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DATE October 29, 1985

To: Brake Performance Study Committee ____

Data Book & Technical Committee ____

Health & Environmental Affairs Committee X

____ ____

Subject: Forwarding of Letter, Correspondence, or Publication

We are enclosing a copy of:

Letter sent to the House of Representatives and copy of HR 1309 "The High Risk Occupational Disease Notification and Prevention Act of 1985." This was forwarded to the Institute by the American Mining Congress. It would appear that certain secions of the proposed legislation could overlap OSHA regulations now in effect concerning rules on hazard communications.

For your information.

EWD/erc
Enclosure:

E. W. Drislane
Executive Director

Same letter to all members of Subcommittees on Labor Standards and Health and Safety

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* Immediate Past Chairman
+ Honorary

October 21, 1985

The Honorable Joseph M. Gaydos
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Knowing of your interest in H.R. 1309, "The High-Risk Occupational Disease Notification and Prevention Act of 1985," I am enclosing a summary of the testimony presented by American Mining Congress (AMC) witnesses at the October 9 hearing held jointly by the Subcommittees on Labor Standards and Health and Safety.

As you may know, AMC represents the vast majority of the producers of the nation's coal, metals, and industrial and agricultural minerals, as well as manufacturers of mining machinery, equipment and supplies. As a representative of the nation's mining industry, we have a vital interest in the health and safety of our employees, and we are committed to their protection.

While we applaud, and wholeheartedly endorse, the concern for the protection of the workforce that led to the introduction of H.R. 1309, our serious concerns with the provisions of the bill demand we strenuously oppose its enactment.

Our concerns with the bill can be summarized in three general categories:

- **H.R. 1309 IS NOT NEEDED TO ACCOMPLISH WORKER NOTIFICATION OF HAZARDS OR EMPLOYEE PROTECTION**

  (a) Under OSHA and MSHA requirements, workers are trained regarding the hazards of workplace exposure and how to protect against them.

  (b) MSHA and OSHA conduct extensive industrial hygiene inspections that evaluate hazards at workplaces and result in enforcement actions if employees are not being properly protected.

We hope that this summary of our position will be useful to you in your consideration of H.R. 1309. If we can be of further assistance to you in this, or any other matter, please contact me or Henry Chajet, AMC senior counsel, at 861-2857.

Sincerely,

J. Allen Overton, Jr.
President

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Morgret, Peter M.	Minority Legislative Associate	Annex 2	H2-535	226-3113

SUBCOMMITTEE ON LABOR STANDARDS

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99TH CONGRESS
1ST SESSION

H. R. 1309

To establish a system for identifying, notifying, and preventing illness and death among workers who are at increased or high risk of occupational disease, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1985

Mr. GAYDOS (for himself and Mr. HAWKINS) introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To establish a system for identifying, notifying, and preventing illness and death among workers who are at increased or high risk of occupational disease, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "High Risk Occupational Disease Notification and Prevention Act of 1985".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

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(1) many harmful substances and physical agents are in wide industrial and commercial use in the United States;

(2) a significant number of workers suffer disability or death or both from occupational diseases caused by hazardous occupational exposures;

(3) diseases caused by hazardous occupational exposures constitute a substantial burden on interstate commerce and have an adverse effect on the public welfare;

(4) there is a period of time between exposure and the onset of disease when it is often possible to medically intervene in the biological process of disease to either prevent or, by early detection, successfully treat many disease conditions;

(5) a significant number of identifiable occupational populations are at risk of developing diseases because of hazardous occupational exposures;

(6) by means of established edpidemiological, clinical and laboratory studies, it is possible to define and identify very specific worker populations at risk of contracting occupational diseases;

(7) there is no established national program for identifying, notifying, counseling, and medically monitoring worker populations at risk of occupational diseases;

(8) workers have a basic and fundamental right to know they have been exposed to an occupational hazard and are at risk of contracting an occupational disease;

(9) social and family services that reinforce health promoting behavior, reduce the risk of diseases;

(10) there is a lack of adequately trained medical and human service professionals, as well as appropriately staffed and equipped health facilities to recognize and diagnose occupational diseases;

(11) there is a need for increased research to identify and assist worker populations at risk of occupational diseases;

(12) through prevention and early detection of occupational disease the staggering costs of medical treatment and care in the United States can be substantially reduced.

(b) PURPOSES.—It is the purpose of this Act—

(1) to expand Federal research efforts to further identify and define worker populations at risk of occupational disease;

(2) to establish a Federal program to notify individual workers within populations at risk of occupation-

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ally induced disease that they are at risk because of a hazardous occupational exposure, and to counsel them appropriately;

(3) to authorize and direct the certification of occupational and environmental health facilities;

(4) to establish a set of worker protections against discrimination on the basis of identification and notification of occupational disease risk.

SEC. 3. SURVEILLANCE AND RESEARCH.

(a) RESEARCH ON IMPROVED SURVEILLANCE METHODS.—The Secretary shall, primarily through the occupational and environmental health centers established under section 6, conduct research into improving the means of surveillance of employees exposed to occupational health hazards, and research into improved means of medical monitoring and treatment of employees exposed to occupational hazards. Such research shall include but not be limited to the following areas—

(1) studying the etiology and development of occupationally related diseases, and the development of disabilities resulting from such diseases;

(2) developing means of medical surveillance of employees exposed to occupational health hazards;

(3) examining the medical treatment of workers exposed to occupational health hazards, and means of

medical intervention to prevent the deterioration of the health and functional capacity of employees disabled by occupational diseases;

(4) studying and developing medical treatment and allied social services of employees exposed to occupational health hazards; and

(5) developing educational programs designed to assist employees and their families take measures which ameliorate the effects of those diseases.

(b) RESEARCH TO IDENTIFY POPULATIONS AT RISK.—(1) The Secretary shall undertake, or shall sponsor, additional epidemiological, clinical, and laboratory research to identify and define additional employee populations at risk of occupational disease.

(2) This expanded research shall be conducted or sponsored, or both, by the Institute.

(3) In conducting its research under this subsection, the National Institute for Occupational Safety and Health shall have access to prior and current employment, occupational, and health-related data and information maintained by agencies of the Federal Government.

(c) AUTHORITY TO EMPLOY EXPERTS AND CONSULTANTS.—In carrying out research under this section, the Secretary is authorized to engage the services of experts and consultants, as he deems necessary.

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SEC. 4. RISK ASSESSMENT BOARD.

(a) ESTABLISHMENT.—There is hereby established the Risk Assessment Board which shall be located within the Institute. The Director of the Institute shall serve as the Chairman of the Board. The Board shall consist of four members in addition to the Chairman. Members shall be career Public Health Service employees designated by the Surgeon General of the United States to serve terms of five years, except that initially one member shall be appointed for three years, two members for four years, and two members for five years. The Board shall include an epidemiologist, toxicologist, industrial hygienist, and physician. There shall be a full-time Secretariat provided by the Institute to the Board.

(b) FUNCTIONS OF BOARD.—(1) The Board shall—

(A) review current medical and other scientific studies and reports concerning the incidence of disease associated with employment;

(B) report to the Secretary on the state of current research with respect to such diseases; and

(C) designate from this review employee populations at risk of disease associated with hazardous occupational exposures.

(2) In identifying populations at risk of occupational disease, the Board shall consider the following factors based upon the best available scientific evidence—

(A) studies of agents, processes, or jobs that may be toxic based upon epidemiologic and clinical observations of human populations, or animal and laboratory studies;

(B) studies relating to estimates of increased risk of death or disease in specific sites, systems or organs of the body in exposed populations.

(3) If the Board determines that a class or category of employees is a population at increased risk of occupational disease, it shall make such a finding and, within ten days of making such a finding, transmit a recommendation to the Secretary that the individuals within such population be notified under section 5 of this Act.

(4) If the Board determines that a class or category of employees is a population at high risk of occupational disease, it shall make such a finding and, within ten days of making such a finding, transmit a recommendation to the Secretary that the individuals within such population be notified under section 5 of this Act and be eligible for services and information under section 5 of this Act appropriate to the nature and extent of the risk.

(c) PRIORITY FOR REVIEW.—The Board shall undertake as its first priorities for review those employee populations exposed to hazardous occupational exposures for which there already exists a permanent standard under section

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6(b)(5) of the Occupational Safety and Health Act. The Board shall transmit to the Secretary its findings and recommendations on these employee populations within one year from the effective date of this Act.

SEC. 5. EMPLOYEE NOTIFICATION AND COUNSELING.

(a) NOTIFICATION OF POPULATION AT RISK.—Upon a determination by the Secretary that a given class or category of employee is a population at risk of occupational disease, the Secretary shall notify each individual within the such population of the risk.

(b) CONTENTS OF NOTIFICATION.—The Secretary's notification shall include:

(1) The nature and degree of risk (high or increased) and the reasons therefor.

(2) An identification of the hazardous occupational exposure including the name, composition, and properties of known chemical agents.

(3) The disease or diseases associated with the hazardous occupational exposure.

(4) Any known latency periods from the time of exposure to time of the clinical manifestation of the disease.

(5) The size, nature, and composition of the population at risk.

(6) Counseling information appropriate to the level of risk including, but not limited to—

(A) the advisability of initiating a personal medical monitoring program;

(B) the most appropriate type of medical monitoring for the disease associated with the risk;

(C) the name and address of the nearest occupational and environmental health center certified under this Act; and

(D) the telephone number of the "hot line" established under subsection (c) of this section.

(c) TELEPHONE INFORMATION.—The Secretary shall establish a telephone "hot line" for the personal physicians of employees notified under this section, for the purpose of providing additional medical and scientific information concerning the nature of the risk and its associated disease.

(d) DISSEMINATION OF INFORMATION.—The Secretary shall prepare and distribute other medical and health promotion material and information on any risk subject to notification under this section and its associated disease as he deems appropriate.

(e) ACCESS TO INFORMATION.—In carrying out his notification responsibilities under this section, the Secretary shall have access to information and data contained in the

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records of any Federal agency solely for the purpose of obtaining names, addresses and work histories of employees subject to notification under this section.

SEC. 6. OCCUPATIONAL AND ENVIRONMENTAL HEALTH CENTERS.

(a) SELECTION OF EXISTING FACILITIES.—(1) The Secretary shall select from educational resource centers of the Institute and similar centers of the National Institute for Environmental Health Sciences for the purpose of establishing and certifying occupational and environmental health centers within each facility. At a later date, the Secretary shall select for such purpose from existing health care facilities an appropriate number to obtain even regional distribution throughout the United States of such centers.

(2) Such centers shall be selected on the basis of their ability and experience in the recognition, diagnosis, and treatment, and research, of occupational diseases in an ethical manner and shall be certified as such under criteria developed by the Secretary.

(b) CAPABILITY OF CENTERS.—The centers shall be capable of providing research resources, diagnosis, treatment, medical monitoring, and family services for employees notified under section 3 of the Act who are at high risk of occupational disease.

(c) CRITERIA FOR MONITORING.—The Secretary shall develop criteria governing the most appropriate type of medical monitoring.

(d) COST OF TRAINING AND EQUIPMENT.—The Secretary shall be responsible for developing a program for training of existing personnel and procuring specialized equipment required under the certification criteria developed pursuant to subsection (a).

SEC. 7. EMPLOYEE DISCRIMINATION.

(a) DISCRIMINATION PROHIBITED.—No employer, insurance carrier, or any other person shall discharge or in any manner discriminate against any employee on the basis that the employee has been notified by the Secretary that he is at risk of any occupational disease.

(b) BENEFIT REDUCTION PROHIBITED.—If, based upon sound medical advice or medical monitoring (or both) initiated under section 4 of this Act, it is determined that an employee should be transferred to a less hazardous or non-exposed job, the employee shall retain the same rates of pay, benefits, and seniority as in the former job.

(c) DISCRIMINATION IN MONITORING AND TREATMENT PROHIBITED.—No health care financing system shall in any way discriminate against an employee who has been notified by the Secretary under section 5 of this Act in the payment of the costs associated with a medical monitoring

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program, or any subsequent treatment, including treatment required by a medical monitoring examination or the onset of disease.

(d) REVIEW OF DISCRIMINATION COMPLAINTS.—(1) Any employee who believes he or she has been discriminated against by any employer, insurance carrier, or health care financing system in violation of subsection (a), (b), or (c) of this section, may, within three months after such violation occurs, apply to the Secretary for a review of such alleged violation. A copy of the application shall be sent to the person or institution alleged to have committed the violation, who shall be the respondent. Upon receipt of such application, the Secretary shall investigate the allegations, which shall include an opportunity for public hearings before an administrative law judge at the request of any party to present information relating to the alleged violation.

(2) The administrative law judge shall notify the parties in writing of the time and place of the hearing at least two weeks prior to the hearing. Any such hearing shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If the Secretary finds that there was no such violation, the Secretary shall issue an order denying the application.

(e) REINSTATEMENT.—Any employee who is discriminated against in violation of this section shall be restored to his or her employment and shall be compensated for—

(1) any lost wages (including fringe benefits and seniority);

(2) costs associated with his or her medical monitoring; and

(3) costs associated with bringing the allegation of violation.

(f) CIVIL PENALTIES.—Any person or institution that discriminates against an employee in violation of this section shall be liable for a civil penalty of not less than $1,000 or more than $10,000 for each violation as may be determined by the Secretary. Any such penalty may be recovered in a civil action brought by the Secretary in the approporiate United States district court.

SEC. 8. ENFORCEMENT AUTHORITY.

(a) INJUNCTIVE RELIEF.—Whenever it shall appear to the Secretary that any person or institution is engaged or is about to be engaged in an act or practice constituting a violation of this Act or any rule or regulation promulgated under this Act, the Secretary may bring an action in the proper United States district court to enjoin such acts or practices, and upon a proper showing an injunction or permanent or temporary restraining order shall be granted without bond.

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(b) QUALIFICATION OF HEALTH CARE FINANCING SYSTEM.—Each health care financing system shall provide appropriate testing, evaluation, and medical monitoring services to employees as required under this Act.

(c) ALLOCATION OF COSTS TO HEALTH CARE FINANCING SYSTEM.—The cost of testing, evaluation, and medical monitoring required by an employee as a result of a hazardous occupational exposure and subsequent notification by the Secretary that such an employee is in a population at risk, as determined under this Act, shall be included as a covered item in any health care financing system available to such employee through his employment or as an individual purchaser of health insurance.

(d) SUBROGATION.—Any treatment provided by a health care financing system to an employee for a subsequent disease that was subject to a notification under section 4 of this Act, may constitute an insurance subrogation claim against a workers' compensation program or insurance carrier.

(e) EFFECT ON WORKERS' COMPENSATION CLAIMS.—The notification of an employee that the employee is in a population at high risk or a population at increased risk and the subsequent medical evaluation and monitoring shall not constitute a workers' compensation claim, nor shall such notice toll any statute of limitations with respect to such a

claim, except as may be specifically provided by law under a workers' compensation statute.

SEC. 9. AUTHORIZATIONS.

There are authorized to be appropriated for the fiscal years which begin on or after October 1, 1985, such sums as may be necessary.

SEC. 10. DEFINITIONS.

For the purposes of this Act—

(1) the term "employee" means any individual employed by an employer, or who is the primary beneficiary of employer-provided health insurance, or who is eligible for health insurance benefits under part A or B of title XVIII of the Social Security Act, for medical assistance under a State plan approved under title XIX of such Act, or for benefits based on disability under title II or XVI of such Act;

(2) the term "employer" means any person engaged in commerce or in an industry affecting commerce, or any agency of Federal, State, or local government;

(3) the term "insurance carrier" means any stock company, mutual company or association, or any other person or fund, or State compensation insurance fund, which is authorized under the laws of the United States to engage in the business of writing insurance;

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(4) the term "Secretary" means the Secretary of Health and Human Services;

(5) the term "health care financing system" means a private or public system for financing health care in the United States, including public and private health insurance programs, and programs providing health insurance benefits under part A or B of title XVIII of the Social Security Act, medical assistance under a State plan approved under title XIX of such Act, and benefits based on disability under title II or XVI of such Act;

(6) the term "occupational and environmental health centers" means existing health care facilities certified by the Secretary under this Act to provide medical monitoring to employees at risk of occupational disease;

(7) the term "population at increased risk" means an employee population exposed to hazardous occupational exposures within which an associated disease occurs at a rate 30 percent greater than a comparable workers population not exposed to the hazardous occupational exposure;

(8) the term "population at high risk" means an employee population exposed to hazardous occupational exposures within which an associated disease occurs at

a rate 100 percent greater than a comparable worker population not exposed to the hazardous occupational exposure;

(9) the term "hazardous occupational exposure" means any harmful chemical, physical, or biological agent; industrial or commercial process or activity; or occupation found in the workplace which is associated with the risk of disease;

(10) the term "medical monitoring" means periodic medical examinations of employees who are at high or increased risk of occupational disease;

(11) the term "occupational disease" means any disease associated with hazardous occupational exposures which appears in a given employee population at rates exceeding that of the general population;

(12) the term "Board" means the Risk Assessment Board established by section 4 of this Act; and

(13) the term "Institute" means the National Institute for Occupational Safety and Health.

SEC. 12. EFFECTIVE DATE.

Except as may be otherwise provided therein, the provisions of this Act shall become effective one year after the date of enactment.

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