AGENDA
CMA EXECUTIVE COMMITTEE MEETING
9:00 a.m., Tuesday, May 13, 1980
CMA Headquarters (Room 407)
Washington, D. C.

		TAB
9:00 a.m.	1. Call to Order -- Chairman Morley	
9:01-9:02	2. Minutes of Last Meeting -- B. M. Barackman	1
9:02-9:03	3. Report on New Member -- B. M. Barackman	
9:03-9:05	4. Treasurer's Report -- G. C. Herrman	2
9:05-9:10	5. Report of the Nominating Committee -- J. M. Henske	
9:10-9:30	6. Superfund Policy Group Report -- W. C. Krumrei	
9:30-10:00	7. Association Activities -- R. A. Roland	
	a. Formation of Task Groups	3
	b. Formation of Hazards Communications Special Committee	4
	c. Report of Program Committee	
	d. Proposed Guidance for Evaluation, Risk Assessment and Control of Chemical Embryo-fetotoxins -- Gloria Portela-Cubria, The Standard Oil Company (Indiana)	5
10:00-10:10	8. ChemCAP Update -- J. N. Sites	
10:10-10:20	9. Report of Director of Government Relations -- W. M. Stover	6
10:20-10:30	10. Report of General Counsel -- E. B. Frost	7
10:30-10:40	11. Regulatory Compliance - SOCMA Activities -- E. B. Pollak	
10:40-10:45	12. New Business	
10:45	13. Adjournment	

MINUTES OF MEETING
CMA EXECUTIVE COMMITTEE
9:00 a.m., Tuesday, May 13, 1980
CMA Conference Room #407
Washington, D. C.

1. The meeting was called to order by Board Chairman Henske. There were present:

John M. Henske, Acting Chairman
J. Earl Burrell
Louis Fernandez
Vincent L. Gregory, Jr.
Richard J. Hughes
William C. Krumrei
Duncan J. MacLennan
Paul F. Oreffice
L. John Polite, Jr.
Robert A. Roland
William G. Simeral
Raymond C. Tower

Bruce M. Barackman, Secretary
Gary C. Herrman, Treasurer

By Invitation:
Richard F. Gold, Stauffer Chemical Company
Stephen L. Goldstein, Olin Corporation
Richard B. Hoots, Jr., ICI Americas Inc.
E. B. Pollak (SOCMA), Olin Corporation
George F. Polzer, Witco Chemical Corporation
James N. Sites, CMA
William M. Stover, CMA
Gordon D. Strickland, CMA
David F. Zoll, CMA

2. Minutes of the Last Meeting The minutes of the April 8, 1980 meeting, as distributed, were approved.

3. Superfund Policy Group Report Departing from the agenda, Mr. Henske called on Dr. Fernandez who reviewed the status of Superfund legislation following which discussion commenced concerning new developments and the posture which CMA should assume in response to them. Staff and invitees were then excused and the Executive Committee convened in executive session. Following a morning of deliberation, the committee then adjourned for lunch, after which it continued in regular session in the Arlington Room, The Madison, Washington, D. C.

4. Report on New Members Mr. Barackman was requested to poll the members of the Executive Committee by mail in regard to pending applications processed by the Membership Committee.

5. Association Activities

- State Activities -- Mr. Roland reported on progress to date of the Ad Hoc Committee on State Activities chaired by Mr. Polzer. While it is not the purpose to develop more Chemical Industry Councils (CICs), it is planned to improve the two-way communications between CMA and the existing effective CICs and, using the CICs as a cornerstone, build on that in the legislative and regulatory area at the state level.

- New Task Groups -- The formation of a Large Electric Motors Task Group by the Engineering Advisory Committee, and a Groundwater Management Task Group by the Environmental Management Committee was announced.

- Special Committee on Hazards Communications -- The formation of a Hazards Communications Special Committee, Exhibit A, was discussed. The charter was approved. Mr. Krumrei, who was appointed committee chairmen, will submit to the Executive Committee for its consideration, recommendations concerning the organization and operations of the special committee.

- Report of Program Committee -- Mr. Roland described briefly the program for the Annual Meeting at The Greenbrier, June 5-6, 1980. The committee is scheduled to meet at The Greenbrier to discuss further the plans for the Semiannual Meeting, October 27-28, 1980 in Houston.

- Committee Appointments -- Nominees to fill unexpired terms of Committee members who have withdrawn were appointed as follows:

  Engineering Advisory Committee
  T. R. Brown, The Procter and Gamble Company (term ending May 31, 1981); and
  Glen E. Twitchell, Chevron Chemical Company (term ending May 31, 1982).

- Proposed Guidance for Evaluation, Risk Assessment and Control of Chemical Embryofetotoxins -- Mr. Strickland distributed to those present the reworked draft of guidelines, Exhibit B, resulting

ative. Mr. Sneath, formerly Chemical Industry Trade Advisor, was on the IPAC but will not serve again in that capacity. During discussion, Mr. Hughes agreed to make inquiries and report back on a potential nominee.

Bruce M. Barackman
Secretary

Certified correct:

John M. Henske
Acting Chairman
CMA Executive Committee

from the review recommended by the Executive Committee at its March 11 meeting. During discussion it was pointed out that probably the numbered paragraphs in the control section would be viewed as a listing of actions in order of priority, in which case they should be rearranged. In this connection, particular reference was made to paragraph two on page three and paragraph three on page four. It was considered desirable to make clear that the listed factors to be taken into account in controlling exposure to a substance presenting a risk of embryo-fetotoxicity, should be applied by the employer, according to his workplace, in the best practicable combination of engineering controls, administrative controls, work practice controls, and, as a last resort, respiratory protection to reduce such exposure. This recognizes that workplaces vary substantially in terms of how a substance is used, number of employees, plant age, and many other variables.

Mr. Strickland advised that the final draft will incorporate the comments received from the American Industrial Health Council. The CMA Occupational Safety and Health Committee still desires to publish, with Executive Committee agreement, the final document.

Subject to the foregoing comments, the draft was approved for use in responding to EEOC/DOL Proposed Guidelines on Reproductive Hazards in the Workplace.

6. ChemCAP Update Mr. Sites distributed to those present an information kit containing selected materials relating to the program. He reviewed the contents of "ChemCAP Action Roundup"; invited attention to "Protecting America's Water", the third of six ads, all of which will be placed by late June; and discussed "Protecting the Environment", which is expected to be the best seller of four booklets.

7. Report of Director of Government Relations Mr. Stover introduced his report, Exhibit C, with a brief update on developments concerning a substitute Superfund bill by Rep. Florio which has been submitted to the House Interstate Foreign Commerce Committee for their consideration.

8. Report of General Counsel Mr. Frost's report is attached as Exhibit D.

9. New Business Mr. Henske advised that a nominee should be named to represent the chemical industry on the Industrial Policy Advisory Committee (IPAC) whose function is to work closely with trade policy officials of the government in the Department of Commerce and the Office of the U.S. Trade Represent-

Exhibit A

FORMATION OF
HAZARDS COMMUNICATIONS SPECIAL COMMITTEE

SUMMARY:

Recommendations are made for the committee chairman, a revised charter and structure. These changes respond to the greater effort level anticipated to be required for the management of the chemical industry's response to EPA and OSHA with respect to the hazards communication area. A sunset provision is provided.

PROPOSAL:

1. Restate Charter

   Language (see attached) clarifies reporting relation, defines scope, responsibilities and activities of committee.

2. Designate New Chairman

   - Should be of high level (for contact purposes) and of broad overview.

     Possible Candidate: William C. Krumrei

   - Vice Chairman should also be selected.

3. Committee Structure

   - Either of two:

     A. Three issue groups feeding into the two present EPA and OSHA task groups.

        Issue groups as follows:

        - Technical: -definition of chronic hazard
          trigger mechanisms
          threshold levels
          AIHC scienfific issues
          difficulty of trace analysis
        - Economic: -disclosure of trade secrets
          impact of listing chronics
          costs of testing
          other compliance costs
        - Legal: -confidentiality
          statutory authority for regulating

     B. Four task groups: EPA issues, OSHA issues, chronic hazards, and disclosure-confidentiality.

4. Timing

Revise charter and establish new chairman by June (Greenbrier) organization meeting of Board. (Therefore, action at May Executive Committee meeting would be required.)

Establish and staff task and issue groups as soon as possible.

5. Resources/Communication

As appropriate, the chairman shall draw upon the resources of the CMA standing committees, CMA staff, and other associations and communicate developments to these groups.

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HBMorley

CMA
EC-5/13/80

HAZARDS COMMUNICATIONS SPECIAL COMMITTEE

CHARTER

Within limits of authority specified by Executive Committee, the Special Committee will oversee Association hazards communication activities. The scope of these activities include EPA and OSHA proposals for product labeling, in-plant labeling, material safety data sheets and substance identifications lists.

Within this scope, the Special Committee will identify key issues and focus on matters of greatest significance to the chemical industry; establish specific objectives and mobilize resources to produce timely results; advocate responsible regulation within existing statutes; and seek relief from unreasonable regulation by providing alternative language to the agencies, submitting comments to proposed rulemaking, and initiating legal action where appropriate.

The Special Committee will communicate major trends and developments to the Executive Committee, the Board of Directors, the Association President, member companies and other trade associations. The Special Committee will serve for a period of two years on an ad hoc basis. At the end of two years, the Committee's status will be reviewed by the Executive Committee.

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Exhibit B

DRAFT

GUIDANCE FOR EVALUATION, RISK ASSESSMENT, AND CONTROL OF CHEMICAL EMBRYOFETOTOXINS

CMA
EC - 5/13/80

DRAFT

(Inside of Front Cover)

PURPOSE

The CMA Occupational Safety and Health Committee has sponsored the development of this document to respond to the growing need for guidance related to chemical embryofetoxins. Its purpose is to assist management in recognizing, evaluating, and controlling chemicals which are known or suspected to have this toxic characteristic.

Although advice from appropriate professional personnel will be required for its implementation, the guidelines contained in this document will allow management to assess the evaluations which are made and the need for and effectiveness of the control procedures.

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GUIDANCE FOR EVALUATION, RISK ASSESSMENT, AND CONTROL OF CHEMICAL EMBRYOFETOTOXINS

Introduction

Concern for the unborn has generated tremendous pressure upon industry and regulatory agencies to provide an effective solution for controlling potential chemical embryofetotoxins.

The issue with exposure to embryofetotoxic chemicals is one of protecting the susceptible embryofetus from chemical substances which can cross the placenta and cause damage to the embryofetus, almost always at concentrations which would have no adverse effect on the female or male adult. It is not one of the female employee being more susceptible than male employees or the female employee being at greater risk of adverse health effects from exposure. It is not an issue of discrimination against the female employee because she is female. The female is involved only because she is unique by being of the sex capable of becoming pregnant and bearing children.

The determination of the intrinsic embryofetotoxic potential of a chemical and the estimation of risk from exposure are scientific endeavors, while the acceptability of an estimated embryofetotoxic risk for the unborn to a given exposure is a societal and regulatory decision.

Scope

This document provides general guidance for evaluating the quality of the data, assessing its significance, and controlling the degree of risk of exposure to embryofetotoxic chemicals. It is not all inclusive nor specific, and recognizes the requirements for sound scientific judgment for each chemical. It does not address either male or female gonadal toxins or mutagens, but is concerned with the conceptus, embryo, or fetus. The importance of the legal considerations involved are also summarized in the paper.

An embryofetotoxin is designated as a chemical which manifests an effect, during any of the stages of gestation, upon the conceptus from fertilization until birth. It may induce death, structural malformations, metabolic or physiological dysfunction, growth retardation, or psychological and behavioral alteration in the offspring that are manifest at birth or in the postnatal period.

Death of the embryo, fetus or newborn is included. For purposes of this document, in-utero-induced carcinogenicity and mutagenic induced abnormalities are not included. This definition is consistent with Environmental Protection Agency definition of teratogen as contained in Code of Federal Regulations, title 40, para. 162.3.

In assessing the risk of exposure to embryofetotoxic chemicals, two basic toxicological principles must be considered:

1. Risk is a function of both the intrinsic embryofetotoxic potential of the chemical and the degree of exposure to the chemical.

2. A dose response relationship holds for each embryofetotoxic response and there exists a threshold exposure level (dose) for each chemical below which no effect is to be expected.

The Appendices to this document provide background and information which will be of assistance in determining if a chemical poses a risk of embryofetotoxicity for which special controls are needed.

Control of Chemicals Posing a Potential Embryofetotoxic Risk

When it has been determined that a substance presents a risk of embryofetotoxicity, the following actions should be considered:

1. Employees who may be affected should be informed of the possible consequences of exposure to such substances and appropriate safe handling procedures established and communicated.

2. Engineering controls should be used to the extent practical to reduce and maintain exposure to the embryofetotoxins to acceptable levels. Such controls should be augmented by administrative controls as appropriate.

3. Whenever further engineering and administrative controls are not practical to keep exposures at or below acceptable levels, the use of personal protective equipment should be required where appropriate. Employees who are required to use such equipment should be adequately trained in its proper use.

4. Where there is potential for exposure to an embryofetotoxin for which an acceptable exposure level cannot be set due to inadequate data, women of reproductive potential should be excluded from the work area.

5. Where engineering and administrative controls, augmented as appropriate by personal protective equipment, are determined to be inadequate to insure acceptable levels of exposure to an embryofetotoxic compound, women of reproductive potential should be excluded from the work area.

APPENDIX A

MEDICAL ISSUES

Recent surveys indicate that up to 7.5% of all delivered infants have developmental abnormalities that interfere with their survival or result in clinical disease.

Selective elimination of many malformed human ova, embryos, and fetuses occurs either soon after conception (between day 2 and day 17) or by spontaneous abortion of the fetus before the 22nd week of gestation. Over a third of all embryos die before recognition of pregnancy, and about 15% of recognized pregnancies abort spontaneously. It has been estimated that about 40% of those lost embryos and fetuses would have been malformed had they survived. Historically, lead has been used as an abortifacient. At the turn of the century in the lead industries, women workers were known to have decreased fertility and an increased abortion rate, along with symptoms of lead poisoning. This led to the widespread enactment in the early 1900's of labor codes forbidding the employment of women in industries involving a lead hazard.

In 1956, Minamata disease was described and its cause proven by 1959. In this disease, the potential mother does not become pregnant if her methyl mercury intake is so great that she becomes acutely ill. At a lower dose, the woman may become pregnant and the child may be spontaneously aborted or

born dead. At even lower doses, a child may be born with congenital Minamata disease, evidenced by neurologic symptoms.

Maternal alcoholism is thought to be the leading known cause of teratogenic effects in humans but the full extent is unknown. Twenty percent of all birth defects are estimated to be caused by known genetic transmission. Chromosomal aberrations cause 3 to 5% of such defects and ionizing radiation, including but not limited to diagnostic and therapeutic, accounts for less than 1%. Infections, such as rubella virus, cytomegalovirus, Herpes Virus Hominis, toxoplasma, and syphilis account for 2 to 3%. Maternal metabolic imbalances such as endemic cretinism, diabetes, phenylketonuria, and virilizing tumors account for 1 to 2%. Drugs and environmental chemicals including androgenic hormones, folic acid antagonists, Thalidomide, organic mercury, some hypoglycemics and some anticonvulsants account for 2 to 3%. The remaining 65 to 70% of the causes are unknown.

The Thalidomide experience aroused much interest in teratogenicity and increased the determination to identify teratogens in advance in order to prevent similar experiences in the future. For instance, the FDA now requires animal teratogenicity studies on all new drugs and the EPA requires these tests on agrichemicals if "the product use may reasonably be expected to result in exposure to human females, or if use may result in residues in food or feed."

The human embryo is most sensitive to teratogens during the period of organogenesis (day 18 through day 60

of gestation). The most critical period is during early differentiation (day 18 through day 30). At this time, the woman usually does not know she is pregnant, for there is no reliable method to ascertain human pregnancies sooner than three weeks after conception. Severe insults during the first 17 days after fertilization will usually result in death of the fertilized ovum. Lower level exposures to some substances for longer periods of time may not produce abnormalities obvious at birth but which may be noted months or years after delivery. During the period of advanced differentiation (after day 60) the susceptibility of the fetus to teratogenic agents affecting structure rapidly lessens with time.

APPENDIX B

EVALUATION OF RISK

Assessment of Intrinsic Embryofetotoxic Potential

The intrinsic embryofetotoxic potential of a chemical for a given species is dependent upon the toxic properties of the chemical and its metabolites. The response may be modified by the defense mechanisms of the host and the target embryo and by the chemical's ability to cross the placental barrier.

The assessment of intrinsic embryofetotoxic potential of a chemical requires sound scientific data and judgment of scientists with training and experience in the field.

After reliable data are developed, the relevancy must be judged scientifically, considering numerous factors including the following:

1. Response
    a. Type (structural, biochemical, functional, etc.)
    b. Severity (life threatening, incapacitating, reversible, etc.)
    c. Relativity (ratio to other toxicities, primary or secondary effect, etc.)
2. Dose-Response
    a. Threshold exposure level

b. Slope of the dose-response curve

c. Critical time of dosing

3. Route of Exposure

a. Inhalation

b. Dermal

c. Oral

4. Biological Variation

a. Biochemical toxicology

b. Target site

c. Species (strain)

d. Type of placenta

5. Biochemical Toxicology

a. Absorption

b. Distribution

c. Biotransformation

d. Excretion

6. Biometrics

a. Sensitivity of the study

b. Limitation of the study

7. Host Response

a. Biochemical

b. Physiologic

c. Pharmacologic

d. Pathologic

e. Immunologic

f. Tissue and biochemical repair

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8. Replication of Results

9. Number of Species Involved

Assessment of Human Exposure

Human exposure in the workplace is controllable. Understanding the degree and nature of the potential exposure permits some measure of control of risks associated with a chemical which has intrinsic embryofetotoxic potential. Assessment of the exposure includes evaluation of:

1. Physical Properties of the Chemical
   a. Solid
   b. Liquid
   c. Gas
   d. Aerosol
   e. Dust
   f. Vapor pressure
   g. Melting point
   h. Boiling point
   i. Solubility
2. Route of Exposure
   a. Respiratory (inhalation)
   b. Percutaneous (dermal)
   c. Gastrointestinal (oral)
3. Dose
   a. Concentration
   b. Volume

4. Characteristics of Exposure

   a. Frequency

   b. Continuous

   c. Intermittent

   d. Duration

   e. Details of the process

5. Population at Risk

   a. Age

   b. Sex

   c. Health

   d. Occupation

   e. Number

Assessment of Risk

Following the evaluation of the intrinsic embryo-fetotoxic potential of a chemical, an assessment of risk based on scientific principles must be made. Most critical to this judgment are the following:

1. Does the embryofetotoxic response occur in more than one species?
2. Does the embryofetotoxic response occur at exposures substantially below exposures which produce other nonteratogenic toxic effects?
3. Do the data indicate a dose-response relationship?
4. Has the test been done in the most appropriate animal model for the class of chemical evaluated and in an exposure route applicable to man?

5. What are the threshold and no-observable effect levels of exposure for the animal model?

6. What populations are at risk (exposed) and what characterizes the exposures?

Estimation of Acceptable Exposure Levels

After assessing the embryofetoxic potential of the chemical, the potential for human exposure and the risk, an acceptable exposure level should be estimated, taking into consideration the degree of confidence in the data and variability and nature of the population at risk.

Where acceptable exposure levels can be estimated they should be accompanied by documentation and statements of rationale.

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APPENDIX C

LEGAL ISSUES

A great many legal issues in various specialized areas are involved in the evaluation, risk assessment, and control of embryofetotoxins. Company counsel should be consulted on all such issues. For example, there are a number of equal employment opportunity matters to be considered when a company concludes that it must exclude women of reproductive potential from workplace areas as a means of controlling exposures.

The Company may be called upon to demonstrate that the embryofetotoxic effect is due to exposure of the embryo or fetus during gestation and not due to toxic effects on the mother due to the exposure during pregnancy. If only women of reproductive potential are excluded, the employer may have to demonstrate that the toxic effects result only from in-utero exposure of the embryo or fetus and not from preconception exposure of either parent. Consideration must be given to what constitutes suitable alternate assignments and compensation for employees excluded from certain jobs because of potential exposures.

Counsel should be consulted at an early date on these and all other legal issues which may be involved.

Done, A. K. (1966). Perinatal pharmacology. Ann. Rev. Pharmacol. 6: 189-208.

Fraser, F. C. (1965). Some genetic aspects of teratology. Teratol.: Princ. and Tech. (J. C. Wilson and J. Warkany, Eds.), 21-38. Univ. of Chicago Press, Chicago.

Gibson, J. P., Staples, R. E. and Newberne, J. W. (1966). Use of the rabbit in teratogenicity studies. Toxicol. and Appl. Pharmacol. 9: 398-408.

Health and Welfare Agency of Canada (1973). The testing of chemicals for carcinogenicity, mutagenicity and teratogenicity. 135-183.

Hurley, L. S. (1967). Studies on nutritional factors in mammalian development. J. Nutr. 91: 27-38.

Hurley, L. S. (1968). Approaches to the study of nutrition in mammalian development. Fed. Proc. 27: 193-198.

Jusko, W. J. (1972). Pharmacodynamic principles in chemical teratology: dose effect relationship. J. Pharmacol. Exp. Ther. 183: 469-480.

Kimmel, C. A. and Wilson, J. G. (1973). Skeletal deviations in rats: malformations or variations? Teratol. 8: 309-316.

Koll, W. (1963). Some considerations concerning testing for teratogenic action. Proceed. Eur. Soc. for Study of Drug Toxicity. International Congress Series No. 73 Excerpta Medical Foundation, Amsterdam.

Kreyllg, T. and von Kreybig-Hackenberger, I. (1967). The basic principles of testing teratogenic effects. Arzneimittel - Forsch. 17(3): 390-392. (Translation).

Ny, M. L. (1965). Factors Influencing teratogenic response to drugs. Teratol.: Princ. and Tech. (J. G. Wilson and J. Warkany, Eds.), 145-184. Univ. of Chicago Press, Chicago.

Department of Health, Education and Welfare. (1977). Chapter 12: Reproduction, Teratology and Human Development. Human Health and the Environment: Some Research Needs 315-328.

Environment Protection Agency (1975). Guidelines for registering pesticides in the United States. Fed. Reg. 40: 123.

National Academy of Sciences (1975). Chapter 10: Environmental Chemicals as Potential Hazards to Reproduction. Principles for Evaluating Chemicals in the Environment. 156-197. Washington.

National Research Council. Reproduction and Teratogenicity Tests, Part VII.

any, J. (1965). Development of experimental mammalian teratology. Teratol.: Princ. and Tech. (J. G. Wilson and J. Warkany, Eds.), 1-20. Univ. of Chicago Press, Chicago.

any, J. (1970). Trends in teratologic research. Epilogue to the Third International Congress on Congenital Malformations. Teratol. 3: 89-92.

on, J. G. (1964). Teratogenic interaction of chemical agents in the rat. J. Pharmacol. Exp. Ther. 144: 429-436.

Wilson, J. G. (1965). Embryological considerations in teratology. Teratol: Princs. and Tech. (J. G. Wilson and J. Warkany, Eds.) 251-261. Univ. of Chicago Press, Chicago.

Wilson, J. G. (1965). Methods for administering agents and detecting malformations in experimental animals. Teratol.: Princs. and Tech. (J. G. Wilson and J. Warkany, Eds.) 262-277. Univ. of Chicago Press, Chicago.

Wilson, J. G. (1973). Environment and Birth Defects. Academic Press, New York.

Wilson, J. G. (1973). Present status of drugs as teratogens in man. Teratol. 7: 3-15.

Wilson, J. G. (1973). Teratogenic effects of environmental chemicals. Fed. Proc. 36: 1698-1703.

World Health Organization (1967). Technical Report Series. 364.

Revised 8/2/79
Revised 2/5/80

Exhibit C

REPORT OF THE DIRECTOR OF GOVERNMENT RELATIONS

WILLIAM M. STOVER

MAY 13, 1980

MUSKIE TO BE SECRETARY OF STATE

President Carter's April 29 appointment of U.S. Senator Edmund S. Muskie (D-Maine) as Secretary of State brings immediate and significant changes in key Senate leadership posts, and in the legislative outlook in several key areas.

Astonishing most Washington observers, the selection of Muskie appears motivated by his wide national reputation and potential for blunting Congressional criticism rather than his somewhat limited background in diplomacy. The Senator's service on the Foreign Relations Committee is a point of reference, but was probably overshadowed by the value of his image as a respected former national candidate and his capacities as a "Washington insider."

Senator Muskie leaves behind the Chairmanship of the increasingly powerful Senate Budget Committee, which is even now gearing for fierce floor fights on this year's money resolutions.

He also relinquishes his longtime post as Chairman of the Subcommittee on Environmental Pollution, where he led innumerable successful legislative battles for stringent laws regulating environmental quality. His qualities of wit, tenacity and political skill enabled him to wield formidable power in the Senate, and he was seldom denied environmental legislative objectives. His departure will cause a major readjustment of influence within that chamber, and it must certainly be viewed with regret by environmental extremists.

CHEMICAL INDUSTRY LEADERS AT WHITE HOUSE

On Friday, April 11, 1980, President Carter conducted a White House anti-inflation meeting with 24 chemical industry executives. This meeting was one of a series being held with various groups to urge wage and price restraint. President Carter asked the executives to hold down price increases even if it means lower profits.

He criticized the chemical industry's recent price increases as "very high" and asked that they "restrain your price increases below what you would have done otherwise."

After the 15-minute session with the President, the executives met separately with Treasury Secretary G. William Miller and COWPS Chairman Alfred E. Kahn. Clearly, the Administration believes that the industry has been raising prices more than needed to cover increased costs, possibly because of fears of eventual wage-price mandatory controls. President Carter reiterated his opposition, however, to such mandatory controls. He felt that action by the food and drug industries to freeze prices were a good model for the chemical industry to follow. He asked the executives to "consider very seriously taking the same action," even though it "may result in some decrease in profits."

The chemical executives, particularly in the meeting with G. William Miller, carried out an effective dialogue on the extreme costs of regulatory burdens on the industry. The Administration representatives agreed that closer cooperation in this area could reduce the cost of compliance for industry and increase its productivity. As the next move to better industry and government cooperation to achieve mutual goals, it was agreed that a working group of industry executive and governmental officials would be formed. A further meeting with Alfred Kahn is planned.

The White House meeting was regarded by both government and industry officials as being cordial. Industry representatives particularly felt that they had a most important opportunity to present their case for more realistic environmental and health controls to the highest level of government.

On April 15, John Henske and Robert Roland, Chairman of the Board and President of CMA, respectively, sent a letter to CMA Executive Contacts. An account of the meeting was followed by a request to forward to CMA examples of problems with the anti-inflation program and unreasonable regulatory burdens.

ENERGY: INCREMENTAL PRICING OF NATURAL GAS

On March 20 the Federal Energy Regulatory Commission (FERC) announced the intention to extend the incremental pricing of natural gas to all industrial uses including feedstock, process and other non-boiler uses.

On April 3 a hearing was held before the House Commerce Energy and Power Subcommittee on the proposed extension of

incremental pricing. FERC is expected to have a staff draft ready and a meeting to discuss the final Rule II proposal the week of April 28. The final proposal, which is expected to be a broad one, must be submitted to Congress no later than May 9. Either House of Congress may veto the proposed Rule II extension within 30 days. An additional hearing may be scheduled in the House around May 15 and Senate Energy Committee hearings may be announced for May 16 or 19.

If Rule II is vetoed, FERC may come back in six months, but no later than two years. The language of the statute is permissive. CMA efforts are directed towards a legislative veto. The repeal effort has picked-up more sponsors.

ENERGY: COAL CONVERSION

The Powerplant Fuel Conservation Act of 1980, H.R. 6930, has been introduced at the request of the Administration to reduce the amount of oil and gas used by electric utilities. Phase I of the proposal contains $3.6 billion for the expedited conversion of approximately 100 coal-capable facilities from oil to coal. Phase 2 contains $6 billion for the development of other alternate energy sources which will displace oil. Hearings were held April 18 and 26 before the Energy and Power Subcommittee of the House Commerce Committee.

In the House there appears to be bipartisan opposition to the present utility oil reduction bill. Energy and Power Subcommittee Chairman John D. Dingell (D-MI-16) may strengthen the bill environmentally and the subcommittee staff are looking for a scaled down compromise version. The perception is that most utilities have converted or are in the process of converting and this is something they should be doing without assistance. However, the Administration is pushing for legislative action. At this time it does appear likely that a bill will get out of subcommittee. A similar utility oil reduction bill, S.2470, had been introduced by Senator Wendell H. Ford (D-KY). Hearings were held before the Energy Committee on April 23 and 25. The Majority Leader has accorded the bill the highest priority, but chances of legislation by May 15 appear slim.

A task group of the CMA Energy Committee has developed proposed amendments to the Fuel Use Act in the event that a utility back-out measure would provide CMA an opportunity to seek corrective amendments.

ENERGY: EFFICIENCY STANDARDS

The report to evaluate the energy efficiency of pumps and motors required under the National Energy Conservation Policy Act will be the subject of Department of Energy (DOE) hearings in Washington, D.C. on May 1 & 2, May 6 & 8 in San Francisco and Chicago respectively. CMA will testify before DOE in Washington. The House Commerce Energy and Power Subcommittee is waiting to receive DOE findings before deciding whether to schedule any hearings on the Senate-passed energy efficiency measure (S.1398). No Congressional action, if any, is expected before late summer.

ENERGY: MOBILIZATION BOARD

On April 23 the House and Senate conferees broke a four month impasse regarding the authority of an Energy Mobilization Board (EMB) to expedite the permit process for priority energy projects. The five-member EMB would decide which projects should be put on a "fast track" and then set deadlines and take other action to assure "streamlining" prompt action by federal, state and local agencies whose approval is needed.

The compromise approved April 23 provides that federal laws may be waived at the request of the EMB only with the approval of the president and both houses of Congress. The House broke the stalemate by agreeing in addition that committees having jurisdiction over laws to be waived could bottle up a waiver proposal and not let it go to the floor of the House or Senate for a vote. Only 12 requests for waivers could be made during the two year life of a Congress.

The conferees are expected to meet April 29 for a final session to draft the technical details. The bill could be passed by both Houses and signed by President Carter by the end of May.

ENERGY: OIL IMPORT FEE

The President has imposed a fee on crude oil of $4.62 per barrel. He has issued a proclamation implementing the pass-through of the fee to motor gasoline only. It is expected that this will amount to approximately 10 cents a gallon at the pump and will start on May 15, 1980. A hearing was held on April 24 before the Trade Subcommittee of the House Ways and Means Committee.

Chairman Charles A. Vanik, (D-OH-22), who supported the President's action, predicted that a majority of the House may soon be supporting legislative proposals to kill it. Many Members of

Congress feel the Administration's oil import fee is not really for the purposes of conservation, but rather a disguised revenue or taxation measure. Congressional opposition is focusing on joint resolutions introduced in both the House and Senate that would use authority granted Congress under section 402 of the Windfall Profit Tax Act recently signed into law. Presidential veto of a joint resolution would have to be overturned by a two-thirds vote in both houses.

TRANSPORTATION: RAILROAD DEREGULATION

On April 1, 1980, the Senate passed by a 91-4 vote the Railroad Transportation Policy Act (S.1946), to substantially reduce government economic regulation of railroads. The final bill provides for a great degree of protection for captive rail shippers because of a Cannon/Long compromise amendment. That amendment would establish a threshold, to be set by the Interstate Commerce Commission (ICC), at which a shipper can challenge a railroad's rate. The threshold would be a ratio of revenues-to-variable costs expressed as a percentage. The ICC would be given latitude to investigate the reasonableness of the contested rate that exceeds the threshold. The ICC also could choose not to investigate and explain why. In deciding whether to investigate the rate, the ICC would have to consider the national energy goal of increasing the use of coal, but would not have to consider that factor in determining the rate's reasonableness.

On the House side, after release of four working drafts, the Rail Act of 1980, H.R. 7110, was introduced April 24 by Transportation and Commerce Subcommittee Chairman Florio. No hearings have been held since March 25 before the release of the second unnumbered bill. The record closed on April 25 and CMA submitted comments on that date. Subcommittee mark-up begins April 29. The Senate-passed bill has not been introduced in the House and neither has a draft shippers' compromise bill. It has been suggested that Chairman Florio may attach his rail reform version to an authorization or financial vehicle before May 15.

TRANSPORTATION: TRUCKING DEREGULATION

The Motor Carrier Reform Act, S.2245, passed the Senate April 15 by a vote of 70 to 20. Basically, the reform bill provides easier and broader access into the trucking industry, eliminates antitrust immunity to meet and set freight rates on single line traffic, and permits truckers to set freight rates within an

established range without ICC approval. An amendment proposed by Senator J. James Exon (D-Neb), to extend Federal insurance requirements to nonregulated carriers and to give the Secretary of Transportation discretion to set minimum insurance limits was accepted. The original bill, as reported out of the Senate Committee on Commerce, Science and Transportation, would have established a $2 million minimum insurance requirement for most truck firms and a $5 million minimum for firms handling hazardous materials.

The bill now under consideration in the House Public Works Surface Transportation Subcommittee, H.R. 6418, will either be substantially revised more towards deregulation or the Senate-passed bill will be substituted. Markup is planned for the week of May 5. The goal of the Senate and House leadership remains to have a bill cleared for President Carter's signature by June 1.

TSCA REAUTHORIZATION AND OVERSIGHT HEARINGS

Chairman James Scheuer's (D-N.Y.) Subcommittee on Consumer Protection held four days of hearings April 15-17 and 22 on TSCA reauthorization and oversight.

SOCMA testified first regarding impacts of the Act on new small volume chemicals - the source of innovation and life-blood of the chemical industry - and defended the adequacy of PMN notices submitted to date. Environmentalists criticized EPA for lengthy delays in implementing TSCA (due, in their opinion, to attempts to achieve "scientific perfectionism" in proposed rules), failure to require toxicity test data in PMN submissions, and allowing U.S. companies to dump hazardous chemicals on ill-informed third world countries.

Chairman Scheuer severely criticized EPA for having failed to prevent accidental PCB contamination of food products, in "flagrant disregard" of section 6 of the Act. He promoted his TSCA amendment requiring replacemement of all PCB-containing electrical equipment used by food or food packaging manufacturers. Chairman Scheuer also recited a litany of general delays and failures by the Agency. EPA's Steven Jellinek defended his implementation of the Act, listing past and future activities by which the Agency will have initiated action on every major section of TSCA.

CMA testified on the final day of hearings, April 22. Richard Fleming, Executive Vice President of Air Products and Chemicals, was our lead spokesman. He was supported by a panel comprised of Shell's Dr. Curtis Smith, Dupont's Eugene Berman, and Exxon's Carl Umland. We presented a balanced evaluation of EPA's performance to date - commend where deserved, and criticize where

justified. We emphasized that it would be premature for Congress to undertake any major review of the Act's implementations thus far, too soon to consider substantive amendments, and supported the two year reauthorization provision in Chairman Scheuer's bill, H.R. 7003.

Our witnesses did an excellent job in getting the Chairman's attention and engaging in meaningful dialogue throughout the hearing. He came to understand the competitive disadvantage our companies may face with European competitors if we are forced to comply with a U.S. toxics law which is more stringent than the EEC Sixth Amendment. He learned how the European law's greater protection of confidential business information could lead to relocation of our R & D activities abroad, and said "the last thing we want to do is export jobs to Europe." Our witnesses were thoroughly prepared, and Chairman Scheuer appreciated their expertise and direct responsiveness on the issues raised. Perhaps most importantly, Richard Fleming and our witness team established essential credibility with this important subcommittee for the time when major legislative review of TSCA is undertaken in the future.

TSCA ECONOMIC IMPACT STUDY

Questionnaires for the Economic Impact Study of TSCA being conducted by the National Economics Research Associates (NERA) have been in the field since the first of the year. The majority of the questionnaires have now been returned to Price-Waterhouse (PW).

PW is currently conducting follow-up visits to six respondents to verify their questionnaire responses. Both PW and NERA appear to be pleased with the responses to the questionnaires. An additional favorable preliminary finding shows that the questionnaires have involved less effort on the part of the respondents than was originally estimated.

An Advisory Panel of knowledgeable persons from the areas of academia, labor, government, and consumer interests has been formed to assist NERA and CMA in their analysis of the data supplied by participating companies. Dr. Richard Zeckhauser of Harvard University is the chairman of the Panel. Other Panel members include Dr. Robert Crandall of the Brookings Institute, Dr. Allen Kneese of Resources for the Future, and Mr. Francis Burkhardt of the International Brotherhood of Painters and Allied Trades.

The final report of this phase of the study (the pilot test portion involving 40 CMA member companies) is expected to be transmitted by NERA to CMA on July 31, 1980.

OSHA REFORM

The Senate Labor Committee continued hearings April 15, 16, and 25 on Senator Schweiker's (R-Pa.) OSHA Reform bill, S. 2153, to exempt from routine safety inspections firms with a good safety record.

Industry groups, led by the U.S. Chamber of Commerce and National Association of Manufacturers, testified in favor of the legislation. CMA will be submitting a generally supportive written statement for the record. As expected, OSHA and organized labor were adamantly in opposition to the bill, and exaggerated its impact by claiming the bill would "gut the agency." The hearings have been completed, unless something unforeseen arises, and the Committee will review the record of testimony over the next several weeks to determine its future course of action.

Chances of Senate passage hinge on Chairman "Pete" Williams, a liberal Democrat from New Jersey, who remains a cosponsor but has reservations about some of the language in the bill. If he actively promotes the bill in Committee, sufficient bipartisan support could be mustered for reporting it. Once reported to the Senate floor, the bill would have a good chance for passage.

The House is a different story. Congressman Gaydoes (D-Pa.), Chairman of the Education and Labor Subcommittee on Health and Safety has vowed OSHA Reform legislation will never get through his subcommittee. Nevertheless, it is important for industry groups to pull together on this issue and develop the coalition needed to achieve significant OSHA reform in the future.

WORKMEN'S COMPENSATION

Chairman Beard's House Labor Standards Subcommittee is continuing hearings through May 1 on H.R. 5482, to establish uniform national minimum standards for state workers' compensation. CMA will be submitting a written statement for the record expressing our concerns about the overall impact of the legislation and making constructive suggestions to improve the scientific basis for the occupational disease standards in section 5 of the bill.

The Senate Labor Committee hearings on S. 420 (the Williams/Javits counterpart to the Beard bill) have been in abeyance since last year. A joint Administration/Committee task force formed to recommend a compromise legislative package never got off the ground. Though the Committee could move on the legislation, it is unlikely

the full Senate would enact such far-reaching and potentially costly changes in this session of Congress. The same reasoning would apply to the House this year. However, the groundwork is being laid for eventual reform of the workers' compensation system.

TAXATION: VALUE ADDED TAX (VAT)

On April 2, Representative Al Ullman (D.-Or.), Chairman of the House Ways and Means Committee introduced H.R. 7015, a revised version of his value added tax bill, H.R. 5665, which he initially proposed last fall. The new bill differs in a number of aspects from the initial proposal, but the basic VAT is essentially the same, namely, a 10% tax on the value of property and services sold at each stage of production and distribution.

When Mr. Ullman introduced his original VAT bill, he said that the value added tax would be a substitute for existing income and payroll taxes. One of the most frequent criticisms of H.R. 5665 was that the VAT could be used as an "add-on" tax rather than as a replacement tax. Mr. Ullman has attempted to meet this criticism in the new bill by including a provision that would limit federal spending to a percentage of the Gross National Product. The limitation would be 22.6% of GNP for fiscal year 1981, 22% for 1982 and one half of 1% less in each successive year until it reaches 20%.

Although it appears unlikely that hearings on VAT will be held during the remainder of the 96th Congress, our Tax Policy Committee is studying the new bill in order to be ready for any Congressional activity that might develop.

PATENTS: PENDING LEGISLATION

The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice conducted five days of hearings during April on several legislative proposals concerning the patent laws. Among these are:

H.R. 2414, the "University and Small Business Patent Procedures Act," which would permit small businesses and universities to obtain patent rights to inventions developed under government contracts.

H.R. 6933, an Administration proposal to amend the patent

and trademark laws. This bill provides for a uniform government patent policy, restructures the fee system of the Patent and Trademark Office and authorizes a system of reexamination of patents.

H.R. 3806 would create a unified patent appeals court.

An additional day of hearings on these legislative proposals is expected, but not yet scheduled. CMA expects to submit a statement for the hearing record.

EEC COMPLAINTS AGAINST U.S. EXPORTS

The European Economic Community (EEC) continues to press a complaint against U.S. exports to the Market of manmade fibers and petrochemicals. It has had difficulty, however, determining which international trading rule or agreement is being violated and what the remedy should be.

On February 18, 1980, the EEC authorized the UK to impose quotas on polyester filament yarn and nylon carpet yarn. The U.S. has protested the action because it is applied selectively to the U.S., Canada, and Japan. The U.S. Trade Representative's Office has asked for $55 million of compensation in the form of trade concessions benefiting manmade fiber producers.

Further, the EEC is considering starting dumping actions on selected products, including petrochemicals; one acrylic fiber dumping case has already been concluded against a U.S. company. In an evasion of both the Italian and EEC governments, Italian manmade fiber producers have won a court restriction against imports of American Cyanamid and Carter Moore Corp. acrylic and polyester yarns.

The EEC asserts that U.S. price controls on crude oil and natural gas provide a substantial cost advantage to U.S. producers and are a subsidy. The Market understands that U.S. price controls phase out on crude oil in 1981 and on natural gas in 1985. However, they believe that solution is too long range.

Total U.S. chemical exports of $17.3 billion in 1979 are nearly 50% above last year's record, creating a surplus over imports of $9.8 billion. The U.S. government will continue to

encourage this level of export activity. Indications are that the problem of high U.S. exports to the EEC will continue in 1980.

Action by the chemical industry: On July 18, a representative from the Office of the Special Trade Representative informed Deputy CITA Myron T. Foveaux of the EEC complaint. Individual discussions were held immediately with representatives from the OSTR, the U.S. Department of Commerce, and the International Trade Commission. A task group was formed in response to the government's request that we jointly prepare a defense against the EEC charges. On August 28, William S. Sneath, Chemical Industry Trade Advisor, wrote Ambassador and Special Trade Representative Alonzo L. McDonald, assuring him of chemical industry support in this matter. The task group has met a number of times on the problem, frequently including representatives from five government agencies (the U.S. Trade Representative, U.S. Departments of Commerce, Energy, and State, and the International Trade Commission).

The chemical industry believes that U.S. hydrocarbon price controls are only a small part of the competitive problem. The phase out of U.S. price controls will eliminate even this advantage. It is the industry's hope that no further overt actions by the EEC will occur that would bring unfortunate countermeasures.

EXPORT OF HAZARDOUS SUBSTANCES

The chemical industry has been criticized increasingly in the press for exporting products banned in the United States to other countries. In early summer of 1978, an interagency Working Group including:

Consumer Affairs (White House)
Departments of:
- State
- Agriculture
- Commerce
- Energy
- HEW
- Justice
- Defense
- Labor
- Treasury

FDA
EPA
Consumer Product Safety Commission
Export-Import Bank
OPIC
Action
CEQ
Nuclear Regulatory Commission
Office of Management and Budget
and other Executive Offices

was formed to consider Federal policy on export of hazardous substances. The catalyst was the controversy over exports of TRIS-treated children's sleepwear. Heading the effort was Esther Peterson, Special Assistant to the President for Consumer Affairs.

The chemical industry was aware of the ongoing work and saw preliminary drafts of the group's work. The fourth draft became available along with a letter from Ms. Peterson, dated February 25, 1980, which solicited reactions from outside groups, including those from industry, labor, consumer, environmental, and health. Her letter made it clear the draft report did not represent the position of the White House or the Administration. It is considered an "evolving document of the interagency working group."

The report calls for an Executive Order to include the following:

1. Notification to the receiving country by the U.S. State Department of a first shipment of a product banned in the United States. Information to be forwarded would include:

   a. name of product
   b. summary of any agency's action
   c. summary of risks involved
   d. other documents or facts

2. Special procedures for cases where a U.S. shipper is forwarding a product which requires U.S. registration before manufacture, production, use, or sale in the United States but the registration has not been sought.

3. Special authority, including ban, when a firm intends to export a hazardous substance that would endanger citizens or environment of the importing country.

4. Special authority, including ban, of a hazardous substance that would entail severe hazards to the environment or citizens of a country other than the importing country or to the world environment.

An ad hoc working group from the industry met with representatives of the Consumer Affairs Office, CEQ, Departments of Commerce and State. There was a willingness by the government to listen to industry comments and suggestions for changes in the draft report. The fifth draft report is likely sometime in May. CMA will be offered the opportunity to respond to it.

CMA has organized a Task Force under the new International Trade Group to deal with this issue with Mr. Ken Davis, Rohm & Haas, as Chairman. It will work cooperatively with other interested trade associations.

CMA
EC-5/13/80

* * * *

Exhibit D

GENERAL COUNSEL'S REPORT

1. Labeling Litigation. On March 7, 1980, counsel for CMA filed an administrative appeal and CMA v. OSHA, No. 80-0605 (D.D.C.) to obtain copies of an economic study prepared for OSHA on the cost of labeling. Litigation was necessary to obtain the documents which OSHA refused to release under the Freedom of Information Act.

2. Labeling Developments. EPA staff have held several meetings with industry members to listen to criticisms of the EPA draft labeling rule. CMA has met with OSHA staff and by letter of April 11, 1980, criticized OSHA's draft proposal.

3. S. 2153 Schweiker Bill to Amend OSH Act. Staff counsel assisted in the preparation of CMA comments supporting this bill which would exempt certain employers from safety inspections and reduce the civil penalties for violating OSHA standards.

4. U. S. International Trade Commission Rule. CMA has submitted its objections to a revised rule of the Commission which provides for disparate treatment for corporate counsel when granting access to confidential information obtained during a countervailing duty and anti-dumping investigations.

5. Criminal Violations of OSHA Standards. Staff counsel prepared a survey of the law surrounding the increased emphasis by OSHA on investigations for willful criminal violation under Section 17(e) of the OSH Act when the violation of an OSHA standard caused the death of an employee.

6. Transportation Deregulation: Rail. On April 1, 1980, the Senate passed S.1946, the Railroad Transportation Act of 1980, which provides for the deregulation of the railroad industry. The Legal Department worked very closely with the Government Relations Department in this matter in supporting Senator Russell B. Long's amendment to that bill. While CMA supported the bill as it was initially reported out of the Senate, the compromise language agreed upon ultimately by the Senate makes S.1946 even more desirable from the chemical industry's viewpoint. The new bill provides the shipper with due process in the ICC's determination of a revenue-to-variable cost ratio at which point, upon challenge by a shipper, the Commission is authorized to investigate the reasonableness of a proposed or new rate. The most beneficial provision in the compromise amendment is that which states that the Commission, in determining whether or not to institute an investigation, must consider evidence concerning the amount of traffic which is carried at rates which do not provide the railroad with adequate revenues and "the carrier's mix of rail traffic to determine whether any one commodity is paying a disproportionate share of the carrier's overall revenues."

On April 24, 1980, CMA filed with Congressman Florio's Subcommittee on Transporation and Commerce of the House Committee on Interstate and Foreign Commerce comments on a "working draft" published by Congressman Florio.

Transportion Deregulation: Motor Carriers. The Motor Carrier Reform Act, S.2245, passed the Senate April 15 by a vote of 70 to 20. Basically, the reform bill provides easier and broader entry into the trucking industry, disallows antitrust immunity on the section of freight rates on single line traffic, and permits truckers to set freight rates within an established range without ICC approval. An amendment to extend federal insurance requirements to nonregulated carriers and to give the Secretary of Transportation discretion to set minimum insurance limits was accepted. The original bill, as reported out of the Senate Committee on Commerce, Science and Transportation, would have established a $2 million minimum insurance requirement for most truck firms and a $5 million minimum for firms handling hazardous materials.

The House Public Works and Surface Transportation Subcommittee held hearings, in which CMA participated, on its motor carrier deregulation bill, H.R.6418. This bill will either be substantially revised more towards deregulation, or the Senate-passed bill will be substituted. Mark-up may occur the week of April 28. The goal of Senate and House leadership remains to have a bill cleared for President Carter's signature by June 1.

7. American Association of Railroads: Bottom Outlet Rules. The ARR is now responding to communications, both written and oral, from the Bottom Outlet Task Group, with a view toward eliminating or modifying substantially the bottom outlet retrofit schedule. The Legal Department has worked closely with members of the Technical Department, Task Group members, and attorneys from Wilmer & Pickering in this matter.

American Association of Railroads: Interchange Rules. The Legal Department is working with Wilmer & Pickering attorneys in preparing a legal memorandum concerning the antitrust violations committed by the AAR in imposing upon private tank car owners Interchange Rules which deny chemical company tank car owners fair compensation for damage done to their tank cars.

8. Loading, Bracing, and Blocking. The Legal Department is participating in meetings of the Packaging Advisory Task Group, which is currently analyzing the current technology in providing safe packaging and safe transportation and distribution of chemicals in all modes of transportation. This task group is also cooperating with the AAR in this regard. A meeting in mid-June is scheduled, when certain restraining devices will be tested.

9. ICC Docket Ex Parte No. 320: Market Dominance. After a series of meetings with the Rail Rate Task Group and outside counsel Richard Hardy and economist George Borts, CMA submitted on April 2, 1980, over 100 pages of comments protesting the proposed revision to the Commission's current regulations on market dominance.

10. DOT/CHEMTREC. On Monday, March 10, 1980, members of the Legal and Technical Departments accompanied President Robert Roland in a meeting with members of the DOT. At that meeting President Roland signed, on behalf of CMA and CHEMTREC, a statement recognizing CHEMTREC as the entity which will help the DOT fulfill its statutory obligations to establish an emergency response center. Legislation amending the Hazardous Materials Transportation Act to allow DOT to delegate this function to a private industry is now pending in the House.

11. CMA Lease. Members of the Legal Department are now interpreting and preparing documents related to CMA's lease of the new building, and sublease of 1825 Connecticut Avenue, N.W.

12. Hazardous Waste Response Center. The Legal Department is actively participating with the Technical Department in meetings with the Hazardous Waste Response Teams. The Legal Department has attended meetings held in Pittsburgh, on March 4th; in Texas, on March 18th; and, in Louisiana, on March 19, 1980, and assisted in choosing to investigate the Motco site in Wye, Texas and the Tates Cove site in Louisiana. The Legal Department is now drafting a memorandum explaining criminal liability to which individual members of the task groups could become subject for failure to report any ptoential or known imminent hazards which they find on the waste disposal sites.

13. Process Emission Regulations Task Group. CMA submitted written comments on three draft standards for consideration of the National Air Pollution Control Techniques Advisory Committee April 16-17, 1980, meeting. The draft regulations cover: (1) voc fugitive emission new source performance standards, and (2) benzene fugitive emissions NESHAPS and (3) benzene storage tanks NESHAPS. Task group representatives will be meeting with EPA officials on April 30, 1980, to discuss, among several issues, incorporation of CMA's work practice regulatory approach into EPA's regulatory scheme.

We have retained Wilmer & Pickering to assist the task group in preparing comments on the proposed national emissions standards for hazardous air pollutants for the maleic anhydride process (45 Fed. Reg. 26660 et seq., April 18, 1980). In a closely related matter, Wilmer & Pickering is assisting the benzene technical panel in preparing comments on whether benzene should be listed as a hazardous air pollutant. Benzene is the primary air pollutant emitted from the maleic anhydride process.

14. PSD/Nonattainment/SIP Task Group. (see appendix - for a more in depth discussion) The task group (and the Environmental Management Committee) have recommended that CMA initiate litigation in the U.S. Court of Appeals for the Third Circuit to challenge EPA's refusal to delegate to New Jersey the authority to implement the "bubble concept" of alternate emission reductions for existing sources Should an administrative attempt to persuade EPA to eliminate the requirement for a mandatory SIP revision for each application of the bubble concept, CMA can be in the position to file a petition seeking judicial review by the end of the 60-day period to challenge regulatory actions under the Clean Air Act (i.e., May 10, 1980).

15. RCRA Regulation Task Group. Settlement discussions with EPA/Justice concerning the subpart D, Sections 4002-4004 litigation are continuing. Significant progress has been made towards resolving most of the procedural issues raised by the Section 4002 regulations. It is conceivable that a final resolution could occur by the first of May. Since the Section 4004 issues are more substantive in nature, the progress on resolving the matter has been a little slower, although the industry petitioners are still optimistic that the significant issues can be resolved without having to proceed to actual litigation.

EPA will be holding a press conference on April 30, 1980, to announce final Section 3001 and 3004 "core" regulations. Additional regulations to implement these sections will be issued this fall. A review of an EPA "steering committee" draft indicates that CMA may have significant problems with the final regulations. The task group will review in depth the regulations on May 12 and 13, 1980, in preparation for a full day seminar to be conducted for the member companies on May 20, 1980, in Chicago, in conjunction with the EMC semi-annual update (May 19-20, 1980, O'Hare/Kennedy Holiday Inn).

16. Effluent Guidelines Task Group. The CMA "white paper" setting forth for EPA an alternative regulatory development program for the chemical industry has been finalized and forwarded to EPA. A meeting to discuss CMA's alternative regulatory program will be set up with EPA management for the near future.

The task group has also undertaken the project of preparing comments on EPA's proposed new source performance standard effluent guideline for the Petroleum Refining Industry that call for zero discharge. Although EPA cited 55 plants as achieving zero discharge, no plants are in fact achieving this discharge standard. In this regard, process wastes are being disposed of by means other than discharge to surface waters.

The effluent guidelines task group, in conjunction with the water quality criteria and environmental monitoring task groups, is preparing comments on EPA's proposed addition of ammorie to the Section 307 list of toxic water pollutants. An ad hoc group of concerned industry trade associations under the aegis of the Chamber of Commerce, have met to coordinate and exchange information concerning response to the EPA proposal.

17. Water Quality Standards Task Group. The task group is nearing finalization of a white paper setting forth CMA's position as to the proper regulatory relationship of water quality criteria to water quality standards. The intent of the white paper, to be submitted to EPA, is to persuade EPA in developing its water quality standards regulatory policy to recognize the proper state/federal roles specified in the Clean Water Act. In addition, the white paper will be used as a vehicle to update the member companies as to the various issues that have been identified to date in EPA's criteria/standards regulatory development process, and to provide information for use in state proceedings on the development of state water quality standards.

18. NPDES Task Group/Ad Hoc Consolidated Permit Group. By the end of April, EPA will promulgate a final consolidated permit program covering NPDES, RCRA, UIC, and some Clean Air Act programs. After promulgation of these regulations, EPA will recommence settlement discussions on the remaining and any new NPDES issues. In order to resolve these issues as part of a settlement of litigation, CMA will procedurally have to refile challenges to the NPDES regulations. In addition, we will have to evaluate whether other aspects of the consolidated permit programs are worthy of judicial challenge. CMA will seek guidance from the various task groups on what if any issues in the final consolidated permit regulations are of concern and should be considered as candidates for court review. In a related matter, the NPDES task group has reviewed a "draft" of an EPA guidance document on Best Management Practices regulatory program and is preparing significant legal and technical comments. When this BMP guidance document is finalized, the task group will decide whether this issue should be resurfaced as part of any NPDES litigation and/or settlement discussions.

19. Clean Water Act Policy Task Group. The task group has identified and prioritized an initial list of twenty issues as potential candidates for revision of the Clean Water Act. Three number one priority issues have been identified and draft position papers have been prepared for CMA use in the event an opportunity develops to seek appropriate amendments. The three issues of prime concern are: (1) Section 509 judicial challenge jurisdiction issues, (2) Section 308 confidentiality issues, and (3) water quality criteria/standards issues. The task group will act as a liaison group with the other water task groups in developing position papers on the other issues. A small CMA delegation informally met with representatives of EPA to see if any material grounds for joint submission of amendments to the Clean Water Act might exist. At the end of meeting it was clear that, at this time, CMA and EPA's views were far apart on most issues.

20. Clean Air Act Revisions Task Group. The task group continues to work closely with the national commission on air quality to assure the chemical industry's positions are accurately reflected in their various studies. In addition, the task group is working on position papers and strategies on seeking technical amendments to subtitle C (PSD) of the Clean Air Act. The task group will be developing various positions on various House bills that recently have been submitted and stratigies for a more thorough reconsideration of the Clean Air Act during the 1981 session.

21. RCRA Amendments Task Group. Recent "technical" amendments to RCRA, included as part of the RCRA reauthorization bill, is still "stalled" in a Senate - House Conference Committee. One key amendment would authorize EPA granting interim status to facilities in existence on April 30, 1980 (Senate bill) or October 1980 (House bill) that notify EPA as requiredly Section 3010 and has applied for a permit. The statute now excludes new facilities, opened after October 21, 1976, from being granted interim status. Since it is illegal to operate a subtitle C facility without a final Section 3005 permit or have interim status for said facility, many newer sites will have to be closed after the implementing regulations are issued, until the corrective amendments included in the RCRA Reauthorization legislations are enacted.

22. Risk Retention Act. On March 10, the House of Representatives endorsed the Risk Retention Act (H.R. 1789) by a margin of 332-17. Although the insurance industry is lobbying the Senate Commerce Committee intensively, events are moving quickly -- and favorably -- on Senate consideration of the Risk Retention Act. On April 22, by-passing the usual policy of first considering a bill at subcommittee level, the full Senate Commerce Committee heard testimony on S. 1789. It is anticipated that the Risk Retention Act will become law this legislative session.

23. Tort Law Reform. Having been successful in the passage of the Risk Retention Act, Congressman Preyer and the House Subcommittee on Consumer Protection and Finance will once again address the issue of tort law reform. Hearings have been set for April 23, 29 and 30 to discuss newly proposed legislation. One bill is H.R. 7000, the Uniform Product Liability Act. Introduced by Congressman Preyer, this bill is modeled after the Department of Commerce's bill and calls for individual state action in adopting revisions to existing tort law practices. Another bill is H.R. 5626, the National Product Liability Act. This bill was introduced by Congressman Sensenbrenner and calls for the federalization of the tort law system. Witnesses expected to testify on both bills are Victor Schwartz from the Department of Commerce, Professor Henderson from the National Product Liability Counsel, the National Association of Manufacturers and several small manufacturing groups. Although CMA has no plans to testify at this time, we do not support any legislation that seeks to federalize the tort law system.

24. TSCA Reauthorization Hearings. On April 22, 1980, CMA testified before the House Subcommittee On Consumer Protection and Finance on reauthorization of TSCA. Testifying were Richard Fleming (Air Products), Dr. Curtis Smith (Shell Chemical Company) and Eugene Berman, Esq. (E.I. duPont de Nemours).

The thrust of our testimony was that it is simply too early to consider substantive amendments to TSCA. We observed, however, that provisions in the Act relating to innovation, international harmonization and confidentiality may require particular Congressional attention in the future.

Copies of the testimony and a supplementary letter responding to questions posed by Subcommittee Chairman Schever (D-NY) will be available at the General Counsel's Group meeting.

25. NRDC v. Costle. On April 1, 1980, CMA filed its comments on EPA's plans for implementing the February 4, 1980 opinion of the Court in NRDC v. Costle, 79 Civ. 2411 (S.D.N.Y., February 4, 1980). Our major points were:

(1) EPA's proposed plan for responding to chemical testing recommendations of the Interagency Testing Committee (ITC) is overly optimistic in light of the complexity of the Agency's tasks.

(2) It is a sufficient "initiation of a proceeding" in response to an ITC recommendation if EPA issues an advanced notice of proposed rulemaking (ANPR) as EPA asserts. Equally sufficient would be publication of a proposed rule under either Section 8(a) or 8(d) of the Act.

(3) The Court should allow the Agency maximum flexibility in implementing Section 4(e) of the Act.

26. Premanufacture Notification Matters. (A) CMA staff and representatives are scheduled to meet with EPA's economic consultants on the PMN program, ICF Incorporated of Washington, D.C., on Thursday, May 1, 1980. Copies of ICF's proposed industry questionnaire and its scope of work will be distributed at the General Counsel's Group meeting together with a supplementary letter responding to the Subcommittee questions.

(B) EPA has issued so-called 10 day notices to certain industry members in connection with the Agency's planned submission of all PMN's to Senator Muskie. That notice, however, does not contain details of the procedures agreed upon by the Agency and the Subcommittee regarding confidentiality protections for PMN data. Previously, the Agency had informed the Subcommittee and industry that the notices would contain such information. A follow-up report on this matter will be presented at the General Counsel's Group meeting.

26. CMA Section 8(a) Petition; EPA Response. On March 17, 1980, CMA petitioned EPA requesting that the Agency supplement and appropriately organize its administrative record in support of the Agency's proposed Section 8(a) rule calling for submission of exposure and related information on approximately 2300 chemicals and approximately eight categories. CMA also asked for an extension of the comment period on the proposed rule of 60 days from the date the Agency cured its administrative record.

CMA asserted that crucial data was missing from the record as to the Agency's rationale for seeking data on certain chemicals, and that record information was not collected at one location, thus further precluding meaningful comment within the time allowed by the Agency. CMA based its petition on two statutory provisions: Section 8(a) of TSCA which provides that "[t]o the extent feasible, the Administrator shall not require [in a Section 8(a) rule] any reporting which is unnecessary or duplicative; the Administrative Procedure Act, 5 U.S.C. §533 and decided cases by which the public in order to have an opportunity to meaningfully comment on an administrative rule must be told the details of the rationale for an Agency's proposal.

On April 22, 1980, EPA signed a response denying CMA's petition, including the request for an extension of time. Nevertheless, the Agency includes in its response information which in effect provides some clarification of the Agency's rationale for the rule. The Agency's response is scheduled to appear in the April 28, 1980 Federal Register. Copies will be available at the General Counsel's Group meeting.

The only significant legal argument raised by EPA was that "the Agency's evidentiary burden to support an investigatory rule is lower than that required to support substantive rulemaking." It offered no citations in support of its position. The balance of its response was a defense of such information as was in the record and supplementary clarifications.

CMA staff, counsel and committees are reviewing the Agency's response.

27. CMA's Supplemental Comments on EPA's Proposed Section 8(d) Rule For Lists and Copies of Health and Safety Studies. CMA's supplemental comments on the above mentioned proposal were submitted on April 14, 1980. The thrust of the comments was:

(a) to renew CMA's position that the Agency has failed to provide an adequate rationale regarding the selection of chemicals targeted by the rule;

(b) to provide information of the economic impact of the Agency's proposal;

(c) to offer alternative approaches and definitions.

28. CMA Named As Defendants In Five Lawsuits. CMA has been named as a defendant in five lawsuits. The following four suits, in which we have retained the firm of Shanley and Fisher of Newark, New Jersey, are similar to the complaint in our recent settlement in Arcell v. Ashland, Docket No. AM-324-75, in the Superior Court of New Jersey.

(1) Anderson et al. v. Allied Chemical Corp., Docket No. L-32988-79 (Super. Ct. of N.J., Hudson Div., filed March 11, 1980).

(2) Azzarello et al. v. Allied Chemical Corp., Docket No. L-34337-79 (Super. Ct. of N.J., Hudson Div., filed March 12, 1980).

(3) Hammond et al. v. Benjamin Moore & Co., et al, Docket No. L-33440-79 (Super. Ct. of N.J., Hudson Div., filed March 11, 1980).

(4) Richard Joyce et al. v. Benjamin Moore & Co., Docket No. L-39824-79, (Super. Ct. of N.J., Hudson Div., filed April 3, 1980).

The fifth suit, Paul Waldrop v. Vistron Corporation, Docket No. 224,985 (filed D.C. La., East Baton Rouge), for which we are in the process of obtaining Liskow and Lewis of New Orleans, involves a plaintiff who suffers from cancer of the colon, allegedly from acrylonitrile. The plaintiff alleges that in the early 1960's CMA covered up information on the carcinogenic effects of vinyl chloride. He alleges that had the Association not done so, the carcinogenic effects of acrylonitrile would have been discovered earlier because of the similarities between the two chemicals.

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