U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210

Office of the Assistant Secretary

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DR. L. H. BALLOU

MAY 5 1978

Laurence H. Ballou, MD
Medical Director
Firestone Tire & Rubber Co.
1200 Firestone Pkwy
Akron, OH 44317

Dear Dr. Ballou:

I am writing to ask for your help in the developing national problem of employment discrimination which is related to occupational exposure to hazardous substances. Reports to the Occupational Safety and Health Administration from workers indicate that a number of major corporations are either adopting or expanding policies which require that women of childbearing age and pregnant women be excluded from jobs involving potential exposure to certain toxic substances. These exclusionary practices have resulted in firings, lay-offs or denials of employment opportunities based on the often unsubstantiated view that exposure to these toxic substances will damage a fetus. Through this letter I want to (1) let you know of several recent governmental efforts in this area, (2) urge you to exercise the greatest possible restraint in adopting or expanding exclusionary practices, and (3) solicit your views and assistance in addressing this difficult problem.

ROSS VPES

Employment practices which deny opportunities to any class of workers in the name of safety and health are of great concern to OSHA, and the Department of Labor. These practices are fundamentally in conflict with the Occupational Safety and Health Act which requires the assurance "insofar as practicable that no employee will suffer diminished health, functional capacity or life expectancy as a result of...work experience."

On April 19, 1978, I delivered an address to the "Workshop on the Assessment of Reproductive Hazards in the Workplace" sponsored by the Society for Occupational and Environmental Health and the National Institute for Occupational Safety and Health. A copy of this address is enclosed for your information.

In that address, I discussed some of the difficult unanswered questions concerning reproductive hazards of both men and women, and explained OSHA's expanding role in this area. OSHA is convinced that the mere exclusion of workers does nothing to eliminated the hazard which is purported to justify exclusion, and that such exclusion is not intended by the Act.

I am writing to you as a corporate medical director because you will play a major role in the consideration of the use of exclusionary practices as a means of limiting exposure to toxic substances in your company. You may be aware of my presentation to the American Occupational Health Conference on April 12, 1978, in New Orleans, a copy of which is enclosed. In this address I emphasized the many varied and significant roles which occupational physicians play in protecting worker health. Your impact on corporate employment policies and your commitment to worker health are indispensible to the eventual elimination of occupational disease.

In recognition of your crucial role in corporate decision-making, I urge you to consider with great caution the adoption of any policies of exlusion as a means of dealing with occupational health concerns. It appears that some exclusionary practices are being swiftly adopted on the basis of fragmentary or inconclusive evidence. Concern for female reproductive capacity and the fetus is praiseworthy, but experience is demonstrating that any given substance may be equally damaging to the male reproductive system and through the male to the fetus. I believe that attention must be focused on hazards faced by all workers--men as well as women.

I am also concerned that some exclusionary employment practices are being adopted instead of steps being instituted to eliminate health hazards. The laws of this nation are committed to guaranteeing both healthful working conditions and equal employment opportunity. I believe, therefore, that employers should exhaust all possible avenues of worker protection (be they engineering controls, work practices, personal protective equipment, etc.) before considering the adoption of exlusionary employment practices.

Additionally, I am concerned that some employers are adopting exclusionary practices in situations where less restrictive alternatives exist. Job rotation or transfer, temporary leave of absence during parenting, and rate retention are all options less restrictive than total exclusion from the

OSHA has much work to do in this area, and is expanding its efforts in concert with other federal agencies-such as the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP). On April 4, 1978, the EEOC Commissioners passed a statement (a copy of which is enclosed) which Chair Eleanor Holmes Norton indicates should serve to put employers on notice that they should think before they act and that they may be violating Title VII when they exclude or remove individuals from the workplace because of alleged exposure to workplace hazards. OSHA will continue to seek to establish standards which provide adequate protection for the entire workforce and will initiate appropriate enforcement actions in situations where employers have failed to comply with the OSH Act.

The purpose of this letter is to urge rational decision-making and dedication both to protecting worker health and to assuring equal employment opportunity for each and every worker in this country. We must not allow occupational health considerations to serve as the basis for limiting the job opportunities of any class of workers. The purpose of the OSH Act is served by eliminating the hazard rather than the worker.

I solicit your views and experience on this difficult issue. OSHA's decision-making is still in the formative stage, and we encourage your input as to historical problem areas, policy options, legal analyses, or other suggestions. In the coming months, OSHA intends to develop a comprehensive agency approach in dealing with exclusionary practices which considers the wisdom of all interested sectors of the public. The National Advisory Committee on Occupational Safety and Health (NACOSH) has discussed this problem and is considering alternatives available for agency action. I welcome your advice and counsel.

Sincerely,

Eula Bingham

Eula Bingham
Assistant Secretary
Occupational Safety and Health

Enclosures

Speech by Dr. Eula Bingham
Assistant Secretary, USDOL
Occupational Safety and Health Administration
Presented to the American Occupational Health Conference

New Orleans, Louisiana

April 12, 1978

I want to thank you for the opportunity to address this special plenary session of the American Occupational Health Conference.

As you are all aware, the Department of Labor was originally created to promote and protect the interests of American workers. This is a very important objective that was further strengthened by the creation of the Occupational Safety and Health Administration by the Congress in 1970. We feel that our mission to assure a healthy and safe working environment for American workers is of the utmost importance to society. It is a difficult task and we recognize that we can't do the job by ourselves.

We need a lot of help and cooperation in order to achieve our goals. We know from past history and the experience we've had, especially during the last year, that we can count on help from members of the medical profession, the academic community, other federal agencies, American industry and american workers. However, we need more cooperation and exchange of scientific data than we have had during the past. We need for workers to be able to identify possible health and safety hazards, and to notify us of their concerns; we need the medical community to share data with us to help us prevent acute episodes from occurring.

We're doing everything that we can to improve the effectiveness of the enforcement of the Occupational Safety and Health Act. Our basic philosophy has been that we have a good law. We believe that it needs to be administered more effectively than has been the case in the past. Secretary Marshall is committed to the proposition that the safety and health of workers should not be an element in economic competition. We think that this should apply to all labor standards, but it's particularly important when we talk about safety and health.

I know that workers, and many in the occupational medical community, fought hard to win passage of the Occupational Safety and Health Act, but when the Act was finally passed the real fight for safety and health was only beginning. Many individuals have diligently labored over the years to force past administrations to fulfill the promise of this landmark legislation. I know that it's been frustrating and disappointing for workers to turn to the Agency responsible for health and safety and find it unresponsive and even in some cases opposed to worker protection.

This administration is firmly committed to worker health and safety. In his first speech at the Department of Labor, President Carter said that he felt that, quote, "Of all the beneficial legislation passed in recent years, the Occupational Safety and Health Act had the best prospect of improving the lives of Americans workers." The President went on to say that he felt that the OSHA program could be well-administered and well-accepted, and he added that there would be no backing down on the concept or purpose of that law.

Secretary Marshall and I have been deeply committed to turning OSHA around. We have redirectd the resources of the agency to concentrate on the most serious hazards facing workers. Secretary Marshall and I have been deeply committed to turning OSHA around. We have redirected the resources of the agency to concentrate on the most serious hazards facing workers. Secretary Marshall said last year that he felt OSHA had been going after minnows and letting whales get away. We're now going after the whales. We're going after the chemicals that cause irreversible disease, cancer, and chronic pulmonary diseases.

We're trying to overcome six years of footdragging. With over 25,000 identified toxic substances in the environment OSHA in the past has issued only four health standards covering 17 chemicals. This administration has already issued three emergency standards and two permanent standards. Within the next few weeks we will issue final standards for arsenic, cotton dust, and DBCP and then lead in the next few months. But issuing standards is only one step in our efforts. We're also committed to effective enforcement. We have directed that at least 95 percent of our inspection resources are to be focused on the most hazardous workplaces. In reality, though, the agency can only inspect about three percent of the over five million businesses that we're responsible for each year. That's why we believe that the real key to job safety and health is a well-informed work force, a work force sensitive to its rights, aware of occupational dangers, and confident that it is protected under the law.

I believe that every worker has a fundamental human right to a safe and healthful workplace. A worker should not have to lay his or her life on the line just to have a job. No American worker should have to choose between health and a paycheck. I believe workers have a right to know the nature of the substances in their workplace environment, and to know how effectively their employers and the government are in protecting them against those hazards. I believe we also have the duty to inform workers of suspected or potential hazards in the workplace. We have not yet fulfilled the fundamental right of every American worker to a safe and healthful workplace.

The Carter administration has stressed human rights. We have not yet fulfilled the fundamental right of every American worker to a safe and healthful workplace. For too long, many workers have been expected to risk their health at the price of being able to work and support their families. We must reverse that attitude. When I assumed the leadership of the Occupational Safety and Health Administration, we had no full-time occupational physicians in the Agency. We are actively in the process of recruiting this badly needed talent and we do have occupational physicians on contract and serving on advisory committee such as NACOSH and the newly established Advisory Committee on cutaneous hazards. I know that we have at least three such people serving OSHA in this capacity in the audience today.

What are some of the things we at OSHA expect of physicians serving in the industrial community? In the area of prevention, we expect physicians to be the primary dispensers or preventive physical examinations to determine overall worker health, not just to ascertain if cholesterol levels are elevated.

We need your advice as forcefully as possible on new chemicals entering the workplace and to make sure that adequate testing and adequate protective measures are taken to protect worker health. We need your input to face squarely the evidence of toxic effects in animal testing and to the fact that these effects may be translatable to man. In the area of standards and in the standard setting process, we need your participation in helping to provide information and data concerning appropriate medical surveys for workers who work with these chemicals. We don't need a denial of the problem but scientific and reliable data to deal with the situation on a factual basis.

The area of education is another one where we need your input. Physicians and nurses still have the potential to do the most effective job in the education of workers and employers. While the image of some industrial physicians may be somewhat tarnished, you know as well as I do that your judgements are still being looked upon as somewhat sacred.

Let me look you in the eye and tell you what I believe your responsibilities are concerning women. You are helping make corporate medical policy concerning the employment of women. These are human beings who also need jobs.

Are you discriminating against women? Or are you discriminating against men who remain behind to do the dirty jobs your company doesn't want to spend the money to control? The Department of Labor does not intend to let either type of discrimination to be used and we intend that there shall be no protective discrimination used in the American workplace. If this type of discrimination continues, appropriate federal action will be taken to see that it ceases. Let me tell you how one senior occupational physician advised a woman who was being harassed by another physician some 17 years ago. During the early stages of pregnancy, the latter physician recommended that she be removed from her research position in a Univeristy laboratory because of potential exposure to toxic substances encountered in her research work. The head of the Department, a well known senior occupational physician called the woman in and openly discussed the potential hazard

involved and the precautions that should be taken to insure no hazardous exposure would occur. He also volunteered additional help in certain of her research to remove her from the exposure. At no time did he recommend removal from the job, only assistance and advice on how to have a safe and healthy working environment and how to avoid exposure. He also told her that at any time she had any apprehensions to come and talk directly with him. You probably recognize him as Dr. Robert Kehoe.

Are you as occupational physicians sitting down with your employees and their families and discussing potential toxic exposures in the workplace and how to protect against them? Are you encouraging family planning and reporting of early pregnancy to the Medical department. Are you discharging your responsibilities as a physician representing the health and safety interests of the workers and their families? Regardless of what might be adverse to overall company policy, you, as a medical doctor, have the duty to inform and to assure a safe and healthy working environment for those you are hired to protect.

We at OSHA also need your cooperation during crises that unfortunately do occur. It was not evident during the kepone and leptophas episodes. It has been forthcoming since, as well illustrated by the past DBCP incident.

I am hopeful that this type of cooperation will be more in evidence in the future. In closing, let me report a quote given by Dr. Irving Tabershaw almost a year ago when he delivered the Sappington Lecture at the ADMA meeting in Boston:

"There is one doctrine to which all physicians subscribe. Every physicians's obligation -- and it is equally pressing on the occupational physician -- is to the health of the individual, no matter who pays for his or her health care: the recipient, the government, an insurance company, an educational or research institution, or an employer. The occupational physician who follows this principle not only fulfills his professional and ethical responsibilities, but also protects the health of the enterprise," which means the physician's employer. "The workers are the company," Tabershaw continued, "What's best for them is best for the enterprise."

ADDRESS BY DR. EULA BINGHAM

PRESENTED TO THE

NIOSH/SOEH

"WORKSHOP ON THE ASSESSMENT OF

REPRODUCTIVE HAZARDS IN THE WORKPLACE"

April 19, 1978

Good morning. I am pleased to be here today, and I am particularly pleased to be a part of this continuing discussion of a problem that is still a dilemma to us all--reproductive hazards--how to assess them--and how to protect against them.

Historically--and too often, still today--reproductive hazards have been seen as a "women's problem"--as if there were no male contribution to the continuation of the species. Recently, many of the lead industries have acted to exclude women of childbearing age, and similar exclusionary practices are apparently becoming more common in the petrochemical industry as well. This discriminatory trend is alarming to me. It also worries many in the unions and other groups. Ironically, such practices could ultimately result in discrimination against the male worker, since many substances, such as lead, which affect female reproduction and the fetus, are also harmful to men.

One company excludes fertile women from its lead operations expressing concern for the fetus. But that same company does not test male workers for effects on the sperm, even through recent studies show that lead can affect male fertility.

Just in the last year with the nematocide DBCP we saw an instance where clearly, the male reproductive capacity was affected--in some cases resulting in sterility. Nobody seriously suggested that we remove all males from that operation. Would that have been the social response if the workers in that instance had been women?

The more we learn about toxic effects on reproduction, in fact, the more we are aware of the importance of male vulnerability. Research on vinyl chloride and anesthetic gases, for example, has shown higher rates of birth defects, spontaneous abortions and other reproductive abnormalities not only among women workers, but among wives of exposed male workers.

At OSHA we are dedicated--and it is our legal responsibility--to assure sofar as possible safe and healthful workplaces for all workers--men and women. And that includes protection of all functional capacities, including the reproductive capacity. We have a responsibility to insure the continuation of a healthy human population--as well as an obligation to protect every working person from the avoidable tragedy of a spontaneous abortion or stillbirth, or procreating children with birth defects.

Those of us who are scientists and those of us who are involved in government regulations have a lot of catching up to do. For too long we have been concerned with protecting only the healthy, white male worker. Any yet, paradoxically, one important reason for the discriminatory practices we are now seeing is that we know more about reproductive effects on females, especially during pregnancy.

For some inexplicable reason, little research has been done on the effects of workplace toxins on male reproduction. I think it is time we recognize the discriminatory effect of this emphasis, and make sure that in the future we do not foster a continuing bias by picturing reproductive hazards as primarily a female phenomenon.

We must be sure that attention is also addressed--where indicated--to seeking out effects on the male reproductive capacity. This does not mean ignoring gender-specific effects where they do occur. We need to be aware of these and use that information--not to exclude workers but to protect them.

It is particularly important to have meetings such as this, because as a regulatory agency, OSHA needs to be guided by the information the medical community can generate. And in this area of reproductive hazards, it is easy to lose focus, since the scientific responsibility is so diffuse among many diverse agencies including our own sister agency, NIOSH, but also the Environmental Protection Agency, the National Cancer Institute, Environmental Health Sciences, the Food and Drug Administration, the new Department of Energy, and others.

We are still on the frontier in learning about toxic effects on sexual capacity. We have vast gaps in knowledge left to fill. And our job at OSHA is that much harder because we have to develop standards for worker protection now. We have to address the social and legal dilemmas and we are, but we are limited to some degree by how little we know, scientifically, about the risks involved.

And that list includes only those substances for which we have dose-response data.

As a regulatory agency, we need answers from scientists in many areas:

- What more do we need to know about mutagens. We know that certain substances are mutagenic, but we have not yet been able to trace a defect in a human population to a mutagenic exposure.

- When are epidemiological studies useful in evaluating reproductive effects, and when are they not?

- Is there any need for a tier--or hierarchical approach--in evaluating mutagenic and other reproductive toxicology?

- What other information do we need about the effects of toxic substances on male and female physiology under stress.

- How can we relate data from animal tests to human populations in determining safe exposures?

- How can we detect toxic substances that exert a weak effect? Can methodologies used in testing safety in pharmaceutical drugs be used in assessing workplace and other environmental exposures, or do we need new testing protocols?

- Should teratogenic tests consider toxic exposures prior to conception?

- What do we need to know about synergistic and additive effects of multiple toxic exposures?

- In terms of social responsibility, at what point should industry, in its testing programs, inform employees and regulatory agencies of abnormal results?

- Given the number of chemicals which still need to be evaluated for reproductive toxicity, what should be the method for assessing priorities?

These are only a few of the questions that scientists can help us to answer. None of them have simple solutions. But in talking about methodology in this field, I want to emphasize to you how important it is, because we are dealing here with substances that have a vital impact on people's lives. And the methodologies used in testing are going to be scrutinized more closely than they ever have been before.

At OSHA, we are beginning the long overdue task of formulating a fair, uniform policy aimed at protecting all workers, male and female. And by protection, let me emphasize again that our commitment is to protection, not exclusion. Employers who look at the exclusion of any group of workers as an answer should be warned that it could have legal implications both under the OSH Act, which explicitly seeks to assure a healthful

working place for every man and woman and also under the Equal Employment Opportunity Act, which protects against job discrimination.

We really don't know the scope of the problem we are facing--but we know that socially we have a problem. To illustrate, seven percent of all children born in the United States suffer from serious birth defects--a total of some 200,000 a year--accounting for a vast medical problem. One out of three beds in children's hospitals are taken by children with congenital defects. Some of these are hereditary. About ten percent we know are environmentally induced, and the vast majority--two-thirds of all defects--are of unknown origins. And we have similarly disturbing and inexplicable statistics on spontaneous abortions and stillbirths. Yet the more we learn about the effects of environmental toxic exposures on reproduction, the more we suspect that it is a substantial burden. The list of chemicals and other toxic substances such as radiofrequency/microwaves grows almost daily as our research efforts expand. NIOSH now lists 56 substances which are mutagenic in animal tests and 471 teratogens.

We have created a new internal task force to consider a whole series of issues related to reproductive function. The social and legal implications in this area are complex, and we don't have many answers yet.

Women employees are worried about their jobs in work situations that have been traditionally male dominated. Now that they have managed to get a foot in the door, they fear this reproductive issue is being used to exclude them. Other workers, male and female, are planning families and they are concerned about whether their workplace exposure is safe. Too often we don't have the answer.

Employees are also afraid some companies, to be candid, are acting from simple fear of liability. But in many instances they, too, are at a loss to know what policies to adopt.

Our internal committee will be looking at these problems and such issues as rate retention, maternity and paternity leave or temporary transfers.

We will also be looking at the feasibility of generic standards for certain classes of reproductive toxics.

Discussions have been underway for some time between OSHA and other involved agencies, principally the EEOC, which has responsibility for protecting workers' rights to fair employment. These discussions are still in the early stages, and will continue.

We are also concerned about increasing public understanding in this area. We are committed to educating our constituencies--both workers and employers about this area, which is still so poorly understood by the public.

Above all, I think it is important that we keep separate which issues are medical ones, and which are social and legal ones, so that the actions we take as scientists don't simply open the door for more discriminatory practices. Our goal at OSHA is to insure that no man or woman has to choose betweeen a job and the right to procreate healthy children.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

Statement on Hazardous Substances and Equal Employment Opportunity

The U.S. Equal Employment Opportunity Commission believes that the objectives of Title VII of the Civil Rights Act of 1964, as amended, to eliminate employment discrimination comport with the objectives of those laws designed to assure a workplace free of conditions that threaten the health or safety of employees.

Employers have at times undertaken employment practices or policies that adversely affect the economic opportunities of women of childbearing capacity and others protected by Title VII, by excluding them from jobs involving exposure to allegedly hazardous substances.

The Commission's chief concern is that employers, in seeking to meet their responsibilities to assure a secure workplace free of risk to the health or safety of employees, do so without treating women and men unequally because of their sex and without violating the rights of individuals to retain or compete for jobs or promotions without regard to race, sex, national origin, religion or color. Exclusionary employment actions taken hastily or without regard for rigorous adherence to acceptable scientific processess may be viewed as unlawful discrimination. Further, the Commission urges employers to make sure that such exclusionary practices not be instituted without making a serious effort to find alternative methods with a less exclusionary impact.

To promote the more efficient administration of these laws, therefore, the Equal Employment Opportunity Commission, in coordination with all agencies concerned, has joined in an examination of these issues with a view to providing more explicit guidance. Pending this examination EEOC will continue the vigorous enforcement of Title VII as to all employment practices or policies that unlawfully exclude women of childbearing capacity and any other persons from the workplace or otherwise adversely affect the economic opportunities of any individuals protected by Title VII.

On April 4, 1978, at a duly announced meeting of the Commission, Vice Chair Leach moved that the Commission approve the foregoing statement.

Commissioner Walsh seconded the motion, which was approved by a vote of 3 to 0.

Voting in the affirmative: Chair Norton, Vice Chair Leach, Commissioner Walsh.

April 21, 1978
(Seal)

Marie D. Wilson
Executive Officer
Executive Secretariat