

SUMMARY OF DISCUSSIONS AND RECOMMENDATIONS

BUSINESS ROUNDTABLE
LABOR/MANAGEMENT COMMITTEE
HEALTH AND SAFETY SUBCOMMITTEE

MEETING - AUGUST 21, 1980

PLAINTIFF'S
EXHIBIT
AL-1107

Policy Group Members present:

Louis J. Bibri	-- Armstrong
Bruce W. Karrh	-- du Pont
Jack G. Morber	-- ALCOA
Frank R. Tully	-- Goodyear

Technical Group Members present:

Roswell L. Beach	-- AT&T
John F. Dickey	-- du Pont
Ned K. Walters	-- du Pont

Others present:

J. Wade Miller	-- ORC
Maryann S. Marino (for A. W. Lawrence)	-- Koppers
Emil Romagnoli (for Kenneth W. Nelson)	-- ASARCO
Carolyn C. Kent	-- Armstrong

Future meeting dates for the Subcommittee were decided upon with the intent to precede the scheduled meetings of the Labor/Management Committee:

November 6, 1980
January 15, 1981
March 12, 1981
May 14, 1981
July 16, 1981

NOTE: THE DATE OF THE NEXT MEETING OF THE H&S SUBCOMMITTEE HAS BEEN CHANGED TO NOVEMBER 6, 1980, AT THE SHERATON AIRPORT INN, PHILADELPHIA INTERNATIONAL AIRPORT, PHILADELPHIA, PA.

The January meeting will be held at the Sheraton Inn - Atlanta Airport, Atlanta, GA.

Lou Bibri announced that Verle G. Whittington, Vice President, Employee Relations, Shell Oil Company, has replaced Peter J. Pestillo of Ford Motor Company (formerly of The B. F. Goodrich Company) as Chairman of the Labor/Management Committee.

1. Report of Subcommittee on Risk/Benefit Criteria
(Howard Kusnetz and Frank Tully)

- In Howard Kusnetz's absence, Frank Tully reported on Howard's contact with the Institute for Contemporary Studies (ICS) for the purpose of discussing the possibility of a study and a publication on risk assessment. Howard Kusnetz reviewed in detail with them the dimensions of the study. Any publication by this group would have no BRT identification; the only commitment from BRT would be the purchase of a certain number of copies of the book. BRT would also input general subject matter. Initially ICS would prepare an outline and have expressed a willingness to meet with the H&S Subcommittee.
 - Frank Tully summarized for the benefit of the new attendees the objectives of establishing a Business Roundtable position paper on risk/cost/benefit assessment and discussed the activity of the task force to date.
 - Following the discussion on the subject of control, the group agreed that there is a need to prepare an organized, well-developed set of concerns in the form of a concrete piece of paper. The group felt, based on Howard Kusnetz's discussions with ICS outlining the study, there would be no problem in confirming the specific issues discussed. Frank Tully agreed to follow through to insure that it is accomplished. Ned Walters volunteered to assist the task group.
 - Wade Miller discussed a need for determining what methodology is the best one for cost/benefit or for the risk assessment process. If the best alternatives are addressed, the book will make a contribution. Following discussion, the group concluded that a focus is needed but that it may not be technically possible to arrive at a specific quantifiable methodology.
- Wade Miller also discussed Bergman's comments at the ORC quarterly meeting regarding the Regulatory Council's development of risk assessment or cost/benefit methodology. Wade was unable to obtain anything further from Bergman or others of the Regulatory Council. Emil Romagnoli agreed to attempt to get more information.*
- The group expressed the desire to act quickly to develop the two-part project of a philosophic publication by ICS and a BRT position.

2. Report on du Pont Visit - Marshall/Bingham

- Ned Walters provided an overview of the visit of Secretary Ray Marshall and Eula Bingham to du Pont. Du Pont's Shapiro issued the invitation to Secretary Marshall. The visit included an evening and full day with a tour of a textile fibers site and discussion with employees. Informal discussions in Wilmington included a presentation by the Applied Technology Group which markets safety technology. Specific issues were identified and success stories described.

*Note: Howard Kusnetz has since indicated that his subsequent contact with Bergman has similarly produced no information on activity in the risk/cost/benefit area.

Bruce Karrh indicated that it is premature to suggest that the Business Roundtable representatives meet with Ray Marshall; however, there seems to be a growing opportunity for dialogue involving the business community.

Lou Bibri commended the du Pont organization for the thoroughness of everything involved with the visit. John Dickey, Bruce Karrh and Ned Walters would be happy to expand upon this discussion and should be called for further clarification.

3. Report of Subcommittee Task Force on Legislative Oversight
(Ken Nelson, John Dickey and Bill Thomas)

-- In Ken Nelson's absence, Emil Romagnoli reported on several items of concern, namely, S.2153, criminal penalties, federalized Workers' Compensation, and regulatory reform.

-- The Schweiker bill (S.2153) is dead for this session unless it should be added as an amendment to another bill.

John Dickey discussed an interesting sidelight which occurred on July 29 in the Senate. Senator David Boren (D-Oklahoma) introduced an amendment to ERISA legislation governing pension benefits to workers. The amendment was attached as a rider to that bill and would prohibit OSHA safety inspections of companies with 10 or fewer employees with safety records (serious injury rates) better than the national average for the industry (SIC code). Those companies would not be exempt from complaints or health inspections. The amendment, along with four other non-germane amendments as riders on labor-backed legislation, passed the Senate by a slim margin. The bill now rests with the Rules Committee of the House. The bill could go to a conference committee. The key involved is who is appointed to that conference committee. The amendment applies continual pressure to OSHA activities.*

-- Criminal penalties for reckless endangerment under the Resource Conservation and Recovery Act (RCRA) are being considered in the Senate but not yet in the House. ASARCO along with the American Mining Conference are trying to address the issue. The longer term may see Senator Kennedy's provision in the criminal code. The OSHA Act itself is well defined with respect to criminal penalties.

-- Federalized workers' compensation and specifically the Senator Hart bill on asbestos are active. Hearings on workers' compensation and occupational disease are being held this week. The asbestos bill (S.2847), unlikely to pass this Congress, provides for a federalized standard for benefits under workers' compensation systems and payment by responsible parties through a group effort. Johns-Manville supports the bill as an exclusive remedy for third party liability. The sentiment is that disease-specific approach has promise.

*Note: We have just learned that the House knocked out the amendments in the pension bill which was passed August 25.

-- Regulatory reform measures have not been recently active.

4. NACOSH - OSHA Personnel Assignments

-- Wade Miller stated that Ronald McCann is no longer a serious candidate for the Director of the Office of OSHA Field Coordination to replace Roger Clark. Not much is happening currently in that area.

-- The group discussed at length the appropriateness of the subject for industry to address; criteria for positions and names should be reviewed by organizations like BRT and ORC to see if there is any way that we can impact. Specifically, candidate lists for OSHA and NIOSH positions should be developed. Several names were suggested and discussed. The group felt that a panel of names should come from this committee and be presented to the Labor/Management Committee.

The group decided that it is important to develop criteria and specific names prior to the next meeting of the Subcommittee. A task group consisting of Bruce Karrh and Jack Morber was appointed to coordinate this effort through mailing to the Subcommittee members. All members of the Health and Safety Subcommittee are requested to send criteria, names, and background information to Bruce Karrh who will condense and compile the information for review by the Subcommittee.*

5. Discussion of Proposed EPA Rulemaking

-- A summary of the proposed rule on Recording and Reporting Allegations under TSCA, Section 8(c), and a copy of the Federal Register notice on the proposed rule regarding Pesticides and Toxic Substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) were distributed to the Subcommittee. Both proposed rules would subject workplaces to additional regulation and control outside of OSHA. Bruce Karrh indicated that du Pont is submitting comments under 8(c). John Dickey indicated that the National Agricultural Chemicals Association (NACA) has supplied comment to the latter FIFRA proposed rule.

6. Discussion of EEOC/OFCCP Guidelines on Employment Discrimination and Reproductive Hazards

-- Bruce Karrh indicated that the comment period was extended and companies and associations such as General Motors, du Pont, PPG, the Equal Employment Advisory Committee (EEAC) had submitted comment. EEOC's new supervising attorney is Roj Gupta. He visited du Pont and talked with their personnel regarding testing materials for teratogenicity.

*Note: Howard Kusnetz has noted that criteria and lists of candidates are being generated by NAM, ORC and AIHC; AIHC's list is being presented to both the Carter and Reagan camps.

Bruce Karrh indicated that du Pont had responded to a series of agency questions; for example, how early pregnancy is detectable; at what time the fetus is most susceptible; realistic research time; etc. The whole area is very poorly understood and du Pont's thrust was to address the concern as a direct contribution to the fetus. It should not be a male versus female situation; the male contribution should not be less than the female contribution. In terms of the guidelines themselves, there is a need for employers to respond; they are in effect now, although it will take time to begin enforcement. EEOC feels there is no financial impact; consequently, there will be no impact statement issued. Bruce felt it worth the effort to call and talk to Mr. Gupta should there be any questions/concerns regarding the guidelines.

- Bruce Karrh also noted Mr. Gupta's statement that the subject guidelines are the second most controversial issue which EEOC faces; the first issue is that of comparable worth, e.g., truckdrivers' pay versus secretaries' pay in light of the value of the job.

7. Discussion

Coke Oven Case

- Lou Bibri discussed the BRT Litigation Committee's amicus brief in the subject case. Lou also contacted the U.S. Chamber which feels that the Supreme Court made a good decision in the benzene case and that there is a possibility for removal of the coke oven case from the Supreme Court docket. That latter standard has been in effect for three years and engineering controls have been instituted thereby making the case almost a moot issue. The Secretary of Labor probably will oppose the removal of the case. Although it was felt by industry as an opportunity to address cost/risk/benefit, which the benzene case did not address, it is felt that the cotton dust standard may serve that purpose. That case, on petition for certiorari before the Supreme Court, should address brown lung and identifiable cost associated with brown lung.

OSHA Lead Standard

- Emil Romagnoli reported on the OSHA lead standard upheld by the D.C. Circuit Court three judge panel. The decision upheld rate retention and seniority even in layoff status for 18 months. There is also a trigger mechanism for lead levels in the blood which become lower over a three-year period. Wade Miller indicated that the issue will be addressed in appeal for rehearing or go to the Supreme Court; the real implications for industry regard rate retention.

Lou Bibri suggested bringing this topic to the attention of the Litigation Committee of the BRT because of its broad implications. Wade Miller indicated that it is a very serious dynamite issue which can override collective bargaining and seniority provisions. (Lou will report to the Labor/Management Committee and emphasize that concern.)

Access to Medical Records

-- Wade Miller reported that OSHA granted a stay, effective today, August 21, limited to members of the Louisiana Chemical Association. John Dickey indicated that a petition for review was filed in the D.C. Circuit Court by the National Constructors Association. An AFL-CIO suit was filed with the D.C. Circuit Court; the U.S. Chamber of Commerce and the Chemical Manufacturers Association intervened in the AFL-CIO case.

8. ORC Report
(Wade Miller)

-- Wade Miller summarized the attached ORC report:

- Benzene standard - ORC interprets the decision to mean that the Secretary of Labor must demonstrate a significant risk of health impairment. It does not deal with cost/benefit analysis.
- Walkaround pay - The U.S. Court of Appeals for the District of Columbia reversed a District Court decision based on the procedural aspects of the issue. As a result of this and the benzene decision, OSHA is rethinking and reevaluating things in process.
- Anticipated Advance Notices of Proposed Rulemaking (ANPRM's)
 - Labeling - very likely by the end of September.
 - Noise - before the election; it is rumored that the noise standard will be limited to work practices and audiometric procedures with the standard remaining at 90 decibels.
 - Confined spaces and lockout and tagout - these are important because of their application to thousands of situations throughout industry.
 - Abrasive blasting and respirators - early 1981.
- Health hazard alert on formaldehyde - perhaps may be issued via the vehicle of a press conference.
- Fire protection and fire fighting
- Training and education programs grants - amounting to 3.5 million dollars; some were received by industry and trade associations, e.g., the Rubber Manufacturers Association, the National Constructors Association, the American Paper Institute, the Society of Plastics Industry.
- Other agencies' involvement - e.g., the Coast Guard; this situation is analogous to the EEO approach under several agencies.

- Wade Miller also discussed a new argument being advanced by Eula Bingham, namely, that productivity can be improved through regulators. Generally, those industries that have good productivity also have good safety and health records. Wade noted the coincidence but also the fact that good management is the common element. Wade recommended that public relations sources of the Business Roundtable be alerted to this new argument. It was agreed by the group that such a challenge would be directed to Jerry Coe's task group on public relations concerns, which could establish a mechanism to bring it to the attention of the Labor/Management Committee.

9. Health and Safety Issues - New Administration

(See discussion under Item 4)

10. Other Business

- In response to activity of the Chemical Manufacturers Association, Bruce Karrh drew the group's attention to an embryofetotoxins draft. Wade Miller indicated that ORC has used that document in supplying comment to EEOC regarding the reproductive guidelines.
- Bruce Karrh summarized the status of the OSHA carcinogen policy and the race to the court house by AIHC, API, AFL-CIO, and others. The U.S. District Court for the southern district of Texas dismissed the case for lack of jurisdiction; AIHC appealed to the Fifth Circuit Court. That court consequently is still involved and may keep the case. The decision in the benzene case should be helpful in deciding the question.
- OSHA published its candidate list of possible carcinogens on August 12. That list is attached as is the EPA list, prepared by the Carcinogen Assessment Group.
- The Advisory Committee on Construction Safety and Health recommended guidelines for extending occupational health standards to the construction industry. After discussion, the group decided that Lou Bibri should contact the BRT Construction Committee and solicit their viewpoint.
- Ned Walters mentioned that the National Safety Council's Board of Trustees has placed an item on their agenda re involvement with the Health and Safety Subcommittee of the BRT.
- Bruce Karrh announced that Dr. Robert A. Neal, a toxicology expert, has been named as head of the Chemical Industry Institute of Toxicology (CIIT) to succeed Dr. Leon Goldberg.

Action Items - Meeting 8/21/80:

1. Frank Tully will follow through to insure that a well-developed set of specific issues, confirming Howard Kusnetz's discussions with ICS, be prepared for use with ICS.
2. All members of the Health and Safety Subcommittee will send criteria, names, and background information to Bruce Karrh regarding OSHA and NIOSH positions. Bruce will condense and compile the information for review by the Subcommittee with the objective of presenting a panel of names to the Labor/Management Committee.
3. Lou Bibri will report to the Labor/Management Committee the implications of the lead standard recently upheld by the D.C. Circuit Court and the provisions which can override seniority and collective bargaining agreements.
4. Lou Bibri will contact the BRT Construction Committee and solicit their viewpoint regarding the Advisory Committee on Construction Safety and Health's recommended guidelines for extending occupational health standards to the construction industry.
5. The Task Force on Public Relations will explore a mechanism to bring to the attention of the Labor/Management Committee the new argument advanced by Eula Bingham that productivity can be improved through regulators.

Enclosures
Minutes of 8/21/80

	<u>Source</u>
ORC Report	Wade Miller
Publication from <u>Federal Register</u> , Aug. 12, 1980, "List of Substances which may be Candidates for Further Scientific Review and Possible Identification, Classification, and Regulation as Potential Occupational Carcinogens"	Lou Bibri
Article from <u>Occupational Safety & Health Reporter</u> , Aug. 14, 1980, "EPA Carcinogen Assessment Group Carcinogens List Referenced in Cancer Policy Candidates Notice"	Lou Bibri
Article from <u>Daily Labor Report</u> , June 26, 1980, "Advisory Panel Submits Proposals on Health Standards in Construction"	Lou Bibri
Article from <u>Regulatory and Legal Developments</u> , Aug. 7, 1980, "Chemicals: Government Issues First Annual Carcinogens Report Listing 26 Chemicals Associated with Cancer"	Lou Bibri
<u>Attachments for those members not in attendance:</u>	
Summary Sheet on Environmental Protection Agency's Proposed Rule on Toxic Substances Control Under Section 8(c) of TSCA	Lou Bibri
Proposed Rule from <u>Federal Register</u> , July 9, 1980, "Registration of Pesticide Producing Establishments, Submission of Pesticide Reports, Labeling; and Maintenance of Records; Proposed Amendment to Regulations for Registration of Establishments and Maintenance of Records"	Lou Bibri
Minutes from Chemical Manufacturers Association Meeting	Howard Kusnetz