GEORGIA-PACIFIC

INTERDEPARTMENTAL COMMUNICATION

DATE: December 17, 1971

Plant Managers (Canadian Excepted)

LOCATION:

. F. Fink

LOCATION: Portland

SUBJECT: OSHA AND FEDERAL MINE SAFETY ACT

PLAINTIFF'S EXHIBIT

GP-2205

Apparently there is some misunderstanding as regards the Acts and resultant inspections.

Initially, the Mine Safety Act is responsible to the point where heat is applied to the rock or calcining. OSHA is suppose to take over at this point however there has been considerable overlap of jurisdiction as OSHA has been insisting that they would be responsible for all surface operations. The two agencies are working out an agreement which will define the limits of jurisdiction between the two departments, U. S. Bureau of Mines and U. S. Department of Labor. States granted the right to conduct inspections will be responsible for the entire operation.

Recommendations and penalties are similar but the Bureau of Mines have made recommendations and allowed time to correct the condition while OSHA has imposed penalties for citations written up during the first visit to the plant. Considerable pressure is being applied to force the Bureau of Mines to levy fines as OSHA does and we are of the opinion that the Bureau of Mines will be forced to adopt this procedure. The clause is in the Act but the inspectors are reluctant to enforce the penalty, hoping to have conditions corrected through cooperation of the operators.

The initial penalty is 50% of the rating. When the condition is not corrected by the deadline date, the penalty is doubled and continues to be doubled each time the inspector cites the plant for the violation. Serious violations can be penalized $100.00 per day for each day that the plant operates past the time allowed for correction, also the inspector can obtain an order to close the plant. Employees must be paid in full for the day of shutdown, plus four hours for the following day. Each employee not abiding by a recommendation is rated as a separate citation. For example, 10 employees not wearing safety footwear will be considered as 10 violations and will be penalized accordingly, that is 10 times the charge for this violation. Safety footwear, respirators, safety hats and other protective equipment will be mandatory when brought to our attention.

Audiometric testing. We are experiencing several problems trying to arrange hearing tests in some of the locations, also in areas where a program has been arranged we are not receiving cooperation. Repeating, whether Bureau of Mines or OSHA, testing is mandatory and the plant can be fined because they did not enforce the ruling. Unsafe acts by employees, employees permitted to work on unsafe jobs without proper instructions or supervision. Several of these violations have been reported by member companies.. One of the member companies has been fined in excess of $2,000.00 for violations of the Act.

Management is responsible, we have been informed that the Department of Labor will not enforce the safety rules, that this role belongs to management; in other words, not "Will you please", but "You are required to".

Government has placed a safety obligation on industry, safety performance is required on penalty of civil or criminal sanctions. The Government will tell what must be done in occupational safety, management's safety movement has to show them how.

M. F. P.

MFF/ab
Attachment
cc: Mr. G. E. Wilson
Mr. E. B. Hollingsworth
Mr. T. W. Richards
Mr. J. W. Hart
Mr. J. DiLorenzo
Mr. H. W. Peele - Delair

OSHA-GRAM

Appeals and General Duty–Robert Moran, OSHRC chairman, told the National Safety Congress that more than 120 appeals of OSHA citations and penalties had been filed with his commission by late October. Number of appeals doubled between August and September, doubled again between September and October. Total, Moran said, is far higher than expected. He pointed out that a majority of all appeals were on citations or penalties involving the "general duty" clause* of OSHAct. "General duty" failure was involved in all appeals on fatality cases. George Guenther, head of OSHA, explained the preponderance of "general duty" cases on the fact that, in early stages of enforcement of the act, few standards had come into force. He stated emphatically OSHA's intention to inspect for standards' violations and to use the "general duty" clause only in exceptional situations.

One out of Five Comply–OSHA chief Guenther told the same Congress session that only 21 per cent of the 5,633 plants his agency inspected in the first five months of OSHAct's existence were in compliance with the act. The inspected workplaces employed more than a million workers. OSHA issued 2,159 citations alleging 12,904 violations of job safety and health standards and assigned penalties of $167,000.

Forty-seven to Three–All but three of the 50 states have entered into interim agreements under Section 18(h) of OSHAct to continue enforcement of their regulations. Outside the fold are Ohio, South Dakota, and New Mexico. In the 47 states, dual enforcement (state and OSHA) will continue through 1972. But Barry Brown, director of Michigan's Department of Labor, told a labor session of the National Safety Congress that he expected only a minority (perhaps a dozen) of the states would be able to come up with satisfactory final plans for the post-1972 enforcement of OSHAct.

Target Industries–Eight states are assisting OSHA in its enforcement effort in the five target industries. The states are Washington, Oregon, California, Illinois, New York, Pennsylvania, North Carolina, and Florida.

Complaints: Health over Accident Hazards–Of the first 953 complaints received by OSHA, George Guenther reported, the major ty concerned health hazards rather than accident hazards. Dusts, fumes, and other environmental factors were prominent. Guenther also stated that the complaints showed little evidence of any effort to harass employers by irresponsible complaints. When inspections are made in response to complaints, inspections will cover the whole plant, not just the area mentioned in the complaints, according to Eugene Newman, OSHA's compliance chief.

Uncle Sam Zeros In–Federal Safety Advisory Council (concerned with safety for federal employees) has announced a four-point program:

1) To devise new systems for recording and reporting federal agency occupational accidents;

2) To establish methods to evaluate agency occupational safety and health programs;

3) To develop campaigns to motivate federal agencies to improve their program results;

4) To design a model occupational safety and health program for use by all agencies.

In the first 10 months of the Zero In on Federal Safety program, each agency picked its major hazard targets. Slips, trips, and falls were picked as the top hazard by 58 per cent of the agencies. Materials handling and motor vehicle accidents were named a major hazard by 54 per cent.

Planned safety activities include: more pamphlets, posters, etc., will be

*The "general duty" clause of OSHAct, Section 5 (a), reads: "Each employer–1) shall furnish to each of his employees employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

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used by 38 per cent of the agencies; 32 per cent will increase inspections; 26 per cent will seek greater safety awareness.

On record-keeping, only 22 per cent of the agencies consider their present systems adequate.

Labor's Man in OSHA—Maywood Boggs, former president of the Metal Trades Department, AFL-CIO, has been appointed a special assistant to George Guenther, who heads OSHA. Boggs will be assigned the task of working closely with labor organizations in OSHA matters. Labor, as previous installments of this column have pointed out, has been vocal in criticism of the administration of OSHAct.

Defining Jurisdictions—A panel of federal safety officials described to a session of the National Safety Congress the complexities imposed by piece-meal assignment of jurisdiction by various laws. Bureau of Mines is responsible for actual mining operations, OSHA for manufacturing. But where, in a mining or quarrying operation, does mining stop and manufacturing begin? Department of Transportation has jurisdiction over truck transportation, but the Treasury Department regulates commerce in explosives. Panelists said discussions were being held between agencies to sort out such issues, but no specific agreements were reported. Expressing top-level concern was the session's chairman, an official of the White House's Office of Management and Budget. An OSHA man underscored the complexities by asking what agency was responsible for the safety of a cement plant employee driving a load of explosives in a rented truck on a public highway to a quarry.

Compliance Manuals—OSHA hopes to issue Compliance Manuals for its compliance officers by December. When issued, they are expected to be available to the public.

Secret or Public?—Information in reports of OHSA compliance officers will be available to the public under terms of the Freedom of Information Act, with certain exceptions. Exceptions will be trade secrets and information bearing on pending legal actions.

Noise Guidelines—Explanations of terms and interpretations of occupational noise standards have been published. Also included in the guidelines are a discussion of what an employer must do to be in compliance and information on instruments, equipment and procedures used to measure compliance (see October NSNews for a verbatim reprint of Guidelines to the Department of Labor's Occupational Noise Standards).

Standards Altered?—F. T. Gutmann, ANSI standards coordinator, recently said, "It appears that certain parts of some ANSI standards reprinted [as OHSA regulations] in excerpt form have lost their intended meaning, or acquired meaning not intended by their originators." Gutmann asked members of the ANSI Technical Advisory Board to give information on such changes.

Shared Labs—OSHA and NIOSH will make joint use of laboratory facilities at Cincinnati and Salt Lake City. NIOSH will make its facilities available to OSHA technical experts to make chemical analyses related to OSHAct compliance and to calibrate, maintain, and repair instruments used by OSHA compliance officers.—**End.**

OSHA-GRAM is a new feature of *NATIONAL SAFETY NEWS*. It will appear monthly. It will present key new facts about the administration of the new *Occupational Safety and Health Act*.

In this compressed format (or even if we had ten times the space), it is not possible to review the act and its administrative machinery. Readers who need general background should contact the Regional or Area Director, Occupational Safety and Health Administration nearest them. The local office of the U.S. Department of Labor can give you his address.

To make the best use of the available space, OSHA-GRAM makes much use of abbreviations. Here is a glossary of such abbreviations:

DOL—U.S. Department of Labor.

FY—Fiscal year. FY 1972 runs from July 1, 1971 through June 30, 1972.

HEW—U.S. Department of Health, Education, and Welfare.

NIOSH—National Institute for Occupational Safety and Health, an agency of HEW.

OSH—Occupational Safety and Health (for example, OSH standards).

OSHA—Occupational Safety and Health Administration of DOL.

OSHAct—The Williams-Steiger *Occupational Safety and Health Act of 1970*.

OSHRC—The Occupational Safety and Health Review Commission.

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