

CMA opposes government mandated committees and specific listing of duties, make-up and selection of members. CMA supports the requirement that employers create the opportunity for employees to participate in workplace safety and health program activities. However, we believe employers should have the flexibility to design and implement participation approaches appropriate to their specific workplace. This position is consistent with both the current CMA policy on employee participation (attached) and the recently approved Responsible Care® Employee Health and Safety Code of Management Practices.

During the last several years, the chemical industry has established a successful track record of employee participation efforts. It is important that we educate Congress on what our industry is already doing so we can turn its attention to encouraging and protecting the rights of employers and employees in dealing with workplace health and safety issues, rather than attempting to mandate cooperation.

In preparing your responses on the enclosed form, please describe the employee participation practices that are specific to your facility. We are interested in opportunities provided at all levels of worksite organization in the areas of safety and health.

Where you use voluntary joint committees, we would be interested in information about their make-up, how employees are selected, and what authority employees are provided. We also are particularly interested in information about participation opportunities other than committees in which you involve your employees, e.g. writing procedures, leading meetings, workgroups or special assignments, reviewing programs, conducting inspections, or assisting in detailing reports. We would like to understand how these activities are organized, how they function, how you engage employee participation, and how the activities are supported. In addition, we would also be interested if you have a special experience that may shed light on the lack of success in one approach versus another you have taken and why the one approach was not as effective as the other.

The information obtained from this exercise may be qualitatively summarized and used to enhance CMA's advocacy to OSH Act reform. The information may be included in documents being prepared such as educational and background papers to be provided to congressional staff, coalition members, and the administration. It may also be incorporated into written or verbal testimony and other formal communications. Company identity will be withheld. However, if an individual program example is presented that may be of unique or exceptional value to our advocacy efforts, permission to use the company name would be sought through the contact person listed on the response form prior to disclosure.

January 31, 1992
Page 3

Your response is requested by Wednesday, February 19, 1992.
Thank you in advance for your prompt assistance in this important
legislative advocacy effort. If you have any questions, please call me
at 202/887-1384.

Sincerely,

Karen W. Creedon

Karen W. Creedon
Manager
Health Programs

Enclosures

cc: OSHA Reform Matrix Team
M. Mullins

***** EMPLOYEE PARTICIPATION RESPONSE FORM *****

PLEASE RETURN FORM BY FEBRUARY 19, 1992 TO:

FAX: 202/887-1237

Chemical Manufacturers Association
2501 M Street, N.W.
Washington, D.C. 20037
Attn: Karen W. Creedon

Responder Name:

**Company/
Facility Name:**

Address:

Phone:

This is a Union _____ Non-union _____ facility.

These are the health and safety employee participation opportunities provided at our worksite, how they are organized and function, means by which we encourage our employees to get involved, and how we support these activities:

(You may attach a separate page or continue on the reverse side of this response form.)

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**CHEMICAL MANUFACTURERS ASSOCIATION
POLICY ON OCCUPATIONAL SAFETY AND HEALTH (OSH) ACT REFORM**

BACKGROUND

Legislation was introduced earlier this year to attempt the first major changes to the Occupational Safety and Health (OSH) Act since its creation in 1970. The proposed legislation (called the Comprehensive Occupational Safety and Health Reform Act), as introduced, would bring about substantial changes in the law and in the agency that administers it. The legislation as introduced is broad in scope and goes beyond traditional questions of health and safety, addressing numerous labor law reform issues as well. In CMA's view, major portions of the pending bills would not be an improvement over current law and, most important, would do little to raise the level of safety and health protection in American workplaces.

Since CMA's last comprehensive review of the Occupational Safety and Health Administration (OSHA) prepared during the transition to the Bush Administration, CMA has maintained there is no need for a massive overhaul of the OSH Act. In the more than 20 years the law has been in force, it has proved to be effective and flexible in addressing workplace safety and health issues. At the same time the law has become more understood and its goals held in high regard.

However, CMA has also maintained that OSHA can be improved -- and that improvements could be accomplished either administratively or by routine regulatory procedures. In recent years, there have been numerous instances when OSHA has improved its performance using both these methods, including development of voluntary programs; enhancement of state training and consultation initiatives; and issuance of generic, performance-based regulations such as the Hazard Communication Standard.

CMA is committed to continually improving the safety and health of all chemical industry employees, contractors and visitors in the workplace, as evidenced by our Responsible Care® initiative and its codes of management practices. Furthermore, the Association and its members are committed to working with the Occupational Safety and Health Administration to accomplish this goal. Although agency performance has improved in recent years, CMA believes there is room for further improvement. In addition, public perception of the state of workplace health and safety is supportive of changes in the law, presenting the opportunity for CMA to be a part of a critical review of the OSH Act.

CMA POLICY

CMA believes the existing Occupational Safety and Health (OSH) Act of 1970 has contributed significantly to the health and safety of American workers. CMA also believes the law and the Occupational

Safety and Health Administration (OSHA) can be improved and strengthened resulting in better safety and health protection in the workplace.

CMA supports changes in the existing law that will improve health and safety. In addition, CMA believes that there are some improvements that can be made effectively through legislative action as well as others through administrative and regulatory initiatives.

CMA does not support the proposed Comprehensive Occupational Safety and Health Reform Act (COSHRA), H.R. 3160 and S. 1622, in their current form. The measures will not bring about further improvements in workplace health and safety protection. In addition, they address labor law issues unrelated to health and safety protection.

CMA believes there are a number of workplace health and safety issues that should be addressed on their merits, and that they should be examined carefully. In our view, this examination should be done in partnership with the Administration, Congress, organized labor and the rest of the business community. The mutual goal should be to promote real improvements in occupational safety and health for American workers. To that end, CMA will actively participate in deliberations with the goal of achieving legislative reform that truly promotes safety and health protection.

Detailed positions on individual issues embodied in the proposed COSHRA legislation are referenced in the attached Exhibit A. The basis for these individual positions are rooted in the proposed legislative policy and previously approved policies.

CMA
EC-1/13/92
BD-1/14/92

CHEMICAL MANUFACTURERS ASSOCIATION
EXHIBIT A

POSITIONS ON INDIVIDUAL ISSUES
CONTAINED IN H.R. 3160/S. 1622

1. **Issue:** Mandated written safety and health programs

Position: 1.1 Support inclusion of a written safety and health program with a non-mandatory list of elements.
1.2 Oppose mandated list of specific program elements.
2. **Issue:** Mandated joint labor management committees by legislation or regulation

Position: 2.1 Oppose mandated committees and specific list of duties, make-up, and selection of members.
2.2 Support the requirement that employers create the opportunity for employees to participate in workplace safety and health program activities but allow employers flexibility to design and implement methods appropriate to their specific workplace.
3. **Issue:** Mandated training of employees and annual training of committee representatives

Position: 3.1 Support health and safety training of employees.
3.2 Oppose mandating training specifics through legislation.
4. **Issue:** Employee Pay

Position: Do not oppose pay for time employees are trained or working on safety and health program activities as presently legislated and regulated.
5. **Issue:** Coverage

Position: 5.1 Oppose elimination of the proven standard of federal agency preemption contained in the existing law.
5.2 Support extension of coverage to governmental employees, but only if preemption is unchanged.
5.3 Oppose as unnecessary the provision addressing federal nuclear facilities.
6. **Issue:** General Duty Clause

Position: Oppose making a site owner responsible for contractor employees, and for safety and health conditions beyond the control of the site owner.

7. **Issue:** Standards setting process and public disclosure of all written or verbal communications regarding promulgation of standards.

Position: 7.1 Oppose legislation of a list of specific standards to be promulgated by OSHA as well as the specific timetables for completion.
7.2 Oppose the imposition of timetables and mechanisms for OSHA to respond to petitions from "interested persons" regarding OSHA standards; the present provisions of the Act are adequate.
7.3 Support OSHA's authority and responsibility under the current Act to establish its own priorities and promulgate occupational safety and health standards as they determine the need.
7.4 Oppose change in public disclosure of communications by OSHA as existing law is adequate.
7.5 Oppose re-definition of Occupational Safety and Health Standard that eliminates the need for cost benefit analysis.

8. **Issue:** Recording of work-related illnesses

Position: Oppose recording of suspected work related illnesses.

9. **Issue:** Enforcement

Position: 9.1 Support the concept that the current OSH Act recognizes consideration of complaints to OSHA from any source.
9.2 Support Agency establishing its own priorities in addressing complaints.
9.3 Oppose redefinition of serious incident requiring OSHA inspection.

10. **Issue:** Abatement

Position: 10.1 Oppose requirement to abate alleged hazard citation while under legal challenge by the employer.
10.2 Do not oppose requirement that the employer verify abatement of hazards that are not contested; OSHA has existing authority to require such an employer response.

11. **Issue:** Employee participation in settlement process

Position: 11.1 Oppose the authorization of employees and employee representatives to file contest of citation for more than reasonableness of the abatement period.
11.2 Oppose authorization of employee representatives to participate as parties to hearings and other proceedings which includes settlement discussions between employer and Agency.

12. Issue: Imminent Danger and Work Refusal

Position: Oppose any change in definition of imminent danger from conditions that could be expected to cause death or serious physical harm; support maintaining current procedure requiring OSHA to seek temporary restraining order to either shut down or remove employees from work area.

13. Issue: Penalties

Position: 13.1 Oppose changes to the penalty structure including the addition of criminal penalties.
13.2 Oppose personalizing fines; allow company assets to support individual employee.

14. Issue: Whistleblowing

Position: 14.1 The existing Act provides for protection of an employee from discrimination based on complaints or testimony given relative to safety and health matters in the workplace; oppose any broadening of these provisions.
14.2 Oppose further definition of conditions that will allow employees to refuse to perform hazardous work without fear of reprisals; employees already have the right to refuse hazardous work under court decisions and the current Act.

15. Issue: NIOSH

Position: 15.1 Support maintenance of NIOSH in CDC.
15.2 Oppose giving NIOSH authority to force OSHA to justify nonacceptance of regulatory recommendations.
15.3 Oppose mandating that NIOSH contractors or designees have authorization to inspect facilities and question employees; oppose authorizing NIOSH to investigate accidents.
15.4 Oppose NIOSH communication of increased risk of disease directly to employees.
Support employee notification of increased risk by employer under jurisdiction of OSHA Hazard Communication.
Support employer determination of medical surveillance needs.
Oppose mandated generic medical removal provisions.

16. Issue: State Plans

Position: Do not oppose increased oversight of state plans by federal OSHA.

17. Issue: Victims' Rights

Position: 17.1 Do not oppose communication with victims and
their families

17.2 Oppose mandatory victim and victim family
participation in OSHA decisions, proceedings and
settlement negotiations.

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CHEMICAL MANUFACTURERS ASSOCIATION
EMPLOYEE PARTICIPATION AND THE RIGHT-TO-ACT

BACKGROUND

Employee participation, sometimes referred to as the "right-to-act," deals with employee participation in workplace health and safety issues. Historically, employee "rights" in the workplace have been provided by state and federal statutes, including the Occupational Safety and Health Act. CMA supports efforts that underscore recognition and support of employee contributions to health and safety. However, CMA is concerned that some recent efforts to expand "rights" may actually be detrimental to fostering a cooperative approach.

Through our regulatory advocacy and Responsible Care® initiative, CMA demonstrates its belief that voluntary employee participation in health and safety activities is often essential to successful results. Voluntary employee participation avoids adversarial regulatory or legislative efforts that could create barriers to the goal of enlisting enlightened cooperation from all employees. Such barriers include: providing management and/or enforcement authority to individuals without responsibility; interfering with the contractual separation of labor-management rights; and imposing a competitive disadvantage on the employer.

Employee empowerment, however, is at the top of organized labor's agenda. Proponents are advocating a variety of views including: mandated labor-management committees; deputized employees as enforcement officers; expanded authority to shut down plant operations; employee agreement on new chemical processes and technology; employee participation in OSHA citation settlement negotiations; and direct supervision of health and safety and environmental personnel by persons other than company management.

CMA's policy on employee participation will be used in addressing federal and state legislation and regulation, international agreements and guidelines (as in the International Labor Organization), and as the foundation for formal comments, written and oral testimony, and other advocacy activities.

CMA POLICY ON EMPLOYEE PARTICIPATION

A cooperative and mutually supportive relationship between employees and employers is fundamental to ensuring safety, quality, and productivity in the workplace. This cooperative relationship stems from a recognition of mutual interdependence. The best way to fulfill these requirements is for management to provide a structure and environment for each employee to participate voluntarily in procedures and practices to ensure, to the fullest extent possible, the prevention of accidents and the safe operation of facilities.

CMA members support actively stimulating employee participation in safety and health management. In particular, employees should be encouraged by management to provide input to:

- o Identifying and communicating hazards;
- o Developing safe operating procedures;
- o Developing training procedures and programs;
- o Investigating accidents;
- o Participating in workplace health and safety program activities and committees; and,
- o Communicating health and safety issues to the community.

Mandating specific employee/management relationships through legislation or regulation inhibits the ability to operate facilities safely and productively. Mandating these relationships creates an atmosphere that disrupts both the cooperative nature of these relationships and the flexibility and authority that make them effective. Therefore, CMA does not support legislative or regulatory proposals that mandate enforcement authority to employees or interfere with the relationship between employees and management.

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