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ANTITRUST

A Philadelphia Lawyer'

Harold Kohn has pioneered a type of lawsuit that's paying victims, enriching attorneys, and enraging defendants.

by IRWIN ROSS

A Philadelphia antitrust lawyer named Harold E. Kohn feels a heightened sense of anticipation when his telephone rings these days. Any time now the clerk of the U.S. Court of Appeals for the Fifth Circuit in New Orleans may call with the court's decision in a celebrated suit Kohn brought on behalf of thousands of plywood buyers against nearly all the plywood manufacturers in the U.S. In 1978 a federal district court jury found that the defendants had conspired to fix prices by phonying freight charges and weights. If the circuit court and, eventually, the Supreme Court uphold the jury's verdict in all particulars, the three defendants who didn't settle before the trial—Georgia-Pacific, Weyerhaeuser, and Willamette Industries—would be liable for a treble-damage award that Georgia-Pacific says could be as high as $1.5 billion or $2 billion. That would make it the largest antitrust class-action penalty in history.

For Kohn, victory would be the capstone of his career as a champion of the plaintiffs' cause in antitrust class actions. It would probably also mean a fee of up to $4 million, depending on how the court evaluates his performance. If Kohn loses, the judge is still likely to award him $1 million to $1.5 million from the $8 million in settlements extracted from the 34 plywood companies that settled before trial. This would hardly be the first big fee Kohn collected for a case of this sort. In the last ten years his firm has taken in almost $6 million from class-action antitrust cases; in 1980 alone its fees came to $2,406,029.

Kohn's comfortable circumstances highlight one of the great charms of antitrust class actions—from the plaintiffs' lawyer's point of view. They also highlight one of the most controversial aspects of antitrust law—the way class actions favor plaintiffs and their lawyers by threatening a defendant with a staggering burden of damages if he refuses to settle, goes on to defend himself in court, and loses.

Research associate: Philip Mattera

Under the present rules of the game, defendants who lose at trial are liable for treble damages not only for their own antitrust violations but for those of all companies found to be co-conspirators. This rule, widely perceived as unfair, enormously inflates the potential cost of being found guilty. Hence nearly all companies settle, even if they feel the case against them is weak. This situation has long prevailed, but lately it has been dramatized by the possible billion-dollar liability in the plywood case and by an equally awesome potential penalty hanging over the Mead Corp. Now an effort is under way in Congress to change the law, which now permits what an executive of one defendant company calls "economic terrorism" (see box, page 104).

"Gets away with murder"

While the system that has enriched Kohn is bitterly resented, Kohn himself is not. Says Harold F. Baker, the managing partner of Howrey & Simon, a prominent Washington law firm that has often opposed Kohn: "Among the plaintiffs' bar, he stands tall both in ability and integrity." Defense counsel tend to admire his performance. "Brilliant lawyer, absolutely brilliant! Gets away with murder!" exclaims one opponent. The only unkind words about Kohn come from fellow plaintiffs' lawyers who have tangled with him over the conduct of a case or the size of their fees. Their major accusation is arrogance, a charge to which Kohn pleads guilty.

Kohn is a pioneer in antitrust class actions, and since the mid-1960s he or his firm has been involved in over 50 such cases, big and small. The breadth of his experience, and the degree of his success (he's lost only one case), leads many to regard him as the dean of this highly specialized bar. At the same time, Kohn has carried on a general corporate practice. He is well known for his work in libel and first-amendment cases and has long represented Triangle Publications (*TV Guide, Seventeen*), the *Philadelphia Inquirer*, and the *Philadelphia Daily News*.

The antitrust class-action bar is a tiny group, consisting of a dozen or so specialists in Philadelphia, Washington, Chicago, Houston, and San Francisco. Apart from Kohn, the prominent names during the past decade have been David Berger of Philadelphia, David I. Shapiro and Jerry S. Cohen of Washington, William H. Ferguson of Seattle, John A. Cochrane of St. Paul, Frederick P. Furth of San Francisco, Stephen D. Susman of Houston, and Granvil I. Specks, Perry Goldberg, Lee A. Freeman Sr., and Lee A. Freeman Jr. of Chicago.

In conversations with some of these men, one picks up a mildly buccaneering spirit. They are forever seeking targets of opportunity, juicy cases where the culprits are well-heeled corporations able to pay large damages. Plaintiffs' lawyers also tend to be at least mildly antiestablishment types, people who enjoy hurling lances at corporate Goliaths.

Harold Elias Kohn shares many of these attitudes. A native Philadelphian, he was the son of immigrants who attained a comfortable middle-class life, but he grew up with the antiestablishment bias of a bright Jewish law graduate—he was first in the 1937 class at the University of Pennsylvania Law School—who found the old-line law firms closed to Jews (as they

Harold E. Kohn, 67, whose name has become synonymous with antitrust class action, in front of the modern federal courthouse in Philadelphia in which he has argued dozens of cases.

lass-Action Gold Mine

were to blacks and women). In 1939, after two years as a law clerk, he took a job with a new Philadelphia firm, Murdoch Paxson Kalish & Green. He remained there until 1969, when he left to form his own firm, now called Kohn Savett Marion & Graf PC.

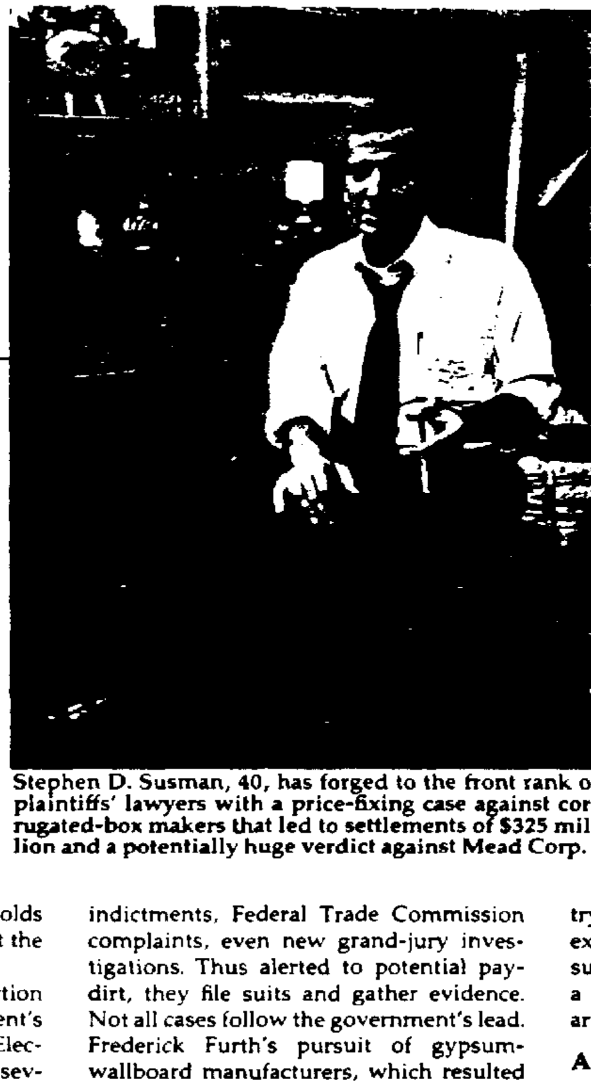
As a young man, Kohn was a New Dealer, and he remains an ardent liberal. For ten years he was vice president of the Philadelphia chapter of the American Civil Liberties Union. In 1970 he was able to get publisher Ralph Ginzburg's sentence on an obscenity conviction reduced from five to three years—and later to have him paroled after eight months in jail. The Kohn firm's big recent ACLU case challenged the constitutionality of the draft on grounds that it excludes women. After winning in the lower courts, he lost in the Supreme Court in June.

A quiet eloquence

Kohn is every inch the proper Philadelphian—invariably dressed in somber clothes, often with a vest in summer, a high gloss on his shoes, a neatly folded white handkerchief in his breast pocket. Whatever the season, he never shows himself on the city streets without a hat. With a visitor his manner is gracious, and as he warms to a subject he is capable of a quiet eloquence. He tends to talk in whole sentences, and he writes well, as in a newspaper obituary tribute to his friend and mentor, Richardson Dilworth, a leader of the postwar Democratic upsurge in Philadelphia.

Kohn is astonishingly thin at 6 feet and 155 pounds—the same weight that kept him out of the Army during World War II. Yet he eats heartily and is a bundle of energy.

Kohn is full of amiable contradictions. He and his wife, the former Edith Anderson, occupy a large, handsome apartment on posh Rittenhouse Square, repairing on weekends to the rustic splendor of an eight-acre estate in Devon, 20 miles out on the Main Line—a 30-room house, a swimming pool, a tennis court, and a front lawn that could accommodate



Stephen D. Susman, 40, has forged to the front rank of plaintiffs' lawyers with a price-fixing case against corrugated-box makers that led to settlements of $325 million and a potentially huge verdict against Mead Corp.

half a dozen croquet games. Yet Kohn is proud of his Toyota Corona and has nothing but contempt for nouveau riche lawyers who drive around in Rolls-Royces.

Ask him his politics today, and he responds blandly that he is sure socialism is the ideal system. But the world is less than ideal, we have seen the deficiencies of big government, problems can't all be solved by throwing money at them—and the socialist manqué voted for Reagan last year. His wife, who voted for John Anderson, hasn't forgiven him.

He is as hardheaded as any lawyer, yet a dinner guest is suddenly plunged into an argument about free will and determinism. Kohn upholds determinism, though he concedes that the doctrine is no guide to everyday life.

Kohn came to the antitrust class-action business in the wake of the government's 1960 criminal prosecution of General Electric, Westinghouse, Allis-Chalmers, several other corporations, and some of their executives for fixing the prices of electric equipment. The case was followed by nearly 2,000 civil lawsuits for treble damages. By consolidating the taking of depositions and production of documents, the courts handled the suits as if they constituted several large class actions.

Establishing a pattern

In 1964, Kohn won the first civil trial, getting a treble-damage award of $28.9 million and then promptly settling for $18 million to avoid the hazards of appeal. "That was big money in those days," he recalls. "We weren't jaded yet." After two other cases were tried and won by the plaintiffs, the remainder were settled. In the end, the defendants paid about $500 million in settlements—and the class-action process in antitrust was launched.

The electrical cases established the pattern in another way as well: the civil suits piggybacked on the criminal investigations. Today plaintiffs' lawyers monitor indictments, Federal Trade Commission complaints, even new grand-jury investigations. Thus alerted to potential paydirt, they file suits and gather evidence. Not all cases follow the government's lead. Frederick Furth's pursuit of gypsum-wallboard manufacturers, which resulted in settlements of $67 million, started in 1967 as a series of civil suits, on which the government's criminal action later piggybacked.

For a lawyer seeking to start a class action, plaintiffs are not hard to come by. Some lawyers inform regular clients that a case has come up in which they might have an economic interest. Other lawyers indulge in some ambulance-chasing, which is easier in antitrust cases than in securities cases, where individual stockholders in specific companies must be found. It's no trick, after all, to find buyers of plumbing supplies or corrugated boxes, to name two groups on whose behalf class actions have been brought.

Two judicial actions in the 1960s smoothed the way for class-action suits. One was the 1966 revision of Rule 23 of the Federal Rules of Civil Procedure. The new rule required that after a judge found that a genuine class existed, the members of the class be notified and given time to opt out and press their claims individually. Previously a suit would be launched and, if successful, a host of similarly situated plaintiffs would come forward to claim benefits—which caused a lot of confusion. Giving notice is expensive—the plaintiffs' lawyers initially bear the expense—but manageable. Mailings are generally made to customers on lists supplied by the defendants; there is also advertising in the trade and general press.

In 1968 the consolidation of class actions was facilitated by Congress's decision to set up a Judicial Panel on Multidistrict Litigation. Typically class actions start with a flurry of similar lawsuits in different parts of the country; the corrugated-box litigation, for example, included more than 50 separate suits. The panel consolidates the cases in a single judicial district, where the cases are tried as one.

A bundle in folding boxes

The actual number of consolidated class-action cases has been modest. Since 1968, the judicial panel has consolidated 121 antitrust cases in which a claim of class action was made. Over the past dozen years only some 20 cases have generated settlements of $10 million or more. But what settlements! Apart from the bundle in gypsum, the totals in the folding-box litigation were in excess of $215 million, in corrugated boxes over $325 million, in antibiotics $219 million.

Kohn and the other leading actors in the field have been involved in almost all the big cases. The prizes are so attractive that dozens of law firms that do little or no other antitrust work often jump in. Organizing the case then becomes a highly political operation, with different factions lining up votes and making deals. Typically, someone calls a meeting of all the lawyers to elect lead counsel, an executive committee, and the chairmen of such vital committees as depositions, argument of motions, and preparation of

continued

In the fine-paper case, which led to settlements of more than $50 million, 40 law firms put in fee claims totaling $20 million.

trial memorandum. Often the lawyers ıabble over voting procedure—one vote lawyer, or per case, or per client? The ırts usually approve what the lawyers ide. Whoever wins control has hunds or thousands of billable hours to pense as patronage.

ι great row took place when the corated-box litigation was organized in 7. Stephen Susman, then 36, began case in Houston, where a grand jury l been investigating the industry. Gran-Specks and Perry Goldberg, who had ;anized the folding-carton case, which ned them a fee of more than $2 mil-ı, then sought to have the case litied in Chicago, an initiative Susman cessfully fought before the panel on ltidistrict litigation. At a clamorous eting in Houston to elect an executive nmittee, Susman's group won. Kohn's ı initially sided with Specks and Goldg, but later cooperated with Susman.

:echnique for using leverage

After a case is organized, depositions taken, usually over a long period. ıen the plaintiffs' lawyers have assemd what they regard as a decent case, y start settling. By then the defendants ıally have a good idea of the evidence. the case against them is compelling, y have three reasons to settle: to get with much less than treble damages, ıvoid the costs of a trial, and to escape ›otentially enormous liability for the elictions of their co-conspirators. Even hey feel the opponents' case is weak, ›st defendants, unwilling to risk that loon liability, settle.

'laintiffs' lawyers apply their leverage following a technique used by Kohn ın antitrust suit against brass-mill and ›per-tubing companies many years ago. hn announced to the defendants' laws that he would settle for a relatively ›dest sum with "the first company that ne through the door on Friday." The owing week, the minimum acceptable tlement would be higher, and it would up further the week after that. As ngs worked out, the first company did indeed get off lightly—for about $500,000. Later, an old friend of Kohn's, who had not really believed him, complained about the price he was being compelled to pay to settle. Kohn said he sympathized, but could make no exception lest the whole scheme break down.

In the corrugated case, Susman worked out a fixed sum for every percentage point of a defendant's market share. The first settlers in 1978 got the best deal—$1 million a point. Thereafter the per-point cost went up, rising to $6.5 million a point for the final pre-trial settlers.

By the time the trial opened in Houston in the summer of 1980, only three defendants were left. Two settled before the end of the trial. The Mead Corp. stuck it out to the end—and lost. The jury held that the co-conspirators had overcharged the plaintiffs by 5%, which implies, according to Susman's rough calculation, a treble damage of nearly $1.1 billion. Deduct the settlements already made and Mead could face a bill for around $770 million—an amount almost equal to shareholders' equity in Mead last year.

Mead vehemently objects to this figure, which it considers "entirely speculative and irresponsible." The company will not provide a figure of its own; to calculate one, it says, would be "purely academic." Mead plans to appeal and says it's confident of victory. The company is also lobbying actively in Congress to change the law. Unsurprisingly, Susman says he is still willing to settle—which is the likeliest outcome if the case continues to go against Mead. Susman says he has no interest in endangering the life of the company, and he wants to avoid the risks of further appeal.

After the settlement is in, the lawyers file their fee applications. The courts used to allow attorneys to collect a contingency fee of up to 33%, but now they generally insist on time charges. Each lawyer submits a "lodestar"—the peculiar term first used by an appellate court in 1973 to designate the hourly rate multiplied by the hours expended. If the judge thinks a lawyer has run a large risk or done a noteworthy job, he applies a multiplier—occasionally as high as 4 but more often between 1.5 and 2.5.

The fees are high for a reason. The cases usually are complicated, go on for years, involve endless briefs, and require scores, even hundreds, of depositions. And bringing a class action entails significant risk. Defendants in some instances refuse to settle, and sometimes suits are lost, in which case the lawyer may get nothing. David Shapiro of Washington lost $1.5 million in time charges when a case against the major automobile manufacturers went down the drain in 1975. Shapiro alleged that the carmakers had conspired to eliminate discounts to purchasers of large fleets of cars. No automobile company broke ranks to settle, the case went to a non-jury trial, and the judge held that there had been no conspiracy. In one case Kohn was paid only his out-of-pocket expenses. A plaintiffs' lawyer can also suffer a loss if the court drastically reduces a proposed fee.

Fighting over fat fees

Moreover, it's arguable that the fees won by Kohn and his colleagues ought to be high. The specter of multimillion-dollar treble-damage penalties was meant to deter antitrust violations, and the deterrent effect would be minimal if big, successful class-action suits weren't brought reasonably often. Still, it is widely believed—even in the antitrust bar—that many fees are too high. In the fine-paper case, which led to settlements of more than $50 million, 40 law firms put in fee claims totaling $20 million. Kohn was outraged: "They will kill the goose that lays the golden egg." A few months ago, suggesting that all fees in the case be kept below $10 million, he filed a petition to knock down the $4.4 million Specks and Goldberg requested and the fees proposed by about a dozen other law firms. Kohn alleged that the lawyers had been trading votes in the organizing phase of the case for promises of billable "busy work and unproductive duplication of time." In court, Specks denied the charge

Some propose letting judges vary the damages.

and contested Kohn's $1.9-million bill.

Whatever the outcome of this case, the courts clearly ought to supervise plaintiffs' lawyers more closely. Ira M. Millstein, a leading defendants' counsel, suggests that the courts could select just one or two law firms to run the plaintiffs' entire case, as they frequently do now in suits arising out of aircraft crashes. Such a limitation might be too stringent, but certainly the courts could end the work-sharing that allows 40 firms into the act, as occurred in the fine-paper chase, without weakening class actions.

A case for judicial discretion

These issues apart, a broad consensus supports the basic function of the plaintiffs' antitrust bar, which is held by virtually all lawyers, economists, and business leaders to perform a valuable service—compensating victims of antitrust violations, and thereby providing a deterrent. If there is an additional issue, it concerns the fairness of triple damages, which the Clayton Act made mandatory and which the advent of the class action has made far more punitive. Irving S. Shapiro, the former chief executive of Du Pont, argues that the penalties possible under present law can be unfair when the case against the defendant is weak. On the other hand, says Shapiro, "On an aggravated set of facts, treble damages are justifiable." His solution is to let judges vary the damages, from straight to triple, depending on the circumstances.

Meantime, the class-action game goes on. Late in June, David Berger of Philadelphia helped stage a press conference at which Mickey Rooney announced a class-action suit against the major movie companies. His aim is to win TV residual fees for actors in films made before 1960. Rooney rattled off a number of prominent names in the class (Barbara Stanwyck, Rock Hudson) and expressed outrage at the movie companies; Berger declared his confidence that the antitrust laws would work their magic and right this wrong. A touch of Hollywood glamour is about all the field has lacked. F

File: Risk

Product liability

William Kimble: How to avoid losses from product liability

A product made today must be safe for *reasonably foreseeable misuse and abuse.*

To reduce the risk of being sued: Find out who actually *uses* the product. They may not be the buyers. *Example:* Parents buy products for children. And try to identify all possible *misuses* of the product. Courts have been very strict on this. If problems turn up, decide whether to redesign the product, add a warning label or discontinue it.

Example: Ladder manufacturers are frequently sued by people who stand on the top step and fall off. *The manufacturers' choices:* Add a telescoping hand rest for people to hold when on the top step. Draw up a warning label not to stand on the top. Stop making ladders.

Warning labels are not required if the danger is inherent in the *correct* use. No warning is needed on matches saying they can start fires. *Essential warning:* Keep matches out of the reach of children.

If legal action by a product user seems possible:

- Try to obtain an exact sample of the product that was involved in the accident at once. *Reason:* By the time the case gets to court, the product might be unobtainable. Examine it to see how the accident occurred.
- Notify the insurance carrier. It will investigate even when there is only the *possibility* of a claim.
- Use the information to alter the product or to revise the warning label. *Trap:* The plaintiff's lawyer will try to use the improvement to show that the company was *negligent* or the product was *defective* if the lawyer can show the improvement was feasible *before* the accident. Otherwise, improvements made after an accident may *not* be used as evidence of the manufacturer's liability.

Where to find experts:

- *Human-factors engineers* evaluate products in terms of how people are likely to use them. Call the psychology or engineering departments of local universities. Or use the *Human Factors Society Directory and Yearbook,* Human Factors Society, Box 1369, Santa Monica, CA 90406, $15.
- *Safety engineers* apply scientific principles to protect people and property. *Where to find them:* American Society of Safety Engineers, 850 Busse Highway, Park Ridge, IL 60068.

Boardroom interviewed William Kimble, a lawyer with Lesher, Kimble & Rucker, 3773 E. Broadway, Tucson, AZ 85716.

FINANCIAL MANAGEMENT

George Manning and David Spiselman

How to Manage The Shrinking Float

Electronic processing is cutting the time it takes checks to clear. To keep pace with the change, companies must scrap or modify some long-standing cash-management tactics.

New strategies for receivables:

- Use computers to streamline cash management *within* the company. Many can be linked with the *bank's* electronic reporting system to give the company an even quicker and firmer grasp of its cash position.
- Offer discounts for payments made by electronic transfer.
- Upgrade lockboxes with a computerized reporting system through which banks notify customers *instantly* when a check arrives and when it clears. Bank fees for these electronic reporting systems vary widely and depend on what balance the company maintains.

Tactics for payables:

- Begin processing bills no sooner than the afternoon of day received.
- Pay with checks drawn on small banks that *do not have electronic data processing* or other services that speed check processing.
- Mail checks from clogged postal areas. *Example:* Checks mailed from midtown Manhattan usually arrive a day later than those mailed from the Wall Street area.
- If the company writes its checks against an out-of-town controlled disbursement point, it should set up at least one *other* point and monitor the performance of each. *Reason:* Since clearing time is changing in many areas, only trial and error can determine the most efficient disbursement point. And if the company switches disbursement points, it should also monitor the new ones periodically.

Important: Several years ago, the Federal Reserve Board started clamping down on companies that took flagrant advantage of *remote* (as opposed to controlled) disbursement points. The Fed's current guidelines discourage companies from using remote disbursement points to make payments to individuals. Companies must also have a reason for banking at the location. *Examples:* An office, plant or branch nearby. *Or:* A prior relationship with the bank. □□

How check-clearing time is changing

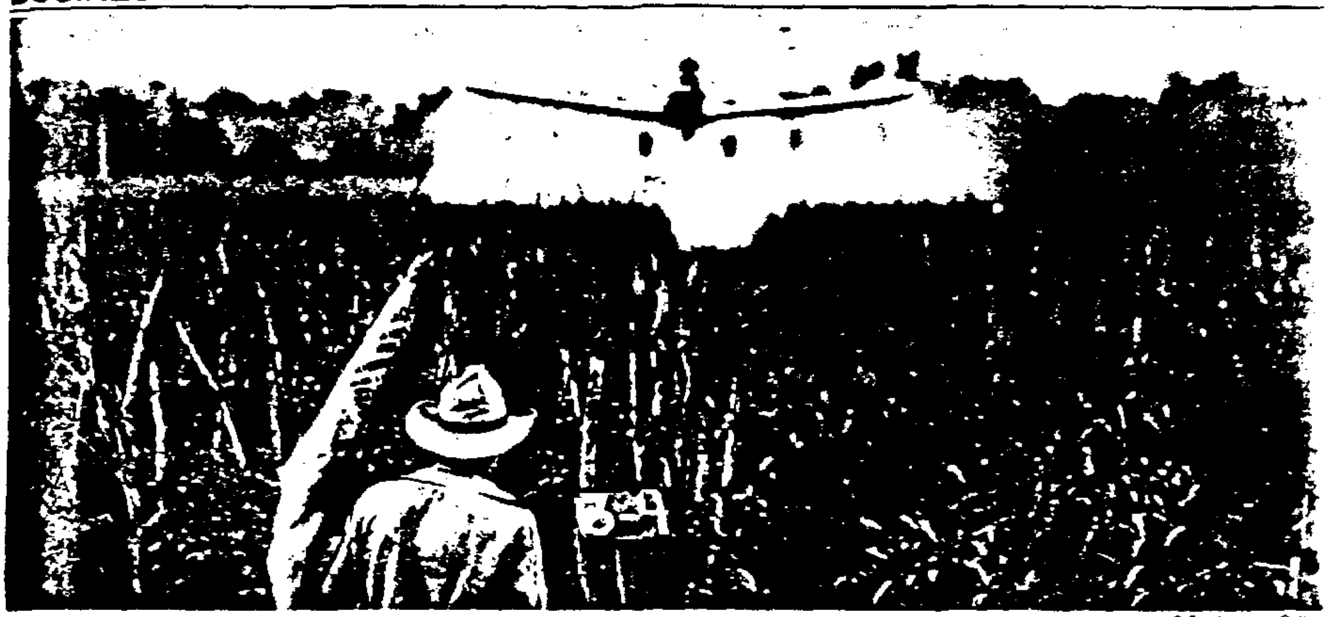
Although the time it takes banks to process checks is *generally* shrinking, high volume is causing bottlenecks in some areas. *Example:* Denver banks are processing checks in about two-thirds the time it took them in 1974. But in Milwaukee, checks take an average of nearly *a day longer* to clear than they did seven years ago.

Cities where out-of-town checks clear in an average of less than 2.5 days: Atlanta; Chicago; Dallas; Denver; Houston; Kansas City; Louisville; Minneapolis; New York; Philadelphia; Pittsburgh; St. Louis.

Cities where checks take longer than three days to clear: El Paso, TX; Helena, MT; Los Angeles; Milwaukee; Nashville; Newark, NJ; New Orleans; Omaha; Portland, OR; San Francisco; Seattle.

Source: Phoenix-Hecht, Inc., a cash-management analysis and consulting firm, 30 W. Monroe St., Chicago 60603.

Boardroom interviewed George Manning, an assistant vice president at Chemical Bank, 20 Pine St., New York 10005, on receivables, and David Spiselman, a consultant specializing in cash management, 87-26 Chevy Chase St., Jamaica Estates, NY 11432, on payables.



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A Mexican fieldworker marks the path for a spraying plane: Too often, not even the doctors are aware of the dangers

Pesticides' Global Fallout

Farmers in the Philippines regularly spray their fields with parathion, a highly toxic pesticide. Unaware of the chemical's harmful effects, three rural tribesmen once turned hoses on each other as a joke. They all died.

A farm-supply store in Haiti is packed with multicolored drums of pesticides—many of them banned in the United States. Clerks scoop out the toxic white powders with their bare hands and put them into unlabeled plastic bags for sale to farmers to use on their crops. When the drums are empty, they are sold, unwashed, to peasants who use them as water containers.

For years, the sale of such deadly pesticides as DDT, aldrin and parathion has been tightly regulated in the United States. Yet American chemical companies and those in other industrialized nations continue to sell the toxic chemicals to Third World countries, where environmental laws are virtually nonexistent. Jack Early, president of the National Agricultural Chemical Association, a Washington-based lobbying group, argues that it isn't America's business to write rules for the world. "We should not impose on these countries a standard that we have imposed on ourselves," he says. But the double standard has created a worldwide peril. The widespread and careless use of dangerous pesticides harms not only the developing nations. It often comes back to plague industrialized countries that import foods contaminated with the very poisons banned at home.

The chemical pollution of the Third World is likely to increase. President Reagan has revoked an Executive order regulating export of hazardous substances, arguing that "the imposition of export controls results in cumbersome regulatory prices, costly to both the public and private sectors." Developing nations searching for ways to boost food production eagerly buy cheaper—if more deadly—pesticides.

Few laws stand in their way. According to Dr. Jan Huismans, director of the Geneva-based International Register of Potentially Toxic Chemicals, about half the countries in the world have no effective legislation to control the use of toxic chemicals. Even though Brazil implemented an "agricultural prescription" program last year to control pesticides, indiscriminate sales continue. In the state of Rio Grande do Sul, one mother applied a chemical called ektafos to her children's heads to rid them of fleas and lice, then watched helplessly as the children died. Says José Lutzemberger, Brazil's leading environmentalist: "I can send any 15-year-old to the store to buy ten drums of products so lethal that skin contact is sufficient to kill a person."

The Third World eagerly buys toxic chemicals, but lack of controls is spreading deadly pollution.

To check that claim and to see how carefully Brazil's new pesticide laws are enforced, NEWSWEEK's Larry Rohter visited a number of stores, asking to buy several highly toxic chemicals whose purchase is theoretically limited. "I easily bought 1 kilo of aldrin, a product whose use is restricted in the United States but is openly marketed in Brazil," Rohter reported. "No questions were asked. I asked for paraquat, malathion and parathion. At no time was I ever asked to show any kind of prescription. When I questioned store clerks about the laws, they said they were not even aware that the laws existed."

Many officials of chemical companies reject the criticism of their overseas sales. Robert Neunreiter, a spokesman for Monsanto, insists: "No product we make in our agricultural chemical division is sold overseas that is not used in the United States. We are always advising growers throughout the world how to use the products properly." Other corporations say that they try to ensure safe use—but that it is not their fault if something goes wrong. "After a product has been moved to some banana plantation in Guatemala, you find it's difficult if not impossible to police and control its use," said Robert Charlton, a spokesman for Dow Chemical.

'Unsubstantiated': Other producers deny that their pesticides are particularly dangerous. When Brian O'Dwyer, pesticides sales manager in São Paulo for the British chemical company ICI, was presented with medical dossiers on paraquat intoxication in Brazil, he rejected their conclusions. "All reports of intoxication are unsubstantiated medically," O'Dwyer said. "Paraquat can

Pat Goudvis

Shipping DDT from the U.S. to Indonesia: A deadly double standard

only cause problems if it is ingested or drunk, since it is immediately deactivated on contact with the soil." One recent issue of a Shell Chemical publication contends that "data available in the U.S." show that cases of pesticide intoxication "do not exceed those caused by cosmetics."

In many Third World nations, living with pesticides is all but unavoidable. Farm workers eat, drink and smoke cigarettes in sprayed fields. They bathe in contaminated drainage ditches. "Organosynthetic pesticides have become a part of the natural and human environment," says a report published in 1976 by the Central American Research Institute for Industry. But just how widespread the problem is—and what toll it has taken on the people—is hard to determine. In most Third World countries, government agencies do not collect statistics on pesticide poisoning; even in those that do, countless cases go unreported. Statistics show 19,000 cases of pesticide poisoning in Central America between 1971 and 1976. "But they aren't realistic," says Dr. Roberto Chediack, an Argentine health specialist. In an inspection of only two rural hospitals in Nicaragua, Chediack says he found 400 cases of pesticide poisoning. Many doctors in developing nations are as ill informed about the effects of pesticides as the people they treat. One Brazilian doctor told a 14-year-old girl suffering from paraquat poisoning that she simply had "a case of nerves."

Confusion: Misleading advertising presents Third World consumers with another problem. In some advertisements pesticides are referred to only as "agricultural protectors." Though most farmers who regularly use pesticides are illiterate, even those who can read become confused. Many containers bear labels in English, German and Japanese, and even those in native languages can be indecipherable. "It's all in small print and big words," says Brazilian farm-union official Mario Gabardo.

Hardly any Third World government warns farmers or local agricultural groups about the hazards of pesticides. In several Central American countries, laborers are routinely told to return to the fields before the recommended 72-hour waiting period after fumigation. Newly sprayed fields are rarely marked by warning signs, and some environmentalists contend that aerial spraying often goes on while people are working. The pesticide regulations that do exist were enacted largely because contaminated food exports have been rejected by other countries. For instance, after the United States banned the import of Salvadoran beef, which has high levels of DDT residues, the government outlawed the use of DDT in 1979.

Critics of the manufacturers accuse them of what one environmental official calls their "unnecessarily hostile attitude toward environmental groups." The National Agricultural Chemical Association supported a 1978 measure that gives the U.S. Environmental Protection Agency the power to notify foreign countries about the hazards of banned or restricted pesticides, but it now opposes key elements of those notification procedures. "What they really want to do is cut all communication off between the EPA and officials of developing nations," argues Jacob Scherr, a lawyer with the Natural Resources Defense Council. "The chemical companies are terrified that Third World countries will learn about the dangers of pesticides."

Restrictions: Some Third World countries are beginning to realize that the indiscriminate use of highly toxic pesticides could prove to be a risk not worth taking. "Our people should not be used as guinea pigs," says Gikonyo Kiano, a former commerce minister in Kenya. A number of governments are trying to keep highly toxic pesticides out of their countries. In El Salvador, imports of several pesticides whose sales are strictly controlled in the United States will be restricted next year, and Mexico is planning to implement a law limiting the import of 300 chemical compounds and pesticides. But as long as the double standard prevails generally, Third World nations will continue to be ready markets for deadly chemicals that the developed nations will not tolerate without controls.

ALEXIS GELBER with LARRY ROHTER in Rio de Janeiro, JOSEPH HARMES in Mexico City, ERIC SCHINE in New York and bureau reports

KILLER CHEMICALS

Many pesticides that are tightly controlled in the United States and other industrialized nations are freely sold in the Third World. A number of these toxic chemicals have been linked to serious health hazards. Examples:

PESTICIDE	SUSPECTED HEALTH HAZARDS	APPROXIMATE LETHAL DOSE*
Aldrin	Cancer, damage to fetus, nervous disorders	Teaspoon
BHC	Cancer	Teaspoon
Chlordane	Cancer	Teaspoon to a tablespoon
DBCP	Cancer, male sterility	Teaspoon to a tablespoon
DDT	Cancer, nervous disorders	Teaspoon to a tablespoon
Heptachlor	Cancer	Teaspoon to a tablespoon
Kepone	Cancer, nervous disorders	Teaspoon to a tablespoon
Parathion	Damage to fetus, nervous disorders	A few drops
Paraquat	Damage to fetus, damage to respiratory system	Teaspoon to a tablespoon
Nitrofen	Cancer, birth defects, female sterility	One-half pint
Toxaphene	Cancer	Teaspoon
2,4,5-T	Cancer, birth defects	1 ounce

Source: Toxicology branch of The Center for Environmental Health, U.S. Centers for Disease Control

*In pure, concentrated form

Claire A. Nivola—NEWSWEEK

Fate Risk

The environmental threat to infants and the unborn

Human concern with congenital malformations is as ancient as human awareness, having been mentioned in Babylonian writings and the Bible and discussed by Aristotle. Early views that maternal impressions structurally affected the unborn held widespread credence for centuries. Educated attitudes in Western Europe in the 19th century shifted to view embryos and fetuses as inviolate in the uterus and untouchable by the environment. Mendel's genetic laws provided an apparent explanation for abnormal births: All flaws arose from genetic mishaps, and development of the zygote was based solely on the genetic information present at fertilization.

The 20th century brought the first experimental evidence for the role of the environment in the production of abnormal offspring. The supposed safety of the human conceptus in utero was directly challenged by a report in 1941 that a German measles epidemic in Australia resulted in offspring with cataracts, deafness, and congenital heart disease. The thalidomide disaster, involving more than 8000 children in 28 countries between 1955 and 1965, also served to trigger awareness of the vulnerability of the intrauterine occupant to outside influences.

Recent concern about the impact of environmental contaminants on the well-being of present and future generations, the increasing presence of women of childbearing potential in nontraditional jobs, and the current unwillingness of the public to be pacified, reassured, and placated by scientists, public officials, or other "heroes" of bygone eras all make timely a book which attempts to discuss current knowledge regarding environmental agents and their role as causes of birth defects.

Christopher Norwood, in "At Highest Risk," considers "the effects of an increasingly toxic environment on the health of the young and unborn." As Norwood, a science writer and journalist, admits, her book is "a relentless exposition of problems." She is willing to defend "the beleaguered government scientist and even the beleaguered government bureaucrat." She believes that there are "some very good and concerned health specialists working in our government" and "that our environmental dilemmas are [not] hopeless or insoluble."

A less-than-balanced and polemical compilation of horror stories depicts a world full of chemicals toxic to the young

"At Highest Risk: Environmental Hazards to Young and Unborn Children" by Christopher Norwood, McGraw-Hill Book Co., New York, 1980, 280 pages, **$10.95** hardback, **$4.95** paperback (Penguin)

Reviewed by Rochelle Wolkowski-Tyl, head of the teratology section of the department of toxicology at the Chemical Industry Institute of Toxicology, who received her Ph.D. in developmental genetics from the University of Connecticut in 1968, taught embryology and human genetics there, and carried out research on agents toxic to the reproductive system and embryo for 10 years before joining CIIT

However, she paints a "world brimming with toxic materials." By horror story after horror story, she indicts and castigates clinicians, the health industry, drug and chemical companies, judges, lawyers, the "lobbyist-dominated Congress," and, to a lesser extent, government regulatory bureaucrats for ignoring relevant data, for political decisions, for unswerving dedication to the profit motive, and, in the past, for "paltry ethics."

Norwood discusses an awesome gamut of agents: the herbicide 2,4,5-T (and its contaminant dioxin), methylmercury, smoking, hormone pregnancy supports such as diethylstilbestrol, microwaves, ionizing radiation, airport environments, anesthetics and operating room environments, drugs, alcohol, food additives, lead, chemical wastes, the soil fumigant DBCP, transplacental carcinogens, and delivery practices. She sees all of these as causes of developmental malformations, functional deficiencies, and childhood and adult cancer.

Norwood feels that "the environmental exposures that today's children confront are more numerous in concentration and more toxic in character than in the past." She is disappointed by the slowness with which government agencies such as the Food & Drug Administration and the Environmental Protection Agency act, as protectors of the public, to regulate substances under their jurisdiction. She attempts to pull together a plethora of trends—increasing incidence of violent crimes committed by teenagers, lower scores on scholastic achievement tests, childhood hyperactivity, a general lowering in number and quality of sperm, the "disconcerting" level of fetal wastage—as all possibly indicative of the effects of an increasingly toxic environment on reproduction and development. There are, at present, no data to confirm or refute her implications of a cause-and-effect relationship or even, in some cases, to indicate whether there is a trend at all. In any case, statistical correlations can never prove (or disprove) causality!

Norwood does try to provide a balanced approach in a number of instances. For example, when she describes the fetal alcohol syndrome, she also indicates maternal malnutrition as a possible causative or confounding factor. She notes the current small decrease in incidence of Down's syndrome children, as well as a rather striking decrease reported in the age of mothers of such children, and discusses the multiplicity of factors involved: the decreasing number of older women having children, the availability of amniocentesis to identify Down's fetuses in older women, the possibility that an increase in Down's syndrome children born to younger mothers (again, her thesis is that they may be caused by environmental pollutants) almost balances the drop in births among older mothers.

She is not always so evenhanded, however. She mentions two children with Hamman-Rich syndrome (a serious form of lung tissue scarring) who had been exposed to the herbicide paraquat. She issues the caveat that two cases don't make a trend, but they are mentioned in precisely that context.

She discusses 2,4,5-T (and dioxin) at great length, describing its use in Vietnam and claims of its role in the production of malformed and stillborn children by exposed American veterans and civilians, as well as claims by eight women in Oregon of miscarriages after 2,4,5-T spraying of forests there. She does not discuss basic criticisms of an EPA-sponsored epidemiological study of the Oregon women which showed higher miscarriage rates, nor the subsequent studies that did not uphold the EPA findings of increased miscarriages.

She treats the Love Canal nightmare with a kind of cavalier "everybody knows who the bad guys are" attitude. She recites the litany of chromosomal and birth defects with the conviction of a legend teller. Yet the Panel to Review Scientific Studies and the Development of Public Policy on Problems Resulting from Hazardous Wastes appointed by the governor and state legislature of New York concluded that no health effects had been demonstrated, although it did not rule out such effects. Norwood does not discuss the inadequacies or the political problems involved in the studies she does cite which contributed to the current lack of valid information.

She also gets mixed grades on her observations on teratological research. She states, without revealing her sources, that "after 30 years, several billions of dollars, and an intensity of effort perhaps exceeded only by the search for a cancer cure" scientists really have not advanced much in their understanding of birth defects. To my knowledge, this is not an accurate description of the intensity of the research effort or of the progress in this field. She points to the Ames test as a great breakthrough in carcinogenicity testing, with the implication that teratologists are remiss for not having developed a similar quick and dirty screen. But the Ames test has real limitations and tests only certain classes of chemicals. It works only because (according to the current consensus) all carcinogens are mutagens, all DNA is identical, and a mutagen in the Ames test is a suspect mutagen (and, therefore, a carcinogen) for humans.

There is no such fundamental dogma for teratogens! Teratogens (for example, thalidomide) need not be mutagens, and a large number of known mutagens are not teratogens. Currently there is no teratogen for which the mechanism is known from its initial entry into the organism (maternal or fetal) to its ultimate pathological manifestation. Suggested mechanisms range from mutagenic or clastogenic events to mitotic inhibition, altered substrate status, ionic imbalance, or enzymic alterations. Suggested sites of action vary similarly, ranging from intranuclear or intracellular to extraembryonic. Normal development requires a precise sequencing of events involving cell movements and divisions, programed cell deaths, biochemical syntheses, and so on. Anything that disrupts this tight timetable may induce structural and/or functional damage.

Meanwhile, several federal agencies prescribe specific teratogenicity tests for drugs, food additives, and environmental agents involving exposure of the test animal and evaluations of its fetuses for soft-tissue and skeletal defects. Norwood perceptively states that "it is quite obvious that real breakthroughs are not going to come from this endless process of dosing mice and rats with possible teratogens and counting up their bones; the real breakthroughs depend on understanding the mechanisms and metabolism of teratogenesis."

But she does not even begin to address the fundamental misgivings many teratologists have of current "accepted" test protocols. Essentially, these protocols involve exposure of the embryo during organogenesis, a relatively brief period in the first trimester (approximately the 18th to 60th day of gestation in humans) when the organism is laying down its major organ systems and is most vulnerable to overt structural damage. However, the fetus is still vulnerable to environmental agents after this period. The central nervous, immunosurveillance, reproductive, hematopoietic, and digestive systems are still undergoing major development. Small structural deficiencies in these systems would not be detected by the examinations now employed. The procedures we now are using may be letting some false negatives slip through from the pitifully few chemicals we do test.

The ultimate impression is tha Norwood's book is a wearying compendium of proven, probable, possible, and totally unsubstantiate horror stories about environmenta teratogens. It appears to be a dutifully researched effort by a writer inexperienced in the field. There is little or no indication of the progress being made or of the efforts involved or any attempt to separate known causative associations from hypothetical unexplored connections. The "parent or potential parent" for whom the book supposedly is written may very well come away from it convinced that he or she can't breathe the air, drink the water, or eat the food of our modern world, that there is a vast industrial-governmental cabal against the public, and that there's nothing much we can do! This impression is not accurate or fair.

Norwood is long on personal descriptions of the people she has talked with and their experiences and on unsubstantiated data. But she is short on the task, admittedly difficult, of explaining the progress or impediments to progress, the efforts, or the fundamental difficulties in defining even basic test systems. She does not convey the frustrating race researchers in the field run in trying to keep up with chemicals now in the workplace and marketplace, as well as with the 1500 to 2000 new ones introduced each year. It is difficult enough just to test them for toxicity, mutagenicity, and carcinogenicity, for which reasonably reliable test systems do exist, let alone for reproductive and teratogenicity effects, for which such systems don't yet exist.

Her style is anecdotal as well as polemical, with a quirky sense of terminology. She writes that transplacental carcinogenesis has "an element of biological jest." She uses the term "gashed palates" for cleft palates and discusses the possibility of "blast[ing] out the brains of fetuses" by microwaves.

Nevertheless, she has pulled together a great deal of information for laypersons most concerned and perhaps least informed. The book's jacket compares Norwood's book to "Silent Spring," written by Rachel Carson in 1962. "Silent Spring" was a landmark book that challenged and changed, once and for all, our view of the unassailable resiliency and stability of the environment and sounded the alarm for the devastation we are wreaking on the fabric of our world. Norwood has neither the lyric skill nor the scientific background of Carson. Only time will tell whether she also has written a landmark book to be cited by future environmentalists and teratologists as the turning point in their struggle to provide a safe environment for the unborn and newly born. □

Section III -- CANCER POLICY

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THE "FIRST ANNUAL REPORT ON CARCINOGENS" FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES' NATIONAL TOXICOLOGY PROGRAM DISCUSSES ONLY 26 CHEMICALS -- AUG. 13, PAGE 14.

SIXTEEN CHEMICALS FOUND CARCINOGENIC IN TESTS BY THE NATIONAL TOXICOLOGY PROGRAM SHOULD BE PLACED ON A "RISK LIST" -- AUG. 20, PAGE 3.

ENVIRONMENTAL CANCER RISK ASSESSMENT PANEL OF THE CONGRESSIONAL OFFICE OF TECHNOLOGY ASSESSMENT WILL MEET IN NOV. AT OTA HEADQUARTERS -- SEPT. 3, PAGE 2.

Bioassay reports available from the National Cancer Institute include reserpine, fluometuron, 2,6-toluenediamine dihydrochloride, phenol and 4,4'-oxydeaniline -- Nov. 12, Page 2.

An OTA panel on "Technologies for Determining Cancer Risks From the Environment" is preparing a report for the incoming Senate Labor and Human Resources Committee which will raise fundamental issues of regulatory policy -- Dec. 10, Page 3.

Union Carbide denies any significant increase in incidence of brain tumors in its Texas City plant -- Dec. 17, Page 18.

EPA has made a tentative decision that it is not worth agency resources to pursue a chemical which presents a cancer risk below 10^{-6} -- June 24, Page 3.

NACA sees ghost of Delaney in EPA decisions -- June 24, Page 32.

Section IV -- CONGRESS

FIFRA

Senate FIFRA action is in a holding pattern following House passage of the reauthorization bill -- July 9, Page 2.

FIFRA extension bill is expected to be acted on by the Senate before the break for the Democratic Convention -- July 23, Page 2.

The Veterans Administration and Dow Chemical Company were criticized before a House Veterans Affairs subcommittee in a continuing investigation of Agent Orange -- July 23, Page 27.

FIFRA enforcement is the planned focus of hearings on implementation of the Act which might be held this fall before the House Government Operations Committee's Subcommittee on Environment, Energy & Natural Resources -- July 30, Page 2.

The Senate-House Conference on FIFRA could begin before the August recess for the Democratic Convention -- July 30, Page 16.

Sens. Jackson and Magnuson (D-Wash.) asked EPA for a report on the regulatory status of captan and benomyl -- July 30, Page 37.

EPA budget, part of the HUD appropriations, was amended and passed by the House -- July 30, Page 38.

House FIFRA conferees are named -- Aug. 6, Page 2.

Rep. Foley (D-Wash.) urges rulemaking for controversial cotton-pesticide advisory opinion -- Aug. 13, Page 27.

Hearings on pesticide contamination of ground water are expected to be held before the Subcommittee on Environment, Energy & Natural Resources, House Committee on Government Operations -- Aug. 20, Page 2.

Human health and the environment are not being protected by EPA's pesticide regulations, according to Rep. Wampler (R-Va.) -- Aug. 20, Page 12.

EPA pesticide budget cut $5 million by Senate Appropriations Committee's Subcommittee on HUD-Independent Agencies -- Sept. 3, Page 2.

Agent Orange hearings before the Senate Veterans' Affairs Committee will be held in Sept. in the Russell Bldg. -- Sept. 3, Page 2.

Senate FIFRA conferees have been named: Sens. Talmadge (D-Ga.), Stone (D-Fla.), Leahy (D-Vt.), Stewart (D-Ala.), Helms (R-N.C.), Hayakawa (R-Calif.), and Jepsen (R-Ia.) -- Sept. 10, Page 2.

Pesticide contamination of water will be the takeoff point for an investigation of EPA regulation of pesticides planned by the House Government Operations Committee's Environment, Energy and Natural Resources Subcommittee -- Sept. 10, Page 3.

EPA pesticide budget cut could result in a 75 percent cut in the extra-mural epidemiological studies done by various universities for the agency -- Sept. 17, Page 2.

EPA pesticide budget cut decisions have not yet been made, according to Edwin L. Johnson, EPA's Deputy Assistant Administrator for Pesticide Programs -- Sept. 24, Page 2.

EPA is hopeful that future collaboration with agricultural interests on techniques to avert drift will be more successful -- Sept. 24, Page 4.

WSJ 7/6/8

ıco Inc. Plans
\cquire Firm
$221 Million

With Ladish Co. in
ck Swap Fits Pattern
Recent Diversification

L STREET JOURNAL Staff Reporter

ETOWN, Ohio—Armco Inc. said n principle to acquire Ladish Co., held metal-forging concern, in an of stock valued at $221 million.

erger with Ladish would fit into a recent years of Armco not only g but strengthening its position in ecialty markets, including energy.

t of the agreement, Ladish has l 53% of its stock to Armco as part posed transaction.

of the agreement call for Armco ge 8(shares of its common for e outstanding of Ladish stock. d slightly more than 6.5 million of would be involved in the proposed

ing on the New York Stock Ex- composite tape last Thursday, osed at $3?.875, down $1 from v.

erger is subject to approval by di- both companies and Ladish share-

, based in Cudahy, Wis., makes d forgings, industrial fittings, ... die casting tools. It was in 1905 and employes about 6,500 in several plants. In 1980 Ladish 11.5 million on sales of $486.3 mil-

ave great respect for Ladish's pro- nagement and innovative manufac- ocedures," Harry Holiday, chief ex- fficer of Armco, said. "In addition, tstanding technology and proprie- pment in specialized forgings offer growth opportunities in the aero- efense and energy markets."

dition to carbon and specialty steels, s a leading maker of oil-field equip- well as industrial products and re- rvices and fabricated composite and oducts. Armco also mines coal iron limestone and is engaged in oil and oloration. It also provides financial urance services through a subsidi-

ific Steel & Supply,
President Charged
J.S. Customs Case

... THE W... STREET JOURNAL

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... A. Falk, 42 years ... resident of Pacific ... d in San Lean- ... Teraoka, 45, of San

Teraoka is ... the San Francisco ... (USA) Inc., an ... based in New York ... Mitsui & Co. Ltd. ... rate that mar- ... products.

... reached for com- ... "Actually, I have ... tell me to say

... stems from an in- ... whether U.S. antidumping ... involved the purchase of ... Steel from Mitsui.

... accused of conspiring ... to U.S. Customs ... price mechanism," a ... by which the Treasury Department ... prices of imported steel products. ... in 1978, the U.S. government ... trigger prices, which it considered

Tax-Exempt Savings Certificate, Cleared By Congress Panels, Likely Faces Changes

By ROBERT W. MERRY

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The tax-exempt savings certificate that sailed through both congressional tax-writing committees last month will likely be changed before it emerges from Congress this summer.

Some important members of Congress are beginning to feel skittish about enacting the plan, which was attached to major tax bills two weeks ago in both the House Ways and Means and Senate Finance Committees and has since met with a barrage of criticism.

One of those skittish members is Sen. Robert Dole (R., Kan.), Finance Committee chairman, who led his committee in approving the President's tax package two weeks ago. But, over administration objections, the committee voted unanimously to accept the so-called all-savers provision. Sen. Dole said at a news conference that the provision might be changed.

"We're looking for better ideas (on how to spur savings) between now and floor time," the chairman said, adding he expected the tax bill to reach the Senate floor next week, probably on July 15.

The provision would create a tax-exempt savings certificate that would pay 70% of the rate on one-year Treasury bills for a one-year period starting Oct. 1. Savers could exclude from their taxable income as much as $1,000 of interest earned on the certificates, or as much as $2,000 for couples filing joint tax returns.

Plan Is Criticized

Critics call the provision a "$4 billion bailout" of the financially troubled savings and loan industry, and some observers say it wouldn't provide any tax breaks for low-income Americans. According to some estimates, a single taxpayer would have to earn $29,000 a year to realize a benefit. A family of four that itemizes its deductions would have to earn $40,000 a year to get a break.

Others suggest, as Sen. Dole did, that the provision won't generate any new savings but would simply redirect funds already in the country's saving pool.

At his news conference, Sen. Dole declined to specify what alterations may be under discussion. "There are numerous ideas being discussed," he said, "and we may find that this (all-savers approach) is the best we can do." Asked if the concept might be dropped, he replied, "Oh, I don't think so."

Congressional staff assistants said it's most likely that the provision would be fine-tuned rather than replaced with some other savings-incentive approach. Still, they added, some alternative approaches are under discussion.

One possibility, they said, would be to provide more tax relief through greater benefits for contributions to Individual Retirement Accounts, or IRAs. Both the Senate bill and its House counterpart sweeten tax breaks for such contributions, but they could be sweetened even further.

Also under discussion is a plan to allow a federal agency to purchase low-interest mortgages that constitute a financial drag on savings and loan associations, thus giving them a much-needed infusion of cash. The plan calls for the S&Ls to purchase the mortgages back after mortgage-interest rates have dropped enough to relieve the current squeeze on S&L associations.

"If we're going to bail out the S&Ls," said one congressional staff assistant, "this might be a better and cheaper way of doing it." The Treasury Department has expressed opposition to this plan, the staffer notes, adding, "But that was before they had the all-savers thing rammed down their throats."

The Treasury remains opposed to the all-savers bill, as well as to other costly proposals intended to bail out the ailing thrift industry. Although the department is studying alternatives to the all-savers certificate proposal, "We still feel that the political popularity is such that we don't want to jeopardize the whole tax bill by coming out against it," a Treasury spokesman said.

Delay of Summer Recess?

Sen. Dole said he hoped the full Senate could complete action on the Finance Committee's tax bill by the end of next week. That would keep alive the possibility, he said, that Congress could finish work on the bill before the start of the summer recess on Aug. 1.

He also raised the possibility that the Senate might delay the recess by a week to nail down, at the least, a conference agreement that would reconcile House and Senate tax-bill versions.

Although the two houses would later have to approve such a conference agreement, he noted, getting an early agreement would give the Internal Revenue Service time to alter tax withholding tables before the first scheduled individual tax cut on Oct. 1.

In the House, Ways and Means chairman Dan Rostenkowski (D., Ill.) has said he plans to get a tax bill through the House by Aug. 1, and that he would accept conference sessions during the August recess "if it proved necessary."

A Rostenkowski aide said last week that the Ways and Means chairman adheres to that position.

Bank Board Will Allow S&Ls to Trade More Heavily in Interest-Rate Futures

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON—Substantial new participation in interest-rate futures markets is foreseen as a result of federal action to permit much wider trading in them by savings and loan associations.

The Federal Home Loan Bank Board, in a move its chairman describes as among the most important it has ever taken, approved final regulations greatly loosening trading restrictions for S&Ls beginning Friday.

Under the new rules, the nation's nearly 4,000 federally insured S&Ls will be allowed to take positions hedging all their assets. The old rules didn't allow contracts to total more than an S&L's net worth, typically only 5% of assets.

The new rules also allow trading in any contracts based on securities in which the S&Ls can legally invest. This will permit trading in Treasury securities futures and bank certificate of deposit futures. Currently, only Government National Mortgage Association futures can be traded.

The Bank Board approved the liberal trading rules in hopes that S&Ls will use them to protect themselves against future

Susan Kelsey, a board staff member, said she didn't expect many S&Ls to attempt to hedge all their assets but that many probably would attempt to hedge all their six-month money-market certificates.

In any event, the potential market for futures will be expanded considerably by the change. S&Ls have issued more than $200 billion of six-month money-market certificates. That is nearly seven times more than the industry's net worth, the previous limit.

Three Firms Plead No Contest in Case On Price Fixing

A WALL STREET JOURNAL News Roundup

Three companies charged with fixing prices of art materials pleaded no contest in federal court in Toledo, Ohio. They could be fined as much as $1 million each.

Judge Nicholas Walinski accepted the pleas of Binney & Smith Inc., Easton, Pa.;

Child Cancer Is Tied To Parents' Exposure To Chemicals on Job

* * *

Study Suggests 25% of Tumors May Be Linked; Further Research Urged

A WALL STREET JOURNAL News Roundup

Children of chemical workers and others exposed to chemicals, paints and solvents may face a greater risk of brain tumors than other children.

In a recent study of 92 children with brain tumors, scientists found those children were more likely to have parents who worked with chemicals than were a similar group of children who didn't have tumors. All the children were under 10 years old.

Compared with the control group, more than three times as many mothers of children with brain tumors were exposed to chemicals and nearly three times as many fathers were exposed to solvents. Seven times as many of the children with brain tumors had fathers who worked with paints.

The study didn't identify which chemicals might cause the brain tumors. Scientists said further research is necessary.

Researchers at the University of Southern California School of Medicine in Los Angeles, site of the study, also found an association between a father's employment in the aircraft industry and his child's brain tumor. The fathers of 12 children with brain tumors worked in the aircraft industry, compared with only two of the controls.

If the data holds up in further research, it may mean as many as 25% of the brain cancers among children are caused by the occupational exposures of their parents, said Dr. John M. Peters, who headed the research team. "We've worried about the direct effects (of chemical exposures) for years," he said. "Now we're beginning to see evidence that exposures to parents may have repercussions to kids." Results of the study are to be published in this week's issue of Science magazine.

Cancer is the second leading cause of death among children, after accidents. Brain cancers often are fatal.

The study is significant because little is known about the causes of brain tumors in children or in adults, and little research has been done on how children are affected by their parents' exposure to chemicals. Most studies have concentrated health problems among chemical workers and on the effects of chemicals on fertility, genetic material and on the fetus. Some studies have been done on the health problems of families of asbestos workers.

University of Southern California researchers interviewed the mothers of the 184 children by telephone. The mothers were asked about their own work histories and those of the children's fathers. They also were asked about smoking habits, use of drugs and alcohol, hair dyes and certain foods during pregnancy, which the researchers later concluded wasn't a factor in the brain tumors. The parents' chemical exposures took place before, during and after pregnancy.

The study cited several "plausible" ways a child could be affected by a parent's occupational exposure, including contact with soiled workclothes and the mother's contact with soiled workclothes before or during pregnancy or while breastfeeding.

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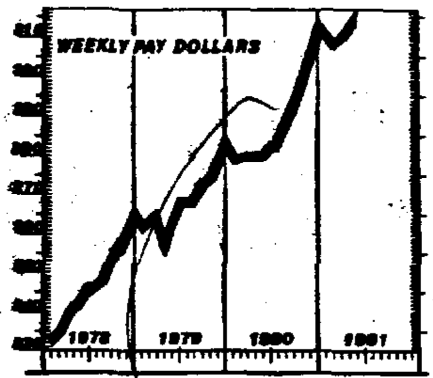
Weekly Earnings



AVERAGE WEEKLY PAY of factory workers in May rose to $317.19 from a revised $312.44 the preceding month, the Labor Department reports.

New CIA Spymaster Is Likely to Become Legend in His Time

* * *

'Street Fighter' Max Hugel Arouses Strong Feelings Among Reagan Associates

Washington Wire

A Special Weekly Report From The Wall Street Journal's Capital Bureau

CONFRONTATION TACTICS by Reaganites yield successes—and setbacks.

The President and aides, hanging tough, deal House Democratic leaders another heavy blow in the budget battle. The GOP victory yesterday on an important test vote greatly strengthens chances Reagan will win a House majority for his proposals. Relentless hammering at Speaker O'Neill as a roadblock pays off; so does Reagan's intensive phoning of House members on behalf of his budget-cut goals.

But Treasury chief Regan fails to sway Ways and Means Chairman Rostenkowski by lambasting him for tax-cut inertia. Chances for revamping the Clean Air Act slip as word of a drastic administration proposal gets around. Arms-control nominee Rostow only raised Senators' hackles with talk about a long SALT delay; he then shifted to a softer line.

The no-compromise push for the AWACS sale to Saudi Arabia runs into trouble. Sen. Laxalt warns "the votes aren't there." He and Sen. Percy urge delay in sending the proposal to Congress.

REAGANITES ACT to shut off leaks of foreign and defense "secrets."

Rely Counterattack

P&G Is Going All-Out To Track Toxic Shock And Exonerate Itself

Firm Finances Researchers, Collects a Mass of Data; Campaign Has Its Risks

Cooking Their Own Goose?

By DEAN ROTBART
Staff Reporter of THE WALL STREET JOURNAL

CINCINNATI—Procter & Gamble Co. is still pursuing toxic-shock syndrome with a vengeance and is taking some uncharacteristic risks in the process.

P&G's Rely tampons were singled out last fall by the government's Centers for Disease Control as being associated with toxic shock – a mysterious disease that seems to strike menstruating women most frequently and has claimed over 80 lives in the U.S. during the past three years. Under pressure from the Food and Drug Administration, which was threatening to order a formal recall, P&G voluntarily withdrew Rely from the market at an after-tax cost of $75 million.

Rely Counterattack: P&G Is Going All-Out in Fight Over Toxic Shock

Continued From First Page

dantly clear to the universities involved that our purpose was to ensure that an understanding of toxic shock would be developed in the shortest time possible," Mr. Place says. "We did not intend to control or direct the work, but rather to facilitate the normal process of academic research." The company adds: "It's patently ridiculous for anyone to imply that these scientists could be bought off."

Some critics suggest as much. Others have a different fear. They complain that because P&G holds the purse strings, it may be able to control what research is and isn't conducted, as well as the flow of information relating to the researchers' findings.

"They do have an influence over the work, because they are funding what they want funded," says William J. Brown, an associate professor of immunology and microbiology at Wayne State University School of Medicine. He received $125,000 from P&G for research he is conducting. P&G defends itself by pointing out that it financed 90% of the "legitimate" researchers who approached it for funds.

P&G also has been involved in a variety of other efforts to accumulate information about toxic shock. For instance, it enlisted 14 outside experts in such fields as microbiology, immunology, genetics, biochemistry and epidemiology to conduct seminars for its own scientific and medical people.

In early May, the company gathered 50 leading specialists—a veritable who's who in toxic-shock research—to exchange ideas on the disease. The weekend seminar, replete with cocktail parties and catered meals, was held at the plush new Westin Hotel in downtown Cincinnati.

Leads and Dead Ends

Moreover, P&G has kept some of its top scientific people crisscrossing the country pursuing leads and possible solutions to the toxic-shock puzzle. The company has logged 92 such expeditions, many of them terminating in dead ends.

Aside from the scientific data, P&G is amassing other information and documentation. The Centers for Disease Control says P&G got about 20,000 documents from it under the Freedom of Information Act. The company's total cost for obtaining documents and for monitoring news accounts involving toxic shock is estimated in the millions of dollars.

When the product-liability trials start, which isn't expected to be soon, P&G undoubtedly will draw heavily on all the information it has gathered.

Using a series of charts, graphs and scientific explanations, P&G nowadays makes a strong case that the Centers for Disease Control goofed in singling out Rely. "As more data became available," says Mr. Place, the P&G vice president, it became "abundantly clear that our initial suspicions (about the CDC's study) were more than justified."

"Can't Argue With That"

P&G's contention, in essence, is that the CDC's investigative method, and that of some non-CDC studies that reached similar conclusions was faulty. The company says that the CDC, with the Food and Drug Administration breathing down its neck, was forced to move too quickly, using data that hadn't been properly reviewed by scientists who weren't involved in the study. In turn, says the company, the FDA made its decision based on misleading and incomplete evidence.

Some FDA officials don't contest P&G's assertion that the data weren't reviewed properly by other scientists or that the FDA didn't have complete evidence to base its judgments on. "I can't argue with that, I can't argue with P&G's concerns," says Robert Britain, the FDA's acting deputy director of the Bureau of Medical Devices, who assumed that post after Rely had been withdrawn from the market. Mr. Britain says the FDA's action at the time might well be called "a half-scientific and half-guts call." He concedes that other scientists might be able to come up with reasonable explanations for the CDC's findings other than those implicating Rely.

P&G rejects the CDC's finding that the number of toxic cases has dropped since Rely was withdrawn. While the CDC waits for state health departments to voluntarily report to it, P&G says, the company actively polls the state agencies regularly. Only "a minority of the cases are being reported" to the CDC, it says.

To P&G's claims the CDC says, Nonsense.

"I don't have a vested interest in tampons or tampon sales," says Bruce Dan, the deputy chief of the CDC's toxic-shock task force. "There is overwhelming evidence, confirmed over and over," that singles out Rely.

"I understand where they (P&G officials) are coming from," Mr. Dan says. "P&G has already lost $75 million (from the one-time write-off), and they're going to lose hundreds of millions of dollars in lawsuits. One can dismiss studies all one wants, and if you get rid of all the data, there is *nothing* to implicate Rely."

Could Save a Bundle

If P&G can convince juries that the CDC erred, it could save a bundle in court awards or settlements. William J. Ahern, a Columbus, Ohio, lawyer who hopes to bring a $75 million class-action suit against P&G on behalf of women in the state, says his case could be won or lost largely on the determination of whether the CDC's findings are valid. "If P&G shoots holes through the CDC, it hurts, hurts badly," he concedes. "It may not be a fatal wound, but I'd bleed."

It does in fact appear that a number of independent researchers, many of whom became noted for their toxic-shock studies and now are financed by P&G, are convinced that Rely shouldn't have been singled out.

"I don't disagree with P&G at all," says Patrick Schlievert, a microbiologist and assistant professor at the University of Minnesota medical school, who has received $30,000 in research grants from the company. "I have been really opposed to the CDC's handling for a long time," he says, adding, "I think a misjustice was done to P&G . . . and I think P&G has every right to go after the federal government and seek damages."

P&G is highly unlikely to do that. Nonetheless, factions within the company feel that current evidence is so favorable that P&G ought to seek FDA approval to remarket Rely—although they advocate holding Rely off the market, even if approval is won, until all questions about toxic shock are answered. (The withdrawn tampons are still in storage, at a cost of $2 million annually.) Such a showdown, while likely to produce a public-relations flap even greater than the original Rely controversy, could have some marked benefits for P&G.

"Any company that depends on its success on introducing new and improved products into broad distribution must have full confidence that its procedures for determining the safety of those products are soundly based," says P&G's Mr. Place.

P&G feels that it and other companies also must be able to trust government agencies to follow procedures that won't allow a safe product to be victimized by misinformation. Given that, if the FDA and the CDC erred, letting the public know about it might prevent them from doing so again with other P&G products in the future.

Square D to Buy Appleton Electric For Cash, Securities

By a WALL STREET JOURNAL *Staff Reporter*

PALATINE, Ill.—Square D Co., which has become more aggressive in merger activity, said it plans to acquire Appleton Electric Co. of Chicago.

The transaction would involve a package of securities and cash valued at about $140 million and would provide future payments over a five-year period, with a limit of $200 million on the total price.

According to the agreement in principle, Square D, a maker of electrical equipment, would issue two million shares of its common (or a smaller number if the stock rises above $35 a share) plus cash and 12% debentures equal to the approximate value of the common stock issued.

Holders of closely held Appleton would be entitled to additional common and debentures annually if after-tax earnings of Appleton in the five year period—1982-1986—exceeded $11 million a year on a cumulative basis. The payments based on future earnings would be made about 50% in common stock (valued at no less than $35 a share) and about 50% in 12% debentures.

In New York Stock Exchange composite trading yesterday, Square D common closed at $34.25.

Subject to customary closing conditions, completion of the acquisition is expected in September, Square D said.

Appleton had sales of $115 million and net income of $5.4 million in the fiscal year ended July 31, 1980. For fiscal 1981, sales are estimated at $140 million and net income at $11 million. Last year, Square D had sales of $1 billion and net income of $83 million, or $3.41 a share.

Donals E. Wilson, Square D's vice president, finance, said Appleton's product line complements Square D's. Appleton makes specialty electric construction products and materials used in hazardous and nonhazardous areas.

In the Sixties and early Seventies, Square D grew steadily by acquisitions. The pace slowed in the last half of the Seventies, though at one point, in mid-1978, the company went after its biggest takeover target, Globe-Union Inc., a battery maker and electronics concern. It was outbid, however, by Johnson Controls Co. Since last July, Square D has made two major acquisitions, Yates Industries Inc., and General Semiconductor Industries Inc., that have taken Square D more deeply into electronics, an area in which the company has indicated it plans more expansion.

Pioneer Corp. Unit Will Stop Producing Uranium Oxide in '82

By a WALL STREET JOURNAL *Staff Reporter*

AMARILLO, Texas—Pioneer Corp. said its Pioneer Nuclear Inc. unit will stop production of uranium oxide in early 1982 because of the closing of the South Texas Conquista project.

Pioneer said the Conquista project, a joint venture of Conoco Inc. and Pioneer Nuclear, had produced about 800,000 pounds of uranium oxide annually. Conoco, the project's operator, announced recently that the project will be phased out during the r mainder of this year, with the closing pected early next year.

Pioneer said that after the C closing, Pioneer Nuclear won't ha ther production of uranium o of the depressed market fr oneer Nuclear already h mining and milling ope mineral belt of C oneer sto

Conference Reports

Working hazards in the plastics and rubber industries

British industry has now had six years to come to terms with the Health and Safety at Work Act. Attitudes towards industrial safety had been improving very slowly since the first recorded protest against hazardous working conditions — the Bryant and May matchgirls strike in 1888. The 1974 Act was therefore an overwhelming step forward since it placed a legal duty on employers to ensure the safety of their workers and also created watchdogs with power to ensure that the law was upheld. Strangely enough the trade union movement as a whole had not fought particularly hard for the introduction of this Act, yet as a result of the HSWA worker participation in decision-making is now greater in this area than in any other.

Six years on then is probably a good time to review the situation in the plastics and rubber industries — what has, is, and can be done to improve working conditions. This was the aim of the Health and Safety in the Plastics and Rubber Conference held at the University of Warwick on 29 September to 1 October.

The first day and a half dealt on the whole with hazards which have already been identified and how to handle them. Dust and noise are often overlooked when considering industrial hazards — yet dust can cause fires and explosions and noise is rated as the greatest environmental problem in modern industry. Dust explosion research at the Health and Safety Executive is attempting to identify the mechanism of dust explosions. In the workplace, pellets, dust suppressed powders and pastilles have considerably reduced the amount of respirable dust (0.2–10μm) in the rubber industry. To reduce noise, however, the only solution is redesign machinery adding as much damping as possible to slow down impact.

For safe handling of hazardous materials and also to establish fire safety in storage areas, it is essential first to assess the exact nature of the risks and then establish a procedure for coping with fires and other hazards which is clearly understood by all those working in the area.

The hazards associated with moving machinery are probably the most straightforward to deal with. Sensible design is again very important — the removal of dangerous parts could eliminate the need for guards. UK legislation on safeguarding machinery is the trend setter in Europe. In one case, however, it will be necessary to postpone any action until machinery designers can cope with the required criteria. The BPF horizontal moulding machine code of practice proposed that progressive mechanical restraints should be obligatory by 1982. However, designers are finding this difficult to comply with.

Toxicity was described by one speaker as 'the property of a chemical substance to cause adverse effects in human beings as a result of industrial exposure arising from skin contact, inhalation or ingestion'. Acrylonitrile has, for some time, been suspected of causing cancer and research studies on both rats and groups of workers do not detract from existing suspicion that it is a human carcinogen — although the evidence is not conclusive. A new control limit of 2 ppm (time-weighted for an eight hour day) will be enforceable by May 1981.

Other sectors also have their problems and case studies were reported of respiratory, skin and eye irritation from toluene di-isocyanate, respiratory diseases from PVC and carbon black, skin irritation from epoxy resins and the now well-documented story of bladder cancer in the rubber industry caused by phenyl beta napthylamine.

Fumes from polymer processing can also represent a hazard. Certain polymers, if processed at temperatures of over 200°C will evolve carbon monoxide, formaldehyde or acrolein.

In most of these situations the solution proferred was to isolate the worker from the contaminant. However, an interesting solution has been devised at RAPRA to reduce rubber curing fumes. The problem is eliminated at source by modifying the compound formulation and curing conditions.

The next section of papers dealt with identification, measurement and control of hazardous substances. Epidemological studies would seem at present to be the only reliable technique used to identify new hazards. Once they have been identified measurement and control is essential via some type of sampling technique. When setting up a sampling process it is important to distinguish between the different types of Threshold Value Limit. Some materials have ceiling designations which must not be exceeded and for others the time-average concentration over an eight-hour period must not exceed a stated value.

In addition to protecting their workers, industry also has a responsibility to safeguard the environment, as pointed out by Dr Chivers of Loughborough University. The main airborne hazards were identified as carbon dioxide and chloroflouro-carbons on a global scale and sulphur dioxide, photochemical smog and toxic substances on a local scale. Odours can be a much more difficult problem. The human nose is more sensitive than analytical instruments so it is useless trying to identify noxious fumes analytically. Detection thresholds can be very low—0.0002 ppm in the case of trimethylamine—and the only solution is to incorporate into the factory design a suitable system for elimination.

Possible water pollution should also be taken into account when designing a factory as this can be an expensive problem. Local authorities have the power to impose high treatment charges on factories who pollute the sewerage systems. It is likely that next year a national notification scheme for new substances will come into force whereby manufacturers will need to show, before marketing a substance, that they have done all they can to prove it is not harmful. Industry will also be required to submit to the government information related to toxic and other hazardous properties.

The last session of the conference was concerned with education and regulation. The importance of ensuring that all workers from board level down to the shop floor were aware of their responsibilities towards health and safety was emphasized by Dr Cartwright. Health and safety aspects should be written into every job specification.

The art of ensuring workers complied with safety regulations was discussed by Ms Emery of the Argyll and Clyde Health Board, who has carried out recently a campaign on safety spectacles. Research had shown self-esteem and pressure from peer groups to be the major factors causing workers to disregard safety regulations. Poster campaigns, which are widely relied on, proved to be ineffective, as did campaigns based on discipline or fear. Gentle persuasion was needed to motivate workers towards the correct behaviour. Ms Emery had found the most effective campaigns so far had been those with an emotional appeal.

Attitudes of managers towards their responsibilities under the Health and Safety at Work Act seemed to vary. Some speakers felt that the long-term economic interests of industry were not being taken into consideration by those administering the Act. Mr Lowe (ICI Ltd) stressed it was important to find a risk level for hazards which was socially acceptable but at the same time economically viable. PRI President Steve Gibbs, however, stated a firmer commitment. He declared that mere compliance with the Health and Safety at Work Act was not sufficient. Managers needed to ensure the best possible working conditions over and above HSWA standards without too adversely affecting profitability.

Mr Gee, of the General and Municipal Workers Union, understandably challenged the cost effectiveness argument. No risk was acceptable if workers health was endangered. Mr Gee defended his union's policy of informing members as soon as a substance was suspected to be harmful. Adequate monitoring of workers health was essential and he recommended the plastics industry should set up some framework to help smaller companies with health research as the BRMA did for the rubber industry.

If the success of a conference can be judged by the number of delegates, this meeting — oversubscribed with over 200 — was very successful. Or maybe success should be judged by the liveliness of the discussion created among the delegates — another factor much in evidence over the three days. All of which seems to suggest that health and safety matters will still be a controversial topic for some years to come.

Preprints of the conference papers are available from the PRI Publications Department at £16 (£12 PRI members) plus 40p postage.

Engineering properties of polymers —their measurement and application

R J Loneragan

The Polymer Properties Group held their ninth research meeting at the Zoological Society of London on 18 September 1980, when 74 delegates were presented with 14 papers on current work in progress.

The day was divided into two sessions: the first, chaired by Dr J P Berry, director (and chief executive) of the Rubber and Plastics Research Association, dealt with property determinations while the afternoon was devoted mainly to papers concerning design in the light of the rather special properties associated with polymeric materials.

The latter session was chaired by Dr A A Challis, Director of the Polymer Engineering Directorate (of the SRC), who also summed up the proceedings by drawing attention to the fact that, although there had been much progress in this field over the last ten years and the papers presented highlighted the current activity, there was a continuing need for research and development on the specific requirements for successful design using materials with such complex properties as polymers.

The first paper by G Sandilands dealt with the available methods for the determination of internal stresses in injection mouldings. There was not yet complete agreement between the various techniques but stress distribution profiles were consistent.

The need to take a broad overview when investigating failures of moulded components while paying detailed attention to the determination of failure criteria under various specified conditions was emphasized by L W Turner.

K Thomas pointed out that measurement of distortion of injection moulded plaques had indicated that control by cavity sensors led to greater consistency in component quality than by injection unit control alone.

While D G M Wright showed that the effect of moulding parameters on product properties could be predicted from the results of tests on laboratory specimens.

Differential Thermal Analysis (which was rapid and needed only a very small sample) was the subject dealt with by S N Lawandy. He showed it could be used to predict optimum melt temperature for achieving maximum mechanical properties in mouldings from a given batch of material.

M A Wilding proposed a model based on an Eyring activated rate process for the prediction of the creep behaviour of ultra-high modulus polyethylene. Some doubt was expressed as to its applicability to randomly oriented and amorphous materials.

The results to date of a study by creep strain monitoring and acoustic emission (supported by optical and scanning electron microscopy) of damage mechanisms in CSM/polyester composite were presented by M G Phillips. Contrary to expectation, initial creep rupture tests revealed no significant distinction between results in air and in water.

J Lancaster described a new accelerated wear test for specially formulated composite materials which predicted satisfactorily the behaviour of aerospace control bearings. The results highlighted the drastic effect of environment on the wear rate of these materials.

The need for materials data and design procedures relevant to rapid loading conditions was described by A F Johnson, who offered a pseudo-elastic model which could provide a route to effective design calculations over a wide range of rates of loading.

M Akay dealt with processing-morphology-property interactions in roll-embossed polypropylene tape, and R Dunk reported recent work on environmental stress cracking of thermoplastics and concluded that the usual limiting strain criterion was perturbed by internal stress.

The implications of low temperature crystallization of natural rubber for bridge bearing design were discussed by A Stevenson, while W S Carswell detailed work (under way) on the response under various loading configurations of filament wound glass/polyester tubes containing cut-outs.

Finally, D J Rice reviewed 30 failure theories for GRP and presented static biaxial failure envelopes for four glass-resin composites.

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WSJ

Risky Business

8-7-80

Behind every successful manufacturer these days is a good lawyer. The murky evolution of product liability law has sent corporate managers scurrying to the most recent law reports, engineers back to the drawing board to try for the inevitably elusive riskless product and the cost of product liability insurance often prohibitively high. Now the Commerce Department and Congress are looking into ways to reverse the trend that began in the mid-1970s toward increased burdens on manufacturers.

The problem is one that affects not only manufacturers and insurers, but consumers as well. They are, after all, the ones who pay higher prices so their more feckless fellows may be compensated for unreasonable product usage. Cases of justice run amok are infamous. There is, for example, the Maryland teenager who dumped cologne on a lit candle in order to give it a scent and collected damages from the perfume company because it didn't warn her about the fire she caused. Or the Oklahoma man who received $600,000 from a glue manufacturer even though he failed to heed flammability warnings. The warning on the glue can called for opening windows, but because there were none to open in the man's workroom, he won damages for his burns.

As with other torts, liability in product cases is determined in state courts, using state precedents and statutes to determine the causation of harm. Jurors establish comparative negligence levels and determine the amount of damages.

When courts in states such as California began switching the burden of proof to the manufacturing defendant and awarding huge sums to plaintiffs, industry was hit with rapidly rising insurance rates for its products. For many manufacturers, insurance increases in the thousands of percent have been common, and some have been unable to find insurers for new, untried products. The House in March passed a bill that would allow companies to pool money and information to insure themselves against liability. The Senate is now considering the measure.

The more fundamental problem isn't insurance, but reforming the law. One option is to allow the states to continue setting their own standards of liability. But in Pennsylvania, Colorado and Washington, the notion that manufacturers should be held absolutely liable despite user recklessness has become firmly entrenched; with several more states tending in that direction, a more logical tort system seems unlikely to come from the states acting independently. A second way is for the federal government to force a uniform system on the states, a proposal for which will be on the House agenda after the convention break. A third alternative is to provide states with a model code reforming the tort law that they can adopt as they please.

The third tack, which has the advantage of leaving much local responsibility for tort law, is the one taken by the Commerce Department's Uniform Product Liability Act. This code attempts properly to blame the party in the better position to avoid the damage. Its most significant sections would establish standards of responsibility for manufacturers in the four most frequent types of defect cases. In two types of claims manufacturers would be in particularly hot water: those involving construction defects that result in a mismanufactured item and those involving breach of an express warranty. The idea here is that sellers should be expected to make a consistent product and to live up to a promise made about their product. But the buyer would have to beware in cases involving defects in entire product line design and failures of manufacturers to warn about potential dangers. This fault standard would not create a total inhibition on producing new products that are used in inherently dangerous activities nor would failure to warn about, say, the dangers of swallowing open safety pins establish producer fault.

Whichever method of reforming the tort law is chosen, the important thing to remember is that risk is inevitable. This is especially so in a society in which innovation is not a luxury, but the bread and butter of our economy. The law should reflect the reality that a riskless society is a chimera.

SUPREME COURT RULED SO IN BENZENE CASE.

URL 03592

Waterbury NY
Sunday Republican
3/15/81

URL 03593

Don't hang up your coffee mug, researchers say

NEW YORK (AP) — Despite a study linking coffee to cancer of the pancreas, it's too soon to hang up your coffee mug for good, researchers say.

The latest evidence may be misleading, they explain, and three more studies on the disease — whose occurrence has tripled in the past 30 years — are on the way.

The most recent study, by Dr. Brian MacMahon and colleagues at Harvard, turned up a link between coffee drinking and pancreatic cancer, the fourth leading cause of cancer deaths.

The Harvard researchers reported Thursday that people who drink as much as two cups of coffee a day nearly double their chances of the disease, and three-cup-a-day imbibers nearly triple their risk.

Two months earlier, a University of Maryland study said drinking decaffeinated coffee was a risk factor for pancreatic cancer, along with drinking wine and occupational exposure to dry cleaning or gasoline.

But MacMahon warned that his results must be confirmed elsewhere before scientists try to pin down any purported cancer-causing ingredient in coffee. The culprit probably is not caffeine, since no similar link was found with tea.

And the American Cancer Society said it was "too early for any kind of clear-cut conclusion to be drawn."

Studies examining the risk factors of pancreatic cancer are under way at the University of Southern California, the American Health Foundation in New York and Johns Hopkins University.

All these investigations are aimed at explaining why cases of pancreatic cancer have nearly tripled in the last three decades.

The American Cancer Society estimates there will be 22,000 deaths from the disease this year, compared to 13,675 deaths in 1960 and 8,952 in 1950.

Pancreatic cancer is especially hard to treat because the pancreas, a flat gland behind the stomach that secretes a digestive juice, is so well-hidden that the cancer usually is far advanced by the time it's discovered.

The disease also is hard to diagnose, and some patients die of it without ever knowing the exact cause of their malignancy.

A major problem for researchers is separating the effect of coffee from that of cigarette smoking, already known to be linked to pancreatic cancer, Dr. Thomas Mack, who heads the USC study, said Friday.

"The fact is there are very few people who are heavy smokers who don't also drink coffee, and people who don't smoke tend to drink small amounts of coffee. It means we have to be very careful about disentangling the two," he said.

Another difficulty is that studies like MacMahon's and Mack's can establish only a "link" or "association" between some habit and some disease, not prove that one causes the other. Scientists then must figure out why the link occurs.

The studies also are occasionally contradictory. The Maryland study by Drs. Ruey Lin and Irving Kessler found wine drinking raised the risk of cancer. But MacMahon found drinkers of alcohol were slightly less likely to get sick, although the effect could have been due to chance.

Under suspicion as possible cancer-causers are some of the solvents used to extract caffeine from coffee beans for decaffeinated coffee.

And caffeine, although not suspected in current studies, has been proposed by the U.S. Food and Drug Administration for review because of evidence it causes birth defects in rats.

MacMahon said he has stopped drinking coffee himself, but in the absence of more evidence cannot advise others what to do.

So individual coffee drinkers must decide for themselves whether to give up the beverage, just as they must decide whether to smoke, drive a car or take any of life's other choosable risks.

"I wish there was an easy answer," MacMahon said. "You pays your money and you takes your chances."

Sen. Dole released after kidney surgery

WASHINGTON (AP) — Sen. Bob Dole, R-Kan., returned home Saturday after 22 days in Walter Reed Army Medical Center, where he underwent a six-hour kidney stone operation.

The senator was picked up at the hospital and escorted to his home in the Watergate apartments by his wife, Elizabeth Hanford Dole, a special assistant to President Reagan for public liaison.

An aide to the senator, Bill Kats, said Dole will try to preside over the start of hearings Monday by the Senate Finance Committee, of which he is chairman, on Reagan's proposals to reduce income tax rates by 27.5 percent over three years to stimulate the economy and curb inflation.

Dole also will be working with the Senate Agriculture Committee, of which he is a member, on food stamp legislation and the agricultural budget.

But Kats said that on the advice of his doctors, Dole will reserve time for several hours of rest each day for at least the first week. His doctors have said it may take four months for Dole to regain full strength.

The senator entered Walter Reed early Feb. 20 after he said he "woke up in the middle of the night and felt like I'd been hit by a two-by-four." Later that day, he underwent lengthy surgery that was complicated by the fact Dole has only one kidney because of wounds suffered in World War II.

Kats said Dole recovered from surgery without complications.

During his hospital stay, Dole conferred with Senate leaders and Finance Committee staff members about Reagan's economic proposals. The president visited Dole at Walter Reed last Thursday for about 20 minutes, and told reporters the senator was "up and about and doing well."

EXECUTE HER

England's Elizabeth I signed a warrant for the execution of Mary, Queen of Scots in 1587.

URL 03594

THE WALL STREET JOURNAL,
Thursday, March 12, 1981

Surgical Mistakes Caused Complications For 36 of 2,500 People in Hospital Study

By MICHAEL WALDHOLZ
Staff Reporter of THE WALL STREET JOURNAL

Going to the hospital may be hazardous to your health.

A year-long study at one hospital identified 36 patients out of 2,500 admitted for surgery who suffered mild to severe complications solely because of mistakes by physicians. Another study found that 36% of hospital patients surveyed had problems tied to their treatment.

Of the 36 patients cited in the first study, 20 died in the hospital, and, the study says, 11 of those deaths were "directly attributable to error." Of the 16 who survived, five had a serious physical impairment that could have been avoided.

Researchers calculated that the surgical mishaps increased the cost of care to each patient an average of $40,000. For the patients who died, charges for hospitalization averaged $1,419 a day, while those who survived incurred an average daily cost of $709. Costs for the entire group of patients who suffered mishaps was 1.3% of the hospital's total patient billings for the year, which was about $133 million.

The study was conducted by a team of investigators at Brigham and Women's Hospital in Boston, and appears in this week's issue of the New England Journal of Medicine. The researchers said that none of the cases they looked at appeared to be due to negligence, and, therefore, aren't the type that generally provide the basis for malpractice litigation. Moreover, two-thirds of the patients reviewed came to Brigham and Women's Hospital after suffering the mishap at another facility.

The researchers found that most of the complications were due to poor judgment by the surgeon. Such problems included reaching wrong diagnoses, delaying needed surgery, performing unnecessary or overly extensive surgical procedures, or ignoring trouble signs because of overconfidence or misplaced optimism.

In an interview, Dr. Nathan P. Couch, one of the study's authors and an associate professor at Harvard Medical School, said a typical problem was caused by a doctor who removed more of a patient's cancerous organ than necessary. "Ninety percent of the errors were those of unnecessary, contra-indicated or technically defective surgical activity," Dr. Couch wrote in the study.

In another study in the same issue of the Journal, researchers found that one of three patients admitted to a hospital for nonsurgical care suffered an unexpected complication. While these problems were far more common than those encountered in the surgery study, they were much less severe.

The study conducted by researchers from the Boston University Medical Center surveyed patients at a teaching hospital, which wasn't identified, over five months. The researchers discovered that 36% of 815 patients suffered some type of problem associated with the care they were receiving. In 9% of the cases reviewed, the incident was considered major in that it threatened the patient's life or produced considerable disability. In 2% of the cases, the researchers said, the complication was believed to contribute to the patient's death.

Dr. Couch said many of the problems associated with surgery could be avoided if surgeons were more willing to discuss difficulties early-on. "But there is a widespread fear that this type of information might eventually be used against the physician in malpractice litigation," he said.

Blue Bell Inc. Expects Fiscal 2nd Quarter Net To Decline 40% to 45%

By a WALL STREET JOURNAL Staff Reporter

GREENSBORO, N.C. — Blue Bell Inc. said that earnings for its fiscal second quarter ending March 31 will be down about 40% to 45% from $23.4 million, or $1.87 a share, a year earlier.

The maker of blue jeans and other apparel attributed the projected decline primarily to weakening European currencies.

The company previously said that soft market conditions in Europe would result in reduced work schedules at its European factories and affect margins in the current quarter.

L. Kimsey Mann, president and chief executive officer, said that comparisons to the prior year for Europe are expected to improve in the June quarter. He also said that operating earnings in the U.S., Canada and Australia are expected to exceed year-earlier levels for the March quarter and the remainder of the year.

In fiscal 1980, ended Sept. 30, Blue Bell's earnings rose fractionally to $67.9 million, or $5.40 a share, from the prior year's $67.3 million, or $5.36 a share, on a sales increase of 26% to $1.4 billion from $1.03 billion.

In the first quarter ended Dec. 31, earn-

Jannock Ltd. Steel Unit

TORONTO—Jannock Ltd. said its Sonco Steel Tube Ltd. unit will spend $7 million (Canadian) at one of its mills in Brampton, Ontario, to begin production late this year of electric resistance welded tubing and casings for use in the oil industry.

Production will be in an addition to the company's new $20 million mill built for production of large-size hollow structural sections.

Jannock, through its subsidiaries, is engaged in sugar refining, brick manufacturing and production of steel tubing and electrical parts.

Chicago Utility Holders to Vote In Authorized S

By a WALL STREET JOURNAL St

CHICAGO — Commonwealt shareholders will be asked at annual meeting to approve d rized common shares to 250 mi pation of a new stock offering s year.

The offering, for which a hasn't been set, would be the ty's ninth since 1970, a spokesr current 125 million limit o shares was approved in 1977. lion of those shares are cu served; the rest are either i marked for a variety of purpos

Proceeds from any stock o help pay for Commonwealth E plant construction, expected $6.7 billion between now and 1 pany's proxy statement said. $5.7 billion would require out from a variety of securities statement said. Also, about $7 be needed to refinance first m and loans maturing at the end

Shareholders also are expe duce resolutions calling for a l construction at nuclear power directors to investigate "the mismanagement by company The second proposal claims ex estimated load growth, ov plants and damaged the comp health.

The antinuclear resolution i introduction by seven religio four individuals. A similar pr feated last year. Three of groups and the four individual of the proposal on managem wealth has urged holders to both proposals.

Jostens Buys Du Moves Into Ma For Business Pr

By a WALL STREET JOURNAL

MINNEAPOLIS—Jostens quired Durand Corp., a priv cago-based concern, for weren't disclosed.

The maker of class rings, other products said the acq first move into the busines ket.

Durand, which makes lo and other products, had $980,000 on sales of $13.5 m Jostens said. For the fiscal y 30, 1980, Jostens earned $ $2.16 a share, on sales of $29

Memorandum from FRED DOVELL

TO: File

SUBJECT: Job Description

"There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things."

Machiavelli, *The Prince*.

or

as Pogo said it equally as well, "We have met the enemy, and they are us."

Opinion

Where science is uncertain, cooperation is needed

The Supreme Court struggled with the so-called benzene case for a long time, almost its entire 1979-1980 term, before deciding finally to avoid the real issue.

Actually, there are several issues involved in this case at that vague front where legal considerations confront scientific evidence or lack of scientific evidence. But the prime issue that was to have been resolved in the case of the Industrial Union Department (AFL-CIO) versus American Petroleum Institute was how much regulatory agencies must consider cost-benefit factors in making rules. The court chose to ignore that issue. It must now wait, apparently, until the coke ovens emissions case later this term to deal with cost-benefits and regulatory rules.

Implicit in that question is the relative importance of benzene. It is a basic chemical. Should that be a consideration in a regulatory agency's attitude toward it? It is clear, for example, that vinyl chloride would never have reached the market place had the Toxic Substances Control Act (TSCA) been in place those many years ago. Instead, industry and the regulators reached a working understanding that allows the huge industry to continue, while workers appear to be adequately protected.

That is not to say that the same questions arise over benzene that were confronted in the vinyl chloride regulation. For one thing there is the evidence of the effects of the chemical. For another, there are the apparent inconsistencies in the Occupational Safety and Health Administration (OSHA) benzene exposure rules. For example, why are service station attendants excluded?

A benzene exposure limit of 10 ppm had been long accepted despite evidence that benzene at higher exposures was linked to leukemia. But when a study at an Ohio Pliofilm plant indicated an excessive number of leukemia cases at what were reported to be lower exposures, OSHA issued an emergency standard.

That emergency standard, challenged in court, never saw the light of day. And the data from the Pliofilm plant subsequently revealed much higher exposures to benzene. Nevertheless, the agency went ahead with a permanent standard of 1 ppm maximum exposure.

That standard was overturned by a Federal court in New Orleans, which held that the agency must weigh the costs of meeting its proposed rules against the benefits derived.

OSHA argues that its Congressional mandate is solely to protect the worker, not to be involved in economic balancing acts. They have a point.

The problem is that there is no check and balance against that position. That is, who looks out for the other side. Our form of government has prospered on a system of checks and balances. But the only immediate check on regulators is the Administration itself.

This is a dilemma for the regulated as well as the regulators. The result has been confrontation in courts. And the courts have been ill-equipped or reluctant to deal with the real issues.

In the benzene case, the Supreme Court did not really confront the scientific issues. Four justices held that OSHA was perfectly within its rights to enforce a lowered exposure standard. Four others argued that the agency didn't have enough evidence to lower the standard. And Justice Rehnquist held the judiciously unique position that the Occupational Safety and Health Act was unconstitutional.

That still leaves open the question of how much evidence is enough to mark an agent carcinogenic. No one wants to have to count dead bodies, which, in essence, is what happened in the vinyl chloride case.

The truth is that many questions remain about carcinogenicity and testing for carcinogens. Short-term tests, such as the Ames Salmonella tests, remain limited, despite the fact that a battery of such tests is now available. Moreover, bioassays on animals are dependent on the protocols and the care with which such tests are performed. Some tests are proven more valid than others. In addition, some basic questions about carcinogenicity remain unanswered. For example, why, and how, and is there a threshold, and what about cumulative factors?

The truth is that science has a lot more to do before it can let the courts make these kinds of decisions. Meanwhile we must have effective controls against exposure to carcinogenic agents. Such controls can only come about through cooperative efforts of industry, unions, scientists and the regulators.—Irvin Schwartz

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Cover

Computer chips, a revolution in chemical analysis
For analytical chemistry, the introduction of microelectronics has caused revolutionary changes in the manner, speed and depth of chemical analysis. And the revolution is still going on. Improved microprocessor-based instruments for chemical analysis are lowering costs, and improving capabilities and ease of operations.

Patent rights: When does an employee own an invention?
The rights of employer and employee to an invention made by an employee during employment gives rise to some prickly problems. Was a contract entered into between the parties assigning inventions from employee to employer? If not, was the employee specifically "hired to invent," or was the employee merely a general employee? If a general employee, did he make the invention on company time, using company materials or labor? The issues are examined in this piece by a noted patent attorney.

Chemical lab safety: Some sets of rules
All the public turmoil over occupational and environmental effects from chemical hazards appears now to be filtering down to the laboratory level. OSHA is preparing a set of criteria for safe operation of chemical labs, including guidelines for controling exposure to carcinogens. And the NRC has prepared a new report that offers detailed practices for all types of laboratories where chemicals are used.

How will the new Reagan administration impact on the life of the industrial chemist? This analysis of the new administration's expected policies toward research and development spending and regulatory reform contains some good news and some bad news.

The results of a Conservation Foundation study examining a perceived lag in technological innovation in U.S. industry are presented here. The study lays the blame partly on government regulation and recommends regulatory reforms and information gathering.

This presentation of a study done by a panel appointed by New York state to review the scientific studies of the health effects of a chemical waste dump at Love Canal contains some criticisms of government agencies and the original studies which conclude that the chemical dump adversely affected the health of some Love Canal residents.

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Where science is uncertain, cooperation is needed

The Supreme Court struggled with the so-called benzene case for a long time, almost its entire 1979-1980 term, before deciding finally to avoid the real issue.

Actually, there are several issues involved in this case at that vague front where legal considerations confront scientific evidence or lack of scientific evidence. But the prime issue that was to have been resolved in the case of the Industrial Union Department (AFL-CIO) versus American Petroleum Institute was how much regulatory agencies must consider cost-benefit factors in making rules. The court chose to ignore that issue. It must now wait, apparently, until the coke ovens emissions case later this term to deal with cost-benefits and regulatory rules.

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