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VISTA

TO: OSHA

TO: SAFETY DIRECTORS

Date 2/10

Finally, Industry is responding
to OSHA's recent Form 200
penalty & citation activity.

TJL

CC Plant Mgrs
RTF

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Similarly, it is too soon to tell whether the new committee will address other issues such as injury and illness recordkeeping and black lung benefits, although there is "a lot of interest" in those topics, she said.

★ Recordkeeping

GROUND SWELL OF INDUSTRY CRITICISM CHARGES OSHA WITH OVERKILL IN CITATIONS

A hard-line approach by the Occupational Safety and Health Administration in enforcing safety and health recordkeeping requirements has created the first serious rift between the agency and industry since the Reagan Administration took office six years ago.

Chemical companies in particular are reacting angrily to a recent series of citations charging Union Carbide Corp. and other major firms with intentionally violating OSHA's requirements for recording work-related injuries and illnesses.

Corporate officials contend that the citations, and the proposed fines in the six- and seven-figure range that accompany them, amount to overkill on paperwork issues that have no real bearing on worker safety and health. They also charge that OSHA is unfairly penalizing companies over honest differences in technical judgment.

The dispute — which prompted a heated exchange between OSHA Administrator John A. Pendergrass and a Monsanto Co. official at a public meeting recently — is "the number one adversarial topic in the business community," one source told BNA.

Agency officials defend the citations, noting that OSHA depends on accurate industry records to ensure that unsafe workplaces do not slip through the enforcement net. However, they acknowledge that OSHA is concerned about the industry backlash, and that alternative ways to "get the message across" are being considered.

Tension Surfaces at NACOSH Meeting

OSHA initiated the cycle of recordkeeping citations last April with a proposed penalty of \$1.38 million against Union Carbide for 221 instances of alleged violations at a West Virginia plant (Current Report, April 3, 1986, p. 1099). Since then, Monsanto, Chrysler Corp., USX Corp., and several other major companies have received similar citations and lesser but still substantial proposed penalties (Current Report, Dec. 17, 1986, p. 796; Jan. 7, p. 869).

Industry representatives contend that the citations primarily have involved judgment calls in recordkeeping — instances where recordkeeping guidelines were unclear on whether a case should have been entered on OSHA Form 200, the injury and illness log required by the agency.

Industry anger over the policy surfaced at a Dec. 18, 1986, meeting of the National Advisory Committee on Occupational Safety and Health, where Thomas F. Evans, director of environmental health for Monsanto, confronted Pendergrass on the issue.

According to the official transcript of the meeting, Evans questioned two particular instances where Monsanto was charged with not recording an employee injury. One instance involved an employee who suffered a first-degree chemical burn. That incident was mentioned to an OSHA compliance officer at the time it happened, and the inspector "said he didn't think this was reportable," Evans told the meeting.

The other instance, he said, involved a situation in which a worker came to the plant nurse on a hot day after experiencing dizziness and twice was given "a shot of oxygen."

"Even if we are wrong [in not recording these cases] ... I think you have to admit they are awful close calls if we are going to get down to the technical detail," Evans said.

'Point of Diminishing Returns'

According to the transcript, Pendergrass responded that Evans had not presented "a very good reference. ... There have not been any close calls that anybody has been cited on." The citations have been handed down after "careful review" by OSHA personnel and Bureau of Labor Statistics officials, and they have involved situations where companies failed to record serious injuries — "people who have broken arms and [were] not counted" — and cases involving injuries that resulted in restricted duty for employees, he said.

OSHA Deputy Administrator Frank White told BNA Jan. 12 that "until fairly recently, response from industry [to OSHA's new emphasis on recordkeeping] was very positive." Companies "were quite responsive in making a good faith attempt to deal with [recordkeeping] problems."

However, with criticism now growing, the agency "may come to a point of diminishing returns" in getting industry's attention on the issue through the citation/penalty process, he said.

Alternative approaches are being considered, including a dialogue with executives "at the highest levels of corporate America ... in a non-enforcement context," White said. Also, the agency hopes that a current pilot program to audit employer records in two states will be helpful in showing whether there are "widespread" problems with recordkeeping, he added (Current Report, Jan. 7, p. 868).

Observers told BNA that, having set a "precedent" with the recent citations, the agency may face the prospect of union criticism if it changes its tack now. Organized labor has long criticized the Reagan Administration's reliance on employer records for targeting its inspections, and has contended that this policy encourages underreporting of injuries.

OSHA recognizes that dilemma, White said. "We have the burden, if we take another course of action, to show that that course is as effective or more effective than what we're doing now."

Dual Recordkeeping Eyed VVV 000009233

For the present, some companies are considering a "dual recordkeeping" system in which all cases recordable under current guidelines would be entered on OSHA Form 200, and a separate system would be used internally to track only those injuries and illnesses that the companies believe to be clearly work-related.

Evans told BNA that he has recommended to Monsanto executives that his company institute such a system. He acknowledged that, if Monsanto begins to log cases that formerly would not have been considered recordable, the company's annual reported rate of injuries and illnesses will rise.

However, he added, "we seem to have no choice but to do this, to avoid willful citations."

Kyle Olson of the Chemical Manufacturers Association said that the same dilemma faces the chemical industry as a whole, an industry for which injury statistics have been low in recent history. "You see four people killed at a construction site, and OSHA proposes a \$4,000, an \$8,000, penalty, maximum. Then it proposes \$50,000, \$100,000, \$1.3 million in fines for what essentially is paper shuffling."

In the meantime, Union Carbide's challenge to the April 1986 citation is pending before an Occupational Safety and Health Review Commission judge. A legal ruling "definitely" would influence OSHA's future policy on recordkeeping