

Date 21 November 1977

INTEROFFICE  
MEMORANDUM

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LAW DEPT.

Subject OSHA Proposal on Carcinogens

To R. Fleming

From J. T. Barr

(Location, Organization, or Department)

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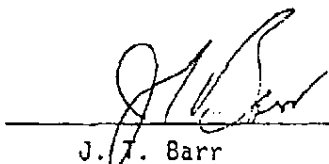
cc: A. R. Adams  
C. Heiberger  
J. McEvoy  
R. Schenck

At your request, I have reviewed the SOGMA and MCA statements before NACOSH on the OSHA carcinogen proposal. With only minor exceptions, these statements apply to the version published in the Oct. 4, 1977 Federal Register.

I have summarized the major objections to this proposal in the attachment under the headings Scientific, Administrative, and Legal. Ray Schenck will provide more detail on the legal aspects. These hit only the highlights, and do not go into the details of the mechanics of the proposal.

The petition by EDF to EPA is strongly derivative of this proposal, and any defense prepared in this case should be useful there also.

JTB:djm

  
J. T. Barr

SCIENTIFIC

assumes no no=effect level, legislates assumptions.

assumes exact correlation between man and animals, as well as bacteria, isolated cells, etc.

does not differentiate between tumors.

attempts a very simplistic definition of carcinogen.

provides no criteria for evaluation of "information".

ignores time, extent of exposure, dose response.

ignores physical properties of regulated materials.

would stifle future research.

zero is undefinable.

does not admit to possibility of scientific advances.

no cost benefit analysis.

requires action based on insignificant results.

**AP00048299**

ADMINISTRATIVE

large number of materials for immediate action, 6 months.

no policy for existing carcinogens.

mandates future ETS, etc. regardless of need.

substitutes the capability of OSHA to assess. *BLANKET RULE*

would result in ban on smoking, cooking, burning, stop coke and steel industry, PVC, research, construction, welding, raising grain, internal combustion.

no statement as to mixtures, impurities.

any "information" requires promulgation.

*assess credibility of data.*

*ECONOMIC IMPACT*

LEGAL

abrogates administrative Procedures Act, excludes facts, procedures  
insufficient time to proceed.

inadequate definitions (feasible, satisfactory, etc.)

arbitrary and capricious because of faulty basis, inadequacies.

double jeopardy - TOSCA, EPA, OSHA

failure to meet Energy Act, Ex. Order 11821

ignored NACOSH recommendations.

power to ban  
zero

**AP00048301**

The MCA intercommittee task group addressing this matter is working closely with the Scientific Committee of the Council and has accepted the assignment of drafting that portion of the Council testimony dealing with risk/benefit. In addition, the task group is developing a proposed statement for MCA to present at the hearing.

As part of the overall effort, the MCA library has established a document center for the references cited in the OSHA proposals and others directly related. These voluminous materials are available for review at the library by member company representatives.

While these activities are expected to lead to timely industry participation in the proceedings on OSHA's cancer proposal, alone they are not enough. I urge every member company to submit views directly to OSHA on this vital matter and to participate in the April hearings.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. J. Driver". The signature is fluid and cursive, with a large, sweeping initial "W".

W. J. Driver

Enclosures

**AP00048302**