

REPORT OF THE PRESIDENT

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ASSOCIATION PROGRAM AND ISSUE REPORT

I. ADVOCACY OVERVIEW

A. Congress

Although new Republican leaders have been installed in the Senate, the basic makeup of the Congress has not changed significantly as a result of the the 1984 elections. Republicans retained control of the Senate by a 53-47 margin, after a net loss of two seats. In the House, Republicans gained 14 seats net, short of the 25 seats needed for restoration of effective control by the coalition of Republicans and conservative "boll weevil" Democrats.

The 99th Congress will see seven freshman Senators. Paul Simon (D-IL), Tom Harkin (D-IA), Mitch McConnell (R-KY), John Kerry (D-MA), Al Gore (D-TN), Phil Gramm (R-TX) and John J. Rockefeller (D-WV). The House will have 43 freshmen Congressmen.

In general, it is unlikely that Congress' commitment to strong environmental laws will change. Although the budget deficit and the tax laws are far and away the paramount concern on the Congressional agenda, the Committees and Subcommittees with jurisdiction over the environmental laws will begin the reauthorization process. The following environmental legislation important to the chemical industry will receive Congressional attention: Superfund, Public Compensation, Safe Drinking Water, Groundwater, Clean Water, Toxic Substances Control, and Clean Air Acts. Also, Congress will look at natural gas, transportation, trade and other issues of interest to the chemical industry. The overall makeup of the 99th Congress will not result in major changes in the Congressional debates over these issues.

Key committee assignments, some of which are still to be determined, must be examined for specific impact on our industry. For example, the Senate Environment and Public Works Committee lost two members: Howard Baker (R-TN) and Jennings Randolph (D-WV). Senator Lloyd Bentsen (D-TX) will become ranking minority member, which may signal a change in the Committee's style but not its philosophical commitment to strong environmental protection. If Senator Robert Stafford (R-VT), Chairman of the Environment Committee, has his way, the Committee will remain at 16 and the two vacancies will not be filled. Nonetheless, possible changes could occur on the Republican side of the Committee due to internal rules proposals, particularly Senator Pete Domenici (R-NM) and to a lesser

extent Senator David Durenberger (R-MN). Domenici has been a force for moderation on environmental issues while Durenberger is active in seeking Safe Drinking Water, Groundwater and TSCA amendments.

All members of the Senate Finance Committee will be returning. However, Senator Robert Dole (R-KS) has been elected the new majority leader for the Senate. This means Dole will give up the Chairmanship of the Finance Committee to Senator Robert Packwood (R-OR).

In the House, the Energy and Commerce Committee has three vacancies created by the departures of Democrats Richard Ottinger (NY-20) and Al Gore (TN-6) and Republican Tom Corcoran (IL-14). New members of this committee will not be announced for several more weeks. Furthermore, it is uncertain whether Republicans will gain an additional seat on the committee due to the higher percentage of the total membership of the House. The current ratio on the Energy and Commerce Committee is 27 Democrats to 15 Republicans.

In the House Public Works and Transportation Committee, there are six vacancies - all to be filled by Democrats. The committee lost Elliott Levitas (D-GA-4), Geraldine Ferraro (D-NY-9), Donald Albosta (D-MI-10), Katie Hall (D-IN-1), James McNulty (D-AZ-5) and Tom Vandergriff (D-TX-26). All Republican members of that committee will be returning to the 99th Congress. Most notable of those departing is Elliott Levitas, Chairman of Subcommittee on Investigations and Oversight. Levitas was a leading proponent of public compensation legislation. As subcommittee chairman, he also held numerous oversight hearings on EPA's handling of Superfund. It is uncertain who his replacement will be. However, Tom Oberstar (D-MN-8) may move over from Chairman of the Economic Development Subcommittee to replace Levitas.

In the Ways and Means Committee, there are three vacancies created by Democrat James Shannon (MA-5) and Republicans Barber Conable (NY-30) and James Martin (NC-9). Most notable of these departures is Congressman Conable, the ranking Republican of the committee. He will be replaced by John Duncan (R-TN-2).

The 99th Congress convened January 3, 1985, and will begin actual work after President Reagan's inauguration January 21. The top leaders elected by the Senate are: Robert Dole (R-KS) Majority Leader; Alan Simpson (R-WY) Majority Whip; Robert Byrd (D-WV) Minority Leader; and Alan Cranston (D-CA) Minority Whip. Re-elected leaders by the House are: Thomas "Tip" O'Neill (D-MA) Speaker; James Wright (D-TX) Majority Leader; Tom Foley (D-WA) Majority Whip; Bob Michel (R-IL) Minority Leader; and Trent Lott (R-MS) Minority Whip.

B. Federal Regulatory Agencies

Department of Energy. Although Secretary Hodel will be leaving the Department of Energy and some modifications in the Agency's agenda are expected, they should not significantly affect CMA's energy agenda or advocacy which is focused on and through the Federal Energy Regulatory Commission (FERC).

U.S. Environmental Protection Agency (EPA). EPA will continue to place primary emphasis on Superfund, RCRA, Toxic Air Pollutants, Effluent Guidelines, Safe Drinking water and groundwater programs. Additionally, EPA, through the Toxics Substances Control Act, will continue to involve itself more in regulation workplace hazards.

Occupational Safety and Health Administration (OSHA). We believe that OSHA does not intend to pursue a significant agenda or to be very active in regulating the workplace or in writing new standards. This lack of a vigorous agenda opens the door wider to more workplace regulation by EPA.

C. International

CMA member companies are experiencing an increasing problem with foreign competition in domestic and foreign markets. Duty free imports from developing countries under the Generalized System of Preferences, along with normal dutied chemicals from the industrialized countries, have caused a number of petitions for import relief. The petrochemical sector expects continuing loss of export abroad. A legislative solution promoted by ammonia producers failed to get Senate-House joint conference approval in the last Congress. The CMA Board took a neutral position on the issue due to differing views within the Association. Similar legislative proposals are expected again in the new Congress. CMA's International Trade Committee continues in its efforts to find a basis for agreement among our member companies.

A prospective free trade agreement including petrochemicals is the subject of January hearings by the U.S. International Trade Commission and Trade Policy Staff Committee. CMA staff has aided a number of member companies which have requested help in seeking exemptions from the agreement.

Trade Representative Brock is promoting a broad scale multilateral trade negotiation. Legislation to authorize this 100 nation effort is expected this year. A CMA International Trade Committee position on the negotiations will be presented to the Board. Tariff cutting policy will be the most important issue for the chemical industry. The Bhopal incident will likely trigger a new U.S. policy addressing the export of hazardous substances. Also expected is legislation limiting use of U.S. technology abroad that cannot be used safely.

D. States

The 1985 legislative session will have 49 states in session, with Kentucky being the only exception. The major issue areas will be public compensation, Superfund, groundwater, right-to-know, toxic air program development and chronic health matters. Further, the Bhopal incident has heightened interest in community right-to-know proposals, routing and prenotification of hazardous materials shipments, and in-state emergency response programs. In addition to the state level reaction to Bhopal, cities and counties will also be addressing these issues. These initiatives are even harder to track and are sometimes more reactionary in their approach to dealing with issues concerning the chemical industry.

E. Media

Media interest in, and coverage of the chemical industry in the closing months of 1984 focused on the Superfund debate and the accident at Bhopal.

For Superfund, media contacts report the failure to report a bill was a significant disappointment to special interest groups. Their very vocal support for public compensation came more to set the stage for debate in 1985 rather than in any expectation it would be achieved. There was, however, a strong expectation of success for Superfund reauthorization. Members of the Media would blame that failure on Mr. Florio's strategy, the industry's assertive legislative and communication posture, and the inability of candidates for national office to move environment on to the front burner.

Bhopal took over the national news in December. It received far more coverage than the Johnson & Johnson Tylenol story. During peak periods, CMA handled over 100 calls a day and totaled over 1000 media contacts. Union Carbide received 1500 contacts.

Since Bhopal, national print media have devoted heavy and continuing coverage to a broad range of industry issues but have brought special attention to bear on right-to-know questions.

We expect to face questions on this subject, plant safety, emergency response, transportation safety and related issues on every media tour conducted in 1985. We will prepare spokesmen accordingly.

F. Courts

On January 3, 1985, a federal district court judge ruled that the federal hazard communication standard preempts the entire New Jersey

right-to-know act as it applies to employers in SIC codes 20-39. The decision establishes a case precedent that the federal hazard communication rule is a standard and it preempts state laws covering the same issue, as of November, 1983. Chemical manufacturers can rely on this decision in other states with right-to-know legislation.

II. ISSUES AND PROGRAM STATUS

A. Superfund (CERCLA and Old Waste Site Cleanup)

1. Congressional Developments and Response

The Congress adjourned in 1984 with Superfund legislation passed only in the House of Representatives. The Senate did not complete action and Congress will have to begin all over again in 1985. Hearings are likely in at least three House committees and two Senate committees. The taxing authority for the Superfund program expires on September 30, 1985.

Senate Activity. Senator Robert Stafford (R-VT), chairman of the Environment and Public Works Committee, introduced new Superfund legislation on January 3. Stafford has indicated he will begin hearings in full committee in early March. This proposal (S. 51) closely tracks the bill approved by the Senate Environment and Public Works Committee on September 13, 1984. S. 51 differs from the 1984 bill in one major respect. The previous five-state victim assistance program is left blank in S. 51. However, a title ("Victim Assistance Program") and a section number remain in the bill. Stafford notes that because "there was some controversy" regarding this provision, "it is possible that a modified version will be advanced during this year's committee consideration."

In addition, Senator Stafford has separately introduced two amendments to the Superfund Improvement Act. The first establishes a taxing scheme to raise the \$7.5 billion (over five years) that was proposed by the committee last year. Stafford's stated intent in introducing this amendment is to "assure that if extremely short notice arises, there will be a taxing scheme available to the Senate which has been widely circulated and examined." The second amendment would create a new federal cause of action for persons alleging injury from hazardous substances. Stafford concedes that "there will be considerable debate prior to the committee or Senate votes on this proposal" and is "introducing it now so that there will be ample opportunity for the serious consideration it deserves."

Senator Lloyd Bentsen (D-TX), new ranking Democrat on the committee, has indicated he will resist increasing the feedstock tax because Texas companies are paying approximately 50 percent of the tax. Also, Bentsen

along with Senator Daniel Moynihan (D-NY) previously introduced a workable waste-end tax and they will advance the same proposal this year.

The Senate Finance Committee, which did not complete consideration of Superfund in 1984, will have as its new chairman Senator Robert Packwood (R-OR). Packwood has not been active on Superfund issues in prior years and it is difficult to say how he plans to proceed. But, some members of the Finance Committee were generally sympathetic to our concern that a feedstock tax increase would adversely affect the domestic chemical industry and its ability to compete in international markets. Also, the Bentsen/Moynihan waste-end tax demonstrated a strong desire to broaden the Superfund tax base.

House Activity. In 1984, the Democratic controlled House rammed Superfund legislation through three committees and floor consideration in an effort to put pressure on the Republican-led Senate and President Reagan during the campaign. The strategy of "dump stumping" did not work, and Superfund did not emerge as a Presidential campaign issue. Representative James Florio (D-NJ) will once again provide the leadership to push for an ambitious Superfund amendment. However, Florio will have to address the concerns of members from Texas and Louisiana as to the economic impact of a 400 to 500 percent increase in the feedstock tax. In the last Congress the House Public Works and Transportation Committee, through the efforts of Representative John Breaux (D-LA), nearly approved an approach very different from Florio's. The same type effort by Breaux and the members of the Committee could be very helpful, especially if early in 1985. Hopefully, the Ways and Means Committee will study more carefully the Superfund tax structure and consider the economic consequences of the Superfund taxes before acting. House hearings are not expected to begin until late February or early March.

CMA Activity. The Superfund Task Group of the Government Relations Committee is newly reorganized and prepared to manage all the elements of the industry advocacy program. Member company Washington Representatives have been assigned a variety of coordination and leadership responsibilities. Cooperative efforts are underway with appropriate technical task groups to refine and supplement our policy positions and advocacy materials. Visits with key Congressional leaders, staff and Administration figures are already in full swing.

2. Grassroots Activity

The CMA Grassroots Program is concentrating exclusively on Superfund reauthorization. Now beginning its second year, the program has matured into an integral part of the overall CMA Superfund lobbying effort. Activities include:

- o Coalition building in targeted Congressional districts
- o March 13 Washington, D.C. plant employee visit

- o Coordination with CIC's in Texas, Louisiana, New Jersey
- o Letter-writing campaign to Congressmen

The Regional Communications section produced the first issue of "Grassroots Progress." The publication is for grassroots managers and congressional liaison representatives. The quarterly will describe programs and activities at CMA and in the field that further our position on Superfund, the primary issue of the grassroots program.

3. Regulatory Developments and Response

Superfund Position Papers. The Environmental Management Committee (EMC) has recommended revised and new positions on seventeen superfund issues for consideration by the Executive Committee and Board of Directors at the January meeting. These issues were raised during the 1984 Superfund reauthorization proceedings and will more than likely resurface as part of the 1985 reauthorization process.

National Priority List Comments. The EMC's Hazardous Waste Response Center submitted comments to EPA on the second proposed set of additions to the Superfund national priority list. Of special concern was the proposed listing of the Oahu aquifer because of residual pesticide contamination. If the aquifer is listed on the final revision to the list, it could result in a significant diversion of fund dollars that would otherwise be used to clean up problem abandoned waste sites.

Superfund Remedial Design/Remedial Action Guidance. The EMC's Hazardous Waste Response Center submitted comments to EPA on draft Superfund remedial design/remedial action guidance. The comments highlighted technical deficiencies and a general lack of real world experience in the draft guidance document. The final EPA guidance will specify for the EPA regional offices and private parties what is acceptable remedial design/remedial action.

EPA's New Interim Settlement Policy. On December 5, 1984, EPA issued a new CERCLA settlement policy. This new policy modifies significantly EPA's earlier policy in a fashion that should allow greater flexibility in negotiations and thereby promote settlements. As such, it should be beneficial in encouraging prompt cleanup of hazardous waste sites.

The new policy changes EPA's current practices in a number of respects.

- o It allows the Superfund to be used for non-settlor shares, (i.e., for the shares attributable to parties who refuse to settle or are financially non-viable). Private and Superfund monies can be "blended" to pay for cleanups.

- o It allows settlement negotiations to begin where the offer is for less than the 80% threshold in the former policy.
- o In place of the 80% rule, EPA has imposed a management standard. The management standard directs consideration of a number of factors, including volume and nature of wastes, strength of the government's evidence, ability of parties to pay and litigative risks.
- o It indicates that EPA will be more flexible in granting releases of future liability.
- o It provides that protection from contribution actions (i.e., actions by non-settling parties, who are determined by a court to owe greater proportionate shares than the parties who have already settled, against the settling parties) can be granted in appropriate cases.

EMC's Superfund Task Group will provide input for the preparation of comments on the new policy.

EPA 301(a) Study. The EPA has also released its 301(a) study of Superfund program funding needs. In conducting this study, EPA anticipated that the National Priorities List (NPL) would grow to approximately 1,800 sites. Each site is projected to have an average remedial cost of \$8.1 million, with 50 percent of the overall costs of cleanup paid for by responsible parties. Assuming these factors, future funding requirements would total \$11.7 billion. Because of uncertainties in the size of the NPL, the average cost of remedial action and the level of responsible party contributions, EPA also stated that future funding needs could range from \$7.6 billion to \$22.7 billion.

4. Technical and Research Activities

Keystone Conference. CMA participants attended the second session of the Keystone Conference on Superfund cleanup levels. The goal of the conference is to see if a consensus position can be developed on the question of "how clean is clean" for Superfund site cleanups. The Keystone participants will be meeting at least one more time at Keystone, which will issue a report sometime in late winter or early spring of 1985.

5. Communications

Communications activities on Superfund slowed during the period as the Congressional session ended without definitive action on Superfund reauthorization legislation. During the last week of October, near the

end of the Congressional session, editorial board briefings on Superfund were conducted at the following selected key newspapers: Great Falls (Mont.) Tribune; Oklahoma City Tribune and the Daily Oklahoman; Albuquerque (N.M.) Tribune and News Journal; Santa Fe (N.M.) New Mexican; Wyoming Eagle, and The State Tribune, Cheyenne, Wyo.; Spokane (Wash.) Spokesman-Review; Tacoma News-Tribune; Billings (Mont.) Gazette.

From the March-to-September period, 78 editorial board interviews were held on Superfund issues in 44 selected cities.

In addition, two television newsfeatures on Superfund issues were produced and distributed near the end of the Congressional session, bringing to 80 the number of TV pieces produced and distributed by CMA during calendar year 1984.

Superfund location shooting on the waste site cleanup film wrapped up in January. Locations include Devil's Swamp, IA., Stringfellow, CA., St. Paul, MN., Jacksonville, FL., and McColl, CA. The film documents progress on site cleanup and will be distributed to community groups, television, and member companies. Due date: March/April 1985.

A script is being developed for a 10 minute videotape to be used in grassroots advocacy and other Superfund communications programs. It is for use primarily by the grassroots manager, the tape will review how the Superfund program works and will lead into a discussion of CMA's position by posing a series of questions.

B. Public Compensation

1. Congressional Developments and Response

Administrative Funds and Federal Cause of Action. In the 98th Congress the compensation issue was considered as part of Superfund legislation. We anticipate the 99th Congress will proceed on the same course. Last year an important Senate Superfund bill contained a five-state demonstration program to compensate through an insurance scheme people exposed to hazardous substances. We anticipate that this concept will again be offered. We also must expect consideration of a full scale administrative scheme for compensation, and proposals creating a Federal cause of action. CMA continues to be strongly opposed to the creation of an administration scheme for public compensation, and to the establishment of a Federal cause of action. In 1984 the House rejected both these concepts during floor debate.

Health Studies. House and Senate committees may examine a variety of proposals for health studies on exposure to hazardous substances.

Product Liability. Senator Robert Kasten (R-WI) has reintroduced his proposed uniform product liability law. The new bill is substantially

the same as the bill reported last year by the Senate Commerce Committee. However, the controversial Tribble amendment limiting the award of punitive damages to a single judgment has been deleted from the bill. CMA is continuing to participate in the Product Liability Alliance, a broad business coalition, in working for the passage of product liability legislation.

2. Technical and Research Activities

UAREP. CMA submitted comments on the draft report on the "Health Aspects of the Disposal of Waste Chemicals" by the Universities Associated for Research and Education in Pathology (UAREP). Dr. Bruce W. Karrh spoke for CMA at UAREP's public forum on December 17. UAREP expects to release a final report in February.

3. Litigation and Related Legal Activities

Agency for Toxic Substances and Disease Registry (ATSDR). CMA has met with the Agency for Toxic Substances and Disease Registry to review its progress in complying to the court order in EDF v. Heckler. EDF and CMA sued the Department of Health and Human Services to establish ATSDR and implement health studies and registries as required by Superfund. ATSDR has now complied with all of the provisions in the court order.

4. Communications

The UAREP communications program has been set in motion and includes dissemination of a press release and executive summary to press contacts and CMA contacts. Material went to all those visited during the media campaign on Superfund last year. Further activities included preparing an editorial board briefing package and an updated issues briefing book entry. With the exception of media tours the communication plan has been completed. Media tours will be re-evaluated at the time the final report is issued.

C. Waste Handling and Disposal (RCRA)

1. Congressional Developments and Response.

The 98th Congress passed a new RCRA law which President Reagan signed shortly after the November election. The 99th Congress was not expected to address additional changes. However, as a result of the Bhopal incident, Representative James Florio has recently said that RCRA regulation of leaking underground storage tanks (LUST) needs to be adjusted to cover air emissions.

2. Regulatory Developments and Response

RCRA Groundwater Compliance Testing Protocol (SW-846). The EMC's Environmental Monitoring Task Group submitted comments to EPA on the Agency's proposal to require test method EPA SW-846 as the means to determine RCRA groundwater requirements compliance. The comments highlighted the technical and scientific problems with the proposed methodology concluding it was inappropriate for use in determining compliance with RCRA.

3. Technical and Research Activities

1983 CMA Hazardous Waste Survey. CMA has received from its contractor the final report on the 1983 Hazardous Waste Survey. Ninety-three member companies participated in the survey with 34 of the nation's top 50 chemical companies (based on total sales) participating. The 1983 survey found:

- waste water treatment increased,
- underground injection decreased,
- landfill disposal continued to decrease, and
- surface impoundments and waste piles disposal decreased.

RCRA Amendments Seminar & RCRA Compliance Workshop. The EMC will sponsor two seminars/workshops on the recently enacted RCRA amendments and how to comply with RCRA. The seminars/workshops will be held January 30-31, 1985, in Houston, Texas, and March 25-26, 1985, in New York City. The seminars/workshops will be open to all Chemical Industry Council members and to all Council of Chemical Association participants and their respective members.

EPA Solid Waste 846. The EMC approved funding for an Environmental Monitoring Task Group proposal that CMA test its alternative testing methodology to demonstrate its equivalency to EPA SW-846. If successful, there is a real possibility that EPA will formally determine CMA's alternative test methodology equivalent for determining compliance with RCRA groundwater requirements. The CMA alternative uses existing peer reviewed test protocol, is generally technically sound, and will significantly limit the number of false positives (i.e., groundwater problems).

D. Groundwater

1. Congressional Developments and Response

Senator Robert Stafford (R-VT) introduced legislation amending the Safe Drinking Water Act on January 3. At this time it is not clear whether or not the legislation will also address groundwater amendments. Senator David Durenberger (R-MN) has also been active in consideration of

Safe Drinking Water Act legislation and sponsored a bill in the last Congress. At this point, the Committee timetables on these related issues are uncertain.

In the House, there is a potential for some competition within the Energy and Commerce Committee as to who will take the lead role in moving a bill. Representative James Florio (D-NJ) appears to be taking an interest, in addition to Representative Henry Waxman (D-CA), whose subcommittee used last year's Safe Drinking Water Act Amendment as a vehicle for groundwater legislation. CMA will monitor developments closely as the environmental agenda takes shape.

2. Regulatory Developments and Response

Maximum Contaminant Levels. The EMC's Safe Drinking Water Act Work Group submitted comments to EPA on proposed maximum contaminant levels (MCLs) for specified volatile organic chemicals (VOCs). The MCLs are required to be established by EPA under the Safe Drinking Water Act. CMA's comments identified concerns with the scientific basis the Agency used in developing the proposed MCLs. MCLs may be of great significance to the chemical industry because they may be the level to be met, for specific VOCs, at Superfund sites.

3. Technical and Research Activities

Ad Hoc Groundwater Coordinating Committee. An Ad Hoc Groundwater Coordinating Committee has been established to coordinate CMA's multi-committee activities on the groundwater issue. The new group will report to the EMC and will be responsible for assuring that needed work products are developed by appropriate groups in a timely manner. The group has company representatives from EMC, CRAC, OSH, SAC, GRC, and the Communications Committee.

Draft Groundwater Principles. The EMC's Groundwater Policy/Strategy Work Group, in conjunction with the State Affairs Hazardous Waste/Groundwater Task Group, have drafted general CMA groundwater principles of operation. The draft principles are being reviewed by the Environmental Management Committee in 1985 for The final principles paper will be used by the State Affairs Committee and the Chemical Industry Councils in addressing proposed state groundwater legislation/regulation.

4. Communications

The Communications Department is assisting the Environmental Management Committee in preparing a booklet on environmental monitoring.

E. Government Control of Chemical Production/Innovation (TSCA)

1. Congressional Developments and Responses

TSCA Reauthorization. In the 98th Congress, Senator David Durenberger (R-MN) and Congressman James Florio (D-NJ) introduced far-reaching amendments to TSCA. CMA actively responded to both Senate and House initiatives. No formal action was taken on either measure in 1984.

Both Durenberger and Florio are expected to reintroduce TSCA amendments early. Durenberger has indicated that TSCA amendments are among his top priorities, and can anticipate Senate hearings by March/April. In the House, TSCA is likely to follow Superfund, but hearings will provably be held by the summer.

CMA, through its technical and government relations committees, is continuing to develop support documents and positions in response to the Senate and House initiatives. In addition, CMA's Chemical Regulations Advisory Committee has developed new approaches to assessment and follow-up of new chemicals for the Board to consider as CMA recommendations for changes to TSCA. The recommended positions, which are the product of intensive deliberations and drafting by company members, staff, and outside counsel, are intended to be responsive to the public's perception that more testing and evaluation of chemicals should be done, without altering the basic philosophy and legal framework of the Act. If approved by the Board, the positions would be made public at an appropriate stage in the legislative process for reauthorization of TSCA.

2. Regulatory Developments and Response

Regulation of Biotechnology. On December 31, 1984, the White House Office of Science and Technology Policy (OSTP) published, in the FEDERAL REGISTER, a "Proposal for a Coordinated Framework for Regulation of Biotechnology." CMA has formed a work group to comment on the proposal focusing on the section that addresses the Toxic Substances Control Act. The work group will consider offers by expert scientific and policy consultants to assist CMA in preparing comments on the OSTP proposal. Comments are due by April 1, 1985.

TSCA Informational Meeting. In December 1984, CMA sponsored a TSCA Informational Meeting. Over 120 industry representatives attended the meeting. Industry and EPA experts addressed TSCA regulatory issues of concern in formal presentations and question and answer sessions. Dr. Ronald Outen, majority staff member of the Senate Subcommittee on Toxic Substances, was the keynote speaker. Dr. Outen discussed Senator Durenberger's TSCA amendments bill and the legislative outlook for TSCA in 1985. Dr. Robert R. Sielken, Jr., Texas A&M University, discussed risk analysis and error propagation.

TSCA Dialogue Group. In December, the Conservation Foundation set up a dialogue group on TSCA. The group's purpose is to identify and discuss aspects of TSCA that could be improved by legislation. The dialogue group participants included environmentalists, labor union staff, congressional staff, EPA staff, CMA and other trade association staff, and individual chemical company representatives. The majority of the participants concluded that there is a basis for further discussion. Therefore, the Conservation Foundation will sponsor a TSCA Dialogue Group in 1985.

New Chemical Assessments Under TSCA. CMA is meeting with EPA staff to develop a common understanding of new chemical assessments under TSCA. The participants plan to identify common elements of a new chemical assessment that would be submitted by a manufacturer to EPA before he could produce a new chemical. EPA and CMA hope to improve the new chemical review activity under TSCA without stifling new chemical innovation within the chemical industry.

Export of Hazardous Chemicals. Upon the advice of CMA's Export of Hazardous Substances Work Group, the Chemical Regulations Advisory Committee recommended that CMA support the White House's policy on the export of hazardous substances. See Section F of this report, International Trade/International Competition for further details.

TSCA Section 5(e). CMA sent a letter to the EPA Office of Toxic Substances (OTS) stating CMA's concern with the use of TSCA Section 5(e) and requesting a meeting to discuss OTS policy on Section 5(e). This section of TSCA empowers EPA to impose production controls and limits on new chemicals. CMA has become concerned that EPA's use of the Section 5(e) authority is so strict that new chemical innovation will suffer. In recent meetings, EPA indicated that they may change their policy towards the use of TSCA Section 5(e). CMA's letter requests a meeting to discuss these changes.

New Polymer Review Under TSCA. CMA also sent a letter to EPA that expresses dissatisfaction with the final rule for polymers under Section 5(h) (4). Although characterized by EPA as an exemption, the rule establishes an abbreviated review period under TSCA Section 5 rather than a true exemption. The polymer rule also limits the polymers that can qualify and imposes recordkeeping requirements on polymers that do qualify. The letter points out that these features of the rule limit its usefulness and do not provide a true exemption from PMN requirements.

CMA Comments on Proposed SNUR. The proposed significant new use rule ("SNUR") for HMPA (hexamethylphosphoramide) and Urethane represents EPA's first attempt to apply its SNUR authority to any production or importation of existing chemicals listed on the TSCA Chemical Substances Inventory. CMA submitted comments on December 10, 1984, because such a broad interpretation of the SNUR authority, if applied to other substances, could have extremely restrictive effects on some chemicals.

In its comments, CMA suggested the use of the reporting rule in Section 8(a) of TSCA rather than a SNUR in cases where EPA wishes to be notified of a resumption of production of chemicals on the Inventory which are now being manufactured.

Formaldehyde. CMA filed supplementary comments on EPA's advance notice of proposed rulemaking on formaldehyde. CMA's comments included an evaluation by Joseph Rodricks and Duncan Turnbull of existing formaldehyde risk analyses. The existing analyses were found to be inadequate, and Drs. Rodricks and Turnbull suggested ways that limitations, uncertainties, and assumptions of a risk analysis can be made explicit for the decision maker.

CMA Supplemental Comments on Formaldehyde. On November 16, 1984, CMA submitted Supplemental Comments on EPA's advanced notice of proposed rulemaking on formaldehyde. Since the risk assessments prepared by EPA and other agencies have been inadequate, CMA urged EPA to prepare a totally new risk assessment in accordance with the carcinogen risk assessment guidelines prepared by the National Research Council and the Office of Science and Technology Policy. CMA attached to its comments a technical report prepared by two risk assessment experts which pointed to the specific scientific data that EPA should factor into its evaluation.

3. Technical and Research Activities

Risk Analysis and Error Propagation. Dr. Robert Sielken prepared a summary of the concepts developed at CMA's seminar on "Risk Analysis and Error Propagation." Dr. Sielken presented his paper at CRAC's TSCA Informational Meeting in December, and will publish the paper in "Regulatory Pharmacology and Toxicology."

Guidelines for Exposure Analysis. CRAC's Risk Analysis Task Group is preparing comments on EPA's proposed guidelines for exposure analysis and is working with the Occupational Safety and Health Committee in preparing comments on EPA's proposed guidelines on carcinogenicity and reproductive effects.

Worker Exposure Study on Bagging and Drumming Operations. The Risk Analysis Task Group held several discussions with EPA on that Agency's study of worker exposure to chemicals from bagging and drumming operations. The study's protocols were flawed and the task group suggested improvements that would provide more accurate information in future studies that EPA plans.

Public Opinion Poll on Adequacy of Testing and Control of Commercial Chemicals. CMA has contracted with the public opinion research firm, Yankelovich, Skelly and White (YSW), to determine from its data base, public opinion regarding the adequacy of testing and control of commercial chemicals. CMA staff and committee members will use YSW's information

during the TSCA reauthorization process to address the public's concern and, where possible, identify solutions.

Interagency Testing Committee. CRAC has developed a contract to evaluate the Interagency Testing Committee (ITC). The ITC was established under TSCA Section 4 to set priority in the existing chemical testing program and thus plays a major role in the implementation of TSCA. The purpose of the project is to review the ITC's performance and the effectiveness of the scoring and review process that they have developed. The results of the study will be useful in responding to congressional concerns about the lack of data on commercial chemicals.

Data Documentation Workshop. In December, CMA published the proceedings of the May 1984, "Workshop on Indicators of Data Documentation Quality." The workshop developed criteria that would indicate to data users the documentation supporting the data. The advantage of such indicators is that users, including government agencies and private companies, would have the means to distinguish well-supported data from poorly supported data. The proceedings have been sent to workshop participants and presented to an interagency committee of toxic substances data users. Over the next year, CMA and the Workshop Steering Group will continue to distribute the proceedings and advocate the recommendations of the workshop.

4. International Regulation

Differences in U.S.-EEC Labeling. The Joint IAG-CEFIC (SOC) work group on labeling for chronic hazards will hold its first meeting January 24 in Brussels. The aim is to harmonize incompletely defined criteria, classifications and warnings to reduce risks of exposure to carcinogens, mutagens and developmental toxins. Success in this activity might lead to resolving more firmly established U.S.-EEC differences in labeling to communicate acute hazards.

5. Litigation and Other Related Legal Developments

CMA v. EPA (SNUR Litigation). On November 19, 1984, CMA filed a petition in the U.S. Court of Appeals for the District of Columbia to review EPA's first final significant new use rule under TSCA. CMA challenged three conditions that were established by the rule and that are expected to apply to subsequent SNURS: 1) a chemical company's responsibility to know whether customers are using a SNUR chemical in a significant new manner; 2) the agency's authority to require manufacturers to notify all customers when a chemical is the subject of a significant new use rule; and 3) the effective date of the rule.

NRDC v. EPA (test rule litigation). On December 27, 1984, CMA filed a notice of appeal of the judgment of the Federal District Court in the case involving EPA's test rules development process. The appeal, which will be heard by the Second Circuit in New York, seeks reversal of

the district judge's decision disallowing negotiated testing agreements as a means of complying with requirements under Section 4 of TSCA. CMA believes that negotiated testing agreements produce test data more reliably and more quickly than testing ordered by EPA rule, and therefore serve the policies of the statute.

F. International Trade/International Competition

1. Congressional Developments and Response

Reorganization of the U.S. Government Trade Function. During the last Congress, the Administration proposed abolishing the Department of Commerce and replacing it with a new Department of International Trade and Industry (DITI). The new agency was also to contain all of the functions of the existing Office of the U.S. Trade Representative. CMA went on the record as favoring such action; however, the legislation failed to be enacted.

The Administration is once again proposing that a DITI be created. Secretary of Commerce Malcolm Baldrige is proposing, however, that the new agency not contain either the National Bureau of Standards or the Patent Office (the proposal in the last Congress would have retained both of those agencies, currently in the Commerce Department, in DITI). By proposing a smaller agency which would deal more specifically with international trade problems, Mr. Baldrige is seeking a much stronger endorsement from Ambassador William Brock than he received last year.

Because it is likely that any bill creating a new agency would be substantially different from the one offered last year, the CMA International Trade Committee will re-examine CMA's position.

Reauthorization of the Export Administration Act. The Export Administration Act (EAA) expired on September 30, 1983. Congress has subsequently passed several extensions to the Act, the most recent of which expired in April, 1984. Although both Houses of Congress had passed reauthorization bills by that time, they were never able to achieve a compromise. The House bill especially had numerous non-germane amendments attached to it, including one which would have placed severe restrictions on companies doing business in South Africa. In the end, it was this amendment that caused a proposed compromise to collapse, and Congress adjourned with no reauthorization bill.

Although the President has authority to continue certain of the EAA provisions under select defense-related emergency powers, there are many export licenses which the Administration no longer has the authority to require. One such instance involved restrictions placed on linear alpha olefins, on which CMA commented in July, 1984. Because the Administration will probably receive increased challenges to their authority to enforce

the export licensing procedures, it is likely that it will push for early reauthorization of the EAA.

South African Trade. We can again expect amendments which seek to restrict business dealings with South Africa. In addition, Rep. Michael Barnes (D-8-MD) is again likely to attempt to include restrictions on the export of hazardous substances. The CMA International Trade Committee has prepared a proposed position on the question of South African trade restrictions, and will re-examine this paper if such a bill is re-introduced.

Export of Hazardous Substances. On the export of hazardous substances issue, CMA committees are again studying the advisability of an affirmative White House policy. A previous version includes a first shipment - export notification requirement. Some have contended that executive action on hazardous substance export policy might reduce pressures for sharply restrictive legislation.

Reform of Trade Remedy Laws. The last Congress attempted to change the existing trade remedy laws because low cost petrochemical imports were negatively impacting the domestic industry. These imports were produced using feedstock which was undervalued as a result of government action. The Gibbons Bill sought to prohibit this practice by changing the countervailing duty or anti-subsidy law. This provision did not survive the conference which created the Trade and Tariff Act of 1984, but a bill with similar provisions is almost certain to be reintroduced.

Because of sharp differences among member companies, the CMA Board of Directors declined to take a position on this issue.

Since that time, the CMA International Trade Committee has continued to examine the problem, seeking a solution in changes of the U.S. import remedy law. Loss of petrochemical exports and increased imports are adding to the difficulties already experienced by this sector. The prospect of greatly increased CERCLA taxes on key petrochemicals is another potential factor in reducing the competitiveness of U.S. petrochemicals.

2. International Negotiations/Agreements

Bilateral Free Trade. Both the U.S. International Trade Commission and the Trade Policy Staff Committee held hearings in mid-January on the subject of bilateral free trade between the United States and Canada for selected products, including a number of chemicals. No negotiations for the chemical sector have been scheduled between the two countries. However, the Trade and Tariff Act of 1984 authorizes the President to enter into bilateral negotiations between the United States and any of its trading partners upon proper notification of the Congress. Such an initiative is expected in 1985.

CMA has advised its members of the hearings, and our staff has provided advice on the proper procedure for filing comments. The CMA International Trade Committee is currently examining this issue in order to propose a position to the CMA Board of Directors.

The Trade and Tariff Act of 1984 also gave the President authority to negotiate a bilateral free trade arrangement with Israel. These negotiations are all but concluded. The proposed agreement calls for across-the-board free trade, with no exceptions planned for any product or sector. Certain import-sensitive items will have their duty eliminations phased in over a period of years. The proposal must be ratified by the Senate before it becomes valid. The Administration is likely to press for early ratification.

Multilateral Tariff Negotiations. The tariffs of the United States and its major trading partners are currently being reduced in annual increments in order to reach the 1987 level called for by the Tokyo Round of multilateral trade negotiations. Results of this Round were implemented into U.S. law by the Trade Agreements Act of 1979.

Ambassador Brock has strongly promoted another broad, multilateral negotiation. Tariff cutting will be one objective. The Trade and Tariff Act of 1984 allows the Administration to negotiate bilateral agreements upon proper notice of such actions to the U.S. Congress, but the USTR needs broader authority. Such authority is likely to be requested of the current Congress. The CMA International Trade Committee is currently examining the issue of both bilateral and multilateral negotiations in order to propose a CMA position.

Export of Hazardous Substances - "White House Policy". The CMA Ad Hoc Group on the Export of Hazardous Substances, in conjunction with the Chemical Regulations Advisory Committee, the International Trade Committee, the International Affairs Group, and the Government Relations Committee, has recommended that CMA change its previous position and advocate the release of the draft White House Policy on the export of hazardous substances. If the CMA Board approves this recommendation, CMA will continue to coordinate its activities on this subject through its coalition with PMA, NACA and SOOMA. The draft White House Policy has been dormant since August, 1982. The last reported version of the draft policy contains the following components:

- 1) Notification by the State Department to foreign governments, through their embassies in the United States, of information on all regulatory actions banning or severely restricting domestic U.S. commerce in a substance. This notification would occur as soon as possible after the regulatory action in question was taken and would be supplemented by an annual compendium of such regulatory actions.

- 2) Elimination of existing requirements for export shipment specific notifications to receiving governments except for exports of consumer products not conforming to U.S. consumer product safety standards. The United States Trade Representative and the Commerce Department have recommended that this section be amended to require a first shipment per country notification in accord with the April, 1984 action of the Organization for Economic Cooperation and Development on this subject.
- 3) Elimination of existing prohibitions on commercial exports of drugs and biologicals which can be lawfully marketed overseas but cannot be marketed in the United States.
- 4) Cooperation by the Department of State, and other appropriate Departments and agencies, in efforts to encourage other countries to share information on regulatory actions and the scientific basis for such actions on substances which are, or might be, subject to banning or severe restrictions.
- 5) Continuation by the United States in its efforts to assist countries to develop their own informed decisions regarding the use of substances which pose hazards to human health or the environment.

CMA has previously remained neutral on the merits of this policy, especially in view of attempts to amend item 2 to bring it into conformance with the OECD action. Our neutrality was based in large part on the position opposed to any export - shipment notifications previously taken in CMA's June, 1981, petition to EPA under Section 12(b) of the Toxic Substances Control Act. It is believed that recent international regulatory and domestic legislative developments may warrant a reassessment of this position.

G. Occupational Safety and Health

1. Congressional Developments and Response

Occupational Disease. Congressman George Miller's (D-CA) legislation providing for compensation to asbestos victims with a "trigger mechanism" to include other chemical substances, died in the 98th Congress. We expect Miller to reintroduce similar legislation in 1985 and seek to develop a broader consensus of support. CMA will work within an allied trade association coalition to oppose punitive measures and suggest constructive alternatives based on sound scientific approaches.

Right-to-Know. Congressman Bruce Vento's (D-MN) joint resolution, to modify the OSHA hazard communication standard in undesirable ways, died in the 98th Congress. CMA worked with key committee staff to ensure they properly understood the issues involved. In 1985 we expect additional Right-to-Know activity by Representative Joe Gaydos' and George Miller's Subcommittees, but it is too early to tell precisely what the focus will be. CMA will continue to work with key committee members and staff to educate them on the Right-to-Know issues.

Workplace Safety. Representative Gaydos' (D-PA) Subcommittee held a hearing in December on the quality and standards of safety for Union Carbide employees in Institute, W. Va. Although no specific plans have been announced by any Congressional committee, we can expect additional hearings on the occupational safety questions raised by the Bhopal incident.

OSHA Reform. Late in 1984, Congressman John Erlenborn (R-IL) introduced OSHA improvements legislation supported by the National Association of Manufacturers. No action was taken on the bill, and Mr. Erlenborn retired from Congress at the end of the year. Any new sponsor of such legislation in the 99th Congress will face a virtually insurmountable uphill fight in the Democratic-controlled House. CMA will provide general support to any NAM-led industry coalition, but does not anticipate a major lobbying effort because of other higher priorities and the poor political prospects for OSHA reform legislation in this Congress. We believe continuing administrative reform and reasonable/effective implementation are the best approaches at present.

2. Regulatory Developments and Response

NIOSH Criteria Document. The CMA Occupational Safety and Health (OSH) Committee 1984, on NIOSH's draft criteria document on occupational exposures to hot environments. We commended NIOSH for advocating the use of a balanced approach in controlling heat stress. We suggested that the technical sections of the document be simplified so that they are readily understandable by someone possessing a generalist safety and health background.

OSHC's Hazard Communication Field Directive. On October 31, 1984, CMA submitted issues to OSHA that we believe should be addressed in the hazard communication directive. We suggested that the directive should address such issues as the performance orientation of the standard, labels, written hazard communication plans, material data sheets, laboratory coverage, and trade secrets. The directive will guide compliance officers in assessing whether an employer is in compliance with the hazard communication standard.

OTA Report on Reproductive Hazards in the Workplace. The Reproductive Hazards Work Group reviewed and informally commented on OTA's draft report on workplace reproductive hazards. The purpose of the report

is to present reproductive policy options for Congress to consider. The final report will be published in Spring, 1985.

3. Technical and Research Activities

Process Safety Management Seminar. The OSH Committee is planning a seminar on Process Safety Management, May 7 & 8, 1985, in the Washington, D.C. area. The program will include discussions of organizational approaches as well as identification and control of process hazards.

Risk Assessment Journal Article. In response to an EPA request for articles of reproductive effects to be published in a special Fall, 1985, issue of "Risk Analysis: An International Journal," the Reproductive Hazards Work Group is sponsoring a paper on developmental risk assessment written by Eastman Kodak scientists. Other articles to be included in this issue will be contributed by scientists from academia and government.

4. International Regulation

Implications of Bhopal Disaster. IAG's links with other national and regional chemical industry trade associations, especially CEFIC, are communicating information on effects of common concern related to the Bhopal disaster, including proposals made by the UN's Environmental Program (UNEP) and International Program for Chemical Safety.

UNEP's interest is further stimulated by the recent (11/14/84) Versailles "World Industry Conference on Environmental Management" which stressed UN-industry coordination. This agreement seems to some to be inconsistent with the U.S. sole dissenting vote in last month's UN General Assembly on a revised Venezuelan Resolution. This Resolution aims to control the export of hazardous chemical substances to less developed countries by reference to a "consolidated list" of "banned or severely restricted substances." This revision is somewhat improved over earlier Resolutions by including existing or other proposed UN programs such as the UN Provisional (Export) Notification Scheme, which could serve as a continuing source of useful information to the International Register of Potentially Toxic Substances. These two programs might, in time, obsolete the inadequate and troublesome "consolidated list" but the lack of a firm operational system to apply to all countries exporting chemical substances is considered a major and objectionable flaw. Without such a system, the U.S. is the only exporting country with legally required export controls.

5. Litigation and Related Legal Activities

Hazard Communication Litigation. This litigation involves a petition for review, filed by organized labor and several states, of the federal hazard communication standard. United Steelworkers of America v.

Auchter, No. 83-3554 (3d Cir. 1984). We are awaiting the scheduling of oral arguments.

New Jersey Right-to-Know Litigation. On January 3, 1985, a Federal District Court judge ruled that the federal hazard communication standard preempts the New Jersey Worker and Community Right-to-Know Act, as it applies to employers in SIC 20-39. New Jersey State Chamber of Commerce et al. v. Hughey, Nos. 84-3255 and 3892 (D.N.J. 1985). The judge held that both the worker and community provisions of the New Jersey law are preempted. All other employers in the state are not affected by the decision and must comply with the state right-to-know law. It is not known at this time if the state will appeal the decision.

OSHA's Hearing Conservation Amendment. On November 7, 1984, in a 2-1 decision, the Fourth Circuit Court of Appeals ruled that OSHA's hearing conservation amendment to the occupational noise exposure standard, 29 C.F.R. 1910.95 is invalid. Forging Industries Association v. Secretary of Labor, No. 83-1420. The court held that the amendment goes beyond OSHA's scope of authority because it is aimed at protecting workers from hearing loss which could have been caused by noise outside the workplace.

The amendment requires employers to monitor workplace noise levels and test the hearing of employees who were exposed to 85 db or more, as an 8-hour time-weighted average. If an employee suffered an average loss of hearing of 10 db, known as a standard threshold shift, the employer was required to provide hearing protectors, reduce the worker's exposure, institute a training program on audiometric testing, and retain records of employee measurements and tests.

The hearing conservation amendment was triggered whenever an employee suffered a standard threshold shift loss in hearing. Because such a hearing loss can be the result of non-occupational noise exposure, the court found the amendment to be invalid.

6. Communications

The Communications Department prepared a standby statement in response to the New Jersey right-to-know lawsuit decision.

Clean Air

1. Congressional Developments and Response

Clean Air Act Reauthorization. In the last Congress, efforts in the House and the Senate to amend the Clean Air Act failed, primarily due to a stalemate over acid rain controls. Regional politics and incomplete scientific studies stifled amendments proposed in the House subcommittee

and precluded consideration of a committee-passed bill by the Senate. The last week Congress was in session, Rep. John Dingell (D-MI) introduced a bill to amend Section 112 of the Clean Air Act (regarding hazardous air pollutants) which did not embrace automatic listing. Thus, the Section 112 debate in 1984 closed on a positive note.

Triggered by the Bhopal incident, the House Health and Environment Subcommittee held hearings on December 14, in Institute, W. Va. that highlighted the degree to which Section 112 regulates hazardous air emissions. As a result, CMA may need to respond to proposed amendments to Section 112 early in the 99th Congress. The Government Relations Committee Clean Air Act Task Group has begun its preparations for the new Congress.

2. Regulatory Developments and Response

Ozone Criteria Document. The EMC's Air Pollutant Effects Task Group submitted comments to EPA on the Agency's draft ozone criteria document. CMA's comments highlighted the technical and scientific inadequacies and missions of the draft document. The ozone criteria document, as revised, will be the scientific basis for EPA's reconsideration and possible revision of the national ambient air quality standard for ozone and other photochemical oxidants.

Secondary Emissions Regulations. The EMC's Secondary Emissions Work Group submitted comments to EPA on an EPA technical note entitled "Basis for Design of Test Facility for Flux Chamber Emissions Measurement Validation". The CMA comments addressed the technical inadequacies of the draft EPA technical note. The test facility is to be used to measure air emissions from hazardous waste surface impoundments as part of the regulatory development process for regulating VOC air emissions from RCRA facilities.

In a related development, the EMC's Secondary Emissions Work Group also submitted comments to EPA on a draft final report entitled "Preliminary Assessment of Hazardous Waste Pretreatment as an Air Pollution Technique." The comments identified the technical inadequacies and omissions of the draft final report. The EPA report, after it is revised, will be an additional technical element used in the regulation of VOC air emissions from RCRA facilities (i.e., surface impoundments, landfills).

3. Litigation and Related Activities

Benzene NESHAPS. The litigation on EPA's benzene decision has been held up by NRDC's filing of an administrative Petition for Reconsideration of those decisions with EPA. That petition requests EPA to reopen the benzene proceeding on the basis of allegedly new, previously unavailable health risk information. That information, NRDC claims, shows that the cancer risk posed by benzene is substantially higher than EPA

estimates. The studies cited by NRDC include the CMA-sponsored 1983 study on the mortality in workers occupationally exposed to benzene. CMA plans to file a response to the petition the week of January 7, urging EPA to deny the petition. CMA will state two grounds for denial:

- 1) All of the information cited by NRDC, including the CMA study, became available either before the comment period closed (in which case it should have been submitted by NRDC at that time) or after the period for judicial review expired (in which case the information does not meet the Act's requirements for a Petition for Reconsideration).
- 2) None of the information cited by NRDC, including the CMA study, supports NRDC's claim that a higher risk number is appropriate. In fact, when these and other studies are fully and accurately examined, they provide further support for EPA's risk estimates.

After filing the petition, NRDC filed a motion with the court requesting that the court order EPA to consider the petition on an expedited timetable. EPA, API and CMA have all filed responses opposing this request. The court should rule on NRDC's request soon. When it issues its ruling, the court will probably also set a briefing schedule in the litigation.

I. Clean Water

1. Congressional Developments and Response

Clean Water Act Reauthorization. Clean Water Act amendments passed the House but failed to reach full Senate consideration in the last Congress. The most controversial issue was inclusion of construction grant funds in the House-passed bill which the budget-conscious Reagan Administration opposed as premature.

The 99th Congress needs to reauthorize the construction grant funds by September 1985. Thus, there is special impetus for reauthorization and amendment of the Clean Water Act this year.

Both the House and Senate committees intend to hold hearings once they get Superfund consideration well under way. EPA testimony is anticipated. CMA representatives met with EPA Assistant Administrator Jack Ravan in December and discussed CMA's updated recommendations. These covered: 1) administrative civil penalties; 2) felony sanctions; 3) compliance deadlines; 4) post-BAT; 5) NPDES permits; 6) pretreatment; 7) non-point sources; and, 8) FDF variances.

2. Regulatory Developments and Response

Water Quality-Based Toxics Control. The EMC's Biomonitoring Work Group submitted comments to EPA on the Agency's Technical Support Document for Water Quality-Based Toxics Control. The comments addressed the scientific, legal, and policy concerns raised by the technical support document. The subject document when published in final form will be used by EPA's NPDES permit writers.

NPDES Permit Application Forms. The EMC's Water Policy Task Group submitted comments to EPA on the Agency's proposed application forms for new NPDES permits and facilities which do not discharge process waste water. Although CMA's comments were generally supportive of the Agency's action, we did note several technical concerns with details of the proposed application forms.

BCT Effluent Limitation Guidelines. The EMC's Effluent Guidelines Task Group submitted comments to EPA on the Agency's proposed rules for best conventional pollutant control technology (BCT) effluent limitation guidelines, and relevant supporting data. The comments highlighted technical, legal, and policy problems with the proposed (BCT) rules. The final rules will be one element used on issuance of second round NPDES permits by EPA.

3. Technical and Research Activities

Water Quality-Based Toxics Control Seminar. CMA, EPA, the American Petroleum Institute, and the Utility Water Act Group co-sponsored a seminar for their industry members on water quality-based management approaches. The seminar attended by 150 participants focused on EPA's proposed use of single chemical and biomonitoring controls in the development, monitoring, and enforcement of NPDES permits.

4. Litigation and Related Legal Activities

Clean Water Act Citizen Suit Appeal. CMA will participate as an amicus curiae in an appeal of a district court's dismissal of a citizen suit against Conrail. The issue to be addressed by the appellate court is whether citizen suits should be dismissed where an administrative consent order has been entered into between the defendant and an administrative/regulatory agency (in this case the New York DEC). The issue raised on this appeal is significant since reversal would leave little incentive for companies to work with regulatory agencies on an administrative level and require enforcement/litigation in almost all cases to bring sources into compliance (i.e., time consuming and costly).

NPDES Regulations. CMA has filed a petition in the D.C. Circuit Court of Appeals challenging the new NPDES regulations issued on September 26, 1984. Challenges are also being filed by several industrial companies, and trade associations, and by NRDC. CMA and other industry

parties have filed a joint motion with the court requesting a briefing schedule. The requested schedule calls for briefs to be filed during the period from March through July; oral argument would occur in September. The industry parties would file joint briefs on the common issues. At this time, CMA has identified four issues that it will definitely litigate: antibacksliding, toxicity limits, bypass, and EPA veto of state permits. Several other issues are also being considered.

CMA and the other industry parties are also seeking relief on one aspect of the NPDES regulations -- stormwater -- through the administrative process. We have asked EPA to defer the deadline for submitting stormwater discharge permit applications. The deadline is currently March 26, 1985. (Actually, we understand that this was an error and that EPA will soon correct the date to be April 26, 1985.) We have asked EPA to extend that deadline by one year, to April 26, 1986. The industry parties met with Assistant Administrator Ravan on December 18 to discuss this request. Mr. Raven requested that industry submit factual material to EPA documenting the problems with the stormwater regulations and the reasons why a deferral is necessary. CMA is responding to this request by preparing a letter explaining in detail CMA's concerns on the stormwater issue. The letter will be sent to EPA the week of January 7. The letter will also be sent to all Environmental Contacts at member companies. We will encourage all companies which have concerns about stormwater to communicate those concerns, along with supporting factual information, to EPA as soon as possible.

Chemical Product Distribution

1. Congressional Developments and Response

Hazardous Materials Transportation. A simple reauthorization of the Hazardous Materials Transportation Act was passed in 1984. While CMA's CHEMTREC operation was recognized in the conference report language, action on a coalition bill promoted by public and private sector groups to establish federal uniformity failed to occur.

Increased public sensitivity to the potential for chemical accidents will draw increased attention to hazardous materials transportation and safety issues in general. Advocacy by state and local groups and results of Congressionally mandated studies will heighten activity in 1985.

Careful consideration of a proactive approach to improved emergency response and training programs is under way by CMA. We continue to provide coalition leadership in seeking a consensus approach to federal/state/local uniformity of hazardous material transportation regulations.

Rail Competition. In 1984 the Senate conducted oversight hearings on the Staggers Rail Act of 1980. A Joint Resolution was also introduced that would direct the Interstate Commerce Commission (ICC) to comply with the Congressional intent of the Rail Act.

Senate Commerce, Science and Transportation Committee Chairman John Danforth (R-MO) is expected to re-introduce the Joint Resolution early in the new session. Several coalition groups are also seeking to have legislation introduced as soon as possible. Legislation concerning rail access, rate regulation and anti-trust practices are also expected, with the initiative likely to take place in the Senate.

CMA will work to maintain and enhance rail-to-rail competition and insure proper implementation of existing law. Discussions with Congressional leaders and ad hoc groups will continue as pro-competitive measures are proposed.

Conrail. Numerous bids to purchase Conrail have been received by the Department of Transportation, and substantial debate has occurred regarding the sale and potential buyer. Some Members of Congress have expressed interest in a public offering rather than a transfer of Conrail to the private sector as required by law.

Transportation Secretary Elizabeth Dole is expected to name a successful bidder early in the new session. Congressional approval is required and intense scrutiny of the process is expected.

Shipping costs for the chemical industry could be much affected by the sale of Conrail. CMA has met the potential Conrail buyers and communicated to key members of the Administration and Congress the need for assured competition in the Northeast Corridor.

2. Regulatory Development and Response

Emergency Response/Uniformity (Chemnet). The Office of General Counsel and CMA's Distribution Committee have finalized a four-part work plan that would improve emergency response, promote uniformity federal, state, and local restrictions on hazardous materials transportation, and possibly avert a new "transportation superfund" or use of existing Superfund monies to pay for state and local emergency response. The workplan will be presented to CMA's Board at its January meeting and specific approval of "CHEMNET" will be sought. CHEMNET is essentially a mutual aid system where if a shipper cannot promptly respond to a serious transportation incident, another chemical company or for-hire response team could be called to the scene. CHEMNET and the other three parts of the program are intended to be a pro-active response to emergency response preparedness concerns raised in light of Bhopal, as well as pressures at federal, state and local level emergency response teams in every city and have industry fund them. This workplan has been developed over the last year within CMA and with government, transporters, and other manufacturing

groups, and has received endorsement by the Distribution Committee and CMA Bhopal Task Group.

Hazard Classification. Among other initiatives in response to Bhopal, the Department of Transportation has indicated that it will reassess the manner in which it classifies chemical products to take greater account of the toxic and chemical hazards that they present. The more hazardous the classification of a product, the more restrictive are the transportation regulations that govern the product. Individual companies should be prepared to respond to classification changes adversely affecting their products, and CMA will address generic issues that might adversely affect the industry.

Competition Among Railroads. The Interstate Commerce Commission (ICC) recently instituted Ex Parte 456 to allow shippers and railroads to negotiate a proposed rule that might resolve their differences regarding the ICC's implementation of the provisions of the Staggers Rail Act governing competition among railroads. CMA in-house and outside counsel have participated in several negotiating sessions and are nearing a final agreement. CMA's major concern is that if only a single railroad serves a chemical plant or receiver, the railroad may prevent competitor railroads from obtaining access to the shipper's traffic by refusing to interchange traffic with the competitor or by charging rates that commercially prevent competition. The prepared agreement with the railroads would basically apply the principles of the "essential facilities" doctrine of the antitrust laws.

Market Dominance. Also in Ex Parte 456, CMA in-house and outside counsel are negotiating with the railroads in an effort to resolve the "market dominance" dispute. Before a captive shipper may challenge a rail rate as being unreasonably high, he must demonstrate that there is no effective competition for the traffic. In the past, the ICC has viewed as effective competition not only existing or theoretical truck, barge and other rail competition, but also existing or theoretical substitute products and different sources of supply. CMA is urging the railroads to agree to a more economically and legally valid approach that would apply the "Herfindahl merger" analysis in such a way that the ability of a railroad to charge monopoly rates can be relatively quickly determined by viewing the concentration of market forces.

Brazil and Argentina Cargo Reservation Laws. The Federal Maritime Commission (FMC) instituted an investigation to determine if the Brazil and Argentina cargo reservation laws have resulted in unfavorable conditions in the ocean shipping trades between the U.S. and Argentina. These laws require 80 to 100 percent of U.S. imports and exports to be shipped in high priced and poor service vessels of Brazil and Argentina. On December 31, CMA filed comments demonstrating that the laws have resulted in U.S. chemical exporters paying 20 to 600 percent higher rates than exporters from Europe when we compete for Brazilian and Argentine business. CMA also showed that CMA members are receiving poor service and

encountering administrative problems. These rate and service problems have led to lost sales to CMA members, to the shifting production (i.e., lost U.S. jobs), and inefficient shipping patterns (i.e., transshipment). CMA urges the FMC to impose sanctions against the Brazilian and Argentine carriers unless their governments substantially rescind their protectionist cargo reservation laws.

U.S./CSG Cargo Reservation Talks. CMA is urging the U.S. Inter-Agency Maritime Policy Group to enter into an international agreement with the developed countries of Europe and Japan (the "Consultative Shipping Group"). The agreement would provide a mechanism for mutually resisting cargo reservation laws of developing countries (such as the Brazil and Argentine laws discussed above). The agreement would also constrain the U.S. from enacting protectionist legislation for our U.S. carriers that would result in higher freight rates for the U.S. chemical exporters or importers. CMA is working through "SCOT" (Shippers for Competitors Ocean Transportation), a coalition that includes a broad base of all types of export and import industries and companies. CMA counsel is participating as a shipper-observer at the international negotiations.

Shipping Act Rules. The FMC has issued its final rules that would implement almost all provisions of the Shipping Act of 1984. CMA has filed extensive interim and final comments, and approximately 75 percent of CMA's concerns were satisfied. The most significant gain is that the FMC retained the right of a conference carrier to take independent action to offer lower rates that vary over time and with the volume of cargo. Also, the FMC will require extensive justifying information before it exempts from the antitrust laws agreements among carriers that are presumptively anticompetitive. One relatively minor loss in that evidence submitted by shippers that challenge anticompetitive carrier agreements is not protected from disclosure under the Freedom of Information Act, whereas carrier information is so protected.

3. Rates and Compensation

Tank Car Allowance. On January 11, 1985, CMA will propose to all parties that they accept our proposal as the "long-term" resolution of the last two years of negotiations over tank car allowances. The proposal would, next year, reduce by about 8 1/2 percent of the level of allowances the railroads pay CMA members for use of their tank cars. The proposal, however, would prohibit deviations from this mutual allowance formula by a railroad that would try to pay a lower allowance level. Finally, the proposal would continue the current practice of the Commission issuing an order setting out an allowance system, relying only on the underlying statute as the obligation of a railroad to pay allowances. In related challenges to railroad tariffs that deviate from the national allowance system, CMA counsel has successfully obtained an investigation of two tariffs, one of which would cost CMA members about \$1.6 million per year.

4. CHEMTREC

Emergency Response Team Workshop. The three CHEMTREC Emergency Response Team Workshops held in 1984 were attended by 201 people. Three additional workshops are scheduled for 1985 in the following locations:

April 2-3, New Orleans, LA
October 29-30, Baltimore, MD

The St. Louis workshop will address the needs of smaller chemical companies and distributors.

Standard Phrases for Emergency Response. CMA formed a work group of chemical industry and other interested parties to identify and define terms used in emergency response communications. Two manuals are being prepared on hazardous materials containers and protective clothing. These manuals will be distributed to emergency responders throughout the country.

Canadian WATS Line. CHEMTREC successfully extended its service across international borders into Canada on November 1, 1984. During the first two months of operation, 30 calls were received from Canada.

5. Technical and Research Activities

Air Dispersion Model. CMA and the AAR Bureau of Explosives are developing an air dispersion model for use in responding to emergencies involving hazardous materials. Responders furnish relative information on weather conditions, leakage rates and spill size, and the model will project the extent of air contamination over time. Currently, the system contains information on 36 chemicals, however, plans call for this base to be expanded. Information on participation will be distributed to CMA members.

Motor Carrier Safety Survey Program. The effects of this program have been very favorable. Over two hundred bulk and dry freight motor carriers have been surveyed which has raised the level of safety awareness on the part of industry and the public. The inter-industry group sponsoring this program intends to embark upon a nationwide media campaign.

Cargo Restraint Systems. CMA, working in conjunction with the AAR and the Department of Transportation, is completing the development of a Loading, Blocking and Bracing Manual that can be used as industry guidelines for securing containers in full load shipments.

K. Energy and Petrochemical Feedstocks

1. Congressional Developments and Response

Energy Taxes. In the last Congress, proposals were considered by the House Ways and Means Committee on a broad-based consumption or sales tax on energy, a BTU tax, a value-added approach and a pollution tax on "unclean" energy sources. National security arguments and disproportionate impacts or equity arguments were also a part of Congressional discussion in 1984.

The imposition of new or additional energy taxes could be considered in the new Congress as a means to generate revenue and reduce the Federal deficit, or possibly as an additional funding source for the extension of the Superfund law. Consideration of a mix of crude oil excise taxes, oil import fees and an increased gasoline excise tax is also expected.

CMA continues to oppose energy taxes. The economic impact of various energy taxes on certain chemicals is being reviewed.

Emergency Preparedness. In 1984, the President signed legislation mandating a Strategic Petroleum Reserve (SPR) fill-rate of 186,000 barrels of oil per day. The House passed a bill requiring the Department of Energy to conduct a test sale of 1.1 million barrels from the SPR within 180 days of enactment. The Senate failed to pass a similar measure, but markup sessions were held in the Senate Energy and Natural Resources Committee on a comprehensive bill to deal with a major petroleum shortfall.

Allowing free market forces to continue to operate, while avoiding government price and allocation controls on feedstocks, is the essence of the CMA position. CMA supports use of the SPR with an auction system for distribution.

Natural Gas. Natural gas legislation failed to pass in the last session. The bill reported by the House Energy and Commerce Committee was not taken up despite a letter urging consideration signed by 218 members. Proponents of that reregulatory bill were unable to have the House Rules Committee consider a rule and send the legislation to the House floor. At the close of the First Session of the 98th Congress, the Senate defeated two natural gas proposals. The debate between deregulation and reregulation continued, and subsequent meetings in 1984, among key Senators failed to produce a consensus. The matter was not returned to the Senate floor.

With 40 to 50 percent of natural gas being deregulated January 1st pursuant to existing law, many Congressional members are tracking gas prices and have adopted a "wait and see" attitude with regard to the need for corrective gas legislation. The debate over gas availability and prices, therefore, has primarily moved to the regulatory arena where the

Federal Energy Regulatory Commission (FERC) rule-making process will intensify. Nonetheless, it is expected that some groups will seek repeal of incremental pricing and the Fuel Use Act as an amendment during the budget approval process. Furthermore, government studies requested by Congress could stimulate interest in legislating natural gas policy. Energy Secretary Donald Hodel has recommended to the President and members of Congress total deregulation of natural gas production, saying the lifting of controls would save billions of dollars and reduce reliance on imported fuel.

CMA and a coalition of other industrial users and producers have opposed legislation extending or maintaining price controls on natural gas, and essentially stated that the status quo is preferable. The CMA goal is to remove demand restraints, seek deregulatory action and prevent punitive legislation from passing.

2. Regulatory Developments and Response

NGPA Report. The Department of Commerce (DOE) released the second report required under Section 123 of the Natural Gas Policy Act (NGPA). The report concludes that NGPA wellhead price controls, restricted access to interstate pipeline capacity, rising transmission margins, and regulatory restrictions on gas-on-gas competition are holding natural gas prices at artificially high levels.

The DOE is not advocating specific legislation at this time while it studies the impact of partial deregulation effective January 1, 1985. However, DOE will become more active in regulatory forums urging the Federal Energy Regulatory Commission (FERC) to remove restrictions on spot-sales programs, to take steps to increase access to pipeline capacity, and to implement new rate designs encouraging gas competition. FERC Chairman Raymond O'Connor announced that a major information gathering effort in these areas should be completed by June of 1985. CMA anticipates rule-making resulting in profound changes in the way the gas industry is regulated. The first notice of inquiry on interstate transportation issues was published in the Federal Register on January 2. The final FERC rule that covers deregulation and other pricing changes on January 1, 1985, under the NGPA was published in the November 29 Federal Register.

Sulfur and Nitrogen Oxides Emissions Survey. The Energy Information Administration (EIA) is requesting public comment on a new survey to gather information for research purposes from industrial sources of emissions of sulfur and nitrogen oxides. CMA's preliminary view is that a new survey should not be necessary since information of this type is provided to EPA and state agencies.

Industrial Energy Conservation Information. The DOE Division of Improved Productivity, Conservation and Renewable Energy is requesting public comment on the forms used in collecting information on industrial

energy conservation progress. CMA does not anticipate any changes that will affect the survey of 1984 energy conservation progress.

Strategic Petroleum Reserve. On December 12, Energy Committee Chairman James Borden provided comments to the National Petroleum Council on behalf of CMA. CMA objected to a provision in their report on the Strategic Petroleum Reserve that recommended " . . . a more restricted list of purchasers such as U.S. refiners, their purchasing agents, and/or traditional suppliers . . ." In our view, CMA members should also have an opportunity to bid for SPR supplies.

3. Technical and Research Activities

Energy Tax Impact Study. CMA has contracted with SRI International to develop information for a better understanding of the potential impact of new energy taxes on plant closing, loss of jobs, and the decrease in related economic activity. The information would be of great value in the event new tax reforms are proposed to Congress. DOE has been asked to provide an analysis to the House Energy and Commerce Subcommittee on Oversight.

4. Litigation and Related Legal Activities

Cogeneration. On November 30, CMA filed a motion to intervene and a protest with the Federal Energy Regulatory Commission (FERC). The filing states CMA's objections to the petition of KP Diversified Investors, Inc. for a FERC declaratory order that would lead to greater utility investment in cogeneration ventures. We believe FERC does not have legal authority to grant KP's request. Moreover, even if FERC does have such authority, the determination should be made following a rulemaking proceeding subject to the constraints of the Administrative Procedure Act rather than by a declaratory order.

L. Taxation

1. Congress Developments and Response

1984 was a highly successful tax legislative year for CMA and its members. Four tax provision of prime importance to the chemical industry were enacted in the Tax Reform Act of 1984:

- o the Foreign Sales Corporation (FSC) provisions to replace DISC;
- o two-year postponement of Treasury Regulations that would require allocating U.S. research and development expenses to foreign source income;

- o exception from new restrictive accounting rules for expenses of cleaning up hazardous waste sites; and
- o exemption from separate taxation under Superfund of benzene, toluene, and xylene used in gasoline.

The estimated value of these provisions to the industry is \$4.3 billion in 1984; \$1 billion in 1985; and \$1 billion in 1986.

The Treasury Department's 1984 Tax Reform proposals would have a severe impact on the chemical industry. Of most immediate concern, the Treasury would eliminate the investment tax credit and limit capital cost recovery through ACRS. In addition, the Treasury would greatly increase taxation of U.S. multinational corporations by repealing the per country limitation. Anticipating a Federal deficit in excess of \$200 billion, the pressure for business tax increase legislation as "tax reform" will be great. Passage of tax legislation must wait until spending and revenue issues are resolved in the first Joint Congressional Resolution, probably in August or September.

Tax Policy Committee is analyzing the Treasury Tax Reforms proposals and preparing position papers. CMA maintains excellent ties with key Congressional and Administration leaders on tax matters and coordinates its activities closely with allied business and trade associations.

Plant Management and Design

Codes and Standards

Electrical Codes and Standards. CMA submitted 114 proposals for revision of the 1984 National Electrical Code.

CMA nominated one principal representative and 10 alternate representatives to Code-Making Panels of the National Electrical Code Committee. All were appointed by NFPA, so that CMA has principal and alternate representatives to 15 of the 20 NEC panels.

CMA approved the following standards as American National Standards: UL 224 (Extruded Insulating Tubing), UL 845 (Motor Control Centers), and UL 886 (Outlet Boxes and Fittings for Use in Hazardous Locations).

CMA disapproved UL 877 (Circuit Breakers) as an American National Standard.

CMA reaffirmed approval of the following standards as American National Standards: UL 44 (Rubber Insulated Wires and Cables), UL 62 (Flexible Cord and Fixture Wire), UL 83 (Thermoplastic-Insulated Wires and Cables), UL 823 (Electrical Heaters for Use in Hazardous Locations), and

UL 1581 (Reference Standard for Electrical Wires, Cables, and Flexible Cords).

Other Standards. CMA approved API 526 (Flanged Steel Safety Relief Valves) as an American National Standard.

CMA disapproved the following as American National Standards: UL 58 (Steel Underground Tanks for Flammable and Combustible Liquids), and UL 142 (Steel Aboveground Tanks for Flammable and Combustible Liquids).

CMA abstained from voting on UL 51 (Pumps for Anhydrous Ammonia and LP-Gas) because the scope excludes chemical plants.

Standards Related Activity. CMA voted for those nominated as members of the ANSI Board of Directors.

N. Patents and Protection of Technology

1. Congressional Development and Response

National Cooperative Research Act. The National Cooperative Research Act of 1984 (S. 1841) was signed by the President on October 11, after unanimously passing both Houses of Congress. The purpose of this legislation is to promote joint research and development (R & D) and increase innovation and productivity. Key provisions are:

- o application of the rule of reason to joint R & D ventures;
- o elimination of treble damages as a remedy against conduct of a joint R & D venture, provided the venture, its parties, nature and objectives have been properly notified to the Attorney General and the Federal Trade Commission, and a notice of the joint venture is published in the Federal Register;
- o allowance of attorneys fees awards to the prevailing defendant in the event of frivolous, unreasonable, bad faith litigation, or litigation entered into without foundation;
- o a lengthy definition of joint R & D ventures within the purview of the Act.

Drug Patent Term Restoration. President Reagan signed S. 1528, the Drug Price Competition and Patent Term Restoration Act of 1984, into law on September 24. The law restores to the patent term for brand name drugs the period of time lost, up to five years, due to the Food and Drug Administration (FDA) premarketing review process. Although earlier

versions of this legislation covered industrial and agricultural chemicals and animal drugs as well, the enacted legislation deals with only human drugs.

CMA's Office of General Counsel has apprised members of CMA's staff on the particulars of this legislation. In particular, given the broad definition of joint R & D ventures covered under this new law, it appears that Special Program Panels may qualify for the elimination of treble damages protection afforded notified joint R & D ventures. The Office of General Counsel has counseled the Special Programs staff on the advisability of and procedures for filing notifications with the Justice Department and the Federal Trade Commission.

Agricultural Patent Term Reform. The Agricultural Patent Reform Act (H.R. 5529), which CMA supported and which would have provided patent term restoration for agriculturals, chemicals regulated under TSCA, and animal drugs, was not passed before Congress adjourned.

Patent Law Amendments. H.R. 6286, the Patent Law Amendments Act of 1984 (S. 1535 in the Senate) was passed by Congress October 11 and signed by the President. The legislation:

- o simplifies requirements for naming joint inventors;
- o allows members of a research team to share unpublished information without endangering patent rights;
- o authorizes arbitration of patent interferences;
- o establishes a system of granting defensive patents and encourages use of them;
- o merges the Board of Appeals and Board of Patent Interferences into a new board called the Board of Patent Appeals and Board of Patent Interferences;
- o prohibits supplying components of an invention in the United States using a process patented in the United States for final assembly abroad;
- o establishes a national commission to study employed inventor rights; and
- o makes other technical changes in the patent laws.

Because of opposition from the generic drug industry, the provision on importation of products made outside the United States using a process patented in the United States was dropped from H.R.

6286 prior to enactment. Legislative activity on this subject is anticipated in the 99th Congress.

Industrial Chemical Patent Term Restoration. The enactment of patent restoration legislation for industrial chemicals is probably dependent upon whether the agricultural chemicals industry will accommodate legislative demands by environmentalists and consumers. CMA and NACA are meeting with key Congressional and Administrative staff members to determine what the prospects are for early passage in the 99th Congress of such legislation.

2. Policy Development/Legal

Patent Search Automation. CMA sent comments to the Patent and Trademark Office (PTO) Commissioner, Gerald Mossinghoff, reaffirming our general support for automation of the PTO patent search files. However, CMA also expressed concern about reports that PTO files may be managed by a private, profit-making enterprise and that fees may be charged to the public for access to records of patent applications and registrations.

CMA maintained that government records should not be managed or controlled by private firms which may charge the public for access. This would be inconsistent with the long-standing government policy of making official non-confidential records available for public inspection free of charge.

CMA's Patent and Trademark Committee was briefed by two PTO officials on November 17, 1984, on new developments in the patent automation process.

0. State Legislative and Regulatory Activity

1. Superfund

State Legislation. The most active aspect of state superfunds in 1985 is likely to be the reauthorization of many of the existing statutes. The major areas of activity should be the size of the fund, funding mechanisms and liability provisions. Legislative activity is likely in the following states: California, Michigan, Pennsylvania, Washington, New Jersey, Texas, Utah and New York, plus others.

Communications Support. A matching grant under regional communications program was approved for the Alliance of Chemical Industries of New York State. The program is aimed at the Superfund extension in that state.

2. Public Compensation

State Legislation. Activity on this issue is expected to increase in 1985 as previously filed bills receive hearings and as additional states take up new legislation. In the forefront of this activity will be New Jersey where a bill introduced in January of last year is expected to be the subject of hearings as early as February. This proposal has the greatest possibility of being enacted of any of the state bills. In addition, the legislative commission working on public compensation in Massachusetts, is continuing its efforts to develop a proposal to present to the legislature in the spring. Despite the excellent efforts by the business and insurance communities in Massachusetts last fall during hearings on a draft report, it is still likely that some compensation plan will emerge from this process. California and Minnesota are both expected to be active in reviewing existing compensation and liability laws for possible amendments. Beyond these four states, legislation may be introduced in New York and Pennsylvania and perhaps three or four more states. While the favorable conclusions in the UAREP report will be valuable additions to our advocacy, a tough year is expected in dealing with liability standards, causation, and compensation fund issues.

Communications Support. The Communications Department assisted New Jersey Chemical Industry Council to develop a communications program on the public compensation issue.

3. Hazardous Waste Management and Regulation

Many states will be considering bans on land disposal and underground injection. An increase in hazardous waste fees and the broadening of fee systems, as witnessed in California, will continue to be a problem in many states due to the continued search for greater revenues for the hazardous waste programs.

In addition, states will continue to apply to EPA for final authorization to run their RCRA programs. Currently eight states have received approval for these programs.

4. Right-to-Know

Legislative States. In 1984, six states enacted new right to know laws and four states amended existing statutes. There are a total of 21 states with worker and/or community right to know laws. The Federal OSHA hazard communication standard finalized on November 25, 1983, has had a significant impact on state legislation. Five of the six new laws passed in 1984 are based substantially on the Federal standard.

NJ Preemption Decision. Several factors will shape the issue through 1985. On January 3, a federal judge in New Jersey ruled that the state's right-to-know law was pre-empted by the Federal standard for all manufacturers in SIC Codes 20-39. This ruling is the first indication

that the courts will uphold the federal pre-emption in the area, and will affect similar state-passed worker right-to-know laws. Community right-to-know legislation will be debated in many states. The issue will focus on public access to information regarding potentially hazardous chemicals in plants and facilities.

State Plan State Activity. The 25 states which have OSHA approved plans will continue to administratively adopt hazards communication programs through 1985. Most state plans will be identical to the federal standard. OSHA has recently approved a plan submitted by the state of Iowa, based on the state's worker/community right to know law, which provides for broader coverage than the federal standard, and allows public access to information.

5. Groundwater

There has been a significant amount of groundwater legislation at the state level this past year. Provisions of bills have included the development of specific state standards for pesticides and other chemicals, new taxes for monitoring and cleanup of groundwater contamination, as well as programs for underground storage tanks. A new trend in some states involves a replacement of contaminated water sources and alternative water supplies. It is anticipated that a number of states will be active in the groundwater area in the coming year, including California, Michigan, Florida, New Jersey, New York, Illinois and Maine.

6. Transportation

Good Samaritan legislation has now been passed in thirty-five states. It is anticipated that a number of additional states will address the issue during the coming legislative session, including Wyoming, Ohio and Alabama. The adequacy of state and local emergency response plans will become a major issue nationwide in light of the Bhopal incident.

7. Toxic Air

More than thirty states are developing programs which regulate hazardous air pollutants for which the U.S. EPA has not set standards. These programs regulate emissions into the atmosphere of hundreds of chemicals and require testing, monitoring and controls. These activities will continue through 1985. Action on state air programs is closely linked to the scheduled debate in Congress on reauthorizing the Clean Air Act. States have broad latitude to address sources of air pollution which are not addressed by federal programs.

8. Chronic Health

The general issue of cancer, managing the risks, and its relationship to environmental pollution and workplace exposure to chemicals will continue to receive legislative and regulatory attention in 1985. State

legislation could address cancer studies, cancer registries and health monitoring and testing programs. A major component of the issue relates to the states setting standards for permissible limits of exposure to certain chemicals. CMA is working with other industry groups to ensure that states use good science in making risk assessments and setting standards.

Specific Chemical Research and Advocacy

Advocacy Highlights

Chlorobenzenes. The Chlorobenzenes Program Panel will initiate a two generation reproduction study of monochlorobenzene in rats. The study will be conducted at Bio/dynamics, Inc.

Cumene. The Interagency Testing Committee (ITC) designated cumene as a priority chemical for testing under Section 4 of TSCA. Recommendations include testing for: mutagenicity, teratogenicity, reproductive effects, chronic effects (including carcinogenicity), and ecological effects. CMA responded to the ITC designation and interacted with EPA during the rulemaking process.

Dibenzofurans and Dioxins. A new Program Panel was formed to address the TSCA Section 21 petition filed by the Environmental Defense Fund and the National Wildlife Federation. The Petition calls for a series of stringent regulatory actions on dioxins and dibenzofurans. The Panel filed with EPA a letter expressing interest in working with the Agency, the petitioners, and other interested parties to address the issues raised by the Petition. This type of collaborative effort is felt to be more productive than the numerous rulemakings proposed in the Petition.

Ethylene Oxide. OSHA recently determined that adoption of a short-term exposure limit (STEL) for ethylene oxide is not warranted. OSHA concluded rulemaking on EO in June 1984 but reserved decision on adoption of a STEL at that time. Further review of the available health evidence led OSHA to the "no STEL" decision.

Fluorocarbons. A 1985 budget of \$1.75 million was approved in October 1984.

- o Members of the Program Panel attended a conference at the World Resources Institute in mid-November. The main topic of discussion was the Prather, et al. paper, recently published in "Nature," which examined the so-called non-linearity of ozone response to very large increases of inorganic chlorine. At this same meeting, the Natural Resources Defense Council (NRDC)

announced the filing of their suit against EPA to force action on the further regulation of CFCs.

- o At the request of the U.S. Department of State (DOS), representatives and speakers for the Panel met in early November to brief Assistant Secretary James Malone, Chairman of NACOA, on the state of CFC science. EPA also participated in the briefing.
- o DOS/EPA hosted a briefing on January 11, 1985, to discuss the U.S. position at the UNEP Ad Hoc Working Group meeting scheduled for January 21-25, 1985, in Geneva. A Framework Convention is expected for signature in March 1985. The fate of proposed non-mandatory protocols is still in doubt.
- o EPA has begun a risk assessment of CFCs. Rand Corporation is one of the prime contractors. The initial phase of the project, scheduled to take two years, will be closely monitored by the Panel.

Glycol Ethers. The Glycol Ethers Program Panel has recently completed a 13-week inhalation study of diethylene glycol monomethyl ether in rats. No adverse treatment-related effects were observed at any tested dose level.

In addition, the Panel is preparing comments in response to EPA's recently published proposed rulemaking on testing requirements for diethylene glycol monobutyl ether and diethylene glycol monobutyl ether acetate. Comments were submitted January 18, 1985.

Octylphenol. Final reports on the Octylphenol Program Panel's aquatic toxicology testing program were submitted to EPA as part of its TSCA negotiated testing agreement. These reports were also filed with the other federal research and regulatory agencies. The Panel informed EPA that it would be conducting chronic testing of octylphenol in the rainbow trout.

Oleylamine. The Oleylamine Program Panel is preparing comments in response to EPA's recently published proposed rule on testing requirements for oleylamine. Comments were submitted January 18, 1985.

Phosgene. The Phosgene Program Panel has authorized Johns Hopkins University to purchase the necessary analytical and industrial hygiene equipment for conducting a research project aimed at developing a treatment for phosgene induced edema. The Panel will contract the research after reviewing the laboratory's safety procedures for handling phosgene.

A.

Phthalate Esters, Trimellitate Esters and Ethylhexanoic Acid.
Three Special Program Panels (Phthalate Esters, Trimellitate Esters and Ethylhexanoic Acid) met jointly with EPA to discuss a scientific issue of mutual concern. The issue is the significance of peroxisome proliferation as a predictor of carcinogenic potential. Certain chemicals, such as lipid-lower drugs, which are not mutagenic, cause an induction of peroxisomes in the liver and cause liver cancer in rodents. Other chemicals, such as aspirin, induce peroxisomes but do not cause cancer. Certain phthalate esters also cause peroxisome induction and cancer. The Phthalate Esters Panel has an ongoing Negotiated Testing Agreement, in which peroxisome induction is used as one of the parameters for determining which phthalate esters need long-term testing. The Trimellitate Esters Panel has a similar testing program. The Ethylhexanoic Acid Panel has therefore proposed that EPA use a similar approach for the test rule on ethylhexanoic acid.

The panels believe that chemicals which are potent peroxisome proliferators should be high priority for chronic testing, where those chemicals which are only mild inducers are of much less concern. The panels' discussions with EPA scientists focused on the meaning of peroxisome induction especially with regard to triggers for further testing.

Polychlorinated Biphenyls. The Polychlorinated Biphenyls (PCB) Program Panel filed comments in response to EPA's proposed rule on electrical transformers containing PCBs. The Panel urged EPA to limit its regulatory activities to those transformers where a significant potential for exposure to combustion products are posed for a substantial number of persons. Furthermore, the comments argued that EPA should provide transformer owners more flexibility for developing effective measures for minimizing fires and associated risks from combustion products. The Panel agreed to testify at EPA's public hearing scheduled on January 14, 1985.

Rubber Additives. The Rubber Additives Program Panel submitted information for use by EPA in reviewing the Interagency Testing Committee's recommendation on mercaptobenzothiazole.

III. DEPARTMENTAL PROGRAM NOTES

Office of the President

International Affairs

The International Affairs Group is pursuing harmonization of chronic hazard communications in cooperation with CEFIC's (European Council of Chemical Manufacturers' Federations) Safety of Chemicals Committee (see E.4, above). With the European Communities' recent Commission decision on

managing confidentiality of specific chemical identity of new substances, this issue is apparently closed; IAG will focus on more general aspects of confidentiality in OECD countries. IAG's consideration of the Bhopal disaster concluded that procedures for in-plant and adjacent community safety need review and broad communication of these to minimize adverse legislation.

2. Association Liaison

A major effort was made to use the U.S. Chamber of Commerce's teleconference facilities for a Council of Chemical Associations' seminar on RCRA, scheduled for early March. Unfortunately, due to the diverse requirements of some associations, the participation needed to approximate this format's substantial costs could not be provided. As an alternative, the more detailed two-day seminars to be presented by CMA's Environmental Management Committee will be modified to include all interested CCA participants. The programs in Houston, New York and possibly Chicago will provide for "break-out" sessions when requested by participating associations.

B. Government Relations Department

1. Federal Affairs

CHEMICAL FORUM. In recent months, the CMA CHEMICAL FORUM L uncheon series has brought several influential speakers before our audience of Washington industry executives.

In September the CHEMICAL FORUM featured the former Governor, and now U.S. Senator Daniel Evans, of Washington. A Republican, and member of the Senate Environment and Public Works Committee, Senator Evans discussed Superfund reauthorization and the direction he felt a bill should take.

On October 11, writer-commentator Ben Wattenberg discussed his book "The Good News Is the Bad News Is Wrong." Mr. Wattenberg's contention is that the pessimistic press and doom-saying TV networks have misled American public toward a negative, fear-oriented view of life in America.

The November CHEMICAL FORUM featured Dr. Richard Wirthlin, President Reagan's pollster and one of his chief political advisors. Dr. Wirthlin reviewed Campaign '84 and the election results, and discussed some of the challenges facing the Administration over the next four years.

The next CHEMICAL FORUM will be February 12, beginning the 1985 series. Featured speaker is expected to be House Commerce Committee Chairman John Dingell (D-MICH).

Government Relations Committee. On December 12 the Government Relations Committee hosted their annual Christmas buffet luncheon at the new J. W. Marriott Hotel in Washington. The attendance was approximately 200, including Members of Congress, company Washington representatives, and guests from the White House and various government agencies.

Grassroots. The first edition of our CMA Grassroots newsletter has now been distributed. Henceforth published quarterly, it will contain articles on major industry issues such as Superfund, and coverage of various grassroots activities.

A Grassroots Task Group has been organized under the Government Relations Committee, with a membership of 18. The task group will seek to develop grassroots ideas and techniques, advise in the management of our program and encourage wider member company participation.

Recently, the grassroots computer program has added a valuable capability. We can now quickly identify companies located in any Congressional district and retrieve a variety of specific information which will help in our coalition-building efforts.

On March 13, the CMA grassroots program will sponsor a one-day Superfund seminar and visit to Congressmen in Washington D.C. Each plant located in our key Congressional districts is being encouraged to send a representative. After a briefing session, armed with appropriate handout materials, and assisted by company Washington representatives, visits will be conducted with their Members of Congress. Separate informational mailings have been sent to each member company.

2. State Affairs

State Affairs Committee. The State Affairs Committee, in response to the Bhopal incident, moved up its January meeting date so as to discuss reactions in the states and localities and to assess our readiness to respond to new and potentially adverse legislation and regulation. It was agreed that the Right-to-Know Task Group should reexamine industry position on community right-to-know. The Committee also charged the Hazardous Materials Transportation Task Group with surveying the states on emergency response programs and how they operate.

Hazardous Waste/Groundwater. Members of the Hazardous Waste/Groundwater Task Group will be participating in a groundwater quality protection workshop sponsored by eight California trade associations including the California Chemical Industry Council. The objective of the workshop is to review the emerging focus of government programs on groundwater quality protection. It will provide a forum for industries to review issues of standards, monitoring, agency management, public perception and legal implications.

The Hazardous Materials Transportation Task Group is continuing to work for the introduction and passage of Good Samaritan legislation and is also discussing the development of a summary of emergency response programs in the states.

Right-to-Know. A new Joint Right-to-Know Task Group has been established which combines the former Hazards Communications Task Group of the State Affairs Committee and the former Right-to-Know Task Group of the Occupational Safety and Health Committee. y support The task group has begun to distribute copies of the Right-to-Know compilation to CMA member companies. This three-volume set includes twenty-one state Right-to-Know laws, plus final and proposed regulations implementing the laws, and related information. The task group is also finalizing Right-to-Know advocacy guidelines to address coverage of employers outside of the manufacturing sector, hazards information for emergency response agencies, and community Right-to-Know.

Toxic Air. A new Toxic Air Task Group is currently being formed and members recruited. The task group will work with other groups from the Technical Department to revise CMA's policy on state air toxic program development.

Information Management. The Information Management Task Group met recently to finalize the 1985 contract with Commerce Clearing House (CCH) for its legislative tracking service. CCH made several important changes to its service based on suggestions made by the task group. The task group is also moving ahead on expanding its electronic information network. By the end of January, several member companies and the Chemical Industry Council of New Jersey will be electronically linked with the CMA data base to identify and report on key issues.

C. Technical Department

Committee and Staff Realignment. In preparation for this year's legislative and regulatory agenda, CMA updated its action plans for Superfund and TSCA Reauthorization, and proposed new plans for Groundwater and Public Compensation activities.

To shorten its response time and to enhance coordination, a new standing committee, the Health and Safety Committee is proposed for Executive Committee approval in January. The committee the activities of five other groups to be sunsetted, the Chemical Regulations Advisory Committee, the Occupational Safety and Health Committee and three groups working on public compensation. Staffing for the Environmental Division and the Health, Safety and Chemical Regulations Division were reorganized to reflect the changed assignments.

Bhopal Impact and Response Planning. In the wake of the Bhopal accident, CMA initiated planning to deal with increased public and governmental emphasis on emergency planning and response, transportation safety, and right-to-know issues.

EMC Environmental Update. The EMC's Fall Environmental Update was held in San Francisco. The Update, held in conjunction with the California CIC, was attended by approximately 130 persons from 60 companies. The Update featured a one-half day summary of the recent RCRA amendments.

D. Office of General Counsel

The Office of General Counsel will be publishing and routinely updating a registry of CMA companies who have attempted to utilize alternative dispute resolution for their intercorporate disputes. The registry will identify such things as the nature of the disputes, the techniques attempted, the status of the efforts, and a corporate representative who can be contacted for more information.

By helping to maximize our industry's expertise in alternative dispute resolution, we hope to enhance our credibility for the future when we propose creative solutions on our advocacy agenda, such as the recent establishment of Clean Sites, Inc.

E. Communications

Bhopal Response. Rarely does one event so stretch an organization's capabilities as has the accident in Bhopal. Every member of the department became involved through answering over 1,000 press inquiries, preparing and distributing briefing materials to 1,700 industry addressees, coordinating numerous television and radio appearances, writing in CMA News and ChemEcology, producing and distributing television and radio features on industry safety to the CMA network and developing the communications portion of the Bhopal response plan. Outside consultants were retained to analyze the media coverage by five major daily newspapers, three news magazines and the three major television networks. An open Communications Committee meeting January 9, which was focused on the implications of Bhopal, drew 70 attendees.

Other Areas

- o The CMA Issues Briefing Book, with a current distribution of 1,350 was updated in December.
- o A CMA Community Relations manual has been developed to assist CIC's in organizing state programs.

- o A CMA Editor's Service to provide information on industry issues to member company employee editors will begin in the first quarter, 1985. Members were surveyed concerning the potential usefulness of the proposed service and the response was overwhelmingly positive.
- o Catalyst Awards publicity efforts in the U.S. and Canada have generated more than 1,000 requests for information and nomination forms.
- o The 1985 Communications Committee planning conference will be held at Williamsburg, VA, May 1-3. The agenda includes program review and critique, and panels on crisis, risk and grassroots communication.

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