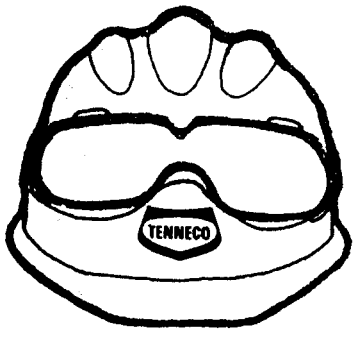

SAFETY & HEALTH NOTES

Fall 1984
Editor: Edward A. Smith
Vol. II, No. 3

OCCUPATIONAL DISEASE — WHO WILL PAY?

Will you buy a product if the selling price includes the cost of illnesses caused by it's production? Could you afford it? If not, how much would you be willing to pay? Who should share the bill? The employees, the Insurance companies, the taxpayers, the employer?

These were some of the questions asked at a recent symposium on the subject of Disability Compensation for Occupational Diseases. While no definitive answers were given to these questions, there was general agreement among the various speakers who represented the medical, legal, scientific, workers' compensation and academic profession that this is a problem, and unless something is done to prevent occupational illnesses, it will become an enormous liability.

With the American Chemical Society registering 70 new chemicals each hour, today's workers are exposed to many pollutants, some known to be carcinogens. Because some carcinogens act synergistically either with others in the workplace or in daily life the danger is compounded. There is no doubt that we do live in a chemical world!

Depending upon thedefinition of "Occupational Disease" (there is no agreed definition) the number of deaths attributed to occupational cancers range from 17,000 to 100,000 each year. On top of that, 300,000 plus are disabled annually from exposures to agricultural chemicals, arsenic, asbestos, benzene, chemicals, chromates. coal or cotton dust, dyes, lead. mercury, monornars, noise. pesticides, polymers, radiation, solvents and vinyl chloride. The U.S. Department of Labor estimates that 1.8 million Americans are now disabled due to exposures to workplace chemicals.

The cost of occupational disease is incomprehensible, because of limited data, but it is easily in the billions. One speaker estimated $326 billion, another $500 billion. A trust fund of $180 million has been set up for Agent Orange victims, with $16 billion already spent for black lung victims. Manville alone estimates asbestos claims of over $2 billion. Supposedly 58% of all Social Security benefits are being paid to people disabled by occupational disease, while only 4 to 5 % of the workers' compensation dollar is spent on occupational disease claims.

Why is this so when every State has statutes covering occupational disease? Six reasons were given as to why employees do not file claims. They are as follows.

(a) Peculiar definitions of "occupational disease" in the statutes.
(b) Time limits bar recovery.
(c) Difficulty in proving occupational disease.
(d) Doctors and/or victims do not connect the disease to their work.
(e) Receive pay from other sources.
(f) Attorneys take a large percentage of the settlement.

So making an assumption that the proper way to compensate someone suffering an occupational disease is through workers' compensation let us evaluate the 6 reasons for not doing so.

(a) The **definition** of **occupational disease.**
As stated previously, there is no universally accepted definition for occupational disease. Many of the present statutes cover all disease "arising out of and in the course of employment". However, "ordinary diseases of life", and diseases "not peculiar to or characteristic of the employees occupation" are not included, and therein lies the problem. The wisdom of King Solomon is insufficient to separate occupational from non-occupational causes.

Additionally, some states have language that restricts claims to only diseases caused by specific exposures. while others exclude diseases of certain classifications, i.e., mesotheliomas.

(b) Time limits bar recovery.
The language that appears in some workers' compensation systems negates the possibility of filing a claim unless the disease is due to the nature of the employment and contracted within 12 months previous to the date of disablement. Other states allow 2, 3, 6 or 12 years, but regardless, when a disease takes 20 or 30 years to manifest itself, the statute of limitations bars the claim.

Many states are changing this statute to unlimited or a certain time after the occupational disease or cause of death becomes known.

(c) Difficulty in proving occupational disease.

This reason is very similar to (a). Without a definition it is almost impossible to prove that the disease claimed is solely the result of an occupational exposure. The melding of a physician's opinion into a legal fact is extremely difficult. especially if the physician is unaware of the work environment. Added to this is the synergistic effect of smoking, life style, diet, etc. For example. emphysema can be contracted from cotton dust or smoking or perhaps a combination of the two. Someone who smokes 2 or 3 packs of cigarettes a day will have a real problem proving it is occupational only.

As stated in the last issue, some states are accepting "presumptive cancers." but that is a rarity.

(d) Doctors **and/or victims do not connect the disease to their** work.

In a large majority of workers' compensation claims, the employer institutes the action by filing the claim. Normally, only after the claim is contested or denied is an attorney consulted. The workers' compensation agency does not seek out claimants as such, however they are providing more and better information to employees through various methods, as are health oriented groups, unions and the government.

So unless a doctor, coworker or friend suggests a casual connection between the disease and work environment, the employee may never file a claim.

(e) **Receive pay from other sources.**

The majority of occupational disease cases manifest themselves to retirees, who for the most part are already receiving social security and retirement benefits. Certain retirement plans "carve out" workers' compensation payments for occupational disease. so the employee really has nothing to gain by filing a claim. Others simply don't want the hassle of filing a claim.

(f) **Attorneys take a large percentage** of **the settlement.**

Some states mandate a percentage amount an attorney is allowed to charge for service. Others allow flat rates, while some have no constraints, **so** in some instances the employee ends up with less money than the attorney. For instance. there was a recent report published that stated the attorneys received 61% of the money awarded in asbestosis cases.

So the system that was started 70 years ago to be "no fault" for injuries is not successfully doing the job for occupational diseases, **especially** those of long latency periods. In the words of one of the speakers "Insofar as occupational disease coverage is concerned - it's a fiasco. The employee is not getting a fair share. Why should the employee have to wait 2 to **4** years to receive money? In some cases, he is already dead!"

On the other side of the coin some of the speakers questioned why the employer must pay for "probabilities" and cited the black lung scandal. We need facts, not calculated guesses **as** industry is committed to paying workers' compensation.

In the next issue, we will take a look at some of the other problems and proposed solutions to the occupational disease dilemma.

COURT CASES

The **U.S.** District Court for D.C. has required OSHA to reconsider the need for publishing an emergency temporary standard (ETS) on ormaldehyde but did not force the agency to actually publish an **ETS.**

The **U.S.** Court **of** Appeals for the Sixth Circuit ruled that oodyear Atomic Corp. violated the National Labor Relations Act by failing to provide their union with information that concerned its members safety and health. Goodyear was told to supply the union with the statistical data, monitoring and testing systems used, and devices and equipment in operations that are related to working conditions.

The Cook County, lllinois medical examiners office is charging the llinois Brick Co. with homicide in the death of two brothers from silicosis. A third brother also **has** symptoms of the disease. Additionally, product liability cases have been filed in behalf of the brothers against Ottawa Silica Company of Ottawa, Illinois.

General Dynamics Corporation has been charged with involuntary manslaughter and criminal violation of Michigan's occupational safety standards. The charge alleges that the company failed to vent a M-1 battle tank of a powerful chemical solvent prior to its being tested. The fatality occurred after other workers had complained about the solvent fumes.

Monsanto Company is being sued for $700 million by 172 former and current employees and spouses who claim that chemicals used in their Nitro, West Virginia plant has caused long term health damage, and that Monsanto covered up the knowledge of the hazards of chemical exposures.

LEGISLATIVE REGULATORY REVIEW

OSHA

Robert A. **Rowland** has been named Assistant Secretary of Labor for OSHA in a recess appointment that will run until the end of 1985. Mr. Rowland is the former Chairman of the Occupational Safety and Health Review Commission.

Patrick Tyson, who has been acting OSHA head since the departure of Assistant Secretary Thorne Auchter at the end of March, will continue as Deputy Assistant Secretary and will be responsible for federal and state operations, technical support and safety and health standards.

Two new Deputy Assistant Secretaries have been named. **Ms. Jane Matheson,** former Chief Counsel and Special Counsel to Mr. Rowland at the Review Commission, will be responsible for field operations which include **OSHA's** ten regional offices. **Michael N. Korbey,** Executive Director at the Review Commission since last October, will be responsible for public affairs, administration, **policy** development , legislative affairs and regulatory analysis.

The House of Representatives has approved an appropriations bill that will allocate $219.6 million **to** OSHA with the provision that 1/2 million be used to study the accuracy and quality of occupational safety and health statistics. **In** addition, **an** appropriation of $6.1 million was recommended for the Occupational Safety and Health Review Commission, and $66.7 million for NIOSH.

New Directions grants of nearly **$2.4** million were announced for 39 non profit organizations. These were awarded to the following four groups.

Labor	$1,540,000
Employer Associations	**$ 222,000**
Educational Institutions	$ 270,000
Other Non-profit Organizations	$ 359,500

Hearings have been completed at several cities throughout the country on asbestos, oil and gas well drilling and servicing, field sanitation, grain elevators and others. Post hearing comment periods are still open on all of these issues. It will probably take OSHA several months to evaluate the record. There is little likelihood that a standard on any of these will be issued this year.

Occupational Safety and Health Review Commission

E. Ross Buckley has been named Chairman of the Review Commission, succeeding Robert Rowland who is now head of OSHA. Buckley was General Counsel of the Commission from 1982 until being named a commissioner last January. Nominees to fill the vacancy are now being considered by the White House personnel office. Additional recommendations for consideration have been requested.

Bureau of Labor Statistics

The Office of Management and Budget (OMB) is reviewing a Bureau of Labor Statistics booklet on employer recordkeeping required by the Occupational Safety and Health Act. The booklet "What Every Employer Should Know About OSHA Recordkeeping", known as BLS 412. was first published in 1972 and revised in 1973, 1975 and 1978. OMB is reviewing the booklet in accordance with it's paperwork reduction authority.

The booklet has drawn criticism from some major industry groups and private companies in recent months. The document was discussed at length at the September and December 1983 meetings of the National Advisory Committee on Occupational Safety and Health (NACOSH), which has not yet taken a position on it. Tenneco will submit comments to OMB.

Slate Legislalive Matters

Right to know and video display terminals legislation in the states has lessened but only because most legislatures have adjourned or recessed. Some will convene later this year and most will convene in 1985. We can expect renewed activity on these two issues in the near future.

WORKERS' COMPENSATION

Back pain problems, notably strains and sprains, continues to be a major problem within industry in North America. Compensable back injuries account for nearly one-fourth of all claims, with four fifths filed by men. The age distribution of those claims is similar to the age distribution of the employment population. The top three occupations are machine operators, truck drivers and nurses. The most frequent cause listed is overexertion and the most claims were filed from the age group of 20 to 44.

These summarized facts are taken from an article which appeared in the June, 1984 issue of the Journal of Occupational Medicine. The article contains data taken from an indepth study of 329,474 claims. If you would like a copy please contact the editor.

The United States Court of Appeals, 9th Circuit recently ruled that the last covered employer was wholly liable for an employee's asbestosis, even though the asbestosis was partially caused by a previous employer.

OSHA/NIOSH

Dr. Ronald E Wear, Jr., Corporate Medical Director, Campbell Soup Company claims that cardiovascular disease should not be included on NIOSH's list of 10 leading work related illness/injuries. He estimates that fewer than 0.00001 percent of the cardiovascular problems in the U.S. are attributable to workplace factors. He makes that conclusion based upon many years as a practicing internist.

He claims that hypertension is due to soduim intake, kidney disease and other physical disorders, and not by the work environment.

Dr. Robert Kessler, of Eastman Kodak also expressed concern about cardiovascular disease appearing on the list, and the implication that such disorders were related primarily to workplace factors. (BNA Occupational Safety and Health Reporter, 7-12-84)

The OSHA Training Institute, located in Des Plaines. Illinois (next to O'Hare field) has published their late '84-'85 training schedule for the private sector.

The courses of possible interest to us are "Introduction to the Competent Person Program" (300-1), "Basic Guide to Voluntary Compliance" (500-2). "OSHA Guide to Voluntary Compliance in the Safety Area" (500-3), and "OSHA Guide to Voluntary Compliance in the Health Area (500-4).

If you or anyone has an interest in these training programs, contact the Registrar, OSHA Training Institute, 1515 Times Dr.. Des Plaines, Illinois 60018, or phone 312/297-4810.

ABSTRACTS OF MEDICAL/SAFETY/HEALTH ARTICLES

The Injury Fact Book

Injury, not disease, is the leading cause of death up to age 44. This book, which is available from our Safety and Health Library, contains comprehensive information charting statistical patterns of injuries. It analyzes data from government and other sources. The facts gathered in this book allow the reader to understand and eventually control injuries. Comments are made about the wide variances in incidence and explains many of the findings.

Backache at Work

This book, which is also available from our Safety and Health Library, is the product of 20 years of intensive study of the low back problem and sets forth suggestions for the management and control of low back disability. r. Laurens Rowe the author has been an Orthopoedic Consultant to Eastman Kodak Co.

Work and Pregnancy

Pregnancy outcomes of 7,155 women who worked between one and nine months of pregnancy were compared with outcomes of 4.018 women who were not employed. There were no differences in rates of prematurity, Apgar score, birthweight. perinatal death rate, or malformation parevalence. Working women were divided into those who left employment during the first eight months and those who worked all nine months. The latter had a lower rate of adverse outcome than the other working group and the nonworking group. This indicates that working to term in the absence of contraindications does not impose an added risk on mother or infant. After control of confounding by parity and other relevant factors, an increased risk of prolonged gestational age was seen among primiparous working women. There was an increased risk of fetal distress among those women leaving work prior to nine months who were having their third or subsequent child. A small decrease in birth weight was seen among women who left work prior to term but not among those who worked all nine months. Overall the results are reassuring that working during pregnancy is not in itself a risk factor for adverse outcome. (JOURNAL OF OCCUPATIONAL MEDICINE, Vol. 26, No. 6, June, 1984)

Prospective Study of Alcohol Consumption and Cancer

The relation between alcohol consumption and the subsequent occurrence of the five most frequent cancers in Japanese men in Hawaii (cancer of the stomach, colon, rectum, lung, and prostate) was analyzed in a prospective study of 8,006 subjects. Information on alcohol consumption was obtained through interviews in the mid-1960's, and the cohort has been followed since then. The analysis, which was adjusted for the effects of age and cigarette smoking, revealed a positive association between consumption of alcohol and rectal cancer, accounted for primarily by an increased risk in men whose usual monthly consumption of beer was 500 oz (15 liters) or more (relative risk, 3.05; P 0.01, as compared with those who did not drink beer). A significant positive relation between alcohol consumption and lung-cancer incidence was also found, accounted for primarily by an increased risk among subjects who consumed larger amounts of wine or whiskey, as compared with the risks among nonconsumers of these beverages (relative risk, 2.19 [P = 0.031 and 2.62 [P 0.01], respectively). No significant relation between alcohol consumption and the incidence of the other three cancers were found. (NEW ENGLAND JOURNAL OF MEDICINE, *1984)*

Low Back Pain in Industry

Low-back pain is a major occupational health problem. Risk factors predisposing to the development of low-back pain are discussed. These include individual risk factors such as age, sex, anthropometry, musculsketal abnormalities, muscle strength and physical fitness, psychological factors, and previous attacks of low-back pain and workplace factors such as heavy work, lifting, bending, and slipping. Various programs for prevention are evaluated. These include sleection of workers, education and training regarding lifting methods, design of lifting jobs, and fitness training. Limitations of the various studies of these programs are discussed. Preemployment strength testing and ergonomic job design together appear to offer the greatest promise. (JOURNAL OF OCCUPATIONAL MEDICINE, Vol. 26, No. 7, July, 1984)

Medical Evaluation for Respirator Use

Medical certification for respirator use should be based on understanding of their respiratory, cardiac, mechanical, psychological, and other effects. Work environmental factors (e.g., level of hazard and work load of the job), respirator characteristics, and personal characteristics of the worker should determine the evaluative procedures used; a three-level scheme is suggested. (JOURNAL OF OCCUPATIONAL MEDICINE, Vol. 26, No. 7, July, 1984)

Drinking and Driving

More than 10 million adults in the United States are either alcoholics or have a serious problem directly related to alcohol consumption. It is responsible for 15% of the nation's health care cost, but the most alarming consequence is its relationship to fatal traffic accidents. This article analyzes alcohol involved fatal *car* accidents. (STATISTICALBULLETIN, Jul-Sep, 1984)

GOOD NEWS DEPARTMENT

Tenneco operations continue to receive many safety and health awards, while others set new personal highs for hours with no lost workday cases.

The Soda Ash Operation at Green River, Wyoming has worked more than 3/4 of a million hours without a lost workday case. They also received a 2nd place award for underground mining and refining operations from the Wyoming State Mining Association.

Marlin Drilling received a 1st place award for Class D, U.S. Land Rigs, and a 3rd Place award for Class C, outside U.S. Rigs, from the Independent Association of Drilling Contractors.

Tenneco Oil's Chalmette Refinery was the recipient of the New Orleans Metrolpolitan Safety Council's Award of Honor for their 1983 safety performance, and recently passed the million hour mark for no lost work day *cases.*

J.I. Cases's Burlington Plant received the Iowa Safety Councils' outstanding award for the 15th consecutive year.

Tenneco Polymers plant in Burlington, New Jersey, received Traveler's Insurance Award of Merit for working 1 million hours without a lost workday case.

Bill Lewis of the TGT Safety and Health Department recently passed his ASP core exam, and Mike Doolittle of Tenneco West has been elected Assistant Administrator of the Risk Management/Insurance Division of the American Society of Safety Engineers.

Three of the Safety and Health Professionals from Packaging Corporation, Bob Riley, Curt Wiegman and Scott Wells will be speakers at the National Safety Council Congress in October.

MISCELLANEOUS

Tenneco Inc. has donated $1,000 to the Texas Safety Association (TSA) to help fund a child safety seat loaner program. Governor White signed this bill in July which makes it illegal in Texas for children under age 2 to ride in cars without being secured in approved safety seats and requires that children ages 2-4 must be protected with safety seats or seat belts. Tenneco was the first organization from the private sector to respond to the TSA plea to provide an adequate number of child safety seats for those who cannot afford them.

The TSA made an original purchase of 200 seats. Other public service organizations are establishing loaner programs. IBM and Transco Companies Inc. have recently responded to the TSA plea and other responses are expected.