

Air Products

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INTEROFFICE
MEMORANDUM

LAW DEPT.

Subject OSHA Testimony

To R. H. Schenck/L. B. Tepper, M.D.

Law/Personnel

(Location, Organization, or Department)

From J. T. Barr

Plastics R&D

(Location, Organization, or Department)

Attached are three items relating to the OSHA testimony on their carcinogen proposal.

1. A draft of comments on the economic aspects of the proposal. This is Section V of the attachment to my 4 January memo.
2. Comment on the definition of authorized persons. This should be inserted after the second paragraph of page 1 of Section VI, detailed comments, of the 4 January memo.
3. Several examples of the use of "acceptable" limits by other agencies.


J. T. Barr

JTB/sjl
Att.

(320)

AP00048515

DRAFT
Issue - on Sec V of my memo of 4 Jan

✓
Economic Aspects

A critical deficiency of this proposal is the lack of an economic evaluation of the consequences, and the failure to perform any cost/benefit analyses to assist in determining an optimum regulatory level.

We have participated in the industry-sponsored economic evaluation of this proposal conducted by Booz-Allen, and have identified 17 materials of interest to us in their list of the 99 most important chemicals that were abstracted from the NIOSH suspect carcinogen test. Three of these are products, the remainder are raw materials. We have estimated that the cost of compliance, over and above our present expenditures ^{for the protection of our employees} will range from an investment of \$5.2MM and an annual added cost of \$2.1MM, if all are put in Category II, up to an investment of \$24.9MM and an added annual cost of \$13.1MM if they all were Category I with an allowable exposure of 10 ppb. Details are in the attached table. Our experience with vinyl chloride and other regulated materials leads us to expect that these preliminary estimates will turn out to be low.

The very least that industry can expect before it expends resources that may be five times that necessary to provide adequate protection to its personnel is that some justification be provided for the incremental expenditure in terms of its necessity to produce an improved quality of life. This OSHA has steadfastly refused to do while holding to the position that only zero exposure can be acceptable.

AP00048516

In several instances the cost of compliance approached the value of the production facility, and in a few cases it was so large that, if required, the only prudent economic decision would be to cease use of that material. In a few other cases development funds would be expended to seek alternatives.

There is no question that these funds should be spent if it is clear that the material in question constitutes a danger to health. It is not clear, however, that unlimited resources should be expended merely because OSHA will not take sufficient time to explore the requirements for a particular material.

We believe that a thorough case-by-case study with an appropriate economic analysis is required for each chemical to be regulated.

AP00048517

COMPLIANCE COSTS, \$M

	II	Category		
		I at 10 ppm	I at 1 ppm	I at 10 ppb
Capital and Incremental First Year Operating Costs	5,184	6,575	15,092	23,558
Development Costs for replacement materials	-	378	378	378
Total Investment	5,184	6,953	15,470	24,936
Added Annual Costs	2,121	3,548	9,371	12,766
Foregone Contribution Margin	-	317	317	317
Total Yearly Costs	2,121	3,865	9,688	13,083

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*Insert in proper place in
Sec II of my memo of 4 Jan.*

1910.0000

b. Definitions: Authorized Persons

No provision has been made for entry of several categories of persons who must enter regulated areas, and are other than employees of the operator or representatives of the employees. These include local safety and enforcement officials, service personnel for telephones, fire protection systems, elevators, weighing devices, and the like, contractors' employees, and representatives of various federal agencies. The exposure of these individuals is infrequent and unlikely to be severe. The enforcement of medical, hygiene, and other provisions of the proposed regulation is beyond the power of the operator, yet their presence is necessary.

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Examples of the Use of "acceptable" risks by Other Agencies

EPA

Train issued a statement on 19 May 1976, see 41 FR 21402, that not all pesticides would be regulated, even though toxic. A decision would be made in each case as to the necessity of regulation. He speaks at length of risk/benefit requirements as a policy.

During the carbon tet spill into the Ohio last year, the Agency frequently stated that the concentration had fallen to below 100 ppb, a "safe" level.

The recent requirement that large cities install carbon beds for chlorinated water suppliers does not require that all chlorinated compounds be removed, but only to a specified concentration of 0.10 mg/l.

The Agency proposed a transuranium element exposure at a calculated risk of 1 per million per year, and discussed the social acceptability of this- 42 FR 60956.

Jellnik has been quoted as saying, "TOSCA demands that EPA weigh the risks and benefits of the decision."

FDA

An acceptable sensitivity for the DES analytical method was chosen based on a 1 per million risk. ^{years} ^{per} ^{year} ^{per} ^{year}

The action level for aflatoxin was set at levels, which if animal data are taken as human risk rates, leaves a substantial risk. This was balanced against the cost of excluding more grain crops from feed uses.

Examples of the Use of "acceptable" risks by Other Agencies (cont'd)

Congress

Congress has ^{permitted} ~~required~~ continuance of saccharin sales despite reports of carcinogenicity in animals.

The legislative history and specific words of the OSH Act require a residual risk based on feasibility.

The Federal Insecticide, Fungicide and Rodenticide Act requires a balancing of risks and benefits.

Carter

An administrative policy, being circulated in October, would require all agencies to justify their proposed regulations on the basis of public need.

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