DTA

Ed-HE-MPL LCE

James J. Hall

CONOCO

To Plant Managers
Safety Directors

Date June 1, 1981

Attached is a copy of Thorne Auchter's May 1 letter to Members of Congress.

James J. Hall

ajo

cc REL, RDG, MM

11

Docs. resp. to

RPOD 11

2(a)

4 Pgs.

MCD 000013601

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington D.C. 20210

May 1, 1981

Dear Congressman:

In the past two months the Occupational Safety and Health Administration (OSHA) has taken action affecting seven OSHA standards — cotton dust, lead, noise, electrical safety, conveyors, cancer policy and labeling. These actions (1) notified the public of the agency's intention to reopen the rulemaking record to consider the relative costs and benefits of the cotton dust and lead standards, (2) announced withdrawal of the proposal for a labeling standard, and (3) directed postponement of the effective date of other standards or of phases of their implementation in order to allow for reassessment and review. These actions have drawn criticism that indicates a misunderstanding of the agency's objectives, particularly in reviewing the cotton dust standard. Let me clarify OSHA's recent actions.

First, of the seven standards under review, only two — cotton dust and lead — were in effect prior to January 20, 1981, and they remain in effect, except as previously stayed by court or administrative action.

Second, OSHA's present review process is a genuine effort to determine the most effective means of achieving OSHA's statutory goal — safe and healthful workplaces for all working men and women. Thus, as a result of its review of the electrical safety standard, OSHA has decided that the standard would go into effect as originally scheduled. Also as a result of agency review, OSHA announced today that the new lower blood-lead level "triggers" for removal from, or reinstatement to, jobs would go into effect on May 15 for all industries except primary and secondary lead smelters.

Third, OSHA's review of these standards has been undertaken in response to President Reagan's February 17 Executive Order 12291, which instructs all federal agencies to choose the regulatory alternative having the greatest net benefit to society. In reviewing these regulations, the agency will also take into consideration the June, 1980, Supreme Court benzene-standard ruling, which requires OSHA to prove that the hazard being addressed poses a substantial risk to workers and that the standard will reduce that risk.

Fourth, of the seven standards under review, six were the subject of federal rulemaking action taken on January 16-19, 1981; the seventh — cotton dust — was the subject of oral argments presented by the government before the Supreme Court on January 21, 1981.

Cotton Dust: The agency action that has drawn the most attention is the decision to make a test case of the feasibility and utility of relying on cost-benefit analysis in setting an occupational health standard for cotton dust. In no way does OSHA minimize the plight of workers disabled from long-term exposure to excessive amounts of cotton dust nor does the

MCD 000013602

agency dispute the need to control worker exposure to cotton dust. By examining the relative costs and benefits of the regulation, we hope to assure a regulation that is both equitable and effective. As responsible regulators, it is only reasonable to try to balance costs and benefits in choosing among alternative actions. We all agree that human life is priceless; at the same time, we can assist the regulatory decisionmakers by being as explicit as possible about the benefits of preventing illness and preserving life. For example, we can estimate numbers of healthful years of life that are saved and can measure changes in productivity and in demands for health and other social services.

There are also significant legal and enforcement problems with the current cotton dust standard. Various courts have invalidated the regulation's application to cotton-ginning and cotton-seed-oil mills. The agency itself has suspended enforcement of the rule in cotton warehousing and classing operations because of inadequate evidence of risk in those industries. Moreover, some provisions of the standard as now written may be unenforceable. For example, there are serious problems with the standard's definition of cotton dust as all respirable dust in a plant. Thus a textile mill that uses a blend of yarn, ninety-nine percent polyester and one percent cotton, may have to comply with the same requirements as a mill that uses one hundred percent cotton. Another difficulty with the definition is that mineral dusts from plant humidifiers as well as oil mist from machine-operations count in the calculations of airborne cotton-dust levels. It has come to our attention that some plants may be forced to purchase equipment to demineralize the humidification water in order to meet the permissible exposure level and that such expenditures would not lower the level of cotton dust.

Labeling: Another agency action that has caused much controversy is the decision taken on February 12 to withdraw the proposal made on January 16 for a standard requiring labeling of the chemical content of hazardous workplace substances. OSHA's purpose in withdrawing this proposal is to permit consideration of regulatory alternatives that may not have received adequate attention in the period between the Advance Notice of Proposed Rulemaking and the Proposed Rulemaking itself. A proposal for a standard sets parameters that shape the final regulation; public comments are directed to the standard as proposed. For example, in the proposal that was withdrawn, there was no provision to train employees in understanding terms printed on labels, nor in using that knowledge to protect themselves; such a provision might make a label with a simple hazard-warning a cost-effective alternative to the complex scientific labeling required in the withdrawn proposal. This is not to say that OSHA advocates this approach, but only that it is an approach that should be thoroughly explored in the public comment period of the rulemaking process.

In addition, serious questions have been raised about the objectivity of the preliminary regulatory analysis that accompanied the original proposal. That analysis concluded that the benefits of the proposed standard outweighed the costs; yet there are provisions in the withdrawn proposal that do not appear to be cost-effective. For example,

MCD 000013603

none of the costs of labeling chemical pipelines and waste products was calculated. We do not quarrel with the concept that an enlightened workforce is one of the best assurances of healthful and safe workplaces. But imposing complex and unworkable obligations on industry will not achieve the desired results.

Similar questions have been raised about the other standards under review.

In conclusion, let me say that we have been guided in our recent actions first by an earnest desire to make regulation of workplace safety and health both effective and efficient, and second, by the realization that in achieving our goal of healthful workplaces, we cannot ignore the economic health of the nation.

Sincerely,

Thorne G. Auchter
Assistant Secretary

MCD 000013604