PLAINTIFF'S EXHIBIT
UPRC-157

CHG 00973

champlin

A Subsidiary of Union Pacific Corporation

INTER-OFFICE CORRESPONDENCE

TO: Holders of Corporate Safety and Loss Control Procedures Manual

OFFICE: FW 2804

FROM: Joe F. Gay

DATE: 08/04/86

SUBJECT: Changes in Hazard Communication Procedures

Due to some recent interpretations by the Occupational Safety and Health Administration of the Hazard Communication Standard, it is necessary to make some minor modifications to our Corporate and local Hazard Communication Procedures.

Hazard Determination (Manufactured Products):

As a chemical manufacturer, we must have the written procedures available that were used to determine the hazards of the chemical(s). We currently rely on OHS for this service and these procedures are very extensive and detailed. The procedures are in writing and will be made available, upon request, to employees, NIOSH and OSHA. As we do not anticipate many requests for this document, we felt it would be overly burdensome to attempt to supply it to each individual operating area. If you have a local request for this procedure please notify us for a copy.

Hazard Determination (Purchased Products):

OSHA has indicated that a statement in local procedures is required to indicate how hazard determination is accomplished for purchased products. They have further indicated that if any employer intends to rely on the accuracy of the upstream manufacturer's information, then a simple statement in the procedure to that effect would suffice.

Changes have been made to the Corporate Procedure that we feel adequately address both of these issues. If the Corporate Procedure is made a part of the local procedure we do not feel any changes to the local procedure will be necessary. If local procedures are "stand alone", then changes similar to the corporate changes will be required.

Chemical Labeling Controversy:

In August, 1985 OSHA instruction CPL 2-2.38 allowed labeling systems that use numerical ratings for in-plant containers, but not on shipped containers. The agency's May 16, 1986 directive (CPL 2-2.38A) on the standard specified that both in-plant and shipped containers must have "approved hazard warnings" that include target organ effects on the labels.

As a result of the August, 1985 instruction, Champlin adopted the N.F.P.A. 704 labeling system as a universal system that could be used for in-plant containers. Some 10,000 other companies adopted similar systems (HMIS, etc.). Obviously if the May 16, 1986 directive is

allowed to stand, all of us are facing compliance problems because none of these systems address target organ effects. Because of the confusion, an OSHA memorandum to regional offices extended a 90-day grace period to August 23 to include target organ effects on in-plant labeling. A confidential draft memorandum (see copy attached) by OSHA pointed out that two questions are raised by the labeling requirements:

1. What is an appropriate hazard warning?
2. Can that term be interpreted to have different meanings for in-plant and shipped containers?

This unsigned document outlines three options and recommends the third option, which allows other types of systems in-plant as long as employees are protected.

It is our recommendation that we continue our current practice of using the 704 system with product identification for in-plant containers. It is still our position that this system, along with our ability to cross-reference MSDS's, coupled with our training programs, comply with the spirit of what is touted to be a performance oriented standard.

OSHA has also recognized the interface of the Hazard Communication Standard with 29 CFR 1910.20 (Access to Employee Exposure and Medical Records) and have acknowledged an overlap with regard to MSDS's being maintained for 30 years. We have provided for a simplification of this overlap in the Corporate Procedure by allowing, as an alternative, the list of hazardous chemicals to be substituted for the MSDS's, provided that the list indicates where the chemical was used and for what time frame. The list would have to be maintained for 30 years.

Some additional changes (mostly editorial) were made to the Corporate Procedure.

Sincerely,

Joe F. Gay

JFG/pah/27

Enc.

OSHA DRAFT MEMORANDUM ON OPTIONS FOR INTERPRETING LABELING REQUIREMENTS OF HAZARD COMMUNICATION STANDARD

Hazard Communication Standard Labeling Requirements

DRAFT

Introduction

The Hazard Communication Standard (HCS) establishes labeling requirements for all non-exempt products that are, or contain chemicals that are considered as hazardous under the standard. Labeling requirements were held to a minimum because of the number of existing systems already in existence. The hope was to establish simple minimal requirements that would ensure that items felt as critical by those participating in the ruklemaking would be present on labels.

29 CFR 1910.1200 (f) provides the requirements for both inplant and shipped containers. Labels for both are required to include the following:

> (i) Identity of hazardous chemical(s), and
> (ii) Appropriate hazard warnings.

In addition containers leaving the workplace must include:

> (iii) The name and address of the chemical manufacturer, importer, or other responsible party.

Identity in the first requirement is defined through the definitions set forth under paragraph (c) of the standard to mean any single common name, trade name, code number etc. as long as it is cross referencible to the MSDS.

The second labeling requirement is where our recent problems begin. The term "Appropriate Hazard Warning" appears within the HCS exactly the same way for both inplant and shipped containers. Accordingly our current position, in coordination with our Solicitors, is to require the same warnings on all containers. We reasoned that the alternative , a dual definition would surely result in bad case law.

In addition to the question of uniform application sprang other fundamental questions concerning the very meaning of the term "appropriate hazard warning". Neither the standard nor the preamble is precise on this issue. What is clear however is the intent of the standard. To reduce chemical source injuries through the sharing of chemical hazard related information. The Health Standard opinion which is reflected in current Agency policy is as follows. Appropriate hazard warnings must convey the specific hazardous effect of the substance , where known, rather than precautions. While this approach is laudable it is not clearly required by the standard as evidenced by the information that follows.

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Current consensus standards such as ANSI, The Compressed Gas Association, and others recommend precautionary labeling statements. None of these groups saw conflict with the standard during rulemaking. In addition major employers such as Dupont and General Electric have in place Hazard Communication Programs that do not require effect labeling. Approximately 10,000 employers (Target Original Article)

are currently using The National Paint and Coatings Manufacturing Associations (NPCA), Hazardous Materials Identification System (HMIS). This is a complete program approach to Hazard Communication compliance that is marketed through American Label Mark a division of Label Masters Inc.

On labeling HMIS uses a numerical system providing a number between 0-4 in each of 4 categories Health, Flammability, Reactivity, and Personal protective equipment. The problem is that the rating numbers do not refer back to effects but rather to precautions. Meetings have been conducted between OSHA ,NPCA and HMIS representatives. The principals indicate that the HMIS was never intended to be used as a stand alone labeling system. Furthermore they indicate that they expected the original label from the original manufacturer to remain on the container. This however is not clear in their program and many are using the system as a stand alone system at least inplant.

The current OSHA Instruction CPL 2-2.38A issued May 16,1986 , copy attached includes guidance on page A-14 of the document that reads as follows:

> There are some labeling systems used in the workplace that communicate degree of severity of the hazard by means of a numerical rating system. These systems are acceptable only when additional warnings indicating the effects of exposure are added to the label.

Issues

Two issues present themselves. By their nature they are inextricably woven.

> 1. What is an "Appropriate Hazard Warning", and
> 2. Can the term "Appropriate Hazard Warning" be interpreted to have a dual meaning. One for inplant and another for shipped containers.

Options

option 1. Continue to implement current policy requiring hazardous effect statements on all labels.

ADVANTAGES

1. Uniform requirements for labels on all covered hazardous containers.

2. Assurance that very hazardous effects such as cancer are not replaced by less meaningful statements such as "avoid inhalation".
3. Avoid ill feelings from employee groups and possible litigation that may result.

DISADVANTAGES

1. Will result in most consensus based systems being out of compliance therefore resulting costly challenges and litigation.

option 2. Permit the use of precautionary labeling for both inplant and shipped containers.

ADVANTAGES

1. Allows almost all available systems to comply in their current form thereby;
2. Avoids litigation.
3. If written properly such warnings will cause desired responses in employees thereby meeting the HCS intent.

DISADVANTAGES

1. May result in watered down warnings.
2. Employees in industries that are not specifically covered by the HCS would not necessarily be provided training and may therefore not be able to properly respond to labels.
3. Will result in litigation.

option 3. Permit the use of precautionary labels, or any other type system inplant as long as employees are protected and require hazardous effects on shipped container labels.

ADVANTAGES

1. Ensures that the best level of protection is provided to all employees including those that are not directly covered by the HCS.
2. Serves as a compromise permitting the use of HMIS and other consensus labeling systems inplant.
3. Provides a position that will minimize litigation.

DISADVANTAGES

1. None from an employee protection standpoint.
2. May be legally indefensible because of the wording of the standard and the difficulties inherent in using a dual meaning.

RECOMMENDED OPTION

Although all three alternatives pose some negative predictable consequence option three is the most acceptable. Of the three options 1 and 3 provide arguably better protection to employees than option 2. Reliance on option 3, a combination of precautionary and effect labeling, in our opinion provides protection rivalling effect labeling alone (option 1). Option 3 also provides a much needed compromise at a time when

further confusion is the last thing employees and industry need. It would be a terrible waste of money and effort to do something that would require the retraining of thousands of employees with no increase in safety and health protection resulting. serving as prudent compromise