

TO: OSHALP & HEALTH COMMITTEES: FOR YOUR INFORMATION. S.G.E.

**AMERICAN
INDUSTRIAL
HEALTH
COUNCIL**

1075 CENTRAL PARK AVENUE SCARSDALE NEW YORK 10583
TEL: 914-725-1492

OSHA Agent
newsletter

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S.G.E.

For Members' Use Only

January 4, 1978

JANUARY 30TH DEADLINE NEARS
FOR COMMENTING ON OSHA PLAN

The deadline for submitting written comments on OSHA's proposed generic standard on carcinogenicity, for requesting time to appear at the public hearings and for submitting copies of oral testimony remains Monday, January 30th. Written comments should be submitted in quadruplicate to the Docket Officer, Docket Number H-090, Room S-6212, U. S. Department of Labor, Third Street and Constitution Avenue, NW, Washington, DC, 20210. Requests to appear at the hearing should be sent to the OSHA office of Consumer Affairs, Room N-3633, U. S. Department of Labor, Third Street and Constitution Avenue, NW, Washington, DC, 20210. These must include the name, address and telephone number of each person to appear, the capacity in which the person will appear, the approximate amount of time required for the presentation, the specific issue raised by the proposal that will be addressed, a detailed statement of the position that will be taken with respect to each issue addressed, whether the party intends to submit documentary evidence and, if so, a brief summary of that evidence. Any party requesting more than 15 minutes for such a presentation or who will submit documentary evidence must provide in quadruplicate the complete text of such testimony including any such documentary evidence. In this latter case, the material must be received, not postmarked, by January 30th.

AIHC is very much interested in getting a feel for the number of companies or Associations planning to present either written or oral testimony as well as whether or not they will be primarily addressing economic or scientific issues. If you have not already notified the AIHC office by letter or phone regarding your plans, we would much appreciate it if you could do so as quickly as possible.

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AIHC ALTERNATIVES PROPOSAL
SCHEDULED OUT NEXT WEEK

AIHC's Alternatives Committee is nearing completion of a detailed proposal for the identification of suspected carcinogens and the type of regulatory controls which can be used to protect employees against such hazards. The proposal draws heavily on experts on AIHC's Scientific Committee and includes detailed input from industrial hygienists, medical directors, etc., within AIHC's participating companies. Hopefully, the proposal will provide a more scientifically sound method of identifying potentially troublesome chemicals and an effective, but more reasonable method of protecting workers than that proposed by OSHA in its generic standard. The Committee expects to complete its work this week and it is anticipated that all AIHC participating companies and Associations will be receiving copies of the alternatives proposal early next week. The proposal will be put together in such a way that companies which cannot support it in its entirety will find sections which they can endorse in their oral testimony or written comments.

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PLAINTIFF'S
EXHIBIT
AL-1026

ALCOA0004314

AIHC EXPERTS AVAILABLE TO ASSIST
COMPANIES IN DRAFTING TESTIMONY

In order to provide assistance to individual companies planning to present either oral or written testimony in connection with

OSHA's proposed generic standard, AIHC has set up a free consulting service to such companies in Washington next week. A series of experts from the Economics, Scientific and Alternatives Committees will be available from Monday, January 9th through Thursday, January 12th, from 9:00 a.m. to 4:30 p.m. each day at the offices of AIHC's Counsel, Cleary, Gottlieb, Steen & Hamilton, Suite 400, 1250 Connecticut Avenue, NW, Washington, DC. They will be there to answer questions, assist in drafting testimony, etc., both on an individual and group basis. It is important, however, that we have some indication if you plan to take advantage of this assistance. Anyone who wishes to use the service can make a reservation by calling Ms. Terri Brown at (914) 725-1492.

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CHAMBER SCHEDULES DEC. 10TH
MEETING ON OSHA PROPOSAL

The U. S. Chamber of Commerce has scheduled a seminar on OSHA's cancer proposal for Tuesday, January 10th, at

the National Chamber Building, 1615 H Street, NW, Washington, DC, beginning at 1:00 p.m. The program will include representatives of AIHC as well as Dr. Grover C. Wrenn, Deputy Director of OSHA's Health Standards Programs, and will cover legal, economic and scientific issues as well as alternative actions for business firms and associations. Companies interested in attending this seminar should get in touch directly with Ms. Christine Waisanen at (202) 659-6101.

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AIHC NOTES

A number of AIHC Committees have meetings scheduled over the next ten days and members should make certain they have them

on their calendars. These include the Scientific Committee on January 4th, the Alternatives Committee on January 5th, the Legal and International Committees on January 6th, the Economics Committee on January 9th, the Associations Committee on January 10th, the Public Relations Committee on January 11th and the Steering Committee on January 13th. ...Mr. Ralph Harding, President of the Society of the Plastics Industry, has agreed to take over administration of the Associations Committee. Trade and professional associations interested in receiving background materials from AIHC and assistance in connection with the public hearings should contact Ralph at (212) 573-9400...AIHC's Scientific Committee has established a detailed library of pertinent documents relating both to the identification and control of carcinogens as well as the toxicological issues involved therewith at the offices of the Manufacturing Chemists Association in Washington, DC. The library was set up basically to assist the Scientific Committee in its efforts to put together meaningful scientific papers on the issues posed by OSHA's proposal, but access can be provided to companies planning to get into the scientific issues in depth in their testimony. Companies requiring access should contact the librarian, Ms. Jane Rasmussen, at (202) 483-6126. ...AIHC has recently obtained a copy of the contract between OSHA and Clement Associates, a consulting firm in New York City, whereby Clement will provide detailed testimony and witnesses to rebut the positions advanced by industry on January 30th. The timetable set by OSHA provides Clement almost seven weeks to go over industry's testimony and pull together witnesses and rebuttal statements.

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AMERICAN INDUSTRIAL HEALTH COUNCIL

1075 CENTRAL PARK AVENUE • SCARSDALE, NEW YORK 10583 • (914) 725-1492

January 3, 1978

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TO: AIHC Association Committee Members

JANUARY 10, 1978 MEETING

Bud Sather of the Polyurethane Manufacturers has given his analysis of OSHA's proposed work practice provisions. He points out, and I agree, that this area is of prime impact to the customers of the chemical industry. We cannot and should not rely on the AIHC Alternatives Committee to handle these particular problems for all of us.

Please be sure to send me your attendance form, mailed to you earlier, and also please make certain that Ron Lang has the questionnaire you owe him regarding your plans to testify.

Cordially,

Ralph L. Harding, Jr.

RLH:fo

CC: Ron Lang
Keith McKennon
Don Blanchard

ALCOA0004316

December 27, 1977

Mr. George Kilbride
President
Polyurethane Manufacturers Association
620 North Chapel Street
Louisville, Ohio 44641

Dear George:

Re: Analysis of Work Practice Provisions of
Proposed Generic Carcinogen Standard

The following identifies various provisions of the Work Practices Standard of Category I and Category II, Toxic Substances and my comments regarding these provisions.

Exposure Monitoring: Section (e)(1)(i) requires monitoring of airborne exposure levels to be accomplished through air samples. This is a somewhat restrictive provision regarding the type of sampling since a particular chemical may render a fallout sampling or employee biological sampling, such as urine analysis, more desirable and accurate method of determining the extent of any exposure to the chemical. The proposal is written in contemplation of only air concentrations.

Housekeeping - Surfaces: Section (k)(1)(i) requires that "all surfaces shall be maintained free of accumulations". From our prior experience, we know such a provision will be interpreted by enforcement officials as a "zero exposure" wipe test standard. For many chemicals this is impossible and would subject the employer to constant and repetitive citations for failure to properly maintain clean surfaces.

Since this is a work practice standard, it would be reasonable to simply require an adequate decontamination procedure rather than have it refer to what can be interpreted as a numerical standard - i.e., retaining all surfaces "free of accumulations".

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Signs and Labels: Section (p)(2) and (3) provide for signs and labels which contain the words "Cancer Hazard". We previously have been confronted with the proposed terms "Cancer Suspect Agent". Based upon the testimony of our experts the same problems that previously have been experienced by the use of the word "Cancer" can be anticipated under the new proposal. The terms "Hazard" and "Suspect Agent" appear to be virtually synonymous with respect to their deficiencies for sign communication purposes.

Exemption for Chemical Traces: The proposal provides that a label should be affixed to all "products containing" the chemical, and that such labels must remain affixed to the products when they are "sold, distributed, or otherwise leave the employer's workplace". The proposed standard does not contain any exemption for infinitesimal or trace amounts of the chemical in the product. Previous carcinogen standards have contained, for example, a "1 percent" exemption which provided leeway for trace amounts of the pure chemical in the final product. There is a possibility that the definition of the substance under section "(b)" could contain such an exemption. However, in light of the importance that such an exemption be contained in the standard, it would appear desirable that the generic standard contain some such expression of intent, if not outright exemption.

Skin Contact: Section (c)(2) prohibits exposure of the eye or skin to the chemical. This is somewhat ambiguous since it again infers a zero standard and could be so interpreted. This is incongruous with permissible exposure limits and could be relied upon to support a zero level of surface contamination.

As long as air concentrations are limited, there is a positive duty to maintain reasonably clean work surfaces and employees are required to wear appropriate protective garments, gloves, etc., this prohibition is not reasonable nor necessary.

Emergency Alarms: Section (i)(2) requires alarms to be sounded to alert employees of any emergency situation which could possibly result in exposure above the ceiling limit. This requirement is too restrictive in the sense that there could be numerous work situations where an actual alarm is not the most feasible method for alerting employees. It would be desirable to have greater flexibility in this

requirement in the sense that there be a requirement for a reasonable and adequate method of alerting employees promptly to any emergency situation. It could well be in some circumstances that a sound mechanism requiring the employee's hearing senses may not be the most effective method for alerting employees of an emergency.

Lunchrooms: Section (m) (3) provides for lunchrooms when food is consumed "in the workplace" which shall have a positive pressure filtered air, etc.

This work requirement is ambiguous regarding what is meant by the term "consumed in the workplace." If "workplace" is interpreted to be the entire place of employment, it can create a severe hardship, whereas if a "workplace" is interpreted to be the regulated area and immediate vicinity where the carcinogen is used, then it may not be so onerous. As presently worded, it cannot be determined what is the intent of the regulation. "Workplace" is not defined in the standard. It is referred to in dealing with initial monitoring and signs. It is impossible to determine whether or not "workplace" is synonymous with the place of employment, or is meant to include only a portion of the place of employment and presumably that portion in which exposure to the carcinogen is possible.

In any event, because of the potential increased cost of these specialized type lunchrooms, the definition of "workplace" should be placed in the standard and it should be made somewhat synonymous with the concept of the "restricted area".

Change Rooms and Showers: Sections (m) (1) and (2) provide for change rooms and showers. These provisions are somewhat more reasonable than we had previously experienced. Showers and change rooms are required for any employees who are exposed to airborne concentrations of the chemical. The reference to change rooms and showers is that of the general regulations. With respect to change rooms, they must be equipped with storage facilities for street clothes and separate storage facilities for the protective clothing but does not require any intricate separate changing facilities - merely the storage of the clothes facilities must be separate. However, this could be subjected to some adverse interpretation by field personnel. The shower requirement also refers to general OSHA regulations in that there must be at least one shower for every ten employees of each sex, or numerical fraction thereof, who are required to shower during the same shift but does not require any specialized relationship with change room facilities.

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Suitable Substitutes: Section (C)(3) provides that where there are "suitable substitutes in certain applications where the chemical is used" and such substitutes "are materials less hazardous to employees" then the Secretary can apply a zero standard to the chemical.

No standards or guidelines are provided for determining "suitable substitutes". Such a provision is totally untenable and clothes the Secretary with arbitrary and dictatorial authority regarding the use of various chemicals in industrial applications.

The Category II toxic substances contain the same work standard provisions as the Category I standard. The principal changes are the absence of the Secretary's authority to apply a zero standard to the use of the chemical upon the determination that there are suitable substitutes and the provision for the signs and label which adds the word "Potential". The signs and labels read "Potential Cancer Hazard" instead of just "Cancer Hazard".

Based upon the preceding comments, it would be my recommendation that the following work practice aspects of the Category I and Category II generic carcinogen standards be addressed by the Association:

1. Elimination of the "suitable substitute" provision which can result in a zero standard.
2. Removal of the word "Cancer" from both the signs and labels.
3. Eliminate the provision that all surfaces must be maintained free of accumulations and provide in lieu thereof a provision that reasonable decontamination procedures must be observed for work surfaces.
4. Place in the standard a clear provision that trace amounts of the chemicals in a product will not subject that product to regulation as a carcinogen nor require that labels be affixed thereto.
5. Remove from the standard the prohibition against eye or skin contact with the chemical in that it is ambiguous with the concept of permissible exposure limits and does not provide any further safety to the employee.

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6. Broaden the provision for an alarm system to be used during emergencies to provide for other reasonable methods of alerting employees to an emergency situation.

7. Define the term "workplace" as it relates to lunchroom requirements to mean where food is consumed in the specific area where the carcinogen is used versus other areas of the place of employment where the carcinogen is not found and where employees can consume their food without the requirement of positive pressure etc. in the lunchroom.

Finally it should be pointed out that there is an inconsistency between the proposed signs which require "authorized personnel only" and the provision relating to regulated areas which are established only when the chemical concentrations are in excess of the permissible limits. In other words, the standard does not prohibit employees or other persons from being present in an area where exposure occurs at the permissible limits. Training must be conducted with any employee for whom there is exposure to the chemical but the standards do not prohibit access to the area where the chemical is in use as long as concentrations are within the permissible limits. It would not be my recommendation at this time that this inconsistency be dealt with in any form during the presentation.

There are numerous aspects of the standard which, based on our experience with previous carcinogen standards, we might regard as excessive or unnecessary. What I have attempted to do in this letter is to identify those aspects of the proposed generic carcinogen standard which I believe to be important matters which if not dealt with effectively could result in serious enforcement problems if this standard were to be adopted for a specific chemical affecting our members.

Sincerely yours,

MICHAEL, BEST & FRIEDRICH

Arvid A. Sather

AAS:sh

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