



HIGHLIGHTS OF CURRENT REPORT

EXCESS BRAIN CANCER RATES among oil and petrochemical workers are reported in a series of government studies presented at a New York Academy of Sciences seminar. Among the findings are a brain cancer incidence rate in a Union Carbide plant in Texas City, Texas, nearly twice that of the surrounding population, and a similar incidence rate at Texaco, Gulf, and Mobil plants in Port Arthur and Beaumont, Texas. However, industry studies also presented—some of them covering some of the same plants—find no excess risk (p. 573). . . The National Institute for Occupational Safety and Health is stepping up efforts to find specific links between worker brain cancers and chemical exposures, a NIOSH official tells the seminar (p. 574).

THE WALKAROUND PAY regulation official-ly will be rescinded in a notice expected to be published soon in the Federal Register, the Department of Labor reports in a submission filed with the U.S. District Court for the District of Columbia. In addition, DOL submits a copy of a memorandum which directs Occupational Safety and Health Administration regional administrators to ensure that inspectors "say nothing" to indicate that an employer must pay for walkaround time (p. 574). . . Text of OSHA memorandum (p. 593). . . Text of final draft Federal Register notice (p. 593).

A FIRM CANNOT REFUSE to turn employees' medical records over to NIOSH in the institute's investigation of asthmatic symptoms suffered by some workers exposed to hexahydrophthalic anhydride, the U.S. Court of Appeals for the Third Circuit rules (p. 575).

CANCER DETECTION EFFORTS can be aided greatly by union representatives, a United Auto Workers local president tells the annual meeting of the American Public Health Association. The official reports that a study he made personally of death certificates found a 27 percent excess of overall cancers at the plant

represented by his local, and a 100 percent excess of lung cancer deaths (p. 576).

A DRAFT NOISE STANDARD that would require employers to begin hearing conservation programs for certain noise-exposed workers is being reviewed internally by OSHA, an American Textile Manufacturers Institute official tells a session of the National Safety Congress. The rule would require hearing conservation measures for workers exposed to noise levels exceeding 85 dBA who have experienced hearing losses, the official reports (p. 576).

VIBRATION-INDUCED EFFECTS that turn workers' fingers white and numb can be reduced through better design of hand-operated tools, the third annual NIOSH Scientific Symposium is told (p. 577).

A SETTLEMENT AGREEMENT is reached between OSHA and Research-Cottrell, Inc., on citations resulting from the 1978 Willow Island, W.Va., cooling tower accident. The company agrees to withdraw its notice of contest to amended citations and pay \$85,100 in reduced penalties (p. 578).

THE SUPREME COURT should reject industry challenges to the cotton dust standard, Sol Stetin, executive vice president of the Textile Workers Union, urges (p. 578).

NATIONAL SAFETY CONGRESS: Voluntary compliance programs are a viable alternative to OSHA inspections, a Bechtel Corporation official tells a safety congress session (p. 579). . . An agricultural chemical industry official recommends ways to handle the "dilemma" of female employees working with toxic chemicals, including the appointment of a committee of experts to develop a protective and "fair" course of action for pregnant female employees in production jobs (p. 579).

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OCCUPATIONAL SAFETY & HEALTH REPORTER

Published at Washington, D.C., every Thursday except the year-end issue by The Bureau of National Affairs, Inc., Washington, D.C. 20037. Telephone: 452-4200 (Area Code 202)

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First year subscription rate (payable in advance) \$327 renewal \$316 per year.

Correspondence concerning editorial content should be directed to the managing editor.

Second Class postage paid at Washington, D.C., and at additional mailing offices.

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Code: ISSN 0095-3237

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Printed in U.S.A.



Current Report

Carcinogens

GOVERNMENT STUDIES INDICATE EXCESSES IN CANCERS; INDUSTRY CHALLENGES REPORTS

NEW YORK — (By a BNA Staff Correspondent) — Research reports presented Oct. 27 and 28 at a New York Academy of Sciences seminar on brain tumors in the petrochemical industry suggested a high likelihood that oil and petrochemical workers face an elevated risk of occupationally related brain cancer.

However, conflicting evidence and varying methodologies indicate that most — if not all — of the findings are either hypothetical or highly tentative, and thus subject to further study, some speakers said.

Participating scientists agreed that exposure-linked causes have yet to be uncovered and that this represents the main task ahead.

Findings reported included an Occupational Safety and Health Administration/National Institute for Occupational Safety and Health collaborative study showing 18 — and possibly as many as 25 — brain cancer cases in a Union Carbide plant in Texas City, Texas. This shows an incidence rate nearly double that of the surrounding population (Current Report, Aug. 7, p. 262).

This finding, according to OSHA physician Victor Alexander, carries weight because it relies on a standardized mortality ratio — the "methodology of choice" — showing an actual incidence rate rather than a hypothesis-generating proportion. The latter, called a PMR, is subject to sample-selection biases, he stated.

The study also is unique, Alexander said, in that it includes follow-up confirmation of cause of death by a respected pathological laboratory. The study also works with a very large sample over a complete employment duration period, he added.

Other studies relied on unconfirmed data such as death certificates and company insurance claim files, Alexander said.

As a clue toward identifying specific exposure groups, the study listed recognized and suspect carcinogens used in the plant, including benzene, trichloroethylene, vinyl chloride, and diethyl sulfate.

A NIOSH/National Cancer Institute study of Oil, Chemical, and Atomic Worker International Union members in Texaco and Gulf plants in Port Arthur, Texas, and a Mobil plant in Beaumont, Texas, found nearly twice the amount of brain cancer deaths expected using data from the general population.

NCI researcher Terry Thomas stressed that, broken down by plant, the results showed statistically significant ratios. Using an innovative "proportionate cancer mortality ratio," researchers found the data to be even more significant than otherwise indicated, Thomas said.

However, a draft report of a Gulf study of its Port Arthur plant presented results that "do not support an increase risk of brain tumors among refinery workers as reported by Thomas, et al." Government researchers, in response, cautioned that the Gulf study might have shown supportive results by taking a larger sample.

A NIOSH/NCI study of Amoco and Marathon oil company plants in Texas City, Texas, found "highly tentative" evidence of a two-fold risk of brain and skin cancer in the

Amoco plant, as compared to the general population. The methodology, however, was subject to bias and reflected a very small sample, as do most epidemiological studies. NIOSH researcher Richard Waxweiler noted. The finding, he said, points only to the need for research to determine causal links.

Operating Engineers

A Mt. Sinai School of Medicine study comparing brain cancer incidence in Operating Engineer union members working in construction, chemical plants, oil refineries, and petrochemical plants, also was reported. The findings, were uncovered at a Dow plant in Freeport, Texas, a Cities Service plant in Lake Charles, La., and two Union Carbide plants in Texas City, Texas.

The study showed a four-fold excess of risk in chemical plants and a two-fold excess risk in refineries and petrochemical plants, but no excess risk in construction.

Researcher William J. Nicholson noted that, by comparing operating engineers' rates to those of other workers in the same plants with less exposure, he and Dr. Irving Selikoff found that the operating engineers faced nearly six times the risk as those with less exposure.

Industry Reports

Several government studies were countered by industry studies during the seminar. A NIOSH/OSHA study of a Dow Chemical plant in Freeport, Texas, showed a "maximum likelihood estimate" for brain cancer for Dow workers two times that of the general population. However, a Dow Chemical U.S.A. report on the same plant using different methodology stated "preliminary calculations of expected deaths from primary [brain tumors among employees] suggested there was no excessive risk."

An Exxon Corporation study of plants in Baton Rouge and two other Louisiana locations reported no excess risk. Government researchers, however, observed that the Exxon study covered only a 1970-77 period, a sample that Exxon researcher Vaun Newill conceded was too small to be conclusive.

A DuPont study of all company employees during a limited time-span found brain cancer death rates "essentially the same as in the general population." The company reserved judgment, however, on whether future studies may uncover elevated risk in worker groups with particular chemical exposure patterns.

NIOSH Director Anthony Robbins, commenting on government-industry cooperation in obtaining data for the studies, said, "We have had occasional problems with access. Companies are still making up their minds, but I think they're seeing that there may be a clear link, so they are cooperating."

J. William Lloyd, OSHA epidemiologist, asserted that "our best interpretation of what has happened" in these plants is represented by the conference presentations. "This is not to say there is not disagreement on whether there is a problem, and if there is one, to what extent it reaches. Cooperation has varied and in some cases the experience has been very good," he said.

Lloyd concluded that finding areas of disagreement and seeking ways to cooperatively resolve those disagreements through further research were the reasons that the seminar was convened.

Carcinogens

NIOSH TO INCREASE EFFORTS TO FIND LINKS BETWEEN CHEMICALS, BRAIN TUMORS

NEW YORK — (By a BNA Staff Correspondent) — In response to growing concern that worker exposure to certain industrial chemicals may cause brain cancer, the National Institute for Occupational Safety and Health is stepping up efforts to determine specific links. William Halperin, chief of the NIOSH division of surveillance, hazard evaluations, and field studies, reported.

Halperin's remarks came in an Oct. 27 session of a New York Academy of Sciences seminar on brain tumors in the chemical industry. Halperin noted five avenues for NIOSH to pursue in order to speed definitive findings.

The institute first intends to seek further cooperative agreements with states for surveillance of cause-of-death-by-occupation data, Halperin said. He noted that Washington and California already are proceeding with the monitoring, and that additional agreements have been reached with Maine, Rhode Island, New York, and Utah.

Another project NIOSH hopes to sponsor would be a newsletter for rapid dissemination of findings in a field where public impatience forces an emphasis on quick progress, he said.

Commenting later in the day on public perceptions of the brain cancer research, NIOSH Director Anthony Robbins affirmed that the institute must "look at brain cancer quickly yet carefully, because occupational cancer can be prevented if we can pinpoint the cause."

Workers' View

Though data have been compiled recently at a pace extraordinary for research science, Robbins said, "I guess we have been slow from the point of view of the workers who may still be exposed to the possible cause."

NIOSH also will seek population-based case-control studies to generate hypotheses, Halperin said. An example of what is needed today, he noted, is a 1950 study by Thomas Mancuso of the University of Pittsburgh School of Public Health. That study, which Halperin said has drawn recent attention after 30 years, showed excess brain cancer rates among rubber workers in Summit County, Ohio, site of the tire manufacturing center, Akron.

NIOSH also will continue to sponsor research to evaluate specific hypotheses and conduct hazard investigations where clusters of incidences indicate a problem, Halperin said.

"Hazard investigations often are not productive," he stressed, "but sometimes can be very fruitful."

One NIOSH forthcoming project nearing completion, he noted, is a study by institute scientists Richard Lemen and Frank Stern determining levels of brain cancer incidence among automobile inspectors that may be caused by auto exhausts.

Congress Seen Doing 'Miserable Job'

Commenting on the problems in establishing a solid data base for comparing possible excess incidence rates of cancer, a former National Cancer Institute official stated that researchers were doing a "marvelous job" in accumulating statistics, but Congress was doing a "miserable job" by cutting back funding for statistical research.

The former official, Marvin Schneiderman, of Clement Associates, Washington, D.C., also noted that the quality of autopsies has been declining in recent years. He called for a national post-mortem service that would provide pathologists performing "good autopsies" across the nation,

possibly enabling researchers to pinpoint occupationally related causes of death.

Bay Area Study

Andrew Moss, of the University of California at San Francisco, told OSHA that he and another researcher, Victor Levin, have begun a population-based case-control study focused on occupationally related brain cancer in the San Francisco Bay area. The area, he said, will include the "silicon valley" of micro-electronic manufacturers, oil refineries, and petrochemical plants in Contra Costa, and several aerospace factories.

The proposal for the study was reviewed by NIOSH, Moss said.

Litigation

JUDGE DISMISSES CASE AFTER NOTICE ON WALKAROUND PAY SCHEDULED BY OSHA

A U.S. district judge dismissed an action by the U.S. Chamber of Commerce against the Occupational Safety and Health Administration after OSHA reported that it plans to publish a notice Oct. 31 officially deleting its regulation on walkaround pay, 29 CFR 1977.21.

The order by Judge June L. Green, of the U.S. District Court for the District of Columbia, dismissed a petition by the National Chamber Litigation Center in the case of *Chamber of Commerce of the United States of America v. Occupational Safety and Health Administration, et al.* (Civil Action No. 77-1842).

Earlier this month, the Litigation Center, acting on behalf of the Chamber, petitioned the court to order OSHA to publish an official notice of deletion of the walkaround pay regulation (Current Report, Oct. 23, p. 557). The regulation was declared invalid in July by the U.S. Court of Appeals for the District of Columbia Circuit because it had not been issued pursuant to the requirements of the Administrative Procedure Act (8 OSHC 1648).

Responding to the petition on Oct. 24, the Labor Department said the Chamber's action should be dismissed as "moot" because action to rescind the regulation officially already was under way. DOL noted its submission of a notice to the Federal Register — a copy of which also was submitted to the court — and the distribution of a memorandum to field personnel ordering that mention of walkaround pay be deleted from the booklet "All About OSHA."

By these actions, the Secretary of Labor "has provided the Chamber with all the relief it seeks," the DOL motion stated.

Register Notice

After a review of the appeals court ruling, OSHA "has decided to delete its walkaround pay regulation" and "will not pursue any enforcement actions based on a per se theory of discrimination to require employers to compensate employees for time spent in walkaround inspections unless it has first promulgated a walkaround compensation regulation using the notice-and-comment procedures of 5 U.S.C. 553," according to the draft Federal Register notice.

The announcement, signed by Assistant Labor Secretary Eula Bingham, added that the agency will publish a proposed regulation on walkaround pay "shortly."

The deletion of 29 CFR 1977.21 was effective Oct. 23, according to the notice.

An Oct. 22 memorandum to agency regional administrators, which also was submitted to the court, said the regional officials should ensure that inspectors "say nothing

to indicate to an employer that he has the obligation to pay for walkaround time."

If asked about walkaround pay, the compliance officer should respond that "OSHA's present policy position is not to enforce walkaround pay rights," the memorandum stated.

The document was transmitted by John B. Miles, Jr., OSHA acting field coordinator.

The text of the final draft Federal Register notice and that of the memorandum appear in the Full Text section of this Current Report.

Litigation

EMPLOYER CANNOT BAR NIOSH FROM EMPLOYEES' MEDICAL RECORDS

An employer cannot refuse to turn over employees' medical records to the National Institute for Occupational Safety and Health in its investigation of asthmatic symptoms suffered by some workers exposed to hexahydrophthalic anhydride at its Trafford, Pa., manufacturing plant, the U.S. Court of Appeals for the Third Circuit ruled Oct. 21.

This decision in *Westinghouse Electric Corporation v. United States of America* (No. 80-1269) affirmed a decision of the U.S. District Court for the Western District of Pennsylvania (7 OSHC 2179) and remanded the case to that court for further proceedings.

The case arose out of a union request for a NIOSH inspection of a plant that manufactures electric insulators. The union complaint alleged that employees were suffering allergic reactions as a result of their exposure to methyl ethyl ketone. The NIOSH inspection found that methyl ethyl ketone was not a potential health hazard. However, the inspectors did discover that hexahydrophthalic anhydride (HHPA) was used in significant quantities, and the physicians helping conduct the inspection suspected that HHPA might be causing the employees' allergic reactions. The physicians therefore recommended that further testing be done regarding the presence and effect of HHPA in the employer's plant.

NIOSH informed the employer that a health hazard evaluation would be conducted and requested a list of all employees who had worked in that area of the plant where high levels of HHPA existed. NIOSH also requested access to those employees' medical records. The employer gave NIOSH a list of all employees presently working in that area of the plant but denied NIOSH access to the employees' medical records.

Subpoena Issued

NIOSH proceeded to perform medical tests and conducted interviews with a majority of the HHPA-exposed workers and issued a subpoena to the employer for the medical records.

The employer refused to honor the subpoena and would not grant NIOSH access to the medical records unless NIOSH obtained written consent from each employee authorizing the employer to supply the records and written assurances that the contents of the medical records would not be revealed to third parties.

NIOSH filed suit in federal district court seeking enforcement of its subpoena. Following a hearing, the court granted NIOSH's request and ordered full enforcement of the subpoena. The employer then filed this appeal and enforcement

of the district court's order was stayed pending disposition of the appeal.

The appellate court held that NIOSH had the authority to review any records maintained by the employer which were relevant to its inquiry into the health effects of HHPA. In this case, the potential of HHPA to produce asthmatic conditions through prolonged exposure was unknown prior to NIOSH's investigation. Accordingly, NIOSH needed to correlate the results of its own medical testing of employees with the data maintained by the employer in the employees' medical records.

The appellate court found the employer's concern that the confidentiality of the employees' medical records is protected by the employees' right of privacy to be justified, as evidenced by the increasing safeguards imposed by Congress and the judiciary. However, "the interest in occupational safety and health to the employees in the particular plant, employees in other plants, future employees and the public at large is substantial. It ranks with the other public interests which have been found to justify intrusion into records and information normally considered private," according to the appellate court. The court then noted that the employer failed to produce any evidence to show that the information contained in the medical records is of such sensitivity that the intrusion by NIOSH could be considered severe or that employees were likely to suffer adverse effects from disclosure of those records to NIOSH personnel.

Security Claim Rejected

The court also rejected the employer's claim that NIOSH lacked effective provisions for the security of the medical records against subsequent unauthorized disclosure. The appellate court reiterated the district court's conclusion that the "evidence indicates that NIOSH's procedures of safekeeping the records and of removing names and addresses of the individuals in its compilation of published data represents sufficiently adequate assurance of non-disclosure by . . . [NIOSH]."

The appeals court concluded that "the strong public interest in facilitating the research and investigations of NIOSH justify this minimal intrusion into the privacy which surrounds the employees' medical records, and that [the employer] is not justified in its blanket refusal to give NIOSH access to them or to condition their disclosure on compliance with its unilaterally imposed terms."

The court then turned to the issue of whether the written consents from all affected employees needed to be obtained before NIOSH could be granted access to their medical records. The court believed that the requirement of securing written consent may impose too great a burden on NIOSH's ability to carry out its statutory duty. In addition, the court reasoned, a possibility existed that some employees would withhold consent arbitrarily or because they did not understand the full nature of the investigation or because they believed that is the course desired by their employer.

The appellate court therefore directed the district court to fashion a form of notice that would inform the affected employees as to the purpose of the NIOSH investigation, what records NIOSH sought to examine, and give each affected employee the right to object to the disclosure of information specified by the employee in written notice to the district court. The appellate court concluded that such a procedure would "accommodate the legitimate interests of all those concerned."

This decision, written by Circuit Judge Dolores K. Sloviter, joined by Circuit Judges James Hunter III and Joseph F. Weis, Jr., will appear in a future *Decisions* issue.

Carcinogens

UAW LOCAL UNION STUDY REVEALS INCREASED CANCER DEATH AT WORKSITE

DETROIT — (By a BNA Staff Correspondent) — Union representatives can have an impact on programs to detect and remove cancer-causing chemicals from the workplace, according to Michael Bennett, president of United Auto Workers Local 328 at the General Motors' Coldwater Road Plant, Flint, Mich.

Bennett told an occupational safety and health section Oct. 22 at the American Public Health Association's 108th annual meeting how he initiated a health survey after noticing about three years ago "something peculiar" at the Coldwater plant, which began operation in the 1950s as a plating and die casting facility. Bennett said that it was his observation that a lot of fellow employees were dying of cancer at what he thought was a rate higher than normal.

The result was an extensive investigation by Bennett of the death certificates of some 225 local union members and retirees who died over a five-year period. Comparing the pattern of mortality at the Coldwater plant to the publicly available national figures, Bennett reported in March of this year, an apparent excess of cancer deaths, particularly lung cancer deaths.

Local Study Reveals Cancer Increase

Bennett's basic findings have been essentially confirmed in subsequent reviews by the International UAW and the Sloan Kettering Institute for Cancer Research in New York City. His investigation produced some major findings:

- ▶ There was a 27 percent excess of all cancers and a 100 percent excess of lung cancer deaths. The lung cancer ratio was three and one-half times that expected among white women.
- ▶ The lung cancer excess became greater as years of actual work in the plant increased.
- ▶ There was an apparent, though not entirely consistent, connection between lung cancer and work in certain departments where chemical exposures were present.
- ▶ The overall pattern is more than would be anticipated from lung cancer increases due primarily to increased smoking or "lifestyle" factors.

UAW Steps Up Cancer Program

As a result of Bennett's workplace investigation, the UAW has expanded its efforts to attack occupationally related cancer. Michael Silverstein of the union's health and safety staff reported at another session.

In April, UAW President Douglas A. Fraser outlined a new and aggressive workplace program which includes preliminary evaluation of plants by union health professionals, recommendations for cancer detection programs and medical examinations of exposed workers where necessary, and full-scale industrial hygiene inspections (Current Report, April 24, p. 1092).

Countering efforts for stepped up workplace studies and controls are others in the industrial complex who "mix economics with epidemiology," Silverstein cautioned.

"Scientists who advise engineering controls are told they may bear the responsibility for job loss if companies are forced out of business only to discover later that the preliminary evidence of health hazards was falsely positive," he continued. "The pressure to go slow is enormous."

Economic Climate Affects Workplace

The current inflationary economic situation resulting in numerous corporate maneuvers to improve productivity and profits has resulted in unemployment and "some clear

changes in strategy for occupational health and safety work," according to Zoe Clayson of the Johns Hopkins University School of Hygiene and Public Health, Baltimore, Md.

For the unionized worker, Clayson explained that this means resisting "encroachments on previously won demands" by continuing "to support strong contract language, potent health and safety committees, vigorous enforcement programs, and increased standards" as well as stepped up education and training programs geared for distribution at the shop floor. "For it is there," she asserted "that the ultimate battle for a safe and healthful workplace will be won or lost."

OSHA Also Feels Pinch

At the regulatory level, there are increased efforts to reduce the scope of the Occupational Safety and Health Administration through continual attempts to reduce the agency's funding level and to "chip away at its legislative mandate" through regulatory reform and legal battles. OSHA Administrator Eula Bingham stated at an October 21 luncheon session. The reality of the national commitment toward public health "does not match the eloquence" of the OSH Act, she declared.

Bingham urged public health professionals to take steps to counter this "dualism" in the commitment toward health by making the public aware of the "real life tragedies, the statistically unmeasurable items" of environmental situations and how they affect individual lives.

Further, she called on those in the public health field to testify at regulatory hearings. "The people factor has to be infused into the regulatory and agency decision making process," the OSHA administrator declared.

Health Hazards

DRAFT HEARING CONSERVATION RULES BEING REVIEWED, INDUSTRY OFFICIAL SAYS

CHICAGO — (By a BNA Staff Correspondent) — A draft standard that would require employers to begin hearing conservation programs for certain noise-exposed workers is being reviewed internally by the Occupational Safety and Health Administration, a textile industry representative reported Oct. 21.

John Tritsch, safety and health director for the American Textile Manufacturers Institute, noted that the draft document would constitute "Phase I" of a planned two-part revision of the noise standard (Current Report, Oct. 9, p. 503).

Tritsch spoke at a session of the National Safety Congress.

Under the draft document, employers would be required to measure regularly the hearing levels of employees exposed to noise levels exceeding 85 dBA, according to Tritsch. Employees found to have undergone a hearing loss would have to be placed in a hearing conservation program, he added.

The draft is being reviewed both in the OSHA national office and in field offices, the industry spokesman told the session. He observed that Phase II of the revision is expected to deal with "engineering control facets," and said at that time "OSHA probably will bring back into consideration the public interest groups' idea that only an 80 dBA standard is safe."

Tritsch noted that OSHA began its enforcement of initial aspects of the cotton dust standard "right on target." With the Sept. 27 start-up date for employee monitoring having passed, affected employers should "expect to see" OSHA inspectors appearing at their plants, he said.

He noted, however, that the agency probably will not be able to transmit a cotton dust inspection directive to its field personnel by the projected Nov. 1 deadline. OSHA staff members say that the agency will be "very fortunate" to get the directive out by March 27, the effective date for the next set of cotton dust provisions, he added.

The document in fact "may never get off the ground," Tritsch speculated.

OSHA is holding meetings with representatives of industry, labor, state governments, and other federal agencies regarding respirator provisions in the cotton dust standard. Tritsch noted (Current Report, Oct. 2, p. 477). Because only 10 to 20 percent of all U.S. textile workers are organized under the Amalgamated Clothing and Textile Workers Union, OSHA asked the Carolina Brown Lung Association to attend the labor meeting to represent unorganized workers, he stated.

Cancer Rates

A study of data gathered since 1933 by the National Center for Health Statistics makes it "clear" that "there is no striking increase in overall deaths from cancer," W. Richard Burack, medical director for the fibers and plastics division, Allied Chemical Company, told the session.

If lung cancer rates were subtracted, the data actually would show a 10 percent decline in the overall rate, according to Burack. He noted that the National Center for Health Statistics data were drawn from cancer mortality statistics for every county in the U.S., and he asserted that the data are "good data, particularly for 1940 on."

Attributing the incidence of lung cancer to cigarette smoking, the official said that "if the politicians, bureaucrats, and public interest groups were rational, they'd go after the cigarette industry" rather than increase regulation for the chemical industry.

"The chemical industry has been made the scapegoat for an alleged cancer epidemic," Burack charged.

According to the official, extrapolation of animal study data to humans is a "dubious and shady exercise." The "enormous size of the doses" in animal tests, imperfect knowledge of routes of metabolism, and the ability of human cells to repair DNA damage make a finding of human cancer risk from animal study results a "contrived interpretation," he maintained.

Health Hazards

TOOL REDESIGN COULD REDUCE RISK OF VIBRATION DISEASE, RESEARCHER SAYS

DETROIT — (By a BNA staff correspondent) — Better-designed hand-operated tools could reduce the job-related occupational vibration disease which turns fingers white and numb, according to Donald E. Wasserman of the National Institute for Occupational Safety and Health, division of biomedical and behavioral science, Cincinnati, Ohio.

Speaking at the third annual NIOSH Scientific Symposium Oct. 19, Wasserman said that investigation of occupational vibration, which affects a total of some eight million workers in the U.S., has been conducted for some time but little has been done to alleviate the problem.

Wasserman centered his discussion on the approximately one million persons exposed to hand-arm vibration, which occurs primarily among chipper/grinder workers, stonecutters, and miners as opposed to whole body vibration which occurs among bus and truck drivers and heavy equipment operators.

According to the NIOSH researcher, long-term use of hand-powered tools can greatly increase the risk of Raynaud's disease, which is caused by the periodic spasms of blood vessels in the fingers. The spasms cut off the blood supply to the fingers which become white and numb. When the blood flow resumes, the returning blood can cause painful burning sensations, similar to frostbitten fingers as they are warmed.

Based on a survey of some 500 workers, Wasserman found that some 20 percent had Raynaud's disease. In these cases, hammers were hitting the worker's hand at 2,400 times the force of gravity.

Manufacturer Redesign Necessary

The key concern is getting the tools redesigned, according to Wasserman. "Otherwise," he said, "it's like putting a band-aid on a larger problem."

Wasserman urged placing greater pressure on the manufacturers of hand-powered tools to improve the design of the equipment. With the exception of chain-saw manufacturers, who have initiated design modification on their equipment, he said there has been little initiative among other manufacturers to improve their equipment.

More pressure seems to be coming directly from workers and the public to get manufacturers to redesign equipment to minimize risks of disease, Wasserman reported, noting that recent studies indicate that there are currently about 36 product liability cases against manufacturers in this area.

Responding to audience questions, Wasserman said that the current data represent "a giant step" toward formulating an enforceable regulatory standard. But he said he "did not know for sure" if a standard would result from the studies.

Wasserman made suggestions for workers currently in jobs involving use of hand-powered tools to reduce the possibility of developing vibration disease. He suggested that workers wear gloves, not to protect the hands from jolting caused by the equipment, but to keep the hands warm, because cold hands increase the risk of the disease. Wasserman also suggested that workers not smoke, because nicotine constricts the blood vessels and may cause an attack. Workers also should let the machine do the job, and not "grab" the tool, Wasserman said.

Metalworking Lathes

The need for industry redesign of machinery or equipment also was cited by John Etherton of NIOSH's division of safety research, Morgantown, W. Va., in his discussion of safety at metalworking lathes. He noted that metalworking lathe operators currently account for more than 10 percent of the occupational injuries each year, with some 3,400 operators suffering lost time injuries annually.

Etherton reported that the major sources of injury were identified with chips and workholding devices and with the hazards associated with the secondary tasks performed by operators.

While equipment redesign was cited by Etherton as a key factor in improving safety without adversely affecting productivity, Etherton said that the manufacturers were reluctant to move in this direction. "Employers treat design as their own domain," he charged.

But with the increased emphasis being given to product liability, Etherton said that employers gradually are becoming aware of the need for change. He predicted that with additional research, more progress will be made in this direction.

Construction

SETTLEMENT AGREEMENT REACHED ON WILLOW ISLAND ACCIDENT CHARGES

Research-Cottrell, Inc., announced Oct. 27 that it reached a settlement agreement with the Occupational Safety and Health Administration on citations resulting from an April 1978 cooling tower accident at Willow Island, W. Va., that claimed 51 lives.

The company said it will withdraw its notices of contest to amended citations, and pay \$85,100 in penalties. That amount was reduced from an original proposed figure of \$105,100.

Termed the "worst job-related accident since OSHA was established in 1971," the Willow Island accident occurred when a scaffold suspended from a power plant cooling tower fell, plunging workers 170 feet. OSHA maintained that the incident resulted from failure to test concrete properly before removing forms, failure to secure the scaffold framework securely to the tower, and failure to anchor beam sections supporting a concrete lifting system (Current Report, June 15, 1978, p. 60).

Last year, the Department of Justice decided not to press charges against Research-Cottrell on the accident. The department reported that an intensive investigation "failed to reveal any criminal violations of the Occupational Safety and Health Act" (Current Report, Oct. 11, 1979, p. 452).

John E. Schork, chairman and chief executive officer of Research-Cottrell, stated that "it is in the best interest of the company and its shareholders to pay the reduced fine, rather than endure lengthy and costly litigation in terms of legal expenses and disruption of our business."

According to Schork, the "exoneration" of Research-Cottrell by the Justice Department "confirms our position that there was no willful intent" to violate the Occupational Safety and Health Act. "It is not necessary to prove this again in any further actions with other governmental agencies," he added.

An attorney for Research-Cottrell noted that the agreement still must meet the approval of an Occupational Safety and Health Review Commission administrative law judge.

Cotton Dust

UNION ASKS SUPREME COURT TO REJECT TEXTILE INDUSTRY CHALLENGE TO STANDARD

The Occupational Safety and Health Administration's cotton dust standard is of "tremendous importance to America's textile workers," a labor union told the U.S. Supreme Court in asking that industry challenges to the standard be rejected.

Sol Stetin, executive vice president of the Amalgamated Clothing and Textile Workers Union, declared in a written statement to the Court that "the tremendous burden that illness and disability imposes on our society far outweighs the relatively minor cost of clean-up to the industry."

Opening its 1980-81 term, the Court on Oct. 6 agreed to consider industry challenges to OSHA standards limiting worker exposure to cotton dust in the textile industry (Current Report, Oct. 9, p. 501). In response to petitions for review filed by the National Cotton Council of America and the American Textile Manufacturers Institute, the Justices decided to determine whether the Secretary of Labor must show that standards are economically feasible and that the benefits to be achieved bear some reasonable relationship to the costs.

According to Stetin, 800,000 workers are exposed to cotton dust and 150,000 already suffer some degree of dust-related illness. He charged that industry ignored the Secretary of Labor's estimate that failure to follow the new standard would cost workers, taxpayers, and society at large over \$7 billion in medical care and welfare benefits.

"Disabled workers suffer a double jeopardy — for not only is their health ruined, but their economic security is destroyed as well. Only a small fraction of all those who have filed claims for workers' compensation have ever received benefits, and many others have died waiting," the union official said.

Stetin charged that the industry has taken a "contradictory position" in challenging the standard. "On the one hand, they would have the Supreme Court and the public believe that the requirements of the new standard are simply beyond human capability. But nowhere do they mention the repeated investigations by the Secretary of Labor — including months of public hearings in 1977 — which clearly demonstrate both the economic and technical feasibility of the new standard."

Stetin said that the industry's demands for "cost-benefit" decisions had "no place in the establishment of occupational health standards."

"There is no such provision [for cost-benefit analysis] in the law now, and Congress never intended there to be one when it passed the law 10 years ago," Stetin said. "And even if there were, the cotton dust standard would pass that test with flying colors," he added.

Stetin claimed that while the American Textile Manufacturers Institute is appealing the standard to the Supreme Court, "some of its largest members — including Burlington Industries, Riegel Textile Corp., and the Russell Corp. — have publicly announced that the overwhelming majority of their cotton operations are already meeting the new limits."

Stetin charged that the industry's challenge is based on "the values of a more primitive era, when exploitation of workers was naked and undisguised." He continued that industry has "dressed up and repackaged their crimes with names like 'cost-benefit' and 'cost-effectiveness'."

"The message is still the same: Let's go back to the old days, when we did what we pleased and the workers be damned if they didn't like it," Stetin charged.

"We call upon the Supreme Court to reject such savage nonsense, and lead us to a higher plane of human and social morality by affirming the OSHA cotton dust standard," the statement concluded.

Agriculture

BINGHAM DEFENDS OSHA'S HANDLING OF GRAIN ELEVATOR INVESTIGATIONS

Prevention of accidents has been "a major policy theme" of the Occupational Safety and Health Administration. Administrator Eula Bingham declared in a statement defending the agency's investigation of grain elevator explosions.

Earlier this month the National Research Council's National Materials Advisory Board issued a report finding that OSHA's investigation of grain elevator explosions has been "undisciplined and unsystematic" and has been performed "mainly for determination of any and all code violations." The report called for investigation of such accidents by an autonomous federal agency (Current Report, Oct. 16, p. 538).

"While we certainly agree with the report's recommendation that a specialized independent team be established to investigate these disasters," Bingham said, "I am concerned

about the report's characterizations of the handling of past explosions by OSHA."

All of the accidents reviewed in the report "took place before we established our special grain elevator training program for compliance officers in April 1978," Bingham explained, adding that the program "has gone a long way towards establishing the kind of competence within the agency that the report claims is lacking."

While the report recognizes that OSHA is a regulatory and not an investigative agency, Bingham asserted that this "does not mean that OSHA overlooks its preventive responsibilities." She noted that in January 1978 the agency put out an alert on grain elevator explosions which included suggestions for preventive action.

Last February the agency issued an advance notice of proposed rulemaking on handling grain elevator problems and followed with public hearings in the spring. Bingham said that she expected OSHA "to come forward shortly with final regulations to help further control this serious problem" (Current Report, Feb. 21, p. 876).

As another means of assistance, Bingham pointed out that grain elevator owners can get free advice on preventing explosions through OSHA's consultation programs available in every state, and that educational programs have been set up by both the Food and Beverage Trades Department, AFL-CIO, and the Grain Elevator and Processing Society under OSHA grants.

Bingham said that she agreed with the report's recommendation for the establishment of a specialized independent team, adding that the National Transportation Safety Board, which investigates airplane and railroad disasters, "might serve as a model for an independent investigatory agency for grain elevator and other explosions."

Health Hazards

'DILEMMA' POSED BY FEMALE WORKERS, AGRICULTURAL CHEMICAL OFFICIAL SAYS

CHICAGO — (By a BNA Staff Correspondent) — Agricultural chemical industry employers may feel they have a "multi-horned dilemma" on their hands with the increasing presence of female employees of childbearing age in jobs involving exposure to toxic chemicals, an industry official commented Oct. 22.

Jerry C. Brooks, director of corporate protection, Goldkist, Inc., Atlanta, Ga., told a session of the National Safety Congress that an employer "doesn't want to endanger the worker, and yet he's aware of the discrimination penalties he faces if he tries to exclude women from jobs involving chemical exposure."

Some 50 percent of Goldkist's 10,000 employees are women, Brooks said. Other firms in the industry that do not have women in production jobs at present will have female workers eventually, he predicted.

Agricultural chemical firms are asking themselves "tough questions" about the presence of women in production jobs, Brooks said. These questions include:

- Can a female handle the physical strain present in the typical production job?
- Are females of child-bearing age more susceptible to toxic chemicals than males?
- Should female employees be treated any different than males regarding safety and health protection?

Brooks asserted that he does not know of any job in an agricultural chemical plant that "a well-qualified female couldn't handle as well as her male counterpart." Regarding effects from chemicals, he noted that such substances

as lead and carbon disulfide have been implicated as having harmful effects on the reproductive systems of both males and females.

Some employers "seem more concerned" about exposure of female workers to chemicals than exposure of male workers, according to the official. He theorized that this perhaps is because "a direct relationship is seen" between chemical exposure and reproductive effects in women. "It is more difficult with males to show a one-to-one relationship," he stated.

A "prudent employer" should remove all references to sex in job titles, and use non-discriminatory hiring practices, Brooks recommended. He also suggested that employers institute training plans to ensure that women are familiar with the "technical terminology" used in production jobs. The training given should be documented, and refresher training should be conducted as well, he said.

When a female employee who works with toxic chemicals becomes pregnant, a committee of experts should be established to develop a course of action for the company that is both protective and "fair" to the employee, Brooks suggested. He said that company medical, legal, safety, and personnel official should be included on the committee.

The official noted that respirators "are not always designed to give a tight seal on a female face." Where respirators are used, employers should ensure that they have a good seal, he said.

Enforcement

SELF-INSPECTION SEEN AS ALTERNATIVE TO 'INEFFECTIVE' AGENCY MONITORING

CHICAGO — (By a BNA Staff Correspondent) — Self-inspection, or voluntary compliance, programs carried out by corporations are a viable alternative to Occupational Safety and Health Administration inspections, according to Robert Atkinson of the Bechtel Corporation, San Onofre, Calif.

Atkinson told participants at the National Safety Congress Oct. 20 that Bechtel's pilot self-inspection program is in its 19th month of operation and is "working very well." Both federal OSHA and California OSHA are monitoring the experiment and have found it to be satisfactory, he said.

The program is a joint project worked out by the National Contractors Association and the California Building and Construction Trades Department, AFL-CIO (Current Report, Mar. 22, 1979, p. 1582). Under the program, a committee of two labor representatives and two management representatives meets weekly to assist in the implementation of Cal/OSHA construction standards. The committee also considers various construction problems present at the plant site.

In order to participate in the project, a company must have a documented and approved safety program, a full-time safety staff, and a safety record 25 percent better than the state average for that particular industry.

Atkinson stated that an evaluation was conducted by OSHA in February 1980 to determine whether the program could be expanded to other industries, but a decision has not been announced yet, he said.

OSHA Costs

Asserting that OSHA has not been very effective in reducing workplace injuries and fatalities, he stated that employers must examine the results of corporate investment in compliance with OSHA regulations. Atkinson claimed that OSHA has cost taxpayers approximately \$1 billion and employers more than \$25 billion over ten years, yet the

agency, he said, has not provided safer workplaces. "The answer is not to expand OSHA and (for corporations to) attempt to avoid citations but rather to avoid accidents and injuries," he asserted.

Relatively few injuries can be prevented through inspections, he maintained, adding that OSHA should stress identification and targeting of safety violations responsible for the most serious injuries.

Atkinson emphasized that a cooperative effort involving employers, employees, and the government is necessary to reduce injuries and fatalities. "A cooperative effort, rather than the present adversary relationship, is the answer," he concluded.

Enforcement

SOME PLASTIC CONTAINERS PERMISSIBLE FOR FLAMMABLE-LIQUID STORAGE, OSHA SAYS

Use of Department of Transportation specification, non-specification polyethylene, and non-regulated containers for storing flammable and combustible liquids under certain conditions is permissible as a de minimis departure from an Occupational Safety and Health administration standard, according to an OSHA-wide instruction issued Oct. 24.

The instruction, STD 1-5.14A, was issued as an attempt to resolve the conflict between OSHA regulations barring storage use of plastic containers, and DOT standards which permit their use for transporting specifically identified Class B poisonous and flammable and combustible liquids, the instruction stated.

The instruction supersedes a 1979 document of similar intent, STD 1-5.14 (Reference File, 21:8172), which applied to only DOT Specification-34 containers.

In order for polyethylene containers to be used, these conditions must exist, OSHA said:

- The liquid in the container must have a DOT exemption, and must be identified as meeting the requirements of the exemption.

- The container storage area must be provided with a fire detection system designed and installed to detect incipient fires and interconnected with an employee emergency alarm system.

- In locations where employees are expected to fight fires, the container storage area must be provided with a fixed automatic fire suppression system designed and installed to control, if not extinguish, a fire involving the stored containers.

- Employees, except for members of fire brigades, must be evacuated from the storage area when a fire is detected. Where fire brigades are used, members must be trained in the specific methods for fighting fires involving polyethylene drums or containers.

- In general purpose warehouses, the container storage area must be provided with diking, or curbing and drainage. Employee emergency exit routes should not intersect or pass over or under open drainage paths.

OSHA noted that the standard affected by the instruction is 29 CFR 1910.106(d)(2)(i) (Reference File, 31:5515).

The terms flammable and combustible liquids are defined in the National Fire Protection Association flammable and combustible liquids code, NFPA No. 30, Chapter 1, OSHA observed.

The text of Instruction STD 1-5.14A will appear in a future Reference File supplement.

Litigation

NORTH CAROLINA APPEALS COURT OVERTURNS WORKER'S BROWN LUNG AWARD

RALEIGH, N.C. — (By a BNA Staff Correspondent) — The North Carolina Court of Appeals Oct. 7 overruled the state Industrial Commission's award of worker compensation benefits to a former textile worker.

The court said the Industrial Commission's finding that the worker contracted byssinosis after exposure to workplace cotton dust "is unsupported by sufficient competent evidence."

In *Pauline C. Hansel v. Sherman Textiles and Travelers Insurance Company* (No. 8010IC207), the court ruled in a split decision that the 51-year-old woman is not entitled to compensation benefits because expert medical evidence failed to link her disability and her employment.

Judge Cecil J. Hill, dissenting from the majority opinion, said, however, there was sufficient evidence to support the Industrial Commission's finding. Judge Hill said "the resolution of contradictions" in the evidence of the medical expert "is the function of the Commission, not ours."

31 Years In Mills

Hansel, who has worked in weave rooms in various textile plants for 31 years, has a history of respiratory problems since early childhood and has smoked cigarettes since she was 16 years old.

She was diagnosed as having chronic bronchitis in 1948, asthma in 1970, and emphysema and signs of byssinosis in 1975. In 1977 she was hospitalized and was told she was suffering obstructive lung disease.

At that time, Hansel was told she could work only in a dust-free environment and was reassigned to the cloth-inspection room at Sherman Textiles. Her symptoms continued, and she resigned.

In 1978, a pulmonary specialist who examined the worker said she had asthma, chronic bronchitis, and possibly byssinosis.

Hansel's preexisting medical conditions and the absence of specific information about the density of cotton dust in her work environment made it difficult for the physician to make a specific byssinosis diagnosis, according to the court.

The doctor's uncertainty and the lack of information on the cotton dust exposure led the court to conclude that the Industrial Commission's award was not supported by sufficient evidence.

Denial Upheld

In another decision handed down Oct. 7, the appeals court upheld the Industrial Commission's finding that another former textile worker was not entitled to compensation because his disability stemmed from medical conditions unrelated to his employment.

In *Samuel B. Brown Jr. v. J.P. Stevens & Co. Inc. and Liberty Mutual Insurance Co.* (No. 8010IC205), the court agreed that Brown "does not suffer from a disease peculiar to those working in cotton mills and his claim is therefore not compensable."

The hearing commissioner found, however, that Brown could not return to work in the cotton mill because exposure to cotton dust and varsol would aggravate his condition. Brown, who worked for J.P. Stevens and Co. for 37 years, has been a smoker since age 20 and had heart attacks in 1971 and 1974, after which he noticed he had shortness of breath.

Two medical doctors testified that Brown's respiratory problems stemmed from health factors other than brown

lung disease. However, a third doctor testified he felt Brown's "exposure to cotton dust had been a significant contributing factor to the development of the pulmonary impairment, but there were other factors . . . that were significant."

The physician said on cross-examination that Brown's exposure to cotton dust "does not give a history suggesting the diagnosis of byssinosis" because Brown's shortness of breath began more in relationship to exertion than to dust exposure.

In appealing the commission's findings, Brown contended he had a pulmonary disease due to causes and conditions peculiar to his employment at J.P. Stevens, not an ordinary disease of life to which the general public is exposed.

His attorney contended the evidence showed that Brown's condition became more serious during his exposure to cotton dust. He also argued that aggravation of a condition is synonymous with causation under the proper interpretation of North Carolina law (G.S. 97-53(13)).

The court ruled, however, that "in order for an occupational disease which develops over a long period of time to be compensable . . . it must be proved that it was caused by the plaintiff's employment."

General Policy

TWO MEMBERS NAMED, FOUR REAPPOINTED TO ADVISORY COMMITTEE ON SAFETY, HEALTH

Two new appointments to the National Advisory Committee on Occupational Safety and Health, representing the public and safety sectors, were announced Oct. 24 by the Occupational Safety and Health Administration.

The new members are Thomas Rockwell, Ohio State University, serving as safety representative, and Carol Oppenheimer, National Veterans Center, American University, serving as public representative.

In its notice (45 FR 70601), OSHA also announced the reappointment of four members whose previous terms expired June 30, 1980. These members are Nicholas Ashford, Massachusetts Institute of Technology, and Richard E. Ginold, University of Wisconsin, both public representatives; John J. Sheehan, United Steelworkers of America, labor representative; and Peter J. Nord, Schauer Manufacturing Corporation, management representative.

Rockwell and Oppenheimer succeed Robert J. Firenze, R.J.F. Associates, and Hawey A. Wells, Titusville (Pa.) Hospital, whose terms also expired June 30.

The terms of the two new and four reappointed members will extend to June 30, 1982, OSHA said.

For additional information, contact Clarence Page, OSHA Division of Consumer Affairs, Room N-3635, Third St. and Constitution Ave., N.W., Washington, D.C. 20210, telephone (202) 523-8024.

Federal Agencies

COMPLETION OF DRAFT GUIDELINES ON HEARING CONSERVATION ANNOUNCED

The second draft of a hearing conservation program guide for federal agencies being prepared by the Federal Advisory Committee on Occupational Safety and Health's standing committee on noise (SCON) has been completed and distributed to committee members. Douglas Ohlin, a committee member, reported at an Oct. 9 SCON meeting.

Hearing conservation program requirements stipulated in a revision of the Occupational Safety and Health Ad-

ministration's workplace noise standard, which the agency plans to issue in late November (Current Report, Oct. 9, p. 503), have been incorporated into the SCON document. Ohlin, who represents the Army Environmental Hygiene Agency, stated.

Inclusion of these requirements has created a problem of "predisclosure" of information in the pending regulatory action, Ohlin said. Because of this, the SCON guidelines will not be released until OSHA issues the standard revision, he explained.

Although the OSHA requirements will be included in the SCON guide, the document is not regulatory in nature.

Ohlin hopes to have a final version of the guide ready by next month. A committee of federal noise experts then will review the document. These reviewers have not been selected yet. Committee chairman Robert Crum said he hopes to be able to submit the document to the FACOSH during the first quarter of fiscal 1981.

The Navy Environmental Health Center prepared the first draft version of the guidelines, which are based on the Department of Defense's hearing conservation program, under contract to the Environmental Protection Agency. It stresses noise control of equipment and processes as the primary means to achieve hearing conservation program goals.

General Policy

PROPOSALS MADE BY CONFERENCE ON EXECUTIVE INPUT INTO RULEMAKING

Two sets of guidelines were proposed Oct. 17 by the Administrative Conference of the U.S. regarding Executive Office input into federal agency rulemaking proceedings, and separation of agency functions in such proceedings.

The proposals, on which the Administrative Conference requested public comment, would apply to the Occupational Safety and Health Administration and other agencies that engage in informal rulemaking activities.

In proposing the guidelines regarding communications between an agency engaged in rulemaking and the Executive Office or other agencies (45 FR 68948), the conference noted that "the President, his advisors, and units of the Executive Office" on occasion have "intervened directly in the formation of policy during particular rulemaking proceedings."

This intervention, the notice commented, "has raised questions by private participants about the manner in which the power of direct executive oversight should be exercised."

Based on an analysis by Dean Paul Verkuil of the Tulane University School of Law, the conference offered these recommendations on the matter:

- In informal rulemaking procedures, the President, his advisors, the Executive Office of the President, and agencies other than the rulemaking agency should remain free to make policy recommendations without having the fact or substance of these communications made public, as long as no new, substantive information is being introduced.

- Communications containing new information should be made part of the rulemaking record promptly.

- Comments by outside parties transmitted through government sources should be made part of the record whatever their content.

- Any material submitted by or through other government units should be made available within the time limits specified for public comments. If the material is put into the record after the comment period, agencies should consider

the "desirability" of giving non-government parties the opportunity to respond to it.

► Judicial review of a final rule should focus on the adequacy of the materials on which the rule was based, and not on the extent of participation in the rulemaking process by the President, his advisors, or other agencies.

These recommendations recognize the "need to accommodate two competing elements of a good rulemaking process," the conference asserted. The first element is the "desirability of being able to identify a coherent body of information" on which a rule was based, it said.

The other, it added, is "the desirability of affording government officials opportunity to engage in uninhibited internal debate over the policy implications of this body of information, subject only to the requirement that the ultimate conclusion be rational and adequately explained."

Comments are due by Nov. 5, and should be addressed to Charles R. Pouncy, Administrative Conference of the U.S., 2120 L St., N.W., Suite 500, Washington, D.C. 20037, telephone (202) 254-7065.

Separation of Functions

In its other notice (45 FR 68949), the Administrative Conference observed that Section 554(d) of the Administrative Procedure Act prohibits prosecutors or investigators for adjudicative agencies to participate in decision-making in adjudication of cases.

This separation of functions should not be followed as a rule by OSHA or other rulemaking agencies, the conference recommended. It maintained that "free consultation" should be permitted between agency staff members and decision-makers, while ensuring that the rulemaking record "adequately reflects all the relevant information before the agency."

The conference added, however, that where one staff member or unit is assigned a specific point of view in a rulemaking proceeding, "the agency should minimize its reliance on off-the-record communication with that member or unit."

Comments should be submitted by Nov. 5 to Jeffrey Lubbers at the same address previously listed.

Health Hazards

MORE EMPLOYEE EXPOSURE DATA NEEDED IN PROPOSING TEST RULES, UNION ASSERTS

The Environmental Protection Agency underestimates by a large margin the number of employees exposed to substances it has proposed for further health effects testing under the Toxic Substances Control Act, according to a union representative.

Speaking at an Oct. 21 public meeting on the TSCA Section 4(a) test rules proposal, the union official also protested that employees often are unaware of the chemical makeup of products they use.

Work products are poorly marked because of a lack of labeling laws and because manufacturers can hold confidential information on product makeup, said Rod Wolford, director of health and safety for the International Brotherhood of Painters and Allied Trades, Washington, D.C.

Steven Newberg-Rinn, chief of the test rules development branch of EPA's Office of Toxic Substances, said the agency has not included in its statistics secondary employee exposure to chemicals. Instead, EPA has looked primarily at exposure at the product manufacturing site, he said.

Newberg-Rinn said obtaining exposure data for workers has been a problem for the agency when choosing chemicals

for further testing. Thus far, only chloromethane and six chlorinated benzenes have been proposed for additional testing by the agency.

The agency also decided that acrylamide's neurotoxic effects were sufficiently proven, and chose not to require further health effects testing for the chemical.

Meredith Golden, an associate of The Conservation Foundation, suggested the agency look at the categories of uses of the chemicals in industry to estimate worker exposure.

Too Much Research

EPA has been accused of conducting too much research and too many literature searches in determining when to require more testing, Newberg-Rinn said. He said the additional employee exposure research might be time consuming.

"Every time we address another issue, it burns up a lot of resources, and the next chemical down the line doesn't get tested," he said.

The agency should conduct enough research to make a decision on whether new testing is needed, he said. However, knowing when to draw the line on testing and research has been a problem for the agency, he said.

"The additional information is needed to make a regulatory decision, but not to decide to test," he said.

EPA's past record of lengthy research slowed its ability to designate chemicals for additional testing.

Under TSCA, the agency has 12 months to develop rules for testing substances recommended by the Interagency Testing Committee. The committee issued its first list of recommendations in 1977, and has added chemicals to the lists every six months.

In May 1979, the Natural Resources Defense Council filed suit charging EPA had not met statutory deadlines for developing test rules.

The agency has since developed two successive schedules designed to speed up its test rules production process. In the most recent schedule, the agency said it can propose test rules or announce decisions not to test chemicals on the first six ITC lists during the next four years.

The public meeting was one in a series of forums scheduled by the agency to obtain comments on the proposed test rules. Several other meetings are planned by the EPA Industry Assistance Office.

Research

U.S. TO SHARE WORKPLACE CANCER DATA, ENTER INTO TRAINING EXCHANGE WITH JAPAN

Working-level committees of the governments of Japan and the United States "fully understand each other in several areas" and need only to make formal the details of an agreement to enter into research and training exchanges in the field of occupational safety and health, officials of the Occupational Safety and Health Administration and the Department of Labor told OSHR.

The staff discussions followed the August visit to Japan of Labor Secretary Ray Marshall that continued the "Department-to-Ministry" relationship with that country begun in January 1979. The D-T-M program, as defined by department international-bureau officials, provides for a "continuing, systematized special relationship for cooperative programs within a wide range of labor-related fields."

The U.S. currently is preparing a package of research data that it will send to the Japanese as the first step of a cooperative workplace health hazard identification project.

agreed to in the 1979 discussions, according to Bailus Walker, OSHA health standards director.

The data include the OSHA candidate's list of potential workplace carcinogens, with Environmental Protection Administration candidates included by reference; National Cancer Institute bioassays; and a collection of U.S. government research on health effects that includes all "in-house" and some contract reports, Walker said. Privately-sponsored research in the public domain may be added in the future as resources allow, he noted.

Walker reported that the Japanese "were extremely interested" in the OSHA cancer policy as the first incidence of "a clear-cut policy for identification, classification, and regulation of occupational carcinogens." Walker added that the U.S. views the research exchange program, which he called "a two-way street," as "very meaningful and very important in terms of our trade relations."

Japanese University Training

Preliminary planning also is underway for U.S. experts to visit the University of Occupational and Environmental Health in Kyushu, Walker said. He commented that "we can learn a great deal from their training approaches, while they can learn from us in regulatory programs and research." Department officials noted that the Japanese regulatory process differs greatly from that of the U.S., relying on consensus in a climate of cooperation between business, labor, and government.

The university-visit plans, which may grow into a series of formal exchanges, originated with an invitation extended to Marshall by Japanese Minister of Labor Masayuki Fujio for U.S. experts to participate in work being done there, according to an unclassified State Department cable following the August visit.

OSHA is interested in "trading scientists" with Japan for long- and short-term stays, Walker said, especially in the fields of epidemiology and occupational toxicology.

Clinton Wright, OSHA director of training and education, also met with the Japanese.

In distinguishing this type of program from a "foreign-aid," technical-assistance exchange, OSHA official James Kallenborn, who coordinates the agency's international programs for its policy office, noted that OSHA exchanges take place only with advanced industrial economies — such as Israel, the European Community, and Japan — or advanced developing countries, such as Mexico.

Calling the series of exchanges "modest" in scope and "not a large budget item," Kallenborn stressed the agency's hopes that, by sharing information, the U.S. will avoid duplicating research undertaken in other countries. "In this sense," he noted, "it is consistent with the agency's emphasis on doing more with less and getting the most out of already-existing resources."

Programs such as the Japanese exchange and the recent initiation of a world-wide health hazard alert system by the International Labor Organization, a tripartite body within the United Nations, serve as reminders that the problems of occupational safety and health are not limited to one country alone and lessen the chance that hazards will be "exported" with the growth of multinational enterprises, Kallenborn said.

The department's general D-T-M program includes Brazil, the European Community, the Federal Republic of Germany, Greece, Israel, Italy, Japan, Mexico, Spain, and the United Kingdom.

Workers' Compensation

DOL ISSUES CONTRACT TO TRAIN WORKERS IN HANDLING OWN COMPENSATION CLAIMS

The U.S. Department of Labor awarded the Workers Institute for Safety and Health a \$1 million contract to conduct a demonstration program in seven states to train workers on the details of handling their own workers' compensation claims.

The institute is a non-profit research and education organization set up last year by the Industrial Union Department and the Ohio AFL-CIO to identify information concerning the special safety and health hazards affecting workers and their families (Current Report, July 24, p. 224).

Under the DOL contract, the institute said it receives \$369,000 in fiscal 1980 and \$279,000 for the next two years to conduct programs in Connecticut, Alabama, Oregon, Missouri, Wisconsin, Louisiana, and Florida. According to the institute's announcement, the federal funds will be used for the drafting of a manual for workers in the seven selected states. Training programs also will be developed with the help of state AFL-CIO affiliates and university-based labor studies centers.

After the initial round of training is conducted, the institute said it expects that state AFL-CIO organizations will pick up the responsibility for continuing the program and will gear their efforts to both union and non-union workers.

The development of a special workers' compensation occupational disease training pilot program in Ohio also is provided under the contract. The institute reports that studies indicate that workers with occupational disease receive only 15 percent of their support from compensation programs.

In announcing the contract, IUD President Howard D. Samuel, who serves as chairman of the institute's program committee, said that the programs will help address some of the problems of the compensation system, particularly those connected with costly legal and administrative maneuvers. He noted that recent studies indicate that over 40 percent or \$3.3 billion of the \$8.5 billion paid by employers in compensation premiums is spent on legal and administrative costs.

Publications

PBS BROADCAST TO INCLUDE BINGHAM IN SAFETY, HEALTH PANEL DISCUSSION

A Public Broadcasting Service presentation on worker safety and health Nov. 5 will include a panel discussion with Assistant Labor Secretary Eula Bingham and three others, the Department of Labor announced Oct. 20.

Bingham's appearance follows the broadcast of the film, "Song of the Canary," a privately-produced documentary study of workers faced with workplace health hazards at a California chemical plant and cotton mills in North and South Carolina, according to the announcement.

Appearing with Bingham are Anthony Mazzocchi of the Oil, Chemical and Atomic Workers International Union and Dr. Sidney Wolfe of the Public Interest Health Research Group, a Ralph Nader affiliate, the department said. Dr. Sidney Shindell of the American Council of Science and Health also will appear.

The film has won awards at the American, Athens, Edinburgh, Los Angeles, Mannheim, and Melbourne Film Festivals, the announcement noted. It portrays accounts of worker exposure to the pesticide DBCP and to cotton dust.

The department said that 9 p.m. EST would be the program's starting time, but noted that the broadcast slot may vary in different parts of the U.S.

Meetings

NIOSH STUDY SECTION TO CONVENE, DISCUSS RESOURCE CENTER PROGRAM

The safety and occupational health study section of the National Institute for Occupational Safety and Health will meet Nov. 12-14 in Rockville, Md., NIOSH announced Oct. 22.

Only the opening portion of the meeting — from 9 a.m. to 11:30 a.m. on Nov. 12 — will be open to the public, NIOSH noted (45 FR 70133). Included in the agenda for that portion will be a progress report on the NIOSH educational resource center program, and administrative reports.

During the remainder of the meeting, the committee will be conducting initial review of research grant and training grant applications, the notice stated.

The meeting will be held in Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Md.

For further information, contact Catherine M. Woodbury, Acting Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 8-63, Rockville, Md. 20857, telephone (301) 443-4493.

Washington

WISHA INSPECTIONS CONTINUE TO GROW, STATE SAYS IN QUARTERLY REPORT TO OSHA

Compliance inspections under the Washington Industrial Safety and Health Act (WISHA) continued to climb for the fifth consecutive quarter, the state reported to the Occupational Safety and Health Administration.

For the third quarter of 1980, July 1 through September 30, Washington's inspectors made 3,972 total inspections, 168 more than the previous quarter (Current Report, August 7, p. 270).

Of the 3,972 third quarter inspections, 79 percent, or 3,138, were listed as general schedule, while 64 were accident investigations, and 311 were in response to complaints. Follow-up inspections accounted for 11.6 percent of the total. Excluding the follow-ups, 34 percent of the employers inspected were found in compliance with WISHA standards.

Washington's 88 job safety and health inspectors cited 543 alleged serious violations for which they proposed \$88,498 in civil penalties. They also cited 6,689 alleged nonserious infractions which carried proposed fines totaling \$32,007.

Publications

STUDY FINDS METHYL CHLORIDE LEVELS WITHIN PERMISSIBLE LIMITS AT FACILITIES

Sampling at four plants indicated that methyl chloride exposure levels found were well below the Occupational Safety and Health Administration limit of 100 parts per million, a report by the National Institute for Occupational Safety and Health stated.

According to the study, the levels detected ranged from less than 0.1 to 21.4 ppm for normal operations.

Some 95 personal samples were taken covering workers in 21 job classifications, NIOSH reported. In addition, it said, 28 area samples were gathered at 18 sites at each plant.

NIOSH attributed the low exposure levels to a combination of factors, including use of closed systems and highly automated processes, and the presence of ventilation controls that appeared adequate to handle the current process and production rates.

Copies of the report, "Extent-of-Exposure Survey of Methyl Chloride" (NIOSH Publication No. 80-134), are available from NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Radiation

FEDERAL AGENCIES' ROLE IN REGULATION ON AGENDA FOR RADIATION POLICY COUNCIL

The role of federal agencies, including the Occupational Safety and Health Administration, in setting radiation protection policies, is among several topics on the Radiation Policy Council's preliminary long-term agenda for 1981-83.

The agenda, on which the Council is seeking public comment, was developed through an extensive process including public meetings throughout the U.S., written requests for suggestions, and mailings to more than 12,000 individuals and groups, the council said in its Oct. 21 announcement of the agenda (45 FR 69611). Through that process, about 150 issues were raised which formed the basis for 9 broad policy issues. Those 9 issues were adopted by the council as a preliminary agenda at its Sept. 25 meeting.

Besides the role of federal agencies, agenda items include: 1) principles and concepts of radiation protection; 2) standards — setting processes; 3) radiation exposure reduction; 4) data base and methodologies; 5) federal/state relationships; 6) facility monitoring and surveillance; 7) scientific and technical personnel needs; and 8) building construction and land use controls.

The council noted that federal policies on radiation protection "have developed piecemeal over a period of 33 years, starting with the Atomic Energy Act of 1947, when virtually all Federal activities were in the interest of national security." Since then, a number of federal agencies have become involved in regulating different aspects of radiation, the council said.

"The resulting maze of functions and responsibilities within the Federal establishment appears to have fragmented Federal radiation protection efforts, created undue administrative difficulties for those being regulated, and bewildered the public," the council said.

Comments on the council's preliminary agenda are invited, and should be submitted by Dec. 5 to U.S. Radiation Policy Council, Room 3026, New Executive Office Building, 726 Jackson Place, NW, Washington, D.C. 20503, telephone (202) 395-4931.

Oral comments may be made at a meeting to be held Dec. 4 at 9 a.m. in Room 2010 at the above address. Persons wishing to speak at this meeting should notify the council in writing or by telephone by Dec. 1.

The council said it anticipates adopting the agenda, after reviewing the public comments, at its Dec. 18 meeting.

Publications

DOCUMENTS LIST, REPORT ON CLEANERS FOR FIBER COLLECTION ISSUED BY NIOSH

Copies of "NIOSH Publications Catalog: Fourth Edition" are available from the National Institute for Occupational Safety and Health.

Intended as a "cumulative catalog" of NIOSH reports and publications, the 677-page document is divided into five sections, four of which list all NIOSH numbered reports, health hazard evaluations and technical assistance reports, contract reports, and unnumbered publications. The fifth section contains a subject index guide to all institute documents.

The catalog also provides information on ordering publications from the Government Printing Office, the National Technical Information Service, and NIOSH itself.

For further information on the catalog (NIOSH Publication No. 80-126), contact Publications Dissemination, DTS, NIOSH, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Asbestos Waste Collection

Also available from NIOSH is a technical report, "An Evaluation of Vacuum Equipment for Collection of Asbestos Waste" (NIOSH Publication No. 80-137).

Under the study, nine industrial vacuum cleaners were evaluated for the amount of asbestos fibers they removed from a test room, and the effects of increasing fiber capacity on vacuum cleaner performance. In addition, a comparison of three fiber counting methods was made.

According to the institute, the study was intended as the first step in establishing performance standards for cleaners to be used to collect asbestos waste.

Copies of the report may be obtained from the NIOSH Publications Dissemination branch at the address given above.

Regulatory Reform

SOCIAL JUDGMENTS CANNOT BE REPLACED BY REGULATORY ANALYSES, COSTLE STATES

CHICAGO — (By a BNA Staff Correspondent) — Cost-benefit analyses conducted by the Occupational Safety and Health Administration and other agencies cannot replace "social policy judgments," U.S. Regulatory Council Chairman Douglas M. Costle asserted.

Although "extraordinary prominence" has been given to economics in social decisions making, it must be accepted that some goods simply cannot be measured sensibly by the single criterion of monetary value, Costle said Oct. 15 at a conference sponsored by the Conservation Foundation at Washington, D.C.

That is as it should be, according to University of Michigan Professor Richard N.L. Andrews, because "most people don't think economic efficiency is the purpose of government. It exists primarily to solve those problems which the market is unable to [solve]."

The real function of cost-benefit analysis is to heighten the explicitness and rationality of the political process, Andrews explained.

Since the political and regulatory process already involves implicit assignment of values, the reasoning process should be made as explicit as possible, according to Paul R. Portney, senior fellow at Resources for the Future, Washington, D.C. Portney argued that benefit analysis, properly carried out, would allow the United States to meet current environmental standards far more cheaply than is done at present.

Bowdoin economics professor A. Myrick Freeman III told the conference he was "modestly optimistic" that an in-

creasing amount of benefit-risk information is being systematically made a part of the political and regulatory process.

The track record of cost analysis is not very impressive, whether it is performed by industry, EPA, or public interest groups. Costle asserted. He noted, for example, that for the years 1974 through 1977, both EPA and the petroleum industry grossly overestimated the compliance costs of pollution control to the industry. The estimate was \$1.4 billion; the actual cost was between \$550 and \$750 million, Costle said.

EPA estimated iron and steel industry compliance costs for the same period to be \$830 million, while the industry estimated \$1.6 billion, Costle noted. The actual costs were between \$470 million and \$630 million, he said.

Both David Doniger, attorney for the Natural Resources Defense Council, Washington, D.C., and Steven Kelman, assistant professor, John F. Kennedy School of Government, Harvard University, argued against all forms of cost-benefit analysis.

Doniger argued that the health-effects data necessary to analyze risks properly are "not in existence and probably can't be gotten," and that "highly quantified and monetized" analysis leads inevitably to the notion that all important things are measurable.

Kelman suggested that the mere process of assigning monetary values to the benefits of regulations might lessen them, by taking away the ability to say, "they're priceless."

Procurement

NCA SEEKS PHOTOGRAPHER, ARTIST FOR CONSTRUCTION INDUSTRY SAFETY SHOW

The National Constructors Association announced that it is looking for a photographer and graphic artist to work on a project involving production of a prototype slide show which will serve as the model for a series of 26 shows dealing with safety and health in the construction industry.

According to the association, the photographer "will be expected to provide approximately 10 days of location photography using color negative film in a format no smaller than 2-1/4 by 2-3/4 inches." NCA expects the artist to provide about 70 camera ready art cards which will include typography, title overlays for photoprints, human figure illustrations and construction setting illustrations.

NCA says that it is making this recruitment effort because it expects both the photographer and artist "will play a key role in developing a style of visual presentation which will hopefully be extended to the 26 slide shows slated for production during the second and third years of the program."

The association made it clear that cost will not be a factor in the evaluation and selection of the candidate. Selection will be based on experience, expertise and demonstrated success at producing a quality product on time and within a specific budget, it stated.

November 24 is the deadline for the return of the completed forms in the photographers and graphic artist evaluation packet. Consideration will be limited to the first 25 written requests for the evaluation package in each of the two categories. Requests for the evaluation packets should be sent to West Program, National Constructors Association, 1101 15th St., N.W., Washington, D.C. 20005.



Review Commission Activity

ACTIVITY OF OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

This Section includes —

Review Commission Decisions: Decisions and orders of the full commission.

Review Commission Final Orders: Judges' reports which have become final, with date of finality.

Judges' Reports Ordered Reviewed: Date ordered reviewed, judge's report, and issues on review.

Court Cases: Filings and dispositions of appeals from commission decisions in the federal courts.

Notices of Contest: Notices of contest to Labor Department citations.

REVIEW COMMISSION DECISIONS

American Package Co., Inc., 10/17/80 — citation for violation of 1910.212(a)(3)(ii), for failure to guard points of operation of eight wrapping machines and two paper cutters, is affirmed as to wrapping machines and vacated as to paper cutters; operator activates wrapping machine by tripping foot pedal, causing ram to descend with sufficient force to cause crushing injury; wrapper is equipped with safety switch that can stop machine at any point in cycle; employer argued that position of operator 1.5 feet from point of operation makes it impossible for him to insert his hands and activate machine at same time; this argument was rejected since release of pedal by itself does not cause machine to stop, and operator could therefore lean over and be injured after machine was already placed in operation; paper cutters require raising left-side lever and lowering right-side lever to cause guillotine blade to descend; design and construction of two-hand tripping device meets performance criteria of 1910.212(a)(3)(ii), and there is no evidence that this guarding design was circumvented by employer or employees (No. 76-2349).

Durant Elevator, A Division of Scoular-Bishop Grain Company, 10/20/80 — citation for violation of 1910.111(f)(7)-(iii), for failing to equip trailers used for transportation of ammonia with self-energizing brakes, is vacated; evidence established that employer delivered anhydrous ammonia to farmers in nurse tank trailers towed by pick-up truck or tractor; subsequent to delivery, nurse tank trailers were attached to farmers' tractors and transported into fields where ammonia was sprayed on soil; evidence proved further that each trailer tank possessed a 1,000 gallon capacity and that trailers were not equipped with self-energizing brakes; employer argued that cited trailers were exempt from standard's requirements by virtue of being "farm vehicles" within meaning of 1910.111(a)(2)(vii); secretary contended that cited trailers did not come within definition of farm vehicles since use of trailers on farm was by farmer, as opposed to employer, and that trailers were "full trailers" covered by cited requirements; farm vehicle exception applies to vehicles used on farm which carry a container of less than 1,200 gallons capacity; exception is not limited to instances when vehicle is actually on farm; furthermore, evidence that vehicles were full trailers does not preclude finding them to be farm vehicles; since vehicles in issue satisfy criteria set out in 1910.111(a)(2)(vii), citation is vacated (No. 77-1518).

Plum Creek Lumber Company, 10/20/80 — employer was cited for violation of 1910.265(c)(18)(i) or, in alternative, for

violation of Section 5(a)(1) of Act; secretary moved to amend citation from serious to nonserious, and judge approved settlement and affirmed citation without specifying which violation is affirmed; since language of Section 5(a)(1) limits it to serious violations and since violation was alleged in alternative, settlement provides for finding non-serious violation of specific standard; secretary's motion to expunge portion of transcript taken before judge who subsequently withdrew from case is denied; passage sought to be expunged concerns remarks made by judge regarding alleged *ex parte* communication by Associate Regional Solicitor in letter to Chief Administrative Law Judge; expungement is not permitted when material sought to be expunged is neither claimed nor shown to be inaccurate; secretary's motion for separate proceedings on *ex parte* communication is denied since letter in question only sought advice as to proper titles to be used on pleadings and contained no discussion of merits of this case (No. 78-1485).

Stearns-Roger, Inc., 10/17/80 — judge's decision vacating citation for willful violation of 1926.28(a), for failing to require use of tied-off safety belts, is reversed and citation is affirmed as serious with \$900 penalty assessed; judge based decision on ground that citation had not been issued with reasonable promptness; evidence established that citation had been issued 139 days after inspection of worksite and that delay had resulted because of review by Regional Solicitor of citation; judge held that delay was unconscionable because of its length and lack of sufficient justification therefor; judge's reliance on unconscionability test set out in concurring opinion in *Jack Conte and Sons Corp.* (4 OSHC 1378) was erroneous; commission decision in *Laclede Gas Company* (7 OSHC 1874) established that vacation of citations for failure to comply with Section 9(a) of OSH Act is warranted only if employer establishes that it was prejudiced by delay; employer's failure to specifically demonstrate that its investigation and defense of citation was materially harmed by delay requires reversal of judge's decision.

Evidence established that employees were engaged in installing bolts to secure structural steel members at elevations of 94-120 feet above ground; evidence proved further that employer had installed static lines for tying off purposes on some girders, but not all of them, and that employees were not required to tie off except when they were stationary at connection points; employer argued that employees would be exposed to greater hazard during installation of static lines than they would be while walking unprotected on girders and that compliance with cited standard was impossible; evidence clearly supports judge's find-

ings which rejected employer's arguments; employer's argument, that affirmance of citation is improper absent proof that use of tied-off safety belts by employees constituted custom and practice of construction industry, is rejected; commission decision in *S & H Riggers and Erectors, Inc.* (7 OSHC 1260) establishes that appropriate test to be applied is whether reasonable person would recognize a hazard requiring use of personal protective equipment; evidence clearly established existence of hazard in this case and exposure of employees to serious physical harm or death (No. 78-819).

REVIEW COMMISSION FINAL ORDERS

Beach Concrete Company, 10/2/80 — citations for serious and willful violations of 1926.700(a) and 1926.451(x)(6)(iii), for failing to provide guardrails on scaffolds located on exterior of two columns, are affirmed as serious violations of 1926.451(x)(6)(iii) with total penalty of \$1,250 assessed; evidence established that employees were performing construction work while located on unguarded scaffolding 10-18 feet above ground; employer's contention, that advisory nature of American National Standards Institute standard to which 1926.700(a) is referenced required vacation of citation, is found to be persuasive; however, record clearly establishes violations under other cited standard; secretary's proposal, that one of scaffolding violations should be classified as willful due to employer's foreman's reluctance to immediately abate violative condition on date of inspection, is rejected; this conduct alone fails to support finding that employer exhibited an intentional disregard for safety of employees; citation for serious violation of 1926.28(a), for failing to require employees to wear tied-off safety belts during construction work on scaffolding, is vacated; use of personal protective equipment was not feasible because concrete of column to which lifeline hooks would be secured was too soft to hold hooks.

Citation for serious violations of 1926.652(c), for failing to shore, slope or otherwise support sides of trenches which consisted of hard or compact soil and were more than five feet in depth and eight feet in length, is vacated; evidence established that unsloped and unshored trenches in which employees worked came within coverage of cited standard; however, evidence proved that soil comprising trenches was frozen to depth in excess of three feet; accordingly, secretary failed to prove existence of hazard since frozen soil would prevent trench walls from collapsing; citation for serious violation of 1926.602(a)(9)(ii), for failing to equip backhoes with reverse signal alarms or to provide employees as signalmen while backhoes operated in reverse gear, is vacated; evidence failed to prove employer control over operation of backhoes or employee exposure to hazardous condition; citation for serious violation of 1926.451(a)(13), for failing to provide access ladder or equivalent means of safe access to top of scaffold, is affirmed with \$500 penalty assessed; evidence proved that employees climbed to top of scaffold by means of projections on column's formwork; use of projections did not constitute safe means of access within meaning of standard.

Citation for violation of 1926.450 (b)(12), for failing to ensure that cleats of job-made ladder were inset into edges of side rails one-half inch or that filler blocks were used on rails between cleats, is affirmed with penalty of \$100 assessed; evidence established existence of violative condition; citation for serious violation of 1926.100(a), for failing to require employees to wear protective helmets, is affirmed with \$100 penalty assessed; evidence proved that two employees were not wearing helmets while working in excavation; evidence proved further that employees were exposed to hazard of head injuries from rocks

rolling down slope into excavation; employer asserted affirmative defense of unpreventable employee misconduct but failed to establish existence of disciplinary procedure for employees who failed to wear hardhats; citation for serious violation of 1926.500(d)(2), for failing to provide guardrails on open sides of runway which was four feet or more above ground level, is affirmed with penalty of \$750 assessed; stipulation of employer that guardrails were absent from runway used by employees as access to top of column 18 feet above ground requires affirmance of citation (O'Connell, Judge; No. 78-797).

Dick's Drywall, Inc., 10/3/80 — citation for serious violation of 1926.500(c)(1), for failing to guard wall openings from which there were drops of more than four feet and where bottoms of openings were less than three feet above working surfaces, is vacated; evidence established that employees were engaged in construction work on floors of building which contained wall openings from which there were drops of at least 50 feet, and that several employees installing channels on ceilings in kitchens of condominiums were working on stilts; evidence proved further that employer had complied with standard's requirements by stringing chains at 42 inch height across all wall openings, except those located in kitchens; bottoms of windows in kitchens were at least three feet above floors but less than three feet above employees' feet as they worked on stilts; secretary contended unsuccessfully that stilts, as opposed to floors, constituted working surfaces for purpose of determining whether guarding was required in kitchen openings; review of cited standard at 1926.500(f), which sets out height at which to install railings, provides support for position that working surface means floor, platform, runway, or ramp level; furthermore, common meaning of working surface is walking surface; since kitchen windows exceeded height specifications of guarding requirement, citation is vacated; citation for serious violation of 1926.25(a), for failing to keep work area clear of accumulation of scrap metal and debris, is vacated because debris did not constitute tripping hazard to employees (Burroughs, Judge; No. 80-1740S).

Jonas Hales and Company, Inc., 10/10/80 — citation for nonserious, repeated violation of 1910.219(b)(1), for failure to guard flywheel spoke openings on power press, is affirmed with \$40 penalty; evidence proved that flywheel located less than seven feet from floor was unguarded, and that unguarded portion of that flywheel was within two feet of operator's reach; evidence further proved that machine had been guarded but that guarding had been removed and had not been replaced; secretary proved that employer had been cited for same violation at an earlier date; citation for violation of 1910.133(a)(1), for failure to provide protective eye equipment to employee working on buffing machine, is affirmed with \$25 penalty; evidence proved that employee working on buffing machine was not wearing eye protection equipment to guard against hazard of small flying particles of pipe or buffing compound striking him in eyes; evidence proved that employee was not wearing safety glasses because they were so pitted from being struck by flying particles that he was unable to see out of them; employee testified that he had asked employer for a new pair but they had not been given to him at time of inspection; evidence proved that employer could not produce good pair of safety glasses when requested to do so by secretary; further evidence proved that employer did not have ongoing safety program; small monetary penalty is assessed as reminder to employer that its primary responsibility under Occupational Safety and Health Act is adherence to its protective mechanisms (O'Connell, Judge; No. 79-4887).

Sabine Coatings, Inc., 10/6/80 — citation for violation of 1915.23(c)(1)(iv), for failure to provide deadman device at nozzle end of sand blasting hose, is affirmed; control device used on employer's sandblaster nozzles is spring-loaded electric toggle switch which is held in "on" position by wooden wedge; wedge is attached to chain that is looped around operator's wrist and which is supposed to pull wedge out and permit switch to return to off position if operator should drop hose; it was compliance officer's opinion that operator could fall on nozzle or chain could slip off operator's wrist and fail to pull out wedge; judge concluded that deadman control is one which requires manual pressure to operate it and keep it in operation by analogy to comparable general industry standard 1910.244(b); in addition, secretary established that employer's control device was commonly misused, and employer failed to prove necessary elements for unpreventable employee misconduct (Blythe, Judge; 79-3295).

Dan Sciuillo & Company, Inc., 10/6/80 — citation for violation of 1926.651(i)(1), for failure to store excavated material at least two feet from trench, is affirmed; employer's argument, that it was impossible to comply with cited standard because of the trench's proximity to a creek and an embankment, is rejected; evidence proved that trench was located 12 feet from creek and eight feet from embankment and that this provided ample room for compliance with standard; employer's argument, that secretary failed to prove employee exposure to violative condition, is rejected; evidence proved that employee worked within zone of danger created by unrestrained spoil pile maintained in manner violative of cited standard; citation for violation of 1926.652(c), for failure to slope or shore sides of trench, is affirmed; evidence proved that employee went in trench after trench box was removed; both citations are affirmed as serious, but not willful violations; evidence proved that employer was aware of applicable regulations and that in good faith attempted to comply with them, or thought it was in compliance with them; citation for violation of 1903.2(a)(1), for failure to post an Occupational Safety and Health Administration poster at a conspicuous place, is affirmed without penalty; employer offered no evidence to rebut secretary's proof of violation; total penalties of \$500 are assessed (McQuade, Judge; No. 80-1049).

Montgomery Wards, Inc., 10/3/80 — citation for serious violation of Section 5(a)(1) of Occupational Safety and Health Act, for failing to adequately train employees in recognition of hazards associated with operation of tire changing machinery, is affirmed; evidence established that employee had been injured during operation of tire changing machine; employee's testimony indicated that he had never received instruction in operation of machinery or in safety hazards related to its operation; three other former or current tire machine operators testified that they had either received no training in operation of machine or that training had lasted for periods under half hour; employer attempted to rebut employees' testimony with that of its safety manager in charge of department during time of accident and other managerial personnel in the automotive division; testimony of managerial personnel indicated that training for new employees in operation of tire machinery lasted 12 hours and included review of instructional manual for machinery, demonstration of use of machinery, precautions to be taken to avoid over-inflating tires, as well as initial supervision in tire changing by an experienced operator; employees' testimony is found to be more credible than that of managerial personnel; employees' testimony remained unchanged during vigorous cross-examination; furthermore, safety manager testified only in "general terms" concerning

training program and other managers had not witnessed actual instruction being given to employees who testified.

Evidence established that employer as well as industry recognized need to train employees in order to protect them from hazards which could occur during operation of tire changing machinery and potential for serious physical harm or death as a result of improper operation of this equipment; proper training necessitated furnishing employees with tire machine manufacturer's instructions, copies of employer's safety rules, and closely supervised instruction in safest method for mounting, demounting and inflating tires; in view of employer's failure to follow these guidelines, citation is affirmed; employer's argument, that cited section is unenforceably vague, will not be considered because commission has no authority to determine constitutionality of OSH Act; citation for alleged violations of 1910.309(a), for failing to adequately insulate extension cord in order to prevent exposure of energized conductors, failing to mark disconnect boxes and blocking access to electrical circuit breaker panels is partially affirmed with penalty of \$100 assessed (Goldstein, Judge; No. 79-199).

JUDGES' REPORTS ORDERED REVIEWED

Boardman Company, 10/15/80 — secretary's motion for leave to file pleading out of time is denied and citation is vacated; evidence proved that secretary failed to file complaint within time limit set by Review Commission Rule 33(a)(1); judge issued show cause order to secretary ordering him to file complaint or show why contested action should not stand as a complaint; secretary failed to respond to this show cause order; judge ordered contested action to stand as complaint and gave employer 15 days to answer; employer filed answer and motion to dismiss for secretary's failure to file complaint and because "contested action" gave employer inadequate statement of relief sought and grounds therefor.

Case was assigned to new judge who vacated "contested action" as being contrary to commission's rules and gave secretary 15 days to file appropriate motion requesting leave to file complaint out of time; secretary filed motion and employer filed memorandum in opposition to that motion; secretary's affidavit in support of his motion failed to present good cause for his failure to file timely complaint; secretary's affidavit indicated that regional office, involved in this case, routinely followed policy of noncompliance with commission rule 33(a)(1) on grounds that it had "heavy caseload" and that judges' orders led that office to believe that commission considers filing of complaint to be unnecessary; size of caseload is inadequate reason for noncompliance with commission rule; case cited by secretary for proposition that citation is equivalent to complaint, in all situations, does not stand for that proposition; secretary's reliance on judges' order is misplaced because those orders have not been reviewed by three-member commission and therefore have no precedential value; secretary's argument, that complaint has become unnecessary as evidenced by commission's adoption of simplified proceedings, is rejected; fact remains that commission rule 33(a)(1) is still in effect.

Secretary's argument, that noncompliance with rule 33(a)(1) also eliminates unnecessary paper work and time wastage, is rejected; such reasons only prove secretary's "sheer effrontery" and "utter disdain" for rule 33(a)(1); secretary's argument, that employer's failure to show prejudice in preparation of its defense prevents commission from vacating citation, is rejected; although dismissal is discretionary and is not usually exercised unless employer

proves prejudice, dismissal is appropriate in cases like this where one party intentionally fails to file required pleading (Cronin, Judge).

Issue on review: whether judge erred in failing to grant secretary's motion to file complaint out of time and vacating citation for failure to file that complaint (No. 80-75).

Pennsylvania Power & Light Company, 10/15/80 — judge's previous decision granting employer's motion to dismiss citation is vacated on remand; judge concluded that rationale upon which he based previous decision is contrary to the now controlling Review Commission precedent; employer made request for copies of statements made by its employees to secretary; employer claimed it needed those statements in order to determine what evidence, if any, secretary has that would rebut employer's contention that its safety program is adequate; employer's claim does not make out a showing of substantial need for those statements for trial preparation purposes; also, employer did not show that it would be unable to obtain substantial equivalent of those statements by other means; statements obtained by secretary are protected by attorney's work product rule and employer failed to prove that secretary waived his protection under that rule; any possible prejudice to employer can be remedied by granting a continuance during trial in order to assemble evidence rebutting employees' statements or prepare for cross-examination of those employees (Taylor, Judge).

Issue on review: whether judge erred in refusing to reopen record when employer offered new evidence tending to prove that secretary, in a similar case, had agreed with employer's interpretation of cited standard (No. 79-5194).

COURT CASES

Anheuser-Busch, Inc., petition withdrawn, 9/25/80, 5th Cir., No. 80-1886, petition filed in 8th Cir. still pending, No. 80-1743 (RevComm: No. 79-5002, 8 OSHC 1770).

Central Soya of Puerto Rico, Inc., appeal filed by employer, 10/14/78, 1st Cir., No. 80-1655 (RevComm: No. 79-4505, 8 OSHC 2074).

S.J. Groves and Sons Company, appeal filed by employer, 10/7/80, 2nd Cir., No. 80-4201 (RevComm: No. 78-5084, 8 OSHC 1766).

Heath & Stich, Inc., appeal filed by employer, 8/26/80, 5th Cir., No. 80-1927 (RevComm: No. 14188, 8 OSHC 1640).

Stone & Webster Engineering Corporation, withdrawn 9/15/80, 1st Cir., No. 80-1605 (RevComm: No. 15314, 8 OSHC 1753).

Wray Electric Contracting, Inc., affirmed, 9/15/80, 6th Cir., No. 78-3597 (RevComm: No. 76-119, 6 OSHC 1981).

NOTICES OF CONTEST

Airco Carbon, division of Airco, Inc., Montvale, N.J., is contesting a nonserious citation for 1910.1000(a)(2) for failure to ensure that employees were not overexposed to coal-tar pitch volatiles, 1910.1000(c) for failure to ensure that employees were not overexposed to total nuisance dust, and 1910.1000(e) for failure to reduce employee exposure to total nuisance dust (No. 80-4446).

Air Conditioning Associates, Inc., Dothan, Ala., is contesting a serious citation and a \$360 penalty for 1926.552(b)(2) for failure to guard hoistway entrances (No. 80-5370).

Arco Oil and Gas Company, Silsbee, Texas, is contesting a serious citation and a \$480 penalty for Section 5(a)(1) for failure to ensure that employees were not exposed to the hazard of a boiler explosion (No. 80-5466).

Astro Concrete, Inc., Westwood, N.J., is contesting a serious citation and a \$160 penalty for 1926.652(c) for failure to shore trench sides as required and 1926.25(a) for failure to keep a construction area clear of scrap lumber with protruding nails (No. 80-5091).

Babcock & Wilcox Construction Company, Copley, Ohio, is contesting a serious citation and a \$180 penalty for 1926.750(b)(2)(i) for failure to provide temporary flooring under skeleton-steel boiler housing construction (No. 80-5285).

Bethlehem Steel Corporation, Bethlehem, Pa., is contesting a serious citation and a \$1,700 penalty for 1910.179(d)(4)(ii) for failure to equip stairways with rigid, substantial metal handrails, 1910.179(g)(2)(i) for failure to locate live parts of electrical equipment where they could not come in contact with employees, and 1910.179(g)(4)(i) for failure to install resistor enclosures to prevent accumulation of combustible matter (No. 80-4482).

Bronco Tank & Steel, Phoenix, Ariz., is contesting a 10-item serious citation and a \$3,450 penalty, including 1926.28(a) for failure to ensure employees' use of personal protective equipment, 1926.451(a)(4) for failure to guard open-sided platforms, and 1926.450(a)(6) for failure to keep clear the areas around the top and bottom of a portable ladder.

The company also is contesting a seven-item nonserious citation and a \$150 penalty, including 1903.2(a)(1) for failure to post a notice informing employees of their rights and obligations under the Occupational Safety and Health Act, 1904.2(a) for failure to maintain a log of occupational injuries and illnesses, and 1926.300(b)(1) for failure to guard power-operated tools (No. 80-5396).

Brooklyn Botanic Garden, Brooklyn, N.Y., is contesting a \$650 penalty for a serious citation for 1910.22(a)(1) for failure to keep a work area clean and orderly, 1910.132(a) for failure to ensure employees' use of protective equipment, and 1910.134(f)(1) for failure to adjust a respirator maintenance program to the type of plant, working conditions, and hazards involved (No. 80-4781).

J. & M. Brown Company, Inc., Jamaica Plain, Mass., is contesting a serious citation and a \$200 penalty for 1926.500(d)(1) for failure to guard an open-sided floor (No. 80-5378).

Burwin, Inc., Gowanda, N.Y., is contesting a willful citation and a \$3,840 penalty for 1926.652(b) for failure to shore trench sides adequately (No. 80-4445).

Cargill, Inc., Domestic Soy Crush Division, Minneapolis, Minn., is contesting a serious citation and a \$1,460 penalty for Section 5(a)(1) for failure to make available test results and other information for a fluidizer blow down attachment, 1910.24(b) for failure to provide fixed stairs where required, and 1910.219(d)(1) for failure to guard pulleys (No. 80-5101).

Caryst-Bradford Construction Corporation, New York, N.Y., is contesting a serious citation and a \$320 penalty for Section 5(a)(1) for failure to connect hoistway door interlocks (No. 80-5259).

Cobb-Holman Lumber Company, Jacksonville, Texas, is contesting a serious citation and a \$700 penalty for 1910.212(a)(3)(ii) for failure to guard machinery points of

operation and 1910.213(h)(1) for failure to guard the upper portion of a radial-saw blade (No. 80-5267).

Cooke Masonry Company, Ironton, Ohio, is contesting a serious citation and a \$350 penalty for 1926.301(c) for failure to ensure that impact tools were free of mushroomed heads.

The company also is contesting a nonserious citation for 1926.451(d)(3) for failure to guard a tubular welded frame scaffold adequately (No. 80-5276).

Dayton Multi-Punch, Dayton, Ohio, is contesting a \$240 penalty for a serious citation for 1910.215(b)(9) for failure to equip a pedestal grinder abrasive wheel with a tongue guard (No. 80-5244).

W.P. Dickerson & Son, Inc., Youngwood, Pa., is contesting a serious citation and a \$1,710 penalty for 1926.28(a) and 1926.105(a) for failure to provide fall protection where necessary and 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring (No. 80-5384).

Eastern Insulation Corporation, Boonton, N.J., is contesting a serious citation and a \$180 penalty for 1926.25(a) for failure to keep a construction area clear of scrap lumber with protruding nails and 1926.651(j) for failure to barricade an excavation.

The company also is contesting a nonserious citation for 1926.350(a)(9) for failure to secure compressed-gas cylinders in an upright position and 1926.550(a)(8) for failure to guard equipment moving parts (No. 80-4450).

Eastern Steel Erectors, Inc., Columbus, Ga., is contesting a serious citation and a \$210 penalty for 1926.351(b)(4) for failure to repair welding cables.

The company also is contesting a nonserious citation for 1926.450(a)(2) for failure to withdraw defective ladders from service (No. 80-5247).

Economy Container Service, Inc., Brooklyn, N.Y., is contesting a serious citation and a \$340 penalty for 1910.177(d)(1) for failure to provide a wheel-restraining device for protection of employees servicing multiple rim wheels and 1910.215(a)(1) for failure to guard grinding machinery abrasive wheels.

The company also is contesting a nonserious citation for 1910.23(a)(1) for failure to guard open-sided stairways and 1910.23(c)(1) for failure to guard an open-sided platform (No. 80-5092).

Etone International, Inc., Jersey City, N.J., is contesting a serious citation and an \$840 penalty for Section 5(a)(1) for failure to equip elevator gates with electrical contacts and mechanical locks, for failure to ensure that elevator doors and gates protected the full width and height of the car-entrance opening, and for failure to ensure that employees did not ride belt conveyers.

The company is contesting a 10-item nonserious citation, including 1910.22(a)(1) for failure to keep a workplace clean and orderly, 1910.38(d)(2) for failure to maintain fire doors in proper operating conditions, and 1910.37(k)(2) for failure to maintain means of egress free of obstruction (No. 80-5089).

Evans Railcar Division, Washington, Ind., is contesting a serious citation and a \$320 penalty for Section 5(a)(1) for failure to ensure that railcars were not moved without the assistance of a spotter (No. 80-5484).

Farrel Company, Connecticut Division, USM Corporation, Ansonia, Conn., is contesting a nonserious citation and a \$300 penalty for 1910.20(d) for failure to make available all employee exposure records for examination and copying (No. 80-5375).

Don R. Fruchey, Inc., Fort Wayne, Ind., is contesting a serious citation and a \$1,400 penalty for 1926.25(a) for failure to keep a work area free of debris, 1926.28(a) for failure to ensure employees' use of personal protective equipment, and 1926.500(f)(1) for failure to provide a guard-rail with a top rail (No. 80-5493).

W.W. Gay Mechanical Contractor, Jacksonville, Fla., is contesting a serious citation and a \$490 penalty for 1926.652(c) for failure to shore trench sides adequately (No. 80-5254).

Geppert Brothers, Inc., Colmar, Pa., is contesting a willful citation and a \$3,200 penalty for 1926.850(k) for failure to guard employees' entrances to a multi-story structure being demolished.

The company also is contesting a serious citation and a \$1,940 penalty for 1926.850(j) for failure to remove exterior wall and floor construction on one story before commencing removal of the story below, 1926.851(c) for failure to ensure that an uncovered stairwell was not used as a passageway during demolition, and 1926.852(a) for failure to ensure that material was not dropped to unprotected areas.

The company also is contesting a repeated citation and a \$1,650 penalty for 1926.850(a) for failure to make available written evidence that an engineering survey had been completed prior to demolition operations and 1926.851(b) for failure to maintain stairs and passageways in a clean and safe condition.

The company also is contesting a nonserious citation and a \$550 penalty for 1926.550(a)(2) for failure to post rated load capacities on equipment, 1926.550(b)(2) for failure to keep crane inspection records, and 1926.850(f) for failure to remove glass from windows prior to demolition (No. 80-5360).

Harold Girard Company, Chippewa Falls, Wis., is contesting a five-item serious citation and a \$250 penalty, including 1926.300(b)(2) for failure to guard equipment moving parts, 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring, and 1926.451(a)(13) for failure to provide safe access to scaffolds (No. 80-5394).

S. Gumpert Company, Inc., Jersey City, N.J., is contesting a serious citation and a \$780 penalty for 1910.212(a)(4) for failure to ensure that revolving drums could not move unless enclosures were in place, 1910.219(d)(1) for failure to guard pulleys, and 1910.219(f)(3) for failure to guard sprocket wheels and chains.

The company also is contesting a nonserious citation for 1910.151(c) for failure to provide suitable quick drenching facilities for employees exposed to corrosive materials, 1910.212(b) for failure to anchor machines designed for fixed locations, and 1910.309(b) for failure to ensure that open wiring entered into metal outlet boxes through insulated bushings (No. 80-4454).

Brad Harrison Company, division of Daniel Woodhead, Inc., Northbrook, Ill., is contesting a serious citation and a \$180 penalty for 1910.212(a)(5) for failure to guard fan blades (No. 80-5486).

C.H. Heist Corporation, Buffalo, N.Y., is contesting a 10-item willful citation and a \$72,900 penalty, including Section 5(a)(1) for failure to provide shower facilities for employees exposed to polychlorinated biphenyl and for failure to make available appropriate medical surveillance to employees exposed to polychlorinated biphenyl, and 1910.132(a) for failure to provide appropriate personal protective equipment (No. 80-4400).

Hollander Industries, division of Thidee Products, Inc., Dayton, Ohio, is contesting a serious citation and a \$1,980 penalty for 1910.22(a)(2) for failure to keep a workroom floor dry, 1910.95(b)(1) for failure to reduce noise, and 1910.217(a)(1) for failure to guard machinery pinch points.

The company also is contesting a nonserious citation for 1910.252(a)(2)(iv)(c) for failure to separate oxygen cylinders from fuel-gas cylinders in storage properly (No. 80-5195).

R.J. Howard & Associates, Inc., Chippewa Falls, Wis., is contesting a nonserious citation for 1926.28(a) for failure to ensure employees' use of foot protection (No. 80-5350).

Earl Jenkins Construction Company, Wichita, Kansas, is contesting a serious citation and an \$800 penalty for 1916.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring, 1926.450(b)(10) for failure to ensure that cleats on a job-made ladder met specifications, 1926.651(c) for failure to shore vertical faces of excavations, and Section 5(a)(1) for failure to ensure that employees faced a ladder they were descending (No. 80-5099).

Earl Jenkins Construction Company, Wichita, Kansas, is contesting a serious citation and a \$680 penalty for 1926.25(a) for failure to keep a construction area clear of scrap lumber with protruding nails, 1926.500(d)(2) for failure to guard an open-sided runway, and 1926.652(b) for failure to shore trench sides adequately (No. 80-5100).

Karbo Bronze Foundries, Inc., Brooklyn, N.Y., is contesting a \$10,850 penalty for failure to correct violations of 1910.95(b)(1) for failure to reduce noise, 1910.1000(b)(1) for failure to ensure that employees were not overexposed to lead fumes, and 1910.1000(e) for failure to reduce employee exposure to lead fumes (No. 80-4300).

Kirk and Blum Manufacturing Company, Cincinnati, Ohio, is contesting a serious citation and a \$720 penalty for 1910.212(a)(3)(ii) for failure to guard machinery points of operation (No. 80-5389).

Lake Charles Memorial Hospital, Lake Charles, La., is contesting a serious citation and a \$240 penalty for 1910.151(c) for failure to provide suitable quick drenching facilities for employees exposed to corrosive materials.

The company also is contesting a five-item nonserious citation for 1910.24(b) for failure to provide fixed stairs to elevations where employees were required to carry tools in their hands, 1910.176(b) for failure to secure material stored in tiers against sliding and collapse, and 1910.176(c) for failure to keep storage areas free of accumulated materials (No. 80-5365).

Lankford Company, Inc., Corpus Christi, Texas, is contesting a serious citation and a \$2,200 penalty for Section 5(a)(1) for failure to test for combustible gas in a work area, bond sandblasting equipment in the presence of combustible gas, secure oil tanks in service during sandblasting operations in the presence of combustible gas, and prohibit grinding operations on the roof of oil-storage tanks in the presence of combustible gas (No. 80-5290).

Lindsey Masonry Company, Inc., Kansas City, Kansas, is contesting a \$160 penalty for a serious citation for 1926.451(d)(10) for failure to guard a tubular welded scaffold (No. 80-5253).

MacIer Industries, Inc., division of Drake Manufacturing, Friendship, N.Y., is contesting a repeated citation and a \$1,120 penalty for 1910.309(a) for failure to ground plug- and cord-connected equipment.

The company also is contesting a serious citation and a \$560 penalty for 1910.133(a)(1) for failure to require employees' use of face and eye protective equipment.

The company also is contesting a nonserious citation for 1910.94(d)(9)(iii) for failure to ensure that employees hand-dipping cores in methyl chloroform were provided with proper protective gloves (No. 80-5260).

Marinas of the Future d/b/a World's Fair Marina, Flushing, N.Y., is contesting a repeated citation and a \$720 penalty for 1910.309(a) for failure to ground plug- and cord-connected equipment.

The company also is contesting a serious citation and a \$420 penalty for 1915.4(i)(1) for failure to guard scaffolding suspended above water (No. 80-4276).

Mellen Electric Construction Company, Inc., New York, N.Y., is contesting a \$420 penalty for a serious citation for 1926.500(d)(1) for failure to guard open-sided floors (No. 80-5258).

Menasco, Inc., Fort Worth, Texas, is contesting a serious citation and a \$480 penalty for 1910.212(a)(1) for failure to guard machinery rotating parts (No. 80-5464).

F.J. Meyer, Inc., Sewickley, Pa., is contesting a repeated citation and a \$1,120 penalty for 1926.28(a) and 1926.105(a) for failure to ensure employees' use of fall protection (No. 80-4736).

Nelson & Sons, Inc., San Antonio, Texas, is contesting a serious citation and a \$420 penalty for 1910.134(a)(2) for failure to provide respirators where necessary (No. 80-5167).

Norfolk & Portsmouth Beltline Railroad, Jacksonville, Fla., is contesting an eight-item serious citation and a \$7,440 penalty, including 1918.74(a)(3) for failure to equip a crane and derrick with radius and boom-angle indicators, 1926.550(b)(2) for failure to ensure that a truck crane met ANSI standards, and 1926.550(a)(7)(ii) for failure to withdraw damaged wire ropes from service.

The company also is contesting a nonserious citation and a \$600 penalty for 1926.550(a)(4) for failure to post illustrations of crane-use hand signals and 1926.550(b)(2) for failure to keep crane inspection records (No. 80-5363).

Pleasanton Well Service, Inc., Jourdanon, Texas, is contesting a serious citation and a \$1,120 penalty for Section 5(a)(1) for failure to provide auxiliary means of egress from an oil-well tubing platform and 1910.27(d)(5) for failure to provide safety devices on a derrick ladder (No. 80-5165).

Proli Molding Company, Inc., Bloomfield, N.J., is contesting a seven-item serious citation and a \$1,500 penalty, including 1910.106(e)(6)(ii) for failure to bond containers while dispensing flammable liquid, 1910.107(b)(5)(i) for failure to equip a spray booth with a visible gauge, and 1910.309(a) for failure to ground plug- and cord-connected equipment.

The company also is contesting a 10-item serious citation, including 1910.22(a)(1) for failure to keep a work area clean and orderly, 1910.23(e)(3)(iv) for failure to ensure that a railing could withstand the minimum load required, and 1910.151(c) for failure to provide suitable quick drenching facilities for employees exposed to corrosive materials (No. 80-4293).

Ralston Purina Company, St. Louis, Mo., is contesting a serious citation and a \$240 penalty for 1910.309(a) for failure to guard live parts of electrical equipment against accidental contact.

The company also is contesting a nonserious citation for 1910.219(e)(3)(i) for failure to guard a motor-drive belt and 1910.309(a) for failure to ensure a permanent, continuous grounding path from equipment (No. 80-5238).

Reed Tool Company, Houston, Texas, is contesting a willful citation and an \$18,000 penalty for 1910.134(e)(5) for failure to ensure proper training in the use of respirators and 1910.1000(b)(2) for failure to ensure that employees were not overexposed to trichloroethylene (No. 80-5367).

Reynolds Metals Company, Inc., Massena, N.Y., is contesting a serious citation and a \$560 penalty for Section 5(a)(1) for failure to guard electrical installations of DC bus-bars against physical contact (No. 80-4318).

Rock Contractors, Inc., Caledonia, Wis., is contesting a willful citation and a \$4,200 penalty for 1926.651(c) for failure to shore excavation sides adequately.

The company also is contesting a serious citation and a \$350 penalty for 1926.652(h) for failure to provide adequate means of exit from a trench.

The company also is contesting a nonserious citation for 1926.450(a)(9) for failure to ensure minimum ladder siderail extension (No. 80-5391).

Sline Industrial Painters, Inc., Houston, Texas, is contesting a serious citation and a \$480 penalty for 1926.28(a) for failure to ensure employees' use of personal protective equipment and 1926.451(i)(8) for failure to ensure employees' use of safety-line belts attached to a lifeline.

The company also is contesting a nonserious citation for 1926.103(a)(2) for failure to ensure that respirators were approved for use during spray painting and 1910.134(b)(6) for failure to store respirators in a clean and sanitary location (No. 80-5296).

Street Electric, Inc., Meredith, N.H., is contesting a serious citation and a \$420 penalty for 1926.100(a) for failure to ensure employees' use of protective helmets and 1926.400(a) for failure to guard live parts of electrical equipment against accidental contact.

The company also is contesting a \$240 penalty for a serious citation for 1926.400(a) for failure to install a temporary power panel with four conductors (No. 80-5377).

Swenson Spreader Company, Lindenwood, Ill., is contesting a serious citation and a \$420 penalty for 1910.94(c)(5)(iii)(f) for failure to equip spray-finishing ventilation ductworks with fire protection.

The company also is contesting a nonserious citation and a \$140 penalty for 1910.134(a)(2) for failure to establish and maintain a respiratory protection program as required and 1910.1025(d)(2) for failure to determine employees' exposure to lead (No. 80-5489).

TRW Inc., Corpus Christi, Texas, is contesting a serious citation and a \$720 penalty for 1910.22(a)(1) for failure to keep a workplace clean and orderly and 1910.132(a) for failure to provide protective equipment to employees where necessary (No. 80-5459).

C.A. Tharnstrom Construction Company, Skokie, Ill., is contesting a serious citation and a \$1,120 penalty for 1926.401(c) for failure to ensure that a grounding path had sufficiently low impedance and 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring (No. 80-5174).

Stuart C. Thomas, Milo, Maine, is contesting a serious citation and a \$240 penalty for 1910.266(c)(6)(v) for failure to inspect equipment for evidence of failure (No. 80-5240).

Tonawanda Coke Corporation, Tonawanda, N.Y., is contesting a five-item serious citation and a \$5,000 penalty, including 1910.1029(c) for failure to ensure that employees were not overexposed to coke oven emissions, 1910.1029(f)(2)(i)(g) for failure to equip coke oven batteries with mechanized gooseneck and standpipe cleaners, and 1910.1029(f)(3)(iii)(a) for failure to ensure that coke and coal spillage was quenched as soon as practicable and not shoveled into a heated oven.

The company also is contesting a \$1,000 penalty for a serious citation for 1910.1029(g)(4)(i) for failure to perform annual respirator fit tests for each employee using a non-powered, particulate filter respirator (No. 80-4850).

Universal Tank & Iron Works, Inc., Indianapolis, Ind., is contesting a serious citation and a \$560 penalty for 1926.550(c) for failure to ensure that employees used standard signals to communicate with a guy-derrick operator (No. 80-5495).

G.A. & F.C. Wagman, Inc., York, Pa., is contesting a serious citation and a \$1,330 penalty for 1926.500(d)(1) for failure to guard an open-sided platform, 1926.651(c) for failure to shore an excavation face adequately, and 1926.303(c)(3) for failure to equip a grinder with a revolving cup guard (No. 80-4907).

Whalen Electric Company of Ohio, Inc., Cincinnati, Ohio, is contesting a serious citation and a \$560 penalty for 1926.28(a) for failure to ensure employees' use of personal protective equipment (No. 80-5395).

Whipple-Allen Construction Company, Erie, Pa., is contesting a serious citation and a \$1,560 penalty for 1926.21(b)(2) for failure to instruct employees in the recognition and avoidance of unsafe conditions, 1926.28(a) for failure to ensure employees' use of personal protective equipment, 1926.552(b)(2) for failure to paint hoistway entrance bars with diagonal contrasting colors, and 1926.552(b)(8) for failure to ground hoist towers.

The company also is contesting a six-item nonserious citation and a \$120 penalty for 1926.350(a)(9) for failure to secure compressed-gas cylinders in an upright position, 1926.400(b)(3)(vii) for failure to make available a record of electrical equipment tests, and 1926.501(f) for failure to fill hollow pan-type treads of metal stairways (No. 80-5289).

Worthington Compressors, Inc., a McGraw-Edison operation, Buffalo, N.Y., is contesting a serious citation and a \$320 penalty for Section 5(a)(1) for failure to post emergency procedures for gas-fired furnaces and for failure to equip furnaces with safety shutoffs, 1910.94(c)(2) for failure to locate spray-finishing operations properly, and 1910.179(d)(2)(i) for failure to ensure that a crane bridge footwalk met specifications.

The company also is contesting a nonserious citation for 1910.179(e)(2)(i) for failure to provide cranes with bridge bumpers and 1910.179(e)(4) for failure to equip bridge trucks with proper sweeps (No. 80-4368).

H.B. Zachry Company, San Antonio, Texas, is contesting a serious citation and a \$1,040 penalty for 1926.28(a) for failure to provide employees with personal protective equipment, 1926.152(e)(2) for failure to bond containers during transfer of flammable liquids, 1926.400(a) for failure to ensure that a junction box in a fuel tank was approved for use in that location, and 1926.500(d)(1) for failure to guard an open-sided platform.

The company also is contesting a nonserious citation for 1926.302(b)(7) for failure to equip a compressed-air hose with a safety device (No. 80-5293).

H.B. Zachry Company, San Antonio, Texas, is contesting a serious citation and a \$560 penalty for 1926.402(c)(4) for failure to ensure that an outlet had a waterproof cover and 1926.450(a)(1) for failure to use a ladder to give safe access to the top of a column.

The company also is contesting a nonserious citation for 1926.152(b)(1) for failure to ensure that no more than 25

gallons of flammable liquid were stored in a room outside an approved storage cabinet and 1926.350(a)(9) for failure to secure compressed-gas cylinders in an upright position (No. 80-5294).



Full Text

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION MEMORANDUM ON DISCONTINUING WALKAROUND PAY POLICY

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
FROM: JOHN B. MILES, JR., ACTING FIELD COORDINATOR

SUBJECT: Walkaround Pay Coverage under 29 CFR 1977.21

The Office of the Solicitor has advised us that the U.S. Chamber of Commerce is suing OSHA for failure to comply with the order of the U.S. Court of Appeals for the District of Columbia, in *Chamber of Commerce v. OSHA*.

As Dr. Bingham discussed with you in the July Regional Administrators meeting, the D.C. Appeals Court ruled that OSHA's Walk-around pay regulation 29 CFR 1977.21 was improperly promulgated and that the regulation should be vacated. Based on a thorough legal analysis of this ruling, OSHA has decided as a matter of policy, not to continue pur-

suing walkaround rights under Section 11(C) until a new regulation can be properly promulgated.

The new suit by the Chamber of Commerce alleges that OSHA is not taking adequate steps to inform employers that they are no longer under obligation to pay for walkaround time. In order to comply with the Court ruling, you should insure that compliance staff say nothing to indicate to an employer that he has an obligation to pay for walkaround time. Before, Compliance Officers hand out the Pamphlet 2056 at an opening conference, they should first delete the mention of walkaround pay on page 40. If the Compliance Officer is questioned about walkaround pay the reply should be that OSHA's present policy position is not to enforce walkaround pay rights.

Please insure that your personnel are advised on this matter as soon as possible.

Oct. 22, 1980

FINAL DRAFT FEDERAL REGISTER NOTICE ON DELETION OF WALKAROUND PAY REGULATION

DEPARTMENT OF LABOR
Occupational Safety and Health Administration
29 CFR Part 1977
Walkaround Pay

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Deletion of regulation.

SUMMARY: The OSHA walkaround pay regulation, 29 CFR 1977.21, requires employers to pay employees for the time during which they accompany OSHA compliance officers during inspections or engage in related activities. That regulation is hereby deleted in light of the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States of America v. OSHA*, in which the court ordered that the regulation be vacated due to the agency's failure in promulgating the regulation to comply with the rule making procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553. The agency is issuing a proposal to require walkaround compensation shortly.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J.

Lerner, Division of Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue N.W., Room S-4004, Washington, D.C. 20210 (Telephone No. 202-523-6569).

SUPPLEMENTARY INFORMATION: On September 20, 1977 the Assistant Secretary of Labor for Occupational Safety and Health promulgated "an interpretive rule and general statement of policy," declaring that an employer's failure to compensate employees for time spent participating in a walkaround inspection conducted pursuant to section 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) (hereinafter "the Act") constitutes discrimination under section 11(c) of the Act (29 U.S.C. 660) (42 FR 47344, 47345). Section 8(e) of the Act provides that, subject to the regulations issued by the Secretary of Labor, a representative of the employer and a representative authorized by employees have the right to accompany an Occupational Safety and Health Administration (OSHA) inspector during the physical inspection of any workplace under section 8(a) of the Act. Section 11(c)(1) of the Act proscribes any discriminatory action against an employee because the employee, inter alia, has exercised on behalf of himself or others any right afforded by the Act. The

The company also is contesting a nonserious citation for 1910.219(e)(3)(i) for failure to guard a motor-drive belt and 1910.309(a) for failure to ensure a permanent, continuous grounding path from equipment (No. 80-5238).

Reed Tool Company, Houston, Texas, is contesting a willful citation and an \$18,000 penalty for 1910.134(e)(5) for failure to ensure proper training in the use of respirators and 1910.1000(b)(2) for failure to ensure that employees were not overexposed to trichloroethylene (No. 80-5367).

Reynolds Metals Company, Inc., Massena, N.Y., is contesting a serious citation and a \$560 penalty for Section 5(a)(1) for failure to guard electrical installations of DC bus-bars against physical contact (No. 80-4318).

Rock Contractors, Inc., Caledonia, Wis., is contesting a willful citation and a \$4,200 penalty for 1926.651(c) for failure to shore excavation sides adequately.

The company also is contesting a serious citation and a \$350 penalty for 1926.652(h) for failure to provide adequate means of exit from a trench.

The company also is contesting a nonserious citation for 1926.450(a)(9) for failure to ensure minimum ladder siderail extension (No. 80-5391).

Sline Industrial Painters, Inc., Houston, Texas, is contesting a serious citation and a \$480 penalty for 1926.28(a) for failure to ensure employees' use of personal protective equipment and 1926.451(i)(8) for failure to ensure employees' use of safety-line belts attached to a lifeline.

The company also is contesting a nonserious citation for 1926.103(a)(2) for failure to ensure that respirators were approved for use during spray painting and 1910.134(b)(6) for failure to store respirators in a clean and sanitary location (No. 80-5296).

Street Electric, Inc., Meredith, N.H., is contesting a serious citation and a \$420 penalty for 1926.100(a) for failure to ensure employees' use of protective helmets and 1926.400(a) for failure to guard live parts of electrical equipment against accidental contact.

The company also is contesting a \$240 penalty for a serious citation for 1926.400(a) for failure to install a temporary power panel with four conductors (No. 80-5377).

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The company also is contesting a nonserious citation and a \$140 penalty for 1910.134(a)(2) for failure to establish and maintain a respiratory protection program as required and 1910.1025(d)(2) for failure to determine employees' exposure to lead (No. 80-5489).

TRW Inc., Corpus Christi, Texas, is contesting a serious citation and a \$720 penalty for 1910.22(a)(1) for failure to keep a workplace clean and orderly and 1910.132(a) for failure to provide protective equipment to employees where necessary (No. 80-5459).

C.A. Tharnstrom Construction Company, Skokie, Ill., is contesting a serious citation and a \$1,120 penalty for 1926.401(c) for failure to ensure that a grounding path had sufficiently low impedance and 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring (No. 80-5174).

Stuart C. Thomas, Milo, Maine, is contesting a serious citation and a \$240 penalty for 1910.266(c)(8)(v) for failure to inspect equipment for evidence of failure (No. 80-5240).

Tonawanda Coke Corporation, Tonawanda, N.Y., is contesting a five-item serious citation and a \$5,000 penalty, including 1910.1029(c) for failure to ensure that employees were not overexposed to coke oven emissions, 1910.1029(f)(2)(i)(g) for failure to equip coke oven batteries with mechanized gooseneck and standpipe cleaners, and 1910.1029(f)(3)(iii)(a) for failure to ensure that coke and coal spillage was quenched as soon as practicable and not shoveled into a heated oven.

The company also is contesting a \$1,000 penalty for a serious citation for 1910.1029(g)(4)(i) for failure to perform annual respirator fit tests for each employee using a non-powered, particulate filter respirator (No. 80-4850).

Universal Tank & Iron Works, Inc., Indianapolis, Ind., is contesting a serious citation and a \$560 penalty for 1926.550(c) for failure to ensure that employees used standard signals to communicate with a guy-derrick operator (No. 80-5495).

G.A. & F.C. Wagman, Inc., York, Pa., is contesting a serious citation and a \$1,330 penalty for 1926.500(d)(1) for failure to guard an open-sided platform, 1926.651(c) for failure to shore an excavation face adequately, and 1926.303(c)(3) for failure to equip a grinder with a revolving cup guard (No. 80-4907).

Whalen Electric Company of Ohio, Inc., Cincinnati, Ohio, is contesting a serious citation and a \$560 penalty for 1926.28(a) for failure to ensure employees' use of personal protective equipment (No. 80-5395).

Whipple-Allen Construction Company, Erie, Pa., is contesting a serious citation and a \$1,560 penalty for 1926.21(b)(2) for failure to instruct employees in the recognition and avoidance of unsafe conditions, 1926.28(a) for failure to ensure employees' use of personal protective equipment, 1926.552(b)(2) for failure to paint hoistway entrance bars with diagonal contrasting colors, and 1926.552(b)(8) for failure to ground hoist towers.

The company also is contesting a six-item nonserious citation and a \$120 penalty for 1926.350(a)(9) for failure to secure compressed-gas cylinders in an upright position, 1926.400(b)(3)(vii) for failure to make available a record of electrical equipment tests, and 1926.501(f) for failure to fill hollow pan-type treads of metal stairways (No. 80-5269).

Worthington Compressors, Inc., a McGraw-Edison operation, Buffalo, N.Y., is contesting a serious citation and a \$520 penalty for Section 5(a)(1) for failure to post emergency procedures for gas-fired furnaces and for failure to equip furnaces with safety shutoffs, 1910.94(c)(2) for failure to locate spray-finishing operations properly, and 1910.179(d)(2)(i) for failure to ensure that a crane bridge footwalk met specifications.

The company also is contesting a nonserious citation for 1910.179(e)(2)(i) for failure to provide cranes with bridge bumpers and 1910.179(e)(4) for failure to equip bridge trucks with proper sweeps (No. 80-4368).

H.B. Zachry Company, San Antonio, Texas, is contesting a serious citation and a \$1,040 penalty for 1926.28(a) for failure to provide employees with personal protective equipment, 1926.152(e)(2) for failure to bond containers during transfer of flammable liquids, 1926.400(a) for failure to ensure that a junction box in a fuel tank was approved for use in that location, and 1926.500(d)(1) for failure to guard an open-sided platform.

The company also is contesting a nonserious citation for 1926.302(b)(7) for failure to equip a compressed-air hose with a safety device (No. 80-5293).