Anthony J. Diglio
Director
Corporate Environmental Activities
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AIR PRODUCTS

2 March 1987

D. F. Baker

Dex:

This is in reply to your request concerning the CMA Executive Committee March meeting's action items.

CMA requests the Executive Committee member's approval of their proposed legislative positions on:

- Nonattainment - Clean Air Act
- Acid Rain - Clean Air Act
- Worker Notification - Gaydos/Metzenbaum Bills

The CMA proposed positions are attached.

Your approval is recommended.

Tony

A. J. Diglio

AJD:pbr

Attachment: CMA Proposed Positions

[redacted]

CHEMICAL MANUFACTURERS ASSOCIATION

February 26, 1987

TO MEMBERS OF THE EXECUTIVE COMMITTEE

Gentlemen:

Enclosed are the additional policy materials on air legislative issues (acid rain and nonattainment) and occupational disease notification, mentioned in my cover letter of February 19, which will be presented for approval at the Executive Committee's meeting on Tuesday, March 3. These supplement materials previously provided in your meeting book.

Also enclosed are the minutes of the January 26, 1987, Executive Committee meeting.

I look forward to seeing you on Tuesday at 10:00 a.m.

Sincerely,

Charles W. Van Vlack
Vice President-Secretary

RECEIVED
AIR PRODUCTS & CHEMICALS INC.
FEB 27 1987
D. F. BAKER'S OFFICE

CLEAN AIR ACT REAUTHORIZATION
NONATTAINMENT ISSUES

ISSUE

Nonattainment of ambient air quality standards

BACKGROUND

Under the existing Clean Air Act, all air quality management districts must meet ambient air quality standards by December 31, 1987. The Act provides that rigid sanctions (i.e., construction bans, cutoff of federal highway and sewage treatment grant funds) be imposed on all areas not meeting standards by the deadline. These provisions could seriously harm industry by preventing new construction or major modifications of industrial processes.

Hearings addressing nonattainment were conducted during February by Congressman Waxman's Subcommittee on Health and Environment. During these hearings, EPA Administrator Thomas testified that one of the first steps he faced with very little discretion was imposing a construction ban on nonattainment areas in southern California and Houston. Proposed legislation resulting from these hearings is expected very shortly. CMA must have a position on nonattainment in March to actively participate in the debate on this issue.

RECOMMENDED POSITION

CMA supports revisions of the Clean Air Act which would ensure implementation of reasonable measures to achieve attainment of ambient air quality standards. An attainment strategy should ensure progress of each area toward attainment using cost effective and efficient control measures for all sources. Sanctions such as Clean Air Act Sections 110(a)(2)(I) - ban on new source construction; and 176 - withholding of federal highway funds and sewage treatment plant funds, should only be applied for areas not attaining standards and not implementing a program leading towards attainment.

ACTION REQUIRED

Approval of recommended position. -CL

EC 3/3/87

CLEAN AIR ACT REAUTHORIZATION
ACID RAIN ISSUES

<u>ISSUE</u>

Acid Rain

<u>BACKGROUND</u>

Four bills dealing with acid rain have been introduced early in the 100th Congress. Each of the bills would amend the existing Clean Air Act rather than stand alone. The control provisions specified in the proposals are also similar to legislation introduced during the 99th Congress. The impact on the chemical industry of these control provisions could be significant.

In assessing Congressman Waxman's acid rain bill from the 99th Congress, CMA concluded that significant costs of as much as one billion dollars annually could be incurred by the chemical industry if the control provisions were implemented as written. These costs would impact the chemical industry in increased energy costs for purchased power, process emissions controls, and industrial boiler emission reductions. Subsequent testimony during 1986 Congressional hearings confirmed that industry could face substantial cost increases with questionable benefits.

CMA presently does not have a formal position regarding acid rain amendments; however, a formal position would aid the Association's participation within existing industry coalitions. The following recommended position was approved by the Environmental Management Committee on February 11, 1987. The position recognizes that EPA presently has adequate authority to control emissions considered to be acid rain precursors; however, if additional legislation is determined to be necessary, then the existing Clean Air Act regulatory framework should not be disrupted by additional amendments.

<u>RECOMMENDED POSITION</u>

<u>No major legislation is required</u> to address acid rain. EPA already has sufficient authority to develop additional control measures using National Ambient Air Quality Standards, New Source Performance Standards, control technology guidelines, and state implementation plans.

<u>Before Congress adopts additional legislation</u> to reduce acid rain precursors, issues such as the benefits received from additional legislation, cost of controls, relative contribution of emission source categories to the overall acid rain problem, and availability of control measures should be fully considered.

<u>If legislation to control acid rain is determined to be necessary</u>, then any amendments should be incorporated within the existing Clean Air Act.

<u>ACTION REQUIRED</u>

Approval of recommended position.

EC 3/3/87

Worker Notification's Legislative Principles

Background: Attached you will find a chart which features a comparison of key issues of the Worker Notification bills and CMA's proposed legislative principles. The last column of this chart expands upon the summary of CMA's proposed principles that was sent to you as part of the March 3 meeting book.

Action requested: Approval of the legislative principles in the last column of the chart.

EC-3/3/87

2/25/87

COMPARISON OF KEY FEATURES OF WORKER RISK NOTIFICATION BILLS AND PROPOSED CMA LEGISLATIVE PRINCIPLES

ISSUE	GAYDOS (100th Congress, H.R. 162)	METZENBAUM (100th Congress, S.79)	PROPOSED LEGISLATIVE PRINCIPLES
1. Who makes determination of risk for employee populations?	Risk Assessment Board in H.H.S (9 members - Assistant Secretary of Health, 5 PHS employees, 3 physicians)	Risk Assessment Board in H.H.S (5 members - all PHS employees)	Risk Assessment Board (in DCD, 10 members appointed by CDC Director, selected solely on scientific qualifications from a list of candidates supplied by NAS), each decision will be based upon recommendation of expert (peer review) panel appointed by Board for each substance.
2. What is the basis for the determination of risk?	Epidemiological, animal and laboratory studies, and other evidence showing incidence of disease in an exposed employee population 30 percent greater than incidence of disease in a comparable non-exposed population.	One statistically significant study (epidemiological, animal, laboratory) showing an incidence of disease for which an employee population is exposed to the same hazard at comparable intensities or durations.	Two step process for identifying populations at risk. First, there must be strong evidence that human exposure to a substance is likely to result in disease. In evaluating that evidence, medical, health, and epidemiological principles must be considered including consistency of association, specificity of association, strength of association, dose-response relationships, biological plausibility, temporal relationships, statistical significance, significance of conflicting or negative studies, role of contributing causal factors and the extent and seriousness of risk. Second, intensity and duration of exposure must be considered to determine which populations to notify.

ISSUE	GAYDOS (100th Congress, H.R. 162)	METZENBAUM (100th Congress, S.79)	PROPOSED LEGISLATIVE PRINCIPLES
3. Duties of the Risk Assessment Board	1) Review medical and scientific reports concerning incidence of disease associated with occupational exposures; 2) identify and designate populations at risk of disease that should receive notification; and 3) develop a form and method of notification.	1) Review medical and scientific reports concerning incidence of disease associated with occupational exposures; 2) identify and designate populations at risk of disease that should receive notification; and 3) develop a form and method of notification.	1) Review medical and scientific reports to first determine whether there is strong evidence that human exposure to a substance is likely to result in disease; 2) evaluate intensity and duration of exposure to determine which populations to notify; 3) identify and designate populations at risk of disease that should receive notification; and 4) develop a form and method of notification. (Note - the two step process for identifying populations at risk must be reflected in the Board's duties)
4. Who notifies employees?	Secretary of H.H.S, certified private employers, state and local governments. A private employer who has been found to willfully violate a recordkeeping, notification or hazardous communication requirement under the OSHA or MSHA may not be certified.	Secretary of H.H.S, certified private employers, state and local governments.	Metzenbaum. (However, certified employers will need addresses available through Federal records)
5. Who is notified?	Employers. Current and past employees at risk of contracting an occupational disease.	Employers. Current and past employees at risk of contracting an occupational disease. A minimum of 100,000 employees must be notified per year.	Gaydos. (There must be no minimum quotas for notification)
6. Priorities for notification	Risk Assessment Board must first review employee populations exposed to hazardous occupational exposures likely benefit from medical surveillance or health counseling.	Risk Assessment Board must first designate employee populations at risk likely to benefit from medical surveillance or health counseling.	Metzenbaum.

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ISSUE	GAYDOS (100th Congress, H.R. 162)	METZENBAUM (100th Congress, S.79)	PROPOSED LEGISLATIVE PRINCIPLES
7. Means of notification	Individual notification plus public service announcements and other means of notification of general population. Also telephone hotlines for additional information.	Individual notification. Also telephone hotline for additional information.	Either bill.
8. Contents of notification	Information on the identity of the hazard, diseases associated with the hazard and latency periods. Also, counseling information re medical monitoring, nearest certified health center, employer responsibilities and government hotline number.	Information on the identify of the hazard, diseases associated with the hazard and latency periods. Also, counseling information re medical monitoring, nearest certified health center, employer responsibilities and government hotline number. Finally, a concise summary of the MSDS on the hazard must be part of notice.	Information regarding the nature and magnitude of the risk, contributing risk factors, and, where appropriate, recommended medical surveillance.
9. Who is a former employee for purposes of Notification?	No comparable provision.	Former employees shall be notified if exposure occurred within 30 years of notification.	Metzenbaum.
10. How is medical surveillance provided?	1. Requires employers who have contributed to the exposure to provide testing, evaluation and medical monitoring requested by notified employees.	1. Requires employers who have contributed to the exposure to provide testing, evaluation and medical monitoring requested by notified employees.	1. Employers who have contributed to the exposure provide medical surveillance for current and former employees either by actually conducting the appropriate surveillance that is recommended by the government or by contracting for the surveillance services. If an employee chooses a physician not designated by the employer, the employer will pay the customary and reasonable fee for the recommended medical surveillance.

ISSUE	GAYDOS (100 Congress, H.R. 162)	METZENBAUM (100 Congress, S.79)	PROPOSED LEGISLATIVE PRINCIPLES
	2. Also established ten health centers to conduct research and provide education, training and technical assistance to physicians and other professionals and to provide medical surveillance for employees. Requires, within 5 years, the establishment of not less than 1 center in each state.	2. Also establishes ten health centers to conduct research and provide education, training and technical assistance to physicians and other professionals and to provide medical surveillance for employees. Permits establishment of not more than 1 center in each state.	2. Not an issue.
11. Who pays for medical surveillance?	Employers must provide or make available medical surveillance at no cost if the exposure occurred during current employment and at cost if no part of exposure occurred during current employment.	Employers must provide or make available medical surveillance at no cost if the exposure occurred during current employment and at cost if no part of exposure occurred during current employment.	Either bill.
12. What is the likely impact on tort and workers' compensation claims?	Unscientific basis for identifying populations at risk will lead to substantially increased and unwarranted litigation/compensation claims.	Unscientific basis for identifying populations at risk will lead to substantially increased and unwarranted litigation/compensation claims.	Use of sound science in identifying populations at risk will reduce nonmeritorious claims.
13. Language limiting use of notification in tort and workers' compensation claims	Notification of an employee and initiation of medical monitoring shall not affect a claim for compensation or damages.	Notification of an employee and initiation of medical monitoring shall not affect a claim for compensation or damages.	The determination to notify and the notification of the employee shall not affect a claim for compensation or damages, nor shall either the determination or the notification be admissible in any litigation or worker's compensation proceedings.
14. Standard for judicial review	Determination of Board set aside if arbitrary, capricious, or an abuse of discretion.	Determination of Board set aside if arbitrary, capricious, or an abuse of discretion.	Determination of government set aside if not supported by evidence on the record (substantial evidence test)

ISSUE	GAYDOS (100 Congress, H.R. 162)	METZENBAUM (100 Congress, S.79)	PROPOSED LEGISLATIVE PRINCIPLES
15. Discrimination prohibited	Discrimination against employees in a population at risk is specifically prohibited.	Discrimination against employees in a population at risk is specifically prohibited.	Not an issue.
16. Benefit Reduction Prohibited	If it is medically determined that the employee should be temporarily or permanently transferred to a less hazardous or nonexposed job, the employee will retain earnings, seniority and other benefits.	If it is medically determined that the employee should be temporarily or permanently transferred to a less hazardous or nonexposed job, the employee will retain earnings, seniority and other benefits. If a less hazardous or non exposed job is not available, benefits are retained for a maximum of 12 months.	Metzenbaum, with the addition the employee may be transferred for a period up to 12 months.
17. Procedure	Notice, comment, and a hearing	Notice, comment and a hearing.	Hearing should be clarified so that interested parties can submit evidence and conduct cross-examination.