

burdensome." Abernethy added that lead is a highly toxic substance.

Representatives of the Service Employees International Union and the National Association of Working Women told the subcommittee Feb. 28 that vision and pregnancy problems could be attributed to working with VDTs (Current Report, March 1, p. 1040).

Rep. Steve Gunderson (R-Wis) challenged the officials' interpretation, asking about the potential of harmful radiation from older terminals or terminals that are not maintained properly. Weiss, referring to a study performed by AT&T Bell Laboratories which measured radiation emissions from 30 to 40 defective units that were being repaired, stressed that none of them had any significant levels of radiation.

The two representatives likened the present nervousness concerning the harmful effects of working with VDTs to a time in the late 1960s when many people thought harmful rays were emitted from color television sets. Weiss claimed that many of the health problems of which VDT workers have complained were not new problems, indicating that the health complaints were the result of having to work with new and unknown equipment. Gunderson said Weiss seemed to be questioning the employee motives in complaining about their health problems. Weiss responded that their motives were "reasonable," adding that they can often be resolved on an individual basis.

More Information Is Needed

Abernethy stressed that what is needed is "better public information," rather than more studies. Abernethy said that the manufacturers are trying to educate the industry on the proper use of VDTs through the use of educational seminars, professional presentations, and video tapes.

Weiss added that the National Institute for Occupational Safety and Health had concluded that there was no more need to research the alleged health problems associated with VDTs. Gaydos responded, "NIOSH has been known to make errors."

When asked by Gaydos if he thought that regulating VDTs would be harmful to competition, Abernethy, who noted that the VDT radiation level is already regulated by the Federal Communications Commission, said that he was concerned that new display technology would be held back by more regulations. Gaydos responded, "You're saying the time isn't right, let industry come up with the answers."

Agreeing with office furniture makers who testified before the subcommittee on April 3, the two men also stressed that better work areas and the use of adjustable equipment would solve 80 percent of the health problems, such as neck and back strain, associated with VDTs. Weiss noted, for example, that vision problems associated with some VDT users could be caused by poor lighting in the work area, rather than the VDT itself.

In addition, Abernethy said that it was possible to increase productivity eight to 15 percent. He added that the fact productivity will increase once the work area is improved will encourage unwilling VDT users to deal with worker complaints.

The next hearing on health problems associated with VDT use is scheduled for May 8 at 9 a.m.

Asbestos

WORKER ILLS, LITIGATION, FROM EXPOSURE TO ASBESTOS GROWING, SENATE PANEL TOLD

Witnesses appearing at what Sen. Donald Riegle (D-Mich) described as "Congress' first look at asbestos related disease since the mid-1970s," told a Senate labor subcommittee hearing April 24 that 350,000 asbestos-related deaths will occur by the turn of the century among workers exposed to the mineral on the job between 1940 and 1980.

Workers' compensation and product liability claims against employers are costly and inefficient, with only \$1 out of every \$2.59 paid going to the occupational disease victim, the Senate Labor and Human Resources Subcommittee on Labor heard.

The hearing was the first of four scheduled by the subcommittee. The second was held April 30 (see related article in this issue).

"Among groups of asbestos exposed workers (insulators and some factory workers), one in five deaths is from lung cancer, one in 10 from mesothelioma, one in 10 from gastrointestinal cancer, and one in 15 from asbestosis," William J. Nicholson, Ph.D., of Mt. Sinai School of Medicine's Environmental Sciences Laboratory told the Senate panel. "About 40 percent of these workers' deaths can be ascribed to occupational exposure to asbestos. Most deaths will occur among individuals who were exposed to fibers during the installation, repair, or removal of thermal asbestos-containing insulation materials," Nicholson continued.

"Asbestos related disease and consequent litigation involve enormous personal and economic stakes," James Kakalik, Ph.D., of the Rand Corporation's Institute for Civil Justice, told the panel. "About \$1 billion in compensation and litigation expenses had been spent by the end of 1982 on more than 20,000 open and closed product liability claims," he continued. "The potential liability of defendant firms runs into the tens of billions of dollars."

Kakalik noted that the outcome of many asbestos-related worker injury claims varied widely due to several factors other than the injury itself, including the number of defendants or plaintiffs in a single claim, and whether the claim was taken to trial or settled out of court. On the average, of every \$2.59 paid on an asbestos claim by defendants and insurers, only \$1 was netted by the plaintiff in compensation, with 95 cents going to pay defense litigation expenses and 64 cents to pay the plaintiff's litigation expenses.

Asbestos, used for decades for sound and thermal insulation, is a mineral that easily crumbles into dust and tiny fibers, but does not otherwise break down. When the fibers are swallowed or inhaled they create a permanent irritation that often leads to cancer or other illnesses, according to the American Lung Association.

'Wave of Litigation'

"The only safe level of exposure is no exposure," Nicholson asserted. By the year 2000, work-related asbestos will have been implicated in more than 220,000 "excess deaths" — deaths that exceed statistical expectation. These projections include 23,000 excess deaths from gastrointestinal cancer; 80,000 from asbestosis; 85,000 excess deaths due to lung cancer; and 43,000 due to mesothelioma.

"Fear of asbestosis and asbestos-related cancers has caused a wave of litigation which swamps the judicial system," Paul Wheeler, M.D., of the Johns Hopkins Medical Institutions' department of radiology and radiological science, told the panel. "Insurance companies favor a short

statute of limitations (inappropriate for disease that may take decades to develop) and this has spurred the filing of suits." Wheeler said that virtually the entire population has been exposed to asbestos, but that workers in the asbestos mining, insulation, construction, shipyard, and auto repair businesses experienced the biggest risk.

Wheeler also contended that histologic evidence, usually a lung biopsy, was required to verify cases of asbestosis, since some other non-asbestos related lung conditions yield nearly identical X-rays. Robert Jones, M.D., appearing as a witness for the American Lung Association, took exception to this position, saying that a combination of X-ray evidence and a history of occupational exposure to asbestos should be sufficient to support a claim.

"Much has been written concerning the inadequacy of the present system in meeting the needs of individuals who have developed asbestos-associated diseases," Jones continued. "In this context, tort litigation has been shown to be inequitable, costly, and markedly unjust in the distribution of resources, a high proportion of awards going to individuals in whom evidence of disease cannot be demonstrated." Jones went on to call for a uniform federal system of occupational lung disease compensation.

"It is expected that most exposures to asbestos in the future will be from asbestos already in place," Nicholson said. "One million tons of friable asbestos-containing material are in schools, ships, offices, and industrial buildings as thermal or acoustic insulation."

"The asbestos problem has been called a litigation crisis which threatens to engulf our court system," Sen. Edward M. Kennedy (D-Mass) stated. "The state workers' compensation system was not designed to deal with the diseases caused by asbestos or toxic chemicals, and it is not doing that job today. The asbestos crisis did not have to happen. But it is with us and we must learn from it and resolve that we will not let it happen again," Kennedy concluded.

Ethylene Oxide

OSHA AGREES TO ISSUE EIO STANDARD JUNE 15 IN STIPULATION WITH PUBLIC INTEREST GROUP

Government attorneys indicated April 17 in a court-approved agreement with counsel for the Public Citizen Health Research Group that the Occupational Safety and Health Administration will promulgate a new standard covering worker exposure to ethylene oxide by June 15.

The agreement is contained in a stipulation filed by the parties in *Public Citizen Health Research Group, et al. v. Thorne G. Auchter, et al.* (Civil Action No. 81-2343) which is presently before the U.S. District Court for the District of Columbia.

Public Citizen initially brought this suit against the assistant secretary in 1981, an action that resulted in a decision by the federal district court ordering OSHA to promulgate an emergency temporary standard lowering the permissible exposure level for ethylene oxide (11 OSHC 1049). In a subsequent ruling, the U.S. Court of Appeals for the District of Columbia set aside the district court's order on the basis that the lower court had impermissibly substituted its judgment of the need for an emergency regulation for that of OSHA (11 OSHC 1209). However, the appellate court recognized evidence showing a need for a reduced exposure limit for EIO, and accordingly directed the government agency to expedite rulemaking for a new permanent regulation covering occupational exposure to the substance.

According to the stipulation filed by the parties in this case, the appeals court "made it clear" that it "expected" OSHA to promulgate the permanent EIO regulation within a year of the ruling which was issued in March 1983. The agreement indicated that OSHA had been unable to complete rulemaking within the time contemplated by the court, and that the Public Citizen Health Research Group did not "acquiesce" in the agency's delay in issuing the regulation.

Both the rulemaking proceedings and review concerning the proposed standard covering exposure to EIO should be completed by June 15, according to the agreement. In addition, the public interest group consented not to seek sanctions or any court orders to compel immediate issuance of a regulation in order to facilitate final rulemaking in this case. Public Citizen did retain the option of petitioning the court for appropriate relief in the event OSHA did not comply with the June 15 deadline, the stipulation stated.

District Court Judge Barrington D. Parker indicated his approval of the parties' action.

Noise

OSHA DROPS REVIEW OF NOISE STANDARD; DECISION BASED ON NINTH CIRCUIT RULING

The Occupational Safety and Health Administration has dropped its review of the occupational noise standard, contending that its aim of protecting workers' hearing can be achieved through the hearing conservation amendment to the standard, according to Gary Stroebel, special assistant for OSHA health standards.

In the latest agenda of federal regulations, issued April 19, the agency listed the noise standard review under rule-making actions that had been completed, noting that the review was "withdrawn" in January (49 FR 16068). Stroebel said, however, that no official announcement had been made of this action. He said that little work has been done on the standard since issuance of the hearing conservation amendment because of manpower shortages.

The agency based its decision to drop the review on a ruling by the U.S. Court of Appeals for the Ninth Circuit in *Donovan v. Castle & Cooke Foods and OSAHRC* (Current Report, Dec. 2, 1982, p. 541). In that case, the court ruled that the Occupational Safety and Health Act and the OSHA noise standard permit consideration of the relative costs of proposed engineering controls to abate noise violations vs. the benefits to be gained by affected employees.

The Ninth Circuit's ruling runs counter to the Occupational Safety and Health Review Commission's ruling in *Sun Ship, Inc.*, which rejected the application of cost-benefit analysis in enforcement proceedings brought under the noise standard. However, there is speculation that OSAHRC's position on cost-benefit, to which one of the three commissioners dissented, will be reversed now that E. Ross Buckley has replaced Bertram R. Cottine on the commission.

Last summer, OSHA said that it was studying the *Castle & Cooke* ruling to determine whether it negated any further need to revise the noise standard, and later in the fall the agency issued new enforcement instructions based on the court ruling (Current Report, Nov. 17, 1983, p. 661.)

The new instructions allow employers to use hearing protectors and a hearing conservation program to comply with the standard, rather than engineering and administrative noise controls, for employees exposed to noise levels below 100 dBA.

The unions asked the agency to withdraw the directive, contending that it would in effect increase the permissible