988 Safety Seminar was a resounding success. There was an increase of 146 participants, resulting in a total of 812. The first day was sold out with 444 being present. (Approximately 60 turned away.) Profits for the seminars were approximately $27,000. As a result $50,000 from seminar funds was turned over to TCC to be used in the building fund.

The possibility of increasing the seminar to three days (third day would be a repeat of the session for 1st line supervisors) was discussed and approved. The seminar will be held at the San Luis in Galveston from June 27 to June 29 with the 2nd quarter 1989 OSC meeting being held on June 30.

The first meeting of this committee for the 1989 Seminar will be held September 16 at 8:00 at the Texas Safety Association offices in Houston.

It was decided to form a planning committee to make proposals for use of any future profits from these safety seminars. It is the feeling that this money should go toward promoting safety, health and environmental matters - possibly in the form of scholarships or research. Fred Sigmon will head the committee.

IV. Miscellaneous

A. Effective Response - Since the Occupational Safety Committee meets only every three months, there is always a problem of how we as a group can respond to issues that arise. A group consisting of Larry Lucchesi, Stan Anderson, John Rivard, John Biggers and Ron Starcher will meet to map out strategy toward accomplishing this.

B. Committee Chairmanships

1. Process Hazards Management - A new committee will be set up to deal with this issue. John Biggers will chair this committee.

2. Safety Standards Committee - Ron Starcher will replace John Biggers as chairman.

C. Worker's Compensation Legislation

There is a move on foot to make revisions to Texas Worker's Compensation. No OSC involvement will be needed at present as Harry Whitworth, TCC Director, has this as a top priority.

D. Personnel Lifts - A new OSHA regulation concerning the use of personnel lifts was published in the Federal Register on August 2, 1988. Members should get a copy of this as soon as possible as some major changes are required. It is effective October 3, 1988.

V. Fourth Quarter 1988 Meeting Plans - Dave Bremer, Hoechst Celanese

The fourth quarter meeting will be held at the Hobby Airport Holiday Inn in Houston on December 8 and 9.

Attachment I

Attendance

Name	Company
DON LARNED	TEXAS ALKYLS INC
BOB MACK	ETHYL
DAUG MAYARD	PETROLITE CORP.
WAYNE WRIGHT	CHEMICAL EXCHANGE INDUSTRIE
JIM HORN	TEXAS PETROCHEMICALS CO
DAVID ACERNI	AMOCO CHEMICALS, TEXAS CITY
TOM GILLESPIE	SHELL OIL CO.
ED HAWTHORNE	SHELL OIL CO.
FRANCIS LYONS	CHEVRON CHEMICALS
Robert Church	Pennwalt Bmt.
Jim Wehmeyer	CAIN CHEMICAL-Bay City
MARVIN HARRINGTON	Himont-U.S.A. -Bayport
MELVIN E LEWIS	GOODYEAR - HOUSTON
MAURICE W. BARD	Goodyear - BayPort
Jacob Bourgeois	Hoechst Celanese, Bayport Works
STEVE WILLIAMS	PENNWALT - HOUSTON
DAVID MANNING	Occidental - Deer Park
LYNN MOORE	DIXIE CHEMICALS
RUSTY CREED	ROHM AND HAAS, BAYPORT INC
MILT DENMAN	GEORGIA GULF CORP.
Walter Treybig	PD GLYCOL, Beaumont
JACK FLYNN	MERICHEM Co., HOUSTON
GARY BARRERE	Union Carbide, Linde Div
KATHY PIERPOLINE	AKZO CHEMICALS INC BAYPORT
TOM BURNS	TEXAS EASTMAN C. Longview
PERI YALCINKAYA	UNION CARBIDE, TEXAS CITY
M M SIMER	TEXACO CHEMICAL CO. PORT NECHES, TX
REESE TILLERY	CHEVRON CHEM. CO. BAYTOWN
FRANK BARDWELL	Marathon Pet. Co. Texas City
CHARLES L. GILMORE	RETIRED - LIFE MEMBER
Lucas W. Brandt	W.R. Grace - Deer Park

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Attendance

Name	Company
Bob Hammann	Amoco Oil Co
Ted Heisig	Lubrizol Corp.
W. D. Mitterlehner	Mobil Chemical - Houston
TH DEARING	Phillips 66
Fred Sigmon	Hoechst Cel. Clear Lake
Ron Starcken	Exxon Chemical - BCP
JOHN BIGGERS	DOW
Art Mundt	Dow
Larry Hensley	BP Chemical - Greenlake
Danny Moore	Union Carbide - Seadrift
Jim Werneke	Hoechst - Celanese - Bishop
TODD KARASEK	SOLTEX POLYMERS - LAPORTE
Ed HARRIS	QUANTUM Chemical Co - Pt. Arth
LARRY LUCCHESI	CHEVRON CHEMICAL Co.
Louis McGraw	ICI Americas Inc.
Eloy Valdés	STAUFFER-RHONE POULENC, INC BAYTOWN.

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~~Volume 3 No. 1~~

June 1988

BOARD HEALTH EFFECTS COMMITTEE ENDORSES EPIDEMIOLOGY CENTER CONCEPT

The Board Health Effects Committee held its fourth meeting at CMA headquarters on May 11. A major portion of the meeting focused on discussing the need and the means to establish an epidemiology center to encourage and enhance industry epidemiology programs.

George Rodenhausen, chairman of the Health and Safety Committee (HSC), reported the results of a recent telephone poll of a sample of CMA member companies. The telephone poll, designed by the HSC Epidemiology Work Group, showed:

- Approximately forty percent of CMA members have occupational epidemiology programs;
- Programs generally are located in larger companies with one thousand or more employees; and
- Over eighty percent of these programs have been in existence for more than five years.

The poll also showed that an overwhelming majority of these companies contacted were in favor of the idea of an epidemiology center sponsored by industry.

The Board Health Effects Committee reviewed and endorsed the HSC concept of an Epidemiology Resource and Information Center (ERIC). ERIC is intended to be a service organization that would:

- Assist companies in developing in-house occupational epidemiology programs;
- Develop industry-wide guidelines to promote data quality;
- Provide technical and scientific consultation to companies on epidemiologic issues; and
- Advocate the greater use of epidemiology and human health effects data in regulatory and risk assessment activities.

CMA's Board of Directors has recommended that the Board Health Effects Committee continue developing the concept.

CMA Contact: Lori Ramonas, 202/887-1384

The **HEALTH AND SAFETY NEWSLETTER** is published by CMA's Health, Safety and Chemical Regulations Division. It includes valuable information concerning regulatory developments and Congressional and Administration action affecting the chemical manufacturing industry, in addition to pertinent activities of CMA's Health and Safety Committee. For further information, contact Diane S. Layne, Editor.

LAM 010329

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CHEMICAL MANUFACTURERS ASSOCIATION
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Telex 89617 (CMA WSH)

CMA TESTIFIES ON TITLE III

CMA testified before the U.S. Senate Committee on Environment and Public Works Subcommittee on Superfund and Environmental Oversight, during oversight hearings on SARA Title III, the Emergency Planning and Community Right-to-Know Act of 1986. George Rodenhausen (Vice President for Environmental, Health and Safety Affairs, Hoechst Celanese Corp.), Chairman of CMA's Ad Hoc Title III Coordinating Group and the Health and Safety Committee, restated CMA's support for Title III, saying that CMA views the law as a continuation of its CAER, Air Quality, and Waste Minimization Programs.

Rodenhausen stated that CMA is confident of a high level of compliance to Title III by its member companies. It is difficult, however, to predict the level of compliance outside the chemical industry. Title III has been mischaracterized as a "chemical industry law". As a result, many companies outside the chemical industry may be under the misimpression that Title III does not apply to them.

To make Title III work, Rodenhausen said that EPA must:

- Continue its efforts to educate industries and businesses of the coverage and provisions of the law;
- Announce a clear and comprehensive strategy to enforce compliance with the law; and
- Help make Title III emissions and inventory information understandable to the public.

Other witnesses before the subcommittee, chaired by Sen. Frank Lautenberg (D-N.J.), were state government representatives, a representative of an environmental coalition, and EPA staff.

CMA Contact: Marion R. Herz, 202/887-1365

CMA MEETS WITH EPA ADMINISTRATOR ON TITLE III

Representatives from CMA met with Lee Thomas, EPA Administrator, and other EPA staff on June 14, 1988, to discuss SARA Title III activities and implementation. CMA was represented by George Rodenhausen, Hoechst Celanese; Robert Roland, President; Jon Holtzman, Vice President-Communications; and Christopher Cathcart, Associate Director — Health, Safety and Chemical Regulations. Topics discussed at the meeting included:

- Health effects — How will health effects information be provided to the public to help them understand the significance of the Section 313 Toxic Release Inventory information? CMA recommended that EPA refine the Integrated Risk Information System (IRIS) modeling system to meet the demands of Title III; that EPA develop lay-language chemical hazard information to supplement data reported under Title III; and that EPA establish a mechanism to provide health effects information to the public;
- Modeling under Title III — How will technical modeling assistance be provided to the states and the public? CMA expressed its concern that modelling systems like pcGEMS and CAMEOII do not meet the needs of Title III use;
- Compliance Assistance and Enforcement — How can the level of compliance with Title III be improved? Attendees agreed that both education efforts, and EPA's enforcement policy, must be directed to all industries covered under the law, including downstream users of products. Assistance should be provided to SERCs and LEPCs in meeting emergency planning requirements; and

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- Risk communication — How can we assure effective communication of risk under Title III? CMA and EPA agreed on the importance of risk communication under the law and will continue their efforts in this area.

Mr. Thomas commended CMA on its efforts to educate industry and the public about Title III. CMA restated its commitment to work with EPA and all affected parties to make the law work.

CMA Contact: Marion R. Herz, 202/887-1365

TITLE III SECTION 313 REPORTING DEADLINE JULY 1, 1988

Under Section 313 of SARA Title III, certain businesses are required to submit reports each year on the amounts of chemicals their facilities release into the environment. The first of these reports is due by July 1, 1988, for releases during 1987, and must be sent to the U.S. EPA and to designated state agencies. (See related article this issue and April 1988 *Health and Safety Newsletter*.)

Owners and operators of manufacturing facilities that have 10 or more full-time employees, that are in Standard Industrial Classification (SIC) codes 20 through 39, and that manufactured, processed or otherwise used a listed toxic chemical in excess of the specified threshold quantities must submit reports.

The statute has a three-year phase-in, as follows:

- 1987 — Facilities manufacturing or processing any of the listed chemicals in excess of 75,000 pounds;
- 1988 — Facilities manufacturing or processing in excess of 50,000 pounds;
- 1989 and thereafter — Facilities manufacturing or processing in excess of 25,000 pounds; and
- Any year — Users of listed toxic chemicals in quantities over 10,000 pounds.

The following information must be reported:

- The name, location, and type of business;
- The identity of the chemical and whether it is manufactured, processed, or used;
- An estimate (in ranges) of the maximum amount of the toxic chemical present at the facility at any time during the preceding year;
- The quantity of the chemical present at the facility at any time during the preceding year;
- The quantity of the chemical entering each environmental medium annually;
- Waste treatment/disposal methods and efficiency of methods for each waste stream; and
- A certification by senior officials that the report is complete and accurate.

EPA is required to make the data reported under Section 313 available to the public through a computer database. The database is expected to be available in the Spring of 1989. This Toxic Release Inventory is intended to help answer citizens' questions about chemical releases in their community. CMA is concerned, however, with the potential misuse or misunderstanding of such raw data, without explanatory information. CMA is working with EPA in this regard, and CMA members are preparing to answer the public's questions on the local and regional level.

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EPA has prepared industry-specific guidances to assist companies in meeting the Section 313 reporting requirements. The guidances cover release estimation in the following industrial activities: monofilament fiber manufacturing; spray application of organic coatings; electroplating operations; semiconductor manufacturing; electrodeposition of organic coatings; wood preserving operations; paper and paperboard production; roller, knife, and gravure coating operations; leather tanning and finishing; textile dyeing; rubber production and compounding; presswood and laminated wood product manufacturing; and formulation of aqueous solutions. Copies of the industry-specific guidances are available from EPA (800/535-0202).

CMA Contact: Marion R. Herz, 202/887-1365

EPA WORK GROUP REVIEWS TITLE III

An EPA draft "Title III White Paper" evaluates SARA Title III's requirements, policies and implementation efforts to determine changes needed to improve the law and its implementation. The draft report was written by a work group of state and EPA officials. It includes suggested changes to make Title III more effective.

Implementation: The paper recommends close coordination between the preparedness staff in the EPA Office of Solid Waste and Emergency Response (OSWER), which administers most of Title III, and the Office of Pesticides and Toxic Substances (OPTS), which handles Section 313.

Enforcement: EPA, in consultation with regions and states, should finish its draft national enforcement strategy, according to the work group.

- Using the National Response Team as a basis, OSWER should provide an inventory of training courses and begin developing a national training strategy. OSWER should also decide how to address the expected low compliance level of local emergency planning committees (LEPCs) in developing local emergency contingency plans and whether to seek an extension to the October 1988 planning deadline.

- EPA should bring together states with established information systems and develop ways to share basic software among all states.

- EPA should also:

- find alternative sources for funding training and information management activities;

- consolidate emergency planning and response program requirements of the various federal agencies and make them available to the states; and

- standardize material safety data sheets (MSDSs), validate the information, and make it widely available.

Chemical Lists: The work group recommends changes in the Title III chemical lists policy, including:

- Convene an agency wide task force to create a basic set of criteria to be followed by all program offices in the development of, or amendments to, program chemical lists;

- Review the chemicals listed under Title III to assure they meet the criteria established by Congress; and

- Combine lists from Sections 302, 304, and 313 to help eliminate confusion of Title III requirements.

Legislative Changes: The work group stressed that any changes made to the law should await completion of the major statutory dead-

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lines (through 1988) under Title III. Some of the changes recommended are:

- Give EPA inspection and information gathering authorities;
- Expand Title III to include federal facilities;
- Give discretion to SERCs, LEPCs and fire departments on whether to require reporting of MSDS information, and whether facilities should report to one, two, or three locations;
- Eliminate Tier I chemical inventory form required by Section 312;
- Limit Tier II (Section 312) reporting to chemicals with an established reportable quantity and make information on other OSHA chemicals available on request;
- Authorize EPA to fund cooperative agreements with SERCs and LEPCs; and
- Develop model legislation for adoption by states to strengthen enforcement authorities, collect penalties, established fee systems, provide liability protection for SERC and LEPC members and clarify SERC responsibilities to LEPCs.

The work group concludes that current Title III outreach programs by federal, state and local governments are inadequate and recommends that EPA develop a comprehensive national outreach strategy to publicize Title III requirements.

CMA Contact: Marion R. Herz, 202/887-1365

SUBMITTING SARA 313 DATA ON MAGNETIC MEDIA

Instructions for submitting SARA Title III Section 313 data on computer tape or diskettes (magnetic media) are now available. Reporting Section 313 data to the U.S. EPA on magnetic media is optional and is an alternative to submitting a paper form.

Magnetic media reporting will allow EPA to load the information directly into the Toxic Release Inventory database, ensuring data integrity. Reports on paper forms will be entered by an Agency contractor, which can result in typographical errors in the data. Submitting magnetic media reports does not relieve the submitter of any regulatory requirements of the Section 313 final rule issued on February 16, 1988 (*53 Fed. Reg. 4500*). Reports to state agencies on magnetic media must be discussed with, and authorized by, the state involved.

CMA Contact: William Royce 202/887-1280.

EPA SETS UP TITLE III HOTLINES

EPA has established several hotlines to handle requests for information on SARA Title III reporting requirements. They are:

For information on Section 313 (202) 554-1411;

For information on other parts of Title III including magnetic media instructions (800) 535-0202 (or (202)479-2449 in D.C. or Alaska).

EPA's regional offices have also set up Title III information centers. They are:

Boston, MA - (617)565-3273
Edison, NJ - (201)321-6765
Philadelphia, PA - (215)597-1260
Atlanta, GA - (404)347-3222
Chicago, IL - (312)886-6418
Dallas, TX - (214)655-7244
Kansas City, KS - (913) 236-2806

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Denver, CO - (303)293-1730
San Francisco, CA - (415)974-7054
Seattle, WA - (206)442-1270

CMA Contact: Marion R. Herz, 202/887-1365

EPA REGIONS HOLDING SEMINARS ON TITLE III SECTION 313

The Environmental Protection Agency's ten regional offices are conducting seminars to help facilities prepare their Title III Section 313 Toxic Chemical Release Inventory Reporting Form. The workshops include a discussion of Title III, Section 313 and release estimation, and detailed review of the reporting form. To help the regional offices prepare the seminars, EPA headquarters prepared a three-hour videotape suggesting what topics might be covered.

The seminars are usually cosponsored by the state emergency response commissions (SERCs), local emergency planning committees (LEPCs), or, in some cases, industry. For more information, contact the regional contacts listed below:

EPA Regional Contacts for Title III Section 313 Workshops:

Region 1 - Ann Walsh (617) 565-3230
Region 2 - Nora Lopez (201) 906-68790
Region 3 - Curt Elsner (215) 597-1260
Region 4 - Jack Findlan/Stewart Eglin (404) 347-5053
Region 5 - Angelo Coste (312) 353-5871
Region 6 - Dick James (214) 655-7244
Region 7 - Ed Vest (913) 236-2806
Region 8 - Diane Groh (303) 293-1735
Region 9 - Kathleen Goforth (415) 974-4061
Region 10 - Philip Wong (206) 442-4061

CMA Contact: Marion R. Herz, 202/887-1365

CMA DEVELOPS PROPOSAL ON HOW TO CONDUCT RESEARCH PROGRAMS UNDER SARA SECTION 110

CMA has developed a proposal on how to conduct Health Effects Research under Section 110 of the Superfund Amendments and Reauthorization Act (SARA). Under Section 110, the Agency for Toxic Substances and Disease Registry (ATSDR) must:

- Prepare summaries of available toxicological and epidemiological information on the most hazardous substances found at waste sites (toxic- ological profiles);
- Assess whether enough information is available to determine significant human exposure levels for each substance;
- Identify necessary additional testing; and
- Assure that a health effects research program is initiated where additional testing is needed.

CMA's proposal identifies three ways for conducting a health effects research program:

1) Negotiate a voluntary testing agreement with the manufacturers/processors of the substance;

2) Rely on Section 4 of the Toxic Substances Control Act (TSCA); or

3) Conduct testing under direct ATSDR sponsorship outside of the TSCA context.

CMA's proposal emphasizes "voluntary testing" as the most desirable way to conduct required testing. A voluntary program offers the advantages of being simpler and more expeditious than a "mandatory" program under TSCA or ATSDR sponsorship.

If a voluntary testing agreement cannot be reached, CMA's proposal suggests that Section 4 of TSCA should be used when:

1) A sound basis for making an "unreasonable risk" or "substantial human exposure" finding exists;

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2) There is substantial consumer, occupational or environmental exposure as a result of ongoing manufacturing or processing activities; and

3) Information may be generated under a TSCA rulemaking more quickly when compared to an ATSDR sponsored program.

The proposal has been approved by CMA's Board of Directors and will be sent to the ATSDR for consideration.

CMA Contact: Lori Ramonas, 202/887-1384

INDUSTRY URGED TO WORK WITH PUBLIC HEALTH OFFICIALS

CMA is encouraging its members to involve local and state officials in industry community outreach and emergency planning activities.

Examples of activities in which public health professionals can become involved are: 1) interpreting emissions data to be made public by July 1; 2) educating the media and the public about the chemical industry's safety record; and 3) developing or modifying coordinated emergency response plans.

Recently, the Agency for Toxic Substances and Disease Registry developed a course on the health components of an integrated hazardous material emergency response program. The purpose of the course is to help public health officials, emergency responders, hospital workers and cleanup contractors understand how people interact in an emergency.

The Integrated Emergency Response Demonstration Program is given in Louisville, Kentucky, ten times a year. Two field exercises give participants an opportunity to gain hands-on experience with emergency equipment and resources. The workshops give public health officials an outstanding opportunity to gain knowledge that will benefit industry and the community. Workshop speakers include public health officials and other emergency planning specialists from Louisville government and industry.

Louisville has had a mutual aid plan for more than 40 years. For more information on the program, call Tom Bartenfeld at (404) 488-4100 or write to: Agency for Toxic Substances & Disease Registry, Emergency Response Branch (F-38), 1600 Clifton Rd., Atlanta, Georgia 30333.

CMA Contact: Joseph Kelley, 202/887-1150.

DOCUMENTS FOR EMERGENCY PLANNING NOW AVAILABLE

Through the efforts of many people, emergency response planners have access to new information that may help them do their jobs better. Emergency response planning guidelines (ERPGs) are substance-specific emergency guidance documents which can be used by LEPCs in developing coordinated emergency response plans.

Specifically, ERPGs can be used with other information to identify the "probable affected area" in the event of a chemical release. Under Title III, LEPCs are required to submit emergency plans to state planning commissions by October 17.

ERPGs are being developed voluntarily by members of Organization of Resource Counselors, Inc.'s (ORC) occupational health and safety group. ORC is a human resources consulting firm headquartered in New York.

The idea for producing ERPGs began when several ORC member companies recognized the inadequacy of existing data and chose to develop emergency response planning documents together.

The American Industrial Hygiene Association (AIHA) has established a program to review, approve and publish ERPGs. Prior to publication the ERPG drafts are submitted to a technical review committee of AIHA for peer review, revision and approval.

There are 366 chemicals on the Environmental Protection Agency's list of extremely hazardous substances (EHS). ORC will concentrate on producing ERPGs for EHS with the highest combined acute toxicity and volatility. ORC is working with EPA, the National Research Council and other appropriate regulatory agencies to produce the needed ERPGs.

An ERPG establishes three levels of exposure on which to base emergency response planning decisions. The cover page of each ERPG includes a chart which depicts the three levels on a continuum of concentrations and effects. The levels are set by testing and by studying the health effects associated with one-hour exposures to various concentrations. The text of an ERPG document provides the material's chemical and physical properties, animal and human toxicology data, rationale for the levels established and a bibliography of source documentation.

ERPGs already exist for phosphorous pentoxide, crotonaldehyde, perfluoroisobutylene, chloropicrin and chloroacetyl chloride. Documents for those substances are available from AIHA for $7, which includes a three-ring binder to which other ERPGs may be added.

Additional ERPGs will be sold in sets of five at $5 each. To order a set of ERPGs, send a check or money order to: AIHA Emergency Response Planning Guideline Committee, 475 Wolf Ledges Parkway, Akron, Ohio 44311-1087 or call (216) 762-7294.

If you would like more information about ERPGs call Becky Daiss, ORC, at (202) 737-6330.

CMA Contact: Joseph Kelley, 202/887-1150

CAER RECOGNITION AWARD MODIFIED

CMA has modified the CAER Recognition Awards Program. The new award, "The Certificate of Recognition for Community Outreach Activities", recognizes the community outreach programs of local facilities. This certificate replaces the Level I Award, which was presented to communities for establishing local planning committees.

To notify CAER participants of this change, a CAER Awards Recognition flyer was developed and distributed throughout the CAER network. The new program flyer has proved to be a tremendous promotional tool for the CAER Recognition Program.

Since the new award was announced, CMA has received numerous applications for it. The following facilities have qualified for the Certificate of Recognition for Community Outreach Activities:

Maryland	— FMC Corporation's Baltimore Plant;
Michigan	— Olin Corporation's Livonia Plant;
New Jersey	— E.I. DuPont's Deepwater Plant, Union Carbide's Bound Brook Plant;
Ohio	— Monsanto Company's Addyston Plant;
Texas	— Exxon Chemical's Mont Belvieu Plant; and
Virginia	— Merck and Company's Stonewall Plant.

The following Local Emergency Planning Committees (LEPCs) have qualified for the CAER Achievement Award for Community Emergency Preparedness:

New Jersey	— Raritan Valley HMAC; and
Virginia	— Martinsville/Henry County CAER Council.

If you wish to apply for a CAER Award, please mail in a request for an application package to:

CAER Awards Program
Chemical Manufacturers Association
2501 M Street, NW
Washington, D.C. 20037

CMA Contact: Kim Gerson, 202/887-1273

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TRANSPORTING WITH CAER — TransCAER

CMA and the Association of American Railroads (AAR) have co-produced a videotape on a joint safety and emergency preparedness program of the chemical and railroad industries. "Moving Hazardous Materials Safely: A Partnership That Works" is a ten-minute video devoted to an explanation of TransCAER.

TransCAER is an outgrowth of the CAER process. Its purpose is to increase public awareness of hazardous materials transport and to improve the emergency response capabilities of communities through which hazardous materials are transported.

CMA is helping to expand TransCAER from its origin in Freeport, Texas, where Dow Chemical and Union Pacific Railroad began their cooperative activities. The videotape, available in ½ and ¾ inch VHS, is $45.00 for CMA members and $67.50 for non-members. To order, write to:

CMA Publications Fulfillment
2501 M Street, NW
Washington, DC 20037

Phone orders cannot be accepted.

CMA Contact: Joseph Kelley, 202/887-1150.

EPA TO PUBLISH BIOTECHNOLOGY REGULATIONS IN JULY

In an effort to have final biotechnology regulations signed in this administration, EPA plans to publish proposed regulations for biotechnology products covered under TSCA and FIFRA in July. The proposed rules under TSCA are expected to formalize many of the voluntary procedures spelled out in the 1986 Coordinated Framework for Regulation of Biotechnology (*51 FR 23302-93*) and Agency policy statements.

There are, however, significant departures from the Coordinated Framework. The Agency may substitute a TSCA Experimental Release Application (TERA) for the full PMN submission currently required under the voluntary procedures for R&D environmental releases of recombinant organisms. The TERA is said to be simpler and require a shorter review time than a PMN. The Agency is still pursuing the Environmental Biosafety Committee (EBC) concept. EBCs will function much like Institutional Biosafety Commitees (IBC) used under NIH Guidelines. The Agency believes that EBCs can speed the review process and provide regulatory oversight of R&D activities. The proposed rules will also broaden the application of the Significant New Use Rule (SNUR).

Policy statements by the EPA Office of Toxic Substances over the last year have extended the definition of intergeneric organisms and have required up-front substantiation of confidential business information (CBI) for environmental releases. These policies are expected to be part of the proposed rules.

The EPA Biotechnology Science Advisory Committee (BSAC) discussed CBI requirements during the January and May, 1988, meetings. In January, a proposal developed by Robert Colwell, a BSAC member from the University of California at Berkeley, and Margaret Mellon, National Wildlife Federation, was presented to the BSAC. The proposal listed information which the authors believe should not be held as CBI. CMA submitted a letter to the committee responding to the proposal. Randy Schumacher, CMA's Director of Health, Safety and Chemical Regulations, also made a brief oral presentation at the May BSAC meeting. CMA expressed concern about the proposed approach, pointing out that, in some cases, regulatory oversight was occurring at the R&D state of product development. Loss of CBI protection in these cases could jeopardize competitiveness as well as European and Japanese patent rights.

CMA Contact: Sandra Tirey, 202/887-1274

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ATSDR SEEKING PEER REVIEW OF PROCEDURES FOR EXPOSURE REGISTRIES

The Agency for Toxic Substances and Disease Registry (ATSDR) has revised its document outlining the "Procedures for Establishing a National Registry of Persons Exposed to Toxic Substances." ATSDR held workshops in February to solicit comments on the draft procedures document and submitted the revised document to a peer review panel on May 20, 1988. CMA's Geraldine V. Cox, Ph.D., Vice President-Technical Director, served on the peer review panel. Other peer reviewers were:

Dr. Lee Ann White
Assistant Dean for Academic Affairs
and Doctoral Program
Tulane University
New Orleans, LA

Mr. Dave Bennett
Chief of Toxic Integration
Branch
EPA
Washington, D.C.

Dr. June Fessenden-Raden
Associate Professor of Biochemistry
Cornell University
Ithaca, NY

Dr. Terry Shehata
Chief of Environmental Health
New Jersey Department of Health
Trenton, NJ

Dr. Patricia Buffler
Professor of Epidemiology
University of Texas
Houston, TX

Dr. R. G. Parrish
Medical Epidemiologist
Center for Environmental Health and Injury
Control
Atlanta, GA

Dr. Jean French
Health Scientist
NIOSH
Atlanta, GA

ATSDR's revised procedures for exposure registries have several significant improvements. Most significant is the inclusion of a definition of "exposed." ATSDR will consider an individual exposed when there is 1) a contaminated source, 2) a route of transmission and 3) indication that transmission of the contaminant has occurred. For example, an individual will be considered "exposed" if there is contamination, verified by analytical results, of well water which was used as drinking water by the individual. In addition, the procedures are more explicit about determining the exposure of each individual in the registry.

Another significant improvement is the separating of site identification from the process of priority ordering of the sites for establishing exposure registries. This separation will aid in clarifying each process. ATSDR will use only exposure factors as the primary criteria for assigning priority to the selected sites. These exposure factors include level and toxicity of the contaminant, contamination of pathways of exposure and size of the potentially exposed population as well as current and past potential exposure.

ATSDR will use advisory panel review at key decision points such as prioritizing of sites, review of research protocols that request access to registry data and information to be disseminated to registry participants. Use of advisory panels will help assure that Agency decisions are scientifically based.

CMA Contact: Sandra Tirey 202/887-1274.

NEW TSCA SECTION 5(e) "MODEL" CONSENT ORDER PROPOSED BY EPA

On April 25, CMA commented on EPA's proposed "Standard Provisions for Section 5(e) Consent Orders and Corresponding Significant New Use Rule Provisions Issued Under TSCA." EPA will use these standard provisions as its Section 5(e) "model" consent order and in the Generic SNUR. These documents are expected to be finalized in late spring and late summer of this year, respectively.

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CMA recommended that EPA develop a carefully targeted regulatory approach that protects health and the environment without placing unnecessary burdens on PMN submitters and their customers. CMA commented that several changes should be made to the model consent order.

Specifically, EPA should: (1) reevaluate the model order's testing provisions; (2) adopt a more flexible approach in requiring the use of protective equipment; (3) develop alternative mechanisms for controlling workplace exposures; (4) take additional steps to achieve consistency with OSHA's Hazard Communication Standard requirements; (5) revoke Section 5(e) orders once a SNUR is promulgated for the order; (6) allow manufacturers and their customers a reasonable opportunity to institute corrective action before EPA becomes involved, in the event of non-compliance with order requirements; (7) control releases of new chemicals using only consent order provisions; and (8) exempt mixtures containing low concentrations of the PMN substance from all consent order provisions.

CMA pointed out that standardized consent order provisions will not expedite the PMN process if they result in overly restrictive regulatory controls which inhibit the commercial development of individual new chemicals. In this event, PMN submitters will continue to seek relief on a case-by-case basis, and the negotiation of draft consent orders will remain a time-consuming process that requires a substantial commitment of EPA and industry resources.

CMA will meet with EPA soon to discuss these recommendations.

CMA Contact: William J. Royce, 202/887-1280

CMA TO SEND INDUSTRY OBSERVER TO OCTOBER 1988 IARC MEETINGS

At the request of the International Agency for Research on Cancer (IARC), CMA will send an industry observer to Working Group meetings scheduled for October 18-25, 1988, in Lyon, France. Participants at the meetings will evaluate the potential carcinogenicity of "Organic Solvents, Some Resin Monomers, Some Pigments and Occupational Exposures in Painting Trades." Final conclusions on numerical classifications will be made at this meeting.

CMA's representative at the October meeting will be Neil Krivanek, Ph.D., of E.I. du Pont de Nemours & Company, Haskell Laboratories. CONCAWE ("The Oil Companies European Organization for Environmental and Health Protection") and ECETOC (The European Chemical Industry Ecology and Toxicology Center) have also been asked to send observers.

The tentative list of substances to be considered at the October meetings is as follows:

- Petroleum solvents
  - special boiling-point solvents
  - white spirits
  - high-boiling, aromatic solvents
- Toluene
- Xylenes
- Phenol
- Cyclohexanone
- 1,2-Epoxybutane
- Bis(2,3-epoxycyclopentyl)ether
- Some glycidyl ethers
  - Allyl glycidyl ether
  - n-Butyl glycidyl ether
  - tert-Butyl glycidyl ether
  - Phenyl glycidyl ether
  - Bisphenol A diglycidyl ether
- Dimethylformamide
- Morpholine
- Antimony trioxide and antimony trisulphide
- Titanium dioxide
- Occupational exposures in painting trades

CMA has coordinated with several industry trade associations to ensure that all chemical specific concerns are adequately represented. Please contact CMA as soon as possible if you

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have toxicologic, epidemiologic, production, use, occurrence or analysis information on any of these substances.

IARC's conclusions do not represent a complete risk assessment for carcinogenicity on chemical substances. Yet those conclusions are directly applied to regulations and legislation in the United States. Because of this trend, CMA is actively promoting sound science with IARC and other U.S. regulatory authorities to improve the way in which chemicals are nominated to lists. A major objective is to eliminate unwarranted regulations on chemicals that do not pose a clear or reasonably foreseeable carcinogenic hazard to humans.

CMA Contact: Nancy G. Doerrer, 202/887-1282

PREPARATIONS FOR 1989 IARC MEETINGS UNDERWAY

On February 21-28, 1989, the International Agency for Research on Cancer (IARC) will hold a series of Working Group meetings to evaluate the potential carcinogenicity of "Some Flame Retardants and Textile Chemicals, and Exposures in the Textile Industry." The following substances and exposures will be considered:

Flame retardants

Bis(2,3-dibromopropyl)magnesium phosphate
Chlorendic acid
Chlorinated paraffins
Decabromodiphenyloxide (DBDPO)
Dimethyl hydrogen phosphite
Tetrakis(hydroxymethyl)phosphonium sulfate and chloride (THPS and THPC)
Tris(2-chloroethyl)phosphate
Tris(1,3-dichloropropyl)phosphate

Textile dyes

4-Chloro-o-toluidine (update)
CI Disperse Blue 1
CI Disperse Yellow 3 (update)
CI Vat Yellow 4
5-Nitro-o-toluidine

Other textile chemicals

Nitrilotriacetic acid (NTA) and its salts
Sodium(2-ethylhexyl)sulfate

Industries

Exposures in the textile industry

Like the October 1988 meetings described in this newsletter, IARC intends to classify these substances and exposures for potential carcinogenicity. IARC will consider only published data at its meetings; unpublished industry data will not be accepted. Companies are encouraged to immediately submit for publication to recognized scientific journals any data on these substances or exposures that might be relevant for carcinogenicity classification. CMA is currently contacting members and industry groups with specific interest in these substances and exposures.

Please contact CMA if you can help identify industry experts in the textile industry, or if you have toxicological, epidemiological, production, use, occurrence or analysis data on any listed item.

CMA Contact: Nancy G. Doerrer, 202/887-1282

TOXICOLOGICAL PROFILES: THE NEXT ROUND

On April 17, 1987, the Agency for Toxic Substances and Disease Registry (ATSDR) published an initial list of 100 hazardous substances found at waste sites, each of which will be subject to toxicological profile development (*52 Fed. Reg. 12866*). The toxicological profiles on the first 25 of these substances are now undergoing final revision by ATSDR, subsequent to significant public input.

According to Section 110 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), the next list of 100 hazardous substances will be published in October 1988.

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Look for this list in the *Federal Register* as October approaches.

In December 1988, ATSDR will publish draft toxicological profiles on the following substances:

CAS NO.	Substance name
56235	Carbon tetrachloride
57749	Chlordane
62759	N-nitrosodimethylamine
72559	4,4,'-DDE, DDT, DDD
75003	Chloroethane
75274	Bromodichloromethane
75354	1,1-Dichloroethene
78591	Isophorone
78875	1,2-Dichloropropane
79005	1,1,2-Trichloroethane
79435	1,1,2,2-Tetrachloroethane
87865	Pentachlorophenol
91941	3,3'-Dichlorobenzidine
92875	Benzidine
107062	1,2-Dichloroethane
108883	Toluene
108952	Phenol
111444	Bis(2-chloroethyl)ether
121142	2,4-Dinitrotoluene
319846	BHC-alpha, gamma, beta, delta
542881	Bis(chloromethyl)ether
621647	N-nitrosodi-n-propylamine
7439976	Mercury
7440666	Zinc
7782492	Selenium

A 90-day public comment period will be granted upon availability of the draft toxicological profiles.

CMA members are urged to submit published and unpublished health effects and exposure data directly to ATSDR at the following address:

Ms. Georgi Jones
Director, Office of External Affairs
Agency for Toxic Substances and
Disease Registry
Building 28 South
Chamblee
1600 Clifton Road
Atlanta, GA 30333

CMA Contact: Nancy G. Doerrer, 202/887-1282

OSHA ISSUES LOCKOUT/TAGOUT PROPOSAL

The U. S. Occupational Safety and Health Administration (OSHA) has issued a proposed regulation for the lockout and tagout of hazardous energy sources. The rule, which has been under development since the mid-1970's, is designed to prevent the unexpected activation of equipment being serviced or repaired. OSHA estimates the regulation could save 122 lives a year. The proposed regulation calls for worker training, labels on hazardous energy sources, and the tagging or locking of equipment during maintenance.

Industry experts believe the new rule is generally reasonable. It appears, in most respects, to reflect current good industry practices.

OSHA's Lockout/Tagout rule was published in the April 29, 1988 *Federal Register*. CMA commented on the proposed rule on June 28.

CMA Contact: Kyle Olson, 202/887-1283

OSHA DELAYS HAZWOPER

OSHA has been forced to delay its safety standards for workers at hazardous waste sites and those involved in emergency response activities. The Hazardous Waste Operations and Emergency Response Rule (HAZWOPER), required by Title I of SARA, is being subjected to further internal review by the Department of Labor.

Originally scheduled for issuance in late 1987, the new delay means that the standard will probably not be published in the *Federal Register* until August or September. The regulation will replace an interim final rule that has been in effect since December, 1986.

CMA Contact: Kyle Olson, 202/887-1283

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Attachment IK

TEXAS CHEMICAL COUNCIL
OCCUPATIONAL SAFETY COMMITTEE
SAFETY AWARD PROGRAM

The Texas Chemical Council's Occupational Safety Committee has established a safety award program based upon proactive safety results and support of established Texas Chemical Council programs.

All facilities who submit for a safety award distinguished recognition must, as a minimum, completed the Tier I activities successfully by meeting the requirements of each of the six identified major activities in order to receive this distinguished recognition.

Selection of the "Best in Texas" will be based upon all Tier I and Tier II items. It is felt this system will provide favorable recognition opportunities for the most plants, yet also serve as a distinguishment for those who achieve the opportunity to participate in the "Best in Texas" award system.

This awards program is developed to encourage member companies to implement critical actions which have been developed, supported, or recommended by the Texas Chemical Council's Executive Committees in the past.

Tier I

1. Zero work related employee fatalities during the reported year.
2. Zero CAER/LEPC plantsite incidences during the year which resulted in exposure to a member of the public through a chemical release or fire.
3. Involvement in the CAER/LEPC program (such as Level I or Level II recognition), active involvement or participation in CAER/LEPC simulations, etc. (Define activities.)
4. Established proactive drug abuse program such as the one recommended by the TCC Board of Directors.
5. Active involvement in TCC Occupational Safety Committee affairs. (Define involvement.)
6. Continuous improvement in the injury and illness incident rate for a given year in the facilities primary incident measurement system when compared to the previous three year average.

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Tier II

Tier II items are those items which will provide for recognition in the "Best in Texas" competition by distinguishing and further amplifying site programs for the purpose of competing by plant size for the "Best in Texas" award.

1. Be a participating member of the Texas Industrial Fire Training Board.
2. Representation at 75 percent of the quarterly TCC Occupational Safety Committee meetings.
3. Representation at the annual TCC Occupational Safety Committee seminars.
4. Have a contractor safety program following the intent of the Business Round Table Report A-3.
5. Any special community safety projects.
6. Involvement in other local, state, or national safety initiatives.
7. Participation in the annual safety statistical survey of member companies.
8. Development of an active off-the-job safety program which encourages the practicing of safety away from the plant site on the part of the employee and their families.
9. Any other plant programs which were designed to increase awareness and knowledge of safety which have not been covered by any of the above items.

Safety committee members will submit their award program to a committee which will be formed to review applications, make decisions regarding the granting of the distinguished status, and awarding of the "Best in Texas" plaque and flag. This award will be determined based on plant size (1-250, 251-500, 501-750, and 751+ employees).

Safety Awards Committee

RBS:mah
06/16/88
TCCAWARDS

parts of air from 1977 to 1987, when a standard setting a 1 ppm limit finally was established.

The study was published as a letter to the editor in the June 18 issue of the British medical journal *Lancet*.

Infante told BNA that the study points up a general need to regulate health hazards more quickly and efficiently. It also shows that other countries which have higher workplace benzene exposure limits than OSHA's should establish stricter standards, he said.

European Community leaders voted recently to tighten benzene exposure limits in a two-phase effort (see related article in this issue).

Standards Basically 'Similar'

In 1977, OSHA issued an emergency temporary standard—followed by a permanent standard in 1978—to reduce the permissible exposure limit for benzene from the existing limit of 10 parts per million to 1 ppm. However, neither the emergency standard nor the permanent rule ever went into effect: both were stayed by federal court orders issued in response to industry lawsuits. Ultimately, the permanent rule was struck down by the U.S. Supreme Court in a landmark decision (8 OSHC 1586).

OSHA successfully restored the 1 ppm limit only last fall after re-entering into a lengthy rulemaking process. The new standard "is similar in most respects" to the 1977 standard, Infante and DiStasio said in their study (Reference File, 31:8481).

In their paper, Infante and DiStasio said they used OSHA-approved risk-assessment calculations which assume that workers exposed to increasingly higher levels of benzene will die from leukemia at increasingly higher rates. The study correlates these risk estimates with average exposure levels above 1 ppm that occurred in various industries between 1977 and 1987, according to data from the record on which OSHA based its standard.

Rates In Tire, Rubber Industries

Using these assumptions and estimates. Infante and DiStasio calculated that the highest number of deaths would be expected in the industries in which workers had the highest average exposures to benzene in the 10-year period. Workers in the tire products and rubber manufacturing sector, they predicted, may suffer the largest single number of leukemia deaths because of the 10-year delay in regulation: an estimated 85 deaths.

Infante and DiStasio also predicted that 56 leukemia deaths may occur among workers in bulk terminals and bulk plant facilities, 35 in petrochemicals and petroleum refining, 13 in coke plants, and eight in tank truck transportation.

The officials said that the process of reinstating the 1 ppm limit "was lengthened considerably by lobbying pressure and argument about quantitative cancer risk assessments, most of which indicated similar results." This "seemingly endless argument reflects the immaturity of our current regulatory process," they stated.

This may be a union/DOL thrust in the future. We need to be ready to protect mgmt.

General Policy

LABOR-MANAGEMENT COMMITTEES NEED POWER TO IMPROVE WORKPLACE, DOL REPORT STATES

Unless joint labor-management committees for occupational safety and health have "significantly more power in the future," they are not likely to be an important force for resolving workplace problems, according to a new Department of Labor report released July 11.

"The Role of Labor-Management Committees in Safeguarding Worker Safety and Health," prepared under contract with the DOL Bureau of Labor-Management Relations and Cooperative Programs, recommends that these joint committees be strengthened with full support and authority from senior management, as well as top-level union representatives.

Most importantly, the role of joint committees should be defined, and they should be provided "with a structure and functions suitable to meet those expectations," author Ruth Ruttenberg wrote. "If committees are expected to directly impact the injury and illness statistics of a company, they need to be empowered. If they are not empowered to act, there is still much that they can accomplish, but the expectations of both parties should be adjusted accordingly."

Power To Inspect, Hire And Fire

The ideal joint committee would have full access to company records and data, including planning, finance, and new technology information. Members would meet regularly during paid working hours and keep complete minutes, the report stated. The committee would inspect facilities regularly and would be involved in monitoring programs and accident investigations. Members would have control of a budget, of the hiring and firing of company safety and health personnel, and of health and safety training, Ruttenberg said. The committee also would have the authority to stop the use of any imminently dangerous equipment or process, she said.

In reality, joint committees in the United States commonly are advisory and serve as a forum for discussion. "Labor-management committees for occupational safety and health in the United States are unlikely to have substantial power or authority," the report stated.

According to the report, some of the safety and health issues and tasks that current joint committees are "well-suited" to resolve are:

- Developing training programs, both for line employees and for committee members;
- Conducting regular joint inspections of the workplace;
- Serving as a "watchdog" for safety and health in the plant;
- Reviewing plant injury and illness statistics;
- Being involved with accident investigations;
- Developing guidelines for air sample monitoring and medical surveillance programs;
- Developing a hazard recognition and labeling program.

Case Studies Examined

The 49-page report reviews six case studies of existing health and safety committees to explore different workplace settings and the functions of the committees within different organizations. "All six have experienced levels of success that may be instructive to others," Ruttenberg concluded.

The committees studied are: Wisconsin Bell and Local 5530 of the Communications Workers of America; Horace W. Longacre Inc. (a Pennsylvania poultry processing plant); Georgia Power (the Vogtle, Ga., plant); General Motors Corp. and the United Automobile, Aerospace, and Agricultural Implement Workers of America; Eugene, Ore., Water and Electric Board; and a tripartite committee of ASARCO, the United Steelworkers of America, and the Occupational Safety and Health Administration.

The report also includes sample contract language and other guidance in establishing effective joint committees. The report is free by writing BLMR-121, U.S. Department of Labor, Room N-5419, 200 Constitution Ave. N.W., Washingerroneous. Failure to make specific findings violates OSHA's enabling statute, the brief argued.

California

JUDGE ORDERS BALLOT ARGUMENTS ON CAL/OSHA INITIATIVE CHANGED

SACRAMENTO, Calif.—(By a BNA Staff Correspondent)—Ballot arguments submitted by Gov. George Deukmejian (R) and other opponents of a proposal to restore California's job safety and health program (Cal/OSHA) were ordered changed Aug. 12 by a Sacramento County Superior Court judge.

References made in two ballot arguments to reductions in workplace deaths and injuries since Cal/OSHA ended enforcement in the private sector July 1, 1987, were ordered changed by Judge Rothwell D. Mason during the Aug. 12 hearing in a suit filed by two state legislators (*Green v. Eu, et al.*, No. 359623, Sacramento SuperCt).

The suit stems from Proposition 97, an initiative measure that will appear on the California ballot in November. Backed by organized labor and other groups, the measure would mandate restoration of the Cal/OSHA program in the private sector (18 OSHR 8, June 1, 1988).

Decline in Illnesses, Injuries Claimed

One of the arguments against Proposition 97 signed by Deukmejian, Robert Stranberg, chief of the state Division of Occupational Safety and Health, and, John Hay, a former president of the California Chamber of Commerce, claimed that since the federal Occupational Safety and Health Administration assumed jurisdiction of private sector workplaces in California on July 1, 1987, "the rate and number of occupational injuries and illnesses has actually declined."

Another argument asserted that the total number of injuries, illnesses, and work-related deaths in California declined in the first six months under federal jurisdiction compared with the last six months under state jurisdiction.

Rocky Saunders, an aide to Sen. Green, one of the plaintiffs in the suit, told BNA the action was filed Aug. 8 to challenge "inaccurate" information and statements in the arguments submitted by Proposition 97 opponents. He said Judge Mason's order deleted references in the arguments to numbers of deaths and rates of job fatalities and clarified that Cal/OSHA has authority to shut down imminent danger situations immediately, whereas OSHA requires a court order.

Richard Simpson, chief deputy director of the state Department of Industrial Relations, said the judge deleted references in the arguments to numbers of job fatalities, but not because the language was inaccurate or misleading. He said the judge ordered one phrase clarified by adding the words "work-related" to a claim by opponents that the rate of job injuries and illnesses has declined since OSHA assumed jurisdiction.

The revised ballot arguments will be printed in a booklet distributed to all registered voters in the state prior to the Nov. 8 election. Proponents of Proposition 97, including John F. Henning, executive secretary-treasurer of the California Labor Federation and Michael Paparian, state director of the Sierra Club California, contend in their ballot argument that OSHA has conducted fewer workplace inspections than Cal/OSHA did and does not regulate 170 toxic chemicals that were regulated under Cal/OSHA.

Green said he is optimistic that the voters will reinstate Cal/OSHA in November by approving Proposition 97. A poll of 809 registered voters taken in the last week of July by the Field Institute showed that 59 percent of respondents favored Proposition 97, 24 percent were opposed, and 17 percent had no opinion.

Report Claims Injury, Illness Increase

In a related development, a report by the staff of the state Senate Industrial Relations Committee issued Aug. 10 claims that work-related deaths rose by 53 percent in the first six months after OSHA took jurisdiction of private sector workplaces in California, compared to the same six-month period a year earlier.

The report, prepared by committee consultant Andrew Schaefer, said 101 work-related fatalities occurred in the private sector between July 1 and Dec. 31, 1987, compared with 66 in the same period in 1986, when Cal/OSHA still enforced state standards.

In a telephone interview Aug. 15, Simpson labeled the report "unquestionably politically motivated" and said it was not based on complete information. Data he cited, comparing injuries and illnesses for all of 1986 to all of 1987, showed a slight decline in those numbers for 1987 and a decline in "standards-related" job fatalities in the first six months of this year to 24 in the private sector, compared with 36 in the same period of 1987.

Schaefer said he was only able to get data from the department on injuries, illnesses, and fatalities through the end of 1987. His report said that 76 work-related deaths occurred in the last six months of 1986, under Cal/OSHA jurisdiction, compared with 107 in the same period of 1987, under OSHA enforcement. Work-related injuries and illnesses also rose under federal jurisdiction by 2,210 to 171,964, his report showed.

Using the calendar year data, Simpson said total occupational injuries and illnesses in California declined in 1987 to 400,344 from 406,276 in 1986. Private sector injuries and illnesses fell to 338,146 in 1987 from 341,530 in 1986, he reported. Those figures suggest that predictions of increases in injuries and illnesses under federal OSHA jurisdiction were not correct, he said.

Simpson said Schaefer's study of work-related deaths is flawed because it uses figures that include fatalities not directly related to job safety or health standards, such as deaths from motor vehicle accidents on the job. In the first six months of 1988, under federal jurisdiction, standards-related deaths fell to 24, "an all time low," according to Simpson, compared with 36 between Jan. 1 and June 30, 1987, the last six months of Cal/OSHA enforcement in the private sector.

LAM 010345

Chemicals

INDUSTRY OFFICIAL CALLS FOR SAFETY DRIVE TO PREVENT FURTHER GOVERNMENT REGULATION

An "all-out safety drive" at chemical plant operations is needed to prevent further federal government intrusions into the industry, the president of a chemical trade association said Aug. 12.

Speaking to workers at a Vulcan Chemicals plant in Port Edwards, Wis., Robert G. Smerko, president of the Chlorine Institute, urged the chemical industry to adopt voluntary programs to monitor for chemical emissions, conduct annual safety audits, and prepare hazard evaluations.

Smerko told the group that despite the industry's "exemplary" safety and environmental-protection records, the U.S. chemical industry is "on track to be regulated like the

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nuclear industry." The industry "simply has no choice but to perform better" to avoid additional government intervention in the form of regulations, he said.

Society increasingly is demanding that congressional leaders work to prevent future chemical accidents like that which occurred in Bhopal, India, in December 1984, according to Smerko. If the chemical industry does not respond to these concerns by improving safety, lawmakers may respond to political pressures exerted on them, he said.

"The chemical industry may be saddled with additional laws that could put [chemical industry] jobs in the hands of bureaucrats in Washington," he told the Vulcan employees.

Industry Initiatives

Public confidence in the chemical industry can be rebuilt, and government intervention can be prevented, Smerko contended, through a combination of legislation and industry safety initiatives.

Smerko urged the chemical industry to adopt programs and policies similar to those developed by the Chlorine Institute to prevent all chlorine emissions. Under that program, each institute member must sign a safety commitment to perform annual safety audits and emission and hazard evaluations.

Safety has been redefined in the last 20 years, according to the trade association president. While safety in the past meant the prevention of workplace accidents, it now also means "freedom from human sickness due to long-term exposure to a toxic substance both inside and outside the plant fence." In addition, safety means "freedom from any human harm from a catastrophic release of chlorine or other potentially hazardous material," according to Smerko.

Smerko was in Port Edwards to present Vulcan's chlor-alkali plant with a Chlorine Institute award for operating 20 years without a lost-workday accident. The institute represents companies involved in manufacturing, distributing, handling, or using chlorine, caustic soda, and caustic potash.

AIDS

CDC COOPERATIVE AGREEMENT GRANTS AVAILABLE TO NATIONAL NON-PROFIT GROUPS

To help prevent the spread of the human immunodeficiency virus, the Centers for Disease Control Aug. 10 announced the availability of about $1 million in funding to support non-profit organizations and consortia to implement national AIDS health education and risk reduction programs (53 FR 30099).

Between eight and 12 educational projects will be funded under the CDC cooperative agreements, and the range of awards will be between $25,000 and $150,000, CDC said. The initial awards will be made on or about Nov. 15 and will initially be funded for a 12-month budget period with a project period of up to five years.

According to the notice, consideration for the grants will be given to national projects directed toward the general population or toward one or more target groups including high-risk individuals, such as intravenous drug users and homosexual and bisexual men; disadvantaged women; young adults; health-care employees; and racial and ethnic minorities.

"The only means currently available to control the epidemic is through effective education about the behaviors that spread the virus from an infected person to an uninfected person, the consequences of infection, and how to prevent becoming infected," CDC said.

Non-Profit Groups

According to the announcement, two types of organizations are eligible for the education grants—established national non-profit organizations, which may be health, education, social service, professional, or voluntary; and established or newly formed national non-profit consortia or a group of organizations which demonstrates a capacity to operate and centrally administer a regionally or nationally coordinated AIDS information or education program.

The role of CDC will be to provide technical assistance and guidance in planning and implementing the programs; assist in the identification and acquisition of appropriate educational materials; provide technical assistance in developing and implementing evaluation efforts for the program; and provide access to the National AIDS Clearinghouse database of AIDS programs and materials, the notice said.

Those interested must submit the original and two copies of the application to Chief, Grants Management Branch, Procurement and Grants Office, CDC, Room 321, 255 East Paces Ferry Road N.E., Atlanta, Ga. 30305 on or before September 26.

A full description of the program, including criteria for review of applications, application format, application procedures, copies of the application forms PHS 5161-1, and other materials may be obtained from Terry Maricle, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road N.E., Atlanta, Ga. 30305; (404) 842-6511.

Technical information may be obtained from Beverly Schwartz, National AIDS Information and Education Program, CDC, Atlanta, Ga. 30333; (404) 639-2384.

LAM 010346

Grants

OSHA AWARDS $1.4 MILLION TO 13 GROUPS TO CONTINUE 'NEW DIRECTIONS' INITIATIVES

Thirteen non-profit groups were awarded a total of $1.4 million in grant money by the Occupational Safety and Health Administration to develop and improve job safety and health training and education programs in the agency's latest round of "New Directions" grants, according to an Aug. 15 announcement.

The groups, which include nine labor organizations and four employer associations, were awarded the grants for fiscal 1989.

Labor organizations winning funding are the Alaska Laborers Training School, $71,000; the American Federation of State, County and Municipal Employees, $98,000; the Arkansas State AFL-CIO, $146,000; the Industrial Union Dept., AFL-CIO, $171,000; the National Training Fund, Sheet Metal and Air Conditioning Industry, $102,000; the Orlando Building and Construction Trades Council, $87,000; the Retail, Wholesale and Department Store Union, $108,000; the United Steelworkers of America, $76,000; and the West Virginia Labor Federation, AFL-CIO, $197,000.

Employer recipients were the Master Builders of Iowa, $86,000; the National Association of Steel Pipe Distributors, $117,000; the National Constructors Association, $138,000; and the New York State Association of Fire Chiefs, $20,000.

With these latest awards, the agency has distributed more than $75 million to 213 groups over the 10-year "New Directions" program, OSHA said.

The program was begun in 1978 to help non-profit groups develop permanent, self-sufficient programs to continue

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▸ Whether "qualified" employees should be required to stay 10 feet or more from overhead power lines, unless those employees are working for electrical utilities, communications companies, or line-clearance tree-trimming contractors;

▸ Whether lockout and tagging requirements contained in the proposal are reasonable and appropriate for the protection of employees.

Concerns Reiterated

Questions posed to OSHA staffers at the hearing echoed comments on the proposal received in February (17 OSHR 1483). Commenters offered varying degrees of support, but many asked the agency to clarify provisions on training, at-risk personnel, and scope.

OSHA proposed in November 1987 to reduce the risk of electrical accidents by requiring the de-energization of electrical equipment and other safety practices (17 OSHR 997).

Scheduled to testify were the National Institute for Occupational Safety and Health, National Arborist Association Inc., National Fire Protection Association, International Brotherhood of Electrical Workers, National Electrical Contractors Association, Union Carbide Corp., and Edison Electric Institute.

Lockout/Tagout

OSHA EXTENDS COMMENT PERIOD ON PROPOSAL, SETS SEPTEMBER DATE FOR PUBLIC HEARINGS

The Occupational Safety and Health Administration Aug. 9 reopened the comment period on a proposed rule for the control of hazardous energy sources—or "lockout/tagout"—and set public hearings on the proposal for September, according to an agency announcement (53 FR 29920).

Public comments on the proposal will be accepted by the agency until Sept. 22, the agency said. An earlier comment period closed June 28.

Public hearings will begin Sept. 22 at 9:30 a.m. in the auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Ave. N.W., Washington, D.C.

The hearing will reconvene Sept. 27 at 9:30 a.m. at the Guest Quarters Suite Hotel, 5353 Westheimer Rd., Houston, Tex.

The agency proposed in April to require equipment and machinery to be locked, tagged, or both to prevent operation during service or maintenance (17 OSHR 1766).

Notice of the extended comment period and public hearing is published in the Full Text section of this issue.

Action Based on Earlier Comments

Extension of the comment period and scheduling of public hearings were based on information and comments received by the agency during the previous comment period, the OSHA notice stated.

Comments should be sent in quadruplicate by Sept. 22 to the Docket Office, Docket No. S-012A, OSHA, Room N-2439 Rear, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C. 20210.

In addition, notices of intention to appear, and testimony and evidence to be presented, should be sent in quadruplicate by Sept. 8 to Tom Hall, OSHA, Room N-3647, at the same address.

For further information on the hearings, contact Tom Hall, at the above address; (202) 523-8615.

For further information on the proposal, contact James F. Foster, OSHA Office of Information, U.S. Department of Labor, Room N-3647, at the same address; (202) 523-8148.

General Policy

REAGAN ADMINISTRATION POLICIES ON SAFETY CRITICIZED IN REPORT BY HOUSE DEMOCRAT GROUP

Budget cuts and "overly vigorous deregulation" have created an environment that is "not as safe as it was eight years ago," according to a House task force report on safety released Aug. 9.

The Reagan administration has "gone beyond economic deregulation begun in the previous administration, in effect removing regulations and enforcement resources designed to protect the public safety and health," Rep. Dan Glickman (D-Kan) told a press conference. Glickman chaired the task force, which also included 22 other Democratic members of the House who chair relevant committees and subcommittees.

"The American public does not want an intrusive government, but the vast majority wants a government that seeks to provide peace of mind," Glickman said, adding that there is an expectation that the government will "ensure certain fundamental safety protections."

The report covers 11 subject areas ranging from transportation and financial security to the environment, workplace, and food safety issues. The task force findings are the result of congressional testimony heard by various committees dealing with public safety and security.

Workplace Safety

During the 1970s, critics charged that the Occupational Safety and Health Administration was "nit-picking and over-regulating the workplace," but under the Reagan administration, OSHA has "clearly undermined the concept of the [Occupational Safety and Health] Act and is endangering the nation's most precious resources—its working men and women," the task force asserted.

The report said "it is an ongoing tragedy that between 7,000 and 10,000 workers die each year in their workplaces, 3 million suffer serious injuries yearly, as many as 100,000 die each year from exposures to hazardous workplace substances, and as many as 400,000 are newly disabled each year from workplace exposures to toxic materials."

During the past seven-and-a-half years, the task force said, workplace safety and health regulations have been "systematically undermined," and regulations developed by the Carter administration have been "delayed or watered down." Health standards have been established only as the result of pressure from petitions initiated by workers and their advocates, court orders, and political pressure, the report said, noting that despite continued pressure, OSHA has yet to respond to a 1985 petition for a standard on wood dust, a 1983 request for a standard on cadmium, and a number of other requests for standards.

The report also criticized OSHA's voluntary compliance policy adopted during the Reagan administration. Under that policy, which was modified in recent months (17 OSHR 1591), if a company maintains an injury/illness rate below the national average for manufacturing, the OSHA inspection consists only of a review of the company's own records. In this way, the task force said, OSHA increased the number of inspections dramatically while reducing inspector levels by 25 percent.

'Very Inadequate Inspections'

Rep. Joseph M. Gaydos (D-Pa), chairman of the House Education and Labor Subcommittee on Health and Safety and a member of the task force, said that the Reagan administration policies have resulted in "very inadequate *and Mortality Weekly Report* as part of recommendations for controlling influenza during the 1988-1989 flu season.

According to the report, individuals attending high-risk persons can transmit influenza infections to them while they are themselves incubating infection, or working despite the existence of symptoms. High-risk persons include the elderly, transplant recipients, or persons with AIDS who have relatively low antibody responses to the influenza vaccine.

"Efforts to protect [high-risk patients] against influenza may be improved by reducing the chances that their care providers may pose them to influenza," the report said.

The influenza vaccine also protects the health-care worker who is exposed to numerous diseases in health-care facilities, Suzanne Gaventa, a researcher in CDC's viral disease division, told BNA July 25. Making sure that health-care workers receive the influenza vaccine "is a reasonable recommendation" since the vaccine causes no negative side effects, she added.

Job Categories To Be Vaccinated

Health-care workers who should be vaccinated include physicians, nurses, and personnel such as primary-care and certain specialty clinicians and staff of chronic-care facilities and intensive care units, particularly neonatal intensive-care units, the report said.

CDC also recommended that home-care providers to high-risk persons, such as visiting nurses and volunteers, be vaccinated.

The influenza vaccine should be offered beginning in September, since high levels of influenza activity generally do not occur in the continental United States before December, the report said.

The report suggests that administrators and infection-control staff of health-care facilities should establish procedures for offering vaccines to patient-care staff that take into account barriers to vaccination. For example, the report said that more staff members will be vaccinated if the vaccine is available at the work site.

Lockout/Tagout

PROPOSAL CALLED INADEQUATE BY UNIONS WINS QUALIFIED SUPPORT FROM NIOSH, INDUSTRY

Numerous labor organizations, in written comments to the Occupational Safety and Health Administration, criticized as inadequate the agency's recent proposal to require locks and/or tags to prevent worker entry to equipment temporarily stopped for servicing or maintenance.

But the proposal, which OSHA said is intended to prevent deaths and injuries due to the unexpected re-energization of such equipment, drew support from several industry groups, conditioned on the agency's clarification of certain proposed provisions.

The National Institute for Occupational Safety and Health also supported the agency's proposal, saying it should lead to "better organized, more systematic control" of maintenance and servicing hazards.

The need for such a rule is evidenced by high numbers of injuries and fatalities; lack of compliance with existing related standards; and evidence that maintenance, repair, and servicing injuries most frequently occur not to maintenance personnel, but to machine operators and feeders, NIOSH told the agency.

Comments came in response to OSHA's April 29 proposal to require that equipment and machinery be locked, tagged, or both to prevent their operation during maintenance or servicing when workers may be inside or near moving parts (17 OSHR 1766). The proposal is designed to prevent employee injuries from the accidental re-plugging or switching-on of stopped equipment, the restarting of equipment by an employee at controls separate from the machinery, and hazardous movements of machinery parts that may contain residual energy, such as spring or hydraulic pressure. Comments were due June 28.

'Most Prominent Issue'

Energy lockout is "the most prominent safety issue" for the United Auto Workers, the union told OSHA. Despite the deaths of 71 union members in accidents involving hazardous machinery operation—one as recently as May 27—the hazard "continues unabated," UAW President Owen Bieber stated in comments to the agency.

Another union, the United Steelworkers of America, has lost 30 members since 1980 because of inadequate lockout procedures, the agency was told.

OSHA's performance-oriented proposal, the Steelworkers contended, is too vague and would exempt too many industries that are "in desperate need of a strong standard."

The Auto Workers, the Steelworkers, and several other unions said that OSHA's proposal fails to incorporate the basic element of an effective lockout program, the doctrine of "one person, one lock, one key." Because the proposal's provisions are not as protective as current work practices, "this proposal is a step backward for many workers," Steelworkers health and safety specialist Frank Grimes told the agency.

Also criticized by the unions was the use of tags, as allowed under the proposal, to warn workers of machinery being serviced or repaired as an alternative to physically locking out equipment.

Temporary Tagging

The Chemical Manufacturers Association and the Synthetic Organic Chemical Manufacturers Association lent their support to the proposal, but recommended that "energy isolating devices"—valves and similar devices that control energy sources—be marked with temporary tags, rather than permanently marking them as the proposal specifies. SOCMA argued that permanent labeling of these devices would be "impractical, costly, and of limited utility."

CMA also recommended that a final rule covering energy lockout exempt servicing and maintenance that occurs during emergencies and other situations where compliance with the standard would increase workers' risk.

The American Petroleum Institute, while supporting the need for an effective lockout standard, said that the proposal's coverage of petroleum pipelines is "inappropriate." Safe operation of petroleum pipelines, API maintained, already is ensured under other federal regulations.

In supporting OSHA's proposal, NIOSH recommended that the agency clarify its definitions of "normal production operations" and "servicing and maintenance." The research institute questioned whether certain routine operations such as changing a power saw blade or clearing a jammed press die would be considered normal production operations not requiring equipment lockout, or service or maintenance operations.

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Regulatory Reform

EVALUATION METHODS TO VALUE HUMAN LIFE SHOULD BE DISCLOSED, ADMINISTRATIVE PANEL URGES

A committee of the Administrative Conference of the United States approved recommendations July 19 that

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Air Contaminants

TEXTILE WORKERS CALL FOR LOWER OSHA LIMIT TO PROTECT DRY CLEANING WORKERS FROM SOLVENT

More than 100.000 workers in the dry cleaning industry need protection from chemicals "that threaten their health. their livelihood and their families." officials of the Amalgamated Clothing and Textile Workers Union told the Occupational Safety and Health Administration Aug. 5 in asking for reduced exposure limits for perchloroethylene. a solvent used in that industry.

The union. however. was unable to recommend a specific "protective and feasible" limit when asked to do so by OSHA officials. The union said that the accelerated rulemaking process that OSHA has followed in proposing reduced permissible exposure limits for perchloroethylene and more than 400 other air contaminants has not given interested parties enough time to prepare such information.

But Eric Frumin. director of occupational safety and health for the union. said that a limit under 10 parts per million appears to be feasible. based on available exposure data.

The remarks came in testimony during OSHA hearings on a June 7 proposal to change or reduce exposure limits for 428 chemicals and other air contaminants (18 OSHR 19). The agency intends to complete the rulemaking by the end of the Reagan administration.

Monitoring, Surveillance Requirements Needed

Ernestine Thomas. an ACTWU member from Local 124 in Detroit. Mich.. testified that she was exposed for 10 years to "extremely high" levels of perchloroethylene while operating "transfer-type" machines at a dry cleaning facility. Transfer machines require workers to remove chemical-soaked clothes from a cleaning machine to another machine for a separate drying process.

The union contended that "dry-to-dry" machines. which perform the whole dry-cleaning process in one machine, are much safer and limit workers' exposures to hazardous chemicals.

Thomas said that as a machine operator she was not provided with gloves or aprons. and that her hands routinely were covered with perchloroethylene and her clothes soaked with the chemical.

During those 10 years of exposure to perchloroethylene, she suffered headaches, irritation of the eyes and nose, and nausea. the machine operator testified.

Based on her experiences. Thomas told the hearing that OSHA should ban transfer-type dry cleaning machines and incorporate medical monitoring requirements in any regulation of perchloroethylene.

Frumin agreed, saying that there is "no excuse" for the agency not proposing medical surveillance and exposure monitoring provisions along with the reduced exposure limits. The agency is working on generic surveillance and monitoring standards (17 OSHR 1729).

Productivity At Issue

An official of the International Fabricare Institute suggested during his cross examination of the ACTWU witnesses that workers could improve productivity with transfer machines because simultaneous operation of both cleaning and drying machines produces twice as many clean clothes as one dry-to-dry machine. William Fisher, the institute's vice president. also questioned data on which was based the union's assessment that a 10 ppm limit is feasible.

When asked by Labor Department attorney Charles Gordon whether she believed she felt better and was more productive using the dry-to-dry equipment. however, Thomas responded "yes."

Currently. the agency requires that worker exposures to perchloroethylene not exceed 100 ppm averaged over an eight-hour work shift. with short-term exposures not to exceed 200 ppm. and five-minute peak exposures not to exceed 300 ppm over a three-hour period.

The National Institute for Occupational Safety and Health classifies perchloroethylene as a carcinogen and recommends that exposures to the chemical be kept to "the lowest feasible limit."

OSHA's proposal would adopt the 50 ppm exposure limit and 200 ppm short-term limit recommended by the American Conference of Governmental Industrial Hygienists. ACGIH's recommended exposure limits provided the basis for all but 35 of the rulemaking's proposed limits.

The agency said in the proposed rule that it "preliminarily concluded" that the ACGIH levels would protect workers against eye irritation, headaches, and other adverse health effects.

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Electrical Safety

OSHA HEARINGS ON WORK PRACTICES OPEN; PARTICIPANTS REQUEST SCOPE CLARIFICATION

While its proposed standard for electrical safety-related work practices is expected to prevent more than 100 deaths and 1,500 injuries annually, the Occupational Safety and Health Administration acknowledged Aug. 9 that it often is difficult to determine what electrical equipment would be covered under the rule.

In public hearings on the proposal, the agency said that it hoped to receive information from participants to help it make those determinations.

OSHA's acknowledgment of the difficulty of the scope issue was underscored by questions posed by representatives of industries where coverage still is unclear.

Steven R. Semler, counsel for the National Arborist Association Inc., asked OSHA for specific guidance on when tree-trimming operations, and specific personnel involved in such work, would be covered by the rule.

Edison Electric Institute, represented by Steven Yohay, similarly asked the agency whether it intended the proposal to cover electrical utility plants. OSHA's proposal would cover electrical "utilization" equipment such as that found in office buildings, garages, and warehouses, but would not cover work performed by "qualified" persons at electrical generation, transmission, and distribution installations.

In opening remarks, Barry J. White, OSHA director of safety standards programs, said that the agency is "well aware" that power plants can contain both types of installations and that it is difficult to distinguish sometimes whether a specific piece of equipment is part of a "utilization" system or part of the "generation" system.

Issues To Be Addressed

Based on comments on the proposal, OSHA said it will address a number of issues regarding electrical safety in developing a final rule, including:

- Whether existing general industry requirements are in fact more protective than corresponding provisions in the proposed electrical safety-related work practices rule;
- Whether the scope of the proposal is appropriate;
- Whether proposed training requirements are adequate to protect workers;

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BR Group also was cited for 45 other alleged serious violations, including 12 instances of failing to provide machine guarding for punch presses.

OSHA inspected the facility in February in response to an employee complaint about the lack of machine guarding, according to the agency.

Similar alleged violations were cited by the agency in 1986 when BR was owned by a different company. OSHA said that those violations were never corrected even though the firm remained under the same management.

OSHA said its investigation also found that the company failed to adopt recommendations from the state's safety consultation service and an insurance carrier on complying with federal machine guarding requirements.

BR Group declined to comment on the citations. The company has 15 working days to contest the citations before the independent Occupational Safety and Health Review Commission.

Litigation

RETROACTIVE APPLICATION OF OHIO TORT LAW TO WORKER DEATH SUIT HELD UNCONSTITUTIONAL

An Ohio statute governing the assessment of damages in intentional-tort actions filed in workplace injury cases may not be applied retroactively, the U.S. Court of Appeals for the Sixth Circuit ruled Aug. 1 (*Pratt v. National Distillers & Chemical Corp.*, CA 6, No. 86-3971/3972, 8/1/88).

The appellate court reinstated a jury's verdict in favor of, and award of damages to, plaintiff Patricia L. Pratt, whose husband died from burns received in a work-related explosion at National Distillers & Chemical Corp., also known as Emery Industries.

Although a jury had returned verdicts on March 5, 1986, for $100,000 in punitive damages and $1,003,028 in compensatory damages, post-trial motions still were pending when the Ohio statute in question became effective on Aug. 22, 1986. Under the law, once an employer is found guilty of intentional harm to an employee under the tort system, the case must be referred to a state panel, the Ohio Industrial Commission, which then assess damages.

In accordance with the statute, the trial judge vacated the damage awards and referred the case to the industrial commission.

Court Finds Application Unconstitutional

Because the statute affected Pratt's substantial rights, the appellate court ruled that such application of the law violated Ohio's constitution, which forbids the general assembly from enacting retroactive laws.

The statute, the court found, redefined "intentional tort" from its common-law definition. Under the state law, as opposed to common-law practice, an employee suing his employer for an intentional tort cannot infer from the employer's conduct and surrounding circumstances that the employer intended to cause the employee injury, the court analyzed. Instead, the employee must prove that the employer acted with deliberate intent to cause injury, the court said.

The statute, therefore, affected Pratt's existing right to recover under the common-law definition of an intentional tort, the court ruled.

Furthermore, the court found that the statute affected Pratt's right to a jury trial, which under the Ohio constitution is a fundamental and substantial right.

Smoking

LAWMAKERS IN NEW YORK CLOSE TO AGREEMENT ON RULES TO LIMIT SMOKING IN THE WORKPLACE

ALBANY, N.Y.—(By a BNA Staff Correspondent)—New York state lawmakers and Gov. Mario M. Cuomo are close to agreement and could enact a bill as early as September to limit smoking in the workplace and other public places.

Cuomo and legislative leaders failed to iron out their differences before the state Senate adjourned its regular session Aug. 2, but officials close to negotiations told BNA that a compromise bill could be drafted and approved when the Legislature reconvenes. The state Assembly, which adjourned in mid-July, is expected to reconvene later this month and the Senate is expected to return to Albany in September.

One of the key issues preventing agreement on the bill was pre-emption. The Senate supports a measure that would pre-empt local laws, while the Assembly and governor favor a bill that would allow tougher local laws to supersede the state law. New York City and some five other counties in the state have enacted laws to regulate smoking in public places.

John McArdle, a spokesman for Deputy Senate Majority Leader John R. Dunne (R-Garden City), the chief sponsor of the Senate bill, told BNA that Dunne has toughened up his bill so that the pre-emption issue is effectively moot. He said no local law would supersede the state law because no local law would be as stringent.

Consent Would Be Needed

Under Dunne's bill (S 7959-C), smoking in the workplace would be permitted only if all workers routinely assigned to the area give their consent. Employers would be required to use their "best efforts"—including the use of ventilation, partitions, and other devices—to meet a non-smoking employee's needs. If the non-smoking employee's needs cannot be met after such steps, the employer would have to designate the area as non-smoking.

Under the bill supported by Cuomo and the Democratic majority in the state Assembly (A 8961), smoking would be prohibited in all common work areas, unless the area is occupied exclusively by smokers. Both bills would prohibit smoking in the workplace in auditoriums, gymnasiums, rest rooms, elevators, classrooms, employee medical facilities, and the immediate areas around a photocopying machine or other shared office equipment.

While the Dunne bill would require that employers, if unionized, negotiate the specific terms of their smoking policies through collective bargaining, the Assembly bill makes no mention of collective bargaining. Contracts would have to contain the minimum protections set forth in the legislation, under Dunne's proposal.

Russell A. Hinz, a spokesman for the New York State Coalition on Smoking or Health, told BNA he feared that provisions regarding collective bargaining might leave the door open for a legal challenge and should, therefore, be struck from the bill. He said such provisions might be deemed as a violation of the Taft-Hartley Act because they attempt to mandate the content and scope of a subject of collective bargaining.

Display Terminals

Another pseudo issue to assist unions in unionizing.

NEW YORK UNION LEADERS ORGANIZE TO SPUR LOCAL, STATE VDT LEGISLATION

NEW YORK—(By a BNA Staff Editor)—Following the implementation of a law protecting video display terminal operators in Suffolk County, N.Y., state labor leaders met Aug. 5 to coordinate a campaign to enact video display terminal legislation in other New York counties as well as state-wide.

The "end goal" of the VDT coalition is to pass state legislation regulating the use of VDTs, "but for now we have to chew one county at a time." Arthur Wilcox, director of the public employee division of the state AFL-CIO, told the labor representatives.

Since the Suffolk County law took effect June 18, New York's Putnam County has passed a law protecting county VDT workers. Westchester County has introduced legislation similar to Suffolk County's, and Albany County and Rockland County legislators have shown an interest in similar measures, Wilcox said.

However, business opposition to the law has not subsided, and a number of towns within Suffolk County are taking action to exempt themselves from the law (see related article in this issue).

Big Business Threats

Despite proponents' support for VDT legislation in those counties, Joel Shufro, executive director of the New York Committee for Occupational Safety and Health, a labor and public-interest activist group, said that big business interests pose a great threat to VDT legislation because "their resources are unlimited."

"We are facing the Fortune 500 in passing this legislation," he said.

"The victory of the Suffolk County legislation puts momentum on our side for the moment, but business is trying to figure out how to kill" such efforts, Shufro said. "Our task is to see how to pool our resources to go forward and develop materials or campaigns for the local or state level. We can only move forward if we do so in a united fashion," he added.

Agreeing with Shufro, Communication Workers of America official Lisa Reardon said CWA's effort to pass legislation in Suffolk County "was all-out war with business." Representatives from "businesses all over the country flew in to fight the legislation" and testify at local hearings, she said.

"Our grass-roots effort made [the VDT legislation] possible. If we lose sight of that we lose the thrust and the momentum" needed to push legislation in other counties, she said.

Rallying Point For Unions

According to Wilcox, VDT legislation is important for a number of reasons. First, legislation can protect workers from safety and health hazards, such as musculoskeletal and stress problems and possible reproductive risks.

Second, VDT legislation has political ramifications for enabling unions to rally behind a law covering all workers, not just those organized in unions. According to Wilcox, New York has about 1.5 million VDT operators, the majority of whom are unorganized.

The Suffolk County law demonstrated the ability of unionized and unorganized workers to work together for a common goal, he said.

Six Committees

To organize their efforts, the union leaders created six committees to work on different aspects of the VDT legislation campaign. The committees will report on their actions at a meeting of the New York AFL-CIO later this month in Albany.

The committees were given the following assignments

- Develop collective bargaining language regarding VDT use for union contracts.
- Develop model bill language for county and state laws.
- Create a communication network to keep union leaders and workers apprised of local developments regarding VDT measures.
- Track national and county-level legal activity relating to VDT legislation and the Suffolk County suit.
- Create a campaign to increase public awareness of the need for VDT safety and health legislation.
- Examine political support for VDT legislation from the Democratic and Republican parties on the local, state, and federal levels.

Those attending the meeting, in addition to the CWA and New York State AFL-CIO representatives, included members of the Civil Service Employees Association; Citizen Action of New York; the Motion Picture Editors Union; the Professional Employees International Union; the United Auto Workers; the Retail, Wholesale, and Department Store Employees Union; and the Service Employees International Union.

LAM 010351

AIDS

STUDY SAYS BETTER MEDICAL DEVICE DESIGN COULD LOWER INCIDENCE OF NEEDLE-STICK INJURIES

The risk of needle-stick injuries for health-care workers—a potential avenue for AIDS infection—could be reduced by improving the design of medical devices and providing safer methods for covering contaminated needles, according to a study in the Aug. 4 edition of *The New England Journal of Medicine*.

In conducting the study, "Rates of Needle-Stick Injury Caused By Various Devices in a University Hospital," researchers examined characteristics of medical devices that caused 326 needle-stick injuries in the University of Virginia Hospital over a 10-month period, and interviewed hospital employees who reported such injuries, to discuss the types of devices used and the circumstances surrounding the injuries.

According to the researchers, the needle-stick study was conducted because the acquired immune deficiency syndrome epidemic "has led to intense concern among health-care workers about the risk they face in the hospital environment. Needle-stick injuries have drawn attention, for despite safety guidelines and employee education, there is little evidence that their incidence is abating."

Needle-Stick Devices

According to the study, 35 percent of the 326 needle-stick injuries were caused by disposable syringes, although disposable syringes had the lowest needle-stick rate per 100,000 items purchased. Of the other injuries caused by accidental sticks, 26 percent were caused by intravenous tubing and needle assemblies, 12 percent by prefilled cartridge syringes, 7 percent by winged steel-needle intravenous sets, 5 percent by phlebotomy needles, 2 percent by intravenous catheter stylets, and 13 percent by other devices.

Researchers found that devices requiring disassembly had rates of injury of up to 5.3 times the rate for disposable syringes, and that one-third of all injuries were related to recapping. Only 17 percent of the incidents occurred while workers were using the items, while 70 percent occurred when workers were preparing the devices for disposal.

Injuries from recapping occurred most often in three ways, according to the report—when the employee missed

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updates and clarifies provisions of a Jan. 19 directive by incorporating recently revised Centers for Disease Control guidelines for protecting health-care workers from exposure to blood-borne infectious diseases (17 OSHR 1332; 18 OSHR 461; Reference File 21:9607).

The full text of the directive will be published in a future Reference File supplement.

Hepatitis B Vaccine

Reversing its previous stand, the final directive requires employers to provide workers the hepatitis B vaccine, but not free of charge—a provision that has been criticized by labor representatives who say the vaccine will be unaffordable for many health-care workers (18 OSHR 654). OSHA's January directive required that employers provide the vaccine for free.

Bill Borwegen, head of the Service Employees International Union's occupational safety and health department, told BNA Aug. 23 that OSHA's decision to omit the requirement that employers pay for the vaccine "stinks of Office of Management and Budget involvement," and is a reversal of the recommendations of the agency's own technical staff.

"Clearly the free vaccine is the most integral part of control [ling]," hepatitis B infection, Borwegen said. "It is a political decision that workers will have to die from," he added.

An OSHA compliance official told BNA the agency probably will require that the vaccine be provided for free in a proposed rule on AIDS scheduled to be published in December.

Inspection Goals Omitted

The final directive also omits regional inspection goals specifically outlined in the January and draft directive. According to the draft, the 10 OSHA regions were to conduct a minimum of 200 inspections. An OSHA health compliance official told BNA Aug. 23 the inspection goals were omitted in the final version to "let the regional administrators set [inspection] goals" since they know how many inspectors they have and are better able to set schedules.

However, Borwegen told BNA the inspection goals were important since they "set benchmarks and reflected commitment" on the part of the agency to conduct inspections. "Regional administrators need guidance" in setting inspection goals, Borwegen said, adding that he would "be happy to provide OSHA regional administrators with copies of the OSHA draft directive" that included the inspection goals.

Changes

Taking into account the CDC guidelines, OSHA's directive expanded the list of bodily fluids linked to the transmission of HIV and AIDS by adding cerebrospinal fluid; synovial fluid, secreted by the membranes of joints and tendons; pleural fluid, secreted from the membrane that covers the lungs and lines the chest cavity; peritoneal fluid, from the membrane covering the abdominal cavity; pericardial fluid, from the membrane surrounding the heart; and amniotic fluid.

A May draft of the directive listed only blood, semen, blood products, and vaginal secretions as potentially dangerous body fluids (18 OSHR 485).

Another difference between the draft and final version is that the final version lists workers such as housekeeping personnel, laundry workers, paramedics, medical examiners, research laboratory workers, orderlies, and morticians as workers who may be directly exposed to potentially dangerous bodily fluids.

Previously, OSHA said those workers "may rarely come into contact with body fluid" and that their risk of contracting blood-borne diseases was low. OSHA also said those employees were "at no greater risk of contracting blood-borne diseases than other members of the general population."

Gloves

The final directive adds a new section defining when an employer may be cited for failing to provide protective gloves to phlebotomists, whom OSHA defines as "any health-care worker who draws blood samples."

For example, an employer who does not make gloves available can be cited for failure to provide equipment under 29 CFR 1910.132(a). Employers who make gloves available, but discourage or prohibit their use can be cited for failure to use equipment under 29 CFR 1910.132 (a), if in fact the gloves are not being used, the directive said.

Incorporating the CDC guidelines, OSHA's directive also updates a section on protective glove materials. In particular, OSHA added a provision saying that gloves must be of "appropriate material, usually intact latex or intact vinyl, of appropriate quality for the procedures performed, and of appropriate size for each health-care worker."

OSHA added three other stipulations regarding gloves, including the requirement that employers not wash or disinfect surgical or examination gloves for reuse; that general purpose rubber gloves used by maintenance, housekeeping, laundry or other non-medical personnel may be decontaminated and reused; and that no gloves be used if they are peeling, cracked, discolored, or if they have punctures, tears, or other evidence of deterioration.

The OSHA directive also specifies that protective gowns, including surgical gowns, be made of or lined with impervious material and should protect all areas of exposed skin.

Multi-Employer Worksites

Unlike the draft of the directive, the final version contains a section offering guidelines for citing multi-employer worksites. For example, OSHA said health-care facilities will be cited for violations of safety and health standards to which their own employees are exposed.

However, under the directive, health-care facilities can not be cited under the general duty clause for violations to which employees of other employers on their premises are exposed, to the extent that they control the hazards. For example, OSHA said, health care facilities can not be cited for not providing personal protective equipment to unprotected employees of other employers on their premises.

Also, according to OSHA, physicians who are members of professional corporations generally are considered to be employees of that corporation and therefore the corporation may be cited for all violations affecting those physicians. Hospitals where the physicians work also may be cited for standards violations, but not for violations under the general duty clause.

We need to get with this Committee and influence them. Role of Gov't should be helpful - not adversary

General Policy

REP. HENRY LOOKS AT OSH ACT REFORM, CONVENES INFORMAL LEGISLATIVE TASK FORCE

The ranking minority member of the House Education and Labor Subcommittee on Health and Safety has assembled an informal task force to develop legislation that would amend portions of the Occupational Safety and Health Act of 1970 identified as obsolete or impediments to the regulatory mandate of the Occupational Safety and Health Administration, members of the task force told BNA.

The five-member group, which is to meet in Washington, D.C., for the first time Aug. 26, was assembled at the behest of Rep. Paul B. Henry (R-Mich). Henry has asked the group to provide suggestions for legislative changes by January for use in the next Congress.

Members of the task force, chosen as non-employer and non-employee representatives, were selected for their range of previous experience with occupational safety and health, Dottie L. Strunk, committee senior legislative associate on the minority staff, told BNA.

The members are: Patrick R. Tyson, attorney with Constangy, Brooks & Smith in Atlanta and former acting assistant secretary of labor for OSHA; Henry Chajet, attorney with Doyle and Savit and former senior counsel with the American Mining Congress; Charles A. Hurley, vice president for policy with the National Safety Council; Robert Stranberg, chief of the California Division of Occupational Safety and Health; and Dr. Marcus M. Key, professor of occupational medicine at the University of Texas School of Public Health.

The scope of the group's meetings will be broad and flexible, Strunk said. "They're supposed to be brainstorming sessions."

Time For Reforms?

The task force members, who agreed to cover their own expenses, said in interviews with BNA that they come together with no rigid blueprint for reform of the OSH Act, but rather a sense that the time has come after 18 years to reopen the law for the first time.

Henry, who took an active role during the subcommittee's oversight of OSHA in the last year and opposed worker disease notification legislation sponsored by subcommittee Chairman Rep. Joseph M. Gaydos (D-Pa), hopes to introduce constructive legislation to improve the regulatory function of OSHA, Strunk said.

Some areas that might be addressed by the task force, according to Tyson, are OSHA's glacial standards-setting process, which he called "a total failure"; aspects of the agency's enforcement authority, including the maximum penalties the agency can propose against violators of federal requirements; and the rights of employees, including their participation in OSHA's enforcement decisions.

Chajet, whose occupational safety and health experience primarily has been with the Mine Safety and Health Administration, said he hopes the group will take a broad view of government regulation of workplace safety and health, rather than approaching legislative reform from a micro perspective.

"Each person in the group brings with them the experience to know what they see needs to be addressed," he said. "It won't be very difficult to sit around and bring to light those common problems and things that need improving."

Lessons In OSHA's Experience

Hurley, who has worked on transportation, rather than workplace issues for the National Safety Council of late, said the occupational safety and health law is "a fine act." The law, however, "has never received the consistent leadership it deserves."

Hurley concurred with Tyson that, "There appears to be a consensus that it's time to take a look at OSHA, at the lessons of the last 17 years."

Areas he hopes to see the task force discuss are education, enforcement, standards-setting, cooperative efforts among organized labor, management and the federal government, and the roles of the National Institute for Occupational Safety and Health and the Bureau of Labor Statistics, he said.

Stranberg said it was premature to speculate about the parameters of the group's work until it meets. "I'm happy to be a part of this group and until I see what they have in mind, I really can't comment," he told BNA.

Although no one was selected by Henry to represent the points of view of organized labor, task force members interviewed by BNA said they hoped to avoid any sense of bias in discussion of OSHA's difficulties. Perspectives skewed to any viewpoint or proposals overtly political in nature are destined for certain failure, Hurley observed.

"If the product is unbalanced, then it's not going to fly," he said. "It's got to be above that level. OSHA was born of conflict and always has been affected by that. ... But we really have to take a look at the safety and health issues, not the conflict issues," Hurley added.

LAM 010353

Right-To-Know

HOUSE SMALL BUSINESS SUBCOMMITTEE TO STUDY OSHA HAZARD STANDARD SEPT. 28

The effect of the Occupational Safety and Health Administration's expanded hazard communication standard on small businesses will be examined Sept. 28 during a hearing before the House Small Business Subcommittee on Exports, Tourism and Special Problems.

Rep. Norman Sisisky (D-Va), chairman of the subcommittee, called the hearing in response to letters from employers concerned that the OSHA standard, newly expanded to cover all workplaces, is burdensome to small employers, who need additional guidance from OSHA in order to comply, an aide told BNA.

The subcommittee has contacted business associations who have been involved with OSHA in the expansion of the standard to invite their testimony, an aide said.

The witness list for the hearing will be compiled in September, she added.

Of potential interest to small business employers and to the subcommittee will be an Aug. 19 decision of the U.S. Court of Appeals for the Third Circuit in response to an April petition from the United Steelworkers of America and Public Citizen Inc. (see related story in this issue).

Legal And OMB Challenges

The court ruled that provisions of the expanded standard disapproved by the Office of Management and Budget last year must immediately be reinstated by OSHA and not reopened for new rulemaking. The appeals court also appeared to rule against a petition for a stay of the standard as it applies to the construction industry, despite the court's earlier order for such a stay.

The hazard communication standard, which originally covered the manufacturing sector, was expanded by OSHA to cover all workers a year ago in response to a court order (17 OSHR 507, 520). In October 1987, OMB disapproved three provisions of the rule and ordered OSHA to conduct new rulemaking. The agency responded Aug. 8 with a proposed rule requesting public comment on OMB's concerns and scheduling a public hearing (18 OSHR 651, 668). In addition, the expanded standard as well as OMB's actions under the authority of the Paperwork Reduction Act, have been challenged by various parties and are being sorted out in the Third Circuit court of appeals (18 OSHR 499).

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Roy Rutz, program supervisor in the department's worker health and safety branch.

In the 1987 proposal, the department suggested 14-day re-entry intervals for fields treated with the fungicides Captan, Captafol, Bravo, and Folpet, Rutz said. At the same time, the department proposed to reduce re-entry intervals for several other pesticides, based on research work performed for the Environmental Protection Agency.

The department decided to defer any action on the latter group when questions were raised about the research work, Rutz told BNA, and it decided to postpone changes in the fungicide re-entry intervals until risk assessment data are available on two of them.

Concern By Growers

Most of the comments on the 14-day re-entry interval for the four fungicides came from growers who feared that the proposed periods would prevent any activities in fields treated with the chemicals, Rutz said.

The department will return to the issue in the future, Rutz said, adding that one of the fungicides, Captafol, is off the market in California and that another, Folpet, "basically is off the market."

In other provisions, the 1987 proposal would expand the scope of worker safety and health rules for pesticides to cover industrial and structural pest control operations, enhance medical surveillance requirements for workers exposed to pesticides, and strengthen respirator management programs, Rutz noted.

The department's worker safety rules presently cover only agricultural uses of pesticides, the official said, and the proposed changes would expand that scope to cover all workers who handle pesticides, including mixers, loaders, applicators, and those who handle chemicals in structural and industrial pest control.

The proposed changes to the medical surveillance rules would require monthly blood testing for new field workers exposed to pesticides, for the first three months, Rutz said, with bimonthly testing thereafter if exposure to pesticides is regular. Employer respiratory protection programs would be strengthened by adding new rules for respirator selection, maintenance, and training of employees, Rutz said. The June 24 revision spells out how employee medical problems, such as asthma or heart disease, are to be handled by employers under a respiratory protection program.

Washington

LABOR AGENCY WARNS AGAINST USE OF PLASTIC POLYVINYL CHLORIDE PIPE IN COMPRESSED AIR PIPING

OLYMPIA, Wash.—(By a BNA Special Correspondent)—The Washington state Department of Labor and Industries has issued a warning that plastic polyvinyl chloride pipe cannot be used in compressed air piping systems without the risk of explosion.

Citing accidents involving PVC pipe in the past year, the department said only one type of pipe, Acrylonitrile-Butadiene-Styrene, is approved for use with compressed air.

Last year a section of PVC pipe being used for compressed air exploded 27 feet above a warehouse floor, and a fragment of the pipe flew 60 feet and was embedded in a roll of paper. Nobody was in the area at the time of the explosion, the department said. A PVC pipe explosion in a new plant in Selah broke an employee's nose and cut his face. PVC piping buried three feet underground at a Yakima manufacturing plant exploded, opening a crater about four feet deep and three feet wide.

"We're seeing more incidents of explosive failure, and we're citing more employers for using PVC air system piping," according to Paul Merrill, senior safety inspector in the department's Spokane office.

The department said employers must protect their workers by avoiding the use of unapproved PVC pipe in compressed air systems. Existing compressed air systems that use PVC piping must be completely enclosed, buried or adequately guarded according to specifications by a professional consulting engineer, the department said.

NEWS BRIEFS

LAM 010354

Jury Instructions In Asbestos Case Proper

Instructions given to a jury in an asbestos-related injury lawsuit must be examined as a whole rather than individually in order to determine if an erroneous instruction was given, the U.S. Court of Appeals for the Ninth Circuit ruled (*In Re: Asbestos Cases, Chang v. Johns-Manville Sales Corp.*, CA 9, Nos. 85-1912 and 85-1913, 5/23/88).

In upholding the jury's verdicts for Hoo Kin Chang and Charles Chun, former workers at the Pearl Harbor Naval Shipyard, the appellate court ruled that the appeals made by the asbestos manufacturers, including Raymark Industries Inc., were totally frivolous. The fact that one jury instruction asked for a determination of when Chang should have known his disease was caused by the defendants' products was not prejudicial in light of other interrogatories given to the jury asking them to determine whether the asbestos manufacturers were negligent, the court said.

Smoking May Not Defeat Bronchitis Claim

A worker in a fiberglass manufacturing plant may claim total disability for his occupational bronchitis and emphysema if he can show that non-occupational factors such as cigarette smoking did not equally contribute to his condition, the Colorado Court of Appeals ruled June 2 (*Hall v. Industrial Claim Appeals Office of Colorado.*, Colo CtApp, No. 87CA1345, 6/2/88).

The court's ruling reversed an earlier decision by a state claim appeals office that dismissed a claim by Arthur Hall on the grounds that Hall's disorders "probably" were mild and resulted from "heavy" smoking, and that any work-related "aggravation" was temporary. The court based its reversal on an opinion by a physician testifying on Hall's behalf, who said that Hall's condition need not be wholly work-related for the purposes of validating his claim, as long as smoking was not as important a causal factor as his workplace exposure to irritants.

Drug Use Relevant In Environmental Case

Evidence that a chemical plant employee used drugs was relevant to his suit charging his employer with exposing him to hazardous chemicals on the plant site, the U.S. District Court for the Eastern District of Arkansas ruled June 15 (*O'Dell v. Hercules Inc.*, DC EArk, No. LR-C-86-435, 6/15/88).

In denying Steven O'Dell's motion for a new trial, the court rejected O'Dell's argument that the evidence prejudiced the outcome of the trial. O'Dell's drug use was relevant to the question of his risk of serious harm from prolonged exposure to toxic chemicals around the plant site,

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Current Report

Right-To-Know

NON-MANUFACTURERS EXCEPT CONSTRUCTION SUBJECT TO OSHA HAZARD RULE INSPECTIONS

The Occupational Safety and Health Administration plans to enforce its hazard communication standard in non-manufacturing sectors of industry—with the exception of the construction industry—beginning Aug. 1, an agency spokeswoman said July 14.

However, the agency plans only to respond to complaints of alleged violations as long as a court-ordered stay of the standard in the construction industry remains in effect, agency spokeswoman Claire Austin told BNA.

The agency expects to issue an enforcement directive to its inspectors by the second week of August, she said.

OSHA made its decision about enforcement procedures following a clarification July 8 from the U.S. Court of Appeals for the Third Circuit of its June 24 stay of the expanded standard. The court specified that the stay pertains only to employers in the construction industry and remains in effect until it rules on the merits of an industry challenge to the expanded hazard standard (18 OSHR 499).

The standard continues to cover the manufacturing sector of industry, to which it applied originally, and enforcement in this sector by OSHA continues unchanged.

OSHA's interpretation of those employers that fall within the construction industry, and are not subject to agency enforcement, will likely be based on Standard Industrial Classification codes for construction, Leo Carey, OSHA director of field programs, told BNA.

OSHA Administrator John A. Pendergrass said July 13 that the agency was "very pleased that we got that question resolved" through the Third Circuit's clarification.

"That stay applies only to construction employers," Pendergrass told members of the Federal Advisory Council on Occupational Safety and Health. "So we will be enforcing the expanded hazard communication standard everywhere but in the construction industry."

Asbestos ✓

OSHA EXTENDS STAY FOR ADDITIONAL YEAR; MINOR AMENDMENTS MADE TO FINAL STANDARD

A partial stay of the Occupational Safety and Health Administration's asbestos standards as they apply to three non-asbestiform minerals was extended an additional year, until July 21, 1989, according to a July 20 announcement by the agency (53 FR 27345).

In addition, the agency made minor amendments to the 1986 final asbestos standards to reflect the extended stay and appropriate references to other standards.

OSHA said it expects to publish a proposal addressing the three non-asbestiform minerals—tremolite, anthophyllite, and actinolite—in October. The stay extension is necessary, the agency said, to allow it to collect and analyze sufficient health and feasibility data, draft the proposal, and complete the rulemaking.

The stay first was granted in 1986 in response to a petition from R.T. Vanderbilt Co. Inc., a Connecticut company that mines and mills talc. The company contends that the standard inappropriately covers the non-asbestiform minerals, two of which are found in its talc.

As with the previous stay, the 1972 asbestos standard for general industry remains in effect for non-asbestiform tremolite, anthophyllite, and actinolite (Reference File, 31:8801), the agency said.

OSHA's notice extending the stay and amending the final revised asbestos standards is published in the full text section of this issue.

NIOSH Information

OSHA had no immediate comment on whether a July 12 letter from National Institute for Occupational Safety and Health Director J. Donald Millar would affect the stay, or whether Millar's comments would be considered by OSHA staffers in making a decision about the regulation of the three minerals.

In the letter, addressed to OSHA Administrator John A. Pendergrass, Millar noted that the stay was based to some extent on internal NIOSH memoranda disclosed by Vanderbilt, in which staff members in the institute's Division of Respiratory Disease Studies disputed evidence from earlier NIOSH studies supporting inclusion of the company's talc in the asbestos standard.

Millar said he had just been informed that a Vanderbilt industrial hygienist had been in contact with a NIOSH researcher in June 1986 in an "effort ... apparently to try to influence the decisions of our respective agencies with respect to issues in this rulemaking."

Millar said the institute stands by its earlier determination that the three minerals should be regulated as asbestos.

A revised asbestos standard for general industry and a new asbestos standard for the construction industry were published in June 1986, lowering permissible exposure limits tenfold (Reference File, 31:3116, 31:8121).

OSHA granted a partial stay of the standards in July 1986 in response to a petition filed by R.T. Vanderbilt, a Norwalk, Conn., supplier of industrial talcs. The company contested the agency's inclusion of the three minerals in the standards on the grounds that they are "non-asbestos" (16 OSHR 134).

The stay was extended in April 1987 to allow the agency additional time to conduct supplemental rulemaking limited to whether the three non-asbestiform minerals should continue to be regulated in the same standards and to the same extent as asbestos, or whether they should be treated in a different manner (16 OSHR 1352).

For further information, contact James F. Foster, director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3647, 200 Constitution Ave. N.W., Washington, D.C. 20210; (202) 523-8151.

LAM 010355

Oversight

LABELING, REGULATION OF COSMETIC PRODUCTS NEEDED TO REDUCE HAZARDS IN SALONS, HOUSE TOLD

Victims of occupational exposures to hazardous chemicals in a beauty salon and a cosmetology school told a congressional panel July 14 that more stringent regulation of cos-

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The study found significantly higher-than-expected rates of death from lung cancer and other causes among Vanderbilt miners. NIOSH Deputy Director Edward L. Baker had said in an earlier letter to the company (18 OSHR 565). In that letter. Baker said the findings supported an existing NIOSH position that Vanderbilt talc should be regulated under the workplace asbestos standard: a position disputed by the company.

Several current and former scientists from NIOSH's Division of Respiratory Disease Studies. including a former director of the division. Robert E. Glenn. are being questioned about the past contacts with Vanderbilt.

No charges or allegations have been leveled against any of the researchers being questioned.

'Scientific Credibility'

In his memorandum to NIOSH managers. Millar said the contacts bring "the scientific credibility" of the study results into question. even though the results appeared to support an official NIOSH position.

The study was an update of a 1980 NIOSH research project that also found higher-than-expected death rates among Vanderbilt miners. Key aspects of the 1980 study, which was performed by researchers in NIOSH's Cincinnati offices. were questioned by the respiratory disease division researchers in internal agency memoranda at the time they were working on the new study.

In comments to BNA. company officials acknowledged that Vanderbilt was in contact with the division in 1985 and 1986. and provided information used in the new study. But they denied that anything improper either was intended or occurred.

Millar said in his memorandum that he has asked Dr. James Whittenberger, chairman of the NIOSH Board of Scientific Counselors—an independent panel that advises the institute on scientific issues—to appoint a subcommittee of the board to evaluate all NIOSH studies that have concerned Vanderbilt employees and make recommendations on the "disposition of data emerging from these studies."

Dennis M. Race. an attorney for Vanderbilt. Aug. 9 criticized NIOSH's actions on the new study as "finger pointing." He told BNA that the company wants an "unbiased" evaluation of the NIOSH data. that it would "welcome" the Board of Scientific Counselors' review "if the panel is independent," but that it would prefer to see a "mutually agreeable" review group named.

Health Hazards Another future issue

DIESEL EXHAUST MAY BE CARCINOGENIC, EXPOSURE SHOULD BE CONTROLLED, NIOSH SAYS

Diesel exhaust should be regarded as a potential occupational carcinogen on the basis of evidence from available studies, and employers should take steps to limit worker exposure to the greatest extent feasible, the National Institute for Occupational Safety and Health recommends in a new current intelligence bulletin.

The bulletin. currently in pre-publication form and expected to be available from NIOSH shortly, says that exposure to diesel emissions as a whole—both their gaseous and particulate components—should be controlled because scientists have not yet determined exactly what cancer risks may be posed by the individual components.

The bulletin also recommends further research to (1) clarify what specific agents in diesel exhaust are associated with lung tumors found in laboratory animals exposed to the emissions. (2) improve the efficiency of known controls and monitoring procedures. (3) evaluate the combined effects of various engineering controls. and (4) identify which controls are appropriate for various uses of diesel-powered equipment.

Some 1.35 million workers are exposed to diesel emissions in approximately 80,000 U.S. workplaces. according to the bulletin. Those most likely to be exposed include mine. bridge and tunnel. railroad. loading dock. and garage workers, and truck and forklift drivers. the bulletin says.

Mice and rats exposed to diesel emissions in laboratory studies have developed lung tumors at significantly higher rates than unexposed control animals. according to data summarized in the bulletin. Also. results from two recent epidemiologic studies have indicated an increased risk of death from lung cancer among railroad workers exposed to diesel emissions, the bulletin reports.

The International Brotherhood of Teamsters applauded the bulletin July 26, and urged the Occupational Safety and Health Administration and employers to "eliminate unnecessary exposure of workers" to diesel exhaust.

Copies of the bulletin will be available from NIOSH Publications Dissemination, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Right-To-Know

SECRETARY OF LABOR HAS FAILED TO JUSTIFY EXPANDING RULE, CONSTRUCTION GROUP ARGUES

The secretary of labor has continuously failed to justify expansion of the hazard communication standard to the construction industry by failing to make any findings of reasonable necessity, appropriateness, and significant risk with regard to the industry, the Associated Builders and Contractors told the U.S. Court of Appeals for the Third Circuit in its Aug. 4 reply brief (*Associated Builders and Contractors Inc. v. Secretary of Labor*, CA 3, No. 88-3345).

The secretary of labor's and the United Steelworkers of America's reliance on a previous decision by the Third Circuit (*United Steelworkers of America v. Pendergrass*, 13 OSHC 1305) to justify the expansion does not satisfy the Occupational Safety and Health Act's requirement of making a specific finding as to the significant harm which will be reduced in the construction industry by expanding the standard, the brief stated.

The respondents' argument that the court's previous order "actually prohibited OSHA from making the statutorily required findings is ... specious," the industry argued. Such an interpretation of the court's order would require that OSHA not perform a regulatory impact or flexibility analysis, or an environmental impact analysis, nor comply with the Paperwork Reduction Act, the brief argued. The court did not order OSHA to promulgate an illegal standard, the brief stated.

The Third Circuit's previous ruling cannot be held to be controlling in the present case because the issue presented was not posed or really decided the first time, ABC argued. The brief stated that construction industry representatives were not parties to the previous court action, and that the court has not been informed of the regulations and practices of the industry. Furthermore, the brief argued, the court was not presented with an actual proposed standard applicable to the construction industry when it made its earlier decision.

ABC also argued that the secretary's use of "general" findings to satisfy the significant risk requirement is clearly

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prove it. The state's highest court affirmed the appellate court, and remanded the case for trial (18 OSHR 486).

But six of the nine justices dissented from the "majority" holding, written by Justice Fred H. Dore, that "the employer's common law duty to provide a safe workplace includes a duty to provide a working environment reasonably free from tobacco smoke."

Dore maintains, however, that because the six justices voted to reinstate the case, and because they concurred with the fact section of the majority opinion, which stated that McCarthy's condition was indisputably caused by smoke in her workplace, the only possible common law action would be for breach of a duty to provide a reasonably smoke-free environment.

Actions Speak Louder Than Words?

"If their holding is that there is no duty, they should have voted to affirm," Justice Dore told BNA. "They said by their action if not by their words that there is such a duty."

Justice Robert F. Brachtenbach, joined by five other justices concurring in part and dissenting in part, specifically dissented from the holding that an employer has a duty to provide a reasonably smoke-free workplace because the issue was not raised in the petition for review or briefed at any stage of the proceedings.

"Not a single authority, whether it be cases or literature relied upon by the majority was cited by either party," Justice Brachtenbach wrote. "The majority has truly gone off on a frolic and detour of its own making."

"The majority's holding may well be correct, but the issue is of great significance to the entire public and private work force of this state," Brachtenbach wrote, calling for proper briefing.

According to Assistant Attorney General Gregory F. Brunson and Washington Reporter of Decisions Richard Jones, Dore's holding on the employer's duty to provide a smoke-free workplace is not a part of the ruling of the case, because court action may only be taken by a majority.

Drug Abuse

OSHA AUTHORITY SHOULD BE EXPANDED TO COMBAT DRUG ABUSE, SENATE REPUBLICANS SAY

The Occupational Safety and Health Administration's authority should be expanded to ensure drug-free workplaces, according to a Senate Republican working paper recommending provisions for an omnibus anti-drug bill.

The position paper, released by the office of Senate Minority Leader Robert Dole (R-Kan), includes proposals addressing national anti-drug issues such as reducing the national demand for drugs, youth education programs, policies for stopping drugs from entering the workplace, criminal justice, and law enforcement provisions for combating drug abuse.

The paper also outlines policies that would be required from a number of government agencies, including the departments of Labor, Health and Human Services, Transportation, and Education.

An aide to Dole told BNA Aug. 2 that the paper contains provisions that may be incorporated into an omnibus anti-drug bill currently being developed by Senate leaders. The aide said that Senate proponents hope to introduce legislation by the end of this year.

OSHA Powers

With regard to OSHA, Senate Republicans suggest expanding OSHA's authority to ensure drug-free workplaces by allowing the agency to designate drug use in the workplace as an occupational safety or health hazard, and to collect data on the use of drugs in the workplace.

The working paper also recommended that "as a component of OSHA accident investigations, the agency could conduct mandatory drug tests to determine whether drug abuse contributed to the accident," and suggested authorizing $15 million for OSHA enforcement and investigation in this area.

A legislative aide from Dole's office told BNA he was not sure how OSHA would conduct the data collection, or from what type of records that information would be gathered. He said the details of the recommendations were still being discussed with Labor Department officials.

A Labor Department official told BNA "the [Reagan] administration is in the process of formulating its position on all the provisions of [proposed] drug bills, including the provisions on OSHA."

Workplace Provisions

Other Republican proposals for provisions to be included in a Senate anti-drug bill include the following:

- That legislation condition the receipt of any federal contract or assistance upon maintenance of a drug-free workplace.
- That legislation authorize HHS, DOL, and the Justice Department to develop non-binding guidelines for employers and employees who desire drug-free workplaces.
- That such legislation eliminate federal legal hurdles which prevent private employers from conducting drug tests and disciplining workers who fail drug tests.
- The paper also suggests that the Rehabilitation Act of 1973 be amended to specify that, for the purposes of employment protections, the illegal use of a controlled substance be considered sufficient evidence of a danger to the worker using the drug and to the employee's coworkers.

Explaining that provision, the paper said that under current law, drug addiction is considered a handicap, and employees cannot be discriminated against because of it. However, in employment, those protections do not apply if the person's addiction endangers himself or others. "Rather than remove drug addiction altogether from the coverage of the Rehabilitation Act, illegal use of drugs would be prima facie evidence of endangerment of self or coworkers."

This provision would shift the burden of proof toward the person who is using illegal drugs to show that his usage is not endangering anyone in the workplace, the paper said.

Right-To-Know

LAM 010357

UNIVERSAL LABELING IN EFFECT FOR 220,000 PENNSYLVANIA COMPANIES

PHILADELPHIA—(By a BNA Staff Correspondent)—The universal labeling provision of Pennsylvania's Worker and Community Right to Know Act went into effect Aug. 2, requiring the labeling of all chemical containers that enter or leave the workplace.

The provision is the final phase of the law, which was implemented in stages beginning Dec. 1, 1986, covering 220,000 employers with a total of approximately 5 million workers. Labeling and information requirements for hazardous chemicals went into effect a year ago (17 OSHR 413).

"With this final requirement for employer compliance the Right to Know law is now fully in effect," Pennsylvania Labor and Industry Secretary Harris Wofford said. "By

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DPMC-06759

The workshop is aimed toward agencies and individuals concerned with reducing the number of occupational fatalities, and will be open to attendees at no charge, according to NIOSH.

The session will be held at the National Mine Safety and Health Academy in Beckley.

Interested persons were asked by the institute to pre-register by contacting either Jan Mainwaring or Dwayne Smith at NIOSH. 944 Chestnut Ridge Road, Morgantown, W.Va. 26505-2888, (304) 291-4811 or (304) 291-4804, respectively.

Chemicals

FINAL RULE REQUIRES STUDIES ON CUMENE: TESTS COULD COST $1.5 MILLION, EPA SAYS

Makers and processors of cumene, a production chemical, must perform health effects, environmental effects, and chemical fate tests that the Environmental Protection Agency estimated will cost as much as $1.5 million, under a final rule issued July 27.

EPA issued the rule under Section 4 of the Toxic Substances Control Act, saying that workers are among those people potentially exposed to cumene, also known as isopropyl benzene.

Cumene is used primarily in the production of phenol and acetone, and a small amount is exported, EPA said. Cumene also is used to make α-methylstyrene and as a high-octane component in aviation fuel, according to the agency.

The tests specified in the rule are:

- Oral and inhalation comparative pharmacokinetics;
- Subchronic inhalation toxicity;
- Developmental toxicity;
- Neurotoxicity.

If the reproductive tissues in animals exposed to cumene in the subchronic inhalation tests show adverse effects, EPA might require a two-generation reproductive effects study, the rule said. The agency would hold a public review before requiring the reproductive study, it said.

EPA said between 700 and 800 workers are exposed to cumene during manufacturing and processing. U.S. production of cumene in 1984 was a reported 3.35 billion pounds, with an additional 339 million pounds imported, according to the agency.

The Interagency Testing Committee in November 1984 designated cumene for a number of studies. The committee includes representatives from the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health, as well as EPA.

For further information, contact Michael Stahl, acting director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M St. S.W., Washington, D.C. 20460; (202) 554-1404, or (202) 554-0551.

Worker's Compensation

REDUCTION IN RATES, OTHER CHANGES IN ALASKA PROGRAM TAKE EFFECT TEMPORARILY

JUNEAU, Alaska—(By a BNA Special Correspondent)—A 5.7 percent reduction in worker's compensation insurance rates in Alaska went into effect July 1 and will last at least 18 months, Gov. Steve Cowper said.

The reduction is a result of passage by the state Legislature of a bill (SB 322) that raises minimum weekly benefits and lowers maximum weekly benefits for injured workers, reduces vocational rehabilitation benefits, and limits the ability of workers to file claims for stress-related injuries.

Extremely high worker's compensation insurance rates in Alaska prompted the Legislature's actions, said Don Koch, chief of market surveillance for the Alaska Division of Insurance. "The premium level went up an average of 14.5 percent on Jan. 1, 1987, and 25.1 percent on Jan. 1, 1988," Koch said.

The new law decreases the maximum weekly benefit from $1,094 to $700, increases the minimum from $110 to $154, and increases maximum permanent partial disability benefits from $60,000 to $135,000. Under vocational rehabilitation benefits, the law makes a rehabilitation program voluntary, rather than mandatory, and changes the intent of rehabilitation, aiming to make the beneficiary "employable" rather than the current goal of "employed."

It removes the presumption of compensability for mental injuries caused by stress and establishes that work stress must be extraordinary and unusual, and that the work stress must be the predominant cause of mental injury.

The 5.7 percent rate reduction will be reviewed after 18 months, Koch said. The legislature has not specified what action will be taken then, he said.

Display Terminals

TIPS ON REDUCING EYE FATIGUE INCLUDED IN 12-PAGE BOOKLET ON VDTs

A booklet recommending methods for reducing eye fatigue resulting from working with video display terminals is available from the Center for Office Technology, a national clearinghouse for information on the use of automated office technology.

The 12-page booklet, *Working with Displays: VDTs and Vision*, contains tips on the appropriate screen distance, viewing angle, and task lighting needed to reduce eye fatigue and glare, according to a notice from the clearinghouse.

For example, the booklet recommends that workers use an adjustable document holder to place materials close to the screen and within the same general viewing distance. It also recommends that the top of the screen be slightly below eye level when the worker is sitting at the keyboard.

To reduce glare, the booklet recommends the use of shielded lighting and anti-glare screens, and suggests positioning the terminal away from direct sunlight.

"Eye fatigue is both normal and temporary, but it can be minimized with a little care, good work practices and attention to your work environment," according to the booklet.

Up to 10 copies of the booklet are available for free from COT. Additional copies are available for 25 cents each. For more information, contact COT, Suite 900, 1130 Connecticut Ave. N.W., Washington, D.C. 20036; (202) 828-7189.

LAM 010358

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ton, D.C 20210. The title of the publication and a self-addressed mailing label must be included.

State Plans

FUNDING FORMULA TO APPLY TO 'NEW MONEY'; OSHA TO EXAMINE ALTERNATE SOURCES OF FUNDING

A new formula for allocating federal funds to state-plan programs will be used by the Occupational Safety and Health Administration starting in fiscal 1989, but it will not affect basic funding levels for those programs and indeed may not have any effect at all, according to observers.

OSHA Administrator John A. Pendergrass, announcing the new scheme in a June 6 memorandum to state-plan directors, said the formula would be applied only to any "new money" provided to the state-plan programs by Congress in a fiscal 1989 appropriations measure, above the level of funding requested by the Reagan administration.

The amount of funding requested by the administration, including a cost-of-living increase that would give the state programs 2 percent more than the amount they received in fiscal 1988, still would be allocated under OSHA's long-time distribution formula.

However, the OSHA administrator added that the agency will continue to examine alternative ways to find additional funding for state-plan operations.

Decision Reflects 'General Consensus'

Some sources told BNA that the new formula announced by Pendergrass may have no real effect at all in fiscal 1989. Although the House and the Senate Appropriations Committee both have called for extra funding for state plans above the administration's requested level in their respective versions of the pending fiscal 1989 appropriations bill, both also have stipulated that the additional amount must be distributed evenly among the states, the sources note (18 OSHR 97, 463).

State-plan funding has been a long-time source of controversy for OSHA and state plan designees. Some state programs have urged OSHA to develop new funding allocation strategies, while others have urged that the current allocation formula remain unchanged and have criticized the new funding formula.

According to the memo, Pendergrass said his decision to apply the formula only to new funding was the result of a "general consensus" of the states that cost-of-living increases should be evenly distributed among them.

"The formula as revised allows, at a minimum, states to maintain their existing programs while at the same time adhering to the agency's commitment to more fairly apportion state plan funding," Pendergrass said.

In July 1987, Pendergrass announced he would implement the formula due to the "heightened interest" of the Office of Management and Budget and other oversight agencies in the way OSHA funds the state programs (17 OSHR 1003).

The formula, drafted by a joint federal-state task force, bases the allocation of funds on a comparison of state employment records and Bureau of Labor Statistics data on national lost-workday injury rates. The two sets of numbers would be used to determine the percent of the total funding each state should receive.

Currently, funding is based on a state's ability to match federal funding, and the first states that entered into state plan agreements with OSHA are given about the same proportion of funds they originally received although the number of states plans has grown and the agency has gone through budget cuts (16 OSHR 1112).

Matching Funds

The memo by Pendergrass said that if a state is unable to match the federal funds available to it, the unmatched funds will return to the "new money" pool and be reapportioned to other "below parity" states—those that receive less than the "ideal" amount they would be entitled to under the new formula, an OSHA official explained.

If none of the remaining "below parity" states can match the funding, the funds would be made available to other states for one-time-only projects, but would not increase their funding base, the memo said.

Bruce Hillenbrand, director of OSHA's division of federal-state operations, told BNA that a state that cannot match federal funding would not necessarily lose all additional funding, and could be offered a lesser amount that it could match. He also said that any "one-time-only project" proposed by a state would need approval by an OSHA regional office.

OSHA To Examine Other Sources

Other potential sources of funding that OSHA intends to study, Pendergrass said in his memorandum, could include realigned, unexpended state grant funds; unmatched funds for cost-of-living increases; and disallowed funding requests from states for updating or buying equipment and programs for OSHA's Integrated Management Information System.

Pendergrass also said the agency would "look more closely" at certain programs and activities within each state that may not be "strictly within the appropriate scope of an approved safety and health plan."

Hillenbrand said an example of such an activity is a state licensing or permit program for certain types of construction work, or inspection targeting programs that are not mandated by OSHA.

LAM 010359

Litigation

BRIEFS FILED IN APPEAL OF DECISION EXCUSING REFINERY FROM FIRE SAFETY STANDARD

The U.S. Department of Labor filed arguments July 8 with the U.S. Court of Appeals for the Seventh Circuit, appealing a hearing judge's decision to vacate a citation charging Unocal Corp. with failure to adequately train and protect employee firefighters in connection with a 1984 refinery explosion in which 17 workers died (*Secretary of Labor v. Union Oil of Calif.*, CA 7, No. 88-1374).

The secretary of labor argued that the judge's decision defeated the worker-protection purpose of the Occupational Safety and Health Act.

The judge found that the personal protective equipment requirement of the standard did not apply to the Unocal (then Union Oil Corp.) fire brigade, and that Unocal did not violate the standard by failing to give adequate fire training to employees who were not members of the fire brigade (17 OSHR 1493, 1867).

General Standard Applies To All Firefighters

The secretary contended that the judge erred in holding that the standard did not apply to Unocal fire brigade members because they did not fight indoor fires.

While the standard specifically requires protective equipment to be worn by indoor firefighters, the secretary argued, it does not address the hazards faced by, or requirements for, outdoor firefighters such as those involved in the 1984 refinery explosion.

DPMC-06761

Therefore, the secretary concluded, the existence of a specific standard for "interior" fires cannot be understood to excuse Unocal from failure to protect its "exterior" fire fighters from the hazards of fire fighting.

All Unocal Employees Expected To Fight Fires

In challenging the decision to vacate the charge of inadequate training of certain employees, the secretary emphasized one witness's testimony that oil refinery fires can escalate rapidly from small to extremely large fires. This circumstance proves the need for all of Unocal's employees to be adequately trained to handle major oil-fire emergencies, according to the secretary.

Under the training standard, all employees that are expected to fight fires are required to be adequately trained to do so, the secretary contended.

The decision to vacate the citations regarding fire training and protective gear, the secretary asserted, would permit Unocal to focus on employee titles, rather than duties, with respect to safety protection. In that way, Unocal could avoid protecting the safety of those employees who, while not members of the fire fighting brigade, are nonetheless expected to actively participate in hazardous fire fighting in emergencies, the brief stated.

Possible criminal charges stemming from the 1984 explosion are currently under investigation by the U.S. attorney in Chicago (17 OSHR 1867).

Voluntary Protection

OSHA CLARIFIES REQUIREMENTS FOR VPP, SPECIFIES ENFORCEMENT REFERRAL POLICY

The Occupational Safety and Health Administration announced changes to its voluntary protection programs July 12 in an effort to clarify requirements and specify its policy on enforcement referrals prompted by information received as part of the programs. The changes went into effect June 29 (53 FR 26339, 7/12/88).

Although OSHA said it had not handled an enforcement referral related to voluntary protection program participation since establishing the programs in 1982, the agency outlined its planned response in such a case. If management refuses to correct unsafe working conditions, OSHA first will try to resolve the dispute and then transfer all available information to the agency head, who will decide whether an enforcement referral is appropriate.

In addition, OSHA has clarified a portion of the VPP requirements to specify its ability to waive some formal requirements for small businesses based on a case-by-case assessment.

Other changes are clarifications that do not include significant alterations to the programs.

The VPPs are voluntary programs that recognize qualified employers whose safety and health programs exceed federal requirements, thus making regular inspections unnecessary, according to OSHA. Those who are recognized by the federal agency for their efforts are removed from OSHA's programmed inspection lists.

The agency's VPPs include two programs, Merit and Star, in addition to a demonstration program to explore experimental approaches. General industry and the construction industry have some separate requirements.

Grants

PUBLIC HEALTH SERVICE PROPOSES CHANGES TO RULES GOVERNING APPEALS OF ADVERSE ACTIONS

The U.S. Public Health Service July 8 proposed certain changes in regulations governing disputes between PHS agencies such as the National Institute for Occupational Safety and Health on one hand, and recipients of grants from those agencies on the other (53 FR 25631, 7/8/88).

The regulations at 42 CFR Part 50 pertain to disputes created when PHS agencies deny further funding to grant recipients—for example, in cases where an agency such as NIOSH terminates a grant, or declines to pay an expense charged to the grant.

The regulations require grant recipients, in challenging such decisions, to try to resolve their disputes with the PHS in certain situations before appealing them further to the Department of Health and Human Services, of which the PHS is a component.

Under one of the proposed changes, these requirements now would pertain to recipients of previous grants who are denied new, non-competitive funding to continue their earlier work, when PHS determines that a recipient has failed to comply with the terms of the previous award. Such disputes previously were not covered by the requirements.

Proposed Exemption

Under a second proposed change, a type of dispute currently covered by the preliminary-appeal requirements would be exempted: cases in which the grantee is denied a written request for advance permission to incur a particular expense during the course of the grant.

The proposal also would require the grant recipient, in appealing an agency decision, to provide a copy of the adverse determination, plus documentation supporting the recipient's claim, to the review committee designated to evaluate the appeal.

The proposed changes would bring the PHS procedures into conformance with separate rules in 45 CFR Part 16 governing disputes heard at the departmental level, the notice of proposed changes said.

Comments on the proposed changes should be submitted to the Director, Division of Grants and Contracts, Office of Resource Management, Public Health Service, Room 17A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857.

For further information, contact Theodore J. Roumel, (301) 443-1874.

LAM 010360

Pesticides

EPA PLANS FIRST PUBLIC HEARING JULY 18 TO DISCUSS FARM WORKER SAFETY PROPOSAL

The Environmental Protection Agency will hold a public hearing in Washington, D.C., July 18 on proposed standards to protect farm workers from hazardous exposure to pesticides, the agency announced July 8.

The hearing is the first of a series of meetings to be held in each of EPA's 11 regions to explain and answer questions on its pesticide proposal. Dates for the following meetings have not yet been set.

The plan, announced June 29, would revise EPA regulations to expand existing requirements for warnings about

DPMC-06762

Attachment VI

Mobil Chemical Company

PETROCHEMICALS DIVISION

WORLD TOWERS ONE SUITE 900
15600 DRUMMET BOULEVARD
HOUSTON TEXAS 77032 2343
TELEPHONE (713) 590 7700

June 27, 1988

Mr. James V. Woodrick
Gulf Coast Regional Manufacturing Services
E. I. Du Pont De Nemours & Company
One Kingwood Place, Suite 116
Kingwood, Texas 77339

Dear Mr. Woodrick:

For your information, please see the attached completed document that will be submitted by the Texas Chemical Council on OSHA's proposed regulation on Lockout/Tagout.

The ad hoc committee, composed of Ed Harris, Walter Trebig, Wayne Wright and the undersigned met and prepared a draft. After review by the committee and a DuPont representative, minor modifications were made.

I would like to thank the committee for their effort and completion of this project in such a short time frame.

Sincerely,

W. D. Mitterlehner

W. D. Mitterlehner, CSP
Mgr. Safety, Health and Loss Prevention
Petrochemicals Division

WDM/ns

cc: E. Harris, Jr. - Quantum
W. B. Trebig - PDG Chemical, Inc.
W. E. Wright - CXI
S. E. Anderson - Rohm & Haas
R. E. Sybert - Mobil Chemical Co.
L. E. McMakin - Mobil Chemical Co.

LAM 010361

DPMC-06763

1.(C)(G)(i)(A&B) OSHA should not require employers to label energy isolating devices to identify the equipment being supplied and the typ and magnitude of energy being controlled. Labeling of energy isolating devices in this manner is not necessary for the implementation of an effective lockout/tagout program. In addition, it could be confusing and would needlessly increase the cost of compliance at facilities where large numbers of valves serve an energy-isolating function.

2.(C)(1) &
(D)(3)(ii) Energy isolating devices:
Add the words "double block (valves) and bleed; line separation.

3. TCC recognizes that the inherent energy in process systems or piping networks presents a potential hazard to workers servicing or maintaining the systems. In fact, the hazard is well recognized, and addressed by employers throughout our industry by "work authorization procedures," frequently referred to as safe work permits or pipe entry procedures. Just as lockout/tagout practices were developed within industry to deal with the hazardous energy of machinery and equipment, so too have work authorization procedures (controls) been developed in our industry to safeguard workers maintaining process systems and piping networks.
<u>TCC urges OSHA to revise the scope and application of this proposed rule to address only machinery and mechanical equipment, and to eliminate the attempt to "force fit" a lockout/tagout control on process systems and piping networks.</u>
In addition to arguments already advanced, TCC is convinced that OSHA has significantly underestimated the costs of applying the lockout/tagout control to the process industries.

4. TCC's concern on implication on the terms of certify and/or certification - should be changed to read "document and or documentation. (C)(4)(ii) & (C)(5)(iii)."

5.(C)(4)(ii) There is no more need to require certification of these periodic inspections than there is to require certification of compliance with a host of other requirements (such as periodic exposure monitoring, medical surveillance, and employee training) that are set forth in a wide variety of OSHA standards without a certification requirement.

6.(C)(5)(iii) We strongly disagree, however, with the provision of Section (c)(5)(iii) requiring employers to <u>certify</u> that employee training has been accomplished and is being kept up-to-date. As in the case of periodic inspections, we recognize the need to maintain records of employee training, showing the name of the employees who received the training and the dates on which it was provided. Written records of this sort will enable the employer to keep track of the training program and will assist OSHA compliance officers in determining whether the employer has complied with the training requirements of the standard. But there is no need to embody these records in a certification, just as there is no need for a certification relating to the performance of periodic inspections or to compliance with a host of similar requirements in a broad array of OSHA standards. Accordingly, Section (c)(5)(iii) should be revised to read as follows: "The employer shall maintain records showing the names of the employees who have been trained and the dates of training."

7.(C)(5)(ii) Periodic retraining - paragraph (c)(5)(ii) - is generally satisfactory, except for the overly broad requirement to retrain <u>all</u> employees when a periodic inspection reveals deviations or inadequacies. The retraining should be restricted to those authorized and affected employees in the area, craft, or department in which the deviations or inadequacies are revealed. To require retraining of <u>all</u> authorized and affected employees in a large establishment (hundreds, even thousands of employees) basis a deviation in a single area is unnecessary, wasteful, and essentially punishes good performance. <u>Revise this item to limit the retraining to the area, craft, or department where deviations or inadequacies are revealed.</u>

8. Revise (f)(2)(ii) to state, "The plant or facility employer shall require that the lockout/tagout ...."

9. Shift or personnel changes - paragraph (f)(4)
TCC agrees that the OSHA regulation must ensure the integrity of the control procedure across shift change. This is particularly important in the process industries which operate around the clock, 365 days per year, and for which many machines, mechanical equipment, or process and piping systems remain de-energized for long periods of time. One way that this problem is handled efficiently and effectively in the process industries is the "operations lock tag or tags". The lockout device is put in place by the operating personnel who have shut down and de-energized the machine. The "operations lock" is the first lock on, and it stays on, across shift changes, ensuring that the machine or equipment is always controlled in a de-energized condition. Craftsmen come and go, placing their lock tag or tags on - and taking their lock tag or tags off - as they complete their tasks or leave for the day. The operations lock does not come off until all craftsmen' lock tag or tags are off. This system is extremely effective, extremely efficient and extremely protective.

OSHA has not yet seemed to recognize the importance of this approach for the process industries. The provisions of (f)(4), and particularly of the Appendix, do not seem to permit this procedure. TCC strongly urges OSHA to revise this section to specifically authorize the use of operations lock tag or tags as an effective and efficient way to control energy hazards across shift change in the process industries.

Attachment VII

State Firemen's and Fire Marshals' Association of Texas
Texas Industrial Fire Training Board
P.O. Box 525 • Pasadena, Texas 77501 • (512) 441-7388

May 13, 1988

Society of Fire Service Instructors
30 Main Street
Ashland, Mass. 01721

Attention Mrs. Mary McCormick

LAM 010365

Dear Mrs. McCormick:

I appreciated the opportunity to visit via telephone with you on May 12 concerning your society's upcoming meeting in Los Angeles. I regret that I will not be able to attend, but do appreciate the opportunity to provide input and share our organizations concerns about the upcoming attempt to write performance standards for the industrial fire service leading to eventually a "certification" process.

It is my understanding that the May 17 meeting is an organizational meeting to initiate this process. Until that task force finishes their assignment, we will reserve final judgment on how it might impact the industrial fire service in Texas. We think there are alternatives to the "certification" process. The Texas Industrial Fire Training Board was formed in 1978 and has been quite successful at administrating and improving the industrial fire service in Texas. I am attaching a copy of our brochure for your information. We would be glad to share our experiences and detail to your societys task force our mission and our accomplishments.

We are of the opinion that the certification process is not the universal answer to problems that you addressed. Because the industrial segment of the fire service is so varied and unique, we feel that it would be impractical, ineffective, and inefficient to impose a lot of generic criteria on any industry. Responsible companies in each industry have always addressed the need for protecting its employee's and its community neighbors. Today, the constraints and responsibilities placed on industry far exceed those that the private and governmental sectors must address. The effectiveness for many of these rules, regulations, certifications, programs, etc. is questionable. The cost for attainment can be prohibitive. Liabilities created are prohibitive. These type of concerns can be counter productive to our mutual goal of effective, efficient, and responsible fire suppression training to meet the reasonable needs for the facility.

The Texas Industrial Fire Training Board has been able to assist Texas's industry in meeting the criteria established by the board to improve performance and proficiency. We have accomplished this without the certification process. I feel certain that the major industry associations will support this approach. Who better knows the peculiar fire training needs for the industry, than the industry itself?

I hope that our organization or organizations that we are affiliated with may supply input to your society's task force. Our concerns are genuine and well founded. Our input should be valuable to your task force so that major portions of the industrial fire service are not alienated and burdened by yet further unnecessary constraints on our business.

Sincerely,

Thomas H. Dearing, Chairman
Texas Industrial Fire Training Board

THD/jb

Attachment

cc: Mr. M. S. Hildebrand
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