A G E N D A

CMA EXECUTIVE COMMITTEE MEETING
1:00 p.m., Monday, September 28, 1981
Conference Facility, Centre Room
Pebble Beach, California

			TAB
:00-1:01 p.m.	1.	Call to Order -- Chairman Simeral	
:01-1:02	2.	Approval of Minutes of Meeting, June 3, 1981 -- B. M. Barackman	1
02-1:08	3.	Treasurer's Report -- G. C. Herrman	2
08-1:13	4.	Budget Responsibility of Finance Committee -- George J. Sella, Jr.	3
13-1:20	5.	CMA Staff Industry Orientation -- Chairman Simeral	
.20-1:50	6.	Association Activities:	
		a. Report of the President -- R. A. Roland	
		i. Ethylene Oxide Industry Council	4
		ii. Water Policy Paper	5
		iii. EMC Air Dispersion Modeling Task Group	6
		iv. EMC Health Assessment Task Group	7
:50-1:55		b. Tax Policy Committee, Revised Charter -- W. M. Stover	8
55-2:05		c. Establishment of State Affairs Special Committee -- W. M. Stover	9
05-2:10		d. Committee Appointments -- B. M. Barackman	10
10-2:40		e. Report of Public Risk Analysis Special Committee -- Konrad M. Weis; Jackson B. Browning, Union Carbide Corporation	11
40-2:50		f. Economic Impact of TSCA: Status Report -- Carl W. Umland, Exxon Chemical Americas	12
50-3:20		g. Clean Air Act Revision -- W. M. Stover	13
20-3:50		h. ChemCAP Company Support Efforts -- J. N. Sites	14
50-4:00	7.	New Business	
00	8.	Adjournment	

MINUTES OF MEETING
CMA EXECUTIVE COMMITTEE
The Lodge at Pebble Beach
Pebble Beach, California
September 28, 1981

1. The meeting was called to order at 12:30 p.m. by the Chairman. There were present:

William G. Simeral, Chairman
Richard C. Ashley
Harry W. Buchanan
Louis Fernandez
James B. Henderson
Richard H. Leet
Paul F. Oreffice
L. John Polite, Jr.
Robert A. Roland
George J. Sella, Jr.
Konrad M. Weis

Bruce M. Barackman, Secretary
Edmund B. Frost, General Counsel
Gary C. Herrman, Treasurer

By Invitation:
*Jackson B. Browning, Union Carbide Corporation
Geraldine V. Cox, CMA
John E. Dull, E. I. du Pont de Nemours & Company
*Robert E. Hampton, ICI Americas, Inc.
Leo H. Johnstone, Phillips Petroleum Company
William C. Krumrei, The Procter & Gamble Company
Keith R. McKennon, The Dow Chemical Company
Victor H. Peterson, CMA
Ernest S. Robson, Jr., SOCMA, Monsanto Company
James N. Sites, CMA
William M. Stover, CMA
*Carl W. Umland, Exxon Chemical Americas

*part time

2. Minutes of the Last Meeting The minutes of the June 3, 1981 meeting, as distributed, were approved.

3. Treasurer's Report In presenting his report, attached as Exhibit A, Mr. Herrman noted that actual results to date appear to be tracking fairly closely to the budgeted amounts. On the revenue side, dues from members will be about $200,000 less than budgeted because of the resignation of three member companies and a refund which is being made to a fourth member who over-reported chemical sales for a three year period. This shortfall in dues will be more than offset by increases in investment revenue. Rates of up to 18%, versus the 12% projected in the original budget, have been locked in. On the expense side, amounts appear to be tracking fairly close to budget. Additionally, he advised:

- The IRS has just concluded the first audit of CMA since we became a tax exempt organization in 1942. The agent indicated that he had no significant audit adjustments and that we are operating within the purposes

for which we are exempt. One open item remains as to whether or not any portion of the ChemCAP program constitutes "grass roots" lobbying. The feeling of the agent and staff is that through May 31, 1980 we had no problem, but his documentation is subject to further review.

- Alexander Grant & Co., our public accounting firm, has also concluded their audit for May 31, 1981, and we have their draft final report indicating no significant adjustments and a clean opinion. The final report should be received shortly for mailing to the Executive and Finance Committees.

4. Budget Responsibility of Finance Committee Mr. Sella reviewed the calendar of events leading up to budget approval and the responsibility of the Finance Committee in the budget process as contained in his letter, Exhibit B. Following discussion no change was recommended in present procedures. The Executive Committee will be reminded of, and urged to attend, the full day budget review session of the Finance Committee March 8, 1982, immediately preceding the Executive Committee meeting the following day.

5. CMA Staff Industry Orientation Following discussion of Mr. Simeral's proposal to help in CMA's staff development program, he designated John Dull, his assistant in CMA matters, to coordinate structuring of a series of visits to member company plants to provide exposure to different types of facilities and the opportunity to learn how companies are organized to carry on their activities. Members present were urged to contact Mr. Simeral with suggestions.

6. Association Activities

a. Report of the President

- Mr. Roland advised that he has assumed, on behalf of the Association Community, the chairmanship of the Trade Association Liaison Group which works with the White House out of the Office of Public Liaison. To date the group has not been very effective but can be developed to perform a useful function.

- He described his recent participation in the fourteenth annual forum of the Asociacion Nacional de la Industria Quimica (ANIQ) which represents the Mexican chemical industry. We can be useful by continuing to work with ANIQ and by providing private sector assistance in helping broker solutions and understanding with their government.

- Mr. Roland also commented on a meeting between officers of CMA and the senior policy group of the European Council of Chemical Manufacturers' (CEFIC) scheduled for October in Brussels. A useful two-tier relationship is envisioned between CMA and CEFIC, as well as between CMA and counterpart associations in various foreign countries -- the first tier is staff; the second tier is the top-level industry group of elected officials who can dialogue with each other.

- Establishment of the Ethylene Oxide Industry Council, as set forth in Exhibit C, was approved as a CMA special program. During discussion Mr. Frost advised that the American Federation of State, County, and Municipal Employees has sued OSHA seeking an ethylene oxide exposure

standard and an emergency temporary standard. He further advised that the Ethylene Oxide Council may want to intervene if a motion is made to press for an emergency temporary standard. No objection to intervention was raised.

Policy Paper on the Clean Water Act, Exhibit D, was approved.

Air Dispersion Modeling Task Group of the Environmental Management Committee, Exhibit E, was approved.

- Health Assessment Task Group of the Environmental Management Committee, Exhibit F, was approved.

b. Tax Policy Committee, Revised Charter

Recommended changes in the charter of the Tax Policy Committee, together with increased membership roster, Exhibit G, were approved. During discussion it was emphasized that while the committee has been exempted from the requirement that one year must elapse before reappointment of a company representative, nevertheless, it is the intent of the Executive Committee that rotation be effected, and it is the responsibility of the Tax Policy Committee and the Board to bring new members into the committee.

c. State Affairs Special Committee

The establishment of a State Affairs Special Committee, a Statement of Purposes, and a roster of members, as contained in Exhibit H, were approved. During discussion concern was expressed as to the impact the Administration's new federalism will have on the chemical industry at the state and local level,and whether sufficient resources were being made available in this area.

It was suggested that it would be helpful if an assessment were made of CIC's state by state to identify those in need of strengthening. The importance of the role played by CIC's and the continuing need to address the interrelationship of the activities of the CIC's and CMA was recognized.

Where CMA is headed in future years in the state activities area is a key question and it was recommended that the State Affairs Special Committee reexamine its Statement of Purposes to incorporate a long-range planning function.

d. Committee Appointments

The committee appointments listed in Exhibit I were approved.

e. Report of Public Risk Analysis Special Committee

Dr. Weis reviewed actions taken by the committee following the suggestions made at the last Executive Committee meeting. He then

introduced Mr. Browning who presented the attached Policy for Regulatory Impact Analysis of Health, Safety and Environmental Regulations, Exhibit J. Following discussion the policy paper was approved with the deletion of the word "public" on the first page in the fifteenth line from the bottom. Mr. Simeral then announced that the special committee would continue under its present leadership to provide support for the other activities in CMA involving regulatory impact analyses.

f. Economic Impact of TSCA: Status Report

Mr. Umland's report is attached as Exhibit K. The study package was approved as a CMA report for release as appropriate. During discussion it was recommended that a low profile be assumed in regard to publicizing the report. It was suggested that limited distribution be made of the CMA summary and that the remainder of the package be made available on request.

g. Clean Air Act Revision

In presenting his report, Exhibit L, Mr. Stover advised that within the last ten days the Administration finally has come out in support of a Clean Air Revision bill, establishing it as a priority item for this year. In addition, it is understood that Vice President Bush has been given the responsibility of leading the effort to enact it. During discussion the view was expressed that it is vital that stationary and mobile sources be kept together in any proposed legislation.

h. ChemCAP Company Support Efforts

Mr. Sites' report is attached as Exhibit M. During discussion it was suggested that the Executive Committee should consider actively encouraging more company involvement in the ChemCAP effort. Mentioned in particular was communications to stockholders, a low incremental cost area. Mr. Oreffice, as Chairman of the Board, agreed to send a letter to the chief executive officers of CMA member companies urging more participation.

7. New Business

a. Review of Superfund Preemption Litigation

Mr. Frost advised that the New Jersey suit in Federal District Court by five CMA member companies questioning the legality of the state spill fund law taxing chemical companies in New Jersey and claiming that the federal superfund act is preempted, has been dismissed for lack of jurisdiction. The companies have appealed. The success of the appeal is in doubt. A suit is also pending in the New Jersey state courts.

The New Jersey Attorney General has sued the United States in the District of Columbia for a declaratory judgement asking for authorization to spend state spill fund money for various designated purposes.

CMA and the Natural Resources Defense Council have intervened, and the United States has asked for dismissal. The Association plans to argue that the D. C. case should not be dismissed; that the District of Columbia is the proper jurisdiction to decide the preemption issues.

Relationships with the New Jersey CIC are delicate, and great attention is being given to communicating and coordinating with them.

b. Mr. Sella invited attention to the $2.6 million advertising development item in the summary recap of communications and public relations expenditures contained in the treasurer's report. He referred to evidence now coming in that CMA's advertising is effective and asked whether it was the posture of the Executive Committee that the advertising effort continue to be supported at the present level.

Mr. Henderson responded by putting into context the Cambridge and Harris polls explaining that they weren't necessarily in contradiction with each other. He entertained some reservations concerning the Cambridge poll's reported 17% increase in the public attitude favorability rating toward the chemical industry regarding control of air and water pollution, but noted that the results were in the right direction. While he did not feel that the jump should be contributed entirely to CMA's program, it should be interpreted as a favorable omen.

He advised that the Communications Policy Review Special Committee will examine the recommendations of the Communications Committee with respect to the advertising activity. The views of Board Members are solicited in considering the recommendation for input into the budget process. Meanwhile it was his feeling that ChemCAP should continue at the present level and at the same time preliminary work should be undertaken to ascertain whether an increased level might not be cost effective.

There was general concurrence by the Executive Committee in Mr. Henderson's remarks.

Bruce M. Barackman
Vice President-Secretary

Certified correct:

William G. Simeral
Chairman, CMA Executive Committee

Exhibit A

TREASURERS REPORT

Four Months Ending September 30, 1981

This report will be prepared and distributed following the end of the month.

For your reference, the following is provided:

- The approved budget and funding for the fiscal year beginning June 1, 1981 and ending May 31, 1982.
- The approved budget for the separately funded Biomedical and Environmental Special Program area.
- A summary recap of the approved budget and funding for all Communication and Public Relations expenditures through CMA.

EC - 9/28/81
BD - 9/29/81

CHEMICAL MANUFACTURERS ASSOCIATION
APPROVED BUDGET AND FUNDING FOR THE
Fiscal Year Beginning June 1, 1981 and ending May 31, 1982

REVENUE:	1981-82 Annual Budget
Membership Dues	$ 9,500,000
Investment Revenue	800,000
Meetings (Net of Expenses)	232,000
GENERAL OPERATIONS REVENUE	$10,532,000
ChemCAP Assessment @ 40% of Dues	3,800,000
Utilization of ChemCAP Assessment collected during prior year	160,000
TOTAL REVENUE	$14,492,000

PROGRAM AND MANAGEMENT EXPENSES:	
General Counsel	$ 760,600
Government Relations	722,400
International Trade & Economics	222,300
State Activities Program	204,400
Communications and Public Relations	1,131,400
Technical Administration	181,200
Health, Safety & Chemical Regulations	734,300
Environmental Activities	662,500
Distribution, Energy, Engineering	417,600
Chemtrec	621,500
Outside Legal Fees	1,600,000
Outside Technical Consulting	1,166,800
Executive Department	1,222,100
Accounting, Purchasing & Building Services	469,200
Printing, Distribution & Computer Services	415,700
GENERAL OPERATIONS EXPENSES	$10,532,000
ChemCAP Expenses	3,960,000
TOTAL EXPENSES	$14,492,000

AUTHORIZED PERSONNEL	147

Note: The above budget and funding does not include the activities and staff of the separately funded Biomedical and Environmental Special Programs area.

CHEMICAL MANUFACTURERS ASSOCIATION
APPROVED BUDGET AND FUNDING FOR
BIOMEDICAL AND ENVIRONMENTAL SPECIAL PROGRAMS
Fiscal Year Beginning June 1, 1981 and ending May 31, 1982

	1981-82 Annual Budget
REVENUE:	
Overhead reimbursement @ $500 per day	$ 641,300
Investment Revenue @ 9%	324,000
Less: Direct Credit of Investment Revenue to the Fluorocarbon Project @ 9%	(162,000)
Publication Sales	1,000
TOTAL REVENUE	$ 804,300
EXPENSES:	
Salaries & Related Expenses	$ 349,200
Employee Benefits	65,600
Travel & Staff Training	8,400
Dues, Subscriptions & Publications	1,200
Meetings & Workshops	800
Outside Printing, Artwork & Graphics	500
Direct Postage, Freight & Delivery	11,000
Direct Supplies & General Office Expense	25,800
Taxes & Insurance	27,300
Special Insurance	56,000
Rent & Occupancy	44,300
Common Cost Expenses	66,700
Administrative Support:	
Technical Administration	48,700
Office of General Counsel	74,100
Accounting	13,700
Printing & Distribution	11,000
TOTAL EXPENSES	$ 804,300

AUTHORIZED PERSONNEL	12

CMA 064194

CHEMICAL MANUFACTURERS ASSOCIATION
SUMMARY RECAP OF COMMUNICATIONS AND
PUBLIC RELATIONS EXPENDITURES
Fiscal Year Beginning June 1, 1981 and ending May 31, 1982

following detail summarizes total funding and expenditures through CMA in the Com-
ications and Public Relations area as an integrated program. The portions funded
members dues and those funded by the special ChemCAP assessment are presented both
arately and as a combined total.

	1981-82 Approved Communications & P.R. Budget	1981-82 Approved ChemCAP Budget	1981-82 Combined Communications Budget
GRAM FUNDING:			
ues & Other General Revenue Required to support program	$ 1,131,400	$ N/A	$ 1,131,400
emCAP Assessment @ 40% of Dues	N/A	3,800,000	3,800,000
ilization of ChemCAP assessment collected during prior year	N/A	160,000	160,000
TAL FUNDING	$ 1,131,400	$ 3,960,000	$ 5,091,400
GRAM EXPENSES:			
alaries & Related Expense	$ 555,800	$ *	$ 555,800
mployee Benefits	99,700	*	99,700
ravel & Staff Training	70,700	*	70,700
ues, Subscriptions & Publications	9,200	-0-	9,200
lee[redacted]s & Workshops	9,900	-0-	9,900
ese[redacted]ch & Opinion Polls	-0-	120,000	120,000
edia & Public Relations	112,000	180,000	292,000
utside Printing, Artwork & Graphics (net of sales of $170,000)	276,100	160,000	436,100
udio Visual Material & Distribution (net of sales of $10,000)	-0-	150,000	150,000
utside Publication Distribution	-0-	40,000	40,000
ews Materials/Workshops	-0-	86,000	86,000
ommunity Committees	-0-	50,000	50,000
peakers Program	-0-	20,000	20,000
cientific/Academic Programing	-0-	50,000	50,000
irect Postage, Freight, Delivery	142,500	60,000	202,500
irect Supplies & General Office	11,000	-0-	11,000
axes & Insurance	46,000	*	46,000
ent & Occupancy	87,100	*	87,100
ommon Cost Expenses	123,500	*	123,500
Administrative Allocation of Salaries, Benefits and Overhead Charges of Communications Personnel	(412,100)	412,100	*
GRAM EXPENSES EXCLUDING ALL ADVERTISING	$ 1,131,400	$ 1,328,100	$ 2,459,500
dvertising development, space costs, etc.	-0-	2,631,900	2,631,900
AL PROGRAM EXPENSES	$ 1,131,400	$ 3,960,000	$ 5,091,400

CMA 064195

Exhibit B

American Cyanamid Company
Wayne NJ 07470

George J. Sella, Jr.
President

August 27, 1981

AUG 31 1981

Mr. William G. Simeral
Chairman, Executive Committee
Chemical Manufacturers Association, Inc.
c/o E. I. du Pont de Nemours & Company
1007 Market Street
Wilmington, DE 19898

Dear Bill:

Yesterday I had a chance to spend a full morning visiting the CMA offices in Washington and meeting with Gary Herrman and Bob Roland.

The visit was very productive and gives me much better insight to the system procedures and controls in the financial function of the Association.

The degree of sophistication accomplished in a relatively short period is outstanding. The systems are well established and appear to be working smoothly with no apparent major requirement other than what I would call fine tuning.

I also had a chance to review some procedural areas with Bob Roland including the Finance Committee and the Executive Committee roles in the budgeting procedure. The Finance Committee plays a considerably more active role than I would have anticipated based on its charter. The Finance Committee has a full day r view of the proposed budgeted programs and funding. It then recommends an approved budget to the Executive Committee. The Executive Committee review is really very limited and essentially accomplished in a period of a half hour or so the day after the full day Finance Committee meeting.

Essentially, the Finance Committee is acting as a mini executive committee in carrying out this function. This is perfectly alright with me but I think that the Executive Committee might well desire direct participation in the review process. One way this could be done would be to have the Executive Committee hold the full day review with the Finance Committee function limited to one of assuring adequate funding which is consistent with their present charter.

Another way would be to accept the expanded responsibility of the Finance Committee and officially invite any members of the Executive Committee to attend the full day review session if they choose.

Also, since the budget books are submitted to the Executive Committee beforehand we might establish a procedure whereby any question or alternative that an Executive Committee member wanted to get resolved at the budget review could be funneled through the Finance Committee to be considered as part of their review procedure. The conclusion reached could then be reported to the Executive Committee on that individual issue or alternative.

I suggested to Bob Roland that I get on the agenda at the Pebble Beach Executive Committee meeting to bring the above up for a very brief discussion to get agreement with the Executive Committee on how we will proceed with the budget review.

If you feel another alternative should be considered or would rather handle it differently, please let me know.

Best wishes,

G. J. Sella, Jr.

GJS:g

cc: Paul F. Oreffice, Chairman
Robert A. Roland, President
[redacted]

CMA
EC-9/28/81

Exhibit C

ETHYLENE OXIDE INDUSTRY COUNCIL

Objectives: See attached charter.

Problems:

1. The current OSHA occupational standard for Ethylene Oxide (EO) exposure on an 8-hour time-weighted average basis is 50 ppm. However, a recently-concluded animal study at Bushy Run Research Center raised important issues concerning the safe level of human exposure to EO. There is an urgent need to create an industry group to assist EPA and OSHA in evaluating the study and to ensure that any regulatory response is reasonable and appropriate. This may require conducting some additional scientific research.

2. The organizational structure and thrust of a special program determines the level of administrative support and staffing required by CMA. In general, the amount of administrative manhours is directly related to the number of outside contacts (Federal agencies, Research Contractors, Legislators, etc.) that are anticipated and to the number of administrative meetings (task groups, committees, etc.) that are envisioned. Special Programs that are designed to advocate issues, such as the proposed Ethylene Oxide Industry Council, require far more administrative manhours than programs which are primarily research oriented The addition of CMA special program staff is a longer term obligation which, by CMA policy, must be supported by reimbursement from special program panels. Over the life of this special program, which is estimated as 5 years, it is anticipated that activities will require approximately 40% of the time of one professional and one support staff.

Recommendations: The attached program description was cleared by CMA staff and the Special Programs Advisory Committee. Recommendation is hereby made for the Executive Committee to approve CMA undertaking this Special Program.

CMA 064198

Impact:

Money:	Participating companies will support the program and necessary overhead charges.
Company Personnel:	One representative on the Council from each participating company
Staff Personnel:	Undertaking this special program will require the addition

of one professional and one support staff to the Special Programs Division bringing total staff to 14. The added cost of these staff will be recovered from the $500 per man day charge to all programs.

Action Required: Approval of recommendation

CMA
EC-9/28/81
BD-9/29/81

7/30/81

PROPOSED

ETHYLENE OXIDE INDUSTRY COUNCIL
(A Special Program of the Chemical Manufacturers Association)

CHARTER AND BY-LAWS

ARTICLE I

Affiliation with Chemical Manufacturers Association

The Ethylene Oxide Industry Council ("Council") is constituted and shall operate as a Special Program of the Chemical Manufacturers Association ("CMA"). The Council and its members shall operate in accordance with the Biomedical and nvironmental Special Programs Guidelines and applicable by-laws, rules, regulations, policies and procedures of CMA, as amended from time to time.

ARTICLE II

Objectives

2.01 Objectives. The objectives of the Council shall be (a) to develop information regarding responsible industry programs to control exposure to ethylene oxide, to develop relevant scientific, technological and economic data and to cooperate with other national and international organizations having similar objectives, (b) to present such information and data to United States federal, state or municipal governmental bodies considering regulatory controls pertaining o ethylene oxide so as to assure that such standards,

regulations or policies, are reasonable, scientifically sound, and economically and socially effective, (c) to provide effective representation of the Council's activities, interests and viewpoints to the public, including government agencies and scientific organizations, (d) to maintain an awareness among members of the Council of regulatory, scientific, economic, technological and other developments related to ethylene oxide, and (e) generally to take such collective action as may be proper to encourage the continued safe manufacture and use of ethylene oxide.

2.02. Antitrust Compliance. The members of the Council shall engage in no activities or communications, such as discussions of pricing, allocation of markets, competition, limitations of supply, bidding procedures, or any other activities or communications which could be violations of federal or state antitrust laws or regulations.

ARTICLE III

Members

3.01. Regular Members. The Regular members of the Council shall be producers (domestic and/or international) or users of ethylene oxide, including manufacturers of equipment or devices which require ethylene oxide for their proper use. The Board of Directors may prescribe such other qualifications for membership in the Council as it may deem appropriate. Any person or business entity who meets these qualifications and agrees to pay membership dues in accordance with the schedule of dues then in existence shall be eligible for membership.

3.02. Classes of Regular Members. Except as otherwise limited by this Charter, the Council shall have such classes of Regular members, with such voting and other participation rights, as the Board of Directors may from time to time prescribe.

3.03. International Members. There shall be a class of Regular Members known as International Members. Any person or business entity who produces ethylene oxide at production facilities outside the United States, and who meets any other qualifications established by the Board of Directors, shall be eligible for International Membership in the Council.

3.04. Association Members. Any trade or business association whose members are interested in the production or use of ethylene oxide, or whose interests are otherwise relevant to the activities of the Council, shall be eligible for Association membership in the Council. Association members shall not pay any dues or fees and shall not be entitled to vote at any meeting of the Council.

3.05. Application for Membership. Any qualified person or business entity shall become eligible for membership in the Council upon the approval by a majority vote of the Board of Directors of an appropriate application for membership in the Council.

ARTICLE IV

Board of Directors

4.01. Composition. The Council shall be managed by a Board of Directors. Each member of the Council shall be entitled to one (1) and only one (1) representative on the Board. The Chairman and Vice Chairman of the Council shall be members of the Board of Directors and shall hold, respectively, the office of Chairman and Vice Chairman of the Board.

4.02. Authority. The Board of Directors shall have general supervisory control and direction of the affairs of the Council. By resolutions adopted and modified from time to time, the Board shall adopt procedures to govern the operations of the Council. A majority shall constitute a quorum of the Board and the Board may act by the majority vote of members present or represented by valid, unrevoked proxy at its meetings.

4.03. Meetings. The Board of Directors shall meet at least quarterly at such times and places as the Board shall determine. Special meetings of the Board may be called by the Chairman or upon the written request of one-third (1/3) of the directors.

4.04. Committees. The Board shall have the authority to organize Committees to perform specific functions. The Executive Committee shall appoint the chairman and vice-chairman or vice-chairmen of any such committee. Each such committee shall have a charter approved by the Board and by CMA.

4.05. Annual Meetings. There shall be a meeting of the members at least once each year at such time and place as the Executive Committee shall determine.

4.06. Notice. Appropriate notice of meetings, including time, place and, if appropriate, subject matter, shall be determined by the Executive Committee and provided to all members.

4.07. Voting. Voting rights at meetings shall be established by the Board of Directors according to membership class. The number of votes to which regular members of a class are entitled shall be set in relation to the financial contribution which that class has made to the Council.

ARTICLE V

Executive Committee

5.01. Executive Committee. There shall be an Executive Committee of the Council consisting of nine (9) members. The Chairman and Vice Chairman of the Council shall be members of the Executive Committee and shall serve, respectively, as Chairman and Vice Chairman of the Committee. Members of the Executive Committee shall be elected by the Board of Directors.

5.02. Composition. Ethylene oxide users shall be represented on the Committee by one (1) member from each of the following groups: 1) processors of ethylene oxide, 2) health product manufacturers, and 3) association members. The

representative of the association members shall be a non-voting member of the Executive Committee. No member of the Council shall have more than one (1) representative on the Executive Committee.

5.03. Authority. The Executive Committee shall exercise the authority of the Board of Directors on a day-to-day basis under the supervision of the Board. The Executive Committee shall have the authority to organize sub-committees and task forces of the committees created by the Board.

5.04 Election, Terms of Service and Vacancies. The members of the Executive Committee shall be elected by the Board of Directors at the annual meeting of the Council and shall serve a term of one (1) year or until their successors have been duly elected and qualified, provided however that the Executive Committee elected by the Board at the organization meeting shall serve until the annual meeting to be held during 1981. Vacancies occurring in the Executive Committee may be filled by the Board. The person elected to fill the vacancy shall meet all qualifications required of the Committee member whose vacancy is being filled and shall serve the unexpired portion of the term for which the vacancy existed.

ARTICLE VI

Officers

6.01. Officers. The officers of the Council shall consist of a Chairman and Vice Chairman, each of whom shall be

lected by the members of the Board of Directors, and such other officers as the Board may from time to time decide and elect. The Chairman of the Council shall be a representative of the producer members of the Council and shall have all powers and perform such duties as are usual or customary to the office of the Chairman of the Board. The Vice Chairman of the Council shall be a representative of the user members of the Council and shall assist the Chairman in the performance of his duties, and in the absence of the Chairman, the Vice Chairman shall act in his place.

6.02. Election, Terms of Office and Vacancies. The Chairman and Vice Chairman, and such other officers as the Board of Directors may from time to time decide and elect, shall be elected at the annual meeting and shall serve for a term of one (1) year or until their successors are duly elected and qualified, provided however that the Chairman, Vice Chairman and such other officers as the Board may decide and elect who are elected at the organizational meeting shall serve until the annual meeting to be held during 1981. The Board of Directors may fill any vacancy which may occur in any office of the Council. Unless the Board otherwise decides, the person elected to fill the office shall serve the unexpired portion of the term for which the vacancy existed.

ARTICLE VII

Committee Membership

7.01. Except as provided herein or otherwise determined by the Board of Directors, each member of the

Council shall be entitled to designate a representative as a member of each committee organized by the Board. No member of the Council shall have more than one (1) representative on any Committee.

7.02. Regulatory Committee. The Board of Directors shall establish a Regulatory Committee composed of domestic producer and user members of the Council. The Regulatory Committee shall have sole responsibility for developing for approval the position of the Council with respect to U.S. governmental standards, regulations or policies pertaining to ethylene oxide. The Regulatory Committee shall have responsibilty to insure that the interests of domestic producers and/or users are appropriately represented before U.S. governmental agencies. Any determination by the Executive Committee or by the Board of Directors of the position of the Council on U.S. regulatory matters shall be made by the domestic members of the Executive Committee or of the Board.

ARTICLE VIII

Funding

As a Special Program of CMA, the Council shall comply with all CMA funding requirements. The Board of Directors shall, from time to time, propose budgets and develop formulas for funding activities of the Council. A separate budget shall be proposed for scientific and related matters. Funding formulas shall be set so that dues based on non-U.S. capacity are lower than dues based on U.S. capacity. These budgets and

formulas shall be submitted to both the members and to CMA for approval, and shall be utilized to obtain funds for the Council's activities.

ARTICLE IX

Sunset Committee

The Board of Directors shall establish a Sunset Committee, composed of the Chairman, the Vice Chairman and at least two (2) other members to be appointed each year by the Board of Directors. It shall be the duty of the Sunset Committee to examine and to report on the need for the continued existence of the Council and to recommend more effective or efficient means to fulfill the objectives of the Council. The Committee's report and recommendation shall be made available to all members of the Board of Directors prior to each Annual Meeting and shall be presented to the members of the Council at the Annual Meeting. If fifty-one percent (51%) or more of the total members eligible to vote, at the Annual Meeting to be held during 1982 and each year thereafter, do not affirmatively decide (by vote at the Annual Meeting or by mail vote or by a combination thereof) to continue the Council in existence, the Board of Directors shall take such steps as may be necessary to cause the orderly dissolution of the Council in conformity with the Biomedical and Environmental Special Programs Guidelines and applicable by-laws, rules, regulations, policies and procedures of CMA, as then in effect.

ARTICLE X

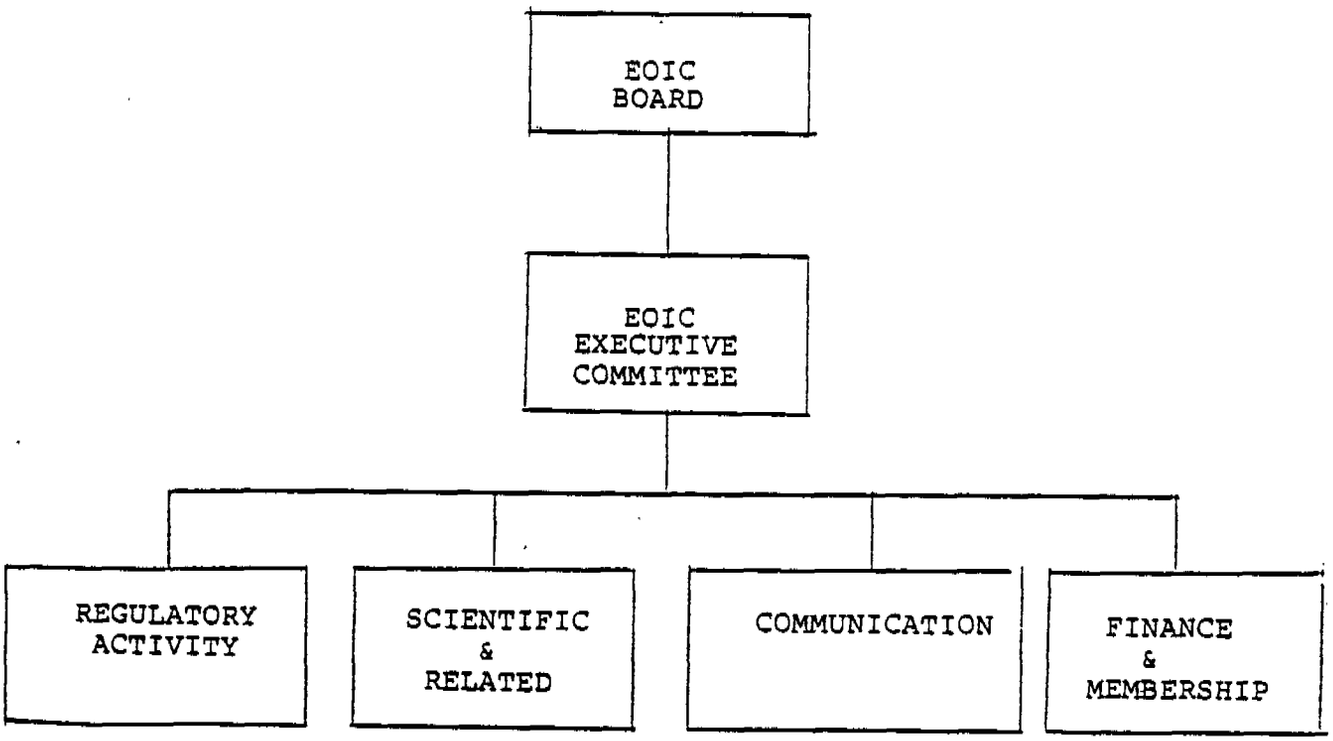
Amendment of Charter and By-Laws

Subject to the approval of CMA, this Charter and By-Laws may be amended by a majority vote of the members of the Council eligible to vote, present or represented by proxy at any meeting of Council members at which a quorum is present, provided that at least fifteen (15) days notice of such proposed amendment is sent to all Council members.

EOIC INITIAL BUDGET

Projected Subscription $800 M

Cost Centers



CMA 064210

ETHYLENE OXIDE INDUSTRY COUNCIL

Companies Committed

PRODUCERS

BASF Wyandotte Corporation
Celanese Chemical Company
Dow Chemical Company
Halcon Research and Development Corp.
PPG Industries, Inc.
Shell Oil Company
Texaco, Inc.
Union Carbide Corporation

PROCESSORS

Conoco Chemical Company
Nalco Chemical Company

HEALTH PRODUCTS MANUFACTURERS

Abbott Laboratories
Becton Dickinson and Company
Bristol Laboratories
Chesebrough Ponds
Johnson and Johnson
Kendall Company
Mallinckrodt, Inc.
Micro-Biotrol Company
Sherwood Medical
Travenol Laboratories, Inc.

HEALTH PROVIDER

Cresent Manufacturing Co.
Foxmatic Corporation
Stange Company
Warren Chemical Co.

TRADE ASSOCIATIONS

Health Industry Manufacturing Association
INDA, Association of the Nonwoven Fabric Industry
Pharmaceutical Manufacturers Association

July 13, 1981

Guidelines for CMA Support of The Ethylene Oxide Industry Council

Biomedical and Environmental Special Programs Guidelines shall apply to the operation of the Council subject to the following interpretations:

1. All policy decisions affecting the Council shall be determined initially by the Executive Committee pursuant to the Charter.

2. Policy Positions. Statements by the Council intended to be presented to a government agency will be delivered to CMA in advance for review of consistency with CMA policy.

3. Stationery. The Council will have its own stationery approved by CMA.

4. Communications. Unless otherwise directed by the Chairman of the Council or requested by CMA, all communications to members or prospective members will be on Council stationery and will be signed by the Council Chairman. All communications to committees will be on Council stationery and will be signed by the Committee Chairman. Copies of communications will be sent to CMA for mailing.

5. Meetings with Government. A representative of CMA will be invited to attend meetings with government agencies.

6. Meetings. Meeting agenda will be subject to antitrust clearance by CMA General Counsel or his designate in advance of any meeting.

7. Minutes. CMA personnel will generally attend meetings. CMA staff will prepare minutes of meetings they attend for approval. On any occasion where a meeting is held without CMA staff, the CMA General Counsel or his designate shall be responsible to have minutes prepared and sent to CMA for antitrust clearance and distribution.

8. Research Contracts. The Executive Committee of the Council will approve and authorize contracts which will be executed by the CMA Treasurer. The Committee or task force chairman responsible for the contract will use CMA assistance in negotiations as appropriate.

9. The Chairman of the Council's Finance Committee will supervise and authorize payments by CMA for the Council's account.

10. Press Statements. All press statements will be decided upon by the Council and be issued in the name of the Council. Press Statements will be sent to CMA in advance for review of consistency with CMA policy and will be given to CMA Communication Department for distribution.

CMA
EC-9/28/81
BD-9/29/81

Exhibit D

CHEMICAL MANUFACTURERS ASSOCIATION POLICY PAPER ON THE CLEAN WATER ACT

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July 31, 1981

CMA
EC-9/28/81
BD-9/29/81

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CHEMICAL MANUFACTURERS ASSOCIATION
POLICY PAPER ON
THE CLEAN WATER ACT

INTRODUCTION

The Chemical Manufacturers Association (CMA) is a nonprofit trade association whose approximately 190 member companies produce more than 90 percent of this country's basic industrial chemicals at some 1,500 operating plants located in nearly every state. These plants are directly and significantly affected by the requirements of the Clean Water Act (CWA) as implemented by the U.S. Environmental Protection Agency (EPA).

The installation of pollution control equipment by American industry has brought about major advances in cleaning up and protecting the nation's waterways. In contrast, major sources of water pollution, namely non-point sources, are not presently subject to any federal controls and many municipal treatment systems have not yet achieved secondary waste treatment as mandated by the CWA. CMA believes that the time has come to evaluate carefully the progress that has been made to date in the area of water pollution control, and to assess whether and to what extent additional controls on industrial discharges may be necessary and cost-effective. CMA is concerned that the Clean Water Act is now being implemented in an unnecessarily complex fashion that includes effluent limitations, costly treatment requirements, and other restrictions on industrial dischargers that result in little, if any, additional b nefit to the waters of the United States.

Current policies under the Act should be examined to ensure that future requirements are imposed only where necessary, beneficial and cost-effective. This will avoid imposing on industry expensive but unnecessary treatment requirements that do not provide commensurate water quality benefits, the costs of which treatment will inevitably result in increased costs to consumers. If additional controls are needed, they should be developed in a way that takes into account the costs of the controls versus their benefits and directs the resources of EPA and industry at areas that really need attention. CMA is prepared to work constructively with EPA and the Congress to address these issues.

EXECUTIVE SUMMARY

This paper discusses a number of important areas in which current policies under the Clean Water Act should be reexamined in order to direct attention to significant problems and ensure that these are addressed in a sound manner. This paper discusses the following key areas of concern:

-- Assessment of the effectiveness of BPT technology. In order to evaluate the progress made to date, there should be an assessment of the degree to which discharges of toxic and nonconventional pollutants are effectively controlled by best practicable technology (BPT) limitations. In the meantime, there should be a moratorium on further controls on nonconventional pollutants. The concept of best conventional technology (BCT) limits should be clarified and made consistent with the policy of Congress.

-- BAT extension. The CWA currently requires that industry achieve, by 1984, a level of treatment known as best available technology (BAT), as defined by EPA in effluent limitations guidelines regulations. It is now clear that EPA cannot and will not develop the BAT regulations in time to allow industry to meet this deadline. We therefore urge that the date for compliance with BAT limits by industry be extended at a minimum to July 1, 1987.

-- BAT limitations. The requirements for BAT controls should be established on a more rational basis. EPA should

reexamine the list of toxic pollutants to ensure that it has a scientific basis. BAT limits should be reserved for industry subcategories where a significant toxics problem remains after installation of BPT controls, taking into account the costs and benefits of any regulation. Pollutants that are discharged in trace amounts and are difficult to measure accurately should not be regulated. A discharger should be allowed a waiver from BAT limits where warranted by economic or water quality circumstances.

-- Pretreatment. Industrial dischargers to publicly-owned treatment works (POTWs) are currently subject to EPA pretreatment standards under the Act. EPA has implemented this program by establishing national standards that do not properly take into account the need for such standards, e.g., the amount of interference with POTWs or the extent of removal of industrial pollutants by POTWs. The result is costly, redundant treatment by industry and POTWs. This program should be restructured to allow pretreatment requirements to be established locally by the POTWs as needed to meet their NPDES permit requirements, and to abandon the use of national EPA pretreatment standards.

-- Criteria and standards. EPA is charged with developing water quality criteria under Section 304(a) of the Act and has authority to publish standards for toxic pollutants under Section 307(a) of the Act. EPA's role in developing these criteria and standards should be reevaluated. In

addition, EPA should incorporate the scientific disciplines of peer review and risk assessment in developing such criteria and standards.

-- The NRDC consent decree. EPA's implementation of the Clean Water Act is governed in large part by a settlement agreement in a suit between EPA and five environmental groups led by the Natural Resources Defense Council (NRDC). This agreement was embodied in a court order in 1976, and has now outlived its original purpose. The decree only serves to hamper EPA's administration of the Act, for example by dictating the list of toxic pollutants and industrial plants that should be regulated. Whatever valid purpose the decree may have had was superseded when Congress enacted the 1977 Amendments to the Act. The NRDC consent decree should be abandoned.

-- Issuance and enforcement of NPDES permits. Permits should be issued for a ten-year fixed term and should not be reopened except in rare circumstances. Where effluent guidelines regulations have been promulgated, limits in permits should be based exclusively upon such regulations. In establishing permit limitations, credit should be given for pollutants in a discharger's intake water, and waivers from guidelines should be authorized where economic or water quality conditions warrant. Limitations should be set only where there are validated sampling and test methods to determine compliance with the limits. Approved states should be

given more authority to run their own programs. EPA's authority to veto state-proposed permits should be limited, and states should have the sole authority to enforce state-issued permits.

-- Administrative procedure and judicial review. The Act's administrative procedures and provisions for judicial review should be examined. EPA's procedures should be modified to provide more systematic consideration of costs and alternatives. The Agency should provide greater protection for confidential information in order to foster the voluntary exchange of data. Finally, gaps in the Act's judicial review provisions should be closed by providing for judicial review in a United States district court of all final EPA actions for which direct appellate review is not mandated.

CMA does not stand alone in its concerns regarding current policies and programs under the Clean Water Act. As a result of hearings during the 96th Congress, the House of Representatives Subcommittee on Oversight and Review of the Committee on Public Works and Transportation recently issued a report on implementation of the Clean Water Act ("the House Oversight Report").[1/] That report discusses in detail significant problems with the Act's implementation and recommends amendments to the Act to address those problems. The CMA positions set forth in this paper are consistent with or directly supported by the Subcommittee's report and recommendations.

1/ Committee Print 96-71, 96th Cong., 2d Sess. (December 1980).

I. THE PROMULGATION OF NATIONAL TECHNOLOGY-BASED EFFLUENT LIMITATIONS GUIDELINES

The backbone of the Clean Water Act's (CWA) control of the discharge of pollutants is the requirement that industrial dischargers to the nation's waters meet a series of increasingly stringent levels of technology-based effluent limitations. This shift from water quality controls to technology-based requirements was a fundamental change in prior law effected by the 1972 Amendments. Although this change may have been sound when adopted, the time has come to evaluate whether the full breadth of increasingly stringent levels of nationally-applicable technology-based effluent limitations imposes undue burdens on industry by mandating treatment for treatment's sake, regardless of benefits to the quality of the nation's waters.

Existing technology-based limitations are effectively controlling the discharge of pollutants to a degree greater than originally anticipated in most areas. Therefore, a review should be undertaken to determine if, and to what extent, the increasingly stringent and expensive technology-based requirements, that would otherwise be required, are necessary in order to protect our nation's waters.

In order to evaluate the progress made by existing treatment, there should be an assessment of the degree to which discharges of nonconventional and toxic pollutants are effectively controlled by the installation of technology to

meet BPT effluent limitations. Pending the outcome of the study, any requirement that more stringent technology-based limits be met for nonconventional pollutants should be suspended. The concept of BCT effluent limitations applicable to the discharge of conventional pollutants should be clarified. Finally, BAT effluent limitations guidelines should be reserved for those industry subcategories where a significant toxics problem remains after the installation of treatment technology to meet BPT limitations. Such guidelines should be based on an examination of alternative treatment technologies, of costs versus benefits, and of inter-media effects.

A. Assessment of the Effectiveness of BPT in Controlling Discharges of Toxic and Nonconventional Pollutants

The House Oversight Report states (at pp. 29-30) that "[t]he latest information indicates that the 129 'priority pollutants' on which the clean water regulatory program is primarily focused are less evident in both amounts and concentrations than previously believed." The Oversight Subcommittee found (at p. 30) that "to a degree not anticipated, the conventional secondary treatment technologies employed by municipalities and many industries have succeeded in removing most of the priority pollutants in a highly efficient manner." The Report refers (at p. 35) to data showing that technology installed to meet BPT limits may be far more effective in removing or degrading toxic pollutants than previously anticipated.

Before proceeding to require industry to spend vast sums of money to install additional treatment equipment to meet more stringent BAT limits on nonconventional and toxic pollutants, EPA should undertake a study of the effectiveness of technology installed to meet BPT limits. Existing valid data should be compiled and analyzed, and new data generated where needed. The study should be initiated immediately and completed by April, 1982. In addition, the study should be updated periodically, at frequencies consistent with BAT reviews. See pages 18-19 below.

There should in addition be a recognition that the promulgation of further BPT effluent limitations guidelines will serve no useful purpose. BPT requirements were required to be met by July 1, 1977. All dischargers are currently subject to BPT requirements established either in published guidelines or on an ad hoc basis in permits under Section 402(a)(1) of the Act. The Act does not require EPA to review BPT guidelines on a regular basis, and the expenditure of EPA's efforts to develop new or revised BPT limits at this point in time would not be justified.

B. Moratorium on Further Technology-Based Controls on Nonconventional Pollutants Pending Completion of the Study

The imposition of BPT effluent limitations, required by the CWA to be met by 1977, has resulted in a significant reduction in the discharge of pollutants to navigable

waters by industrial sources. Based on available data, it appears that technology-based effluent limitations beyond BPT for nonconventional pollutants are not cost-effective or necessary to protect the environment. To confirm this, there should be a moratorium on any further technology-based effluent limitations for nonconventional pollutants, and EPA should undertake a comprehensive analysis of the effectiveness of controls implemented to date.

If the analysis reveals that water quality problems due to nonconventional pollutants still exist after the installation of BPT technology, the study should also address how such problems might best be alleviated, taking into account the scope of the problems and cost-benefit considerations. While the study is under way, problems that exist or may arise with nonconventional pollutants in particular waterways can be dealt with on a case-by-case basis using water quality-based limitations.

C. Clarification of BCT Effluent Limitations

Congress replaced the strict BAT standard for conventional pollutants with the less stringent BCT standard because it concluded for such pollutants that the national goals could be achieved by uniform application of the 1977 standards of BPT for industry and secondary treatment for municipalities. Further expenditures by industry to control conventional pollutants would be excessive in relation to the

marginal benefits obtained. Congress concluded that funds would be better spent on further control of toxic pollutants which, unlike conventional pollutants, were still considered a significant problem.

Accordingly, Congress mandated that any required increase in control of industrial discharges of conventional pollutants beyond the BPT level be reasonable in cost. It directed EPA specifically to apply two primary factors in making this determination of reasonableness: (1) an internal industry-by-industry cost-effectiveness test which compares the incremental cost of moving beyond BPT to the average cost of BPT for each industry subcategory tested; and (2) a comparison of the incremental cost of moving beyond BPT to the average cost for municipalities to achieve secondary treatment. 33 U.S.C. § 1314(b)(4)(B).

As the United States Court of Appeals for the Fourth Circuit recently held in American Paper Institute v. EPA (July 28, 1981), EPA has wholly ignored one of these factors, the industry cost-effectiveness test. The Fourth Circuit has directed EPA to devise a cost-effectiveness test in revising its BCT regulations. Although the Fourth Circuit sustained EPA's POTW cost comparison test on the grounds that it was within the Agency's discretion, CMA continues to believe that EPA should consider the average costs of secondary treatment, not the incremental cost of advanced treatment. EPA's approach has resulted in an inaccurate and unnecessarily complicated methodology which biases the POTW cost comparison toward much

higher levels of treatment for conventional pollutants than Congress intended to require. In revising its BCT regulations on remand from the Fourth Circuit EPA should require no level of technology beyond BPT for conventional pollutants unless the costs are reasonable under both the cost-effectiveness test and the POTW cost comparison test using average costs of secondary treatment.

EPA has announced a policy of placing limits on "indicator" pollutants (such as BOD, COD, and TSS) in lieu of controls on toxic pollutants. In general, CMA supports the use of conventional pollutants as indicators, at the permittee's option, in order to assure compliance with the Act while reducing monitoring costs of dischargers. The use of indicators should be consistent with the supporting scientific data, however, and their use must not be more costly than direct control of toxics. In addition, EPA should not use indicators as a justification for imposing limitations on conventional pollutants that are more stringent than BCT.

D. Reserve BAT Effluent Limitations Guidelines for Significant Toxics Problems and Significant Industry Subcategories

In 1977, Congress recognized the importance of concentrating the nation's resources on the control of toxic pollutants, and amended the CWA accordingly. To implement the directives of Congress, EPA has been attempting to develop nationally-applicable effluent limitations guidelines, for large numbers of industrial subcategories, which will require control of toxic pollutants based on BAT limitations.

The task of developing such BAT guidelines has proved to be very difficult. EPA has been unable to promulgate guidelines in a timely fashion, and current budget constraints will only hinder this task. It makes little sense to continue developing such nationally-applicable guidelines for large numbers of industry subcategories. Instead, EPA should focus its efforts on developing guidelines where a significant toxics problem remains in a particular industry subcategory after the installation of BPT, and where there are a sufficient number of plants in the subcategory to justify nationally-applicable requirements.

As a first step in this effort, EPA should develop a new list of toxic pollutants, basing its classification of a pollutant as toxic on substantial evidence that has been reviewed by an independent board of qualified individuals. Where there is no widespread toxics problem in a subcategory of dischargers, or where there are few plants in a subcategory, effluent limitations beyond BPT should be handled on a case-by-case basis where there is a significant toxic discharge problem.

1. Classifying Pollutants as Toxic

In the 1977 Amendments to the CWA, Congress defined the existing universe of toxic pollutants in Section 307(a) by reference to the list negotiated by NRDC and EPA in NRDC v. Train, 8 E.R.C. 2120 (D.D.C. 1976).[1/] Congress provided that EPA should revise that list from time to time "tak[ing] into

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1/ See discussion of NRDC decree at pages 29-30 below.

account" certain specified criteria. Congress did not prescribe how the criteria should be weighted or, indeed, what it meant by taking the criteria "into account." As a result of the statute's vague criteria for classifying pollutants as toxic, EPA may in some cases classify pollutants on the basis of incomplete, inaccurate, or inadequately-reviewed scientific data.

To remedy this situation, EPA should base its classification of a pollutant as toxic in water on substantial evidence that has been reviewed by an independent board of qualified individuals, and that supports a finding that a significant and unreasonable risk of exposure exists.[1/] EPA should evaluate the severity of anticipated harm from a pollutant, the potential exposure of aquatic organisms, and the probability of harm occurring from exposure at various levels. The supporting evidence should consist of an evaluation of the available scientific and statistical data, weighted as to relevancy, accuracy, credibility and validation, scientific method, and significance. The Agency should consider both data supporting the toxics classification, and data that are not supportive. The placement of pollutants on the toxics list should be based on a risk assessment which estimates the exposure of affected organisms to the pollutant of concern.

1/ See discussion of peer review at pages 27-28 below. Moreover, the error in improperly designating a pollutant as toxic is compounded by virtue of the fact that the toxic pollutant list is referenced in other programs. See, for example, the Superfund 1 gislation, Public Law 96-510, 42 U.S.C.A. § 9601(14)(A).

EPA should also review the existing list of toxic pollutants and promulgate a new list based on the new criteria and risk assessments. Pollutants that do not satisfy the criteria should not remain on the toxics list and should not be controlled to the more stringent, and most costly, BAT or Section 307(a) effluent standards levels.

2. Defining a Significant Toxics Problem

In Section 101(a)(3) of the Act, Congress has set forth as a policy to prohibit the discharge of toxic pollutants in toxic amounts. This is related to the more general goal of the Act, namely the restoration and maintenance of the chemical, physical and biological integrity of the nation's waters. However, EPA has not developed well articulated priorities for regulating discharges. By attempting to address all levels rather than significant discharges of toxic pollutants, EPA simply dilutes its resources.

It should be made clear that under certain circumstances, EPA may exclude from Section 304(b) effluent limitations either a specific point source category or specific pollutants that are discharged by a category. Such circumstances should include, but not be limited to, situations where equally or more stringent protection is already provided by another standard or limitation, where a pollutant is present in the effluent solely as a result of its presence in intake waters, or where a pollutant is present in a discharge only in trace amounts. Pollutants that are discharged

in trace amounts are difficult to measure accurately, and it is not cost-effective to regulate their discharge.

EPA must have the flexibility to exclude point source categories altogether from the development of national effluent limitations guidelines, and to decline to regulate discharges of pollutants within a point source category. Public funds should not be spent in the development of guidelines applicable only to a few sources, and industry funds should not be spent controlling insignificant discharges of pollutants.

3. Consideration of Alternatives, Inter-media Effects, and Costs Versus Benefits

Section 304(b)(2)(B) of the Act specifies the factors that EPA is to consider in developing BAT effluent limitations guidelines. Included among those factors is the cost of achieving the effluent reduction. Nowhere, however, is the Agency expressly directed to undertake a cost-benefit analysis to determine whether the costs are justified by the benefits to the environment. We believe that such an assessment should be undertaken.1/

As part of the cost-benefit analysis, EPA should consider the inter-media effects of its proposed regulations. Section 304(b)(2)(B) of the Act requires EPA to consider non-water-quality impacts in promulgating effluent limitations

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1/ See also pages 44-45 below.

guidelines. Solving a water problem by creating a hazardous waste or air pollution problem makes little sense unless the problem in another medium can be much more easily or more cost-effectively treated.

Similarly, EPA should consider alternative treatment technologies when promulgating regulations based on the best available technology economically achievable. Unless such alternatives are considered, EPA cannot have a true picture of the costs and the benefits of any particular technology.

Finally, it should be made clear that the "guideline" factors in Section 304(b)(2)(B) are to be considered in permit limitations developed on a case-by-case basis in the absence of nationally applicable guidelines.

E. Extension for Compliance with BAT Limitations

Section 301 of the Act requires compliance by July 1, 1984, with BAT effluent limitations for toxic pollutants. This date is unreasonable in light of the Agency's failure to promulgate effluent limitations guidelines for many industry subcategories and its inability to issue case-by-case permits to 69,000 dischargers. Indeed, as the House Oversight Report notes (at p. 29), current problems besetting the Agency "call into grave question whether the EPA is truly capable of putting into effect a genuinely workable, legally defensible and cost-effective regulatory scheme with which industry and local

government can reasonably be expected to comply within the statutory deadlines." The House Oversight Report (at p. 62) recommends that this reality "be recognized sooner rather than later," and that the date for compliance with BAT treatment requirements be extended to compensate for EPA's delay in issuing treatment regulations.

Congress should extend the date for compliance with BAT limitations to a reasonable date based on a determination of the time needed by EPA to complete its task and by industry to comply with whatever limitations are imposed in permits based on published limitations guidelines or, in the absence of regulations, the permit writer's best professional judgment. At a minimum, compliance with BAT limitations should be extended until July 1, 1987. This coincides with the current BAT deadline for nonconventional pollutants. Also, provision should be made for an extension of the BAT compliance date on a case-by-case basis if a discharger can show that, despite its good faith efforts, compliance with the limitations by the prescribed date is not feasible.

F. Revise BAT Effluent Limitations Guidelines Every Ten Years

Once BAT effluent limitations guidelines are established, industry should be able to rely upon those limitations as the only technology-based discharge requirements it must meet. Otherwise, industry will be constantly altering its

pollution control plans to meet ever-changing requirements, or constantly replacing equipment it has installed only recently. This is not cost-effective or sensible. Congress should provide that BAT effluent limitations guidelines may be updated every 10 years, rather than the 5 year review now called for by Section 301(d) of the Act. In light of the long period of time that EPA has spent promulgating the first set of BAT guidelines, it makes little sense to require review of the guidelines every 5 years.

G. Waivers From Effluent Limitations Where Circumstances Merit

Where economic or water quality circumstances merit, a discharger should qualify for alternative BAT effluent limitations. Section 301(c) of the CWA now provides for a waiver from BAT limitations upon a showing by a point source that modified limits will represent the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the elimination of the discharge of pollutants. Section 301(g) provides for a modification of the BAT limitations applicable to nonconventional pollutants where such modification will not interfere with the attainment or maintenance of water quality. No modifications are allowed in BAT effluent limitations applicable to toxic pollutants. See CWA § 301(l).

Modifications to technology-based limitations beyond BPT should be authorized for conventional, nonconventional and toxic pollutants based on water quality considerations. If a state has adopted water quality standards that meet the requirements of the Act, and if there will be no interference with the attainment or maintenance of the water quality, it is appropriate to allow such modifications. Section 301(l) of the Act should be deleted, and Section 301(g) should similarly be modified.

With respect to the economic waivers provided for nonconventional pollutants in Section 301(c), it should be made clear that economic capability is to be determined on a plant-by-plant basis, not on the basis of the economic well-being of the parent company. Corporations generally decide whether to close a facility based on that particular facility's economic viability. If, therefore, the pollution control requirements applicable to the facility result in severe economic injury to that facility, the parent corporation may close the facility even though the parent corporation could itself absorb the losses from that facility.

H. Apply BAT Limitations to New Sources

Section 306 of the CWA presently requires EPA to develop a separate set of technology-based standards for new sources. We believe that such standards are unnecessary and should be abandoned.

As a practical matter, EPA's new source standards have generally been identical to its BAT limitations for industrial dischargers. Thus the provision for separate standards has simply resulted in increasing EPA's administrative burden at best.

Moreover, there seems to be no policy justification for requiring different or more stringent standards for new sources. As discussed above, BAT limitations should be adequate to address any significant discharges of toxic pollutants. Water quality standards will of course be available to deal with any particular local problems.

II. LOCAL CONTROL OF THE PRETREATMENT PROGRAM

Unlike the dischargers governed by Sections 301, 304 and 306 of the Act, many industrial facilities do not discharge directly into the nation's waters. Industrial facilities in urban areas frequently discharge into publicly owned treatment works (POTWs). The POTWs treat industrial, as well as domestic, wastes and the industrial user pays a fee for this service.

POTWs and other direct dischargers must obtain and comply with the terms of National Pollutant Discharge Elimination System (NPDES) permits, but Congress decided not to impose such a permit regime on indirect dischargers. Instead, Section 307(b) of the Act authorizes EPA to establish pretreatment standards designed to prevent interference with the operation of the POTWs or the passthrough of wastes that the

POTW is not capable of treating. However, it has always been the policy of Congress to avoid redundant treatment by industry and POTWs.

Relying upon what it believes to be the mandate of Section 307(b) of the Act, EPA has developed an elaborate and cumbersome pretreatment program. The most onerous aspect of this program involves the promulgation of national technology-based pretreatment standards applicable to dischargers of toxic and nonconventional pollutants. In the development of these standards, EPA has not given proper consideration to the amount of interference with the operation of POTWs, or the extent to which municipal treatment systems effectively remove pollutants

Although EPA's general pretreatment regulations refer to the granting of credits reflecting consistent removal of pollutants by POTWs, the barriers that the Agency has erected in its regulations make it unlikely that credits will in fact be given. Indeed, the House Oversight Report (at p. 4) quotes one municipal witness at the Subcommittee's hearings in June, 1980 as stating, "'The restrictions and difficulties involved in the granting of removal credits lead to the conclusion that the EPA was never serious about allowing removal credits to industry.'" Without credits, industrial dischargers will be required to install expensive treatment technology to meet pretreatment limits even though the POTW may remove all or most of certain pollutants in the dischargers' effluents.

This will result in redundant treatment, in violation of the clear intent of Congress that such redundant treatment be avoided. In addition, EPA refuses to take into account the fact that municipalities are able to enforce much less stringent local standards while meeting their NPDES permit limits and without experiencing any significant interference or water quality problems.

The pretreatment program should be modified to focus more clearly on the special problems of interference and passthrough already identified in Section 307(b) of the Act, and to place principal responsibility for pretreatment requirements on the municipalities and states involved. Because the mix of wastes at individual POTWs will vary widely, each POTW will experience unique problems that are best addressed at the local level. Where an industrial discharger causes or contributes to a violation of a POTW's NPDES permit or a violation of EPA's sludge disposal guidelines under Section 405 of the Act, the municipal treatment authority (not EPA) should develop and enforce pretreatment limits on its users adequate to resolve the problems.

The House Oversight Report (at p. 62) states that steps should be taken immediately to allow municipal treatment authorities to implement their own pretreatment programs, which would include the establishment of local pretreatment standards. The Report unequivocally recommends that the use of national categorical pretreatment standards be abandoned.

Such return of the pretreatment program to the local level is necessary if industry and municipalities are to get on with the task of jointly treating wastes discharged to municipal systems.

III. THE PROMULGATION OF CRITERIA AND STANDARDS

EPA is charged with developing water quality criteria under Section 304 of the Act and has authority to publish standards for toxic pollutants under Section 307(a) of the Act. EPA's role in developing these criteria and standards should be reexamined. Further, EPA should employ the scientific disciplines of peer review and risk assessment in developing such criteria and standards.

A. The Role of EPA in Developing Water Quality Standards

Section 304 of the CWA requires EPA to publish information criteria on the effects of various pollutants, at various concentrations, on plant and animal life. Section 303 requires states to adopt water quality standards, and gives EPA the authority to determine whether state water quality standards are consistent with the requirements of the Act. Nowhere, however, is EPA authorized to require that states apply EPA's criteria in developing standards. Yet, in an Advanced Notice of Proposed Rulemaking (43 Fed. Reg. 29588 (July 10, 1978)), EPA announced a policy of "presumptive applicability" for Section 304(a)(1) criteria. Although the Agency

has indicated in its Notice of Availability of Water Quality Criteria Documents (45 Fed. Reg. 79318 (Nov. 28, 1980)), that it may abandon its presumptive applicability policy, it is not clear that EPA's policy has in fact changed.

EPA appears to have taken the position that fishable/swimmable use designations are the norm in developing water quality standards, and that less stringent designations will be allowed only in limited circumstances. Nothing in Section 303 requires the setting of standards for fishable/swimmable uses only. States should retain primary responsibility for developing standards based on multiple water uses.

We believe that EPA's information criteria under Section 304 should not be presumptively applicable. Section 303 should provide for multiple use designations and the adoption of standards designed to ensure that such uses are maintained. Fishable/swimmable waters, though a laudable goal, should not be the rule in all cases, particularly when background pollutants in the water would make achievement of fishable/swimmable quality impossible.

While EPA's information criteria are not presumptively applicable to the states, it is nonetheless likely that states which have limited resources to devote to independent research will rely heavily on EPA's criteria in developing water quality standards. It is therefore critical that the criteria rest on a sound technical foundation. To ensure that

the criteria are technically valid, the criteria should be subject to public notice and comment and peer review. See pages 34-35 and 46-47 below.

B. The Role of Effluent Toxicity Testing

EPA has drafted a proposal for a national program of effluent toxicity testing. The Agency apparently believes that this program is akin to biological monitoring, which is mentioned in Section 308 of the Act. As presently contemplated by EPA, effluent toxicity testing will be used by NPDES permitting authorities to impose case-by-case permit requirements.

CMA believes that effluent toxicity testing may be able to play a useful role in implementing the Clean Water Act, but only if based on sound science and reasonable regulatory objectives. The regulatory objectives must recognize that the only meaningful toxicity information regarding effluents is what specific adverse impacts, if any, a particular effluent has in the receiving water in question. CMA also believes that toxicity testing should be used not only to determine when adverse effects of a discharge in a specific receiving water may call for additional treatment, but also when the lack of adverse effects may indicate that existing treatment is adequate and further expenditures for additional treatment are unnecessary. Considerable further work must be undertaken before effluent toxicity testing may realistically be used to assess receiving water quality.

C. Peer Review of EPA's Scientific Determinations

Under the Clean Water Act, EPA is directed to classify pollutants as toxics and develop effluent standards for such toxics (Section 307), and publish water quality criteria (Section 304). In performing all of these tasks, the collection and careful evaluation of scientific information and data are critical. To ensure that the evaluation process is an objective one, it is essential that there be an independent review of the scientific data on which the scientific decisions are made.

An independent evaluation of scientific data is particularly necessary where, as in the case of much data in this area, the data are incomplete and subject to different interpretations. There is always the danger that such data will be used to support a preconceived notion, rather than being evaluated objectively. In performing its functions under Sections 304 and 307 of the Act, EPA should prepare and publish a critical evaluation of the relevancy, quality and accuracy of all scientific data, studies and analyses on which it relies. Contrary data should also be examined. These data, together with EPA's evaluation, should then be reviewed by an independent science advisory board. The board should not be appointed by EPA. The board's mandate would be solely to review and analyze the data used as the basis for EPA's decisions and EPA's evaluation of the data. It would not

review the regulatory decisions themselves, since such decisions would involve social and economic considerations outside the scope of the board's expertise.

In its review of the data and EPA's analyses of the data, the board should point out those areas in which the data or analyses are inadequate or need to be revised. In proposing a new or revised decision, EPA should be required to justify any failure to follow or respond to the review board's recommendations.

D. Standards for Toxic Pollutants Should be Limited and Based on Risk Assessments

Section 307(a) of the Act authorizes EPA to develop effluent standards for toxic pollutants. Such standards should not overlap the BAT and water quality requirements. Instead, the standards should be reserved for those pollutants that present an unreasonable risk to human health or the environment based on scientific data substantiating the pollutant's toxicity and threat to aquatic life. Section 307(a) standards should be established only when the results of a risk assessment demonstrate that a standard is necessary. Evidence supporting the need for such controls should be subject to adequate peer review. See pages 27-28 above.

Section 307(a) of the CWA provides EPA with little guidance on how to develop toxic pollutant effluent standards,

other than the requirement in Section 307(a)(4) that such standards must provide "an ample margin of safety." The quoted phrase is subject to serious misinterpretation and abuse in that it allows for a subjective determination of and unnecessary stringency in setting standards. The "ample margin of safety" concept should be abandoned. Instead, standards under Section 307(a)(2) should be based on risk assessments. Section 307 should require an adequate evaluation, and a weighing of the significance of risk presented by actual ambient concentrations of a particular pollutant, before effluent standards are promulgated for that pollutant.

IV. THE NRDC CONSENT DECREE

In 1976, EPA entered into an unprecedented settlement agreement with the NRDC and several other environmental groups. That agreement, embodied in a court order, established a wide range of programs for the control of discharges of toxic pollutants not found in the Act.

Whatever valid purpose the consent decree may have had when adopted, that purpose was superseded when Congress acted in 1977. The 1977 Amendments to the Act provide a regulatory framework for the control of toxic pollutants and give EPA discretion to implement these provisions.

The NRDC consent decree has outlived its usefulness, and now serves only to hamstring the Agency and to impose restraints on EPA's implementing actions that Congress has

committed to EPA discretion. The decree specifies criteria not found in the Act that EPA must follow in its implementation, and requires that EPA undertake programs not required by the statute. It forces EPA to prepare detailed justifications for many of its regulatory decisions, and the threat of a contempt suit gives the plaintiffs undue influence over EPA's regulatory actions.

The NRDC consent decree should be abandoned to remove the unjustified constraints on EPA's implementation of the CWA.

V. THE ISSUANCE AND ENFORCEMENT OF NPDES PERMITS

Sections 301 and 402 of the CWA provide that pollutants may not be discharged to waters of the United States except in compliance with a permit issued by EPA or an authorized state. Pursuant to those provisions, NPDES permits have been issued to most industrial direct dischargers. These permits are now expiring and will have to be reissued. Based on experience gained from the first round of permit issuance and an examination of problems that are likely to arise in the future, certain changes in the permitting process are necessary

In particular, permits should be issued for a ten-yea fixed term and should not be reopened by EPA during their life except in rare, specified circumstances. Industry should not be subject to a moving target. Permit conditions should be based exclusively on regulations that have been through notice

and comment rulemaking proceedings, and effluent limitations should be based solely on effluent limitations guidelines where such guidelines have been promulgated. In establishing limitations, credit should be given for pollutants in a discharger's intake water, and waivers from guidelines should be authorized where circumstances warrant. In addition, limitations should only be set where there are validated sampling and test methods to determine compliance with the limits. Where permit limits are based on published guidelines, the compliance sampling and analytical procedures should be identical or equivalent to the procedures EPA used to develop the guidelines.

Finally, approved states should be given more authority to run their own NPDES programs. EPA's authority to veto state-proposed permits should be limited, and states should have the sole authority to enforce state-issued permits.

A. Extend the Life of NPDES Permits to Ten Years

The existing five-year maximum limit on the life of NPDES permits is unnecessarily short. In light of the fact that it often takes one year for a final permit to be issued, and up to three years to install treatment technology, the five-year limit leaves insufficient time to test the effectiveness of the treatment before the permit renewal application process begins. Further, where a permit has been issued on a

case-by-case basis prior to the promulgation of guidelines, it should not be changed soon thereafter even to conform to subsequently issued guidelines. The permit program should be modified to provide for ten-year NPDES permits. As the House Oversight Report recognizes (at p. 62), extending the life of permits will provide "greater stability and certainty to the [NPDES] program," and more assurance to industry that it will not be required to replace or substantially modify pollution control equipment that has only recently been installed. Longer permit terms will also "allow a more effective utilization of the overburdened regulatory staffs of the EPA and the States." Id.

B. Fix Permit Terms During the Life of a Permit

In its NPDES regulations, EPA has reserved the right to reopen NPDES permits if subsequently promulgated standards or limitations are more stringent than corresponding effluent limitations in the permit, or if the subsequently promulgated standard or limitation controls a pollutant not limited in the permit. 40 C.F.R. § 122.62(c).*/ This policy should be change' Once a permit is issued, the permit should not be reopened during its life to impose more stringent effluent limitations.

*/ Although the reopener clause need not now be incorporated in permits issued after June 30, 1981, EPA nonetheless believes that it has authority to reopen permits on these grounds.

Industry should not be subject to a moving target. A discharger should know that funds invested today to control its discharges will be funds well-spent, that EPA will not be able to change the rules in the middle of the game. If the discharge of a pollutant poses a significant risk of harm to human health or the environment, EPA may proceed under authority already given to it under the Act to secure appropriate emergency relief.

C. Exclusive Reliance Upon Guidelines Where Promulgated

Once effluent limitations guidelines are promulgated, EPA should be bound by those guidelines. EPA should not set technology-based effluent limitations in permits on a case-by-case basis for pollutants covered in guidelines in the absence of a showing made in a variance-type proceeding that a particular industrial discharger is fundamentally different from those dischargers considered in developing the guidelines. To regulate pollutants not covered by the guidelines, EPA should be required to show that those pollutants are discharged in amounts that are both significant and substantially greater than the amounts from the facilities considered in developing the guidelines. Industry should be able to rely on promulgated guidelines that have been subject to notice and comment and not be subject to undefined and ever-changing limitations. If additional technology-based limitations are needed on an industry-wide basis, the Agency should promulgate revised effluent limitations guidelines.

EPA's current regulations provide that a permittee who has accepted effluent limits based on the permit writer's best professional judgment may not "backslide" if a subsequently promulgated guideline applicable to the permittee imposes less stringent limits. This unfairly penalizes those dischargers who did not contest their case-by-case limits, and puts them at a competitive disadvantage with dischargers whose limits are based on the guidelines. EPA should not impose limits in a new or reissued permit different from those in promulgated guidelines, in the absence of a variance-type showing that such different limits are justified.

D. Prior Public Notice and Comment for EPA Manuals and Guidance

The permit writer is directed by the preamble to the NPDES application forms to consult various sources to determine appropriate technology-based limitations in the absence of guidelines regulations applicable to an industry subcategory. 45 Fed. Reg. 33521 (May 19, 1980). Such sources include EPA guidance, and a five-volume treatability manual prepared by EPA. Neither the guidance nor the manual was the subject of notice and comment rulemaking under the Administrative Procedure Act (APA).

Because of the inordinate delay in promulgating effluent guideline regulations, many dischargers will be required to install treatment technology to meet effluent

limitations based on EPA manuals that have never been scrutinized or criticized by the public and may not be scientifically valid. Manuals or other guidance documents that EPA intends permit writers to use in setting case-by-case permit limits should be subject to the rulemaking procedures established by the APA.

E. Reserve Best Professional Judgment BAT Permit Limits for Significant Toxics Problems

Under the policy proposed above, BAT limitations for toxics would be set by nationally-applicable guidelines only when there is a significant toxics problem and there are sufficient plants in a subcategory to warrant the promulgation of national guidelines. Where there are less than five plants in a subcategory, national guidelines should not be promulgated. If there is a significant toxics problem caused by a plant's discharge (see discussion above at pages 12-16) but no guidelines have been promulgated, then BAT limits should be imposed in a permit on a case-by-case basis. Such permit limits, like the nationally-applicable effluent limitations guidelines, should be based on an evaluation of costs and benefits, treatment alternatives and inter-media effects. See discussion at pages 44 below and 16 above.

F. Credit for Pollutants in a Discharger's Intake Water

In the CWA, Congress has authorized EPA to regulate "discharges" of pollutants to navigable waters. Section 502(12) of the Act defines "discharge of a pollutant" as the addition of pollutants to navigable waters. Based on this clear language of the Act, courts have held that in setting effluent limits EPA must provide credit for pollutants in intake water. See, e.g., Appalachian Power Co. v. Train, 545 F.2d 1351, 1377 (4th Cir. 1977).

In spite of these judicial decisions interpreting the Act, EPA has in its NPDES regulations imposed so many restrictions on the granting of "net" effluent limitations that it will be virtually impossible for dischargers to qualify for them. See 40 C.F.R. § 122.63(h). The rules will thus force dischargers to remove pollutants that they do not add to the receiving water. By denying credit for pollutants in intake waters, the EPA rules may also result in the imposition of effluent limitations that cannot be achieved with the technology on which the industry guidelines were based. The costs to achieve such limits, even if attainable by other means, may be unjustifiable.

EPA's restrictions on net limitations are unwarranted. A discharger should be given credit for pollutants in its intake water that will not otherwise be removed by treatment systems installed to meet applicable effluent limitations

guidelines. Where water quality problems are created on account of the credit, such problems can be regulated through water quality-based limitations on a case-by-case basis.

G. Limit EPA's Veto of State Permits

EPA should not veto a permit proposed by an approved state on the basis of anything other than clear requirements of the Act or effluent guidelines regulations. By delegating the permit-issuing authority to the states, Congress intended to remove the federal government from that process to the extent possible. Indeed, Section 402(d) of the Act provides that EPA may veto a state-proposed permit only where the permit conditions are "outside the guidelines and requirements of [the] Act." Interpreting this section of the Act, courts have held that EPA cannot object to a state-proposed permit simply because it disagrees with the state. Nor can the Agency rely on informal guidance or memoranda as the basis for its objection. Ford Motor Co. v. EPA, 567 F.2d 661 (6th Cir. 1977).

Yet, in its NPDES regulations (40 C.F.R. § 123.75), EPA has asserted the right to object to state-proposed permits on a wide range of grounds, many of which involve merely a substitution of the Agency's judgment for that of the state. For example, 40 C.F.R. § 123.75(c)(6) allows EPA to object to any proposed effluent limitation which "in the judgment of the Regional Administrator" is improper, even in the absence of EPA effluent limitations guidelines regulations. What this

means is that the states never truly run their own programs. Every judgment of state officials is subject to review and reversal by EPA personnel. EPA's failure in some instances to delegate meaningfully the NPDES permit program is criticized in the House Oversight Report (at p. 56), which urges EPA to "make every effort to ensure that these delegations of program authority are genuine." The veto policy should be reassessed to make express the limited scope of EPA's review once an NPDES program has been delegated to a state.

H. Require Prompt Action on Applications for the First NPDES Permit for a Source

The NPDES permit-issuing process is unduly cumbersome and permits are rarely issued in a timely fashion. Under existing EPA regulations, the permit-issuing authority prepares the draft permit and publishes it for public comment. Opportunities are provided for evidentiary hearings or, in the case of permits for new sources or new dischargers, non-adversary panel hearings. During this appeal process, a new facility is without any permit and, under EPA's NPDES regulations, cannot begin construction; an existing facility seeking its first permit will be uncertain as to what limitations and conditions it must meet. Placing industrial facilities in such a state of uncertainty for such long periods of time is intolerable.

To remedy this situation, the permit-issuing process should be modified to expedite the issuance of the first permit for a discharger. Time limits should be placed on EPA's permit issuance procedure, and the procedure streamlined as much as possible to avoid unnecessary delays. New sources and new dischargers are required to apply for a permit 180 days before the date on which their discharges are to commence. Fairness requires a reciprocal obligation on EPA's part to act on permits within this period. In addition, the applicant for an initial permit should be given the option of preparing a proposed permit with supporting data, which permit would become final unless acted upon by EPA within a specified period of time.

I. Validated Sampling and Test Methods for Determining Compliance With Effluent Limitations

Enforceable discharge limitations should not be imposed in permits in the absence of reliable, reasonably available, and cost-effective sampling and test procedures to determine compliance. In general, such procedures should be subject to independent peer review by members of the scientific community, including individuals a majority of whom are not employees of the federal government; they should be validated by procedures that conform to standards set by the scientific community; they should be approved by a consensus standards-writing organization; they should be shown to yield

data of sufficient accuracy and precision to be applicable to the programs authorized by the CWA; and they should be cost-effective for providing the required data.

Further, where permit limits are based on effluent limitations guidelines, monitoring to determine compliance with permit limits should be performed using the same sampling and test procedures used in the guidelines development or procedures that are equivalent. Otherwise, compliance monitoring might consistently show that a permittee is in violation of an effluent limitation for a particular pollutant when in fact the "violation" is only the result of different confidence levels in the monitoring methods. Compliance monitoring procedures should be subject to requirements of validation for accuracy and precision.

J. Allow States to Enforce State-Issued Permits

When the Administrator learns of a violation of a state-issued NPDES permit, Section 309(a) of the CWA gives him the option either of bringing an enforcement action directl against the violator, or allowing the state to commence an enforcement action within 30 days after notification by EPA to the alleged violator and the state. EPA should not be allowed to bring an enforcement action for permit violations occurring in approved states. States that have assumed exclusive responsibility for implementation of NPDES programs should be given sole enforcement responsibility. Modifying the enforcement authority in this manner will also alleviate the "double

jeopardy" that dischargers now face of prosecution by both EPA and the state. EPA would, however, retain oversight responsibility and the authority to withdraw its delegation where appropriate.

K. Exempt New Sources From NEPA

Congress provided in Section 511 of the CWA that nothing in the National Environmental Policy Act of 1969 (NEPA) should be deemed to authorize the imposition of any effluent limitations other than limitations established under the CWA. It should also be made clear that new sources are not subject to the Environmental Impact Statement (EIS) requirement of Section 102(2)(c) of NEPA. Preparation of an EIS is a time-consuming process.

While the requirement that such an EIS be prepared may make sense as applied to federal agencies other than EPA, it is unnecessary to impose the heavy burden of preparing an EIS on EPA. As the Agency charged with protecting the environment, EPA takes environmental concerns into account in all of its decision-making. Moreover, the NPDES permit-issuing process for new sources provides ample opportunity for consideration of environmental concerns and, accordingly, is the functional equivalent of the EIS requirement. Permits for new facilities under the Resource Conservation and Recovery Act, the Safe Drinking Water Act and the Clean Air Act are not subject to NEPA's EIS requirement, and NPDES permits should similarly be exempt.

In its NPDES regulations EPA has provided that, as a general rule, new sources may not begin construction prior to the issuance of a final NPDES permit. 40 C.F.R. § 122.66(c). CMA does not believe that Congress ever intended the Clean Water Act to regulate construction as opposed to discharges. Prohibiting facilities from beginning construction prior to the issuance of a permit for the facility's discharge will unnecessarily delay and discourage the building of new, modern, clean plants that will better protect the environment.

L. Clarify the Responsibilities of the Army Corps of Engineers in Assessing Environmental Impacts on Navigable Waters

Under Section 10 of the Rivers and Harbors Act of 1899, an Army Corps of Engineers permit is required for activit which takes place in or affects a "navigable water" of the United States if the activity will have a significant effect on navigation or navigable capacity. When permit issuance is found to be a "major Federal action," the Corps is required by NEPA to undertake an environmental assessment to determine whether an EIS is required. Collecting the environmental assessment information and preparing a Section 10 permit is time-consuming and expensive for both industrial and municipal applicants, and carries with it inherent uncertainties and delays.

Recently, the Corps has determined that a new or revised Section 10 permit is needed when a proposed activity

may have a new or different environmental impact or affect the "physical capacity" of waters, even though there is no significant effect on navigation or navigable capacity. These activities will involve situations that are unrelated to the Corps' historical expertise in assessing impacts on navigation and navigable capacity. Moreover, the environmental effects of such activities would be reviewed by other environmental agencies such as EPA or state agencies. The result will be regulatory duplication, additional costs, and unnecessary delays in permitting new or modified industrial facilities without commensurate improvement in protection of the environment.

The responsibility of the Corps should be clarified. Congress retained a limited function for the Corps when it transferred the Corps' permitting authority for refuse discharge under the Rivers and Harbors Act to EPA under the Clean Water Act. The Corps' authority is directed only to activities which have a significant effect on navigation or the navigable capacity of the waters of the United States. EPA alone should have the responsibility for considering the environmental consequences of other activities which may affect the quality of the nation's waters.

VI. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

The CWA's administrative procedures and provisions for judicial review should be examined. As to the former, EPA's procedures should be modified to provide more systematic consideration of costs and alternatives. To foster the voluntary exchange of data, EPA should provide greater protection for confidential information. Finally, gaps in the Act's judicial review provisions should be closed by providing for judicial review in a United States district court of all final EPA actions for which direct appellate review is not mandated.

A. Development of Alternatives, Consideration of the Economic Impact of Regulations, and Adoption Of the Least Burdensome Alternative

Executive Order 12291 requires agencies to conduct a Regulatory Impact Analysis for "major rules," defined to include, inter alia, rules where it is anticipated that the economic impact on the economy will be at least $100 million annually and rules that will result in significant additional costs to consumers or will place U.S. industry at a competitive disadvantage in relation to foreign-based enterprises. This is a salutary procedure for ensuring that regulations are cost-effective. EPA should also be required to consider th economic impact of a regulation in light of the impact of other regulations affecting the same parties and to adopt the least burdensome regulatory alternative that satisfies the Act's goals. Finally, in order to make this review of alternatives more than just a rubber stamp of a single proposal,

the Agency should be required to consider and determine the costs and benefits associated with alternative proposed regulations.

B. Protection for Confidential Information

In carrying out its responsibilities under the Clean Water Act, EPA routinely requests private industry to supply it with confidential and proprietary business information. Under normal circumstances, such information would be protected from public disclosure under the Trade Secrets Act, which generally prohibits disclosure of confidential business information by the Government unless such disclosure is otherwise specifically "authorized by law." 18 U.S.C. § 1905. In that regard, EPA has interpreted Sections 308(b) and 402(j) of the CWA as authorizing disclosure of business information which would normally be protected under the Trade Secrets Act.

Regardless of whether or not EPA's interpretation is correct, the current statutory language and EPA's position have the net effect of seriously jeopardizing industry's ability to protect the proprietary business information which it routinely submits to EPA. CMA believes this to be a critical problem which, if not adquately resolved, will impair the voluntary exchange of information between EPA and the regulated community. It is only by such a free exchange of information that rational and responsible regulation under the CWA can take place. Failure to offer adequate statutory safeguards to

prevent disclosure of confidential business information by EPA can only have detrimental effects. At best, such a failure will make industry extremely reluctant to provide confidential information to EPA. At worst, it will result in burdensome litigation by industry to protect the confidentiality of its proprietary business data.

We believe that under Section 402(j) of the CWA, only nonconfidential portions of permit applications should be made available to the public. Information protected under the Trade Secrets Act which is not otherwise made available to the public under Section 308(b) should be kept confidential. Second, the phrase "effluent data" in Section 308(b) of the Act should be deemed to include only the quantities and concentrations of pollutants discharged to navigable waters. Finally, data released under Section 308(b) as part of a proceeding under the Act should only be released to a person who has a direct interest in the proceeding and who has executed an agreement that would prohibit further disclosure of the data.

C. Close the Gaps in the Judicial Review Provision of the Act

EPA has followed a practice of issuing instructions, manuals and other similar information or directives to EPA and state permit writers regarding implementation of the NPDES program. Such information and directives have not been subject to public comment and often escape judicial review based on the assertion by EPA that they are only policy or guidance.

Often the public is unaware of the existence of these documents and the EPA policies set forth therein. Yet, these policies and guidance have a major impact on industry. Examples include the Agency's five-volume treatability manual, which will be used to set case-by-case permit limits; the water quality criteria, which will be used by states in developing water quality standards; and a best management practices manual, which may be used in writing or enforcing permits.

To ensure that EPA action which directly affects dischargers will not escape judicial scrutiny, review should be provided in a United States district court of all final EPA action taken under the authority of the Act. Such final action would include issuance not only of published rules and regulations, but also guidelines, manuals, guidance documents, instructions, criteria, and other such documents intended by EPA to be applied by its Regional offices and the states. In addition, EPA should be required to publish notice of the availability of all such documents that have an impact on the public and the regulated community.

CONCLUSION

This paper summarizes a number of areas in which present policy under the Clean Water Act should be reassessed and modified. CMA is prepared to work constructively with EPA and the Congress to address these issues in a sound,

rational manner. We believe that the adoption of the foregoing proposals would make the Clean Water Act a more workable vehicle for protecting the environment and promoting the productivity of the nation.

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Exhibit E

ENVIRONMENTAL MANAGEMENT COMMITTEE

AIR DISPERSION MODELING TASK GROUP

Situation

The Environmental Protection Agency (EPA) is continuing to develop and use air models to calculate pollutant exposure concentrations from source data. These models are an integral part of the regulatory process (e.g., regulation development, emission permitting, especially determination of available increments under PSD rules, and SIP development), and will continue to be as long as air quality exposures and impacts form the basis for the regulatory effort.

Mission

Develop an advocacy program that assures a close working relationship with EPA in order to enable CMA to influence the development and implementation of scientifically sound and carefully validated air models.

Current Program

- Monitor EPA's activities in developing and applying air models.
- Provide comments and technical guidelines to EPA and state model developers.
- Provide comments on regulations using air models.
- Advocate responsible model application by EPA and state agencies.
- Advocate careful validation of models.

Membership

James C. Edwards, Sponsor; J. D. Martin, Task Group Leader

Sunset

Task group review September 1, each year

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Problem

A significant portion of the regulatory programs implementing the Clean Air Act are impacted by mathematical models. To date the chemical industry has had limited efforts to impact on the development and application of these models.

Objective

To establish an advocacy program that assures the development and implementation of air models that are scientifically sound and carefully validated.

Background

EPA is continuing to develop and use air models to calculate pollutant exposure concentrations from source data. These models are an integral part of the regulatory process (e.g., regulation development, emission permitting--especially under PSD rules--and SIP development) and will continue to be as long as air quality exposures and impacts form the basis for the regulatory effort.

Recommendation

The Environmental Management Committee recommends the establishment of an Air Dispersion Modeling Task Group.

Impact

Money: None anticipated at this time, since company modeling expertise is the critical element for an effective task group. If consultant funding becomes appropriate (i.e., long range transport issues) it will come out of the existing EMC budget.

Company Personnel: Approximately 6 to 7 people to meet approximately 1 day per month.

Staff Personnel: No new personnel. The Manager of Air Programs will be staff executive for the task group.

tion Required

None - for information only.

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Exhibit F

ENVIRONMENTAL MANAGEMENT COMMITTEE

HEALTH ASSESSMENT TASK GROUP

Situation

Chronic health effects, especially carcinogensis, underline many environmental laws and regulations. These include Section 112 of the Clean Air Act, hazardous waste under RCRA and Superfund, and the Clean Water and Safe Drinking Water Acts. Various attempts are being made by legislators and regulators to compile and promulgate lists of such chemicals. These listing procedures invariably shortchange scientific input and have adverse economic and social consequences.

Mission

Develop scientific information, including papers and expert testimony, on the subject of chronic health effects, especially carcinogensis, as it relates to pollutants at levels of exposure found in the environment. Assist other EMC task groups in identifying and understanding these issues, developing positions and advocating them.

Current Program

Consult on the development of EMC positions and alternatives relative to Section 112 of the Clean Air Act and other laws and regulations where listing of chemicals for health effects purposes is an issue.

Membership

L. D. Johnson, Sponsor; W. McCarville, Task Group Leader.

Sunset

Task group review September 1, each year

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Problem

Chronic health effects, especially carcinogenesis, underlie many environmental laws and regulations. Attempts are being made by legislators and regulators to regulate chemicals thought to be carcinogens. These attempts invariably limit scientific input and have adverse economic and social consequences.

Objective

Develop scientific information, including papers and expert testimony, on the subject of chronic health effects, especially carcinogenesis, as it relates to pollutants at levels of exposure found in the environment. Assist other EMC task groups in identifying and understanding these issues, developing positions and advocating them.

Background

EPA has proposed regulations listing "hazardous" air pollutants, establishing water quality criteria, and establishing drinking water limitations which have been primarily designed to control "carcinogens". EPA has invariably limited scientific input to these regulatory procedures preferring quick regulation based on preconceived judgments rather than protection of the public based on established facts. State and local governments have made similar initiatives. The chemical industry has been adversely impacted by this scientifically unsound regulatory effort.

Recommendation

The Environmental Management Committee recommends the establishment of the Health Assessment Task Group.

Impact

Money: None anticipated at this time for research projects, since company scientific expertise is the critical element for an effective task group. Assistance of outside counsel in major regulatory and legislative advocacy projects may be necessary where in-house counsel resources are not available for a specific project. The cost of outside counsel will come from existing OGC budget.

Company Personnel: Approximately 5 to 7 people to meet two days per month. Additional effort will be needed at critical regulatory or legislative development times. This resource committment is not a net addition to the total demand of company personnel since the same effort is currently being managed by the AIHC Scientific Committee. AIHC is presently assisting CMA in this area. It is expected that the Health Assessment Task Group will be composed primarily of existing active AIHC members. Creation of this committee within CMA/EMC will internally improve communication with this group, improve the scientific input of existing EMC groups, and more effectively utilize existing member company scientific resources.

Staff Personnel: No new personnel required. A current staff executive vacancy in the Environmental Division will be assigned staff executive responsibility for the task group.

Action Required

None - for information only.

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Exhibit G

TAX POLICY COMMITTEE: RECOMMENDATION FOR EXEMPTION FROM SIZE AND ROTATION REQUIREMENTS

It will be recalled that the Tax Policy Committee, through past reports of chairmen, has identified as inhibitions to its effectiveness the CMA rules which set a fifteen-member committee size limitation and require mandatory rotation of members upon completion of a three-year term of service. The Committee maintains that hardships arise because the fifteen-member size limitation needlessly restricts access to industry expertise and capability, and makes it difficult for the Committee to operate as a forum for addressing industry problems. The Committee also asserts that, for the same reasons, the rotation requirement which mandates a break-in-service is not in the best interests of the Association.

The concerns of the Tax Policy Committee were alluded to in President Roland's June, 1981, report to the Executive Committee on the subject of CMA committee procedures, wherein he noted that alternatives were under review and that recommendations would be forthcoming.

Accordingly, after consultation with staff, the Tax Policy Committee recommends that it be granted the following exemptions from CMA committee rules and procedures:

(1) that the permissible size of the Tax Policy Committee be increased to 21 members, allowing appointment of 7 nominees each year; and

(2) that the Committee not be subject to a requirement that one year must elapse before reappointment of a company representative.

It is the Committee's belief that an overall size of 21 members would constitute a more appropriate pool of expertise and resources. Further, the option for immediate reappointment of effective members would permit their participation without a mandatory one year hiatus.

If the recommended exemptions are granted, membership of the Tax Policy Committee would be as shown on the attached sheet.

The Staff concurs in these recommendations and recommends approval.

ACTION REQUIRED: Approval

CMA
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CMA TAX POLICY COMMITTEE
PROPOSED MEMBERSHIP EFFECTIVE SEPTEMBER 28, 1981

Term ending May 31, 1982 -

(1) *John L. Eichner, (Chairman), Manager, Corporate Tax Department, Eastman Kodak Company (current member)*
(2) *A. William Gallagher, Tax Counsel, Chevron Chemical Company (current member)*
(3) *William F. Loftus, Director of Taxes, Allied Chemical Corporation (current member)*
(4) *Richard S. Payne, Vice President, Director of Taxation, Celanese Corporation (current member)*
(5) *John W. Rakow, Director of Taxes, Stauffer Chemical Company (current member)*
(6) *G. Wesley Read, Manager, Corporate Tax, El Paso Products (new member)*
(7) *Williamson P. Donald, Tax Attorney, E.I. du Pont de Nemours & Company (new member)*

Term ending May 31, 1983 -

(1) *Eldin Glanz, Director of Taxes, Hercules Incorporated (current member)*
(2) *Clement J. Wydra, Corporate Tax Director, Diamond Shamrock Corporation (current member)*
(3) *Charles L. Chambers, Manager, Taxes, Refining, Marketing & Chemicals, Gulf Oil Company (nominated to fill vacancy created by resignation of McCarter Middlebrook, Gulf Oil Company)*
(4) *Thomas M. Rasmussen, Director of Tax & Insurance Department, Monsanto Company (nominated to fill vacancy created by resignation of Paul Glaser, Engelhard Minerals & Chemicals)*
(5) *Robert J. Moody, Director of Taxes, FMC Corporation (nominated to fill vacancy created by resignation of John M. Skelly, Pennwalt Corporation)*
(6) *William M. Bellamy, Jr., Chief Tax Counsel, Union Carbide Corporation (new member)*
(7) *Richard W. Brust, Vice President, Taxes, Minnesota Mining and Manufacturing Co. (new member)*

Term ending May 31, 1984 -

(1) *Paul H. Durham, Associate Tax Counsel, Phillips Petroleum Company (current member)*
(2) *Robert T. Guinan, Tax Counsel, Richardson-Vicks (current member)*
(3) *James C. Pugh, Director of Taxes, Policy and Planning, PPG Industries, Inc. (current member)*
(4) *Thomas G. Singley, General Tax Attorney - Products, Shell Chemical Products (current member)*
(5) *Glenn W. White, Director of the Tax Department, The Dow Chemical Company (current member)*
(6) *Wallace J. Clarfield, Vice President, Taxes, Olin Corporation (new member)*
(7) *Cornelius P. (Neal) Powell, Assistant General Counsel & Director of Taxation, Air Products and Chemicals, Inc. (new member)*

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Exhibit H

PROPOSAL TO ESTABLISH
STATE AFFAIRS SPECIAL COMMITTEE

In recent years, both the volume and complexity of state legislative and regulatory activity have increased dramatically. In addition to the states' own initiatives that impact on areas of concern to the chemical industry, the Reagan administration's "New Federalism" is aimed at redirecting the decision-making process on many key issues back to the states.

Recognizing the speed with which proposals move through the state legislative and regulatory process and also recognizing the potentially disastrous consequences of fifty different sets of state requirements on any given issue, CMA has initiated a new effort targeted at the state level with the creation and staffing of a State Affairs division in the Government Relations Department. The Division came into existence on June 1, 1981.

As with most CMA programs, the state program is drawing much of its strength from the resources of the member companies. To date, the mechanism for harnessing these industry resources has been an ad hoc State Affairs Committee which held its initial meeting on July 23, with subsequent meetings on August 20 and September 17. More than 35 member companies nominated experienced state government relations professionals to serve on this body. Thus it has the requisite expertise to deal with the wide range of issues facing the industry in the states, and to guide and focus our program.

Working closely with other Association entities and with the state Chemical Industry Councils, the committee and its task groups will provide the focal point for the chemical industry's response to the emerging challenge of state legislation and regulations in the 80's.

It is now appropriate to formalize this committee effort by securing Executive Committee and Board Approval, as follows:

1. that creation of a CMA State Affairs Special Committee is authorized, effective immediately;

2. that the committee will function according to the attached Statement of Purposes, and will otherwise be subject to all CMA procedural requirements for special committees;

3. officers and membership will be as shown on the attached roster.

Action required: Approval

CMA
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BD-9/29/81

STATE AFFAIRS SPECIAL COMMITTEE

STATEMENT OF PURPOSES

With respect to State legislative and regulatory matters significant to the chemical manufacturing industry, the committee will:

1. Seek to anticipate, identify and establish priorities with respect to current and emerging issues and opportunities.

2. Monitor and review proposed legislation and regulations.

3. Advise the Board of Directors, Executive Committee, other CMA entities in policy matters.

4. Participate in the planning and implementation of Association programs impacting on specified state issues or objectives with emphasis on developing a consistent Federal/State and Interstate strategy.

5. Coordinate participation in the execution and delivery of State legislative and regulatory programs.

6. Provide support for and liaison with other authorized Association programs.

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STATE AFFAIRS SPECIAL COMMITTEE

Membership

Richard N. Williams (Chairman), Vice President, State Relations, Olin Corporation

Herman W. Vaughan (Vice-Chairman), Government Relations Manager, The Dow Chemical Company

J. Michael Schweder, State Relations Director, Air Products and Chemicals, Inc.

Alan S. Painter, Director, Corporate Affairs, Allied Corporation

Jerry Chambers, Manager, Legislative Communications, American Cyanamid Company

James L. McGraw, Manager, Environmental Affairs, American Synthetic Rubber Corporation

Hector M. MacKethan, Jr., Eastern Regional Director, State & Local Government Relations, ARCO Chemical Company

J. R. Gilligan, Manager, Regulatory Affairs, Borg-Warner Chemicals, Inc.

Dr. Leon Starr, Director, Environmental Health and Safety Affairs, Celanese Corporation

Judy Feldman, Government Affairs Coordinator, Chevron Chemical Company

Ralph Loomis, Director of Public Affairs, CIBA-GEIGY Corporation

Gary W. Bruner, Director of Public Affairs, Cosden Oil & Chemical Company

Bruce Brubaker, Manager, Regulatory Affairs, Diamond Shamrock Corporation

John Cardella, Manager, Regional State Government Affairs, Dow Corning Corporation

William T. Wood, Jr., Director of State and Local Affairs, E.I. du Pont de Nemours & Company

Charles E. Fitzgibbon, Director, State and Governmental Relations, Eastman Kodak Company

Deborah L. Neale, Manager, State Governmental Relations, The BFGoodrich Company

J. R. Strausser, Manager, Regulatory Affairs, Gulf Oil Chemicals Company

Gerald D. Lore, Regional Manager State Governmental Affairs & Planning, Hoffmann-La Roche Inc.

Julie Archuleta, Government Affairs Representative, Hooker Chemical Company

Charles Hebner, Assistant, Community Affairs, ICI Americas Inc.

Lester M. Rapp, Corporate Regional Environmental Representative,
Kaiser Chemicals

Earl Bassett, Vice President, Federal Government Affairs
Minnesota Mining and Manufacturing Company

Barney Wander, Regulatory Management Director, State Environmental Policy Staff,
Monsanto Company

H. J. Baumgarten, Vice President, General Counsel,
National Starch & Chemical Corporation

Michal W. Mainwaring, Manager, State Government Liaison, PPG Industries, Inc.

Michael McManus, Jr., Corporate Counsel, Pfizer Inc.

Ron Betz, Director, State Affairs, Phillips Chemical Company

Robert E. Belliveau, Associate Manager, Technical Government Relations, The
Procter & Gamble Company

Geoffrey B. Hurwitz, Director, State Government Relations, Rohm and Haas Company

W. A. Wood, Manager, Government Affairs, Shell Chemical Company

A. Allan Noe, Director, State and Community Affairs, Stauffer Chemical Company

Roy T. Gottesman, Vice President, Environment & Regulatory Affairs,
Tenneco Chemicals, Inc.

James V. Murray, Manager, Regional Public Affairs, Union Carbide Corporation

Donald E. Ellison, Manager, Government and Industrial Relations,
Virginia Chemicals Inc.

Don Norris, Assistant Director for State Government Affairs, Vistron Corporation

Jean M. Luck, Governmental Affairs Representative, Vulcan Materials Company

Paul C. Duggan, Governmental Liaison Representative, Witco Chemical Corporation

William P. Buckley, Staff Executive, Chemical Manufacturers Association

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Exhibit I

COMMITTEE APPOINTMENTS

1. Chemical Regulations Advisory Committee
   J. P. McCarthy - Koppers Company, Inc. (Term ending May 31, 1983)
   (Replacing Alonzo W. Lawrence - Koppers)

2. Distribution Committee
   Robert A. Christman - Mobay Chemical Corporation (Term ending May 31, 1983)
   (Replacing Thomas Regan - International Minerals and Chemicals Corp.)
   O. M. Watson - Olin Corporation (Term ending May 31, 1982)
   (Replacing C. H. Vescelius - Olin)

3. Environmental Management Committee
   Phil H. Fournet, Jr. - Kaiser Aluminum & Chemical Corporation
   (Term ending May 31, 1983)
   (Replacing Ed Lantz - International Minerals and Chemicals Corp.)
   J. Jeffrey Zimmerman - Hooker Chemical Company (Term ending May 31, 1984)
   (Replacing David A. Guthrie - Hooker)

4. Government Relations Committee
   Stephen R. Conafay - Pfizer Inc. (Term ending May 31, 1983)
   (Replacing Robert L. Shafer - Pfizer)

5. International Affairs Group
   Joel B. Charm - Allied Corporation
   J. Ronald Condray - Monsanto Company
   Alfred C. Haven - E. I. du Pont de Nemours & Company
   James R. Michael - Exxon Chemical Company

6. Occupational Safety and Health Committee
   Warren S. Ferguson - Allied Corporation (Term ending May 31, 1983)
   (Replacing Jonathan Plaut - Allied)
   Ronald Van Mynen - Union Carbide Corporation (Term ending May 31, 1983)
   (Replacing Dr. Myrl Miller - IMC)

7. Public Risk Analysis Special Committee
   Jackson B. Browning - Union Carbide Corporation

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Exhibit J

POLICY FOR REGULATORY IMPACT ANALYSIS OF HEALTH, SAFETY AND ENVIRONMENTAL REGULATIONS

Regulatory agencies should perform regulatory impact analyses to make government decision-making processes more effective.

Improved analysis at the beginning of a regulatory proposal will allow workable and effective rules to be in place sooner. Scientific, technical and economic issues should be examined before important decisions are made.

The following Guidelines are recommended:

- Regulations should be adopted when (1) a need for regulation has been demonstrated, (2) costs bear a reasonable relationship to benefits, and (3) the most cost effective approach is adopted.

  Regulations should be adopted only where they will significantly reduce ~~public~~* risk. Regulations should not be used to induce small changes or to reduce already minor risks. Justification for a regulation should be based on scientific data that clearly identify the hazard to be reduced and show to what extent the regulation will reduce the hazard.

  The anticipated cost of a regulation should include both the direct costs of complying with it and its indirect costs throughout the economy. Similarly, the benefits to be included are the direct and indirect benefits of the regulation.

  Finally, a regulation should take the least burdensome approach that will achieve its goals. Resources are wasted whenever a regulation imposes requirements not directly related to its objectives.

*deleted by Executive Committee - 9/28/81

- Regulatory impact analysis should not include quantification of intangibles in monetary terms.

  Regulatory agencies should not place a dollar value on human life, other health effects such as pain and suffering, or aesthetics. Such quantification is not meaningful to society and the use of a mechanistic cost/benefit ratio for decision-making would be unwise. Regulatory impact analysis should provide decision-makers with as much information as practicable to ensure that regulations express human as well as economic values.

- Regulatory agencies should use "good science" in defining both the need for a regulation and the benefits in terms of risk reduction it will provide.

  Agencies should use quantitative risk assessments that are based on substantial evidence. Unsupported assumptions or seriously flawed scientific studies form a poor basis for regulation.

  Analyses should be reviewed by independent scientists as well as by agency scientists to ensure that the data are valid and that interpretations are correct.

- Regulatory agencies should evaluate alternative approaches to regulation.

  Regulatory agencies should analyze the potential costs and benefits of reasonable alternatives for achieving regulatory goals. Non-regulatory approaches, such as economic incentives, can be more effective and less costly than regulations.

  Agencies should also consider alternative methods of regulatory control. Such alternatives might include flexible compliance deadlines, performance standards, variances and exceptions.

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Exhibit K

REPORT OF THE CHEMICAL REGULATIONS ADVISORY COMMITTEE TO CMA EXECUTIVE COMMITTEE

Carl W. Umland, Chairman
CRAC Impact Analysis Task Group

BACKGROUND

CMA identified a need for Toxic Substances Control Act economic impact assessment very early in the life of the Act. This was in anticipation of Congressional oversight hearings in the early 1980's. These hearings were expected to be an opportunity for amendment either to seek relief from damaging burdens or to defend against further tightening of the Act's provisions. In either case, a sound, verfiable data base would be required.

In response to this direction, CRAC established an Economic Impacts Task Group. An agreement was reached with National Economic Research Associates, Inc. (NERA) about 3 years ago "to develop a method for determining the direct cost of TSCA regulations assessing the impact of these regulations on industry output, production cost, research activity, and the development of new chemical substances".

An industry survey was designed and piloted with 36 member companies. It was administered by Price Waterhouse and Company who also conducted random reviews of the questionnaire completion processes. It was critiqued by an outside panel of economic experts and other interests (including EPA, a trade union, and environmentalist groups).

The study package submitted for review and release consists of 4 documents:

1) The CMA Summary of September 29, 1981.
2) The Advisory Panel Report of August, 1981.
3) The NERA Report of January 20, 1981.
4) The Price Waterhouse and Company Report of September 19, 1980.

This package was reviewed by CRAC on August 19 and its acceptance for general release is recommended with the following observations:

- A survey methodology applicable to estimating TSCA costs was demonstrated.
- The pilot survey produced some significant findings even though preliminary in nature.
- Confidential business information can be securely amassed and used in verifiable fashion.
- The outside Advisory Panel was a critical safeguard to the overall credibility of the study package and the Association.
- Executive Order 12291 has made regulatory analysis broader than just economic impact and will require greater specificity for industry's presentations to the agencies.
- CRAC has gained additional insights from its productive and effective PMN Impact Analysis studies.
- As a result, CRAC has restructured its activity beyond (but including) economic analysis and will seek coordination with PRASC as well as direct involvement of its regulatory task groups in impact analysis disciplines.
- Continuing data requirements are under active study and are expected to include elements of the NERA pilot study; the NERA study per se will not be expanded.

ACTION REQUIRED

Adoption of the study package as a CMA report for release as appropriate.

CMA 064279

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Exhibit L

AMENDING THE CLEAN AIR ACT

CMA is working actively in cooperation with an extremely broad coalition to aid the Reagan Administration in its goal of comprehensive amendment of the Clean Air Act this year. This ambitious timetable has been complicated by the delays in naming an EPA Administrator, the exclusive priority given the tax cut/budget control issue, the hostile treatment of air quality issues in the media, and a reluctance by the Administration to move forcefully on Capitol Hill.

In response to specific requests from key Administration officials we are joining with many other groups and industries to (1) increase the understanding of both Congress and the public as to the justification for changes in the Clean Air Act, and (2) urge that prompt and comprehensive action be taken on legislative remedies. An action call to that effect went to all member companies from President Roland earlier this month.

Following are more details and background on this issue, with attention to specific elements of the CMA program.

ction required: None; information only.

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STATUS REPORT ON
CLEAN AIR ACT AMENDMENTS

Our organization primarily is concerned with aspects of the Clean Air Act which unnecessarily reduce productive capacity without contributing significantly to cleaner air. We believe that the goals of the Act - including protection and enhancement of public health and welfare - can be accomplished with far less sacrifice of economic and energy resources.

CMA began working three years ago toward Clean Air Act amendment this year, through bills to authorize funding of the Act beyond the FY 1981 expiration date. Reauthorization bills were to be ready for floor action by May 15, 1981. Now, in the absence of such legislation, the Clean Air Act program may be funded after September 30 by means of continuing resolution until passage of legislation.

The general objectives of our recommended revisions in the Clean Air Act are: to assure that valid scientific evidence is used in setting and revising standards; to assure the use of economic and energy consideration in standard-setting and determination of controls; and, to eliminate non-productive and unnecessary requirements.

The CMA "Position Paper on Recommended Revisions to the Clean Air Act" dated November 4, 1980 was widely distributed by the end of the year. Our Clean Air Act Task Group and CMA staff began, in December, meeting with Senate members and staff to acquaint them with CMA views in preparation for their review of the Act. In later visits we also provided them with the CMA "Clean Air Act for the '80s" communications package including a non-technical background paper relative to our position.

Also early in the year, CMA joined the newly formed Clean Air Act Forum of major industry groups, for information exchange toward amendment of the Act. The Forum includes the coal, electric power and petroleum associations as well as those of the steel, mining, paper and motor vehicle industries.

By March, CMA Representatives had met with Senate Environment Committee Chairman Robert T. Stafford (R-Vt.) and with House Commerce Committee Majority leader James T. Broyhill (R-NC-10) regarding the importance of amending the Clean Air Act this year. That month, also there were joint hearings to receive a Congressional study report of the National Commission on Air Quality. The Senate Committee proceeded with comprehensive hearings on the Act, while the House Subcommittee on Health and the Environment -- responsible for review of the Clean Air Act under the Commerce Committee, held more oversight hearings. The Subcommittee is chaired by Henry T. Waxman (D-Ca.-24) who wants no change in the present Act except, for example, regarding acid rain.

On May 6, Congressman Broyhill introduced H.R. 3471 containing amendments for stationary sources only, including a provision to strengthen scientific review under Section 112 of the Act. In general, industry groups recognized specific weaknesses in the bill but felt it was a major step in the right direction which would help focus the Clean Air Act debate. We, therefore, shared with Congressman Broyhill a legal comparison of H.R. 3471 to the CMA Position Paper of November 1980.

Unfortunately, environmental groups published newsletters headlined, "Broyhill Mauls the Clean Air Act". Shortly thereafter it became apparent that the Administration was not going to endorse Broyhill's bill. Through meetings of the Clean Air Act Forum and in our CMA talks with top Administration officials, we especially began pressing the Administration on its legislative strategy. Lack of specific timetable and lack of more forceful Republican leadership was causing growing uneasiness in the business community. Finally, C. Boyden Gray, Counsel to the Vice-President, indicated that an Administration bill would be introduced by June 30th.

Also in May, five CMA representatives briefed Administration staff regarding our recommended changes in the Act. The staff were among those involved in drafting the Administration's bill and they represented EPA, OMB, the Vice President - General Counsel's Office, and the White House Office of Policy Development. Following the briefing, we began to maintain contact with the working level staff in addition to emphasizing to top Administration officials the need for a bill, as early as possible.

During May through June, we also focused on the Senate Environment Committee hearings on the Clean Air Act and provided: 1) a statement for the record of the May 20 hearing on the Prevention of Significant Deterioration (PSD), including case studies; 2) oral testimony on June 9 regarding the ambient standards/standard-setting process (Sections 108 and 109), and a full statement for the record covering all of CMA's recommended changes in the Act; 3) a response document on questions from Senators Stafford and Alan K. Simpson (R.-Wy.), in follow-up to our testimony of June 9; and 4) scientific statement, for the record of the June 11 hearings on hazardous air pollutants and scientific evidence on actual public health risk from air pollution.

By the end of June, the entire country was buzzing about an EPA working draft of the Administration-promised bill, dated June 12th. Reportedly it was leaked, and Congressman Waxman called a press conference to publicize it. This event sparked major media coverage of anti-Clean Air Act amendment statements. Previously, CMA had maintained a low-profile with the media, but over the summer we developed plans for further chemical industry communication on the need for changes in the Act.

Also this summer, as part of our Clean Air Act Task Group strategy, there was a special round of CMA visits to Senate Environment Committee members and key staff in view of their expected drafting of amendments over the August recess. We discussed and left with them copies of the CMA scientific statements on hazardous air pollutants. These documents also were provided to Administration staff including those whom we had briefed in May.

During the July weeks when the Administration was engaged in decision-making on provisions of a bill still promised to be introduced once the President's budget and tax cut bills passed Congress, we also provided Administration staff with analysis of the June 12th EPA draft and re-emphasized our CMA recommendations particularly regarding Sections 108, 109 and 112.

However, instead of proposing a Clean Air Act bill, the Administration issued eleven basic principles as the framework for working with Congress toward Clean Air Act amendments. Since then, Administration officials have been meeting with newly formed coalitions to lobby for amendment of the Clean Air Act on the basis of economic growth, including an industry coalition in which CMA is highly represented.

To date, Administration officials still say there is time for passage of a Clean Air Act bill this year, yet it is unclear whether the Administration will provide the necessary leadership as opposed to continuing to keep its options open. Already some Congressional leaders including Senator Stafford are projecting that Clean Air Act amendments are unlikely to reach the floor before next year. They see other business, including the appropriation bills, filling the calendar.

Nevertheless, Senate Environment Committee staff are determining consensus on various Clean Air Act issues. Widespread agreement on improvements in the Act is expected to lead to proposed legislative language. In view of what we have perceived in meetings with Committee staff, the draft language is likely to be along with lines of fine-tuning only. There also is the threat of proposals to expedite listing and regulation of substances under Section 112 of the Act without proper consideration. This concern is a primary focus of our Clean Air Act Task Group strategy.

The only bill introduced in Congress to-date regarding overall stationary source provisions of the Clean Air Act still is H.R. 3471 (expected to be revised and reintroduced by Congressman Broyhill). Mobile source amendments could be achieved through H.R. 4400, which Congressman Bob Traxler (D.-Mi.-8) introduced on August 4. Under the Health Subcommittee, comprehensive hearings are scheduled to begin in late September regarding mobile source issues and acid rain. The two bills will not be addressed by these hearings.

Our Clean Air Act Task Group effort is aimed at reassuring the Committee members who co-sponsored the Broyhill bill and convincing more Democratic members to support change in the Act. We are urging completion of comprehensive hearings before the Subcommittee as early as possible.

Full Committee consideration headed by Chairman John D. Dingell (D-Mi.-16) and Congressman Broyhill is needed to get a bi-partisan mobil and stationary source bill reported out of the House Commerce Committee this fall.

Developments in upcoming weeks will be pivotal for overall amendment of the Clean Air Act this year or early 1982, versus sometime after the '82 elections. Our Government Relations Committee, at a special meeting held on August 27 to review our CMA program for amendment of the Clean Air Act, reaffirmed that we will continue to seek comprehensive legislative change in the Clean Air Act -- now.

SUMMARY OF CMA POLICY IN CLEAN AIR ACT AMENDMENT

CMA is primarily concerned with aspects of the Act which unnecessarily reduce productive capacity without contributing significantly to cleaner air. We believe that the goals of the Act, including protection and enhancement of public health and welfare, can be accomplished with far less sacrifice of economic and energy resources.

CMA's general objectives are:

-- *To assure that valid scientific evidence is used in setting standards;*

-- *To assure the use of economic and energy consideration in standard-setting and determination of controls;*

-- *To eliminate non-productive and unnecessary requirements;*

CMA's priorities for change are:

. *Revision of the basis for setting National Primary and Secondary Ambient Air Quality Standards (NAAQS).*

II. Revision of Prevention of Significant Deterioration (PSD) Provisions.

III. Revision of Non-Attainment provisions of the Act.

IV. Revision of Criteria for Regulating Hazardous Pollutants under Section 112.

V. Revision of provisions establishing new Source Performance Standards (NSPS) under Section 111.

VI. Revision of EPA/state authorities in implementing the Clean Air Act, to clarify and increase the role of states.

VII. Correction of imbalances between the Clean Air Act and energy policy and economic policy.

STRATEGY OBJECTIVES

1. *Seek comprehensive legislative change in CAA now; should such amendment not occur in the short-term, we will:*

   (a) seek interim regulatory relief

   (b) explore possibilities for helpful amendments as a part of a limited bill, with priority attention to the issues of PSD and NAAQS/non-attainment

   (c) continue to stress the need for prompt, comprehensive amendments

2. *Participate in business community cooperative efforts as the most effective means of achieving broad CMA objectives.*

3. *Communicate overall CMA recommendations, but devote particular attention to Section 112; seek acceptance of our Section 112 proposals by the Administration and by Congressional committees.*

4. *Participate in business community cooperative efforts to attain better public acceptance and more positive media treatment of the need to amend the Clean Air Act.*

CMA Government Relations Committee
September 1, 1981

CMA
EC-9/28/81
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Exhibit M

SURVEY OF CHEMCAP PUBLIC SUPPORT ACTIVITIES

BY 60 CMA MEMBER COMPANIES

REPRESENTED ON THE BOARD OF DIRECTORS, 1980-1982.

EXECUTIVE SUMMARY

A survey of ChemCAP activity by companies represented on the CMA Board of Directors in 1980-1982 indicates that:

- 71 percent of the companies have undertaken some kind of ChemCAP-related employee communications program.
- 16 percent have communicated with stockholders on ChemCAP issues.
- 31 percent have initiated some kind of communications activity with the news media.
- 36 percent have organized, are planning or are exploring speakers programs.
- 36 percent have engaged in some form of community outreach program at plant locations.

In addition, a few companies have communicated ChemCAP material to suppliers or customers but the number was too small to include in the bar graph that accompanies this report.

The survey was conducted by telephone and corroborated by mail in August. Its purpose was to arrive at a composite picture of ChemCAP activity by those companies who could logically be expected to be most active in public support programming and to provide a benchmark against which future ChemCAP involvement can be measured. Standard forms were used in making the summary.

A discussion of each of the five principal activity areas follows:

1. Employee Communications--A logical objective is to have each employee informed about what the industry is doing about air and water pollution, worker

health and safety, transportation of hazardous materials and safe disposal of hazardous materials. While not 100 percent, the score on communicating to this basic audience is encouraging.

The wide variety of communications materials made available by CMA has allowed participating companies to design their own programs, using different mixes of materials and different methods of distribution. A number of companies adapted CMA materials to suit their own needs, and some companies have expanded ongoing communications to employees on the key issues.

2. Stockholder Communication--The number of companies involved in this activity is small, but it must be regarded as an area of promise and potential growth. The relative ease of including brief discussions of ChemCAP issues in such stockholder publications as quarterly earnings reports should commend it to publicly held companies. Several companies who have communicated on ChemCAP to shareholders have been encouraged by the response.

3. News Media Communications--Set against the recognized need for a vigorous media relations program by the industry, the score in this category is disappointing. Most firms in the industry continue to adopt a low profile and to deal with both national and local news media in a reactive way. For example, only a handful of companies have distributed ChemCAP material to local newspapers or placed public service announcements with local radio and television stations. There has been little sponsorship of ChemCAP advertisements in plant area newspapers.

   Some exceptions are noted, particularly joint efforts undertaken in the Houston area and the media activity planned for the Westchester-Fairfield Counties area.

4. Speakers Program--This form of face-to-face communications is highly important, and the growing number of companies that are starting speakers programs is encouraging. The ChemCAP Speakers Manual is regarded as a very useful resource. The potential benefit from this activity--if, for example, each chemical plant manager would make just one community speech a year--is immeasurable.

5. Community Outreach Programs--A great many things, in addition to speeches, can be done to bring home

the ChemCAP messages to plant communities, and companies have initiated plant open houses, so-called "media days" and mailings of ChemCAP materials to community leaders. While this kind of local activity is widely recognized as being important, involvement by CMA Board member companies has been spotty. It needs central management's encouragement and support.

Fifteen companies represented on the board have undertaken no ChemCAP-related programs. Most of these are small companies with no professional communications staff people. Some of the reasons they offer for not becoming involved in ChemCAP:

- Lack of professional communications staff.
- In process of reorganization, merger, acquisition, etc.
- Primary business is not in chemicals.
- Concern about taking higher profile and becoming target of environmentalist attacks.
- Concern about raising employee fears and demands over job safety.

On-scene discussions with individual company managements by H.G. Brown have been cited as helpful in putting local involvement into broader perspective with overall industry needs. The new "ChemCAP Materials Guide" has also been helpful in providing an overview of available materials--aside from the constant flow of new booklets, press materials, etc.

Likewise, CMA's monthly "ChemCAP Action Roundup" is helping alert companies to effective projects being undertaken by other firms throughout the industry. Still more useful should be the collection of specific case examples being put together by CMA for publication and industrywide distribution in late September: our new "Public Support Programming Action Guidebook."

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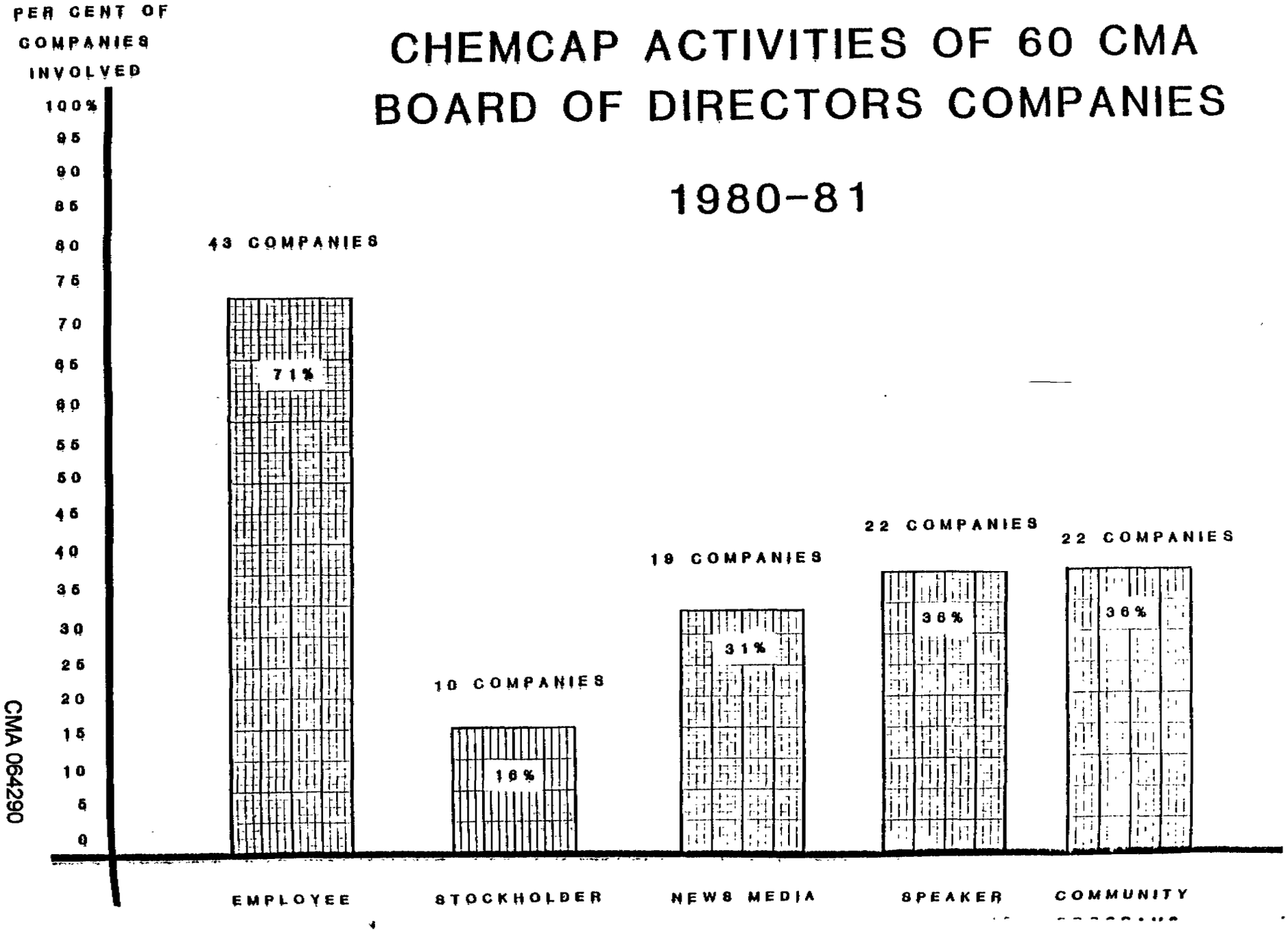
CHEMCAP ACTIVITIES OF 60 CMA BOARD OF DIRECTORS COMPANIES

1980-81



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