

John L. Kimberley Executive Vice President

Lead Industries Association, Inc. / Zinc Institute, Inc.

August 16, 1971

TO: ALL U.S. MEMBER COMPANIES OF LIA  
ALL SUPPORTING COMPANIES OF ZI NOT INCLUDED WITH LIA

SUBJECT: PUBLIC LAW 91-596  
91st Congress, S.2193  
December 29, 1970

ATTENTION: \_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

The subject Act to be cited as the "Occupational Safety and Health Act of 1970" has the following preamble:

"To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes."

Enforcement of this law has been assigned to the Department of Labor. American Smelting & Refining Company's Omaha lead refinery has been cited under the law. In order to establish guide lines for industry, Dr. J.F. Cole arranged for a meeting in Washington on Tuesday, August 10. He has prepared a report on this meeting (copy attached). This report shows those in attendance.

Discussion during the meeting was stifled because of the pending hearing - first of its type - with ASARCO apparently serving as a guinea pig.

The industry people at the meeting, namely Messrs. Mann of XL Industries, Pallies of ESB, Nelson of ASARCO and Cole, Lynam and Kimberley of LIA-ILZRO were unanimous in their reaction that the Dept. of Labor's attitude on this bill is going to be tough, with little, if any, room for industry interpretation or negotiation.

Labor had little interest in the industry's use of biological monitoring (blood lead and urine lead determinations) to safeguard personnel. Their only concern was that the plant's working environments be as specified. Presently the ANSI standard of #Z37.11-1969 of 200 micrograms per cubic meter as determined on a "time weighted average" is their only concern.

 292 Madison Avenue, New York, N. Y. 10017

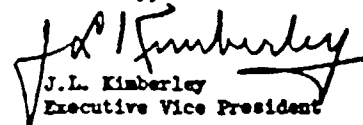
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It was agreed that many of the requirements of the Act have not yet been implemented with the needed regulations and instructions.

While the LIA is not, and is not expected to be in a position to participate in all hearings that may develop in the future or in behalf of all companies that may later be involved, we propose in this case to participate in the ASARCO Omaha plant hearings as may be indicated necessary. The objective of this "first participation" will be to become better informed on what may be expected, and be in a better position to keep the industry advised.

IT IS RECOGNIZED THAT YOU MAY NOT BE THE PERSON IN YOUR COMPANY TO BECOME ACTIVELY INVOLVED IN THIS MATTER. WILL YOU PLEASE FORWARD THIS LETTER TO THAT PROPER PERSON, AND LET ME KNOW AS TO HOW FUTURE MAILINGS ON THIS SUBJECT SHOULD BE ADDRESSED.

Sincerely,

  
J.L. Kimberley  
Executive Vice President

JLK/gt  
Attach.

VISIT REPORT

Date: August 10, 1971

Location: Department of Labor  
Railway Labor Building  
Washington, D. C.

Persons present: Mr. John P. O'Neill, Dept. of Labor, OSHA Office of Standards Development  
Mr. John A. Proctor, Dept. of Labor, OSHA, Office of Standards Development  
Mr. Eugene Regal, Dept. of Labor, OSHA, Office of Standards Development  
Mr. Marshall Harris, Dept. of Labor, Solicitor's Office  
Mr. Ray McClure, Dept. of Labor, OSHA, Office of Compliance  
Mr. Denny Dobin, National Institute of Occupational Safety and Health (NIOSH-NHEW) Liaison with Dept. of Labor  
Mr. K. W. Nelson, American Smelting and Refining  
Mr. W. L. Menn, M. L. Industries  
Mr. W. M. Pellies, ESB, Inc.  
Mr. J. L. Kimberley, Lead Industries Association  
Dr. J. F. Cole, ILZRO-LIA  
Mr. D. N. Lynan, ILZRO-LIA

Report by: J. F. Cole, D. N. Lynan

SUBJECT: Occupational Safety and Health Act

The purpose of the meeting was to obtain from the Department of Labor interpretation of certain aspects of the Occupational Safety and Health Act of 1970 as it applies to the lead industry. Certain questions had come from the industry which required interpretation, particularly use of biological monitoring, atmospheric sampling procedures, use of personal protective equipment, posting of relevant symptoms and warning of hazards. An interpretation from the Washington office would omit the need for each member to contact regional representatives and would provide uniform guidelines throughout the industry.

The personnel from the Department of Labor were very reluctant to discuss any aspect of the Occupational Safety and Health Act, using the pending hearing involving ASARCO as the reason. However, it was clear that air sampling is their only basis of evaluating occupational exposure to lead. The evaluation of exposure by biological monitoring (of blood lead and urine analyses) is irrelevant from an enforcement standpoint. It was pointed out by the representatives of the lead industry that the use of a good industrial hygiene program using blood lead determinations of the exposed population as the basis is the best possible means of controlling lead exposure in industry, surpassing air sampling. Mr. O'Neill expressed the view that the provision in the ANSI standard (incorporated into the Act) for biological monitoring is not a means of environmental control. Rather, it is for the medical evaluation of the worker, and this concept is not accepted by the Department of Labor.

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No comments were made by the Labor personnel when they were asked to provide guidelines on sampling techniques, especially length of sampling period. Mr. McClure did comment that respiratory or size selective sampling equipment is not satisfactory and only an open face type of entry head (which collects the entire size range of particles) is acceptable.

It also appeared that the use of respiratory protective equipment for controlling exposure would not be acceptable under any conditions. Only when all possible (without regard for economic feasibility) engineering controls could be shown inadequate, could respiratory protective equipment be considered for use.

Mr. Proctor explained that standards have not yet been prepared on the labelling and posting requirements under the Act. The industry was advised to watch for the publication of the proposed standards in the Federal Register.

Representatives of the lead industry agreed that all possible assistance should be given to ASARCO in this initial case against the lead industry, since precedents will be set at this time. It was also agreed that an appeal should be made to the Secretary of Labor regarding the opposition of the Labor Department to the use of biological results for controlling occupational exposure.

cg:  
