



Lead Industries Association, Inc.

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TO: Members of Lead Industries Association

FROM: Werner T. Meyer

July 7, 1981

Attached please find a summary of the present situation regarding OSHA. It was drafted by Mr. Medina and is specifically addressed to our perception of the Supreme Court decision in regard to LIA's petition for certiorari.

Also, attached please find a copy of a news release on the same subject.

We shall, of course, keep you informed as new developments occur.

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FOR: LEAD INDUSTRIES ASSOCIATION

Contact:
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FOR IMMEDIATE RELEASE

LIA RESPONSE TO THE SUPREME COURT DECISION
ON THE OCCUPATIONAL LEAD STANDARD

NOTE TO EDITORS: What follows is the Lead Industries Association's statement in response to the Supreme Court's decision not to hear the industry's petition to review the Occupational Health and Safety Administration's standard for lead. The statement may be attributed to Werner T. Meyer, President, Lead Industries Association, Inc.

"LIA is disappointed that the Supreme Court did not decide to vacate the Court of Appeals decision upholding the standard as OSHA itself had suggested.

"LIA is pleased, however, that OSHA has decided to conduct supplemental rulemaking proceedings on the lead standard. We will participate actively in those proceedings and are hopeful that the agency will issue a reasonable standard that protects employee health.

"The United Steelworkers Union, in its court papers, has acknowledged that OSHA can and should reconsider and reevaluate the standard in supplemental proceedings. LIA agrees.

"OSHA still does not know what costs the lead standard will impose on the lead industry and society nor has it yet analyzed the available alternatives to determine which of the protective approaches is the least expensive.

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Disregarding OSHA's request to grant certiorari and vacate the lower court decision, the Supreme Court announced on Monday that it would not review the Lead Case. Justices Powell and Stewart did not participate in the decision.

Although LIA is disappointed by the Court's action, the denial of the petitions for certiorari should not affect OSHA's announced intention to reconsider and reevaluate the lead Standard. Indeed, ^{the} unwillingness of the Court to review ^{undoubtedly} the issues presented by the Lead Case resulted in large part from the fact that OSHA's supplemental rulemaking proceedings may well render many of those questions moot. As the United Steelworkers observed in their papers to the Court, "the granting of certiorari . . . is not necessary for [OSHA] to conduct the proposed rulemaking proceeding. That proceeding can go forward in the same fashion if th[e] Court simply denies the petition for certiorari."

Although the denial of industries' petitions for certiorari automatically terminates the partial stay entered by the Court on December 8, 1980, we do not yet know whether OSHA will enforce the previously stayed provisions of the Standard. When the agency published its Advance Notice of Rulemaking Proceeding on April 21, 1981, it announced that

cost-effectiveness analyses and to compare the costs of comparable compliance methods. See BNA Occup. Safety & Health Rep. 75 (June 25, 1981). It is also undisputed, of course, that OSHA still does not know what the Standard will cost (and hence cannot realistically evaluate its feasibility) and has not assessed the substantiality of the health risk on an industry-by-industry basis. All of these questions and others, LIA has urged, should be addressed in the supplemental rulemaking proceedings.

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