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these written comments was September 15, 1977.

The closing date for the submission of these written comments has been extended to September 30, 1977. All other information contained in the Commission's Notice remains the same.

Issued: September 14, 1977.

By the Commission.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc.77-27208 Filed 9-15-77;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1910]

[Docket No. H-004]

EXPOSURE TO LEAD

Proposed Standard; Additional Comment Period and Informal Public Hearing

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of additional comment period and scheduling of informal public hearing.

SUMMARY: This notice establishes an additional comment period for the submission of written data, views, and arguments solely on the issue of appropriate protections for workers transferred or removed from lead exposure under the proposed lead standard's medical surveillance provisions. The notice also schedules an informal public hearing to provide an opportunity to submit oral testimony on this issue.

DATES: Comments and Notices of Appearance concerning the proposed rule must be postmarked on or before October 17, 1977; all materials which will be introduced into the hearing record must be received by October 25, 1977; an informal hearing is scheduled to begin November 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. James Foster, Office of Public Affairs, Occupational Safety and Health Administration, Third Street and Constitution Avenue N.W., Room N-3641, Washington, D.C. 20210 (Tel. No. 202-523-8151).

SUPPLEMENTARY INFORMATION: On October 3, 1975, notice of a proposed standard for occupational exposure to lead was published by the Occupational Safety and Health Administration (OSHA) in the FEDERAL REGISTER (40 FR 45934), pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911. As a result of the proposed standard's invitation to interested parties to submit written comments, a considerable amount of relevant information and data was received. In addition, informal public hearings were held on the proposal in Washington, D.C., from March 15, 1977, through April 14, 1977, in St. Louis, Mo., from April 26 through April 28, 1977, and in San Francisco, Calif., from May 3 through May 6, 1977. Additional evidence and post-hearing briefs were submitted by participants in the hearings. Consequently, OSHA has collected a substantial body of information on issues it had previously identified as well as other issues involved in the proceedings.

One of the issues involved in this proceeding is whether, and to what extent, the standard should require employers to protect employees who submit to medical surveillance and as a result are removed from lead exposures in order to preserve the employees' health. This issue is inherent in the proposed standard's medical surveillance provisions and has been the subject of a considerable amount of testimony and discussion in the hearings and post-hearing submissions (see e.g. statement of OSHA representative Grover Wrenn). In order to provide the public with a clean understanding of OSHA's intended actions and supporting rationales, OSHA has decided to publish this notice discussing the problem and alternative courses of actions in detail. Written comments and the submission of evidence on this issue are invited. In addition, an informal public hearing will be held to receive testimony on this limited issue. The final lead standard will be based on the total record developed including the public comments, data and testimony received on the issue of medical transfer and removal protections.

INTRODUCTION

It is clear that the Act is intended to assure, to the extent possible, that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his or her work experience. Consistent with this goal, the Secretary has been given broad-ranging authority to promulgate comprehensive health and safety standards and other implementing regulations. With respect to health standards, the Secretary is empowered to require employers to determine the extent of employee exposures; utilize engineering controls and suitable protective equipment to control employee exposures; prescribe medical examinations and other diagnostic tests to effectively determine whether the employee has been adversely affected by his or her exposures, and inform employees about workplace hazards including the symptoms, treatment and precautions needed to protect themselves (see Sec. 6(b)(7)). This integrated approach to employee protection is the cornerstone of the Act. A successful preventative occupational health program cannot succeed unless all of these elements accomplish their intended purposes.

A successful medical surveillance program is essential because it is the only method for the early detection of occupational disease. If occupational illnesses are diagnosed only after the employee exhibits overt symptoms, diminished health or life expectancy will frequently result. In addition, timely medical surveillance provides an opportunity to treat the occupational illness before it becomes irreversible. Continued exposures also increase the probability of material impairment to the employee's health. Early medical detection provides essential information for protective action to prevent these exposures. This is particularly important for lead exposures since the subtle effects of overexposure can be detected by current medical practice through the use of diagnostic tests. Positive results on these medical tests appear long before overt symptoms appear. As a result, an effective medical surveillance program can protect employees from further impairment of their health. Moreover, past effects may be reversed.

Recently, a great deal of attention has been focused upon the effectiveness of OSHA's medical surveillance provisions because employees are reluctant to participate in medical surveillance programs such as the one contained in the proposed lead standard. There is significant evidence that employees are unwilling to participate in medical screening and examinations programs because they fear that the discovery of an abnormal medical condition resulting from their occupational exposure may lead to the loss of employment or other adverse employment effects.

In the final standard for employee exposure to coke oven emissions, OSHA indicated that it was concerned about the plight of workers who must confront the dilemma of either taking the medical examination that could ultimately result in loss of employment, or alternatively refusing to take the medical examination and thus precluding the protections of early medical detection (41 FR 46780). More evidence on this very difficult issue was presented during the lead proceeding. Several employees indicated that they would be extremely reluctant to submit to medical examinations under these circumstances. In situations where blood lead levels determine removal from a job, employees testified that they had sought the use of extremely toxic drugs from nonmedical sources in order to reduce their blood lead levels. In addition, several expert witnesses testified that a medical surveillance program could not be successful under these circumstances (see e.g. statement of Andrew M. Kricko, M.P.H.). This problem has been recognized, in part, by some employers who currently provide protection to employees who are removed from lead exposure for medical reasons.

OSHA is seeking additional public input regarding a provision in the final lead standard which would protect employee participation in the lead medical surveillance program. This provision would extend employment protection to employees who participate in the medical surveillance program and are removed or transferred from their job because of occupational lead illness. The following

discussion represents OSHA's current views on protected medical surveillance.

Protecting Employee Participation in Medical Surveillance

It appears that there are essentially three alternative approaches to overcoming the employee's reluctance to submit to the medical surveillance program. The alternatives are: (1) Mandatory medical examinations; (2) medical removal protection for employees who are removed from their jobs because further exposure to lead could result in material impairment of health; or (3) prohibition against removal of employees.

Mandatory medical surveillance would, in effect, require employers to discipline and ultimately discharge employees who refuse to submit to medical surveillance. Employers who fail to do so would be subject to citation and would have no choice but to discharge the employee. This approach intensifies the employee's dilemma in submitting to medical surveillance. Either the employee submits to medical examination and risks discharge for occupational lead illness; or, the employee refuses the medical examination and is automatically discharged. This is particularly difficult when the affected employee has been employed in the lead industry for a relatively long time and would find it extremely difficult to obtain a job in a different industry. As a result, the affected employees and their families would bear the primary financial responsibility for the preventive health measures mandated by the Act to control occupational disease. The result is inconsistent with the purposes of the Act. The Act assigns employers the primary responsibility to control workplace hazards and protect employees from occupational disease. This responsibility necessarily includes the costs to protect employees from occupational disease which will occur as a result of continued exposure. Moreover, a general requirement for mandatory medical examinations could inappropriately interfere with the employee's privacy.

The third alternative is to prohibit forced removal of employees from their jobs when medical surveillance indicates an excessive blood lead level. Obviously, this alternative would eliminate the employees' reluctance to participate in medical surveillance based on the fear of removal. However, this alternative would merely provide employees with information on their current medical status without any protection from working conditions which materially impair their health. Clearly, section 6(b)(7) of the Act anticipated that medical surveillance would be an effective component in a preventive health program directed at protecting employees from material impairment of their health.

The central purpose of the Act is to prevent illness and injury, not simply to identify it. Furthermore, prevention cannot be achieved when employees must choose between continued exposure to a toxic substance with protected illness and the employees' means for supporting their families. This is intensified for the employees who are at the greatest risk because of long-term exposure to lead.

Based upon the foregoing, OSHA's present view is that the medical surveillance provision should afford significant employee protection from serious health hazards without a consequential loss for the exposed worker.

Exposure Limitations, Transfers and Removal

The medical surveillance provision of the proposed standard contemplates that employers will limit the exposure of employees who are at increased risk of material impairment of health. Improved engineering controls, work practices, hygiene practices, respirators, and administrative controls may be utilized to reduce employee exposures so that the employee is no longer at increased risk of material impairment of his or her health.

OSHA's primary goal is to assure that no employee suffers material impairment of health or functional capacity. The Agency does not favor transfer or removal as an alternative to controlling the level of a toxic substance in the workplace environment. Moreover, once full compliance with the permissible exposure level is achieved by engineering controls and work practices, the need to transfer or remove employees from exposure to lead should arise infrequently with only short term transfer or removal necessary.

However, it appears that some limitations on exposure such as transfer or removal from occupational exposure may, on occassion, be necessary to effectively protect employees from material impairment of health. For example, if an employee's blood lead level were only slightly elevated above acceptable levels, transfer ("removal") to a job where the lead exposures were considerably lower might be appropriate preventive action. Transfer to another job where lead exposures are considerably lower is a form of administrative control that would comply with the proposed standard under certain circumstances.

Of course, this transfer must be based upon a physician's written opinion. On the other hand, if this same employee's blood lead levels were substantially elevated above acceptable levels, removal from any occupational exposure to lead may be necessary in order to significantly reduce the blood lead level.

The present practice of many employers is to remove employees from all occupational exposure to lead when blood lead reaches a specific level. These employees are required to submit to periodic blood tests. However, their employers do not provide appropriate protection for employees who are transferred or removed. Therefore, when blood lead levels indicate that employee's exposure to lead has not been effectively controlled, employers tend to remove the employee from exposure completely because the employer incurs no substantial cost by taking this course of action. Thus, the exposed employee is penalized for participating in a medical surveillance program. (In fact, some employers have refused to certify that lead poisoning has resulted in layoffs so that their worker compensation premiums would not be affected.)

However, if the final lead standard contains a provision which protects employees who are removed, the employers' attention will be focused primarily upon preventative health action and only secondarily upon the economic implications. On the other hand, OSHA is concerned that respirators will be inappropriately issued when blood lead levels exceed acceptable levels in order to avoid the costs of transfer and removal. OSHA requests information on the conditions, if any, when respirators may be used to limit employee exposure.

Medical Removal Protections

The medical surveillance provisions of the lead standard should include a requirement for medical removal protection. This requirement would maintain the rate of pay, seniority and other rights of an employee for the time period, or a portion thereof, that the employee is transferred or removed from his or her job as a result of an increased health risk from exposure to lead. After a follow-up medical examination and opinion, the following options would be available with no loss of earnings or rights: Return to the original job, assignment to a different job (transfer), or continuation of the transfer or removal.

The following is a discussion of several issues regarding the operation of medical transfer and removal protections. This discussion is not intended to be exhaustive. Rather, it presents the Agency's current position and is intended to serve as a focal point for further public comment, data and views.

A. Medical Basis for Mandatory Removal and Other Limitations

The operation of the medical surveillance program raises several issues if the medical surveillance section of the lead standard is expanded to include transfer, removal and other limitations. Several employees testified that they had serious doubts about the objectivity or reliability of medical opinions rendered by physicians currently retained by their employers. One way to ensure greater accuracy in medical diagnosis and to improve employee confidence in the medical examinations would be a provision that would allow the employee to challenge the finding made by the first physician. This provision could allow the affected employee to select a second physician to render a medical opinion. This might occur where the first physician's opinion is that the employee is physically fit to work at the same job but the employee contiues to experience the symptoms of lead poisoning. Conversely, the employee may be healthy and want to continue work, but the first physician concludes the em-

ployee is not fit to do so. At this stage, peer review by a second physician may result in the first physician reconsidering the original opinion after comparing it with the findings of the second physician. If the second physician's opinion differs irreconcilably from the first, then a third impartial physician would be chosen by the first two physicians, and the third opinion would serve as the basis for the employer's determination concerning the particular employee's continued exposure to lead.

OSHA requests information on alternature physician selection procedures. These medical services would be at the employer's expense. This system of medical examination and review is analogous to the system required in the permanent standard on diving operations (42 FR 37650, July 22, 1977).

If exposure limitations including transfer and removal are based exclusively on blood lead levels in excess of an established level, then the necessity of the second and third medical examinations becomes an issue. Since an excessive blood lead level is an objective criterion, it may be unnecessary to authorize a second and perhaps third medical examination. However, the issue remains as to whether multiple opinions are necessary on the appropriateness of a limitation recommended by the first physician.

b. CRITERIA FOR LIMITATIONS ON EXPOSURE

Blood lead levels may be utilized either as the exclusive biological indicator for a medical opinion or they could be supplemented by additional biological indicators. The exclusive use of blood lead levels simplifies the medical surveillance process and focuses the physician's attention on appropriate preventive limitations. By supplementing blood lead levels with other biological indicators, the employer may place limitations on employee exposure based on medical opinion even though the blood lead levels are within the acceptable level. Data and views on these alternatives are sought by the Agency.

c. TERMS OF THE PROVISION ON MEDICAL REMOVAL PROTECTION

At the hearings on the proposal, employee and employer groups noted that certain employers currently protect the rate of pay and related rights of employees for a period of time after removal. Ninety days was mentioned as one time period for earnings protection ("rate retention"). However, there was also testimony that in some cases employees were not capable of returning to their original positions within that time. Thus, an issue is raised as to the appropriate duration of removal protection. The period of time should reflect the following considerations: The time necessary for employee health and/or biological indicators to normalize, the nature and extent of physiological damage from lead poisoning, and the number of removed employees who would be covered by this provision. Earnings and seniority protection could last until the individual employee is able to safely return to work. However, if the employee is unable to return to the job due to occupational exposure to lead, then a certain maximum time period could be established.

The record indicates that in some existing programs the period of earnings and seniority protection is not co-extensive with the actual transfer or removal period. For example, an employee removed from exposure for four months may receive earnings and seniority protection for only three months. OSHA requests information and views on the duration of transfer and removal protection.

Testimony at the hearings revealed employees occupationally poisoned by lead receive Workers Compensation payments in some States, such as Missouri. These payments do not equal the salaries of the affected workers nor are they necessarily co-extensive with the time period that the employee has been removed from work. Moreover, there is typically a substantial delay before an employee receives the first payment under Workers Compensation. Therefore, the Agency must consider the relation between awards to the removed employee under Workers' Compensation and payments under the medical surveillance provision.

Comments submitted for the record by employers suggested that medical removal protection should be limited to the transfer of employees to other available positions. This suggestion does not speak to the need to remove employees completely from exposure, e.g., their home or hospital. Moreover, employee protection becomes entirely dependent on the number of available jobs. If an employee should be removed for medical purposes, then job removal protection must be equally available to all removed employees.

Another issue involves the conditions which terminate medical transfer and removal protection. One alternative is to remove an employee for a definite period of time based on the medical recommendations. Medical examinations would be scheduled at various intervals within this time frame, and the removed employee would be returned to work when the employee's condition returned to normal. A related issue is the medical criteria for returning a removed employee to his or her original job. These criteria should insure so far as possible that the returned employee is not removed immediately after reassignment as a result of resumed lead exposure. This may require a reassignment criterion for the employee's blood lead level which is somewhat lower than the removal criterion. The provision might also condition the employee's return to exposure on assignment to a job with reduced lead exposures. Since the employer's decision to return an employee must be based on a medical opinion, a medical review procedure may be necessary to resolve disagreements on medical recommendations to return to the original job or the appropriateness of recommended limitations.

OSHA has already collected a substantial body of information on occupational exposure to lead. Therefore, the written responses to this notice and testimony at the public hearing shall be limited to those issues directly related to medical removal protection. Issues such as the blood lead level or levels which would trigger limitations on exposure have already been subjected to extensive public comment and testimony and are not appropriate for this comment period and hearing.

Comments and information are sought on any issues raised by the above discussion, the issues raised below and any other directly related issues:

1. Whether a provision for removal protection is necessary or appropriate.
2. What should be the appropriate scope of this provision?
3. What earning protecion programs are presently in use, and how do they operate?
4. What impact would this provision have on small businesses?
5. What impact would this provision have on collective bargaining?
6. Should employees be permitted to remain on their job despite the risk of material impairment of their health?
7. To what extent, if any, should respirators be permitted to reduce exposures of employees who are at increased risk of material impairment of their health?
8. Should a time limitation be placed on the duration of medical removal protections for a particular employee? If so, what should that time limit be?
9. Should the initial medical opinion be subjected to multiple medical opinions?
10. Should employee participation in the medical surveillance program be mandatory?
11. Should elevated blood lead levels be the exclusive medical criterion for recommending removal from the job, limitations on exposure, or return to the original job? If not, what supplementary medical criteria should be used?
12. To what extent do Workers Compensation laws cover occupational diseases related to lead exposure?
13. The economic impact of such a provision, including (a) Number of employees affected if this provision becomes operative at 20 μg Pb/100g of whole blood, 30 μg Pb, 40 μg Pb, 60 μg Pb, or 80 μg Pb; (b) Cost per employee of this provision for each triggering blood lead levels; (c) Cost impact on consumers, businesses, markets, or Federal, State, or local government; (d) Effect on productivity of wage earners, businesses (both small and large) or government; (e) Effect on competition; (f) Ability of specific industries to absorb costs of compliance; and (g) Cost impact on the employee, the employee's family, compensation and disability programs, the health care delivery system, governmental and societal institutions and other related cost savings.

PUBLIC PARTICIPATION

NOTICE OF HEARING

Interested persons are invited to submit written data, views and arguments with respect to medical removal protection. These comments must be postmarked on or before October 17, 1977, and submitted in quadruplicate to the Docket Officer, Docket H-004, Room S6212, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210. Written submissions must clearly identify the position taken with respect to the issue. The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions received will be made a part of the record for this proceeding.

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by this notice, including the economic impact, will be provided at an informal public hearing scheduled to begin at 9:30 a.m. on November 1, 1977, in the Auditorium, New Department of Labor Building, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210.

NOTICES OF INTENTION TO APPEAR

All persons desiring to participate at the hearing, must file in quadruplicate, a notice of intention to appear, postmarked on or before October 17, 1977, with Clarence Page, the OSHA Division of Consumer Affairs, Docket No. H-004, Room N-3635, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-8024. The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center—Docket Office (Room S6212), telephone 202-523-7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A detailed statement of the position that will be taken with respect to each issue addressed; and

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

FILING OF TESTIMONY AND EVIDENCE BEFORE HEARING

Any party requesting more than 15 minutes for presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of testimony, including any documentary evidence to be presented at the hearing, to Clarence Page, the OSHA Division of Consumer Affairs. This material must be received by October 25, 1977, and will be available for inspection and copying at the Technical Data Center—Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified.

Any party who has not substantially complied with this requirement may be limited to a 15 minute presentation, and may be requested to return for questioning at a later time.

CONDUCT OF HEARINGS

The hearing will commence at 9:30 a.m. on November 1, 1977, with resolution of any procedural maters relating to the proceeding. The hearing will be conducted in and expedited manner consistent with the full development of the record and rights of the parties.

The hearings will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing in accordance with 29 CFR Part 1911. Following the close of the hearing or of any post hearing comment period that might be provided, the Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The proposal will be reviewed in light of all oral and written submissions received as part of the record, and a standard will be issued based on the entire record in the lead proceeding.

(Sec. 6, Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; Secretary of Labor's Order No. 8-85 (41 FR 25059).)

Signed at Washington, D.C., this 13th day of September 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc.77-27041 Filed 9-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Parts 700, 710, 715, 716, 717, 720, 721, 722, 723, 725, 740, 795, 830]

SURFACE MINING RECLAMATION AND ENFORCEMENT PROVISIONS

Proposed Rules; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Corrections.

SUMMARY: This document corrects proposed rules that appeared on page 44920 of the FEDERAL REGISTER on September 7, 1977, FR Doc. 77-25928.

DATES: Comments must be received by October 7, 1977. Public hearings will be held starting at 1 p.m. on September 20, 1977, and continuing if necessary at 9 a.m. on September 21 and 22, 1977.

ADDRESSES: Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240. Public hearings will be held at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C.; Kiel Auditorium, 1416 Market Street, St. Louis, Mo.; Public Library Auditorium, 1357 Broadway, Denver Colo.; and Morris Harvey College, Riggleman Hall, 2900 McCorkle Avenue Charleston, W. Va.

FOR FURTHER INFORMATION CONTACT:

Paul Reeves, Office of Surface Mining Reclamation and Enforcement, 202-343-4237.

DRAFTING INFORMATION: The principal authors of these corrections are Michael Bradley, Office of Surface Mining Task Force, and Edward Clair, Office of the Solicitor, Department of the Interior.

Dated: September 13, 1977.

CARL C. CLOSE,
Acting Director, Office of Surface Mining Task Force.

The following corrections are made:

1. On page 44920, under SUMMARY line 6 "These regulations require" is corrected to read "The Act requires".

2. On page 44920, under SUPPLEMENTARY INFORMATION, line 10 "These regulations, especially dealing with" is corrected to read "The regulations, especially those dealing with".

3. On page 44922, the first full paragraph, line 8, "that its was necessary" is corrected to read, "that it was necesary".

4. On page 44922 § 715.20, line 13 strike the comma after "wildlife" and before "habitat".

5. On page 44922, § 716.3, line 9, "long-term" is corrected to read "long term".

6. On page 44923, DRAFTING INFORMATION, line 3, after "George Davis" insert ", Office of Surface Mining Task Force."

7. On page 44924, "DRAFTING REGULATION", is corrected to read "DRAFTING INFORMATION".

8. On page 44926, *Surface coal mining and reclamation*, is corrected in the second line by adding "*operations* means surface coal mining" immediately following "*reclamation*" and immediately before "operations".

9. On page 44926, § 700.13(d)(4), "The dates" is corrected to read "The date".

10. On page 44925, § 700.13(e), "Secretary of" is corrected to read "Secretary or".

11. On page 44927, § 710.5, *approximate original contour*, last line, "§ 715.7" is corrected to read "§ 715.17".

12. On page 44927, § 710.5, *Highwall*, first line, "face of an exposed" is corrected to read "face of exposed".

13. On page 44927, § 710.5, "*Roads means*" is corrected to read "*Roads* means".

14. On page 44928, "*Runnoff water*" is corrected to read "*Runoff water*".

15. On page 44928, "*Water table* means upper surface" is corrected to read "*Water table* means the upper surface".

16. On page 44929, § 710.12(c)(1), "not to exceed 1,000,000 tons" is corrected to read "not to exceed 100,000 tons".

17. On page 44929, PART 715, under Section heading 715.18 "Dams constructed of *refuse* material, general" is corrected to read "Dams constructed of refuse materials."