

# THE COMMUNITY AND TOXICS

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OVERSIGHT HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS  
OF THE  
COMMITTEE ON  
NATURAL RESOURCES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

THE COMMUNITY AND TOXICS: ACCIDENTS INVOLVING HAZARDOUS  
MATERIALS

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HEARING HELD IN RICHMOND, CA  
AUGUST 10, 1993

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**Serial No. 103-43**

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# CONTENTS

	Page
Hearing held: August 10, 1993 .....	1
Member statements:	
Hon. George Miller, a Representative in Congress from the State of California .....	1
Hon. Barbara Boxer, a Senator in Congress from the State of California ..	11
[EDITOR'S NOTE.—Senator Boxer's statement was read into the record by Katherine Merrill, field representative, San Francisco District Office of Senator Boxer.]	

## WITNESS STATEMENTS

Panel consisting of:	
John F. Kroeger, general manager, sulfur products group, General Chemical Corporation, Parsippany, New Jersey .....	13
Gary Brown, director, Contra Costa County Office of Emergency Services .....	21
William Walker, M.D., health officer and medical director, Contra Costa County Health Services .....	27
S. Mark Lindsey, chief counsel, Federal Railroad Administration .....	35
Panel consisting of:	
Hon. George Livingston, mayor, City of Richmond, California .....	49
Michelle Jackson, executive director, Neighborhood House of North Richmond .....	50
Henry Clark, executive director, West County Toxics Coalition .....	59
Dorothy Olden, North Richmond Municipal Advisory Committee .....	61
Donald Watts, president, North and East Neighborhood Council .....	62
Panel consisting of:	
Hon. Robert J. Campbell, assemblyman, Eleventh District, California .....	75
Tom Powers, supervisor, First District, Contra Costa County Board of Supervisors .....	94
Panel consisting of:	
Dr. Wendell Brunner, director, Public Health Services, Contra Costa County Health Services Department .....	100
Michael Belliveau, executive director, Citizens for a Better Environment—California .....	103
Mark Mason, chairman, West County Group, Sierra Club .....	181
Greg Feere, business manager and secretary-treasurer, Contra Costa Building and Construction Trades Council .....	186
Panel consisting of:	
William H. Well, chief, Railroad Safety Branch, and acting director, safety division, California Public Utilities Commission, accompanied by Barbara Masters, assistant to the director, Contra Costa County Health Services Department .....	197
Rosemary Corbin, Hazardous Materials Commission, West County Cities Representative .....	209
Christopher Howe, Vice-Chairman, Community Awareness and Emergency Response Group, Contra Costa County .....	214

## APPENDIX

AUGUST 10, 1993

Additional material submitted for the hearing record from:	
U.S. Environmental Protection Agency: Prepared statement of Regional IX, Hazardous Waste Management Division, Office of Health and Emergency Planning .....	223

IV

	Page
Additional material submitted for the hearing record from—Continued	
Robert D. Bullard, professor of sociology, University of California, Riverside: Prepared statement .....	226
National Association for the Advancement of Colored People, Richmond Branch: Letter to Chairman Miller from Lloyd G. Madden, President, dated August 3, 1993, including resolution in support of the Environmental Justice Act .....	235
Board of Supervisors, Contra Costa County: Letter to Chairman Miller from Gayle Bishop, supervisor, Third District, dated August 5, 1993 .....	238
Northern California Millwright Local 102, Oakland, CA: Letter to Chairman Miller from Stan Boren, business representative, dated August 6, 1993 .....	240
The Clorox Company, Oakland, CA: Letter to Chairman Miller from James O. Cole, vice president-corporate affairs, dated August 9, 1993 ...	242
Heat and Frost Insulators and Asbestos Workers Local Union 16: Letter to Chairman Miller from James W. Schwandt, business manager, dated August 10, 1993 .....	243
Oil, Chemical & Atomic Workers International Union, AFL-CIO, Martinez Local 1-5: Letter to Chairman Miller dated August 10, 1993 .....	245
Imperial West Chemical Company, Antioch, CA: Letter from Andrew A. Woods, manager, safety and emergency response .....	248
Ethel Dotson, Richmond, CA: Copies of materials submitted to the State Legislature, State of California, regarding <i>Dotson v. Bay Area Air Quality Management District. et al</i> .....	249



# **THE COMMUNITY AND TOXICS: ACCIDENTS INVOLVING HAZARDOUS MATERIALS**

**TUESDAY, AUGUST 10, 1993.**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
COMMITTEE ON NATURAL RESOURCES,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 9 a.m., in the Richmond Auditorium, Bermuda Room, Richmond, California, Contra Costa County, Hon. George Miller (chairman of the subcommittee) presiding.

## **STATEMENT OF HON. GEORGE MILLER**

Mr. MILLER. The Subcommittee on Oversight and Investigations will come to order for the purposes of conducting an oversight hearing on the accident occurring in Richmond a couple of weeks ago, and the broader topic of how communities coexist with the shipment and management of toxics.

Two weeks ago in Richmond a release of toxic sulfuric acid from a railroad tank car sent thousands of people to the hospital. The Richmond leak was one of the worst hazardous materials accidents in this county's history, but it was not the only toxic spill to affect the community in recent years. In fact, accidents involving dangerous chemicals are almost routine.

Over the last five years, at least 15 other serious accidents have occurred at refineries, chemical plants and other sites in this highly industrialized county. The death of Louis Torres last year from the fire at Rhone Poulenc is still fresh in our memories. The General Chemical spill is clearly not an isolated incident as some believe.

Our concern here today is not only the recent Richmond spill, but also the broader issue of how hazardous materials are managed in this county. More than 60 major industrial plants line the Contra Costa waterfront. Many of them handle, transport, store and produce hazardous and toxic materials on a daily basis. These facilities employ thousands of people and make vital contributions to the region's economy.

We have no interest in making industry the "enemy" or an unwelcome part of our community. However, we also must recognize that Contra Costa County has significantly changed since many industries first located here. It is now among the most densely populated regions of California.

Our goal is not to get rid of the industries or the people, but to learn how industries that routinely handle dangerous chemicals can coexist more safely with those who live in their midst.

The residents of this county are angry and they are anxious. Many of them fear that they are being regularly exposed to poisonous chemicals. They also wonder whether it is just luck or careful regulation that has prevented an accident the size of Bhopal or the recent explosion in China from occurring in their neighborhoods.

While we must be vigilant in our efforts to prevent accidents, we must also admit that this will not be the last accident involving dangerous chemicals in Contra Costa County. Considerable confusion currently surrounds how residents are best protected.

Firefighters ordered the evacuation in North Richmond following the General Chemical spill, and yet county health authorities believed it was safer for residents to remain indoors. While the county's automated warning system made over 5,880 telephone calls within the affected area during the emergency, it took over three and a half hours, and only 3,900 of those calls through.

Many people learned about the spill almost accidentally: One woman was alerted to the leak only when called by a local reporter inquiring about the toxic cloud that was passing over her home. Although there are plans to improve the computerized phone system, we must consider what additional notifications would be required.

Like the Dunsmuir spill, the Richmond accident focuses our attention on railroad tank cars. Tank cars used for storage of dangerous chemicals, like the one involved in the General Chemical spill, fall through the regulatory loopholes.

Federal Department of Transportation regulations cover hazardous materials in transit, but do not extend to these same tank cars when in storage. Although the State requires reporting of tanks used for permanent storage of hazardous materials, few companies apparently comply. Reporting of tank cars used for storage of dangerous chemicals for less than 30 days is not required.

Last week, I wrote to companies of this county that handle high volumes of hazardous material asking for an accounting of the tank cars used for storage. Of the industries that responded, I can report that as of last Friday, over 500 tank cars are being used to store hazardous materials in Contra Costa County.

I have also asked the railroads for an accounting of tank cars in transit through Contra Costa County and the contents of these cars on a daily basis.

As our community struggles to live amid the chemical giants of America, we must also look at the important question of environmental justice. More often than not, communities with disproportionate numbers of minority and poor residents are located in industries' backyard.

In 1987, a study of the United Church of Christ found that 15 million African Americans—three out of every five African Americans—live in communities with one or more abandoned toxic waste sites.

Each chemical spill, accidental release or permitted emission has an immediate impact on these communities. Why these communities are located in proximity to these hazards is less important

than recognizing that their residents endure a persistent impact because of accidents that occur.

I am glad to report that I am an original sponsor of the Environmental Justice Act of 1993, introduced by my colleague John Lewis, which seeks to redress these disparities.

Our ultimate goal must be to reduce the use of acutely hazardous materials; and many industries in our county have already cut back consumption of toxics significantly or have minimized the dangers in handling them. We should also pay tribute to California's environmental community, which fought for many years to improve standards. Their efforts have given California some of the best environmental standards in the country.

Again, as I review the history of hazardous materials in this county, I ask myself whether we are doing all that we can to protect our communities. That is the purpose of the hearing this morning, to provide some perspective on the accidents and the steps taken in response and, more importantly, on the magnitude of the problem within our community.

Because of time constraints with this hearing, it is obvious everybody who is interested in this subject will not be able to appear as a witness. The record of this hearing will be held open for a period of 15 days so that people can send, either to my local office or to the committee office in Washington, their views and comments on testimony received at this hearing or their views and comments on the accident or other issues that will be raised in this morning's hearing.

We would welcome those comments and they will be made part of the record of this hearing. We would encourage members of the community and others to comment and to make those available to us.

I guess I should have said at the outset that I am Congressman George Miller, I represent this district, and it is a pleasure to be here.

[Prepared statement of Mr. Miller and attachment follow:]

**NEWS****ATTENTION:**
**CONGRESSMAN**  
**GEORGE**  
**Miller**

 2205 Rayburn Building  
 Washington, D.C. 20515  
 (202) 225-2096

 7th District  
 California

**COMMITTEE ON NATURAL RESOURCES**  
**Subcommittee on Oversight and Investigations**

**OPENING STATEMENT**

**HONORABLE GEORGE MILLER**  
 Chairman

August 10, 1993

9:00 am

Two weeks ago in Richmond, a release of toxic sulfuric acid from a railroad tank car sent thousands of people to the hospital. The Richmond leak was one of the worst hazardous materials accidents in this County's history. But it was not the only toxic spill to affect our community in recent years. In fact, accidents involving dangerous chemicals are almost routine. Over the last five years, at least 15 other serious accidents have occurred at refineries, chemical plants and other sites in this highly industrialized county. The death of Louis Torres last year in the fire at Rhone Poulenc is still fresh in our memories. The General Chemical spill is clearly not an "isolated incident," as some believe.

Our concern here today is not only the recent Richmond spill, but also the broader issue of how hazardous materials are managed in this county. More than sixty major industrial plants line the Contra Costa waterfront. Many of them handle, transport, store and produce hazardous and toxic materials on a daily basis. These facilities employ thousands of people and make vital contributions to the region's economy.

We have no interest in making industry the "enemy" or an unwelcome part of our community. However, we also must recognize that Contra Costa County has significantly changed since many industries first located here. It is now among the most densely populated regions of California. Our goal is not to get rid of the industries or the people, but to learn how industries that routinely handle dangerous chemicals can coexist more safely with those who live in their midst.

(more)

The residents of this community are angry and they are anxious. Many of them fear that they are being regularly exposed to poisonous chemicals. They also wonder whether it luck or careful regulation that has prevented an accident the size of Bhopal or the recent explosion in China from occurring in their neighborhood.

While we must be vigilant in our efforts to prevent accidents, we must also admit that this will not be the last accident involving dangerous chemicals in Contra Costa County. It is imperative that we have an adequate response system. Considerable confusion currently surrounds how residents are best protected. Firefighters ordered the evacuation of North Richmond following the General Chemical spill, and yet county health authorities believed it was safer for residents to remain indoors. While the county's automated warning system made 6454 telephone calls within the affected area during the emergency, it took over three and half hours, and only 3,968 of those calls got through. Many people learned about the spill almost accidentally: one woman was alerted to the leak only when called by a local reporter inquiring about the toxic cloud that was passing over her home. Although there are plans to improve the computerized phone system, we must consider whether additional notification is required.

Like the Dunsmuir spill, the Richmond accident focuses our attention on railroad tank cars. Tankcars used for storage of dangerous chemicals, like the one involved in the General Chemical spill, fall through a regulatory loophole. Federal Department of Transportation regulations cover hazardous materials in transit, but do not extend to these same tanks when used for storage. Although the state requires reporting of tanks used for permanent storage of hazardous materials, few companies apparently comply. Reporting of tanks used for storing dangerous chemicals for less than 30-days is not required.

Last week, I wrote to companies in this county that handle high volumes of hazardous material asking for an accounting of the tank cars used for storage. Industry has responded promptly and I can report that as of last Friday, more than two hundred tank cars are being used to store hazardous materials in Contra Costa County. I have also asked the railroads for an accounting of tank cars in transit through Contra Costa County and the contents of these tanks.

As our community struggles to live amidst the chemical giants of America, we must also look at the important question of environmental justice. More often than not, communities with disproportionate numbers of minority and poor residents are located in industries' backyard. In 1987, a study by the United

(more)

Church of Christ found that 15 million African Americans--three out of every five African Americans--live in communities with one or more abandoned toxic waste sites.

Each chemical spill, accidental release and permitted emission has an immediate impact on these communities. Why these communities are located in proximity to these hazards is less important than recognizing that their residents endure a persistent impact because of accidents that occur. I am glad to report that I am an original sponsor of the Environmental Justice Act of 1993, introduced by my colleague Congressman John Lewis, which seeks to redress these disparities.

Our ultimate goal must be to reduce the use of acutely hazardous materials; many industries have already cut back consumption of toxics significantly or have minimized the dangers in handling them. Clorox, for example, has constructed cement rail car enclosures for loading and unloading tank cars to eliminate the chances of toxic leaks to the community. We should also pay tribute to California's environmental community, which fought for many years to improve standards. Their efforts have given California some of the best environmental standards in the country.

Again, as I review the history of hazardous materials in this county, I ask myself whether we are doing all that we can to protect our communities.

Because of time constraints, not everyone attending this hearing can appear as a witness. I encourage you all to write to me so that your views may be included in the hearing record. Your comments and the testimony from this hearing will be the basis of a congressional report to be prepared by the Subcommittee on Oversight and Investigations, which will recommend changes in current policy to ensure that industrialized communities are also safe communities.

**SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**LIST OF HAZARDOUS MATERIALS ACCIDENTS IN CONTRA COSTA COUNTY FROM 1980 TO 1993**

DATE	COMPANY	INCIDENT	INJURIES	DEATHS
5/4/80	Chevron	Reactor explodes.	3	
7/9/81	Chevron	Tanker truck explodes.	2	1
9/22/82	Shell	Corroded pipe explodes, shakes homes.		
4/7/83	Tosco	Leaking pipeline explodes, causing fire.	2	
1/9/84	Chevron	Ammonia and hydrogen sulfide spew from flare towers.	100	
8/12/84	Chevron	Leaky gasket causes fire to burn northernmost portion of plant.	2	
8/24/85	Shell	Vapors from a 3 million gallon tank cause explosion and fire.		
7/5/87	Louisiana-Pacific Fibreboard	Boiler explosion. OSHA cites company for 9 serious violations and 19 lesser violations, and imposes total fines of \$5,580.	6	3
10/27/87	USS-Posco	Construction worker is electrocuted, another worker is run over.		2
4/23/88	Shell	Illegally opened drain valve spills 400,000 gallons of crude oil into Carquinez Strait.		
5/28/88	USS-Posco	Steel plant construction company is fined \$21,200 for safety and health violations.		
3/25/89	Tosco	Vacuum truck explodes, probably due to inadequately trained worker.		1
4/10/89	Chevron	Pressurized hydrogen gas pipe separates at weld. Fire and explosion cause 6-story reactor to fall, engulfing workers without fire protective gear, and forcing the evacuation of hundreds of nearby	9	

**INCIDENTS**      **INJURIES**      **DEATHS**

**DATE**      **COMPANY**

6/2/89	Chevron	Damaged pipe sprays hot wax.	2
9/5/89	Shell	Explosion rattles window seven miles from refinery; fire burns out of control for several hours. Two contract workers severely burned.	2
1/12/90	Exxon	Clogged Drains cause water mixed with petroleum products to spill into Suisun Bay.	
3/4/90	Benicia Pump Repair	Waste oil spill.	
4/29/90	Shell	Employee of non-union contractor falsifies well test results on 25 pipes that would have carried hot, flammable petroleum liquid.	
5/27/90	Exxon	Flash fire during tank sludge removal operation conducted by low paid workers.	4
6/17/90	Exxon	Fire in air compressor causes temporary production reduction.	
10/17/90	Unocal	Storage tanks rupture.	
5/5/91	Dow Chemical	A malfunction at the agricultural plant releases hundreds of pounds of chlorine gas and carbon tetrachloride gas. 6 workers hospitalized.	6
6/25/91	Dow Chemical	About 700 pounds of liquid chlorine leaks, sending 30 workers to the hospital.	30
10/30/91	Chevron	Oil leak sparks fire, forcing the evacuation of toll collectors from the Richmond-San Rafael Bridge.	



**INJURIES DEATHS**

**INCIDENT**

**COMPANY**

**DATE**

12/5/91	Chevron	Valve malfunction spews catalyst dust and soot over Point Richmond and surrounding areas. County activates emergency alert network, warning residents to stay indoors.	1
3/31/92	Pacific Refining	Tube rupture causes explosion and fire, dropping flakes of charred aluminum on parts of Rodeo.	1
5/29/92	Pacific Refining	Cooling tube ruptures, releasing cloud of oil mist that covers parts of Rodeo. County activates emergency alert network and warns residents to stay indoors. Highway 4 and Interstate 680 closes for several hours.	1
6/22/92	Rhone-Poulenc Basic Chem.	Chemical is spilled and fire erupts. County activates emergency alert network, warning residents to stay indoors.	1
6/23/92	Chevron	Pump failure releases a cloud of vaporized petroleum. County activates emergency alert network, warns residents to stay indoors. Winds carry most of the cloud over the Bay.	1
7/29/92	Texaco	High-pressure hose bursts while two workers are servicing a Texaco oil pipeline.	1
8/9/92	Exxon	Compressor failure in Benicia causes fire and generates a cloud of black smoke visible from S.F.	1
8/12/92	Tosco	Hydrogen escapes, causing fire and explosion.	1
8/22/92	Electro Forning Co.	A nitric acid leak produces toxic cloud, believed to be caused by bullet holes in a plastic tank. 130 people are sent to hospitals after breathing the toxic cloud.	130
9/5/92	Sunvalley Mall	A gas odor causes the evacuation of Sunvalley mall in Concord. About 20 people are treated at the hospitals for breathing problems.	20

- 6/18/93      Tosco      "few"  
A mixture of butane, propane and hydrogen sulfide gases is released from a relief valve. The cloud floats toward Antioch, sending several people to the hospital with burning eyes and shortness of breath.
- 7/26/93      General Chemical Corp  
A leaky railroad tank valve spewed oleum, a concentrated form of sulfuric acid, for more than three hours and created a corrosive cloud that spread northwesterly from Richmond through heavily populated bayside cities, past Suisun Bay and into Solano County.

Mr. MILLER. We have a rather long list of panels and, hopefully, they have been grouped so they can give us the best insight with the limited time that we do have. Our first witness will be a representative of Senator Barbara Boxer's office and that is Katherine Merrill, who is a representative from her district.

Katherine, you can either read Senator Boxer's statement into the record or summarize it, however you are most comfortable.

**STATEMENT OF HON. BARBARA BOXER, A SENATOR IN CONGRESS FROM THE STATE OF CALIFORNIA READ BY KATHERINE MERRILL, FIELD REPRESENTATIVE, SAN FRANCISCO DISTRICT OFFICE OF SENATOR BOXER**

Ms. MERRILL. I will read her statement into the record, Mr. Chairman.

This is the testimony of U.S. Senator Barbara Boxer before the Subcommittee on Oversight and Investigations on the House Committee on Natural Resources.

Mr. Chairman, I want to thank you for the opportunity today to present my testimony concerning the transportation of hazardous materials. I have a long-standing interest in this matter, as I will explain later.

First, I want to share with you a commitment I have received from Jolene Molitoris, recently confirmed administrator for the Federal Railroad Administration, who says she is committed to working every day to make the railroads safer. I believe she will bring a fresh look to the FRA. In fact, she has already agreed to help on one point.

I learned in talking to General Chemical's chief counsel that the corporation believed it could still use the model 111A tank car, involved in the recent incident, after October 1 with some modifications. That is not true. Administrator Molitoris has agreed, at my request, to alert railroad shippers using the 111A tank car that as of October 1 use of that tank car for shipping certain toxic substances such as oleum will be unlawful. We want to make absolutely clear that this dangerous tank car will no longer carry hazardous materials through our communities.

Mr. Chairman, when I heard of the release of the toxic cloud in Richmond on July 26, I could only think, here we go again. It was a July day 2 years ago when the people of Northern California suffered a toxic spill that sent hundreds streaming to the area hospitals suffering from respiratory illness.

The derailment of the Southern Pacific train near Dunsmuir not only injured residents and destroyed 45 miles of the Sacramento River, but there was another suffering that took place. It was the suffering of a people who had lost confidence that their government would protect them.

In the course of an investigation into that derailment, which I was privileged to lead as Chair of a House subcommittee, we learned a most troubling fact. That fact was that the material that caused this destruction—metam sodium, a pesticide—was not considered hazardous despite the damage wreaked on the community and the environment.

We learned that the U.S. Department of Transportation only considered the material hazardous if it was transported over water.

We later learned that the U.S. Environmental Protection Agency had information in its files regarding the possible health effects of the material on pregnant women, but that information was not passed on to the highest levels.

We learned that the Federal Railroad Administration inspectors, once they found safety violations, were not checking back to see if those violations were corrected.

And now we learn that a type of railroad tank car with a history of ruptures once again fails. This time not hundreds but thousands of residents are injured. There have been at least 317 and possibly as many as 600 similarly ruptured disks on the DOT class 111A tank car from 1988 to 1992.

Mr. Chairman, I expect you will have to question why such a dangerous tank car is permitted in service until October 1. Why is it that once again a dangerous incident occurs while the government is still trying to put a regulation in place. It is time to adopt the recommendations of the Hazardous Substances Task Force of the Department of Transportation. They are:

Expand centralized reporting to the National Response Center, rather than separate reports to a variety of government agencies, and develop a mechanism for updating and correcting initial reports of information on releases of potentially dangerous substances.

Develop and make widely available regional, State and local contingency plans that clearly and simply delineate the roles and responsibilities of agencies, departments and other organizations involved in an emergency response.

Widely disseminate comprehensive information on available training opportunities for emergency responders and promote greater coordination among training providers to make the most of existing training resources. Provide, as necessary, more and better training to workers on the use of contingency plans during an emergency release.

Despite this latest spill, Mr. Chairman, I am optimistic we have new managers on board in the Federal Government committed to putting safety and health first. In addition to Jolene Molitoris, another key Federal player is the EPA administrator. During her confirmation hearing, EPA Administrator Carol Browner assured me that her agency would better coordinate with the DOT, particularly the sharing of the latest scientific information on hazardous substances.

Mr. Chairman, thank you once again for this opportunity to testify. You should be commended for your swift action in scheduling this hearing to air the concerns of the East Bay community.

Thank you.

Mr. MILLER. Thank you very much, and I want to thank Senator Boxer for that statement.

We had a chance again to talk about this Saturday when we came out on the plane, and she has assured me that she will be more than happy to help in any way that she can in terms of our follow-up, if any is necessary, at the federal level. I want to thank you for taking your time, Katherine, to come over here.

Ms. MERRILL. Thank you.

**PANEL CONSISTING OF JOHN F. KROEGER, GENERAL MANAGER, SULFUR PRODUCTS GROUP, GENERAL CHEMICAL CORP., PARSIPPANY, NJ; GARY BROWN, DIRECTOR, CONTRA COSTA COUNTY OFFICE OF EMERGENCY SERVICES; AND WILLIAM WALKER, M.D., HEALTH OFFICER AND MEDICAL DIRECTOR, CONTRA COSTA COUNTY HEALTH SERVICES DEPARTMENT**

Mr. MILLER. Our first panel will be made up of Dr. William Walker, who is the medical director of Contra Costa County Health Services Department; Jack Kroeger, the production general manager for General Chemical Corporation; and Gary Brown, director of the Contra Costa County Office of Emergency Services.

If you will come forward, please, to the table.

Any written statements that you have will be put in the record in their entirety. And we will ask, to the extent that you can, if you might summarize so that we will have time for questions; that will be deeply appreciated.

I think Mr. Kroeger, we will start with you.

**STATEMENT OF JOHN F. KROEGER**

Mr. KROEGER. Good morning, Congressman Miller, members of the subcommittee, as well as the public. I would like to read a statement that has been prepared.

I have come today at the request of the subcommittee to address the question of how the hazardous materials industry and Contra Costa County residents can safely coexist in the same community. I understand that concerns have been raised as a result of several accidents that have happened involving hazardous materials in Contra Costa County over the past few years, and most recently, the July 26 release of sulfur trioxide at General Chemical's Richmond facility.

General Chemical sincerely regrets the recent accident at our facility and any impact it may have had on the community. The company is aware of the concerns the incident has engendered in local residents and responsible governmental agencies.

It is thus our aim to gain a clear and timely understanding of the cause of the rupture, to review existing on-site and community response plans, and to work with other segments of the community to further reduce the risk of future industrial accidents.

Through these efforts, we hope to improve the relationship between county residents and their industrial neighbors. General Chemical has been a member of the Richmond community for almost 50 years.

We believe our facility has performed a valuable service to this area over the years as the primary business of General Chemical's Richmond facility is the regeneration of spent acid used as an alkylation catalyst in the refining of gasoline.

Alkylate is one of the key building blocks of gasoline which meets the guidelines of the Clean Air Act as well as California gasoline requirements. Spent acid regeneration allows for the recycling of sulfuric acid, thereby eliminating the need to dispose of it, as well as reducing the need for additional acid manufacture.

The investigation of the events leading up to the July 26 release is not yet concluded. I am accordingly not in a position today to

fully discuss those events with you, although we expect to have a preliminary report completed within the next few days.

Today, I will focus primarily on General Chemical's immediate and ongoing response to the accident.

Let me begin by briefly summarizing the course of events surrounding the July 26 release. Early on July 26, General Chemical employees were unloading a rail car containing oleum into an on-site tank.

At approximately 7:15 a.m., the rupture disk on the car's safety relief valve exploded outward, causing a sudden and rapid release of SO<sub>3</sub> into the air. Employees began contacting the appropriate response agencies, including the Contra Costa Health Services Department, the City of Richmond Fire Department, and Chevron's Mutual Aid. Subsequently, the Office of Emergency Services and the National Response Center also were contacted.

Through the efforts of these agencies and General Chemical employees, a new rupture disk was installed at about 10:15 a.m., and the release was stopped completely by approximately 11:00 a.m. The company estimates that roughly 3.9 tons of sulfur trioxide was expelled from the rail car into the air.

General Chemical has adopted specific measures to prevent recurrence of other incidents of this type at the Richmond facility. The company has committed not to unload any remaining rail cars containing oleum currently on the site or in the adjacent switchyard.

The railcar involved in the July 26 incident has been sealed on General Chemical's rail siding pursuant to conditions specified by the United States Coast Guard. This car will be moved only after all other necessary authorizations have been received from the Coast Guard and other agencies with jurisdiction, and we are satisfied that all legal requirements have been met.

Five other cars containing oleum, one on the company's rail siding and four in the switchyard, remain sealed and will be moved to another facility outside the State of California. The sealing and removal of these cars will prevent any possible recurrence of the July 26 incident at the Richmond facility.

General Chemical is also conducting an internal investigation, together with the appropriate regulatory agencies, into the cause of and response to the July 26 incident. General Chemical will also explore potential opportunities to further enhance its oleum handling and accident response procedures.

Beyond these efforts to ensure public safety in the future, we are making every effort to address the individual concerns of area residents stemming from the July 26 incident. On July 29, General Chemical publicly announced it will directly pay hospitals and clinics for all initial treatment visits by residents in response to the accident.

The company currently is working with health-care providers to arrange for prompt payments for these visits. In addition, we set up a toll-free number to address claim inquiries from individuals, and we are in the process of deciding how best to administer legitimate claims from the community.

As a natural result of this accident, General Chemical has begun to examine the coordination efforts of all parties who responded on

July 26. The company truly appreciates the prompt response and the bold efforts of the Contra Costa Health Services Department, Chevron's Mutual Aid, the Richmond Fire Department, and the Coast Guard. We also commend our employees who responded bravely and quickly to stop the release.

General Chemical is committed to learning from what occurred on July 26 and to take any steps that might further enhance its operations.

Thank you for the opportunity to speak with you today and for your efforts to initiate dialogue aimed toward greater safety and understanding in the Contra Costa community.

Mr. MILLER. Thank you.

[Prepared statement of Mr. Kroeger follows:]



**PREPARED TESTIMONY OF JOHN F. KROEGER  
General Manager, Sulfur Products Group  
General Chemical Corporation  
Parsippany, NJ**

**Before the**

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**August 10, 1993  
Richmond Auditorium  
Richmond, California**



*Chairman Miller and Members of the Subcommittee on Oversight and Investigations:*

I have come today at the request of the Subcommittee to address the question of how the hazardous materials industry and Contra Costa County residents can safely coexist in the same community. I understand that concerns have been raised as a result of several accidents involving hazardous materials in Contra Costa County over the past few years and, most recently, the July 26 release of sulfur trioxide at General Chemical's Richmond facility.

General Chemical sincerely regrets the recent accident at our facility and any impact it may have had on the community. The company is aware of the concerns the incident has engendered in local residents and responsible governmental agencies. It is thus our aim to gain a clear and timely understanding of the cause of the rupture, to review existing on-site and community response plans, and to work with other segments of the community to further reduce the risk of future industrial accidents. Through these efforts, we hope to improve the relationship between county residents and their industrial neighbors. General Chemical has been a member of the Richmond community for almost 50 years. We believe our facility has performed a valuable service to this area over the years as the primary business of General Chemical's Richmond facility is the regeneration of spent acid used as an alkylation catalyst in the refining of gasoline. Alkylate is one of the key building blocks of gasoline which meets the guidelines of the Clean Air Act as well as California gasoline requirements. Spent acid regeneration allows for the recycling of sulfuric acid, thereby eliminating the need to dispose of it, as well as reducing the need for

PREPARED TESTIMONY OF JOHN F. KROEGER  
August 10, 1993  
Page 1

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PREPARED TESTIMONY OF JOHN F. KROEGER  
August 10, 1993  
Page 2

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General Chemical is committed to learning from what occurred on July 26th and to take any steps that might further enhance its operations.

Thank you for the opportunity to speak with you today and for your efforts to initiate dialogue aimed toward greater safety and understanding in the Contra Costa community.

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PREPARED TESTIMONY OF JOHN F. KROEGER  
August 10, 1993  
Page 4

## STATEMENT OF GARY BROWN

Mr. MILLER. Mr. Brown?

Mr. BROWN. Yes, Mr. Congressman, thank you.

I am Gary Brown, director of the Contra Costa County Office of Emergency Services.

Our role in this event, as in all events of this nature, is to activate the county's emergency operation center, when necessary, to support field response. Our emergency operations center in Martinez was opened up shortly after we learned of this incident, and when it became apparent that the incident was of such a size that it would require some coordination of the several agencies that were involved in the response.

So at that point, we activated our EOC to provide that support, to make sure that the various agencies involved in response were coordinating their activities, to determine whether any specialized resources may be necessary that we could procure for supporting that response.

In our activation, we have representatives from many of the county agencies, such as the Sheriff and Fire Department, the Health Services Department, representatives from outside agencies, such as the Red Cross and the Highway Patrol that report to our center, to make sure we are coordinating our actions. So that is what we did on the morning of the event.

One of the other major functions that we provide is public information and dealing with requests from the media for information. This is the type of support that we provide in any such incident. If there is any questions on our role, I would be glad to answer those. What I would like to do, however, is speak a little bit about the written testimony I had presented on some of my views of preparing for this type of incident and what I think residents need to do and what some of the agents may be able to do to help them in that endeavor.

I think we are all familiar with the Boy Scout motto of "be prepared," and this message of being prepared forms the basis of what my office does in trying to encourage people to take actions themselves to ready themselves for any type of emergency event. Public emergency response agencies react to emergencies and disasters as quickly as they can and with the resources that we have available to us.

However, steps taken by individual citizens to prepare themselves before an incident occurs can be the most effective means of preventing or at least minimizing personal injury or property damage.

For example, we live in the San Francisco area; we live in earthquake country. In fact, most people who live in California need to be concerned about the earthquake threat, and there are steps people can take to prepare for earthquakes to prevent personal injury or property damage.

I am sure that residents who are now moving back into their rebuilt homes in the Oakland, Berkeley Hills area, have learned something about the steps they can take to prepare themselves for future disaster.

The point is that persons who live in an area where chemicals are present, need to, first of all, be aware of that, and be aware

that they are at a higher risk than people living in areas where there are not chemicals. Second, what are the things that these people can do; what steps can they take now to help prepare for incidents such as occurred a couple of weeks ago?

I was born and raised in this county, lived here all my life. I am not going to move out of the county because there are chemicals present. In fact, I live in Martinez, and those of you who read the paper recently saw that Martinez area has the highest concentration of some of the most dangerous chemicals.

I live near Shell Oil. I live near Rhone Poulenc and Tosco, so I am also a resident who shares some of the concerns that the people here have—in addition to being a professional in the disaster preparedness business. I try to see from my professional position through the eyes of residents and determine the best way that their concerns can be addressed.

With regard to the General Chemical incident, there is no question that the company has a responsibility to the community. There is no question that government agencies must do what they can to effectively respond to such incidents and to take steps to notify and protect citizens.

After the release on July 26, *West County Times* printed an editorial that addressed these issues. The editorial also said, however: "The entire responsibility should not rest with the government. Residents who live near chemical plants must realize that toxic clouds or spills happen sometimes. They must take the responsibility of learning how to respond."

That is fine, but how can citizens learn how to respond? My answer is a public education program. For example, an informational brochure could be developed specific to the Richmond area. A brochure could include a list of chemical plants, with the names and phone numbers of the plants' community relations personnel, so people know who to call.

It could include a brief description of each plant, what it does or the major product produced there so that the public is aware of it; give a listing of all the government agencies involved with chemical plant inspections and/or enforcement of laws and regulations with phone numbers provided for citizens to call with complaints or to ask for information. There could be a listing of phone numbers for all the emergency response agencies serving the area.

This brochure could include medical tips for persons who have been exposed to chemicals. Steps citizens can take in advance to prepare for a chemical release incident could be included. Information can be given on how citizens will be notified of chemical releases and told what actions to take.

I think there are some other things that could be done in this regard. Managers of chemical plants could invite citizens to meetings where the plant operations could be explained, and citizens could ask questions. Perhaps some plants could offer tours of their facilities; take away some of the mystique about what goes on behind those walls.

Sometimes doing that, opening up to the public, relieves a lot of their fears once they see what the operation is, what is taking place, and what the safety program is that the plant has in effect.

In addition, videotape, for example, could be produced providing information on these things and could be shown on local cable TV channels. Chemical plants could produce and distribute newsletters, and I know some of them do, to keep the citizens in the immediate area of the plant informed as to what is going on in the plant, what some of their latest activities are.

And in this regard, I believe that the companies handling these chemicals should pay for the cost of developing and implementing such a public education program and I think that such a public education effort could be undertaken in a partnership with industry, emergency response agencies and other public local agencies that have some responsibility in this regard.

Thank you.

[Prepared statement of Mr. Brown follows:]

Testimony Before the U.S. House of Representatives  
Committee on Natural Resources  
Subcommittee on Oversight and Investigations

August 10, 1993  
Richmond, California

By

Gary Brown, Director, Office of Emergency Services  
Contra Costa County

Hearing Focus: Coexistence of Hazardous Materials  
Industry and Community Residents

We are all familiar with the Boy Scout motto: "Be prepared." And, I think most people are also familiar with the well publicized advice to be prepared to take care of themselves for the first 72 hours following a disaster. This message forms the basis of the public education efforts conducted by my office.

And, there is good reason for this.

Public emergency response agencies react to emergencies and disasters as quickly as they can and with the resources they have available. However, steps taken by citizens to prepare themselves before an incident occurs can be the most effective means of preventing or, at least, minimizing personal injury and property damage.

We live in the San Francisco Bay Area. We live in earthquake country. In fact, most people in California live in areas of known earthquake activity. And since we like living here and most of us do not intend to move to another state just to avoid earthquakes, it makes sense for residents to take some steps in order to mitigate injury or damage caused by an earthquake. I am sure that residents who are moving back into their rebuilt homes in the Oakland/Berkeley Hills are much more aware of the fire danger in that area and have learned that there are steps they can take to be better prepared to deal with future fires. Likewise, if you live in an area where large amounts of chemicals are being manufactured or used in various commercial processes, then you have to realize that you have a greater risk to chemical exposure than do people who live in areas where chemicals are not present.

I was born and raised in this county. I like it here. I am not going to move out of the Bay Area because of the earthquake threat. I am not going to move out of Contra Costa County



because of the hazardous materials threat. I am not going to move out of Martinez even though I live close to Shell Oil Refinery and Rhone-Poulenc Chemical Company. So, in addition to being a county employee with responsibility for disaster preparedness activities, I am also a resident who shares the same concerns as other residents.

From my official position I try to see issues through the eyes of residents to determine the best way to address their concerns. With regard to the General Chemical incident, as with any such incident, there is no question that the company has a responsibility to the community. There is also no question that government agencies must do what they can to effectively respond to such incidents and to take steps to notify and protect citizens. After the release on July 26th the West County Times printed an editorial that addressed these issues. The editorial also said, however, that "...the entire responsibility should not rest with the government. Residents who live near chemical plants must realize that toxic clouds or spills happen sometimes. They must take the responsibility of learning how to respond."

But, how do citizens learn how to respond? Answer: A public education program.

For example, an informational brochure could be developed specific to the Richmond area. Such a brochure could include :

- A listing of chemical plants with the names and phone numbers of the plants' community relations personnel.
- A brief description of what each plant does or the major products produced.
- A listing of all of the government agencies involved with chemical plant inspections and/or enforcement of laws and regulations. Phone numbers should be provided for citizens to call with complaints or for information.
- A listing of phone numbers for emergency response agencies.
- Medical tips for persons exposed to chemicals.
- Steps citizens can take in advance to prepare for a chemical release incident.
- Information on how citizens will be notified of chemical releases and told what actions to take.

Chemical plant managers could invite citizens to a meeting where the plant operations could be explained and citizens could ask questions. Perhaps, some plants could offer tours of their facilities.

In addition to an informational brochure a videotape could be produced providing information on such things as emergency preparedness, medical tips, immediate response actions and community notification procedures. The videotape could be aired on the local community access cable TV stations.

Chemical plants could produce and distribute newsletters to residents to keep them informed of plant activities.

The chemical plants should bear at least part, if not all, of the cost of developing and implementing such public education efforts.

**STATEMENT OF DR. WILLIAM WALKER**

Mr. MILLER. Mr. Walker.

Dr. WALKER. Mr. Chairman, I welcome the opportunity to testify this morning. I am Dr. William Walker, health officer and medical director for Contra Costa County Health Services Department.

I want to preface my remarks about the incident by saying that I, too, am chagrined about the number of major incidents that have occurred in our county in the last few years. I see every one of these incidents not as accidents but as injuries to the community, injuries which can be controlled, and I see every one of these incidents as a failure in our prevention efforts. I think we need to learn from each of these about what more we can be doing to prevent such future occurrences.

With regard to the oleum spill on July 26, the response of our department was really in three ways. First of all, we sent eight hazardous materials specialists to the scene to perform not only the function of dealing with capping the release, but also the monitoring of the surrounding community, and measuring the amounts of material that were going over the fence and helping us with our community notification problem.

I have to say that the efforts of the hazardous materials specialists in working with the local City of Richmond Fire Departments, I believe, were exemplary, and I believe that this was a direct result of exercises that we have held recently, also most recently in Chevron, a couple of months ago, where we exercised a similar type of response.

We worked also closely with the Bay Area Air Quality Management District, the California Office of EPA's Hazardous Assessments and Department of Health Services. We opened up our Emergency Operating Center for Hazardous Materials Events at 4333 Pachenco in Martinez. We had people on site there from CAL EPA and the Department of Health Services. We also had a health officer on site at the scene, and I believe made, even in retrospect, the appropriate decisions with regard to notification and with regard to evacuation.

I have to say the most difficult question early on in this incident was whether or not to attempt to evacuate people through an ongoing release. And even in retrospect and in consultation with all the toxicologists that are available to us, in consultation with Richmond's Fire Departments post-incident, it is clear that if we had made a decision to evacuate people through that cloud, we would have had much more serious types of injuries and a larger number of injuries.

What kills people and what injures people with regard to a sulfur trioxide release is exposure to the highest concentration of the chemical. We know that over 20,000 people have sought medical assistance. We also know that relatively few of those people required hospitalization or intensive treatment, and I believe that that fact results from the issue of the success of shelter-in-place and the decision not to attempt to evacuate thousands of people who would be sitting on narrow streets attempting to get out of the North Richmond area and sitting in the context of the highest concentration of that cloud.

So I defend the decision of my department that shelter-in-place was the appropriate response to this incident and I also welcome any further investigation into that decision.

The second thing I want to address this morning is the issue of community notification. We have in Contra Costa County a Community Alert Network, a computerized telephone system that will ring down to surrounding areas, around anywhere in the county, but particularly in the major chemical and petrochemical facilities. Around the Chevron and General Chemical facilities, we have established zones which are predesignated, computerized areas which will automatically ring down simply by dialing up a Zone I notification.

In this particular incident, Zone I, which includes North Richmond, was the first zone to be telephoned. That call went out to the CAN network shortly after the incident, and 1,569 phone numbers in that zone were dialed in a mode that proceeded from the houses nearest the facility on out toward the houses farthest away.

Of those initial 1,569 calls, 857 were completed and they were completed within 48 minutes. From there we went on, as has been referenced, to notify further surrounding zones, moving out sequentially farther from the area.

Now, did the CAN system work? Yes. It worked as best as the CAN system can work.

Is the community notification system, as a whole, acceptable? No, it is not, because the CAN system is only part of a network of notification that needs to be in place.

The remainder of the notification has been under discussion for a couple of years now. One of those is the establishment of a traveler's alert network, a radio network in West County, which I believe is about to be established.

The second is the establishment of sirens around facilities and around the communities so that we will have more immediate notification.

Now, establishment of sirens sounds like a simple approach. It is a rather complex way and requires an ongoing commitment to community education to make sure that people understand what to do when the siren goes off. I, nonetheless, believe that we can do that.

We have been in discussion with the Community Awareness and Emergency Response Group, which represents industry agencies and the public in Contra Costa County, over the last several months on the siren issue. A current proposal is now being looked at to establish county-wide standards for establishing a siren system.

The furthest along in that development is the Chevron facility, which is in discussion with its neighborhood representatives about establishing sirens around Chevron.

I believe that when we have a siren system in place, that in addition to the CAN system with the potential improvements which will be coming down the line on the CAN system, I believe we will have the most effective notification system in the country with regard to hazardous materials incidents.

Will it ever be good enough? No. It will never be good enough in that not every citizen will either hear the sirens or get a phone call.

We will do the best we can to work with all the agencies, to work with industry to make sure we put in place what is technologically feasible.

I want to mention one other thing and that is that what we saw in the medical response to this incident was extraordinary. We saw the coming together of major health-care providers in West County, which included not only the Contra Costa County Health Services Department but also Brookside Hospital and the Kaiser system. These facilities together saw, as I mentioned, over 20,000 patients.

A special clinic was established, and we are now in the process of working with the Department of Health Services and CAL EPA to do an ongoing assessment of the health impacts of this release. We will be looking at medical records, doing ongoing monitoring of people who have been affected and make sure that people receive appropriate attention to any of the health effects of this release.

I will be happy to answer any questions.

Mr. MILLER. Thank you very much.

Thank you all for your testimony.

Mr. KROEGER, the off-loading of oleum is not something that you ordinarily do at General Chemical, or it is?

Mr. KROEGER. It is not part of the day-to-day operations and had not been done prior to this at that facility.

Mr. MILLER. Not done at this facility. When you say the five rail cars that are there will be moved out of state for the purposes of off-loading, that is consistent with your ordinary pattern, or why are those cars there?

Mr. KROEGER. We had just gone on a major modification of the facility. A major modernization. As part of that, we were going to be down for 12 days. In order to continue to meet customer demands for oleum during this outage, we built inventory into the rail cars in the month prior to the outage.

When the outage was done, we were bringing the rail cars and unloading them back into our normal system. So it was a temporary system to meet inventory.

Mr. MILLER. So this is not an ordinary part of your business, to transfer oleum to rail cars?

Mr. KROEGER. No, it is not. We don't normally do business with oleum by rail.

Mr. MILLER. This was to take up the slack while the facility was undergoing changes?

Mr. KROEGER. Yes.

Mr. MILLER. So when the issue is raised about why the personnel were not trained for this purpose, the fact is you don't do that at this facility; is that correct?

Mr. KROEGER. You are raising an issue that they were not trained. This was something the plant discussed—

Mr. MILLER. I didn't raise the issue; the issue was raised in the press.

Mr. KROEGER. I have read it in the media.

We have another facility in Claymont, Delaware. When they have outages, they also load oleum into rail cars. There was some

coordination between those facilities as to the procedures, and that was passed on to the operators who were handling the procedures.

It is one of the things we are looking at as part of the investigation though.

Mr. MILLER. They were trained on how to handle the oleum in the transfer of the cars?

Mr. KROEGER. One of the things we are looking at as part of our internal investigation is, Was that training adequate and was it followed?

Mr. MILLER. Let us start with the question of whether or not the training took place. Was there training?

Mr. KROEGER. Yes, there was.

Mr. MILLER. And that was based upon the experience the company has with the handling of oleum at another facility you have?

Mr. KROEGER. With that and also we handle oleum at the facility in trucks, which is not all that different from loading into a rail car. So the facility has a lot of experience handling oleum.

Mr. MILLER. Let me ask you this. The issue has also been raised as to whether or not there is a capability in your permanent facility—the question is, Do you recover escaped vapor in the event of an accident or a procedural breakdown? Do you have that capability at General Chemical now?

Mr. KROEGER. It is my understanding that in the permanent storage tank that it can vent back into the process system, if there is a problem.

Mr. MILLER. The theory being there would be no escape of that material into the atmosphere?

Mr. KROEGER. Yes.

Mr. MILLER. But you do not have that for loading of trucks and/or rail cars?

Mr. KROEGER. I think there is a system in place for the loading of trucks. There is a system for unloading of rail cars but nothing at the facility to handle the rupture disk. Nothing at the facility to handle that amount of venting back into the system.

Mr. MILLER. Does that mechanism exist? If you were into the loading and unloading of oleum on a rail car, does a mechanism exist for vapor recovery in the event of an accident, leak or what have you in that process?

Mr. KROEGER. I can't say I have looked into that. That is something we would look at if we were intending to do that at the facility.

Mr. MILLER. Do they have that mechanism at Delaware?

Mr. KROEGER. I am not sure what they have at Delaware. I can get back to you, if you would like.

Mr. MILLER. I would like.

With respect to the issues being raised as to both the CAL OSHA inspections and the fines that followed by both CAL EPA and CAL OSHA, how do you characterize your company's accident and environmental record?

Mr. KROEGER. I would like to address my comments specifically to the Richmond facility. And prior to the CAL OSHA visit this year, I think the only fines that had been initiated against the site were less than \$3,000 since General Chemical has managed the facility.



Mr. MILLER. Has CAL OSHA inspected them on a regular basis?

Mr. KROEGER. I don't know the amount of the inspections. I know when CAL OSHA has come in, we have met with them and they have come back and assessed fines. We are discussing them. Some we do not think are appropriate; some we have already dealt with, as far as we are concerned.

And we are dealing with CAL OSHA as we go along. Nothing that CAL OSHA raised has dealt with this issue. I am personally, and I think the company is personally committed to not having accidents. We are committed to running safe plants.

Mr. MILLER. Well, the concern would obviously be with respect to the confidence in the community. If the facility is receiving fines after inspections in other areas related to either environmental releases and/or safety, that obviously goes to the confidence that the community would have in any part of the operation, whether it was directly related to this incident and procedure or not. Do you agree?

Mr. KROEGER. I agree. All I can tell you is the accident review from CAL OSHA, when we asked what were your comments about the facility, they were, "well, you have a well-run plant."

Mr. MILLER. But you are going to be fined?

Mr. KROEGER. Well, I agree it goes to the confidence issue. It is a question I asked and it is something we have to address, but we are trying to work within the regulatory community. We are committed to safety; we are committed to operating a safe plant.

Mr. MILLER. What is it that the community can expect following this procedure, in terms of your operations? You will not load tank cars in the future or if you are going to load tank cars in the future, what would we expect in terms of a change in operations?

Mr. KROEGER. Last week the president of our company had a discussion with Senator Boxer. During that discussion, he committed we will not ever in the future use rail cars to transport oleum in the Richmond facility.

Mr. MILLER. What about for storage?

Mr. KROEGER. Same thing. We will not load oleum into rail cars at the facility.

Mr. MILLER. But you do load trucks, do you not?

Mr. KROEGER. We do load trucks.

Mr. MILLER. You could blow a membrane or a seal on a truck?

Mr. KROEGER. The trucks that are currently in use today do not have the rupture disk that is on the rail car. It has a different kind of relief valve.

Mr. MILLER. So you have a system where you cannot have release into the atmosphere?

Mr. KROEGER. I can't say it can't happen, but as far as I understand, the truck has a different relief system and it is something we feel will not happen.

Mr. MILLER. Mr. Brown, you go to great lengths to say how much help a brochure would be. Why don't we have a brochure to date?

Mr. BROWN. Well, there are a variety of pieces of information now, some of which my office distributes and the health department and other agencies all have information that is available to the public. My idea, because of this incident, is drawing attention in this area and the citizens' concerns, because there have been

several incidents over the last few years, that information could be made specific to the Richmond area.

That was my idea of putting a lot of different information into one source that could be distributed to the citizens just as one part of a training program.

Mr. MILLER. So would it be your determination at this point, that the information that is currently being put out is not comprehensive enough and/or specific enough for the Richmond community?

Mr. BROWN. I think that is true. I think most of the information I have seen available in brochures is of a generic nature; whereas my recommendations would be to make it specific to Richmond.

Mr. MILLER. You cite the editorial in the *West County Times* in saying that the residents have got to take responsibility for learning how to respond. I guess maybe to both you and Mr. Walker, the question really there is that the residents are only as good as the information they have with respect to a specific incident that takes place because, obviously, the question of what is the chemical and what is the impact on them, affects whether you stay put or run, which decision you make, Mr. Walker, and becomes important.

How quickly are we able to generally identify a chemical in the case of a release outside of the bounds of a facility?

Dr. WALKER. Generally, a release that occurs on-site and in a facility is more quickly assessed than something that occurs beside the roadway or a spilled tanker or an identified transportation vehicle.

In this particular case, we knew immediately what was coming off. We had the initial notification that it was oleum, which would release sulfur trioxide, which would produce the sulfuric acid mist. So there was no question what was coming off in the identification of the material.

Mr. MILLER. In your statement, Dr. Walker, you mentioned that whether it is the phone system or anticipated siren system or any of the other systems, that this is not a fail-safe system that you are constructing; you would say it may be the best in the country, but it is—

Dr. WALKER. I don't believe there is in existence a fail-safe system. I would like to think we have tried to cover every base when we eventually have the system in place. The CAN system is only part of it.

I do want to add, which I failed to mention, the participation of the major media in helping us get the information out. They allowed both myself and Dr. Brunner to go on live on radio and TV to get the word out to the community about shelter-in-place and with regard to information about the event.

I think one of the more effective ways we had of getting information out was through all the major media channels.

Mr. MILLER. I guess one of my concerns would be, as the press suggested, the residents were going to have to take more responsibility. What is the balance between that and the issue of prevention?

You cannot construct a fail-safe notification system, and I don't think anybody expects that. Mr. Kroeger and others in the industry are not going to be able to construct a fail-safe system in terms of the process in their transportation and refining of these chemicals.



But in terms of the real people in this operation, the residents, where do they look?

My opinion would be that a greater burden falls on the producer of the chemicals, if you will, or the person moving them, than on the notification system. That is not to suggest that the burden should be lightened. When all hell breaks loose, there are still the residents, or the people on the freeway, or wherever they are, who are kind of caught in the middle.

Dr. WALKER. Right.

Mr. MILLER. It seems to me when you try to balance this, you have to move toward the prevention side of the incident.

Dr. WALKER. I absolutely agree with you, and that is why I said in preface to my remarks I see each of these events as a failure of our prevention efforts.

We, as you know, are doing risk-management prevention plans in the major facilities in Contra Costa County. The major effect of those efforts so far has been, in fact, to reduce the total amount of acutely hazardous materials on-site in the county.

Nonetheless, as you well know, we still have major inventories of acutely hazardous materials and those prevention efforts are aimed at looking in a detailed manner at each and every way in which those materials are handled within the plants and looking at ways in which to minimize the risk of a release.

As has also been pointed out, in this particular case, the use of a rail car for unloading at General Chemical is not part of their normal operation and, therefore, was not part of their RMPP. And that is an area of major concern to me—the fact we can have regulatory programs and yet have the opportunity for a company to put into place an unusual kind of procedure without proper notification of anyone, not the health department, the air district and surrounding communities, or anyone else. That is a major loophole that needs to be addressed.

Mr. MILLER. Well, that is the rub. There appears to be a series of procedures that can be undertaken within the industry across the board, not limited to General Chemical, where there really is not notification in terms of what the community might expect as a result of the first time of unloading or off-loading of this chemical by General Chemical—the additional storage of chemicals on-site or off-site, if you will.

Our survey, as I said earlier today, just quickly in the responses from the industry, suggests there are some 500 tank cars out there that are being used for storage of a variety of materials, in whatever combination. Apparently, we don't know. Would it be correct that you are not notified as to how long they are there?

Dr. WALKER. That is correct.

Mr. MILLER. And yet you are expected to construct a system which will take into account all of those variables. It seems to me that is far too many variables for you to handle.

Dr. WALKER. I agree with you.

Mr. MILLER. The residents of Martinez ought to know, or somebody ought to know, as chemicals are moved back and forth on that siding, what is there at any given time? It would seem to me that notification is not so horrendous with electronic mail, or whatever it is, to tell the fire department in Martinez what is now currently

on those sites, or the fire department in Richmond what is or is not on those sites, especially when some of it apparently is left there for extended periods of time, as previous surveys by the district attorney's office has shown.

It would seem to me, then, you would have some idea if all hell breaks loose, in the case of a tanker car, what combinations you are looking at, whether you are looking at further explosions or more toxics and, again, what do you tell the citizens.

Dr. WALKER. We have undertaken that inquest after each rail incident. The State, most recently, in the Dunsmuir incident, we called in the Federal Railway Association, met with Southern Pacific and came up with the same answer we are hearing today: It is a matter of federal regulation.

I believe there needs to be a change in federal regulation which gives more authority either to the States or to local communities to help regulate the issue of rail car inventories. If the Feds cannot do it, other people need to do it.

Mr. MILLER. I guess I can sympathize with the railroads that don't want to tell the town the makeup of every train that passes through the town over a period of time, over the years. But by the same token, when a manufacturer or user of chemicals is storing those on leased or private sidings, or whatever the railway system is off of the main tracks, it seems to me that it is a question of whether that regulation goes to the manufacturer or does that go to the railroad.

If Shell Oil or Chevron or General Chemical is storing chemicals on-site, I am not sure that you are barred from asking them what they are doing because of the Federal Railway Act. They have made a decision to keep those chemicals on railtracks that are under no regulatory jurisdiction and in a condition not under regulatory jurisdiction.

I don't know the answer to the question, but it seems to me it is certainly worth asking in terms of compliance with notification.

Dr. WALKER. With regard to legal compliance, we are restricted by an arbitrary 30-day limitation. If it is over 30 days, they are required to report the inventory. If it is less than 30 days, they are not required to report the inventory. And that really allows, I believe, for a hide-the-pea type of situation.

Mr. MILLER. The problem is you don't know when the 30 days starts to run?

Dr. WALKER. That is correct.

Mr. MILLER. If they don't tell you the first day the chemical is put into storage, then how can you count 30 days to see if it is still there or not? They tell you, theoretically, when they are at or near 30 days?

Dr. WALKER. Correct.

Mr. MILLER. And we don't even know if they are doing that. In fact, again as the district attorney points out, they are not doing that.

Dr. WALKER. That is right.

Mr. MILLER. Well, I raised that issue because I think we will wait and see the outcome of both your investigation and the other investigations, with respect to General Chemical, as to the specifics of this incident. But in terms of the communities, whether it is a

rail car or otherwise, there is such a gap in information that is available to you or Mr. Brown or to State agencies, or what have you, with respect to the reaction that we want out of emergency services when something like this happens that, in many instances, you are moving blind?

Dr. WALKER. Yes, we are.

Mr. MILLER. We have not even started yet with the notion that many of these chemicals are simply not even in a secure facility. They are sitting on a siding somewhere in Contra Costa County and they are simply out there in the public domain.

Dr. WALKER. I personally believe the greatest ongoing risk to the residents of our county comes not from the fixed facilities but from the transportation incidents from the rail cars or tanker trucks which are rolling up and down our freeways daily, completely unregulated, to my knowledge, with regard to safety issues.

Mr. MILLER. Well, thank you very much, to all of you for your testimony.

I would like to reserve the right, if I might, of the committee, to submit additional questions to you as we continue in this process, and if you would respond in some kind of timely basis, I would appreciate it.

Thank you.

Mr. MILLER. The next witness will be S. Mark Lindsey, who is the acting administrator and chief counsel of the Federal Railroad Administration.

Mr. Lindsey, welcome to the committee; and we appreciate you taking your time. We know that you have a scheduling problem so we will try to get through your testimony and questions as rapidly as we can.

Mr. LINDSEY. Thank you, Mr. Chairman.

Mr. MILLER. You are welcome to submit it and proceed in any manner in which you are most comfortable.

Mr. LINDSEY. I would like to submit the written statement for the record, Mr. Chairman, and summarize it more briefly.

Mr. MILLER. That is fine.

#### **STATEMENT OF S. MARK LINDSEY, CHIEF COUNSEL, FEDERAL RAILROAD ADMINISTRATION**

Mr. LINDSEY. I deeply appreciate your courtesy in accommodating my scheduling difficulties. It is severe for me. And you save me, I think, a whole day, which I deeply appreciate.

I should also note at the outset that I am cited on the testimony as acting administrator, and I ceased to be that yesterday afternoon when Jolene Molitoris was sworn in as our new administrator. So I am just here as chief counsel. Happy to be back to my regular job, too.

Mr. MILLER. I was going to say, is that better?

Mr. LINDSEY. It is better, very much so.

Mr. Chairman, I am pleased to have this opportunity to come before the committee to address this very serious subject about which we at FRA are regularly concerned.

The railroad system in the United States is a major means of transporting hazardous materials, and we are extremely concerned that their transportation be safe and that their loading and unload-

ing at each end, which is also within our jurisdiction, be done safely.

We have a great deal of empathy for and sympathy with the citizens of the Richmond area who were exposed to this toxic cloud. It is a very scary thing to be exposed to a hazard chemical and certainly, at first, not to know what the likely consequences of that would be or perhaps what to do.

We strive daily to prevent the exposure of people to that sort of thing. For the most part, I think we have managed a pretty good record in the railroad industry lately on that; but we are attempting continually to do better.

One important measure of that is that since 1980 I am aware of only 1 death that has resulted from a release of a hazardous material in rail transportation. Certainly we are trying to do better all the time because even 1 death is an unacceptable level and so are injuries; and injuries continue to occur.

As you pointed out in your invitation to the hearing, Mr. Chairman, and in your remarks this morning, an important way to view this issue is in terms of how do the community of residents and the hazardous materials industry coexist in the same area. Certainly the industry is important in terms of jobs and tax base and products that our society needs, yet residents need to be able to live in security and safety.

FRA's part of trying to protect public health and safety here is the regulation of rail transportation. We do that under the Federal Railroad Safety Act; the Hazardous Materials Transportation Act, which has regulations under it that we enforce but do not write; and the Accident Reports Act.

To do it, we have 358 inspectors nationwide supplemented by 124 State inspectors, of whom there are a number from California. California has a very active State program working closely with our own office of safety.

Within that context, however, railroads and shippers have the primary responsibility to conduct their activities in compliance with the law and safety.

In respect to this particular incident and what is going on here in the Richmond area, you have expressed concern about the storage of hazardous materials and railroad tank cargoes to us both before the hearing and certainly in what I have heard you say this morning.

Our regulations don't cover a great deal about storage, and regulation is limited primarily to storage related to transportation. We restrict storage in railroad tank cars to 48 hours incident to transportation, and the other requirements that we have relate to assuring that the material is properly delivered once it arrives at its destination. We are looking for the consignee to claim the shipped material quickly and store it appropriately.

The regulatory requirements are fairly broad. What is imposed upon the railroad is to assure that when a car full of hazardous material arrives at its destination it is stored safely, and that it is in a secure location. And those words, "secure location," go very closely to what we think are the principal safety concerns around the storage of hazardous materials in a tank car.



These tank cars are, by and large, very safe vehicles to hold almost anything in. They are very sturdy, and continually we attempt to make them better, of course. But one of the principal hazards to them is vandalism, and securing location and preventing access to the cars by unauthorized people is very important to the safety of storing hazardous material in a car for whatever length of time. And the other one is to prevent collisions, because the principal cause of releases of hazardous material, whether in transportation or anyplace else, is a collision with a container.

Our regulations do not address storage of hazardous materials inside plants other than those requirements that I have just recited. California, as you have noticed earlier in the discussion this morning, does have a statute relating to that dealing with preventing storage for periods greater than 30 days.

I would add, listening to the discussion about notification, that I believe that the EPA's regulations bearing on community notification under the Community Right-To-Know Act would cover storage in tank cars that are not in control of the railroad because, as I recall it—and I am not an expert in the area, and I might like to supplement this for the record—my recollection is that the regulations simply require the owner of the facility and the operator of the facility to report to the emergency responders the chemicals that are on site without regard to what they are stored in, whether they are in a stationary tank or a tank car or whatever. They are simply required to notify the emergency responders about the presence of the chemicals and the characteristics of those chemicals and what ought to be done in the event of their release so that storage in tank cars, I think, ought to be covered.

In terms of this particular incident of storing oleum in a car, while the oleum was sitting in a tank car on the site across the street from General Chemical's plant, it was pretty safe, Mr. Chairman. Oleum congeals into a condition about like Crisco below 85 degrees Fahrenheit; and that is the condition it is normally in when it is in railroad transportation. And to be off-loaded, it has to be heated until it is liquid and able to flow.

From what I understand from our hazardous materials inspectors, the trick is to heat it just enough that it will flow and not enough that it begins to vaporize, which creates a good deal of pressure.

And in the course of heating the oleum in order to unload it was where the problem arose here and where it is most likely to arise in the transportation of this substance at any rate.

I think you already know the basic facts of this release. The oleum was being heated through steam pipes to make it fluid enough to release, and at some point the pressure became sufficient that a rupture disk on the tank car began to leak. They attempted to collect those vapors by vacuum until the leak got too big and then had to flee the area and managed to cap it up only somewhat more than 2 hours later.

I note in passing that our inspectors have told me there was a General Chemical employee whose name has escaped me who did a very good job of capping that event at considerable personal hazard, and I think he merits some mention in passing because he displayed a good deal of courage and creativity and managed to stop

that leak and, I think, rendered a significant service to the community in doing it.

Finally, in terms of the Federal Railroad Administration's investigation, we have interviewed everyone having to do with this particular incident. We have sent off the relevant pieces of equipment for analysis at laboratories, including the pressure gauge regulating the steam and the ruptured disk to see whether we have a faulty disk here or, if not, what the other cause of the accident may be. That investigation is ongoing. The investigation of the disk is being conducted by our own transportation systems center in Cambridge and by MIT.

Thus far, no corrosion was detected on the disk that would be accountable for a failure. And they will be examining the disk in sections with an electron microscope to see whether there were internal flaws that might be detected.

Beyond that, we are examining whether there were human errors, whether the procedures followed at the plant were adequate, whether the training of the employees was adequate, and whether the information available to the people who had to respond was accurate and sufficient.

One note I would like to add in closing, I heard from the earlier panel that it was planned no longer to ship oleum from this facility in tank cars but rather to shift to tank trucks, and I would like to suggest that perhaps the people making that decision might wish to reexamine it because a tank truck is not quite as sturdy as a tank car; and I am not sure that safety is well served by that decision.

With that, Mr. Chairman, thank you very much. I will be glad to answer whatever questions you may have.

[Prepared statement of Mr. Lindsey follows.]

STATEMENT OF S. MARK LINDSEY  
ACTING ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES  
AUGUST 10, 1993

Mr. Chairman, I am pleased to have this opportunity to testify before your subcommittee on the important issue of the safe transportation and handling of hazardous materials. On behalf of the Federal Railroad Administration, let me first express my sincere sympathy to those in Richmond and surrounding areas who were victims of the release of hazardous materials that occurred on July 26, 1993. Managers and employees of chemical and transportation companies and experts from federal and state agencies are at work daily trying to prevent such occurrences. Given the volumes of such materials used in and transported through our communities every day, the safety record is actually quite impressive in general terms. Of course, such general statistics are of no comfort to those who experience injury, evacuation, or fear when a release of hazardous materials occurs. Understandably, such persons want to know the cause of the release and what is being done to prevent a recurrence.

Your invitation to testify stated that this hearing will focus on how the hazardous materials industry and county residents coexist in the same community. That is an excellent way to frame the issue, for it makes clear that the chemical industry and the transportation industry are indeed parts of



the community. In terms of producing important products, providing jobs, and expanding the community's tax base, these industries are vital parts of the community. Still, residents have every right to expect that the production, use, and movement of hazardous materials will not jeopardize their health. Let me explain what FRA is doing toward that end.

Under the Federal Railroad Safety Act of 1970, FRA has statutory authority over all areas of railroad safety. FRA also has authority to enforce the Hazardous Materials Transportation Act and its implementing regulations in the rail mode. In addition, FRA has accident investigation authority under both of those statutes and the Accident Reports Act. Of course, the National Transportation Safety Board (NTSB) has broad authority to investigate transportation accidents and often investigates major rail accidents.

FRA's safety program entails monitoring safety conditions and regulatory compliance in the rail mode, enforcing the statutes and regulations through a variety of methods, determining the cause of significant accidents and incidents, and educating the regulated community and public on issues related to rail safety. FRA's nationwide inspection force of 358 inspectors is divided by area of expertise. Of those, 43 are hazardous materials inspectors. Obviously, such a small number of inspectors--even when supplemented by over 100 state inspectors who participate in federal enforcement--cannot inspect every hazardous materials shipment or transport

vehicle. Instead, our inspectors focus their efforts on the locations and companies that present the highest risks based on such factors as volume and nature of hazardous materials traffic, compliance history, and accident data. The inspectors examine equipment, documents, and practices of railroads and chemical companies to determine whether they are in compliance with the federal hazardous materials regulations. State safety inspectors are an important supplement to the FRA inspection force. When properly qualified, such inspectors are authorized to enforce the federal requirements. California has a very active state participation program. The primary responsibility for safety and compliance, of course, rests on the regulated companies, whose employees are required to be familiar with the pertinent regulations and to comply with them.

Other federal agencies have complementary authority to address various hazards posed by chemical plant operations. The Occupational Safety and Health Administration (OSHA), for example, has requirements concerning personal protection equipment, hazard communication in the workplace, and process safety management of highly hazardous chemicals. Of course, the Environmental Protection Agency (EPA) regulates hazardous materials in many ways. Perhaps the most important for today's purposes is EPA's Community-Right-To-Know regulations, which require that detailed information on the nature and quantity of hazardous chemicals in any facility be conveyed to local governments and emergency response organizations. Various

state agencies also play a role in implementing some of these federal programs and their own requirements.

Despite the efforts of all these dedicated experts at the state and federal level, these dangerous materials sometimes are unintentionally released in volumes sufficient to cause injury, evacuation, and even death. When that occurs within the jurisdiction of FRA, we try to find out the cause or causes so that we can take enforcement, regulatory, and/or educational steps to help prevent a recurrence. One important measure of our success is that only one person has died since 1980 as a result of a hazardous materials release in railroad transportation.

We began our investigation of the Richmond incident on the day it occurred. The California Public Utilities Commission is working with us in the investigation. We have not yet reached a conclusion as to cause. Here is what we have learned.

At approximately 7:40 a.m. on July 26, a product called oleum (the technical name of which is sulfuric acid, fuming) was unintentionally released from a railroad tank car while it was connected to an unloading device at the General Chemical Company in Richmond. The car (GCTX 415199) was a DOT Class 111 car equipped with a safety vent. The vent contained a frangible disk known as a rupture disk, which is designed to burst at a certain pressure. The idea is to permit the product to escape through this small opening rather than risk an explosion of the car from internal pressure.

Oleum must be heated before unloading so that it will flow. The car was being heated at the time of the incident. We have been told by those present that the unloader noticed vapors escaping from a small hole in the disk when the indicated internal pressure was at 55 psi, well below the burst pressure of the disk. The unloader stated that he immediately shut off the steam heating unit and placed a vacuum hose at the leak to retrieve the vapors. The hole in the disk became larger, surpassing the capacity of the vacuum hose, and the unloader left the immediate area and activated the company's emergency alarm system. A significant quantity of vapor escaped until a temporary plug was placed in the vent at about 10 a.m. Of course, we all know what occurred as a result: A large vapor cloud rose and moved across the area. Hundreds of persons sought medical treatment at local hospitals for symptoms that were apparently caused by the vapor. Massive disruption of rush-hour traffic ensued.

Our investigation is focusing on whether the disk was defective, causing it to rupture at a pressure well below its intended burst pressure; whether the device used to monitor the car's internal pressure was accurate; whether human error was involved; whether the company's procedures for unloading and inspecting cars prior to loading were proper and whether training of the personnel involved is adequate; and whether the information we have received from those on the scene is fully accurate. Of course, other factors may come to light and

require examination.

The disk is being analyzed at the Department of Transportation's Volpe National Transportation Systems Center in Cambridge, Massachusetts. We hope to have the results of that analysis soon. If that analysis reveals that the disk was defective, we will then have to try to determine how it came to be defective and whether it is one of a kind or part of a batch of defective disks that needs to be replaced. If the analysis indicates that the disk functioned as intended, we will have to look for the cause elsewhere. As soon as we have reached a determination as to cause, we will be glad to share it with the committee. If the investigation reveals the need for regulatory change, we will make it. If evidence of regulatory violations is uncovered, we will take appropriate action.

The chemical and railroad industries themselves have the primary responsibility to prevent releases of hazardous materials from rail cars and have very strong incentives to ensure safety. Incidents like the one in Richmond challenge the legislative and executive branches at all levels of government to examine their laws and programs to see what more can be done to prevent such occurrences. The results of FRA's investigation of the incident will help FRA determine what measures it may need to take to increase hazardous materials safety in the rail mode.

**FRA's Exercise of Jurisdiction in Chemical Plants:  
Sources of Authority**

- o **Federal Railroad Safety Act of 1970 (Safety Act)** provides FRA authority over "all areas of railroad safety" and provides authority to conduct investigations and to "enter upon, inspect, and examine rail facilities, equipment, rolling stock, operations, and pertinent records at reasonable times and in a reasonable manner." Chemical plants with railroad tracks are, presumably, rail facilities. In any event, railroad equipment and rolling stock in such plants are subject to FRA's authority. For resource and other reasons, FRA has excluded industrial railroads from most of its regulations. However, this limitation on the applicability of its regulations does not affect FRA's broad authority to investigate or take emergency measures even where its regulations do not apply. Moreover, the hazardous materials regulations do apply, even in the chemical plants (see below).
- o **Accident Reports Act** gives FRA authority to investigate collisions, derailments, or other accidents resulting in serious injury to a person or to the property of a railroad and occurring on the line of any railroad. If chemical plant railroads are railroads, which FRA believes they are, this provides ample investigatory authority in the chemical plant context.
- o **Hazardous Materials Transportation Act (HMTA)** gives FRA authority over the rail transportation of hazardous materials in commerce. (Other Department of Transportation agencies enforce the HMTA in their respective modes, and the Research and Special Programs Administration has intermodal responsibility, including issuance of hazardous materials regulations.) "Transportation" includes "movement of property by any mode, and any loading, unloading, or storage incidental thereto." (Emphasis added.) "Commerce" means "trade, traffic, commerce, or transportation" between two or more states or that "affects trade, traffic, commerce, or transportation" between two or more states. FRA has the authority to enter upon and inspect the records and properties of all persons to the extent they relate to the transportation of hazardous materials in commerce. The hazardous materials regulations have provisions that relate specifically to unloading and storage of hazardous materials. The regulations concerning storage, however, refer to storage of shipments that are within the railroad's control, not storage in cars that have reached their destination or never left their point of origin.
- o **Conclusion:** FRA has ample authority to investigate hazardous materials incidents involving a release of hazardous materials from a rail car at any facility. FRA,

often in conjunction with other agencies, investigates any significant release to determine its cause. FRA's hazardous materials inspectors, supplemented by state inspectors in states that participate in the federal program, inspect hazardous materials shippers and consignees to determine their compliance with the hazardous materials regulations.



Mr. MILLER. With that, thank you, Mr. Lindsey, for your help in the investigation of this incident and for your testimony this morning.

As you stated, the 30-day notification provision for storage is a matter of State law, so I would assume that this hasn't gone challenged. As far as I know, the Federal Government has not preempted the State from regulating the storage of material in tank cars on sidings that are either leased or privately owned.

Is that fair to say?

Mr. LINDSEY. Yes, Mr. Chairman, it is with one caveat.

I am told that someone has suggested to the Research and Special Programs Administration that it should be preempted and that they have that petition under consideration.

I don't know who the petitioner is, but I believe that RSPA will come to a decision fairly soon. And while I have not looked closely into the issue, I am not aware of an obvious conflict on the face of the regs.

Mr. MILLER. You don't know who the petitioner is in this case?

Mr. LINDSEY. No, sir, I don't.

Mr. MILLER. Bet I can guess. But we will move on.

On that issue, because you raise a couple of points, in preparation for this hearing, we asked the local industries if they might tell us the number of tank cars. All of them have not responded—I don't mean to find fault with that. This was all done just in the last couple of days. Some have told us that they haven't responded by today but they are preparing the work. There are some 500 tank cars that are being used for these purposes within their industry; I assume either on site or somewhere off site where they have arrangements with the railroads for storage.

Again, as you point out, outside of collision, the next greatest threat may in fact be vandalism to these cars. I live in Martinez, which is just up the way here; and our waterfront cars are constantly moved between the refineries and stored for periods of time. I would assume that most residents of my hometown would believe that the cars on those railroads are under the jurisdiction of the railroads. But, in fact, that may very well not be the case.

Can they lease sidings to industries for that purpose?

Mr. LINDSEY. Yes, Mr. Chairman, they can.

Mr. MILLER. And do?

Mr. LINDSEY. And do.

Mr. MILLER. So the question that would be raised with respect to notification is, When the tank cars come out of the Shell Oil refinery or out of some other facility, are they still on their property, or are they on railroad property, or are they somewhere in between?

Does the lease take them out of the realm of the Department of Transportation jurisdiction?

Mr. LINDSEY. No, sir, it doesn't.

Mr. MILLER. So a leased line would be within your jurisdiction?

Mr. LINDSEY. Yes, it would. Property ownership doesn't really affect us. What does is whether or not the vehicle is in transportation, and at times that can be a hazy line. We tend to resolve it inclusively.

For example, in the case of the move here at General Chemical, I believe they thought that they were not putting the tank car in question here in transportation when they had a local switching railroad move it across the street and back. Our view was different. They, in fact, moved it off their property; they had a railroad, which the switching railroad is, come and move it for them. It was not the same in our eyes as someone simply moving a tank car within his plant.

And that would be typical of the operations that you are describing in Martinez as well.

Mr. MILLER. So you consider those tank cars in transportation?

Mr. LINDSEY. If they are moved by a railroad, yes.

Mr. MILLER. If they are put on a leased siding and left there for 30 days, does the legislature have some right to regulate what happens to those, or do you preempt the ability of the State legislature to deal with that?

Mr. LINDSEY. In that sense, I don't think we have. If they are sitting on a facility and they are not in transportation—that is where the line gets difficult—if they are sitting there in storage, we are not regulating them at that time, and our regulations outside of transportation don't hit that issue. So I have a difficult time seeing how we would cover that. There may be a wrinkle to it that I don't know.

I have to admit I am not closely familiar with California's statute so there may be some element of that statute that I am missing.

Mr. MILLER. Finally, let me just go back, because I am interested in the part of your testimony where you suggested the State's ability to regulate storage is now undergoing challenge, but absent a successful challenge, currently the State has the ability to regulate the conditions of storage of these materials even though they are in rail cars as long as they are not in transit?

Mr. LINDSEY. Yes, sir, that is correct.

Mr. MILLER. I guess we better pay attention to that challenge at this point.

Well, thank you very much. And, again, we reserve the right to submit additional questions to you. And we look forward to the results of your laboratory findings on this particular incident.

Mr. LINDSEY. We will be happy to supply them to you as soon as we have them.

And, again, thank you for your courtesies,

Mr. Chairman.

Mr. MILLER. Thank you.

**PANEL CONSISTING OF HON. GEORGE LIVINGSTON, MAYOR, CITY OF RICHMOND; MICHELLE JACKSON, EXECUTIVE DIRECTOR, NEIGHBORHOOD HOUSE OF NORTH RICHMOND; HENRY CLARK, EXECUTIVE DIRECTOR, WEST COUNTY TOXICS COALITION; DOROTHY OLDEN, NORTH RICHMOND MUNICIPAL ADVISORY COMMITTEE; AND DONALD WATTS, PRESIDENT, NORTH AND EAST NEIGHBORHOOD COUNCIL**

Mr. MILLER. The next panel will be made up of Mayor George Livingston from the City of Richmond; Michelle Washington Jackson, the executive director of the North Richmond Neighborhood House; Henry Clark, from the West County Toxics Coalition; Doro-

thy Olden from the North Richmond Municipal Advisory Committee; and Donald Watts from the North and East Neighborhood Council.

Come to the table and let me welcome you to the committee and thank you for your cooperation and your efforts in working with the community after this incident and your cooperation with the committee in the preparation of this hearing.

And let me also say that we in no way believe that this is inclusive of the entire community affected by this incident. That is why, at the outset, we certainly would encourage others who have views that they think should be expressed or which are not represented here to feel free to do so to the committee over the next couple of weeks.

And with that, Mr. Mayor, we will begin with you. Welcome to the committee.

#### STATEMENT OF HON. GEORGE LIVINGSTON

Mr. LIVINGSTON. Thank you very much, Mr. Chairman, it is a pleasure being here. Normally mayors are very excited to get national publicity; but on this one, I must say I was not overly impressed that we were in the news with this type of incident.

I came to you today without a printed statement but to verbalize some of the things that I noticed during this unfortunate experience.

First of all, I thought it would have been proper for the highest elected office in the city to be notified in times like these because I did get a number of calls from people who were informing me as to what they had heard and I was a little bit on the naive side. I was most embarrassed. I would hope that in the future, whenever you make those contacts, at least the community leaders should be notified.

And I was also informed that the Pacific Gas and Electric Company representatives were not notified. The water company was not notified. And I talked to one of our representatives, John Joyer, who was a little bit disappointed because it is possible that the pollution could have landed in our waterworks. And I certainly should have known about that.

When I first heard about this incident, I immediately went to where the spill was taking place. I began to smell some of the odor, and the highway patrol and others had blocked off the area to make sure that it was a safe zone. But being the Mayor, I had the authority to go into closer proximity.

I would like to take my hat off at this moment to the public safety officials who were involved: highway patrol, sheriff department, police department from the city of Richmond, and our fire department. They worked as professionals, and I thought it was a job well done.

Unfortunately, it was a sad beginning; but the conclusion, I thought, was very, very good. It was captured in the early hours. I went to the hospitals to visit some of the members who had gone to the hospitals, and I was very impressed with the professionalism shown at especially Kaiser Hospital. I didn't visit Brookside Hospital, but it was an emergency and people reacted very well. I no-

ticed that no one seemed to be pushing the panic button, and that is good whenever you have these kinds of incidents.

I appreciate you, Mr. Congressman, coming to Richmond to get information on this particular subject. We had a very long discussion on this subject at our last city-wide council meeting. There are those who are concerned.

In conclusion, my thought is that we need jobs; we need a safe working environment; and if I have a choice, I will take the safe working environment, and I would say that jobs are something that is not on the front burner.

Safety, the lives of our citizens, are at stake; and we must protect them. I would hope that all of this information that is being discussed would be compiled in a way whereby we will be more astute on this particular subject.

We have other companies in the city of Richmond that have chemicals; and we hope that this information will be conveyed to them as well because General Chemical is not the only plant in town that has these kinds of chemicals.

And I conclude by saying that it is not an emotional setting we should have. We should sit down as reasonable people, work out the details and not have a Band-Aid approach. We do not need a quick fix. We need a permanent solution. It is not just in the city of Richmond. It is in many parts of the United States, and I think we can all learn from this incident.

Thank you very much.

Mr. MILLER. Thank you.

Michelle.

#### STATEMENT OF MICHELE JACKSON

Ms. JACKSON. Thank you, Congressman Miller, for this opportunity to testify this morning. We are here today to speak to environmental racism.

This racism is deadly, insensitive, dehumanizing, and economically deficient for the residents of North Richmond and the entire city of Richmond.

This racism is symbolic of the racism experienced during slavery whereby a few benefit and the majority suffers. This suffering was very blatant on Monday, July 26, 1993, at 7:15 a.m. when the residents of North Richmond began to water their gardens and run to the store to get milk fighting a sulfuric cloud that consumed their respiratory systems. This racism was blatant when African-American females were taken to the fire station and asked to take off all their clothes while white firemen watered their naked bodies down with water hoses looking very promiscuous.

This racism was blatant when residents were put in buses used for criminals to take them to San Ramon for care because everywhere else was full. Once there, they were left to find their own way back to North Richmond and family members waiting and anticipating not knowing where their loved ones were for hours.

This racism was blatant when nobody, absolutely nobody, came to North Richmond to do an environmental check on the elderly, children, families, and residents with prior documented respiratory problems. North Richmond is not that big, Congressman.

Where the chemical was most concentrated is the very place that received the least support and services. The YWCA on MacDonald Avenue was chosen as a medical satellite clinic for the community?

Since there is no such thing as environmental justice, since many of these businesses are housed throughout this country in the most poor communities, since these businesses do not hire anyone from the area, how can we expect change? They have it made. Who is responsible for change? Not one politician came to North Richmond, no one from the health department, no one from General Chemical.

So please inform us, who is responsible for what happened July 26, 1993?

What are the changes needed?

Number one, ensure that at-risk facilities hire at-risk people who live in their community.

Number two, an early warning system via sirens, horns, bells, whatever it takes.

Number three, clinical emergency teams need to be set up and operated in North Richmond or wherever the impact of such hit is the worst, via Verde School, Peres School, Shields-Reid Park, Neighborhood House.

Number four, establish an evacuation plan that is thorough and precise and not prejudged and compromised.

Number five, have culturally competent staff on the Contra Costa County emergency service team.

Number six, special assessment should be paid by these at-risk companies to compensate for these additional services needed for the community.

We need more than brochures, Congressman. We need more than education. We need a lot more than information after it happens. Thank you.

[Prepared statement of Ms. Jackson follows:]

TESTIMONY OF MICHELE JACKSON  
EXECUTIVE DIRECTOR  
NEIGHBORHOOD HOUSE OF NORTH RICHMOND  
RICHMOND, CA

Before the

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

August 10, 1993  
Richmond Auditorium  
Richmond, CA



We are here today to speak to ENVIRONMENTAL RACISM. This racism is deadly, insensitive, dehumanizing and economically deficient for the residents of North Richmond and the entire City of Richmond. This racism is symbolic of the racism experienced during slavery...whereby a few benefits and the majority suffers. This suffering was very blatant on Monday, July 26, 1993 at 7:15 a.m. When the residents of North Richmond began to water their gardens and run to the store to get some milk fighting a sulfuric cloud that consumed their respiratory systems. This racism was blatant when African American females were taken to the fire station and asked to take off all their clothes while white firemen watered their naked bodies down with waterholes looking very promiscuous...This racism was blatant when residents were put in buses used for criminals and taken to San Ramon for care because everywhere else was full...once there, they were left to find their own way back to North Richmond, and family members waiting in anticipation not knowing where their love ones were for hours...This racism was blatant when nobody, absolutely nobody came to North Richmond to do an ENVIRONMENTAL CHECK on the elderly, children, families, and residents with prior documented respiratory problems. North Richmond is not that big Congressman...

Where the chemical was highly concentrated, is the very place that received the least of support and services, North Richmond.

The YMCA on Macdonald Avenue was chosen as a satellite clinic for the community????



Since there is no such thing as Environmental Justice... Since many of these businesses are housed through this country in the poorest communities, since these businesses do not hire anyone from the area (they got it made in the shade), how can we expect change... Who is responsible for change... Not one Politician came to North Richmond... No one from the Contra Costa Health Department came to North Richmond... No one from General Chemical came to North Richmond... So someone, please inform us who is responsible for changing what happened Monday, July 26, 1983.

WHAT ARE THE CHANGES NEEDED:

1. Insure that at risk facilities hire at risk residents in the at risk communities in which they do business...
2. An Early Warning System via sirens, community alarms, horns bells etc.
3. Clinical emergency team that set-up and operates in North Richmond, not 7 miles away...
4. Establish an evacuation plan that is precise, not prejudged and compromised by the health department.
5. A special assessment paid by these at-risk companies to compensate for these additional services to the community.

**North Richmond Neighborhood Action:  
Toxic Cloud Stress Debriefing**

On August 2, 1993, from approximately 6:30 p.m. to 9:30 p.m., a Critical Incident Stress Debriefing was held at the Neighborhood House of North Richmond for those in our community affected by the July 26 release of toxic sulfuric gas by General Chemical Company. Twenty local citizens attended. Henry Clark, Director, West County Toxics Coalition, and a member of the Municipal Advisory Committee Meeting, was present..

This meeting was coordinated by Jessie West, a resident of the area, and Michele Jackson, Executive Director of the Neighborhood House of North Richmond. It was facilitated by Sheryll Thomson, M.A., M.F.C.C. Ms. Thomson is on the Mental Health Disaster Committee of the Alameda County Red Cross. She is also Chair of the East Bay California Association of Marriage and Family Therapists' Disaster Response Team. She is trained and experienced in Critical Incident Stress Debriefing, and recently held two debriefings for workers returning from hurricane rescue activities.

A record of the experiences and concerns of those in attendance, related to this toxic cloud incident, is attached. It includes a list of problems the community believes require immediate action.

### North Richmond Community Report: Toxic Cloud Stress Debriefing

One resident reported seeing a light cloud and then experiencing shortness of breath and a pounding head. This resident sealed the house windows at 3:00 a.m.

Another resident related that at 6:45 a.m. there was a darkness outside; a doomsday type of darkness. None of the neighbors knew what was happening. The door to the house was open all the time. This person reports symptoms of being confused and having nausea and headaches.

A resident told of having headaches for three days after the incident.

One person at 21st and Lugg Road saw a mist, a dampness, and smelled a chemical odor. He experienced coughing and his nose alternately peeled and burned. He saw police car emergency lights flashing and got off the street.

Another person told of symptoms of vomiting, hoarse voice, and continual itching.

Another resident described the mist as being like a gray, foggy morning. This resident heard about the spill and closed all the windows, except one, which wouldn't go down. Said there was sunshine at Church Lane. At 7:30 a.m. phoned the doctor's office but it was closed due to the cloud. The doctors and nurses were sick from the cloud. Called the Hilltop Pediatrics office and a doctor gave advice --her children have asthma. During the day began to feel light headed and weaker and weaker. Went to the hospital with symptoms of burning and itching, especially itching on the back. Had a terrible headache. Used eyedrops to try and alleviate burning of the eyes. Took their 83 year old mother-in-law to the doctor because she had a heart condition.

A person said they started having diarrhea the next day (Tuesday) and it continued all week. Described their back as bleeding and "torn up".

At 7:45 a.m. one person received a call from a friend with asthma who had been warned. Nothing was being reported on the radio. Work was closed. This person then saw the cloud and experienced a sore throat and dryness. Their daughter had diarrhea.

One woman feels drained and tired. Her daughter had suffered an arm injury and her mother couldn't locate her at any of the hospitals. "I felt so bad; they couldn't help." Finally a nurse called and told her where her

daughter was. By Friday her daughter's legs were itching and broken out in blisters. Her daughter thought she was going to die.

One resident was outside watering and saw the cloud. He received a call from the warning system about 8:30 a.m. Summer school was closed and the children were coughing. He got hot and cold and experienced thick mucous. His wife was coughing and had a headache. They went to the doctor but still feel weak.

Angry residents stated "This is nothing new for us" and "The early warning system is a joke."

One person saw white clouds on the horizon, an unusual amount. A friend said "We have just had another chemical accident." They saw sheriff's people blocking the streets and found that the warning system was not working properly. Paramedics told them ambulances wouldn't come to Richmond.

A man had gotten up early and saw smoke by the tracks. He then felt it in his throat and experienced a hoarse voice. He heard about the spill at the Union office and is very angry that the chemical company makes excuses. "They should have been aware of it."

A mother has headaches and her one month old son still has diarrhea and vomiting a week later.

Another resident complained about diarrhea, itching, coughing, dizziness, and a worsening of diabetes.

Saw white foggy cloud. "I was disturbed." Had respiratory irritation. Headache. Used gas mask periodically.

"Dr. Walker said 'We tried to contact 6,000 people. We contacted about half..' That means it worked?"

Really disturbing to hear people in authority minimize the seriousness of the problem.

We were treated like "the criminals"—that we would try to fake illness just to get compensation.

Residents criticized the lack of transportation to medical facilities. Women, in particular, were appalled by the coarse and immodest manner in which they were treated while being washed off with water hoses.

We feel anger about the lack of response from the larger community--no outpouring of love and concern and help--"because we're the 'wrong' population."

North Richmond Community Report: Action List

Why were the Sheriff's prison buses used to transport people to hospitals?

Terrible behavior from ambulance-chasing lawyers.

Who warned the homeless about the danger?

Who checked on the elderly, the housebound?

A phone calling system for warning is needed.

Medical facility should have been set up in North Richmond, where concentration of the cloud was strongest.

Mr. MILLER. Thank you.  
Henry.

#### STATEMENT OF HENRY CLARK

Mr. CLARK. Thank you, Congressman Miller, for the opportunity to testify here today.

My name is Henry Clark. I am the executive director of the West County Toxics Coalition, an organization that was formed here in the Richmond West Contra Costa area going back to 1983 specifically to address chemical assaults on our communities and North Richmond being one of those lead communities.

For identification purposes also, I want to mention that I am also the president of the North Richmond Municipal Advisory Council, the community that was on the front line of this chemical assault, as well as a member of the Contra Costa County Hazardous Material Commission.

The chemical disasters that we are having here in Richmond and West County are getting worse. I was born and raised in the North Richmond community, and I can recall chemical accidents when I was growing up, the periodic explosions that rocked our house and broke windows out of our houses. Not only the specific chemical accidents that have occurred over the years, the fires and the explosions or the releases like General Chemical had on July the 26, but the daily emissions are bad enough. We live in a toxic, contaminated environment. North Richmond is on the front line, the prevailing wind patterns meaning that, the way the prevailing wind patterns blow mostly throughout the year, the emissions are carried across North Richmond. We are talking about up to 70-some thousand pounds of toxic chemicals like toluene, xylene, benzene, coming from the Chevron refinery alone. We are talking about around 50,000 pounds of methylene chloride, which is a deadly carcinogen, coming from the Chevron or Ortho Chemical Company located in the North Richmond community alone, coming into North Richmond on a daily basis. This does not even consider the long list of other facilities.

So this is a bad enough situation in itself. It is not when we come to these particular types of chemical accidents like General Chemical. This is the type of environment that we live in.

I am going to present to you an exhibit that lists companies in the Richmond area, which indicates the long list of toxic chemicals that are stored in our community, some of the ones that I have just mentioned. This is appalling. There are not supposed to be any accidents. This is an unhealthy environment for our residents to live in.

We are talking about chemical accidents today. Also in my Exhibit B here, we have a chemical accident record of the Chevron refinery alone—which is the facility in our community that has had the most accidents—since 1984. We are talking about some 18 chemical disasters that have plagued our community, just from that facility alone, not considering the other chemical accidents from other facilities in the area right here in Richmond, in West County.

In regard to the General Chemical company disaster on July 26, we are talking about a rail car, a rail car containing oleum, a sul-

furic acid compound, and a valve that malfunctioned. That may be the technical aspect of the chemical accident, but I have heard no mention about the fact that the people at General Chemical company were engaged in an illegal practice. They did not have any permit nor authorization to be carrying on the practice of transferring that oleum out of that train car into the original storage tank. That was in violation of their permit, and I have not heard any type of acknowledgment of that.

Our community, our lives, and our children were placed at risk because here was a company that was deliberately violating the operating permit.

These type of accidents here, these are not accidents. This is deliberate, a deliberate violation; so how are you going to stop someone who deliberately violates their permit that they have to operate under?

General Chemical should step forward and take full responsibility for that and acknowledge that. In addition to that fact, we have been led down the primrose path. Since this incident occurred, General Chemical have come before us and pretended that they have been a good neighbor and that this is the first chemical accident that they have had in some 50 years. Well, that is just an outright lie, plain and clear, and this exhibit here that I have in my hand now will verify that.

Here, this was discovered from a document check of General Chemical with their name right there on top of it. It says here, on 10/10/88 General Chemical had a chemical accident at their facility that injured some contract workers that were working at the Chevron refinery.

So this July 26 incident is not the first chemical accident. The company had others that have been buried and have been kept from the public and the community, and you know, they are coming forward, putting forward some information that is not accurate.

In addition to those exhibits, I have an exhibit here, Exhibit D, if you will, of the West County Toxics Coalition program going back to 1983 where we called for warning systems. And, in fact, the present warning system that the county has is a result of the work of the West County Toxics Coalition which worked with these agencies to push for some type of warning system; and we have been working with them continually to upgrade that system, to have some type of sirens, but bureaucracy is slow in getting things done.

We have been discussing upgrading this system with sirens since the last Chevron accident December 5 of 1991; and so far, here we come today, and we still haven't got that community alert system upgraded with any type of siren or that travelers' alert system.

Just in conclusion, I want to say that we certainly thank you, Congressman Miller, for having these hearings to bring all this information out in the open; but we do expect some material results to come out of this hearing.

You know, talk is good and talk is cheap, as they say, if it doesn't result in some type of material results that end up reducing the risk from these chemical accidents, making this a safer environment for all of us to live in. We need to phase out those train cars that caused that accident. I understand that they are supposed to be phased out by law on October of 1993. We hope the company



certainly complies with that, and it would be good if they showed some good faith effort and phased them out before the deadline.

The community alert network certainly needs to be upgraded with sirens, the travelers' alert, radio, and whatever else that it takes to ensure that residents and facilities in this area are informed when there is a chemical accident.

We also need to do some planning. One of the problems here in the Richmond, West Contra Costa County area, as my colleague, Michelle Washington, indicated, is that we are dealing with the situation of environmental racism. This area has already taken over its fair share. It is saturated with polluted facilities. As long as the planning agencies in the city of Richmond and Contra Costa County continue to put more of these toxic handling facilities in this area, we are only creating a further chemical time bomb that is waiting to go off.

Furthermore, we should ensure and encourage the companies that are in this area, through working with the regulatory agencies and the community, to do toxics use reduction, to phase out the use of dangerous chemicals, and to use safer substitutes.

We have chemicals stored right here in Richmond that are deadlier than the methyl ice or cyanide gas that was released in Bhopal, India, that killed thousands of people; and people are still dying from it.

We have chemicals deadlier than that right here in Richmond. And if we don't get a grip on this situation, we are just waiting for the big one to happen.

The West County Toxics Coalition and the communities here in Richmond and particularly North Richmond will certainly look forward to continue working with you, Congressman Miller, working with the mayor, the city council, to get an environmental affairs commission, whatever else is necessary, to reduce the risk of these chemical hazards so that we can have a safer community to live in.

General Chemical should come forward and compensate the community for the personal and property damages that have already occurred in addition to preventing future accidents. That is the sign of a good neighbor. That is what residents want to hear. And the residents will be having their own public hearing this Saturday when the community marches on General Chemical company from Shields-Reid Park in North Richmond at 12 noon to present the community's demands to this company to be a good neighbor, prevent accidents, and compensate our community.

Thank you.

Mr. MILLER. Thank you.

Dorothy.

#### STATEMENT OF DOROTHY OLDEN

Ms. OLDEN. Good morning, Congressman Miller. We appreciate you coming here to conduct this hearing. I thank you for allowing me to speak on behalf of my community today.

I come to you for the young in this area who have asthma and for the old who have heart trouble and breathing problems. Neither group is able to speak for itself. And if they could, who would care and who would listen?

I am here to tell you that the time has come for the larger community to start caring about us. I have read most of what the press has said about us, that we are mostly poor Blacks, Asians, and Hispanics. Yes, that may be the truth, but no matter, a lot of us choose to live here and we care about our community.

No matter what we are labeled, we are also part of America. We deserve clean air. We have the right to live not in fear of our lives or for our children's lives. We realize that the industries and the communities must coexist together. We have long done our part, but why should we suffer as we do?

We are not allowed to work in these plants; they don't want us. They want us to live in this unhealthy area and just be quiet and take whatever poison is put into the air.

Let us begin today to set standards of clean air and safety that the rest of America enjoys. Let us use today to bring forth the truth. Let us use this time to find a way to allow my children and grandchildren the chance to live and grow and be healthy.

Thank you.

Mr. MILLER. Thank you.

Mr. Watts.

#### STATEMENT OF DONALD WATTS

Mr. WATTS. Good morning. My name is Donald Watts, and I am a resident of Richmond, California, and president of the city's North and East Neighborhood Council.

I would like to thank the committee for having me here today. I would also like to say at the outset that there are scores of individuals who are better qualified than I to testify about the technical issues surrounding this incident. And, likewise, there are thousands of Contra Costa residents who were more directly affected by this accident than I was. Nevertheless, I appreciate your taking the time to hear what I have to say.

On the morning of the accident, at approximately 7:40 a.m., I was driving my two children, ages three and five, to their preschool on Carlson Avenue in Richmond. I heard on the radio there had been a small toxic spill at the Chevron refinery. I thought to myself, should I keep the kids in the car and bring them in to work in San Francisco? No, I decided to go ahead and take the children to school because these things happen all the time and I didn't want to overreact.

No sooner had I arrived at work than I realized the news stories had been wrong on two accounts. It wasn't Chevron, and it wasn't small. In fact, although early accounts were sketchy, it was clear that a horrible toxic cloud was spreading across the city. I am sure most of you are parents, so perhaps you can appreciate how I felt; but it is hard to put into words the guilt, not to mention the anger and frustration I felt, anger and frustration that I went through as a parent for having left my children in Richmond after having heard on the news there was a chemical accident in progress. It is no exaggeration to say that I felt as though my children were in a gas attack. At least the Israelis had gas masks during the Gulf War.

It was especially mind boggling to learn that General Chemical and their leaking rail car had eluded all regulatory scrutiny simply

by parking their toxic time bombs on a railroad siding for less than a month.

Perhaps the most frustrating aspect of this situation is the fact that these industries are going to continue to be our neighbors whether we like it or not.

With that in mind, it is imperative that we find ways to ensure the safety of everyone living and working near these facilities. I am not a lawyer or a technical person, but it certainly seems clear there are a number of things that can be done immediately in the area of federal regulation that would help protect us all. For example, despite a mishmash of county, State and Federal regulations in this area, there are loopholes so big you could sail a battleship through them. Certainly exempting rail cars from regulation simply because they are parked on a siding for less than 30 days is a situation that must be changed.

A community right-to-know law should be passed or expanded. Industry opposition that a right-to-know law would somewhat infringe their trade secrets is a red herring. These rail cars are everywhere in the country, and we all have a right to know what poisons are moving through and being stored in our communities. This is not only important for residents, but it is also essential for the safe and efficient use of police, fire, and health services.

Companies working with dangerous chemicals must be required to file realistic worst-case contingency plans. General Chemical's worst-case scenario, which it wasn't, was a farce. As you can see, the company said that the worst that could possibly happen would be an accident lasting no more than 5 minutes and releasing a plume a quarter of 1 mile wide and 1 mile long. And as you can see, it extended at least 15 miles.

I believe they knew full well what could happen and, instead, knowingly perpetrated a fraud on the community. I might add, if they didn't know what could happen, it is even more frightening.

And, finally, we must have strong criminal penalties as a meaningful deterrent to this type of activity. General Chemical willfully and flagrantly violated the law by failing to obtain the required permits before unloading this material. As a penalty for poisoning at least 20,000 members of the community, General Chemical was cited as having created a public nuisance.

Our community suffers from two criminal plagues: drugs and toxins. Congress, in its infinite wisdom, has seen fit to mandate minimum sentences for drug convictions. If a poor resident in North Richmond is convicted in a federal court of possessing no more than 5 grams of crack cocaine, the law requires a minimum sentence of 5 years in prison, U.S. Code 21, Section 841 and the Federal sentencing guidelines, Section 2(d)2.1. Yet General Chemical can poison 20,000 people, and they are only cited as a public nuisance.

Much has been said in Congress about the harsh penalties as a deterrent to crime. I, therefore, challenge you to show us your concern for crime is not simply a code word for a racist attack on poor people by passing equally harsh criminal penalties for corporate officers who willfully violate environmental regulations.

And I would just like to add an aside to Gary Brown's comments about public education. There seems to be a feeling that having si-

rens would cost a lot of money, and therefore, maybe we can't do it. Well, it seems to me that involving the community in this educational process is essential, especially in an era of declining revenues. As we have seen right here, we have the West County Toxics Coalition, Citizens For a Better Environment, Richmond has the Neighborhood Council system, and I think it is essential to work with the county to develop the materials and then use members of the community to go out and educate ourselves. It is not only cost effective; but it will also really take the message to the people in a way that we can get a response. We can get people who speak the languages. We have a multilingual community, and it will be a lot easier to get young people.

Everybody is concerned. Everybody wants to do something with their anger. I think this would be a constructive way of channeling our fear and outrage.

Thank you very much.

[Prepared statement of Mr. Watts follows:]

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SF CA 94105  
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**Testimony of Donald Charles Watts before Congressman Miller's Subcommittee  
August 10, 1993  
Richmond, California**

My name is Donald Watts, I am a resident of Richmond, California and President of the city's North and East Neighborhood Council.

I would like to thank the committee for having me here today. I would also like to say at the outset, that there are scores of individuals who are better qualified than I am to testify about the technical issues surrounding this incident, and likewise, there are thousands of West Contra Costa residents who were more directly affected by this accident than I was. Nevertheless, I appreciate your taking the time to hear what I have to say.

On the morning of the accident at approximately 7:40 a.m. I was driving my two children -- ages 3 and 5 -- to their preschool on Carlson Avenue in Richmond. I heard on the radio there had been a "small toxic spill" at the Chevron refinery. I thought to myself, "Should I keep the kids in the car and bring them into San Francisco?" I decided to go ahead and take the children to school since these things happen all the time and I didn't want to overreact.

No sooner had I arrived at work than I realized the news story had been wrong on two counts: it wasn't Chevron and the accident wasn't small. In fact, although early accounts were sketchy, it was clear that a horrible "toxic cloud" was spreading across the city.

I'm sure most of you are parents, so perhaps you can appreciate how I felt, but it's hard to put into words the guilt -- not to mention the anger and frustration -- that I went through as a parent for having left my children in Richmond, after having heard on the news there was a chemical accident in progress.

It is no exaggeration to say that I felt as though I had left my children in a gas attack. At least the Israelis had gas masks during the Gulf War.

It was especially mind boggling to learn that General Chemical and their leaking rail car had eluded all regulatory scrutiny, simply by parking their toxic time bomb on a railroad siding for less than a month.

I spent the rest of that day stewing in impotent rage until it finally occurred to me that there must be thousands and thousands of people who were as concerned as I was, and that if our anger could be channeled in a positive direction perhaps some good could come of this near deadly accident.

Since I didn't know where else to turn, I called Congressman Miller's office to see if he could help us. I must say I am pleased to see the Committee here, and think your presence in our community today reflects a growing awareness that if something isn't done

Much has been said in your august body about harsh criminal penalties as a deterrent to crime. I therefore challenge you to show us that your concern with protecting the public from crime is not simply a code phrase for racist attacks on poor people by passing equal harsh criminal penalties for corporate officers who willfully violate environmental regulations.

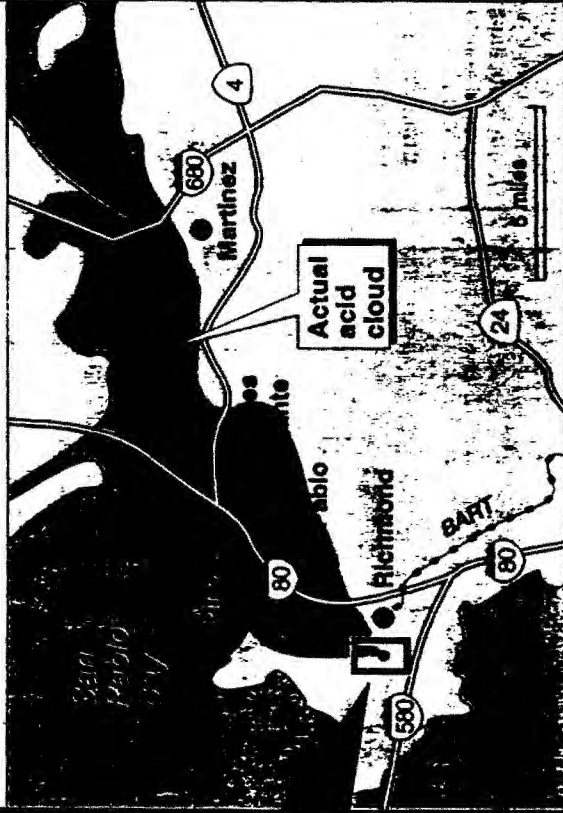
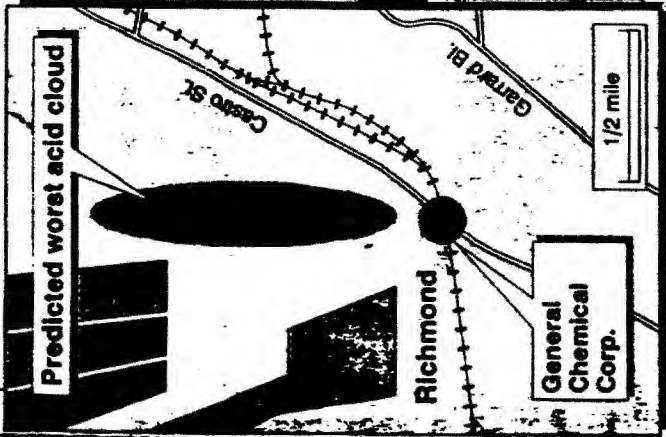
Thank you.



**APPENDIX 1**

# A predicted accident and the real one

General Chemical Corp. predicted its "worst credible" sulfuric acid accident would be a five-minute, local release from a corroded pipe or tank. Monday's three-hour leak from a rail car created an acid cloud that spread north to Solano County. The predicted cloud marks an area in which the fumes would be intense enough to affect health permanently after one hour's exposure.



ANDREW DeVIGAL/Times

Mr. MILLER. Thank you.

Let me thank all of you members of the panel for your testimony. As you quite correctly noted, this type of accident—maybe not something of this magnitude—but this type of accident is not an isolated incident in our county. And as I go back over the last decade, or longer actually, I think over the last 15 years, you find a series of very serious accidents that have taken place over that period of time; and they basically cover the communities along the waterfront, Benicia, Martinez, Richmond, North Richmond, Rodeo, the entire area.

But your testimony suggests that the accidents occur, and there is activity, but then there is not follow-up. And I just wondered if you might point out what historically has been the situation. Because, clearly, as you point out in this case, this is certainly not the first time that the community of North Richmond has been impacted by various accidents on site and off site of the facilities. And the question would be: What has been the follow-up?

Michele or Henry or David, whoever feels comfortable answering.

Mr. CLARK. I certainly want to comment on that because when these chemical accidents occur, you know, I am right there on the spot assessing the damage that is done to the community.

Basically, the pattern has been—particularly the North Richmond community, as I indicated earlier, which is on the front line of these chemical accidents—normally the situation is, Congressman, that there is a state of denial on the part of industry. What they tell us mainly, for most of the chemical accidents that we have been bombarded with, is that, well, you know, the community really wasn't affected because the toxic smoke went up in the air and over your community so you really weren't affected. It has basically been an effort to minimize the chemical exposure to residents in North Richmond.

Then we go through possibly some hearings before the county Board of Supervisors or the county Hazardous Materials Commission.

In the end, in terms of any material results coming out of it to prevent accidents, nothing really comes out of it.

In terms of the community alert network, we find over and over again that it doesn't work like it is supposed to. But there seem to be some long delays continually before we can get it upgraded.

And, in the end, the community is treated like they are victims or they are criminals, that we are just out trying to hustle whatever particular company for a quick buck.

And so, from beginning to end, we become the victims though we were the ones that were poisoned. We are the ones that were chemically assaulted, but we are the ones whose human dignity was trampled on and who are criminalized and treated like we are some community of hustlers trying to get a quick buck out of General Chemical or Chevron somewhere.

So that is the usual pattern. And people are left with medical bills; people are left with property damages; and the companies end up not really compensating the people or putting forward any attempt to compensate them.

As far as their long-drawn legal suits, there are suits going back to April 10 of 1989 and a series since then on up to today.

So that is the pattern of the way the community has been treated. And then after the chemical assault—I want to mention this because this has been brought out in the media this time very significantly—after the chemical assault, the first wave of assault on our community, and then here come the lawyers assaulting our community. We found in many cases, though, there are some good attorneys—and we certainly encourage attorneys operating ethically—but we find that in many cases, the attorneys come on the scene, they sign up a lot of people, they set up shop on the street corners throughout the neighborhood, and when they find that the cases are going to take a long time going through the courts or they are not going to get the type of return that they thought immediately or quickly enough, then they end up dropping off the case, often not even showing the common courtesy to even let the residents know that they dropped off the case.

And, here again, residents are left under another assault, the second wave of the assault, trampling on their human dignity. That has been the historical pattern, Congressman.

Mr. MILLER. Let me ask you, you mentioned that you have been working since, I think it was, December 1991 on the completion of the emergency notification network. It was suggested, I think, by Dr. Walker that that is nearing completion.

Is that your understanding that the combination of phone and sirens is coming to completion, certainly with respect to the area around Chevron?

Mr. CLARK. Well, I know that we have been having some discussions; however, I have not received any report or any indication that that process was complete.

Mr. MILLER. I don't mean it is complete. But they have apparently now arrived at the point where they are now prepared to put that in place.

I don't want to put words into Dr. Walker's mouth, but I was led to believe that is now being finalized.

Mr. CLARK. No, I am not aware of that.

What we would like to see is some timetable as to when that process would occur if, in fact, it is about to be finalized. That is what we want to see, some material results.

I want to congratulate you, Congressman Miller, for actually having this hearing, because we have been promised hearings before, too, by various elected officials; and the hearings never even materialized either. This is the first hearing that we have had by any of our elected officials really on these chemical accidents and this incident here. Thank you.

Mr. MILLER. Michele, with respect to just from this incident on into the future, obviously everybody at the table has testified that there needs to be community involvement in that follow-up, that it won't work if either people like myself as policymakers or the local governmental officials that have to carry out that policy simply talk to ourselves.

What is the vehicle that makes the most sense with respect to the North Richmond community? Is it the municipal advisory committee? Or how do you pull together a cross section of representation for that ongoing consultation and information exchange?

Ms. JACKSON. Okay. Mr. Congressman, we had a debriefing last Monday at the Neighborhood House, and a lot of community residents came to the Neighborhood House on Monday night to talk about what happened. And I learned a lot from that setting.

And what seems to be the problem is that there are a lot of emotions when something like this happens. They don't know when the big one is going to come. I mean, just the fact that something happens and something continues to happen frightens the community.

Now, in terms of follow-up, there are enough community agencies and entities in North Richmond, such as the housing authority. You do have the municipal advisory council, but sometimes they may not be accessible as a group at all times. You have the Neighborhood House that has 5 detached programs within the North Richmond community, and there are several outreach workers.

I think the reason why the follow-up does not occur is because North Richmond is a very high-risk area, and people are afraid to deliver services to North Richmond. Let's talk about that. That is fine. We know that.

However, there are some things that we can do to help influence that. The health department, the city, whomever, can come to, say, the Neighborhood House, find out if they can get some workers to go with them throughout the community, to go into Los Deltas. There is an office there in Los Deltas.

Project Cry is another facility that can be used. If the health department or other entities are afraid to come into North Richmond to deliver a service, we can collaborate those efforts with the community outreach workers that are there already in the community.

Mr. MILLER. Do you think that is what caused the setting up of the clinic on MacDonald Avenue?

Ms. JACKSON. Yes. Yes. It is very obvious when something is impacted you don't go down the corner and around the street to set up the repair service.

If your car breaks down on the freeway, you are going to send somebody to the car to pick it up and take it somewhere. You don't go get that car. So that is very obvious that that has happened.

Mr. MILLER. Again I want to, for a moment, focus here on what expectations might be had here, on this incident.

Obviously there is going to have to be some follow-up and there are going to have to be some assurances given to the community about what is or is not going to take place as a result of this. We just don't go back to business as usual. Given the tremendous number of people impacted or potentially impacted by this incident—from the site of the incident all the way across the straits to Solano County—either we are going to have a notification system that is comprehensive, or we aren't.

And the question comes down to now basically that one: Is there or is there not going to be a comprehensive notification system in process?

There has got to be a vehicle established to convey that decision and how the decision is implemented within the community.

Ms. JACKSON. Exactly. And I would suggest that not only residents be called, but Neighborhood House of North Richmond, housing authority, Project Pride has a phone number that needs to be called. Because we are the ones ultimately that will deliver the

message to the residents. We are the only providers in the community.

So if we are left out of that loop—

Mr. MILLER. What is the vehicle we establish to get that information to these individuals as they are designing that system?

Ms. JACKSON. One of the suggestions I mentioned earlier is that this Contra Costa County emergency service should provide some type of communication or have some type of a program that when things like this happen, when we have emergencies, that they have a contact in the community, that they know that 2 or 3 people from the North Richmond area—

Mr. MILLER. You are ahead of me. I want to know between now and the implementation of that service what is the vehicle by which, in this case, the North Richmond community, can have input into the design and the implementation of that system?

Ms. JACKSON. I would say the Neighborhood House of North Richmond.

Mr. MILLER. Mr. Mayor?

Mr. LIVINGSTON. Yes, first of all, I must say that I don't believe that anyone on the Richmond City Council will take care of business as usual. This is a very serious problem, and many times, whenever there are accidents on the streets, two or three people get killed, and then you put up a light.

We have had a very serious experience, and it is certainly going to be an education to those of us who are there, and staff concurs with the idea.

What I have in mind, and I have discussed this with the council, is to set up an ad hoc committee encompassing those leaders such as Michele Washington, Henry Clark, others from business and industry, lay people, ministers, and so forth, to establish a strong line of communication.

We need an education process. I believe that our schools should be pulled into this, because if our children are not aware of what is happening, they will hear a siren or whatever kind of alert system they hear, and it does not mean a thing.

I am reminded somewhat of the system that was used during the war. I am sure you probably, Mr. Congressman, heard about the drills where we went to various shelters. On the East Coast, they have drills where you go to a cellar when they have tornado warnings. These are the kind of things we must be aware of.

But as I said earlier, the companies that are in this city must get directly involved because, every time there is a new plan, there is a price tag on it. And I believe that those who are causing the problem must prepare themselves to pick up the tab. I also believe that, as has been mentioned before, those who have been affected by this problem, must be compensated for their loss.

I think that the first step taken would be to establish a committee made up of those individuals who have concerns, bring in some experts, because this is a very serious problem. If I had a problem with my car, I would not go get a doctor, I would get a mechanic. So we need someone who can certainly answer those questions, and for the community to be educated, this is a step in the right direction.



There are those who are thirsty to get involved, and I say to you in conclusion, it is not going to be "business as usual" because the pressure is on, the emotions are there. Once the emotions die down, the pressure will still be on, and it will not be lifted until there is a solution to the problem.

Mr. MILLER. Thank you.

Let me again mention the Environmental Justice Act that Congressman John Lewis is pushing, and others are pushing, as part of the legislation raising EPA to Cabinet level, which would, as you point out, Henry, identify the ongoing impacts on low-income minority communities around these facilities. But more importantly, I think, it would provide technical assistance to those communities so they can increase their sophistication in dealing with these problems on an ongoing basis, not just on a react-to-an-incident basis. And, hopefully, the Congress will respond at least at that level.

Let me thank you for your time and for your input, and just say that I would hope that you would feel free to call upon my office, me personally, however you want to do it, because as we get further from the incident, the tendency is to lessen the commitments that we have to change. We have to try to see that we do learn something from this and we do have better processes in place than we might have had on the day of this accident, in terms of security, so that you should feel free to call upon us so that we might lend our shoulder to the wheel to see that that happens for the community.

And, finally, Henry, my recollection is that the Bay Area Air Control Board agrees with you about the permits. That is being challenged by the company, but clearly, that needs to be established because you or me, the community or policymaker, we rely on those permits.

Mr. CLARK. Right.

Mr. MILLER. And they are supposed to inspire some confidence as to the existing process working. Forget all the changes we want, but if those, in fact, are openly being violated, then we have a far more serious problem than we can contend with because we assume good-faith compliance with the laws on the books.

Thank you very much for your help with this hearing and with this incident.

**STATEMENT OF HON. ROBERT J. CAMPBELL, ASSEMBLYMAN, 11TH DISTRICT, CALIFORNIA; AND TOM POWERS, SUPERVISOR, FIRST DISTRICT, CONTRA COSTA COUNTY BOARD OF SUPERVISORS**

Mr. MILLER. Next, I would like to recognize Assemblyman Bob Campbell and Supervisor Tom Powers.

Welcome.

We have copies of your statements, I think, already.

Welcome to the committee, and thank you for giving us your time.

Obviously, a number of the responses that people are asking for and some of the gaps that have been discovered by the press and others in our response to this incident directly impact both the State and our county governments, so I really appreciate your taking time to come out here and to be with us today.



Bob, we will start with you and proceed in the manner in which you are most comfortable.

#### STATEMENT OF HON. ROBERT J. CAMPBELL

Mr. CAMPBELL. I realize I was given three minutes, but it is hard for a politician to say anything in three minutes.

Mr. MILLER. This is a training course.

Mr. CAMPBELL. Yes. Well, let me be specific.

Normally, I don't send a letter. I normally speak extemporaneously about things because things change.

Let me explain that the first day I got elected, and the first year, 1981, there were four things apparent—and I pointed them out in the letter—one was we needed to have some kind of a risk management prevention plan, which has been created, but it has to be a meaningful one.

We have carried legislation. I have given you some copies of potential legislation, which has been watered down over the years in order to get a gubernatorial signature. The plan has to be made. There has to be public input prior to the promulgation of a plan so that the unions, the employees, the residents, the environmental groups and, yes, even the University of California, Stanford and others, who hear about these hearings, can have input on what will work and what will not work.

When Bhopal took place, the accident in Bhopal, and Chernobyl took place, it was evident that the communities, the schools, the hospitals had to know what was in proximity to Chevron or Shell Oil, or whatever chemical company it was.

And, by the way, I will digress for a moment, because I think what will happen is we have historically kicked the behind of some of the chemical companies. But in deference to the chemical companies and other major companies in the industry, whether in New York, the Bay area, or wherever, local communities have allowed these industrialized areas to grow without planned buffer zones. We are still allowing encroachment in terms of what we allow to be built between these facilities and residential communities.

North Richmond has a garbage dump by it, a toxic community by it, everybody in the world by it, and we keep allowing things to happen, which is inappropriate.

So what we are saying, if you have a map, with a manifest, and you know what is in that plant—and I understand trade secrets and patent pending laws and everything else—and that is a major problem, I guess, but it ought not to be because wind flow patterns in the Bay area are pretty great. Sometimes you have a 10-mile-an-hour wind, sometimes 25 miles, sometimes it is 45 miles an hour. And something that is predicted to go a quarter of a mile or half mile, may go 15 miles, as it did in this case.

So there has to be a viable risk management plan with input from the community so that the community knows what will take place. As I said, we carried other legislation dealing with fencing and posting, the right to know. The public has a right to know. When you buy a box of cereal, or when you buy medicine, for example, it states specifically what the ingredients are so that you don't have to buy it.

The folks in proximity to Chevron or Shell Oil, or anyplace else, or this General Chemical company, are poorer people, older folks that live there. They just cannot sell their homes and move out, but they should know there is benzene, or whatever the case might be, there.

The second issue, as was mentioned before, is a fining mechanism. We want to figure out how you fine folks for negligence, gross negligence, for just inadvertently paying attention, not paying attention to facts. We looked in 1982, and the average fine assessed was around \$120. I think I will say this publicly. I think the Bay Area Air Management Quality Board has been a disaster in the last number of years I have worked with them.

They may be better now. And it is not because of the people on it. Some of the folks are trying to do the right things, but they don't make the fines.

The average fine was \$120 in 1982. We carried out legislation to increase the fines in these various categories. Finally, the governor signed the bill. Five years later, the average fine is still only around \$540.

It is like saying to a child who receives a \$2 allowance, we will charge you a penny, we will take a penny away if you don't behave yourself. Why should they care about losing four or five cents? So the fines have to be increased. There have to be minimums there.

The third area, very important, we know about it in this country. We have had a Cold War and we have had a war, and the civil defense mechanisms have been in place for 60 years in this country. We know how to evacuate people.

When I was in the National Guard, we had maps showing roads of ingress and egress. If a bridge was taken out, we knew what roads you take, where you store people, where you put things.

There was a question in this early warning system where the fire departments wanted to evacuate and the health department said no because the air is polluted. So someone has to understand that mechanism. There has to be a system with sirens, with radio, with TV, with every possible thing you can do with education, and yes, the community has to be involved in the creation of that process.

And, finally, something the governor has talked about, and you and I have talked about for the last number of years, Congressman Miller. There has to be a rational way of coming up with an intervening agency so that when there is a disaster it will have control, because whether a tanker derails on a track, in a plant, or stationary, someone has to go look at it, seal it off, and decide what to do.

That has to be part of that risk management plan; that we know not just what is permanently on the ground but what might be on those rail cars from time to time. Those are looked at in this manifest so we know what is there.

I think that is what has to happen. We have to know. The State EPA or the U.S. EPA or the Federal Rail Agency automatically deals with and defers to some other entity that will go in and close things off and someone will make a decision.

The laws, your comment about 30 days, whether it is here or there, we carried legislation to define that. It gets vetoed, and we cannot get the votes for it.

I would prefer to defer to the Federal Government to come up with a plan to say this agency will be in charge and they have the final say. That is confusing also to the plant managers and those people who run these major corporations. They don't know who to go to in terms of these plans.

But I want to say in closing, I thank you for allowing me to be here, and I want to say Senator Petris and Tom Bates are out of the country, and Nick Petris did call me day before last and asked me to give his comments and say he is sorry he could not be here.

But, Congressman Miller, the thing I want to really point out in this 32 million population State—there are close to 8 million in the Bay area, if you take all nine counties—the wind flow patterns, the demographics have changed, everything is changing. We can no longer rely on someone giving us a plan and saying that is the plan; here is our plan.

It has to be promulgated through a public hearing process. It has to be developed with definitive input or something really bad will happen.

This was a minor case compared to what can probably happen: something like Bhopal or Chernobyl.

Thank you.

Mr. MILLER. Thank you.

[Prepared statement of Mr. Campbell and attachments follow.]

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## Assembly California Legislature

ROBERT J. CAMPBELL

ASSEMBLYMAN, ELEVENTH DISTRICT

CHAIRMAN

WAYS & MEANS SUBCOMMITTEE ON SCHOOL FINANCE

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JOINT COMMITTEE ON  
THE 1986 CONSTITUTIONAL  
COMMITTEE ON  
SCHOOL FACILITIES  
STATE ASSOCIATION BOARD

August 10, 1993

Honorable George Miller  
Chairman, Subcommittee on  
Oversight and Investigations  
387 Civic Drive, # 14  
Pleasant Hill, CA 94523

Dear Mr. Chairman:

I am sending you the following information as a portion of what I am going to say before your Subcommittee on Tuesday, August 10, 1993.

I would like to begin by saying that much of what I am about to say is common sense, given the sequential development which has taken place around existing petrochemical and other industrial facilities. What is happening in Richmond California and the rest of West Contra Costa County is happening all over the industrial world. Because local and state planning agencies have failed to pay much attention to controlled and orderly growth in and around industrial complexes, the potential problem for major disasters has increased geometrically. For this reason, we must be careful in laying all of the blame on the industry or company in question. The lack of planned buffer zones around these industrialized areas, beginning back at the turn of the century and continuing on through today, make the problems your Subcommittee is discussing today very difficult to resolve.

Despite these inherent problems, our office, working along with the environmental and neighborhood communities, has attempted to do the following through legislation:

- o Enact amendments to Risk Management Prevention legislation to allow those living in proximity to any company handling acutely hazardous materials the right to know the potential consequences of an accidental discharge into the atmosphere.
- o Increase fines for the illegal emission of air contaminants to equal to the penalties imposed for pollution of the water and other environmental mediums.
- o Require that signs be posted around California Superfund Sites.

Page Two  
Miller  
8/10/93

o Create one final authority which would be ultimately responsible for regulating hazardous material.

The concept and significance of a risk management prevention system was made clear after the Bophal incident in India. There is the general feeling that any person or entity living or doing business in and around a company which uses, produces, stores or transports toxic materials had the right to know what kinds of materials were being stored and what the worst case scenarios might be if there were an accident. The Legislature passed legislation whereby the company producing, storing or shipping these chemicals should be made to provide the community with a Risk Management Prevention Plan (RMPP). This RMPP included a map which showed what kind of toxic materials were being stored etc. and then, with concentric circles emanating from the plant, showed the potential effects of an accident at various distances from the source and under what wind conditions.

It was further felt that there should be public hearings before such a plan was promulgated. This way the whole community, including various other experts could give their comments on the various affects and conditions being considered.

A second component of the legislation I have carried is the penalties which would be assessed to deter illegal emissions of air contaminants. We found in the early 1980's that the average fine assessed by BAAQMD was around \$120. We then put together legislation to increase the fines under certain conditions. Legislation was finally passed in 1987. Since that time, we have carried more legislation to increase fines because we found out that after four years of our previous legislation that the average fine was still only around \$542. That legislation was signed in 1992.

I have also considered legislation to create an all-inclusive early warning system which would notify persons in the most responsible manner. The fact that an appropriate and well thought-out early warning system ought to be devised became even more evident during this most recent disaster. There needs to be a system which at a minimum includes: telephoning, radio and T.V, a siren system, plus public education before the emergency occurs. The question will be who runs it and who pays for it.

A final and perhaps most important aspect of any plan is who is going to be ultimately responsible for managing the various inspection and review programs? This issue is raised by the question of who regulates hazardous materials stored in rail tankers on site. Should a federal governmental entity be in charge of a stationary tanker? How does this fit into the state's Risk Management Prevention Plan? These are but two of many questions.

Page Three  
Miller  
8/10/93

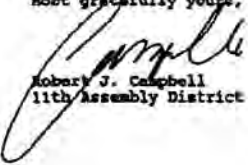
I have outlined only four areas on which our office has been working for several years without finding a final solution. The days are gone when we can forestall answering all of the questions which are being asked by our citizens. The potential risk has grown to a point where we are now faced with potential calamities which could kill or hurt thousands of human beings in an instant simply because one person makes a mistake.

For example, let's look at this last major incident which took place this past week at General Chemical. As I understand it, an employee of a company overheated a tanker car and the combustion blew a valve. Toxic emissions lasted for well over two hours. Adding to the confusion, a fire fighter doused the tanker car with water, which, when combined with SO<sub>2</sub> becomes corrosive and more dangerous. In addition, because there wasn't an adequate warning system there was a mix up between authorities. The local fire agency wanted to evacuate part of the affected area while another agency wanted those citizens to shelter in their homes.

These are but a few of the problems which arose from what might have been a more simple exercise. We might be reminded that the areas which are generally located around these kinds of industrial plants are usually inhabited by poorer people, people in the lower socio-economic classes and older citizens who might find it more difficult to cope with the outcome of a dangerous chemical release.

I thank you for allowing me to make these few points.

Most gratefully yours,



Robert J. Campbell  
11th Assembly District

RJC:nr

Summary of Legislation  
by Assemblymember Campbell  
Regulating Hazardous Materials and Air Pollution

Right to Know: Acutely Hazardous Materials

o State law requires that any business handling acutely hazardous materials to prepare and submit a risk management prevention plan (RMPP). AB 1131 required that the offsite consequence analysis required as a part of the RMPP include a map indicating the location of nearby hospitals, schools and residential areas. It also specified that the offsite consequence analysis be made available to the public for review and comment (AB 1131- Chapter 816, Statutes of 1991).

Air Pollution

o Increased fines to \$1000 for air pollution violations and to \$10,000 for negligent air emission violations and to \$25,000 for intentional violations (AB 1276- Chapter 1453, Statutes of 1986);  
o Increased fines from \$1000 to \$10,000 for air pollution violations and to \$15,000 for negligent air emission violations and created a \$50,000 fines for a wilful or intentional violation (AB 1572- Chapter 1252, Statutes of 1992);  
o Redefined the statute of limitations on air pollution violations to run from the date of discovery rather than the date of commission, thereby making it more likely that prosecution of air pollution violations would be successful (AB 1630);  
o Other related bills that would have increased penalties or have authorized the air district to suspend a permit if the holder had been issued five or more notices of emission violations failed passage.

Warnings Posted at Superfund Sites

o Required the state to post signs at California Superfund sites to explicitly warn of hazardous substance contamination (AB 2494- Chapter 1628, Statutes of 1984).

Transporting Hazardous Materials

o Authorized CHP or appropriate local agency to close a highway to vehicles transporting hazardous materials if the highway is located within a 1/2 mile and within the watershed of a drinking water reservoir (AB 609-Chapter 1049, Statutes of 1987);  
o Gives local governments input into designation of routes for transporting hazardous materials (AB 1861- Chapter 81, 1988);  
o Other related bills that failed passage would have give local governments even greater control over designation of hazardous material routes.

8/9/93



**Assembly Bill No. 1572**

**CHAPTER 1252**

**An act to amend Sections 39674, 42400, 42400.1, 42400.2, 42402, 42402.1, 42402.2, and 42403 of, and to add Sections 42400.3 and 42402.3 to, the Health and Safety Code, relating to air pollution.**

[Approved by Governor September 29, 1992. Filed with  
Secretary of State September 30, 1992.]

**LEGISLATIVE COUNSEL'S DIGEST**

**AB 1572, Campbell. Air pollution: penalties.**

(1) Existing law prescribes civil and misdemeanor criminal penalties for violations of specified air pollution control laws, rules, regulations, permits, and orders.

This bill would impose increased maximum fines or civil penalties for certain offenses, as specified. The bill would impose a state-mandated local program by creating new crimes.

The bill would state that if an offense is punishable under the air pollution control laws either as (a) a violation of a permit condition, or (b) a violation of an order, rule, or regulation, of the State Air Resources Board or of an air pollution control district or air quality management district, the offense may be punished as a violation of either (a) or (b), but not both.

(2) Existing law specifies factors to be considered by the court in assessing those civil penalties.

This bill would specify that the same factors are to be considered by air pollution control districts and air quality management districts in reaching any settlement, and would include the nature, extent, and time of response of the cleanup and construction undertaken by the defendant as a factor to be considered.

(3) This bill also makes additional changes in Section 39674 of the Health and Safety Code proposed by AB 2728, to be operative only if AB 2728 and this bill are both chaptered and become effective on or before January 1, 1993; and this bill is chaptered last.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 39674 of the Health and Safety Code is amended to read:

**39674. (a)** Any person who violates any rule or regulation,

emission limitation, or permit condition adopted pursuant to Article 4 (commencing with Section 39665) is strictly liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(b) (1) Any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Article 4 (commencing with Section 39665) is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day in which the violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act which was not the result of intentional or negligent conduct.

SEC. 1.5. Section 39674 of the Health and Safety Code is amended to read:

39674. (a) Any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is strictly liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(b) (1) Any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day of violation is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act which was not the result of intentional or negligent conduct.

SEC. 2. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1 or 42400.2, any person who violates any provision of this part, or any order, permit, rule, or regulation of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision

of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of any action violating any provision of this part.

(c) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) occurs is a separate offense.

SEC. 3. Section 42400.1 of the Health and Safety Code is amended to read:

42400.1. (a) Any person who negligently emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than fifteen thousand dollars (\$15,000) or imprisonment in the county jail for not more than nine months, or both.

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 42400.2, to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(c) Each day during any portion of which a violation occurs is a separate offense.

(d) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

SEC. 4. Section 42400.2 of the Health and Safety Code is amended to read:

42400.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than twenty-five thousand dollars (\$25,000) or imprisonment in the county jail for not more than one year, or both.

(b) For purposes of this section, "corrective action" means the termination of the emission violation or the grant of a variance from this applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order of the state board or of a district, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(d) (1) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(2) As used in this subdivision, "actual injury" means any physical injury which, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(e) Each day during any portion of which a violation occurs constitutes a separate offense.

(f) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

SEC. 5. Section 42400.3 is added to the Health and Safety Code, to read:

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any order, rule, regulation, or permit of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars (\$50,000) or imprisonment in the county jail for not more than one year, or both.

(b) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2 or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

SEC. 6. Section 42402 of the Health and Safety Code is amended

to read:

**42402.** (a) Except as otherwise provided in subdivision (b) or in Section 42402.1, 42402.2, or 42402.3, any person who violates any provision of this part, any order issued pursuant to Section 42316, or any order, permit, rule, or regulation of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars (\$1,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any order, permit, rule, or regulation of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is liable for a civil penalty of not more than ten thousand dollars (\$10,000).

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day in which the violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act which was not the result of intentional or negligent conduct.

(c) Each day during any portion of which a violation occurs is a separate offense.

**SEC. 7.** Section 42402.1 of the Health and Safety Code is amended to read:

**42402.1.** (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is liable for a civil penalty of not more than fifteen thousand dollars (\$15,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in paragraph (2) of subdivision (d) of Section 42400.2, to the health or safety of a considerable number of persons or the public is liable for a civil penalty as provided in subdivision (a).

(c) Each day during any portion of which a violation occurs is a separate offense.

**SEC. 8.** Section 42402.2 of the Health and Safety Code is amended to read:

**42402.2.** (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty, of not more than twenty-five thousand dollars (\$25,000).

(b) Any person who, knowingly and with intent to deceive,



falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order of the state board or of a district, is subject to the same civil penalty as provided in subdivision (a).

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in paragraph (8) of subdivision (d) of Section 42400.2, to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is subject to a civil penalty as provided in subdivision (a).

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 9. Section 42402.3 is added to the Health and Safety Code, to read:

42402.3. Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any order, permit, rule, or regulation of the state board, or of a district, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than fifty thousand dollars (\$50,000).

SEC. 10. Section 42403 of the Health and Safety Code is amended to read:

42403. (a) The civil penalties prescribed in Sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent jurisdiction.

(b) In determining the amount assessed, the court, or in reaching any settlement, the district, shall take into consideration all relevant circumstances, including, but not limited to, the following:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) The frequency of past violations.
- (5) The record of maintenance.
- (6) The unproven or innovative nature of the control equipment.
- (7) Any action taken by the defendant, including the nature, extent, and time of response of the cleanup and construction undertaken, to mitigate the violation.
- (8) The financial burden to the defendant.

SEC. 11. (a) If a violation is punishable under Division 26 (commencing with Section 39000) of the Health and Safety Code as a violation of either (1) a permit condition or (2) an order, rule, or regulation, of the State Air Resources Board or of an air pollution control district or air quality management district, the violation may be punished as a violation of either (1) or (2), but not both.

(b) This language is modeled on Penal Code Section 634, for purposes of civil and criminal air pollution violations.

SEC. 12. Section 15 of this bill incorporates amendments to Section 39674 of the Health and Safety Code proposed by both this bill and AB 2728. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1993, (2) each bill amends Section 39674 of the Health and Safety Code, and (3) this bill is enacted after AB 2728, in which case Section 1 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



## Assembly Bill No. 1131

## CHAPTER 816

An act to amend Sections 25534 and 25534.5 of, and to add Sections 25531.1 and 25535.9 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 10, 1991. Filed with Secretary of State October 11, 1991.]

## LEGISLATIVE COUNSEL'S DIGEST

AB 1131, Campbell. Acutely hazardous materials management.

(1) Existing law requires the administering agency to make a preliminary determination whether there is a significant likelihood that a handler's use of an acutely hazardous material may pose an acutely hazardous materials risk. If the administering agency determines that there is a significant likelihood of risk, the administering agency is required to require the handler to prepare and submit a risk management and prevention program (RMPP), including a hazard and operability study and an offsite consequence analysis, as specified. In reviewing the RMPP, the administrative agency is authorized to have access to the information reasonably necessary to make a determination concerning the RMPP. A knowing violation of these requirements, after reasonable notice, is a crime.

This bill would require the offsite consequence analysis in the RMPP to include a map containing specified information, thereby imposing a state-mandated local program by creating a new crime.

The bill would require the handler to submit the offsite consequence analysis to the administering agency when completed, thereby imposing a state-mandated local program by creating a new crime. The bill would require the administering agency to make an RMPP available to the public within 15 days after the agency determines that the RMPP is complete, thereby imposing a state-mandated local program by imposing additional requirements on the administering agency.

The bill would make legislative findings.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25531.1 is added to the Health and Safety

Code, to read:

25531.1. The Legislature finds and declares that the public has a right to know about acutely hazardous materials accident risks that may affect their health and safety, and that this right includes full and timely access to hazard assessment information, including offsite consequence analysis for the most likely hazards, which identifies the offsite area which may be required to take protective action in the event of an acutely hazardous materials release.

The Legislature further finds and declares that the public has a right to participate in decisions about risk reduction options and measures to be taken to reduce the risk or severity of acutely hazardous materials accidents.

SEC. 2. Section 25534 of the Health and Safety Code is amended to read:

25534. (a) The administering agency shall make a preliminary determination whether there is a significant likelihood that the handler's use of an acutely hazardous material may pose an acutely hazardous materials accident risk.

(1) If the administering agency determines that there is a significant likelihood of risk pursuant to this subdivision, it shall require the handler to prepare and to submit an RMPP in accordance with a timetable based on the priority ranking established in subdivision (b).

(2) If the administering agency determines that there is not a significant likelihood of risk pursuant to this subdivision, it may require the preparation and submission of an RMPP, but need not do so if it determines that the likelihood of an acutely hazardous materials accident risk is remote.

(3) If the administering agency determines that an economic poison, as defined in Section 12753 of the Food and Agricultural Code, used on a farm or nursery may pose a risk pursuant to this subdivision, the administering agency shall first consult with the Department of Food and Agriculture or the county agricultural commissioner to evaluate whether the current RMPP is adequate in relation to the risk. This paragraph does not prohibit, or limit the authority of, an administering agency to conduct its duties under this article.

(b) The administering agency shall rank each use of an acutely hazardous material identified pursuant to paragraph (1) of subdivision (a) in terms of the relative risks associated with its use, should an acutely hazardous materials accident occur. The estimation of the relative risks posed by the use of an acutely hazardous material shall be based on worst case assumptions regarding the quantity and rate of release of the acutely hazardous material, air dispersion, toxicity, meteorological conditions, and other pertinent parameters. Based on the estimate of relative risks, the administering agency shall establish a timetable for the submission of the RMPP for the use of the acutely hazardous

material.

(c) The RMPP shall be prepared within 12 months following the request made by the administering agency pursuant to this section. The RMPP shall include all of the following elements:

(1) A description of each accident involving acutely hazardous materials which has occurred at the business or facility within three years from the date of the request made pursuant to subdivision (a), together with a description of the underlying causes of the accident and the measures taken, if any, to avoid a recurrence of a similar accident.

(2) A report specifying the nature, age, and condition of the equipment used to handle acutely hazardous materials at the business or facility and any schedules for testing and maintenance.

(3) Design, operating, and maintenance controls which minimize the risk of an accident involving acutely hazardous materials.

(4) Detection, monitoring, or automatic control systems to minimize potential acutely hazardous materials accident risks.

(5) A schedule for implementing additional steps to be taken by the business, in response to the findings of the assessment performed pursuant to subdivision (d), to reduce the risk of an accident involving acutely hazardous materials. These actions may include any of the following:

(A) Installation of alarm, detection, monitoring, or automatic control devices.

(B) Equipment modifications, repairs, or additions.

(C) Changes in the operations, procedures, maintenance schedules, or facility design.

(6) Auditing and inspection programs designed to allow the handler to confirm that the RMPP is effectively carried out.

(7) Recordkeeping procedures for the RMPP.

(d) The RMPP shall be based upon an assessment of the processes, operations, and procedures of the business, and shall consider all of the following:

(1) The results of a hazard and operability study which identifies the hazards associated with the handling of an acutely hazardous material due to operating error, equipment failure, and external events, which may present an acutely hazardous materials accident risk.

(2) For the hazards identified in the hazard and operability studies, an offsite consequence analysis which, for the most likely hazards, assumes pessimistic air dispersion and other adverse environmental conditions and which includes a clearly prepared map noting the location of the facility which shows the populations considered pursuant to Section 25534.1 and the zones of vulnerability, including the levels of expected exposure in each zone.

(e) The business shall submit to the administering agency any additional supporting technical information deemed necessary by the administering agency to clarify information submitted pursuant

to subdivision (c).

(f) A handler shall maintain all records concerning an RMPP for a period of at least five years.

(g) The RMPP shall identify, by title, all personnel at the business who are responsible for carrying out the specific elements of the RMPP, and their respective responsibilities, and the RMPP shall include a detailed training program to ensure that those persons are able to implement the RMPP.

(h) The handler shall review the RMPP, and shall make necessary revisions to the RMPP at least every three years, but, in any event, within 60 days following a modification which would materially affect the handling of an acutely hazardous material.

(i) Any person who handles acutely hazardous materials and who owns or operates two or more business facilities which are substantially identical may prepare a single generic RMPP applicable to all those facilities if the handling of the acutely hazardous materials is substantially similar at all of those facilities.

(j) The RMPP, and any revisions required by subdivision (h), shall be certified as complete by a qualified person and the facility operator.

(k) Except as specified in subdivision (d) of Section 25535, the handler shall implement all activities and programs specified in the RMPP within one year following the certification made pursuant to subdivision (j). Implementation of the RMPP shall include carrying out all operating, maintenance, monitoring, inventory control, equipment inspection, auditing, recordkeeping, and training programs as required by the RMPP. The administering agency may grant an extension of this deadline upon a showing of good cause.

(l) The Office of Emergency Services shall adopt, and publish for distribution, guidelines for the preparation and submission of an RMPP. In preparing the guidelines for hazard and operability studies, the office shall, at a minimum, base its procedural recommendations on those set forth in the 1985 Guidelines for Chemical Hazard Evaluation Procedures, prepared by the Center for Chemical Process Safety of the American Institute of Chemical Engineers.

SEC. 3. Section 25534.5 of the Health and Safety Code is amended to read:

25534.5. In reviewing an RMPP pursuant to subdivision (a) of Section 25535, the administering agency may have access to and review all technical information in the handler's possession which is reasonably necessary to allow the administering agency to make a determination regarding the sufficiency of the RMPP. That information may include any study or analysis conducted pursuant to subdivision (d) of Section 25534. The handler shall submit the information prepared pursuant to paragraph (2) of subdivision (d) of Section 25534 to the administering agency upon completing the studies and analysis specified in that subdivision. Information

collected pursuant to subdivision (d) of Section 25534 shall not be disclosed by the administering agency except as provided in Section 25511.

SEC. 4. Section 25535.2 is added to the Health and Safety Code, to read:

25535.2 Within 15 days after the administering agency determines the RMPP is complete, the administering agency shall make the RMPP available to the public for review and comment for a period of at least 45 days. A notice briefly describing and stating that the RMPP is available for public review at a certain location shall be placed in a daily local newspaper and mailed to interested persons and organizations. The administrative agency shall consider these public comments in the review of the RMPP pursuant to Section 25535.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



## STATEMENT OF TOM POWERS

Mr. MILLER. Tom.

Mr. POWERS. Thank you, Mr. Chairman, for having this hearing in Richmond.

The July 26 release, I think in my experience as a lifetime resident here, was one of the most serious that I have experienced. Many residents became ill, as you have heard, and our hospitals and clinics were overwhelmed by the people who were sick and scared, and it has heightened the long-standing concerns of many Richmond residents and those throughout the county of the dangers presented by the numerous petrochemical facilities that border residential communities.

But we are not unique in Contra Costa. Industrial facilities handling hazardous materials exist throughout the State and the country and often border residential and commercial districts. Hazardous materials are routinely transported by railroad and truck through countless more communities. We are all potentially at risk and all have a responsibility of finding a safer way to handle these toxic compounds.

We have placed a great priority in Contra Costa County on preventing and preparing for industrial accidents through aggressive implementation of our hazardous materials and community notification programs. I believe, comparably, we are probably the best in the country. Yet our efforts, as well as those of the State and Federal regulatory agencies, are not enough to prevent these accidents from occurring.

Although I don't have specific recommendations on how to fix the particular problem associated with rail cars, I think you will hear from experts on the topic later this morning. I do have one recommendation: Take a broad view of the subject.

One of the problems we encounter at the local level is determining the various rules that jurisdictions—State, Federal, regional—play in overseeing these facilities. It is confusing to business, it is confusing to local agencies, and perhaps most importantly, it is confusing to the public.

You may identify a specific gap in federal regulations regarding rail cars and be tempted to plug it, that specific issue. I understand that the State may be looking at the same thing. While that type of action may solve the immediate problem, it may also inadvertently compound the problem in the long term, by further segmenting and fragmenting the regulatory process.

I would urge you that we take the opportunity to find the best way, the most straightforward, as well as the most comprehensive way to oversee industrial operations so that the agencies, the public and industry can understand what is required.

I want to stress that your investigation into this issue is very important and we recognize that facilities in this county and throughout the country form a significant part of our economy. They make products that are utilized by Americans everyday and provide jobs to thousands of men and women in our community.

We cannot overlook the part that industry plays in this, rather we must find a way to help these facilities coexist with their neighbors. That means first and foremost stopping those accidents from occurring. I believe that the risks can be minimized without driving

business out of the county. It is a difficult charge, but it must be done.

I look forward to working with you in the months ahead to accomplish these goals, and might I add that I think Mayor Livingston's approach to form a task force and an advisory committee with a broad representation is an excellent suggestion and one that should be pursued. And the county is willing to support that task force in all the technical ways we can, and I am sure the board is willing to support the concerns that the Mayor has outlined earlier in what that task force can do in getting public input.

[Prepared statement of Mr. Powers follows.]



STATEMENT OF SUPERVISOR TOM POWERS, FIRST DISTRICT  
CONTRA COSTA COUNTY BOARD OF SUPERVISORS  
FOR  
HEARING ON MANAGEMENT AND SAFETY ISSUES  
CONCERNING HAZARDOUS MATERIALS

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
COMMITTEE ON NATURAL RESOURCES

Mr. Chairman, I want to thank you for calling this hearing this morning and for holding it in Richmond. The sulfuric acid release on July 26 was only the most recent in a series of accidents at industrial facilities over the last few years. It was also one of the most serious. Many residents became ill. Our hospitals and clinics were overwhelmed by people who were sick and scared. And, it has heightened long standing concerns and anxieties among residents in Richmond and throughout the county about the dangers presented by the numerous petrochemical facilities that border our residential communities.

But we are not unique here in Contra Costa County. Industrial facilities that handle hazardous materials exist throughout the state and country and often border residential and commercial districts. And, hazardous materials are routinely transported by railroad and trucks through countless more communities. We are all potentially at risk and all have a responsibility for finding safer ways of handling these toxic compounds.

We have placed a great priority in Contra Costa on preventing and preparing for industrial accidents through aggressive implementation of our hazardous materials and community notification programs. I believe we are far ahead of most comparable communities in the state or country. Yet, clearly, our efforts -- as well as those of the state and federal regulatory agencies -- were not enough to prevent this accident from occurring.

Although I do not have any specific recommendations on how to fix the particular problem associated with rail cars -- you will hear experts on that topic later in the morning -- I do have one general recommendation. Take a broad view. One of the problems we encounter at the local level is determining the various roles and jurisdictions of all the state, regional and federal agencies that oversee industrial facilities. It is confusing to business, confusing to our local agencies that administer regulatory programs, and confusing to the public.

You may identify a specific gap in federal regulations regarding rail cars and be tempted to plug that specific gap. I understand that the state may be looking to do the same.

While that type of action may solve the immediate problem, it may also inadvertently compound the problem in the long term by further segmenting the regulatory process. I would urge that we take this opportunity to find the best way -- the most straightforward as well as the most comprehensive -- to oversee industrial operations so that the agencies, the public and industry can understand what is required.

Mr. MILLER. Thank you very much, and my thanks to both of you for your help with this hearing and your response to the community after this accident.

Let me, if I might, just articulate a couple of points that I have learned that I think are of interest to all of us, but specifically may be within your jurisdiction.

First and foremost, I guess the question about the community involvement in the promulgation—Bob, that you have raised and, Tom, you have raised—not only in the final design of the warning system, but the resolution of this particular incident and what we do about future incidents, both in terms of prevention and response, I don't think can be overstated.

I am told that when Rhone-Poulenc had the explosion in Martinez last year, some 20 agencies responded when the Dunsmuir tank car wreck up above Shasta happened, some 58 agencies responded; and in this case, the number may be somewhere between 40 and 50 agencies, I think, that have responded. There is no community that can assimilate all of that information and pull it together and have a rational understanding.

We may have an awful lot of overlapping jurisdictions here, but somehow we have to figure out how we connect the community with the pertinent information and those agencies. Hopefully, in the future, there will not be 50 agencies, but those agencies need to understand the needs of the community.

I guess for our little part of it here, how we follow up this accident in terms of devising a means by which the community can talk to the city and the county, and the city and county can act as filters from all of these different agencies to get the relevant information to the communities, I think, is going to be very important. And the extent to which the county can clearly help, certainly with the North Richmond community, since it is directly in their jurisdiction, I think that is very important.

The other one was this morning learning from the Department of Transportation that the State's jurisdiction over storage of these railway cars is now being challenged. I don't know by whom, but historically, this kind of regulation would be challenged perhaps by the railroads or those who store these materials, and they don't want 50 different State regulations.

But I would have to say that preemption is sought so that they won't have either any regulation and/or they will basically have a relatively weak generic federal regulation.

I would think, Bob, that at a minimum you might want to talk to Dan Lungren and find out what the State's position is on this, to preempt this California law. Because even with this law, it is clear there are really some gaps there. But to take away the right of the State to have its say over the storage of this, whether it wants to strengthen it or not, but to even take away that option is sort of frightening at this moment, in this State, in this county, with all the storage that we have documented.

Mr. CAMPBELL. Just a general comment. The State legislature is in recess this month but member Tom Umberg, Chair of the Toxics Committee, did come to Richmond, and when we reconvene, he will have a hearing in the area down here, and he also will ask that same question.

It seems logical to us if it is in motion on a track someplace, by all means, it should come under the Federal Rail Administration jurisdiction under federal law. But once it proceeds to be fixed, stopped in the yard someplace, it should be part of the community. It should be part of that company. There should be no argument about that. And if it is there for 30 days, 15 days, or 2 days, it should make no difference. If it is stationary, stalled there, it becomes part of that particular company and that whole complex question about the "right-to-know."

If, for example, General Chemical, or any other chemical company, has on a regular basis  $SO_2$  or some kind of benzene or anything else in a rail car, that is their business. It should be part of their manifest.

We should know it is there today, maybe in January, maybe in December, maybe 1996, 1997. And if there is a major change for other chemicals coming in, the community should know as well.

Maybe the merging of two chemicals in proximity to each other either at Chevron or some other place may cause a problem if they mix. You have to know that. There is a cumulative effect of chemicals in our society, and if somebody adds another something to the equation it, obviously, changes the equation and the output. That is all we are saying.

We have been saying that now for a dozen years. Not just yesterday or today. And it is like having a fire on your stove and you are trying to read the extinguisher on how to use the thing. Doesn't work.

You have to know how to use it ahead of time, and that is true of all the plans we promulgate. I want to restate this for the community—Richmond, San Pablo and Pinole and the county areas have to be part of the process. There have to be hearings before a plan is put together. They have to have input so that there is an open discussion.

I mean, trade secrets are important and patent pendings are important, but people's lives are much more important than that. This is a major issue.

Mr. MILLER. My concern with the petition for preemption or for authority is, apparently, it is in the process of being resolved, and I would hope that the State and the Attorney General would take a stand that the Department of Transportation should in fact not do that; that they should leave this. It may be inadequate, but I think we have one of the toughest laws in the country with respect to storage, and I think our Attorney General certainly ought to file and our Department of Transportation ought to file with the Federal Government against that action so that we can maintain our right as a State legislature to draft that law that is relevant to our communities.

I say this having heard this the first time this morning. I think that is a very serious threat to any notion of a comprehensive community's right to know about what chemicals are or are not present in the community at a given time.

It has also been suggested that this storage of chemicals is used as a means of minimizing taxation on the value of those chemicals. I don't know if that is quite accurate or not, but it would seem to me that the question of 30 days also goes to when you might have

a right as a county or the State—I don't know which one in this case—to attach an assessment to the value of those chemicals.

It would seem to me, at a minimum, if that is the case, there should be some kind of sliding scale that reverses the notion here: get those chemicals out and get them into the stream of commerce and on their way, as opposed to continuing to store them, again, at sites that have no standards with respect to security, vandalism, or encroachment.

As one who used to spend a good amount of time riding the rails from Berthan High School in Martinez to Scagmont, I can tell you, anybody in Martinez can jump on a train.

I don't know if that is driving this policy or not in terms of taxation, but that has been suggested.

Mr. POWERS. The State taxes those facilities through the State Board of Equalization. It is not a local taxing issue. I don't believe that is it.

What I do believe is it was a convenience to the industry in terms of storage when they were doing a turnaround. This is a very preliminary finding that we have made.

Mr. MILLER. In this incident?

Mr. POWERS. Yes, in this incident. You probably are already finding that there are a lot of regulatory agencies involved in this process, and the problem has been that nobody knows who is in charge, and therefore, it is very difficult to find out where the gaps are.

I think, unfortunately, we find a gap here in a situation where the Department of Transportation is regulating the rail car facilities and the local government, through good State law—AB-2158 is a good law but does not include the inventory that is in rail cars.

What we have tried to do locally here is we formed an inter-agency task force where we have pulled all of the agencies together. That is only on a voluntary basis. And I think one of the things that probably needs to be done is to try to find a way to bring those agencies together, both in terms of exercising enforcement, inspection, and also in communicating to the public in terms of what kinds of input should occur at the regulatory level.

So I think that is probably an area that we can have more success in prevention and in reacting to accidents.

Mr. MILLER. You know, we are not beating up on the industry here, because I think we have examples—the Chevron Mutual Aid packet we saw work the time we had the big gasoline spill on the Inner Harbor, where something that could have been absolutely catastrophic used that kind of preplanning and working out of arrangements and responses from the various facilities that had different types of equipment, manpower, training and expertise and really was rather remarkable in that incident. And I know it was also invoked here by General Chemical.

So we do have models where with the proper planning and resources, obviously, you can minimize the impacts that can take place from these kinds of incidents. But it is also apparent that is not yet fully implemented across the chemical belt here in Contra Costa, but it is certainly something to build on in terms of our responses.

I know it is shared with respect to the major refineries, in talking to the various fire chiefs and people responsible within the fa-

cilities and the community, that that mutual aid arrangement is constantly worked on and has been invoked again in Solano County, Contra Costa, without regard to jurisdictions or cost. But I don't know that that extends out in terms of some of the smaller facilities.

Again, let me thank you very much for taking your time. I know you both have tight schedules and we appreciate your taking the time to help us out here.

**PANEL CONSISTING OF DR. WENDEL BRUNNER, DIRECTOR PUBLIC HEALTH SERVICES, CONTRA COSTA COUNTY HEALTH SERVICES DEPARTMENT; MICHAEL BELLIVEAU, EXECUTIVE DIRECTOR, CITIZENS FOR A BETTER ENVIRONMENT—CALIFORNIA; MARK MASON, CHAIRMAN, WEST COUNTY GROUP, SIERRA CLUB; AND GREG FEERE, BUSINESS MANAGER AND SECRETARY-TREASURER, CONTRA COSTA BUILDING AND CONSTRUCTION TRADES COUNCIL**

Mr. MILLER. The next panel will be made up of Dr. Wendel Brunner, Mike Belliveau, Mark Mason, and Greg Feere.

If you will come to the table here.

Dr. Brunner, we will start with you.

As with the other panels, your written submissions will be made a part of the record in their entirety, and any supporting documents you have, and you can proceed in the manner in which you are most comfortable here.

#### **STATEMENT OF DR. WENDEL BRUNNER**

Dr. BRUNNER. Thank you, Congressman Miller.

I am Wendel Brunner, director of public health services for the Contra Costa County Health Services Department.

Contra Costa County has the most concentrated area of hazardous materials in the State of California, and there are a number of public health problems from these hazardous materials and a number of public health threats.

We have had many releases over the last few years in Contra Costa County, but the release that occurred two weeks ago at General Chemical, in terms of its impact on the public health of the community, was the most serious release that has occurred in my 10 years as public health director in the county.

Obviously, a release of this magnitude focuses a number of issues and I want to comment briefly on just some of them.

There is a considerable body of environmental regulation that has grown up over the last 10 or 15 years, and a lot of effort is attended to it. Some in industry think perhaps too much; it is burdensome, perhaps even onerous. But we have noticed and evaluated that there are many gaps in this environmental regulation in terms of its effectiveness in protecting public health.

The environmental regulations have grown up largely as a response to specific incidents that have occurred over the last 10 or 15 years. So when Fairchild Chemical leaked trichlorethylene in the water supply and the ground of San Jose, we had the Underground Tank Law.

We have 2185, which is sometimes referred to as the Bhopal Prevention Act of 1985. And as a result of this rail car incident, I



think we will probably have, either at the State or Federal level, an appropriate piece of legislation that will cover this gap that has now been dramatically exposed. And that is a good thing, but I think that we need to look at the entire regulatory structure that we sort of create tree by tree and stand back and look a little at the forest and see if this really is the kind of approach that can maximally protect public health, and I think there are a number of gaps within it that need to be smoothed out.

The purpose of environmental regulation, from my point of view, is to protect the quality of the environment and the health of the people who live in it, and the rest of the biosphere, for that matter. And I think this protection of public health needs to be focused on when we look at regulatory issues.

When we look at the protection of public health, we need to look at the communities most heavily impacted. Study after study has demonstrated what is really completely obvious in the first place, which is that the communities that are most heavily impacted by hazardous materials and toxics are predominantly minority communities and low-income communities, and that these communities already suffer disproportionately from a whole variety of public health problems.

If we look at Richmond, California, here, where this event occurred, we see we not only have a heavy concentration of toxics and hazardous materials, but this community is already disproportionately impacted by every public health problem from AIDS to unemployment. We need to look at the health impacts of this sort of release in a broader context than just a single isolated release of a sulfuric acid cloud in the community, important as that is.

Scientifically accurate as these medical bulletins may be—and we need consultation from CAL EPA, OES, and people in this audience—but when Dr. Brunner's medical bulletins say, there will be no long-term health impacts, so don't worry be happy, this needs to be put in context. In this event, the fact is that thousands of people were injured, even if only temporarily, and thousands of other people were so frightened and so concerned, legitimately, that they needed to come for medical attention for evaluation of themselves and their children and reassurance, and that 15 people were hospitalized, even though the majority of those already had underlying disease.

We also need to remember this is not an isolated occurrence. This has happened again and again and repeatedly over the last few years in this community and throughout Contra Costa County, and we issue the same bulletin on the no long-term health impacts. Everyone in the community knows what everyone in the health department knows—that this could have been much worse and that the potential threat for these kinds of releases exceeds what we have seen already. People in the community already have enough problems and enough concerns and enough health impacts, and they don't need to worry about whether their children are going to be gassed in their homes and whether the health impact exceeds just the respiratory irritation.

Impact also includes the outrage, the invasiveness of having toxic stuff spread over your homes and your children's toys—what Henry

Clark refers to as toxic trespass—and this also needs to be figured into the health impacts.

I want to put that in the context in which the details in our medical reports and reassurances are put out to the community, and I think promote in general the specifics that need to be seen. We need to close the gaps in the regulatory structure, not necessarily make it bigger but make it better.

I think to some extent the formation of CAL EPA and trying to get all the regulatory agencies together was a step in that direction of integrating it, but it also showed some of the problems with the regulatory structure. The regulatory structures, like environmental protection agencies, are largely regulatory driven, and the key professionals are attorneys, engineers, chemists, and their key mission is enforcing the regulations.

To have effective public health protection from the regulatory agencies, they need to be working closely with the public health agencies and with community groups, as well as business. Standing back and looking at the reason we are doing this legislation is not to enforce this regulation or that regulation, although that needs to be done, but the reason we are doing this is to protect the health and well-being of the people in the community, and that requires a broader view.

I think CAL EPA is currently flirting with an experiment in this approach in their Comparative Risk Project under a statewide Advisory Committee, chaired by the Dean of the School of Public Health, which is trying to develop this broader view toward assessing the risks of protections toward CAL EPA and the public health officials, and we will see to what extent that will influence CAL EPA and State policy.

There are a lot of things we can do to improve emergency response, and I will not comment on those here. Other people have talked about them and other people will talk about them more and will deal with them extensively, but the key purpose of public health is prevention. We need to prevent not only these kind of events but much worse kinds of events from happening.

There is a program, the Risk Management Prevention Plan, which involves doing risk assessments for these kinds of accidents and implementing programs to reduce their likelihood. In my view, these programs need to be subject, at least in their end point, to public scrutiny, and I think Bob Campbell has been pushing that legislatively. Our health department has required that at least the off-site consequence analysis from these Risk Management Prevention Plans be put out into the public for public scrutiny so we can see if they pass the giggle test.

Most of the RMPPs in this county basically indicate there will be no off-site consequence in the worst credible accident. I am not a professional in this area, I am not an engineer, but I don't believe that and I think neither do the vast majority of people in the community.

I am reminded of what NASA did. These are the same engineers that brought us to the moon. They did a risk assessment of the space shuttle and concluded it would blow up in 1 in 100,000 launches. Again, you don't need to be a rocket scientist, if you put that out in the public, to realize that is wrong. There is something



fundamentally in error in the plan. So I think prevention needs to be a key issue.

I also want to mention occupational health, because occupational health is linked with environmental health. I said this was the worst release in terms of its impact on the public health of the community, but nobody died in this release. Yet in the last few years, at least 10 workers have been killed in hazardous materials incidents.

Workers receive the brunt of the exposure. Protecting the workers, developing training and safety programs that will protect workers in the handling of these hazardous materials, will also protect the community and is important for public health.

Finally, I think we need to look down the road. This rail car issue has been kicking around for a long time. After Dunsmuir, the health department held a meeting on the rail cars—lot of rail cars in Contra Costa County—and what will happen.

Last September, we held another meeting and got the regulatory agencies, one of the towns, and the agenda was: Are there gaps? Yes, there are gaps.

Who is responsible? It is unclear; therefore, nobody.

Our health department responded by training our hazardous materials team on tank cars. We sent them to tank car school, and I am pleased that two members of our hazardous materials team from the county health department were key in stopping this rail car release. But the purpose is not to stop releases but to prevent them from happening.

So we need to also look down the road and see if we can prevent future disasters or maybe legislate or deal with them before they occur. We need to look at the issue of pipelines, for example. There is a zillion miles of pipeline in Contra Costa County and nobody knows how many or where they are, just like they didn't know about rail cars, and I don't know who regulates them.

We need to look at earthquakes. The Hayward Fault runs under my house, past Brookside Hospital, veers between Chevron and Unocal. What will be its impact? These are the variety of issues that need to be addressed.

Mr. MILLER. Thank you.

Mr. Belliveau.

#### STATEMENT OF MICHAEL BELLIVEAU

Mr. BELLIVEAU. Good morning. My name is Mike Belliveau. I am the executive director of Citizens for a Better Environment. We are urban environmental health advocates. We work to prevent industrial pollution hazards, to empower affected residents, and to promote a sustainable economy.

We believe that the General Chemical toxic gas cloud was a tragic wake-up call. It was no accident. It was a statistically predictable event, and tragically, this chemical release was also entirely preventable.

The July 26 release must serve as a tragic and costly warning; with another chemical involved there could have been dead bodies in the streets of Richmond.

Based on our analysis of the facts and the history of our involvement in this issue, there are four major findings we want to share with you today.

First, the threat of a catastrophic release of extremely hazardous chemicals is very severe, posing a real and present danger to the residents and workers throughout much of Contra Costa County as well as other communities.

Second, existing chemical disaster prevention programs are grossly deficient.

Third, the public is being shut out of chemical disaster prevention and emergency response planning.

Fourth, present hazardous materials policies are full of loopholes that serve to cover up the serious hazards posed to public safety.

I want to address each of these briefly and share some recommendations with the committee.

First, the magnitude of the threat is very severe. As you can see on the poster board to my right, which is a summary, a mapping of hazardous materials throughout Contra Costa County based on "acutely hazardous materials" registration forms submitted by industry to the Contra Costa County Health Services Department, that this is a widespread hazard throughout Contra Costa County.

Nearly 127 million pounds of 50 different acutely hazardous chemicals are in storage at any one time in the county, at 129 different separate industrial plants and public facilities, and this does not include the same materials that are located in rail cars, pipelines, trucks, ships or barges. These are just on site at industrial and public facilities.

As you can see from the map, residential communities that are particularly at high risk because of the high volume of materials, include Martinez, Richmond, Pittsburgh, Antioch, Rodeo, Hercules and portions of Concord, and we know that materials can leave those areas and affect other residential communities as well.

I want to call your attention to a specific concern as just one example of how a toxic gas cloud release could result in much worse consequences than were suffered on July 26. I am speaking of the chemical anhydrous ammonia, which is a highly dispersive toxic gas stored under pressure at various refineries and chemical plants.

The map that has been posted there on the easel is of North Richmond and it shows a Chevron chemical fertilizer plant on Castro Street, barely three blocks from community residents in North Richmond. At any one time, upwards of 1 million pounds of anhydrous ammonia are on storage at that property.

The toxic plume mapped on the graph here was prepared by Chevron as part of their disaster prevention planning program, and by no means is it a worst-case release scenario.

Nonetheless, it shows portions of the plume, indicated in green, reaching residential portions of North Richmond in which, if you were present for more than 1 hour, you would be dead. This is a lethal cloud. Again, a very moderately estimated release scenario.

The second layer of cloud, in yellow, is if you were exposed for more than 1 hour. You would be either severely injured or incapacitated such that you could not take protective action. And then outside those boundaries, in an area that is not mapped, is a much

larger area where people would be adversely affected as they were in the release on July 26.

And, again, this is not a worst-case release scenario. This is a modest release scenario and shows there could be much worse consequences here as well as around other plants throughout Contra Costa County.

If you could put the next chart up.

I don't need to remind us of the severe earthquake hazard that we face in the Bay area, but I will do so anyway. This chart from the United States Geological Survey that is being put up shows the probability of major earthquakes in the near future in the Bay area. There is a 67 percent chance in the next 30 years there will be a very major earthquake somewhere in the Bay area with severe consequences. The highest probability of an earthquake is on the Hayward Fault, which runs barely 1 mile or 2 miles from this hearing room and barely 3 miles from very high concentrations of acutely hazardous materials.

There is a 28 percent chance in the next 30 years, according to the experts, that there will be a major earthquake on the Hayward Fault. If the storage of materials alone was not enough to frighten us, the fact that an earthquake could grossly exacerbate the effects and incapacitate the response capability is something that should highly motivate us to take preventive action.

That leads to my next point, which is the take-home lesson from this recent incident: Chemical disaster prevention must come first, and that is not the present situation. Existing chemical disaster prevention programs are grossly deficient. They are incomplete, they are behind schedule, they are underfunded, they are uncoordinated, and they are relegated to non-urgent status.

Since 1986, when one of the first State chemical disaster prevention laws was enacted in California, one of the first in the country, only two chemical disaster prevention plans submitted by industry have been accepted and approved by Contra Costa County Health Services Department. We need to dramatically upgrade these prevention programs and give primacy for prevention over emergency response.

If we can have eight hazardous material specialists doing an outstanding job in responding to a release, why is it that we only have three engineers working on prevention throughout all of Contra Costa County? There are many, many measures that can be taken to prevent releases of these materials.

The best means of prevention is to eliminate or dramatically reduce the use and storage of acutely hazardous materials. Unfortunately, no single agency is targeting specific dangerous chemicals for priority efforts to phase out their use and to reduce their sudden release risks.

One lone exception in this area is a pioneering effort by the South Coast Air Quality Management District in Los Angeles, which has adopted a program calling for the phaseout of hydrogen fluoride gas by the end of this decade.

We need similar programs in the Bay Area to reduce the usage. We need to relocate storage, upgrade vessels and equipment. We need to maintain plenty of highly trained union personnel. We need

to enclose these storage areas with secondary containment, add scrubbers and so forth. Land use reform is another critical venue.

Mr. MILLER. Mike, I will ask you to move through this quickly.

Mr. BELLIVEAU. Let me get on to some of the more significant loopholes regarding the failed efforts of State and local governments to achieve chemical disaster prevention programs.

Michael, if you could put up the next poster.

One problem is that no agency is requiring that worst-case chemical release scenarios be shared with the public. We saw reported in the press what is illustrated on this poster. On the left-hand side is General Chemical's official predicted worst acid cloud which, miraculously, does not leave their property. This is routine in the chemical disaster prevention plans that are submitted by industry.

On the right is a map of a much larger area of the county showing the actual outline of the toxic gas cloud.

We know industry has these worst-case scenarios. They have done this work. They must be made public and Contra Costa County must require them, and they have refused to do so up to this point in time.

Let me identify an area, Congressman, where we could really use your help in achieving some federal accountability. In addition to the very severe problems at the regional level and the fact that the Governor's Office of Emergency Services in Sacramento has grossly failed to exercise any leadership in this area, the U.S. EPA needs to be kicked in the butt.

In 1990, the Clean Air Act was amended, as you know, and for the first time Congress directed federal agencies to implement chemical accident prevention programming. EPA has missed its statutory deadline and not yet produced required studies on the dangers of hydrogen fluoride and hydrogen sulfide gases. Both of these materials are in high concentration in Contra Costa County.

President Clinton has failed to appoint five technical members to the new Chemical Safety and Hazard Investigation Board. This entity could be helpful in analyzing the July 26 incident, except that it exists only on paper.

And, most importantly, EPA has failed to adopt and has violated statutory deadlines for adopting comprehensive risk management program regulations. This would expand and improve upon the State prevention law existing in California and establish the first-ever national chemical disaster prevention program. This statute, by the way, in the wisdom of Congress, expressly requires an evaluation of worst-case accidental releases and clearly, the county needs to heed this federal requirement.

Unfortunately, the EPA regulations have been languishing for 16 months at the Office of Management and Budget and we could use your assistance in getting them out and into effect.

In closing, again, we need to establish the primacy of chemical disaster prevention over emergency response. And many agencies, county health, the Bay Area Air District, which should be adopting a community safety technical advisory program, State OES, EPA, we need much more aggressive efforts to prevent these releases; and to require the reduction in storage of these materials. We don't lack technical options for correcting this problem. We need political will, and we need the public "right-to-know" to be honored, and we

need to honor the public's right to act on this information so that they can be involved and have a seat at the table in the negotiations between industry and government over what must be done to reduce the threat of these very dangerous accident hazards.

Thank you.

Mr. MILLER. Thank you.

[Prepared statement of Mr. Belliveau and attachments follow:]

**Preliminary CBE Review of Chemical Disaster  
Prevention Issues  
Following the Toxic Gas Release from  
General Chemical, Richmond,  
July 26, 1993**

Statement of

Michael Belliveau, Executive Director of  
Citizens for a Better Environment - California (CBE)

Before the

Subcommittee on Oversight and Investigations of the  
House Committee on Natural Resources

Regarding

Hazardous Materials, Industry and Community Safety  
in Contra Costa County, California and Beyond

Richmond, California

10 August 93

Prepared by CBE staff members Julia May, Michael Leedie, and Michael Belliveau.

## Table of Contents

	<u>Page number</u>
Preamble	i
I. Introduction	1
II. Summary	2
III. The Magnitude of the Threat is Severe	3
IV. Chemical Disaster Prevention Must Come First	5
V. The Public Has a Right-to-Know / Right-to-Act	7
VI. Regulatory Policy Reforms Are Feasible and Urgently Needed	8
A. State and Local Chemical Disaster Prevention Programs are Failing	8
1. Accident modelling in California does not include worst-case catastrophic releases	9
2. Basis of accident modelling (Haz Ops) are generally kept secret from the public	10
3. Regulators are not mandating prevention measures	11
4. Local Administering Agencies (AAs) have virtually no oversight by the state	12



5. AAs are far behind in completing RMPPs (Risk Management & Prevention Programs)	13
6. Regional Air Quality Management Districts must become active in regulating acutely hazardous materials	13
B. The Federal Government has failed to implement the chemical accident prevention requirements of the Clean Air Act Amendments of 1990	14
C. Available Technologies Must Be Mandated: Relief Valves	15
D. Warning systems and evacuation plans must be improved	16
E. Railcar regulations and local authority must be clarified and expanded	16
F. Union safety certification, worker training	17

## Preamble

Good Morning. My name is Michael Belliveau. I'm the Executive Director of Citizens for a Better Environment - California, also known as "CBE." We are urban environmental health advocates of clean air and water and toxic free communities. We work to reduce and prevent industrial pollution hazards, to empower affected residents and to promote a sustainable economy. Nearly 20,000 CBE members throughout the San Francisco Bay Area and Los Angeles County support our efforts.

Much of our work in the last fifteen years has focused on documenting and reducing the environmental health hazards posed by the petrochemical industry in Contra Costa County. Along with local residents, we have been instrumental in the enactment and enforcement of policies to reduce smog-producing and toxic air pollution, to prevent toxic metal pollution of the Bay and to begin a chemical disaster prevention program for the oil refineries, chemical plants and other industrial plants that line the Contra Costa County shoreline.

We've hardly been alone in this effort. We work closely with and support the efforts of grassroots community organizations that have sprung up to fight industrial pollution, including the West County Toxics Coalition (Richmond) - which we helped start in 1986, Communities for a Safe Environment (Martinez), Rodeo Citizens Association (Rodeo), the Toxic Cloud Task Force (Point Richmond) and others.

A report published by Citizens for a Better Environment in February 1989 presaged the current concern with acutely hazardous materials releases. Entitled "Richmond At Risk: Community Demographics and Toxic Hazards from Industrial Polluters," the report found that more than 39 million pounds of extremely hazardous chemicals were stored in the Richmond area alone at any one time.

The CBE report also documented an example of "environmental racism:" the toxic hazards in the Richmond industrial zones were located adjacent to 14 neighborhoods where 70% to 90% of the residents were African-American. Latinos also lived near the high risk areas. A recent San Francisco Chronicle editorial decried the failure of land use decisions to address environmental racism and issued a call "to sharply reduce the amount of toxic materials stored at industrial sites." (August 1, 1993).

## I. Introduction

The July 26 release of more than 7,000 pounds of sulfuric acid fumes from the General Chemical plant in Richmond injured thousands of people and disrupted the lives of tens of thousands more. For CBE this was more than a vindication of long stated community concerns and a harsh reminder of our failure to secure the public's safety from acutely hazardous materials; this toxic gas cloud also exposed and injured one of our staff members and her family in North Richmond.

The General Chemical toxic gas cloud was a tragic wake up call. It was no "accident;" it was a statistically predictable event. Nor was this an isolated event; there has been a rash of fires, explosions and toxic gas clouds in recent years, and extremely hazardous chemicals surround this and nearby communities in staggering quantities. The July 26 release must serve as a tragic and costly warning; with another chemical there could have been dead bodies in the streets of Richmond.

Tragically, this chemical release was entirely preventable. The backdrop for this latest toxic trespass is an ineffectual prevention program, incomplete response efforts, failed government leadership and short-sighted industrial planning. To make matters worse, the people at greatest risk from disastrous chemical releases have been denied information, left out of decision making, and all too often discriminated against. If public scrutiny of this chemical emergency exposes and corrects these faults, then true public safety from hazardous industrial materials might emerge from the personal tragedies of the many thousands of people exposed, injured and terrified on July 26.

Please Note: The analysis and recommendations presented in this statement are preliminary and not meant to be exhaustive. Although we present a broad overview of the acutely hazardous materials threat and identify many specific and feasible and needed reforms, in the two weeks since the toxic gas cloud was released by General Chemical we have had little time to document in-depth the many shortcomings of preventive programs or the institutional complexities. We recommend that further investigative research and legal analysis be commissioned by this Oversight Committee.

## II. Summary

Our analysis of the facts and our long history of involvement in chemical plant safety issues provides the basis for four major findings and recommendations. These are summarized here and discussed in depth in the sections that follow.

**First**, the threat of a catastrophic release of extremely hazardous chemicals poses a real and present danger to residents and workers throughout much of Contra Costa County and other communities. Nearly 127 million pounds of 50 different acutely hazardous chemicals are in storage at any one time at 129 industrial plants and public facilities in Contra Costa County. Reported chemical releases are not isolated or chance events. Over the last five years, more than ten other major chemical releases and explosions have killed one person, severely burned four people and exposed thousands more throughout the County.

**Second**, existing chemical disaster prevention programs are grossly deficient - i.e. behind schedule, underfunded, uncoordinated and relegated to nonurgent status. Since 1986, only two chemical disaster prevention plans submitted by industry have been approved by the County. Chemical disaster prevention programs must be dramatically upgraded and given primacy over emergency response efforts. For example, in one pioneering effort, the South Coast Air Quality Management District did a study that found the use of hydrogen fluoride gas in the Los Angeles to be incompatible with nearby residential neighborhoods. Following political outcry after a series of chemical releases, the District adopted a regulation banning HF use in the region.

**Third**, the public is being shut out of chemical disaster prevention and emergency response planning. At-risk community members and workers must be fully informed of chemical hazards and empowered to join as equal partners in government and industry decision making regarding hazardous materials. The public has a right to know about toxic hazards. Creation of a Community Technical Advisor at the Bay Area Air Quality Management District would help community groups to have access to an expert advocate.

**Fourth**, present hazardous materials policies are full of loopholes and serve to cover up the serious hazards posed to public safety. Feasible regulatory policy reforms must be immediately enacted, including: close the loophole on rail car storage of toxics, require pressure relief valves to vent to treatment & containment devices, publicize worst case toxics release scenarios, and create meaningful state-level oversight and accountability for chemical disaster prevention and emergency planning.

### III. The Magnitude of the Threat is Severe

**Summary:** The threat of a catastrophic release of extremely hazardous chemicals poses a real and present danger to residents and workers throughout much of Contra Costa County and other communities. Nearly 127 million pounds of 50 different acutely hazardous chemicals are in storage at any one time at 129 industrial plants and public facilities in Contra Costa County. Reported chemical releases are not isolated or chance events. Over the last five years, more than ten other major chemical releases and explosions have killed one person, severely burned four people and exposed thousands.

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About 400 toxic chemicals are formally designated as "acutely hazardous materials" (AHMs) under state law (AB 3777, Statutes of 1986) and "extremely hazardous substances" (EHSs) under federal law (Title III, Superfund Amendments and Reauthorization Act of 1986 [SARA]). These chemicals were so listed and distinguished from other hazardous chemicals because they are so highly toxic as to pose an immediate threat of death or serious injury upon a sudden short term exposure.

Contra Costa County is one of several regions in California, the United States and the world where large quantities of AHMs are produced, used, transported or stored in close proximity to people.

Nearly 127 million pounds of 50 different acutely hazardous chemicals are in storage at any one time at 129 industrial plants and public facilities in Contra Costa County. This does not include AHMs in storage in rail cars, pipelines, trucks, ships or barges, all of which are exempt from hazardous materials reporting requirements under SARA Title III or parallel state law. (Note: a much larger quantity of materials in storage are not AHMs but are flammable, combustible and/or hazardous for other reasons).

Based on the Acutely Hazardous Materials Registration Forms on file with the Contra Costa County Health Services Department, the San Francisco Examiner, at the suggestion of CBE, recently analyzed the distribution of AHMs by region (zip code), company and chemical. (See attachments).

Residential communities where more than 100,000 pounds of AHMs are in storage at any one time include Martinez, Richmond, Pittsburg, Antioch, Rodeo, Hercules and portions of

Concord. The top ten industrial sites with AHM storage, by maximum total quantity, include four oil refineries (TOSCO, Chevron, Shell and Unocal) and six chemical plants (Rhône-Poulenc, General Chemical - 2 plants, Zeneca, Chevron Chemical and duPont).

The greatest volume AHMs in storage in Contra Costa County include sulfuric acid, oleum (fuming sulfuric acid), carbon disulfide, ammonia, nitric acid, chlorine, hydrogen fluoride, phenol, sulfur dioxide and hydrogen sulfide. Although exposure to sulfuric acid fumes (from the release of sulfur trioxide from oleum) from General Chemical resulted in a massive toxic gas plume that exposed and injured thousands, more severe injuries or even deaths could result from major releases of other acutely hazardous materials which are stored in large quantities in Contra Costa County.

Anhydrous ammonia, a highly dispersive toxic gas usually stored under pressure and lethal at high concentrations, is present in large quantities close to neighborhoods. For example, the Chevron Chemical fertilizer plant on Castro Street stores up to one million pounds of ammonia on property that borders closely with residential North Richmond. Ammonia is produced and stored at all the oil refineries in the county with especially large quantity storage at the Chevron refinery (Richmond) and TOSCO (near Martinez). About thirty industrial plants report nearly 6 million pounds of ammonia storage. Ammonia is also often shipped by rail car through the County.

Hydrogen fluoride gas, a deadly poison and insidious acid that can dissolve glass and bone and could result in a Bhopal-like asphyxiating release, poses hazards to residents and others downwind of the duPont chemical (Antioch), Dow Chemical (Pittsburg) and General Chemical (Pittsburg) plants.

Chlorine gas, an all too common hazard at industrial plants, water/sewage treatment plants and large swimming pools, is highly toxic, lethal at high concentrations, and dispersive. About forty plants in the county report maximum storage of more than two million pounds of chlorine gas. The highest volume storage sites for chlorine include duPont chemical (Antioch), Imperial West Chemical (Pittsburg), Central Contra Costa Sanitary District (Martinez) and Imperial West Chemical (Antioch).

Earthquake hazards exacerbate toxic chemical storage hazards. There is a high probability that a significant earthquake will occur on the northern Hayward Fault which runs through western Contra Costa County. (See attachments). Seismic activity on other faults can also affect the county. Given the proven severity of this natural hazard even greater priority

should be given to solving the hazardous materials threat. Imagine if the General Chemical release had occurred during a major earthquake when response capabilities may have been paralyzed and other chemical releases and fires triggered by the quake.

These provide just a few examples of the lethal hazards posed by extremely hazardous chemicals in Contra Costa County. Many different toxic release scenarios could result in serious injury and death. Other communities in other counties also face toxic gas cloud threats, including Silicon Valley (semiconductor manufacturing), Los Angeles (petrochemical) and so on.

#### **IV. Chemical Disaster Prevention Must Come First**

**Summary:** Existing chemical disaster prevention programs are grossly deficient - i.e. behind schedule, underfunded, uncoordinated and relegated to nonurgent status. Since 1986, only two chemical disaster prevention plans submitted by industry have been approved by the County. Chemical disaster prevention programs must be dramatically upgraded and given primacy over emergency response efforts. For example, in one pioneering effort, the South Coast Air Quality Management District did a study that found the use of hydrogen fluoride gas in the Los Angeles region to be incompatible with nearby residential neighborhoods. Following political outcry after a series of chemical releases, the District adopted a regulation banning HF use in the region.

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For a discussion of the pronounced deficiencies in prevention programs, see the section below entitled "Regulatory Reforms are Feasible, Urgently Needed."

A principle of any good public health program stresses that prevention offers a much better investment in avoiding human suffering than responding with treatment after an injury or disease has set in. Similarly, catastrophic chemical releases are better prevented than responded to after an emergency. Although clear improvements are needed in emergency response, prevention must be given primacy.



Serious AHM releases can be prevented by a variety of means:

- phase out the use/production of AHMs, replace AHMs with safer substitutes,
- reduce the total amount in storage,
- reduce the maximum amount in storage in a single container,
- relocate storage further away from people,
- store the substance in a safer chemical form,
- upgrade storage vessels and equipment to best available technology,
- maintain plenty of highly trained union personnel,
- enclose with secondary containment,
- add scrubbers or other gas plume knockdown systems,
- vent pressure relief valves to enclosed systems,
- upgrade seismic safety precautions, and so on.

The best means of prevention is to eliminate or dramatically reduce the use and storage of acutely hazardous materials. Due to a lack of leadership from the EPA, the Governor's Office, the State Office of Emergency Services and others, no single agency is targeting specific AHM's for priority efforts to phase out use and reduce sudden release risks. Several chemicals that are AHMs should be placed on a fast track for "sunsetting" (i.e. a complete phase out) because of the hazard posed and because safer substitutes are available or within reach.

For example, phase out efforts should target hydrogen fluoride gas, chlorine gas, ammonia gas (in refrigeration applications), arsine gas (used in semiconductor manufacturing), ethylene oxide (a sterilant), organic lead compounds and several pesticides. Other AHMs which are more difficult to eliminate outright in the short term should be targeted for aggressive hazard reduction efforts.

Land use reform is another critical venue for chemical disaster prevention. Submitted with this statement to the Committee is one copy of a report prepared by the Environmental Health Coalition of San Diego entitled "Toxic Free Neighborhoods Community Planning Guide". This documents profiles a successful effort to reform zoning requirements in San Diego to phase out the use of certain highly toxic materials in close proximity to people over time, establishing protective buffer zones around sensitive residential areas. Copies of this report can be ordered from EHC by calling (619) 235-0281.

Improved prevention can also result from industrial process decisions which reduce the use of acutely hazardous materials. Conversely, major shifts in local refining could cause more

severe future chemical catastrophes in Contra Costa County. Oil companies plan to invest billions of dollars in Bay Area refining complexes starting in 1993 and 1994. Working with a refinery process engineer (see attached analysis), CBE discovered three facts about some of these refinery proposals. First, they will increase the number of sudden releases with "upsets" when new equipment is brought on line and fine-tuned. Second, they will increase the severity of sudden chemical releases by drastically increasing the amounts of explosive and acutely toxic chemicals that are held in and moved between petrochemical facilities in the County. Third, despite oil company claims, they are not needed to produce required cleaner-burning gasoline. Other refineries produce cleaner gasoline without using the cheapest crude oil and dirtiest refining methods available. Without preventive actions, present investments may lock area refiners into cheaper and more lucrative oil refining at the expense of their workers and neighbors, who would suffer even more from acute exposures to petrochemicals in the future than they have in the past.

## V. The Public Has a Right-to-Know / Right-To-Act

**Summary:** The public is being shut out of chemical disaster prevention and emergency response planning. At-risk community members and workers must be fully informed of chemical hazards and empowered to join as equal partners in government and industry decision making regarding hazardous materials. The public has a right to know about toxic hazards. Creation of a Community Technical Advisor at the Bay Area Air Quality Management District would help community groups to have access to an expert advocate.

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Efforts to reduce and prevent chemical disaster hazards are being seriously undermined by minimizing public involvement in hazardous materials planning, contrary to state and federal legislative intent, and by restricting public access to critical information. The public has both a right to know about chemical hazards and a right to act on that knowledge to improve the safety of the community and workplace. A few specific ways that these rights are being violated are discussed in greater detail in the following section and include: technical studies (called HazOps), on what failures can lead to chemical releases are routinely withheld from the public. Worst case release scenarios that profile off-site consequences are routinely withheld from the public, and the Local Emergency Planning Committees (LEPCs) established under federal law have been rendered virtually ineffectual in California by the failed leadership of the State Office of Emergency Services (OES).

One partial remedy would be the creation of a Community Technical Advisor Program to provide technical assistance to community and environmental groups concerned about chemical plant safety. Such a proposal is actively under consideration by the Bay Area Air Quality Management District (BAAQMD). (See attachments). This program would provide an independent technical expert to review safety documents and relevant data, monitor facilities and assist community members in developing recommendations for continuous improvements. The BAAQMD should complete its review of this program, and work out remaining details under discussion with community members, and implement the program immediately.

Locally, the City of Richmond should establish an Environmental Affairs Commission made up of appointed residents to evaluate environmental problems, including chemical hazards, in the Richmond area and to develop recommendations to the City, other agencies and industry regarding environmental improvements. Most major California cities with serious environmental problems have constituted such citizen commissions. The City of Richmond should join the modern era and involve its citizenry in responding to this critical concern.

## VI. Regulatory Reforms are Feasible, Urgently Needed

Summary: Present hazardous materials policies are full of loopholes and serve to cover up the serious hazards posed to public safety. Feasible regulatory policy reforms must be immediately enacted, including:

- Create meaningful state-level oversight and accountability for chemical disaster prevention and emergency planning.
  - Publicize worst case toxics release scenarios, and
  - Require pressure relief valves to vent to treatment & containment devices,
  - Close the loophole on rail car storage of toxics,
-

### **A. State and Local Chemical Disaster Prevention Programs are Failing**

California has one of the few chemical disaster prevention laws in the country. Enacted in 1986 as AB 3777, it requires local administering agencies (AAs) to maintain an inventory of acutely hazardous materials based on facility reporting and to require chemical disaster prevention plans, known formally as Risk Management and Prevention Programs (RMPPs), to be prepared by facilities with AHMs that may pose a significant risk. The RMPPs are to be based on Hazard and Operability (HazOp) studies, that plot modes for failure/error and chemical release, and Off-Site Consequence Analyses (OSCA) which are supposed to map out what exposures, injuries and deaths could result from a significant release. The RMPPs, which must be approved by the AAs, are supposed to include measures to be taken by the facility to prevent the release of acutely hazardous materials.

Poor implementation of this statute has hindered progress in preventing AHM releases and has created an illusion of public safety that does not exist. Among the many problems that plague this program are:

1. Accident in California does not include worst-case catastrophic releases
2. Basis of accident modelling (Haz Ops) are generally kept secret from the public
3. Regulators are not mandating prevention measures
4. Local Administering Agencies (AAs) have virtually no oversight by the state
5. AAs are far behind in completing RMPPs (Risk Management & Prevention Plans)
6. Regional Air Quality Management Districts must become active in regulating acutely hazardous materials

#### **1. Accident modelling in California does not include worst-case catastrophic releases**

##### Recommendations:

—>> RMPPs (Risk Management and Prevention Programs) must include modelling of true worst case scenarios in order to identify potential offsite consequences, to enable planning and prevention, and to honor the public's right to know.

—>> State law should clarify and mandate that real worst case scenario releases be analyzed.

—>> State OES should require real worst case analysis in order to comply with federal law and guidance.

- **RMPPs only model small releases.** RMPP (Risk Management and Prevention Program) modelling of accidents in Contra Costa County has allowed the use of unrealistically small releases to be called "worst case credible" accidents.
- **Small release modelling generally predicts no offsite consequences.** So called "worst case credible" accident modelling allowed by the Contra Costa County Health Services Department and used by industry predicts that likely scenarios for accidental releases of acutely hazardous materials will generally not go outside company fencelines, and not affect neighbors.
- **In reality, large releases with major exposure to neighbors have been frequent.** The large (and increasing) number of major accidents in Contra Costa County in the last couple of years clearly show that the County and the petrochemical industry have been greatly underestimating the amount of acutely hazardous materials which are likely to be released during accidents. Many accidents have resulted in offsite plumes over large areas, with exposure of large numbers of neighbors to toxic materials. (See attachments on series of accidents.)
- **Federal EPA guidance recommends modelling real worst case analysis, but California Administering Agencies are not performing them.** According to an EPA guidance document, modelling to identify vulnerable zones should be done based on the "maximum quantity that could be released from [the] largest vessel or incremental vessels." (Technical Guidance for Hazards Analysis, EPA, Dec. 1987, p. 2-17, see attached)
- **Federal Clean Air Act amendments (of 1990) also require worst case analysis.** Section 112(r) requires that industrial plant-specific hazard assessments include "an evaluation of worst case accidental releases." The regulations implementing these sections are hung up in OMB (Office of Management and Budget) and need to be expedited.

2. Basis of accident modelling (Haz Op) are generally kept secret from the public

Recommendation

- >> Hazard and Operability (Haz Ops) studies should be submitted to regulatory agencies.
- >> Independent review to determine what is and is not trade secret in RMPP-related documents should be done by regulators, in order to allow public review and meaningful comment on the documents which form the basis of RMPPs.

- Industry has kept its Haz Ops studies from public review. Haz Ops studies identify sources of potential leaks and releases and are the basis of RMPPs, but are generally kept from public review, due to over-broad claims of trade secrecy.
- Contra Costa County has helped companies to shelter Haz Ops from public review. Contra Costa County has encouraged the sheltering of Haz Ops from public review, by allowing companies to retain Haz Ops onsite, rather than requiring submittal to the County where they would be subject to Public Records Act requests that would make non-trade secret material publicly available.

### 3. Regulators are not mandating prevention measures

#### Recommendations

- >> The state RMPP law should be amended to clarify that regulators have clear authority to require affirmative steps to prevent catastrophic releases.
- >> Counties should also take advantage of existing authority under California Civil Code for potential nuisances.

- Industry claims Contra Costa County cannot mandate prevention actions, and to date, the County has sided with industry. Industry claims the County has no authority to require companies to take particular actions to reduce or eliminate risk of release of acutely hazardous materials.
- State law does provide ability to disapprove RMPPs if inadequate. In fact, state Health & Safety Code gives the County authority to disapprove an RMPP if it is inadequate in preventing accidents.<sup>1</sup>
- Industry incorrectly claims that Contra Costa County cannot mandate prevention actions, and the County has sided with industry. Industry claims that the County has no authority to require companies to take particular actions to reduce or eliminate risk of release of acutely hazardous materials. This position is clearly contradicted by well-established law. Within the meaning of California Civil Code

<sup>1</sup> Health & Safety Code, Section 25534, "If...the administering agency determines that the handler's RMPP is deficient in any way, the administering agency shall notify the handler of these defects. The handler shall submit a corrected RMPP within 60 days of the notice. Section 25535, "...Failure to fully comply with this notice and the requirements of this section shall be deemed a violation of this article for purposes of Section 25940." Section 25534, "...The RMPP shall include all of the following elements: Design, operating, and maintenance controls which minimize the risk of an accident involving acutely hazardous materials."

<sup>2</sup> *Vedder v. County of Imperial*, 36 Cal.App.3d 654, 661 (1974).

<sup>3</sup> *County of San Diego v. Carlstrom*, 196 Cal.App.2d 485, 491 (1961).

section 3494, the County is perhaps the best recognized "public body" to abate public nuisances. The California courts have held that "the storage of gasoline and other highly combustible chemicals and not requiring or providing adequate fire protection facilities," could constitute a public nuisance, even if no fire has yet occurred.<sup>2</sup> Similarly, the courts have held that a County may exercise its nuisance authority to require prospective actions to reduce the latent but foreseeable risk of fire created by the storage of hazardous materials in a residential neighborhood.<sup>3</sup>

#### 4. Local Administering Agencies (AAs) have virtually no oversight by the state

##### Recommendations

—>> Require oversight of AAs by the state so that all federal and state requirements are met, possibly through additional state legislation.

—>> Reconstitute LEPCs (Local Emergency Planning Committees) so that they correspond to each AA.

—>> Require AAs or LEPCs to do jurisdiction-wide cumulative hazards analyses, as required by federal law.

- \* The State does not provide oversight for local Administering Agencies (AAs). The approximately 130 California Administering Agencies (cities, counties, fire departments) are designated by the state to implement state and federal law on storage of hazardous materials, but are lacking state oversight on performing their duties. There is a lack of accountability for AAs, and a lack of communication between AAs, AAs and LEPCs, and with the California OES (Office of Emergency Services).

- \* Local AAs are not part of an integrated state network. AAs have no formal inter-coordination, standardization of methods, or centralization of data. Implementation of state and federal law by them is done very poorly by many, better by others, but left to ad hoc, case by case development.

- \* The geographic boundaries of the LEPCs cover too much area to effectively discharge their responsibilities of coordinating the activities of the administering agencies. Contra Costa County is one of sixteen counties in only one LEPC which extends from Monterey to Del Norte County. The concentration of toxic materials in Contra Costa County and other Bay Area communities alone could easily warrant the designation of a separate LEPC. In addition, the large geographic area makes the job of oversight more difficult because of pronounced regional differences in population and industry types.

- \* Proper oversight could correct deficiencies, such as a failure for cumulative hazards analyses to be performed. Hazards analyses are jurisdiction-wide analyses



required by federal law which look cumulatively at the risks from all industries in the area, and take into account transportation through the area.

## 5. AAs are far behind in completing RMPPs

### Recommendations

—>> Administering Agencies should increase fees to administer RMPP programs in order to hire additional engineers to expedite the RMPP program.

For example,

- About 129 facilities store Acutely Hazardous Materials in Contra Costa County.
- 26 RMPPs have been requested by the County.
- 16 RMPPs have been submitted.
- 2 have been reviewed and accepted.

(Source: personal communication, Randy Sawyer, Engineer under contract to the Contra Costa County Health Services Department, August 6, 1993.)

## 6. Regional Air Quality Management Districts (AQMDs) must become active in regulating acutely hazardous materials

Regional air quality agencies, like the Bay Area Air Quality Management District, who have the expertise, staffing, and authority to act, have generally refused to get involved in the prevention of airborne releases of AHMs. (A positive exception is the South Coast Air Quality Management District (SCAQMD) which adopted a regulation calling for the phase out of hydrogen fluoride (HF) gas in the L.A. area).

### Recommendations:

—>> Regional AQMDs should be involved in all aspects of the RMPP process, including making pollution prevention recommendations.

—>> Regional AQMDs should regulate priority AHMs for phaseout, especially those stored near residences.

- Regional AQMDs have authority to regulate airborne pollutants including Acutely Hazardous Materials (AHMs)—through its general authorities and through nuisance authorities. (See attachments)
- Regional AQMDs have large, expert staff available

- AQMDs often utilize measures to prevent ongoing air pollution which can also be used to reduce releases of AHMs
- AQMDs have the regulatory structure and region-wide jurisdiction to enact industry-wide phaseouts, or use reduction, of high priority chemicals

## **B. The Federal Government has failed to implement the chemical accident prevention requirements of the Clean Air Act Amendments of 1990**

In four respects, the U.S. Environmental Protection Agency (EPA) and the Clinton Administration have fallen short of the intent and requirements of Section 301 of the Clean Air Act Amendments of 1990 (Section 112(r) of the Clean Air Act).

- EPA has missed statutory deadlines and not yet produced required research studies on the dangers of hydrogen fluoride and hydrogen sulfide gas. The studies must document the worst case catastrophic impacts of releases of these materials. Both of these materials are present in significant quantities in Contra Costa County. Section 112 (r)(3)-(4)
- President Clinton has failed to appoint five technical members to the new Chemical Safety and Hazard Investigation Board. Despite Congress' willingness to fund this independent oversight body, no effort is underway due to the lack of appointments. (Former President Bush had left positions on this Board vacant until the very end of his tenure.) Section 112 (r)(6)
- EPA has failed to adopt comprehensive Risk Management Program regulations intended to establish a first-ever national chemical disaster prevention program. The hazard analyses required by statute under this program must include "an evaluation of worst case accidental releases" Section 112(r). EPA's failure to act is contrasted with that of the Occupational Safety and Health Administration (OSHA) which completed on time its task, under the same statute, to adopt Chemical Process Safety regulations for the chemical industry. EPA's proposed regulations have been languishing for 16 months at the Office of Management and Budget (OMB).
- EPA has failed to vigorously pursue the research opportunity to use facilities in southern Nevada to examine properties of toxic gas clouds deliberately released into the environment in the absence of people. This research effort needs \$3 to \$4

million per year to generate critical information that can be used to set priorities for preventing catastrophic chemical releases.

(We are grateful to Dr. Fred Millar of Friends of the Earth, Washington, D.C. for assisting with this profile of federal inaction).

### C. Available Technologies Must Be Mandated

#### Relief Valves

##### Recommendations:

—>> Relief valves must not be allowed to vent gases to the atmosphere, but instead be piped to widely available containment systems such as scrubbers.

—>> The BAAQMD (Bay Area Air Quality Management District) should implement its Clean Air Plan, which identifies a regulation on pressure Relief Valves, due for adoption in 1993. (Rulemaking has not yet started, and should be expedited.) This regulation should ban venting of pressure relief systems from all sources to the air.

- Relief valves are designed to open up under high pressure, and so must be routed to containment systems. Relief valves, rupture disks, and other relief systems are for the purpose of allowing over-pressured vessels to release gases when the pressure reaches a certain threshold, so that the vessels won't explode. Railcars, tanks, processing vessels, etc. have such pressure relief systems.
- Older petrochemical plants routinely allow relief system gases to dump to the atmosphere. Older refinery and chemical plants vent their pressure relief systems to the atmosphere and are major sources of ongoing air pollution, and cause major releases during accidents.
- General Chemical and Tosco had major accidents involving pressure relief valves this year. General Chemical in Richmond, and Tosco Refinery in Martinez dumped many tons of toxic materials through pressure relief systems which were unequipped with containment systems during accidents this year.
- Scrubber systems are widely available. Newer refinery and chemical plants vent their pressure relief systems to scrubbers or flares, instead of dumping to the atmosphere.
- Exxon & other refineries collect relief valve gases into flare systems. Exxon in Benicia (a newer facility, built in the '60s) and newer portions of other Bay Area refineries vent their relief gases to flares.

- Dow Chemical collects toxic relief valve gases in scrubbers. Dow Chemical in Pittsburg pipes their relief valves to scrubbers so that they will not dump to the atmosphere when they open to relieve pressures.
- BAAMQD has not yet set its schedule for implementing its Clean Air Plan for requiring controls on pressure relief valves. The BAAQMD has not yet scheduled any workshops to implement the Clean Air Plan's requirement for adoption of a pressure relief valve regulation this year. (See attached excerpt from BAAQMD Clean Air Plan.)

#### D. Warning systems and evacuation plans must be improved

##### Recommendations:

- >> Siren systems must be put into place, with community education on their meaning so that people know how to protect themselves.
  - >> The CAN (Community Alert Network, telephone warning system) must be made to work, or be replaced.
  - >> Evacuation plans, with advance community education, should be developed in detail to provide an additional option aside from the "Shelter in Place" policy.
- Siren systems could provide instant warning. People walked directly into the sulfur trioxide / sulfuric acid cloud during the General Chemical July 26th release and were overcome by it, thinking that it was a cloud of fog. A siren system may have allowed more people to recognize the hazard and escape exposure.
  - The CAN system has repeatedly failed. During several major accidental toxics releases in Contra Costa County, the computerized telephone system has missed calling large, and even the majority of people in critical areas, it has called late (even after the release was over), or has not worked at all.
  - "Shelter in Place" has been promoted as a policy without clear criteria for its use, and without testing it. Shelter in Place has been treated as a well-tested system and replacement for a broader variety of options such as evacuation plans and public education to prepare people for protecting themselves and escaping exposure. In reality, "Shelter in Place" has not been well tested, and would clearly be the wrong choice in cases where lethal gases can overtake people inside their homes, and in other cases. (See attachment.)

## E. Railcar regulations and local authority must be clarified and expanded

### Recommendations:

—>> Railcar regulations must be clarified to emphasize local regulatory oversight for inspection, and limitations in maximum amounts on site at one time.

—>> Railcar regulations should not allow temporary storage exemptions from other storage regulations.

—>> Railcar regulations should be modified to provide centralized inventories of amounts of materials stored, time stored, locations, etc.

—>> Railcar regulations should be modified to provide phaseout of storage of AHMs near neighbors.

—>> Railcar regulations and jurisdiction of different agencies should be reviewed, and a report of gaps and solutions provided to the public.

- Railcars have been widely used to temporarily store toxic and Acutely Hazardous Materials (AHMs) and avoid regulatory oversight. Facilities using AHMs have used regulatory loopholes which allow temporary storage of AHMs in railcars without tripping local, state, and federal requirements for inspection, and permit storage limits.

## F. Union safety certification, worker training

### Recommendations:

—>> Require that workers in areas where Acutely Hazardous Materials (AHMs) are present, to be fully trained through intensive, certified safety programs offering 80 hour or more hours, such as the Oil, Chemical, and Atomic Workers (OCAW) and Pipes Trades training programs.

—>> Assess the current status of worker training to identify gaps.

—>> Existing trade unions which have extensive information on worker safety training and accidents should be consulted for developing higher standards for all workers in areas where AHMs are used.

- Union training programs prevent accidents. OCAW, and Pipe Trades, and other union training programs offer extensive safety training to workers, greater than 80 hours.

- Many non-union contract workers have little safety training. Workers have reported accidents caused by untrained, non-union contract workers.
- A trend in using undertrained, non-union workers, and reducing maintenance may be causing more accidents. The Gray Institute Report (Lamar University, Beaumont, Texas, July 1991), found a greater dependence in recent years on outside contract workers, with less safety training than union-represented workers. The OCAW has stated that unsafe work by contract workers has caused major catastrophes and cost OCAW members their lives. (OCAW / Labor Institute Emergency Response & Prevention Workbook, First Edition, p.27)

**Attachments to:**

**Preliminary CBE Review of Chemical Disaster Prevention Issues  
Following the Toxic Gas Release from  
General Chemical, Richmond,  
July 26, 1993**

Statement of

Michael Belliveau, Executive Director of  
Citizens for a Better Environment - California (CBE)

Before the

Subcommittee on Oversight and Investigations of the  
House Committee on Natural Resources

Regarding

Hazardous Materials, Industry and Community Safety  
in Contra Costa County, California and Beyond

Richmond, California

10 August 93





# Probabilities of Large Earthquakes in the San Francisco Bay Region, California

By WORKING GROUP ON CALIFORNIA  
EARTHQUAKE PROBABILITIES

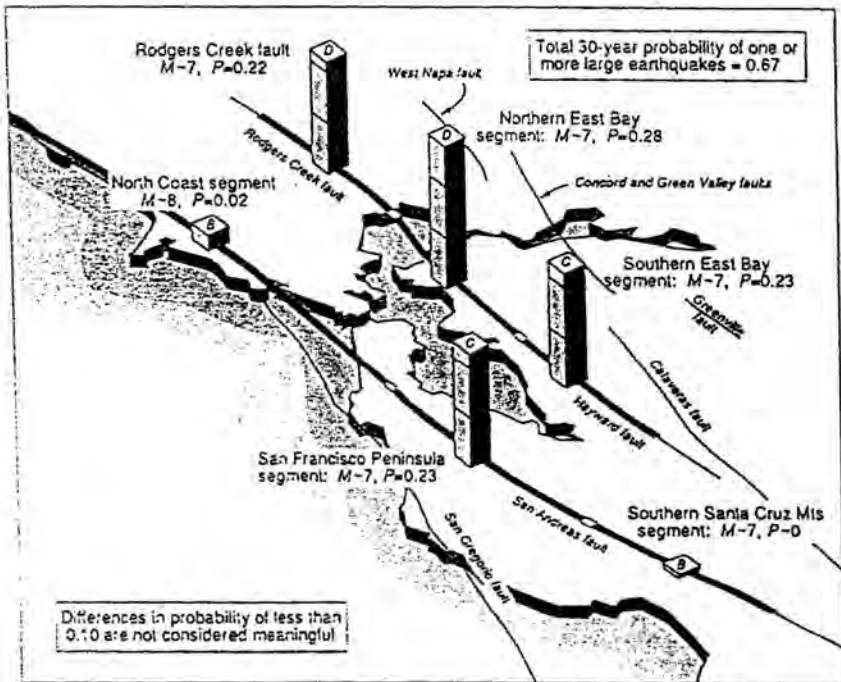


Figure 9. Conditional probabilities of earthquakes ( $M \geq 7$ ) in San Francisco Bay region. Column heights are proportional to probabilities. Letters on columns indicate reliability of forecast, on a scale of A to E, with A being most reliable.  $M$ , magnitude;  $P$ , probability.

MAJOR SHIFTS IN LOCAL REFINING COULD CAUSE MORE SEVERE  
FUTURE CHEMICAL CATASTROPHES IN CONTRA COSTA COUNTY.

Oil companies plan to invest billions of dollars in Bay area refining complexes starting in 1993 and 1994. Working with a refinery process engineer (See analysis attached as appendix \_\_), CBE discovered three startling facts about some of these refinery proposals. First, they will increase the number of sudden releases with "upsets" when new equipment is brought on line and fine-tuned. Second, they will increase the severity of sudden chemical releases by drastically increasing the amounts of explosive and acutely toxic chemicals that are held in and moved between petrochemical facilities in the County. Third, despite oil company claims, they are not needed to produce required cleaner-burning gasoline that other refineries produce without using the cheapest crude oil and dirtiest refining methods available. Without preventive actions, present investments may lock area refiners into cheaper and more lucrative oil refining at the expense of their workers and neighbors, who would suffer even more from acute exposures to petrochemicals in the future than they have in the past.

SECTION VI. THE DRAFT EIR FAILS TO IDENTIFY AND DISCUSS THE ENVIRONMENTALLY PREFERRED ALTERNATIVE OF REFINING LIGHT, SWEET CRUDE OIL FOR REFORMULATED FUELS.

A. Introduction.

Reformulated fuels can be refined from lighter, lower sulfur crude oil by using different, generally less intensive processing schemes. Compared with Shell's proposed project to refine heavy, sour crude oil more intensively, this less intensive processing of "cleaner" crudes would avoid or reduce significant air and water pollutant releases, as well as catastrophic chemical releases. Construction and operation of modifications to perform this less intensive processing and maintain Shell's fuels output would also create safer jobs in the refinery.

The Draft EIR fails to identify, discuss or analyze this environmentally preferred alternative. This alternative project could meet clean fuels requirements and provide jobs while avoiding or reducing significant air pollution, water pollution, and chemical accident impacts on workers, refinery neighbors, and San Francisco Bay.

The Draft EIR further fails to provide information about the essential crude oil foundation for any clean fuels alternative. This fails to foster informed public comment on avoidable but potentially irreversible impacts, and fails to foster informed public decisions on what alternative should be constructed at this Martinez refinery.

B. It is feasible to make the same amount of reformulated fuels from light sweet crude without some processing modifications that are proposed by Shell.

Among other process units, Shell proposes to add four hydrotreating units and two cokers to remove sulfur and other contaminants and generally "upgrade"<sup>33</sup> petroleum compounds. DEIR at 3-34. Shell also proposes a new hydrogen plant that would make hydrogen for the hydrotreaters, and a new sulfur recovery/sour water system to further process the sulfur byproducts of the hydrotreaters. DEIR at 3-47, 3-51.

<sup>33</sup> The DEIR defines "upgrading" as follows: "Modifies the properties of a hydrocarbon stock to improve the properties or remove impurities." DEIR at 3-24. For example, the "new Delayed Coker Unit would become a cornerstone in the processing of heavy, high-sulfur, petroleum compounds to higher value products" that have fewer carbon atoms per molecule. DEIR at 3-49.

These proposed project components are needed to refine heavy, sour crude oil into the same amount of reformulated fuels: They are not needed to produce reformulated fuels at Shell from light, sweet crudes.

Light crude oils, and some intermediate crudes, yield many times less asphalt and residuum than the heavy San Joaquin crudes refined by Shell today. Purvin & Gertz at 5. Refineries processing light or intermediate crudes require many times less residuum conversion (eg., coking) capacity than those that refine heavy crudes. *Ibid.* at 12, 13. Shell already has significant coking capacity (DEIR at Figure 3-7) to process a relatively heavy crude slate. Therefore, Shell could process lighter crudes at similar throughputs, and might use existing coking capacity to increase the amount of fuels produced.<sup>34</sup> This would require little or no additional coking.

Sweet crudes contain less than half as much sulfur as relatively sour crudes from the San Joaquin Valley. Purvin and Gertz at Table 1. Sweet crudes can contain a hundred times less sulfur than the sour crude drilled offshore Point Arguello, California. *Ibid.*; Siegner at Appendix A; and OCS Movement Sheets. Refineries processing sweeter, lower sulfur crudes require many times less sulfur recovery than those that refine relatively sour crudes. Purvin & Gertz at 12, 13. Shell has significant existing hydrotreating (DEIR at Figure 3-7) to remove sulfur and nitrogen from relatively sour Central Valley crudes. Shell could process sweeter crudes at similar throughputs, and might use its existing sulfur recovery capacity to make reformulated fuels. This would require little or no additional hydrotreating.

With little or no additional hydrotreating, Shell would not need the expanded sulfur recovery/sour water system. The new hydrogen plant could be eliminated or scaled down because with little or no new hydrotreating, Shell would not need most (or any) of the extra hydrogen.

There is no doubt this alternative processing scheme is feasible. It is a typical refinery processing design. Purvin and Gertz at 11, 12. Many refineries operate in this way. Refineries operate this way while competing in the same regional markets.<sup>35</sup> Refineries plan reformulated fuels projects without some of the heavy crude processing units proposed by Shell.<sup>36</sup>

<sup>34</sup> The need for additional light ends processing and debottlenecking is addressed below.

<sup>35</sup> Chevron USA, November 11, 1992. Letter from P.S. Williams of Chevron USA to Steven R. Ritchie of the State Regional Water Quality Control Board regarding: Response to the RWQCB request for information regarding the WSPA selenium proposal. This letter provides evidence that the Richmond Refinery is running mainly the lighter, sweeter Alaska North Slope crude.

<sup>36</sup> For example, the ARCO refinery in Carson, California proposes a reformulated fuels project that does not include a coker. This refinery reportedly runs more Alaskan crude than the Shell Martinez refinery.

C. The process units that would be eliminated or reduced if light sweet crude is processed are the major sources of multiple chemical pollution and accident threats.

If Shell builds its proposed process units for heavy, sour crude refining, these units will become the major sources of increased selenium, cyanide, coke dust, hydrogen sulfide gas, carbon monoxide, greenhouse gases, and other pollutant emissions from the project. These units would also be the major causes of increased hydrogen accident risks, and increased hydrogen sulfide accident risks.

Specifically, operation of Shell's proposed hydrotreaters, cokers, hydrogen plant, and sulfur recovery/sour water system running relatively heavy, sour crude oil would cause:

- Most of the new selenium emissions from the project (DEIR at 6-14, 6-15, Figure 6-4, 6-28, and 6-29), leading to significant environmental impacts. Ibid. at 6-29. Shell selenium discharges already violate State and Federal water laws and threaten San Francisco Bay, endangered species, and public health.<sup>37</sup>

- Most of the new cyanide emissions which may increase by significant amounts. See CBE's discussion of work by Prather and Berkemeyer (1975) and Kunz et al. (1978) in Section IV of these comments. Though the Draft EIR fails to discuss cyanide in waste water, increased crude oil nitrogen inputs to coking could cause a significant increase in potentially toxic cyanide discharges to San Francisco Bay.

- Most of the new hydrogen sulfide (H<sub>2</sub>S) gas emissions. DEIR at 8-69. This "would result in increased concentrations of hydrogen sulfide emissions above the odor threshold at certain off-site locations" and cause a significant impact. DEIR at 2-17. Shell H<sub>2</sub>S emissions already caused recent violations of clean air and nuisance requirements.

- More than half the new carbon monoxide (CO) emissions according to the Draft EIR. DEIR at Tables 8-15 and 8-16. The increase in CO emissions would cause a significant impact, and the Draft EIR claims this impact could not be mitigated. DEIR at 2-2. Exposure to carbon monoxide reduces the capacity of blood to carry oxygen, causes impaired heart and lung function, and produces chest pain and breathing difficulties.

- Half the new sulfur oxides (SOX) emissions according to the Draft EIR. DEIR at Tables 8-15 and 8-16. SOX increases are a significant environmental impact. DEIR at 8-64.

---

<sup>37</sup> Note that many of the projected increases in pollutant release, and projected environmental impacts, are underestimated and/or inadequately addressed by the Draft EIR. These problems are discussed in greater detail in the sections of this comment on air quality, water quality, and chemical accident impacts.

- More than half the new fine particle (PM10) emissions from the project according to the Draft EIR. DEIR at Tables 8-15 and 8-16. The increase in these emissions is a significant environmental impact. DEIR at 8-66.

- Most or all the new coke dust emissions from the project would come from operating the new coking operations and coke handling. These new operations could cause coke dust emissions to increase drastically. Increased coke dust emissions could cause increased health hazards to workers and refinery neighbors.

- Most of the new hydrogen in the refinery from project, increasing chemical accident risks. The new hydrogen plant would add on the order of 100 million standard cubic feet of hydrogen per day to the refining process, the equivalent of about fifteen Hindenburg dirigibles per day.<sup>38</sup> This would significantly increase the potential for fires or explosions that could lead to other hazardous chemical releases.<sup>39</sup>

- Most of the new hydrogen sulfide gas (H2S) in the refinery from the project, increasing chemical accident risks. In the hydrotreaters "sulfur is converted to hydrogen sulfide and nitrogen is converted to ammonia." DEIR at 3-29. The four proposed hydrotreaters would produce a significant portion of the roughly 4 million cubic feet of H2S that would be produced in the Shell refinery in every 24-hour period, and increase the risks associated with sudden release of this hazardous material.<sup>40</sup> Acute exposure to H2S gas can cause loss of consciousness and death. With hydrogen and other hazardous materials, increased H2S causes a significant overall risk from chemical accidents.

- More than 40% of new nitrogen oxide (NOX) emissions from the project according to the Draft EIR. DEIR at Tables 8-15 and 8-16. NOX increases are a significant impact. DEIR at 8-62. Further, nitrogen releases from sour crudes contribute to cyanide problems and may contribute to odors and other problems as well.

- Nearly 40% of the new volatile organic compound (VOC) emissions according to the Draft EIR. DEIR at Tables 8-15 and 8-16.<sup>41</sup> Increased VOC emissions would cause a significant adverse environmental impact, and the Draft EIR claims this impact could not be mitigated. DEIR at 2-2. VOCs can cause increased health hazards to workers and refinery neighbors.

<sup>38</sup> The Hindenburg dirigible was a hydrogen-filled blimp famous because of the disastrous explosion of its contents in flight.

<sup>39</sup> The Draft EIR finds a significant overall chemical accident risk, but admits that its accident analysis contains significant uncertainties. DEIR at 2-34. CBE believes the Draft EIR underestimates this risk. For more detail please see the section of these comments addressing catastrophic chemical releases.

<sup>40</sup> The amount of hydrogen sulfide in the process units and piping at any one time could be calculated from process design data, but the Draft EIR failed to provide this information in its inadequate project description.

<sup>41</sup> These emissions and new emissions from tanks appear underestimated.



- Most of the vast increase in greenhouse gases from the project. The proposed project as a whole would add on the order of two million tons of carbon dioxide (CO<sub>2</sub>) to the atmosphere each year. More than 60% of these new CO<sub>2</sub> emissions would come from the new hydrogen plant and delayed coker. Global increases in CO<sub>2</sub> emissions could cause regional climate changes leading to droughts, floods, and sea level rise.

In sum, refining poor quality crude oil into valuable products requires more intensive processing and removing more impurities. More energy and raw materials are used. More hazardous materials are produced or needed on the site. More "impurities" and combustion products are released at the site as pollutants. In the case of Shell's proposed project, this would cause significant impacts from multiple chemical threats to the environment, refinery workers, refinery neighbors, and people who eat San Francisco Bay food resources.

D. Refining light sweet crude would significantly reduce hazardous materials, accident, water pollution and air pollution impacts of the reformulated fuels project.

All of the significant pollutant increases and environmental impacts discussed above would be avoided or greatly reduced by avoiding or greatly reducing the new processes associated with refining heavy, sour crudes. Alternative process modifications could be operated with less pollutant release and less environmental impact.

Just as refining light crudes requires relatively smaller residuum and gas oil conversion, refining heavy crudes requires less naphtha and distillate upgrading. Purvin and Gertz at 12, 13. Modifying the Shell refinery to process significantly lighter crudes would probably require new isomerization and alkylation units, and modification of the crude unit to perform distillation differently. Shell's existing hydrotreating capacity might need modifications to produce reformulated fuels from sweeter crude. Piping changes and other modifications would probably be necessary to balance the refinery to run the new crude slate without excessive bottlenecks.

For most of the chemical threats to the environment that have been identified, running light, sweet crude in these alternative processes would cause small or insignificant increases in environmental threats compared with the much greater increases in environmental threats from running heavy, sour crude in units that they would replace.

The "light-refining" units would release smaller amounts of selenium, cyanide, H<sub>2</sub>S, coke dust, hydrogen, or CO<sub>2</sub> compared to the "heavy-refining" units.

They would not equal the PM10, NOX, CO, and SOX emissions of the heavy-refining units even if the light-refining capacity was increased to four times what is now proposed, based on data in Table 8-16 of the Draft EIR.

In one case, operating twice the new alkylation and isomerization proposed by Shell might result in greater amounts of sulfuric acid on site and equal VOC emissions compared with the proposed heavy-refining units (based on Table 8-16 of the Draft EIR). But in all other instances examined above the light-refining process alternative could greatly reduce environmental impacts.

This processing alternative would significantly reduce selenium, cyanide, H2S, coke dust, hydrogen, and CO2 impacts, may significantly reduce PM10, NOX, CO, and SOX impacts, and might significantly reduce other environmental impacts relative to the proposed project.

E. Construction and operation of modifications for the "clean" crude alternative would create safer jobs compared with the proposed alternative.

If Shell builds the environmentally preferred project, instead of constructing and operating a larger hydrogen plant and sulfur recovery/sour water system, more hydrotreaters, and more cokers, Shell would build other process units. These may include the new isomerization and alkylation units, modified crude unit, modifications to current hydrotreating capacity, piping changes, and "debottlenecking" modifications discussed above. The alternative process construction and operation would require similar or greater labor relative to the proposed project. These jobs would be safer jobs because accident risk and pollutant exposures would be reduced.

Unfortunately, the Draft EIR fails to compare the employment benefits and worker safety of the alternatives.

F. The Draft EIR fails to provide basic and essential information about the project alternatives and fails to foster informed public comment and decision-making about alternatives that could cause, or prevent, irreversible and cumulative impacts.

The Draft EIR fails to identify, describe, or discuss the environmentally preferred alternative that is analyzed by CBE above. Incredibly, it fails to identify this alternative despite initial investigations of the alternative by other government agencies. It fails to discuss even the project proponent's concerns about the environmentally preferred alternative, as described below.

Shell told the Regional Water Board that lighter, sweeter crudes are "only available to the California market in limited quantities." Shell at 3. However, testimony to the Bay Area Air Quality Management District suggests that 2.4 million barrels of very low sulfur oil are produced each day on the Pacific Rim, and Shell itself produces 350,000 BBL/day of this very low sulfur crude. Siegner at Appendix A. In comparison, Shell runs about 140,000 BBL/day at Martinez. Shell at 1. A Supplemental EIR should discuss the quantities of different crudes being extracted and how they could be blended to form a crude slate for the environmentally preferred alternative. The Draft EIR did not.

Shell claims switching crudes may "significantly increase manufacturing costs" to run light sweet crude and may cause its refinery to "become competitively disadvantaged." Shell at 3. However, despite the higher cost the Chevron USA Richmond refinery runs a lighter and sweeter crude slate than Shell (Chevron at 1, 2) and reports profits. It is nevertheless significant that heavy Central Valley crudes may cost \$12 per barrel while lighter, low-sulfur crude may cost about \$19 per barrel. Purvin and Gertz at 14; and Siegner at 2, 3, 4. At Shell's 140,000 BBL/day throughput this might make a \$350 million per-year difference.

A Supplemental EIR should discuss the profitability of the proposed project. According to the analysis above, Shell stands to make an extra 35 % annual return on its \$1 billion investment in the project by refining dirtier crudes.

Shell claims that "[e]xport markets will have to be found" for the heavy San Joaquin crude if Shell stopped running it, and this "would mean shipping any displaced crudes through San Francisco Bay." Shell at 3. These statements are probably incorrect.

Pipelines that appear to have additional future capacity connect the Central Valley oil fields to Cadiz, Four Corners, Texas, and three water terminals other than S.F. Bay. Purvin and Gertz at Figure II, 6, 7, 8. There will be non-export markets for this crude if any of the many California and western U.S. refineries now upgrading to meet reformulated fuels requirements choose to run it. Further, export markets will not increase S.F. Bay traffic if these other water terminals are used. The Draft EIR should provide adequate information and discussion to address these questions about the preferred alternative. It does not.

Shell claims that "alternate crudes will have to be transported by ships" and implies that this could increase the number of crude tankers "traveling into San Francisco Bay." Shell at 3. Instead, when the California crude runs out Shell could be locked into more tankering and even dirtier crude refining.

The Draft EIR states that: "California's oil supply derives almost equally from in-state and Alaska production and is expected to decline slowly over the next 20 years, forcing the state to import foreign oil to make up the difference and to meet

increasing demand." DEIR at 14-3. Shell's consultant states that "California oil production has fallen for six consecutive years." Purvin and Gertz at 6.

Central Valley crude oil shipments to the Bay area are already being supplemented by crude drilled off California's coast near Point Arguello. OCS Movement Sheets. Old cost estimates suggest that tankering Point Arguello crude may be cheaper than piping it to the Bay area. Van Nostrand's at 1750. Thus it appears likely that increasing amounts of Point Arguello crude will be tankered through the Bay to be refined by Shell in the future. The Draft EIR fails to discuss this likelihood. This failure is crucial because Point Arguello crude could carry three times more sulfur and selenium than even San Joaquin heavy crude, according to data discussed in the following subsection.

Finally, Shell claims it can't switch crudes because its refinery is locked into heavy, sour crude refining. "If MMC switched to light crudes, refinery modifications would be needed." Shell at 3. Shell's proposed modification may in fact be irreversible for the same reason. Modifications that "would be needed" to switch crudes are feasible with wise use of Shell's \$1 billion investment now. But if using up this investment locks Shell in to refining more and more Point Arguello crude it could have significant environmental impacts for the next generation. A Supplemental EIR is needed to discuss how we may be "locked in" to the refining alternative chosen for a long time to come.

G. The Draft EIR fails to identify or discuss the crude oil that these alternatives would run. This deficiency fails to foster informed public comment and decision-making about alternatives that could cause, or prevent, irreversible and cumulative impacts.

The Draft EIR fails to identify, describe, or discuss the crude that will be run by any alternative. This misleads the reader who may infer that the choice of crude oil is unimportant to environmental impacts of the project.

The properties of the crude oil to be refined are the essential foundation of any oil refining alternative. See eg. Purvin and Gertz at 2, 5, 11, 12, 13, 14. Crude slate properties are as important to designing a refining project as earthquake faults are to designing a high-rise, or salt intrusion to designing an irrigation project. They have fundamental effects on project design and environmental impact. The failure to discuss the properties of available crudes and describe which are the foundation of the project is a glaring error in the Draft EIR.

These examples, from crudes that are either run in Bay area refineries or extracted from the "Pacific Rim" area and potentially available to them, show there are vast differences between available crudes:

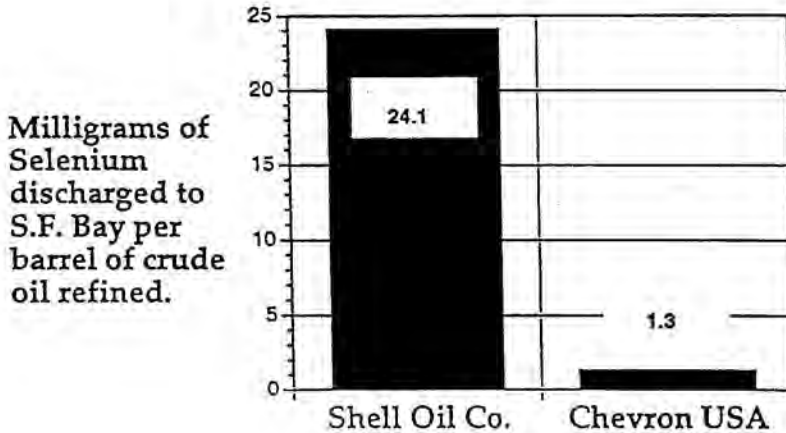
<u>Crude type</u>	<u>Sulfur</u>	<u>Selenium in ug/ko.</u>	<u>Asphalt &amp; residuum distillation yield</u>
Shell Martinez	1.2%	450-490	74.6% (a)
Central Valley	.2-1.2%	450-600	17.3% - 65.7%
Pt. Arguello	3.6%	???	
Alaska N.S.	.7-0.8%	80-120	31.3% - 36.3%
Texas		150-350	22.6%
Arabian		30-40	
Daqing (China)	0.08%		
Miri (Malaysia)	0.07%		
Minas (Indones)	0.08%		
Barrow Island	0.04%		
California		200-1,400	

(a) Distillation fraction above 650 degrees, except lube cut.  
Sources: Tosco, 1991; Siegner, 1990; Shell, 1992; Chevron, 1992; Purvin & Gertz, 1992; OCS Movement Sheets, Attachment 1; and Arthur D. Little, 1989.

The differences in the crude oils listed could have dramatic effects on pollutant release rates. Selenium is one example.

Figure 1. (Section VI)

For every barrel of oil refined, the Shell Martinez refinery releases nearly twenty times more selenium to San Francisco Bay than the Chevron USA refinery.



Sources: Selenium discharge data from oil company self monitoring reports as analyzed by the Regional Water Quality Control Board, October 12, 1992 "Mass reduction strategy for selenium." See page 39. Crude oil throughput data from NPDES applications submitted to the Regional Board by the oil companies. Per. Comm., Mark Ruderman, Regional Water Board, Oakland, CA., July 21, 1992. These throughput data were corroborated by other publicly reported data. Per. Comm., Harold Lipps, Bay Area Air Quality Management District, San Francisco, CA., July 21, 1992. For more information contact Citizens for a Better Environment, San Francisco, Calif., 415/ 243-8373.

Refining some of these crudes would bring 4- to 35-times more selenium, 4-times more heavy ends, and nearly 100-times more sulfur into a refinery. It would require more hydrotreating capacity and heavy ends processing such as coking to handle these increases. These same processes increase the transfer of this pollutant to the local environment. Selenium partitioning from oil to water occurs largely in sulfur removal (eg. hydrotreating and hydrocracking, see Chevron-b at 3) and in coking (DEIR at 6-15), where heavy ends that tend to contain more selenium (Purvin and Gertz at 3) are intensively processed.

The cumulative effect of bringing more selenium in and also putting a greater portion of this into aqueous waste streams probably explains why Shell and Unocal bring 6- to 10-times more selenium in per barrel but put 20-times more into the Bay per barrel, compared with Chevron, Pacific, and Tosco.<sup>42</sup> Figure 1 compares Shell and Chevron selenium discharges to the Bay per barrel of crude refined.

The Draft EIR fails to discuss these inter-related effects on pollutant impacts despite the extreme concern over the very high sulfur content of the Point Arguello crude. This crude might be increasingly refined by Shell and/or other Bay area refineries. The table above shows it contains 300% more sulfur per barrel than even heavy San Joaquin crude. Since sulfur and selenium are correlated in California crudes, Point Arguello crude may contain on the order of 300% more selenium than heavy San Joaquin crudes. Tosco at Appendix A. Refining a slate with any significant amount of this "dirtier" crude is consistent with using the far more intensive processing Shell proposes, and could cause Shell's selenium releases to more than double.

The Draft EIR's failure to describe the future crude slate thus ignores a project component that may cause order-of-magnitude increases or decreases in emissions of some pollutants, depending upon which inadequately discussed alternative is chosen.

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<sup>42</sup> Unocal's crude selenium content is 810 ug/L (Unocal, 1992), Shell's is 470 ppb (Shell, 1992), and Chevron's, Pacific's, and Tosco's would be no less than 80 ppb based on refining Alaskan North Slope crude and the table above. Shell and Unocal release 27.8 milligrams of selenium to the Bay per BBL of crude refined, as a weighted average, and the weighted average of Chevron USA, Tosco, and Pacific is 1.4 mg/BBL according to CBE analysis of the Regional Water Quality Control Board's October 12, 1992 Staff Report, page 39, and the refineries' reports of oil throughput in NPDES permit applications.



H. A Supplemental Draft EIR is needed.

A proper Draft EIR must identify and discuss the reasonable alternatives to the project including the environmentally preferred alternative. It must follow its assertion that present crude supplies will diminish by stating what new crudes will replace them in the project. It must describe the oil that will be refined in this new crude slate. It must include and discuss the selenium content of Point Arguello crude if this crude that could cause significant cumulative impacts will be refined in the Bay area as a result of the refineries' modification projects.

Unfortunately, any failure to provide a Supplemental Draft EIR that allows for public discussion of responses to comments on these omitted discussions would very likely fail to foster informed decisions. The omitted discussions are crucial to allow informed comment and decisions. However, Shell and other oil companies have not provided adequate information for such public discussion despite recent regulatory requests. See eg. Shell, 1992; Chevron, 1992; and Unocal, 1992.

Despite refiners' trade secrecy claims, a significant portion of the relevant information was gathered by CBE (with considerable difficulty) and this type of information is obviously not confidential. However it is costly and difficult for the public to gather independently. The oil companies have interests in maintaining maximum flexibility to decide future crude slates that maximize profits. See eg. Chevron USA at 2.

The potential conflict between such private interests and the public interest in examining options and their environmental effects is precisely the reason why CEQA, NEPA, and most environmental laws were enacted. A Supplemental Draft EIR that adequately discusses these issues should be prepared for public comment as soon as possible.

Literature cited in this Section:

Arthur D. Little, 1989. Physical and Chemical Characterization of San Joaquin Valley Crude Oil. A Study Element of the Pilot and Reconnaissance Study for the Shell Oil Spill Assessment and Recovery Monitoring Environmental Effects Program. Final Report to ENTRIX, Inc. Dated April 1989.

Chevron USA, 1992. Letter from P.S. Williams of Chevron USA to Steven R. Ritchie of the California Regional Water Quality Control Board regarding "Response to RWQCB Request for Information Regarding the WSPA Selenium Proposal." Dated November 11, 1992.

DEIR (Draft Environmental Impact Report for the Shell Oil Company Clean Fuels Project) Land Use Permit 2009-92; State Clearinghouse # 92093028. Contra Costa County. May, 1993.

OCS Movement Sheets. Attachment 2.

Kunz et al., 1978. Refinery Cyanides: A Regulatory Dilemma. Hydrocarbon Processing, October 1978.

Prather and Berkemeyer, 1975. Cyanide Sources in Petroleum Refineries. Proceedings of the 30th Industrial Waste Conference, May 6, 7, and 8, 1975, Purdue University, Lafayette, Indiana. Ann Arbor Science Publishers Inc., Ann Arbor, Michigan.

Purvin and Gertz, Inc., December 1992. Submission to the Regional Water Quality Control Board, San Francisco Bay Region. Prepared on behalf of Shell Oil Company by John H. Vautrain.

Shell, 1992. Letter from J. C. Harmon, Manager, Environmental Conservation, Martinez Manufacturing Complex, to Steve Ritchie, Executive Officer, California Regional Water Quality Control Board, regarding "Response to SFRWQCB Request of October 19, 1992 for Information Pertaining to WSPA Joint Refinery Selenium Reduction Study." Dated November 13, 1992.

Siegner, 1990. Letter from A.L. Siegner, Rancho Palos Verdes, California to Judy K. Moore, Pacific Refining Co., regarding "Low Sulfur Crude Oil Project." Dated April 2, 1990. Includes Appendix "A". This document was included as Attachment 1 of Pacific Refining's April 4, 1990 comments before the Bay Area Air Quality Management District on BAAQMD Proposed Rule 9-1-313.

Tosco, 1991. (Also see Attachment 1) Selenium Removal and Source Control Study, Final Report. Submitted to the California Regional Water Quality Control Board, San Francisco Bay Region, to Tosco Refining Company, Martinez, Calif. Prepared by Brown and Caldwell. Dated December 1991.

Unocal, 1992. Letter from Rand H. Swenson, Chief Refinery Engineer, to Steven R. Ritchie, Executive Director, Regional Water Quality Control Board, San Francisco Bay Region, regarding "Response to RWQCB Questions on WSPA Proposal; Removal of Selenium From Refinery Discharges, Unocal-San Francisco Refinery." Dated November 23, 1992.

Van Nostrand's, 1976. Van Nostrand's Scientific Encyclopedia, Fifth Edition. Van Nostrand Reinhold Company, New York.

ATTACHMENT 1:



Tosco Refining Company  
Avon Refinery, Martinez, California

Selenium Removal and  
Source Control Study

December 1991

FINAL REPORT

Submitted to the  
California Regional Water Quality Control Board  
San Francisco Bay Region

Prepared by Brown and Caldwell Consultants  
Pleasant Hill, California

## APPENDIX A

## SELENIUM CORRELATION

There are several references to selenium content of crude oils in the literature (Pillay et al., 1969; Shah et al., 1970). Selenium analysis in crude is difficult and must be done using neutron activation analysis. We plotted selenium in parts per billion (ppb) versus weight percent sulfur content of the crude on Figures A-1 and A-2. We found that only California crudes with greater than 0.5 percent sulfur content have increased selenium content with increased crude sulfur content. Other crudes from the various states in the USA and outside the USA showed essentially no increase in selenium with increases in crude sulfur content. Also the highest selenium concentrations were found in California crudes. California crudes can have selenium concentrations up to 5 times greater than those in crudes from outside California.

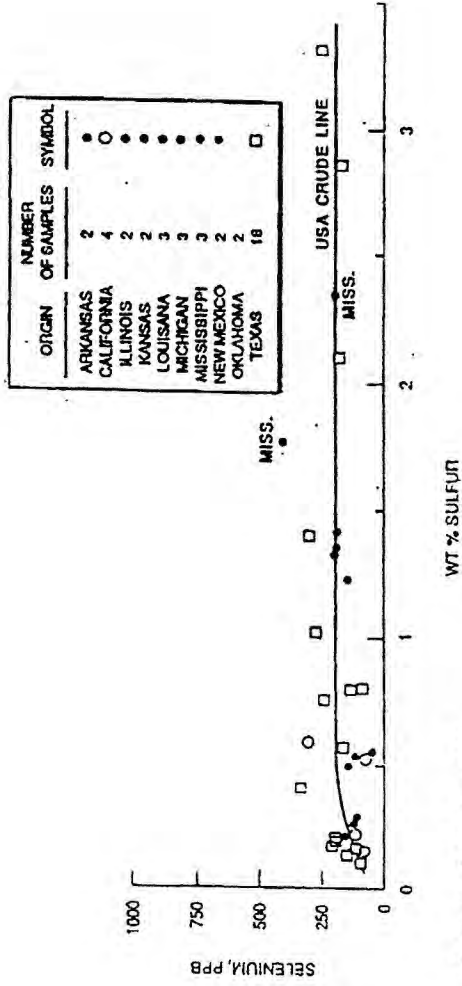
On Figure A-1 (data from Pillay et al., 1969), the selenium concentrations of 41 crudes from 10 USA states are presented. Eighteen of the data points are for Texas crude. They show a scatter about the correlation line as they range from approximately 150 to 350 ppb selenium. There is no correlation with increased sulfur content for any of these crudes. At sulfur levels below approximately 0.3 percent sulfur, the selenium content does decrease slightly with decreasing sulfur.

On Figure A-2 is plotted the correlation line from Figure A-1, the data of Shah et al. (1970), and data obtained by Tosco. California crudes with approximately 1 to 2.5 percent sulfur content show increased selenium with increasing sulfur content. This is a very strong relationship with enough data points to feel confident drawing a "California selenium" line.

The data of Tosco is an independent check of both lines shown on Figure A-2. The San Joaquin Valley (SJV) data show 600 ppb selenium versus approximately 650 ppb selenium from the California line. The Alaska North Slope (ANS) data point is 120 ppb versus 200 ppb from the correlation line.

We feel the overall fit of the data points is good. Considering that the literature data were from analytical tests done in 1969 through 1970 in two separate laboratories and the Tosco data were obtained 20 years later in another laboratory, one could say the agreement is unusually good. Thus, we feel confident in accepting Figures A-1 and A-2 as a basis for these selenium discussions.

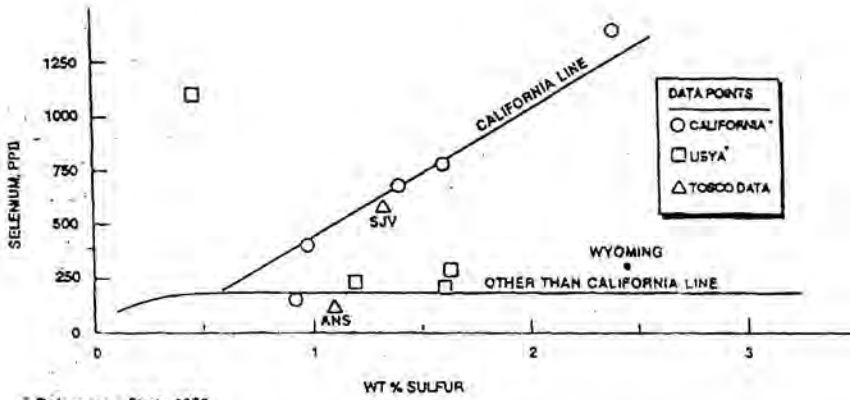
E-62406310-076240-07-A-1



\* Reference: Pillay et al, 1969

Figure A-1 Selenium Content of American Crudes\*





\* Reference : Shah, 1970

Figure A-2 Correlation of Selenium Content to Sulfur Content in Crudes

## REFERENCES

1. Pillay, K. K. S., Thomas, C. C., and Kaminski, J. W., 1969. Neutron Activation Analysis of the Selenium Content of Fossil Fuels. *Nuclear Applications and Technology* 7:478-483.
2. Shah, K. R., Filby, R. H., and Haller, W. A., 1970. Determination of Trace Elements in Petroleum by Neutron Activation Analysis. *Journal of Radioanalytical Chemistry* 6:413-422.

E-57206360-076110-07 A-A

Brown and Caldwell  
Corporation

ATTACHMENT 2.

UNION MILLERS

BATCH #	TICKET DATE	TOT. VOLUME @ 60°	TOT. VOLUME @ 60°	VOLUME @ 60°	BATCH TOTAL @ 60°	41 CITY @ 60°	VISCOSITY @ 60°	SILICA @ 100°	SSAW	R.V.P.	METER 20K		METER 20K		METER 20K		MONTH TO DATE	YEAR TO DATE	
											TEMP.	FACTION	TEMP.	FACTION	TEMP.	FACTION			
138	02/07/93	4366	101,251.28	4360	84,853.44	21.1	433.42	13.00	3.74	2.2	2.85	131.4	1.0004	104.119	131.4	1.0003	91.541	461.827	2,289,519
139	02/11/93	4261	71,510.44	4264	120,550.33	21.6	433.42	13.00	3.71	2.1	2.70	130.7	1.0006	73,519	130.5	1.0002	133,283	628,659	2,146,151
140	02/14/93	4264	491.40	4266	213,706.28	20.9	525.57	13.20	3.69	2.3	2.75	128.5	1.0008	505	131.8	0.9993	214,973	820,137	2,146,172
141	02/17/93	4266	31,644.04	4267	160,394.07	21.2	523.34	13.20	3.80	2.4	2.90	128.3	1.0002	31,514	131.6	0.9999	194,877	1,115,226	2,843,230
142	02/20/93	4268	62,800.26	4270	174,321.04	21.2	535.52	13.20	3.00	2.5	2.70	128.8	1.0004	64,207	128.6	1.0003	127,931	1,308,168	3,135,286
143	02/24/93	4271	121,572.72	4272	197,196.02	21.8	547.65	13.10	3.61	2.5	2.85	130.0	1.0004	128,110	130.1	1.0003	141,415	1,577,691	3,466,483
144	02/26/93	4273	133,820.77	4274	167,166.77	21.1	606.81	14.00	3.64	2.3	2.85	128.4	1.0004	139,986	128.4	1.0003	172,318	1,826,165	3,719,197
145	03/02/93	4278	106,405.27	4279	107,629.24	20.9	576.07	14.00	3.63	2.3	2.70	127.8	0.9997	109,402	127.3	0.9995	116,879	220,281	3,937,176
146	03/08/93	3264	149,458.19	4275	119,978.22	20.9	576.07	14.00	3.61	2.4	2.45	128.4	0.9997	153,757	128.7	0.9995	123,318	67,456	4,244,553
147	03/17/93	2486	125,528.07	2485	124,684.23	20.8	529.67	14.50	3.65	2.3	2.45	128.9	0.9997	127,057	129.0	0.9995	129,570	752,182	4,401,300
148	03/27/93	2486	156,760.95	2481	107,004.28	20.8	515.73	14.50	3.53	2.5	2.45	128.5	0.9997	151,209	128.7	0.9995	192,451	1,105,845	4,633,040
149	03/29/93	2487	213,915.27	2488	143,251.06	20.9	579.07	14.00	3.54	2.5	2.55	129.0	0.9999	213,083	129.2	1.0000	167,317	1,672,245	5,189,440
150	04/25/93	2490	131,915.27	2489	131,144.25	21.1	561.27	13.70	3.50	2.5	2.65	128.1	0.9999	131,687	128.0	1.0000	134,864	1,742,794	5,493,201
151	04/28/93	2491	131,243.19	2492	177,522.45	21.0	575.59	13.80	3.56	2.5	2.65	128.5	0.9999	131,043	128.5	1.0000	131,115	2,100,352	5,728,143
152	05/01/93	2493	126,819.29	2494	127,102.41	21.0	569.42	13.10	3.60	2.2	2.65	128.9	0.9999	130,132	129.0	1.0000	130,710	2,270,094	5,972,791
153	04/05/93	2496	156,300.20	2495	178,475.63	21.1	517.27	13.40	3.65	2.2	2.80	128.4	1.0005	160,006	128.7	1.0004	132,656	222,782	6,200,053
154	04/10/93	2491	160,818.51	2492	411,980.02	21.1	541.27	13.20	3.66	1.9	2.80	127.3	1.0005	166,217	127.3	1.0004	42,727	500,785	6,477,957
155	04/15/93	2497	165,699.79	2498	146,216.51	21.1	503.18	13.50	3.56	1.9	2.15	127.5	1.0005	159,025	127.7	1.0004	150,219	641,200	6,878,101
156	04/19/93	2491	133,386.17	2490	145,810.05	21.2	508.84	12.00	3.64	1.7	2.85	127.8	1.0001	137,102	127.8	1.0002	145,810	1,124,502	7,110,793
157	04/23/93	2492	165,124.97	2493	155,828.06	21.6	533.22	13.40	3.64	1.9	2.80	128.1	1.0002	163,708	128.4	1.0001	160,202	1,654,412	7,441,203
158	04/29/93	2494	153,147.66	2495	127,787.23	21.1	528.06	13.20	3.67	1.4	2.70	128.7	1.0001	157,771	128.9	1.0002	198,200	1,810,330	7,751,674
159	05/01/93	2491	48,129.29	2492	49,264.42	21.1	536.35	13.50	3.63	1.2	2.70	129.2	0.9999	50,534	129.3	1.0002	198,200	1,810,330	7,751,674

111 MAY 10 1993



Attachment B  
QCS MOVEMENTS (MFD)

	<u>NORTH</u>	<u>SOUTH</u>		<u>EAST</u>	<u>SISOUGC</u>	<u>TOTAL</u>
		(Neat)	(Blend)			(Neat)
Jul, 91	2,500	-0-	-0-	--	--	2,500
Aug, 91	20,000	4,100	-0-	--	--	24,100
Sep, 91	20,000	9,500	500	--	--	29,500
Oct, 91	21,100	11,100	950	--	--	32,200
Nov, 91	15,600	15,000	1,900	5,850	--	37,450
Dec, 91	17,600	17,500	1,950	--	--	35,100
Jan, 92	4,850	20,500	4,100	--	--	25,350
Feb, 92	4,850	31,400	6,400	--	--	36,250
Mar, 92	5,800	19,400	4,500	4,850	--	30,050
Apr, 92	15,000	23,750	4,200	10,000	--	48,750
May, 92	16,000	24,500	3,650	5,000	--	45,500
Jun, 92	14,250	29,700	3,900	3,350	--	47,300
Jul, 92	16,850	30,900	3,700	5,000	--	52,750
Aug, 92	18,000	20,000	4,500	--	--	48,000
Sep, 92	18,950	28,000	4,500	--	5,000	51,950
Oct, 92	19,150	29,100	3,600	--	8,000	58,520
Nov, 92	22,200	24,400	800	2,000	7,000	55,600
Dec, 92	14,450	28,400	300	1,100	20,000	63,950
Jan, 93	9,000	22,700	1,450	4,400	21,400	87,500
Feb, 93	8,000	43,000	5,300	6,400	8,000	85,400
Mar, 93	8,100	51,500	5,150	9,700	0	69,500
Apr, 93	12,800	47,500	5,000	2,000	3,800	66,100
May, 93 (Nominations)	14,000	34,500	4,000	3,300	15,500	67,300

North represents deliveries at Pentland to Texaco.

South represents deliveries at Pentland to Four Corners Pipe Line.

East represents Volumes transported to Texas as well as minor amounts of oil held in tankage.

Total (Neat) reflects QCS receipts from the GIMT.

DEVELOPED BY THE COMMUNITY SAFETY ALLIANCE OF CONTRA COSTA COUNTY:

CITIZENS FOR A BETTER ENVIRONMENT, COMMUNITIES FOR A SAFE ENVIRONMENT, RODEO CITIZENS ASSOCIATION, TOXIC CLOUD TASK FORCE, WEST COUNTY TOXICS COALITION.

### INDEPENDENT COMMUNITY INSPECTIONS COMMUNITY TECHNICAL ADVISOR PROGRAM

Create new program of community technical assistance and a new full time position at BAAQMD of Community Technical Advisor to serve as a resource to citizens and community organizations regarding refinery and chemical plant emissions. Provide a qualified petrochemical expert to review documents and relevant data, monitor facilities, and interview employees and community members concerning plant emissions and health and safety issues. Assist community organizations in developing recommendations to the company and BAAQMD Board of Directors for continuous improvement on these issues.

#### ACCOUNTABILITY TO THE COMMUNITY

The Community Technical Advisor would be hired and discharged by the Refinery Subcommittee of the BAAQMD Board of Directors with the advice and consent of a Community Risk Panel (CRP) made up of representatives of the 5 community and environmental groups that brought the proposal to the District. The subcommittee and the CRP would review the performance of the Community Technical Advisor on a regular basis.

#### COMMUNITY ACCESS TO FACILITIES

The Community Technical Advisor will include citizen access to and participation in the advisor's activities. This should include accompaniment on plant tours or inspections with the prior approval of the company.

#### FUNDING

The program and the Community Technical Advisor would be funded by permit fees collected from Bay Area refineries and chemical plants. A first year budget for this program should include salary for the Community Technical Advisor, an office space in a refinery community, support staff for clerical work, and some money for outside consultants.

#### RESOURCES

Community Technical Advisor would have the ability to contract out for experts and consultants if necessary to evaluate concerns brought by citizens and community organizations.

Contact: Denny Larson, 415-243-8373 • Henry Clark 510-232-3427



## PROPOSAL - CITIZENS FOR A BETTER ENVIRONMENT

## The PROPOSAL

Create a new program of community technical assistance.

Response - YES

Create a new position (Advisor) to serve as a resource to citizens and community organizations regarding refinery and chemical plant emissions.

Response - YES

Provide a qualified "chemical expert" to review documents and relevant data, monitor facilities, and interview employees and community members concerning health and safety issues.

Response - SCOPE OF WORK(AUTHORITY) AND QUALIFICATION MUST BE DETERMINED PRIOR TO ANY DETERMINATION AS TO HOW THIS ACTIVITY SHOULD OR MAY BE CONDUCTED.

Assist community organizations in developing recommendations to the company and District Board of Directors for continuous improvement on these issues.

Response - DISTRICT STAFF WILL PROVIDE AS MUCH ASSISTANCE AS POSSIBLE TO ALLOW COMMUNITY ORGANIZATIONS TO REACH APPROPRIATE CONCLUSIONS AND RECOMMENDATIONS. THE STAFF WILL NOT PROVIDE AN ADVOCATE OTHER THAN THE ADVOCACY WHICH THE DISTRICT IS ALREADY CHARGED WITH PROVIDING.

## ACCOUNTABILITY TO THE COMMUNITY

The Advisor would be hired and discharged by a sub-committee of the Board, with the consent of a Community Risk Panel (CRP).

Response - NO

The sub-committee and the CRP would review performance on a regular basis.

Response - NO

## COMMUNITY ACCESS TO FACILITIES

The Advisor will provide citizen access to and participation in, the Advisor's activities, including accompanying the Advisor on plant tours or inspections, with the approval of the company.

Response - NO. THE REFINERIES HAVE ALREADY STATED THAT THEY WILL NOT PROVIDE ACCESS TO PRIVATE CITIZENS.

#### FUNDING

The program and Advisor would be funded by permit fees collected from Bay Area refineries and chemical plants. Fees should include funding of the Advisor, a community office, support staff, and funds for outside consultants.

Response - THE COMMUNITY ASSISTANCE PROGRAM WILL BE FUNDED OUT OF THE GENERAL FUND. NO COMMUNITY OFFICE IS CURRENTLY PLANNED. CONSULTANTS WILL BE FUNDED OUT OF PROFESSIONAL SERVICES FUNDS, IF AVAILABLE, FROM THE GENERAL FUND. THE ADVISORS SALARY WILL BE FUNDED BY ASSIGNING THESE DUTIES TO VARIOUS, CURRENT STAFF MEMBERS.

OFFICE MEMORANDUM

DRAFT

DRAFT

DRAFT

JUNE 25, 1993

TO: INTERESTED PARTIES  
FROM: AIR POLLUTION CONTROL OFFICER  
SUBJECT: COMMUNITY ASSISTANCE PROGRAM

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A significant element in the District Community Technical Assistance Program (C-TAP) is the Community Technical Assistance Officer. The purpose of this memo is to identify the form and function of this officer.

The Community Technical Assistance Officer (CTO) will reside in the Enforcement Division under the Direction of the Engineering Services Manager. The Engineering Services Manager is Responsible for the conduct and evaluation of the Community Technical Assistance Program.

Program Goals - C-TAP is intended to provide citizens within each community surrounding a refinery or major chemical plant access to information in the following areas:

1. Information regarding the current status of the facility including recent inspections, audits, or other activities involving the District.
2. Information regarding the activities of other regulatory agencies dealing with:
  - a. Emergency Response to hazardous material incidents which may have on-site and community impacts relating to public health, property and the environment.
  - b. Accident prevention and preparedness.
  - c. Compliance with applicable rules and regulations.
3. Information relating to past and proposed actions by the District or other agencies.
4. Information relating to a particular event which had, or may have had a direct impact on the community.

The Engineering Services Manager will develop a timeline for the completion of the identification and implementation of each goal and related objectives.

APPENDIX I - PROGRAM DESCRIPTIONS

1. COMPLIANCE ASSISTANCE

Program Cost: \$39,000

Objectives/Activities/Outcomes:

- Provide staffing for the Compliance Assistance "Hotline". The hotline is a one-stop answer office to assist business with answers regarding District regulations. This service has received much acclaim by industry groups.
- Develop and conduct Industry Compliance School for two small business categories. This program helps industry develop self-inspection techniques and avoid violations.
- Two courses will be taught, four sessions each, for the maximum number of participants possible.
- Develop operating procedures for Industry Compliance School Program.
- Respond to engineering inquires from industry, up to 40 /day. The current staffing level will make it difficult to handle these calls effectively.
- Review and respond to special coating petitions.

Dr. Harold L. ... (Public Engineer)

2. COMMUNITY ASSISTANCE

Program Cost: \$138,000

Objectives/Activities/Outcomes:

- The objective of this program is to implement measures recommended by the APCO from the Community Safety Inspector study.
- The District will conduct 3 community meetings relating to specific sources in a geographic area.
- The District will establish an Information Liaison at a toll-free number to respond to questions relating to a specific source or event.
- The District will prepare Incident Reports relating to Public Nuisance cases and make these reports available to interested parties.
- The District will prepare annual reports for refinery and chemical plants in the counties of Contra Costa and Solano. Each report will summarize all District activity for the preceding year.
- The District will continue to staff each refinery with at least one full-time inspector.
- The District will continue to provide 24 hour response to community nuisance complaints.
- Community meetings.
- Information "Clearinghouse".
- Staffed Information Liaison phone.
- Incident reports.
- Inspection report for nuisance complaints, including incident reports.
- Develop and participate in Community Outreach Program (staff required).
- The outcome for this objective is to communicate to the community the steps industry has, or has not, taken to achieve compliance as well as to convey emissions information.
- The effectiveness of this program will diminish due to the reduction of engineering support from the following activities:
  - Community meetings associated with this program.
  - Annual refinery and chemical plant reports.
  - Information clearing house.

*Handwritten notes:*  
 4  
 need more meetings  
 use staff

*Handwritten notes:*  
 - 1.5 ENGINEER  
 1.5 Inspection (S)

? - date? ?

# West County Times

Serving Western Contra Costa County

Monday, August 24, 1992

## ☐ PETROCHEMICAL ACCIDENTS

Oct. 30, 1991 — Oil leak at Chevron's Richmond refinery sparks fire that forces the evacuation of tollkeepers from the Richmond-San Rafael Bridge.

Dec. 5, 1991 — Valve malfunction at Chevron spews catalyst dust and soot onto Point Richmond and surrounding areas. County activates emergency alert network, warns residents to stay indoors.

March 31, 1992 — Tube rupture causes explosion and fire at Pacific Refining in Hercules, dropping flakes of charred aluminum on parts of Rodeo.

May 28, 1992 — Cooling tube rupture at Pacific Refining releases cloud of oil mist that covers parts of Rodeo. County activates emergency alert network, warns residents to stay indoors. Highway 4 and Interstate 680 closed for several hours.

June 22, 1992 — Chemical spill and fire at Rhone-Poulenc Basic Chemicals in Martinez kills one worker and seriously injures another. Cause undetermined. County activates emergency alert network, warns residents to stay indoors.

June 23, 1992 — Pump failure at Chevron refinery releases a cloud of vaporized petroleum. County activates emergency alert network, warns residents to stay indoors. Winds carry most of the cloud over the Bay.

July 29, 1992 — High-pressure hose bursts while two workers are servicing a Texaco oil pipeline in Martinez. One worker killed, one seriously injured.

Aug. 9, 1992 — Compressor failure at Exxon refinery in Benicia causes fire and generates clouds of black smoke seen from San Francisco.

Aug. 12, 1992 — Hydrogen escaping from a leaking tube at the Tosco refinery in Martinez causes a fire and explosion that slightly injures one worker.

# West County Times

7-27-93

Serving Western Contra Costa County

## TOXIC SPILLS IN CONTRA COSTA

Contra Costa County's worst chemical spills and leaks in the past five years:

- **April 10, 1989:** An oil processing unit at Chevron refinery exploded, injuring nine and forcing the evacuation of hundreds of nearby elementary schoolchildren.
- **Sept. 5, 1989:** Explosions and a fire at Shell Oil Co. in Martinez seriously burned two employees.
- **May 5, 1991:** A malfunction at the agricultural plant at Dow Chemical Co. in Pittsburg released hundreds of pounds of chlorine gas and carbon tetrachloride gas, sending six workers to hospitals.
- **June 25, 1991:** About 700 pounds of liquid chlorine leaked at Dow Chemical Co., sending 30 workers to hospitals.
- **Oct. 30, 1991:** Oil leak at Chevron's Richmond refinery sparks fire that forces the evacuation of toll collectors from the Richmond-San Rafael Bridge.
- **Dec. 5, 1991:** Valve malfunction at Chevron spews catalyst dust and soot onto Point Richmond and surrounding areas. County activates emergency alert network, warning residents to stay indoors.
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- **July 29, 1992:** High-pressure hose bursts while two workers are servicing a Texaco oil pipeline in Martinez. One worker killed, one seriously injured.
- **Aug. 9, 1992:** Compressor failure at Exxon refiner in Benicia causes fire and generates clouds of black smoke visible from San Francisco.
- **Aug. 12, 1992:** A leaking tube at the Tosco refiner in Martinez lets hydrogen escape, causing a fire and explosion that slightly injures one worker.
- **Aug. 22, 1992:** Bullet holes in a plastic tank appear to be cause of a leak of nitric acid at Electro Forming Co. in Richmond. About 130 people are sent to hospitals after breathing the toxic cloud.
- **Sept. 5, 1992:** A gas odor causes the evacuation of Sunvalley mall in Concord. About 20 people are treated at hospitals for breathing problems.
- **June 18, 1993:** A mixture of butane, propane and hydrogen sulfide gases is released from a relief valve at the Tosco refinery. The cloud floats toward Antioch, sending several people to the hospital with burning eyes and shortness of breath.

## CHEVRON'S RECORD\*



May 1982 - Chemical leak from Chevron refinery sends seven workers at nearby Richmond Produce Company to hospital.

1984 - Major release of Hydrogen Sulfide (H<sub>2</sub>S) and ammonia. 78 workers injured, 1200 evacuated.

August 12, 1984 - Distillation unit catches fire. Two workers injured. Fire officials allow fire to burn for two days until it goes out.

August 7, 1986 - Collapse of support pipes at Chevron Long Wharf kills two.

June 8, 1988 - Hydrogen sulfide released for two hours into the air.

December 1988 - Vapor leak sends Richmond/San Rafael Bridge toll takers to the hospital complaining of lung and eye irritation.

April 8, 1989 - Four Chevron Ortho workers injured; noxious release of mercaptan vapors, dimethyl sulfate and methylene chloride into the air.

April 10, 1989 - Explosion (fireball shoots 250 feet into the air) and fire at refinery injures nine workers, burning three seriously. 275 children from Verde Elementary school are evacuated. Black clouds of particulate-laden smoke pour into community for six days.

May 22, 1989 - Oil tanker crash into Chevron Long Wharf causing extensive damage but no injuries.

January 27, 1990 - Compressor fails and large flare is emitted.

September 30, 1990 - Train derails causing two ammonia cars to overturn outside fertilizer plant. No release.

November 11, 1990 - Fitting breaks and hydrogen sulfide is released into air. No injuries reported.

October 16, 1991 - Tanker truck leak spills 120 lbs of ammonia nitrate onto North Richmond street.

October 30, 1991 - Fire at catalytic cracker. Black clouds of smoke blow out over bridge and bay causing toll takers to be evacuated.

December 6, 1991 - Toxic release of heavy metals including cancer-causing nickel from same the unit as Oct 30th fire. The blanket of chemical dust on Pt. Richmond necessitates massive clean-up first use of County Department of Health's Emergency Notification Program.

December 19, 1991- accidental release of hydrogen sulfide and sulphur dioxide through fcc flare.

December 26, 1991- spill of thousands of gallons of jet fuel into a runoff pond.

December 31, 1991- oil tanker spills fuel oil into the Bay

January 30, 1992- Bart is shut down for 26 minutes during rush hour and hundreds of callers as far away as Fremont complain of foul odor after hydrogen sulfide water leaks from a pipe.

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C I T I Z E N S F O R A B E T T E R E N V I R O N M E N T  
521 Second Street, Suite 305, San Francisco CA 94107 (415) 743-8373

\*Compiled from Bay Area press reports by CBE



# Technical Guidance for Hazards Analysis

## *Emergency Planning for Extremely Hazardous Substances*

U.S. Environmental Protection Agency  
Federal Emergency Management Agency  
U.S. Department of Transportation

December 1987

Further, both wind speed and direction may change during the course of the release. Because of this, it is suggested that planners use a circle for fixed sites or a corridor for transportation routes when estimating vulnerable zones.

#### 2.2.4 Application of Estimated Vulnerable Zones to Hazards Analysis for Extremely Hazardous Substances

This section provides an overview of how vulnerable zones can be estimated as part of a hazards analysis. To estimate the zone, specific values must be assigned to each of the variables discussed in the previous sections. Values may be obtained from the reporting facilities, from techniques contained in this document, or other sources recommended in this guide. In several instances, this guide provides liquid factors which replace a series of calculations. These factors are intended to make the process of estimating the vulnerable zones much easier for local emergency planning committees (LEPCs).

The step-by-step hazards analysis described in Chapter 3 of this guidance is divided into two major phases. The first phase involves a screening of all reporting facilities to set priorities among facilities so that more detailed hazards analysis can be conducted for those facilities that pose the greatest risk should a release occur. The first phase employs assumptions for a credible worst case scenario. The second phase involves the reevaluation of the facilities by priority. During this phase the LEPCs have the opportunity to reevaluate the assumptions used in the screening phase on a case by case basis using data that may be unique to a particular site.

##### Estimating Vulnerable Zones for Initial Screening

Because of time and resource limitations, local planners may not be able to evaluate all reporting facilities at the same time or to the same extent. Thus planners should set an order of priority among potential hazards for all facilities that have reported the presence of one or more EHSs in excess of the TPQ. One way to do this

is to estimate a vulnerable zone radius using assumptions for a credible worst case scenario. Values that reflect these assumptions are assigned to all the variables discussed in Section 2.2.2. In this way, all facilities and substances are similarly evaluated to establish a relative measure of potential hazard for purposes of prioritization.

The initial estimated screening zones are based on the following credible worst case assumptions.

- Quantity released: maximum quantity that could be released from largest vessel or interconnected vessels.
- Rate of release to air: total quantity of gas, solid as a powder, or solid in solution is assumed to be released in 10 minutes; for liquids and molten solids, the rate is based on the rate of evaporation (rate of volatilization). As explained in Appendix G this guidance simplifies the calculation of the rate of evaporation with a liquid factor which approximates a series of calculations. This number is called liquid factor ambient (LFA), liquid factor boiling (LFB), or liquid factor molten (LFM) depending on the handling conditions of the EHS.
- Temperature: not applicable to gases or solids as powders or in solution; for liquids, dependent on whether they are used at ambient temperature or near their boiling points; for molten solids, at their melting point.
- Meteorological conditions: wind speed of 1.5 meters per second (3.4 miles per hour); F atmospheric stability.
- Topographic conditions: flat, level, unobstructed terrain; use of the dispersion model for rural areas.
- LOC: one-tenth of the (NIOSH) published (IDLH) value or one-tenth of its approximation.\* (See Appendix D for a discussion of LOC.)

\* Provided it is not exceeded by the ACGIH TLV. In this case, the TLV is used.

## ADMINISTRATIVE AGENCIES

*Environmental Quality Act Requires  
30-Day Period for Public Comment  
On All Aspects of Proposed Regulation*

Cite as 93 Daily Journal D.A.R. 9835

ULTRAMAR, INC.,  
Plaintiff-Appellant,  
v.  
SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT,  
Defendant-Appellant.

No. B068366  
(Super.Ct.No. BC027555)  
California Court of Appeal  
Second Appellate District  
Division One  
Filed July 30, 1993

APPEALS from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed.

Kaye, Scholer, Fierman, Hays & Handler, Aton Arbisser, Robert Barnes, McCutchen, Doyle, Brown & Eversen, and William H. Freedman for Plaintiff and Appellant.

Latham & Watkins, David J. Hayes, Juli Wilson Marshall, Susan S. Azad, McClintock, Weston, Benshoof, Rochefort, Rubalcava & MacCuish, and Jocelyn Niebur Thompson as Amici Curiae on behalf of Plaintiff and Appellant.

Peter Greenwald, District Counsel, Barbara Baird, Principal Deputy, William B. Wong, Senior Deputy, Shute, Mihaly & Weinberger, Mark I. Weinberger, Aletta d'A. Belin, and Daniel P. Selmi for Defendant and Appellant.

James K. Hahn, City Attorney (Los Angeles), Vincent B. Sato, Deputy City Attorney, Kenneth L. Nelson, City Attorney (Torrance), Burke, Williams & Sorenson, Carl K. Newton, Michael P. Kenny, General Counsel, Diane Moritz Glazer, David N'zoi, County Counsel (Santa Barbara), Stephen Shane Stark and William M. Dillon, Deputy County Counsel, Lloyd Harmon, County Counsel (San Diego), Terrence Dutton, Deputy County Counsel, James B. Lindholm, Jr., County Counsel (San Luis Obispo), Raymond A. Biering, Deputy County Counsel, James L. McBride,

County Counsel (Ventura), and James W. Thonis, Deputy County Counsel, as Amici Curiae on behalf of Defendant and Appellant.

Ultramar, Inc., and South Coast Air Quality Management District ("AQMD") each appeal from portions of a judgment. Therein, the trial court upheld AQMD's power to issue a regulation challenged by Ultramar, but found that AQMD had violated a provision of the California Environmental Quality Act (Pub. Resources Code ["PRC"], § 21000 et seq.; hereafter "CEQA") relating to a 30-day public comment period on an environmental assessment ("EA"). We conclude the trial court was correct in both respects and therefore affirm the judgment.

## BACKGROUND

Hydrogen fluoride ("HF") is a colorless, fuming gas or liquid acid. In concentrated form, it is used by oil refineries as a catalyst in the production of high-octane gasoline. HF is a toxic air contaminant. Refineries which do not use HF use sulfuric acid as a substitute.

In March 1988, AQMD formed a task force to study the hazards of HF use. The task force submitted a report to the governing board of AQMD on March 29, 1990. A summary of the minutes from the April 6, 1990 meeting of the governing board of AQMD states that the board passed a motion to adopt its staff's recommendation "that the storage and use of large quantities of HF be phased out by December 31, 1994." AQMD formulated rule 1410 which, if adopted, would require that the use of HF be phased out over a seven-year period, and that interim mitigation measures be adopted.

Normally under CEQA, such a project, having a potentially significant effect on the environment, requires the preparation of an environmental impact report ("EIR"), a complicated and time-consuming process. However, an agency such as AQMD can apply to the Secretary of the Resources Agency of California to have its regulatory program certified. Once its regulatory program is certified, an agency is entitled to prepare an EA, an abbreviated environmental report, in lieu of an EIR, and is exempt from specified portions of CEQA. (PRC, § 21080.5, subd. (c).)

To qualify for certification, an agency's regulatory program must be governed by regulations which, *inter alia*, require that no project will be approved if there are feasible alternatives or mitigation measures available which would substantially lessen any adverse impact on the environment, and require that final action on any proposal include the written responses to significant environmental points raised during the evaluation process. Additionally, the project plan must be made available for review and comment by other agencies and

the general public. (PRC, § 21080.5, subd. (d); see, generally, *Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 610-611.)

AQMD submitted its regulatory program to the Secretary of the Resources Agency of California, who approved it. Pursuant to this authority, AQMD's staff began preparation of an EA. When distributed, the EA would focus public discussion on the adoption of proposed rule 1410 which, as noted, would eventually ban the use of HF. On February 22, 1991, AQMD set i copies of its draft EA by Federal Express to industrial users of HF, and by regular mail to other interested members of the public. The deadline for submitting comments on the draft EA was set forth as March 25, 1991. Shortly after February 22, 1991, AQMD discovered that the chapter of the EA which discussed the cumulative environmental impacts of rule 1410 had not been sent to all interested parties. On March 1, 1991, AQMD mailed this chapter to everyone on the mailing list. However, it did not extend the deadline for the submission of comments on the draft EA, thereby effectively making the comment period less than 30 days.

On April 5, 1991, following a public hearing, the 11 members of AQMD's governing board who were present voted unanimously to adopt rule 1410. As adopted, rule 1410 prohibits oil refineries from using or storing HF after January 1, 1998, unless the physical characteristics of HF are reduced to levels specified in the rule. Additionally, rule 1410 requires that, before the phase-out date, a number of interim control measures be adopted. These measures ranged from "[m]aintain[ing] HF-sensitive paint for leak detection on all valves and flanges for pipes and vessels handling [HF]" to "[m]aintain[ing] containment systems."

On May 6, 1991, Ultramar filed a petition for writ of mandate challenging AQMD's adoption of rule 1410. In material part, Ultramar asserted that AQMD did not have the authority to adopt rule 1410, and that it had not complied with CEQA in various respects, including an alleged failure to allow a 30-day public comment period on the draft EA.

On October 8, 1991, Ultramar sought summary adjudication of its causes of action alleging AQMD's lack of authority to adopt rule 1410. AQMD responded on October 31, 1991, by filing its own summary adjudication motion directed to the same issue. On November 22, 1991, the trial court determined that AQMD "has the broad authority to adopt Rule 1410."

The balance of Ultramar's action was heard on April 22, 1992. In its statement of decision, filed June 8, 1992, the trial court found that AQMD possessed the authority to adopt rule 1410 pursuant to sections 40001, 40402, and 40440, and that the EA was legally adequate in all respects except for lack of a 30-day public comment period. As noted by the trial court, AQMD's "own guidelines, CEQA guidelines, and

the [PRC] all require at least a 30-day comment period. An EA of this scope and depth should have had the widest possible exposure, particularly a chapter discussing cumulative impact."

The judgment entered on June 8, 1992, suspended rule 1410, pending a reevaluation of the rule by AQMD following at least a full 30-day public comment period. AQMD was ordered to consider and respond to any new comments raised during this comment period.

## ISSUES

### A. AQMD's Appeal

AQMD contends that (1) CEQA's 30-day period for public comment is inapplicable to rule 1410, (2) Ultramar waived its right to challenge rule 1410, and (3) the trial court's order remanding the matter for a new comment period was overbroad.

### B. Ultramar's Appeal

Ultramar's primary contention on its appeal is that AQMD does not possess the necessary police powers to phase out preemptively the use of HF.<sup>2</sup>

## DISCUSSION

### A. AQMD's Appeal

1. CEQA's 30-day Public Comment Period Is Applicable to Rule 1410

PRC section 21091, subdivision (2), provides that "[t]he public review period for a draft [EIR] shall not be less than 30 days." The fact that this section refers to EIR's, rather than EA's, is of no consequence. We note that when certifying AQMD's regulatory program pursuant to PRC section 21080.5, the Secretary of the Resources Agency of California stated that the AQMD governing "[b]oard has adopted CEQA implementation guidelines which will apply to the review of proposed rules and will assure an interdisciplinary approach in the analysis of all significant, and potentially significant, environmental impacts which may result from these proposals." Clearly, the Secretary of the Resources Agency of California was not distinguishing between EIR's and EA's at the time AQMD's regulatory program was certified, and neither shall we.

AQMD further argues that had the Legislature intended that a 30-day review period be applicable to EA's prepared as part of certified regulatory programs, as well as for EIR's, it could have amended PRC section 21080.5 to provide for a 30-day period when it enacted PRC section 21091. Although not intended by it, AQMD's argument actually leads to the opposite conclusion. We say this for the following reasons.

"A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves exclusion of other things not

expressed—*expressio unius est exclusio alterius*. [Citation.]” (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403.) The plain language of PRC section 21080.5, subdivision (c), which discusses the portions of CEQA from which a certified regulatory program is exempt, limits the exemption to “the provisions of Chapter 3 (commencing with Section 21100) and Chapter 4 (commencing with Section 21150) and Section 21167.” PRC section 21091, which specifies a public review period of not less than 30 days, is a part of chapter 2.5. We must conclude that the Legislature’s exclusion of this section from the specific list of exemptions was intentional.

Moreover, it is well-settled that, in ascertaining legislative intent, interpretations of statutes which render words of a statute as surplusage are to be avoided. (*Woods v. Young* (1991) 53 Cal.3d 315, 323.) In order to accept AQMD’s argument, we would have to ignore, and thereby nullify, the Legislature’s specific list of exemptions.

As the Supreme Court recently emphasized, “[t]he foremost principle under CEQA is that the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390, quoting *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.) We conclude that an interpretation of PRC section 21080.5 which contracts the public comment period would thwart the legislative intent underlying CEQA.<sup>3</sup>

Finally, AQMD’s contention that CEQA’s 30-day public comment period was satisfied since a complete copy of the draft EA was available for public inspection at AQMD’s office for more than 30 days is without merit. By mailing copies of the draft EA to interested parties, AQMD assumed a duty to send complete copies. AQMD cannot now argue that it mailed these copies merely as a courtesy, and therefore should not be held responsible for having mailed incomplete copies. Recipients of the draft EA would naturally assume that they were being sent a complete copy. Relying on that assumption, they would have no reason to examine the draft EA at AQMD’s office.

## 2. Ultramar Did Not Waive Its Objection to AQMD’s Noncompliance With CEQA

AQMD asserts that Ultramar waived its right to challenge the adoption of rule 1410 since (a) it failed to exhaust its administrative remedies, (b) it rejected an extension of time within which to comment, and (c) there was no demonstration of prejudice. We reject these claims.

### a. Ultramar Exhausted Its Administrative Remedies

PRC section 21177 codifies the exhaustion of administrative remedies doctrine. Subdivision (a) of that section prohibits the commencement of any proceeding to attack a project “unless the alleged grounds for noncompliance with [CEQA] were presented to the public agency orally or in writing by any person.”

“The essence of the exhaustion doctrine is the public agency’s opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review.” (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198, original emphasis.)

In this case, on March 18, 1991, counsel for Ultramar sent a letter to James Lentz, AQMD’s Executive Officer. In this letter, Ultramar vigorously protested “the highly improper procedures being followed by [AQMD] in circulation of the draft [EA] for proposed Rule 1410,” and requested that the public comment period be extended to at least April 3, 1991, a mere nine days.

By specifically objecting to AQMD’s failure to distribute a complete copy of the draft EA and requesting that the comment period be extended for an appropriate period of time, Ultramar clearly satisfied its obligation to exhaust its administrative remedies.

### b. Ultramar’s Rejection of AQMD’s Offer to Extend the Time Within Which to Comment on Chapter Six Does Not Constitute a Waiver

AQMD argues that Ultramar should be barred from complaining that the draft EA was not circulated for a 30-day period since it rejected AQMD’s offer to it of an extension.

By narrowly focusing on its offer to Ultramar, AQMD overlooks the gravity of its omission. The net effect of AQMD’s action was to deprive the public of the full 30-day comment period on the EA. AQMD cannot remedy this omission merely by offering, in a private communication, an extension of the comment period to one member of the public. We conclude that no waiver occurred.<sup>4</sup>

### c. There Was a Prejudicial Abuse of Discretion

PRC section 21168.5 provides: “In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.”

AQMD asserts that neither Ultramar nor any

member of the public was prejudiced by AQMD's failure to send out a complete draft EA. To support its argument, AQMD notes that none of the 35 witnesses who spoke at the public hearing "raised any question about the inadequacy of the time period for public review." A similar contention was rejected in Environmental Protection Information Center, Inc. v. Johnson, *supra*, 170 Cal.App.3d 604. There, the California Department of Forestry approved a proposed timber harvesting plan. Like the EA, the harvesting plan was an alternative to the preparation of a complete EIR. The Forestry Rules (former Cal. Admin. Code, tit. 14, § 895 et seq.) required that the notice of approval be issued no later than 10 days from the date of approval. PRC Section 21080.5, subdivision (g), required that any lawsuit to challenge the approval be filed within 30 days of the date of approval. The California Department of Forestry failed to comply with the 10-day rule. Nonetheless, it argued that the party challenging the approval was not prejudiced, since it was able to file its suit within the 30-day period, and later secured leave to file an amended complaint. In rejecting this argument, the Johnson court stated:

"Full compliance with the letter of CEQA is essential to the maintenance of its important public purpose. [Citation.] Reviewing courts 'have a duty to consider the legal sufficiency of the steps taken by [administrative] agencies [citation], and we must be satisfied that these agencies have fully complied with the procedural requirements of CEQA, since only in this way can the important public purposes of CEQA be protected from subversion.' [Citation.] At least, when these provisions go to the heart of the protective measures imposed by the statute, failure to obey them is generally 'prejudicial'; to rule otherwise would be to undermine the policy in favor of the statute's strict enforcement.

.....

"The 10-day rule is a key regulation preserving the public's right to challenge a plan approval without the undue haste caused by [California Department of Forestry's] violation of the rule. For this reason the 10-day time limit must be enforced, without after-the-fact speculations on ephemeral possibilities of prejudice or the lack thereof." (170 Cal.App.3d at pp. 622-623, fn. omitted.)

So in this case, AQMD violated not only PRC section 21091, subdivision (a), which mandates a minimum 30-day public review period, but also its own CEQA guideline 7.7(c), which states that review periods for draft EIR's should be not less than 30 days, and rule 110(b), which requires publication of all staff reports, including EA's, for at least 30 days.

Furthermore, although only 12 pages of the 288-page draft EA were omitted, the missing section was an entire chapter which focused on the cumulative environmental impact of rule 1410. The significance of a truthful, complete and public dissemination of information relating to the cumulative environmental impact of a proposed project was emphasized in Mountain Lion Coalition v. Fish & Game Com. (1989) 214 Cal.App.3d 1043, 1051: "The requirement of public review has been called 'the strongest assurance of the adequacy of the EIR [.]' [Citation.] '[I]t is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them. [Citation.]' [Citation.] 'A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval. [Citation.]' [Citation.]"

Rural Landowners Assn. v. Citv Council (1983) 143 Cal.App.3d 1013 is also instructive on this subject. There, a public agency failed to submit a copy of its draft EIR to the Governor's Office of Planning and Research State Clearinghouse before the public agency approved a project. Under former California Administrative Code, title 14, section 15051, subdivision (b), the state clearinghouse was "responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment." The public agency conceded that, by approving the project before submission to the state clearinghouse, "it was unable to respond to the comments received from [the Office of Planning and Research] and other state agencies . . ." (143 Cal.App.3d at p. 1019.) The trial court denied mandate since it concluded that the violation was not prejudicial. In reversing, the Court of Appeal stated:

"Were we to accept [the public agency's] position that a clear abuse of discretion is only prejudicial where it can be shown the result would have been different in the absence of the error, we would allow [ ] a subversion of the purposes of CEQA. Agencies could avoid compliance with various provisions of the law and argue that compliance would not have changed their decision. Trial courts would be obliged to evaluate the omitted information and independently determine its value. This prospect has led other courts to recognize that a failure to proceed in the manner prescribed by law may alone be a prejudicial abuse of discretion. [Citations.] We conclude that where



that failure to comply with the law results in a subversion of the purposes of CEQA by omitting information from the environmental review process, the error is prejudicial." (*Id.* at pp. 1022-1023, fn. omitted.)

As with the procedural noncompliance in *Rural*, AQMD hampered a fully-informed public review of rule 1410 through its failure to circulate the cumulative effects chapter. The purposes of CEQA were thereby subverted.

We conclude AQMD's omission constituted a prejudicial abuse of discretion.

### 3. The Trial Court's Order Is Not Overbroad

PRC section 21168.9 provides, in pertinent part:

"(a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

"(1) A mandate that the determination, finding, or decision be voided by the public agency.

"(2) A mandate that the public agency and any real parties in interest suspend all activity, pursuant to the determination, finding, or decision, that could result in any change or alteration to the physical environment, until the public agency has taken such actions as may be necessary to bring the determination, finding, or decision into compliance with this division.

"(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division."

Relying on *Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d 376, AQMD argues that the trial court erred in commanding it to conduct a new 30-day public comment period on the full EA, and to "stop doing anything to implement" rule 1410. According to AQMD, since only those individuals who did not have 30 days to comment on chapter six were harmed by its CEQA violation, the trial court should have limited its remedy for that defect by giving only those parties additional time to comment, and by permitting comments solely on chapter six.

AQMD's reliance on *Laurel Heights* is misplaced. There, a public university desired to relocate its biomedical research facility to a newly acquired

building. The Supreme Court concluded that the EIR prepared by the university adequately described the potential environmental effects of the current intended uses of the facility and that substantial evidence supported the university's finding that these effects would be mitigated. However, the EIR was deficient in its discussion of the environmental effects of the university's future activities at the facility, as well as its description of alternatives to the project. In deciding whether to permit the university to continue operating at the new facility pending the certification of a legally adequate EIR, the Supreme Court held that "traditional equitable principles" should guide courts in making such a determination. (*Id.* at p. 423.)

On the issue before us, we conclude that the equities do not favor AQMD. First, unlike the EIR in *Laurel Heights*, which described adequately the environmental effects of the university's current operations, the omitted portion of AQMD's EA concerned a chapter dealing with the cumulative effects of a rule which would be implemented immediately. Second, we cannot overemphasize the importance of full compliance with all notice provisions of applicable law, so that there will be maximum public comment and involvement. The enactment of a rule such as rule 1410 is a matter of great public significance. If implemented, the cost in financial terms to industry and to the public will be great.<sup>3</sup> If not implemented and there is an accidental release of HF, the cost in loss of life could be horrific. In the last analysis, it is not our role to decide the best course to take in the regulation of toxic air contaminants. Rather, our role is to ensure that the law is followed, so that an informed decision is made. Given the significance of whatever path is followed, any decision must be subject to full public review before its implementation.<sup>4</sup>

### B. Ultramar's Appeal

AQMD Has the Authority to Adopt Rule 1410

a. There Is Statutory Authority for the Adoption of Rule 1410

Ultramar concedes that AQMD has the power to take action upon the actual release of an air pollutant such as HF,<sup>5</sup> and that it may regulate HF emissions in conjunction with the issuance of a permit. However, it attacks rule 1410 by saying that the rule is an unauthorized use of a police power AQMD does not possess. In essence, Ultramar contends that AQMD has no authority to force a company which has a permit, and is not seeking modification of that permit, to phase out its use of HF. We disagree.

The parameters of the various air pollution control districts' authority, including that of AQMD, are contained in section 40000 et seq. Section 40000 provides: "The Legislature finds and declares that local and regional authorities have the primary responsibility



for control of air pollution from all sources, other than emissions from motor vehicles. The control of emissions from motor vehicles, except as otherwise provided in this division, shall be the responsibility of the state board."

As noted, the trial court concluded that sections 40001, 40402, and 40440, subdivision (a), authorized AQMD to adopt rule 1410. We find dispositive of this issue the provisions of section 40001. The language of the section in effect when rule 1410 was adopted<sup>8</sup> provided: "Subject to the powers and duties of the state board, the districts shall adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emission sources under their jurisdiction, and shall enforce all applicable provisions of state and federal law. (f) The rules and regulations may, and at the request of the state board shall, provide for the prevention and abatement of air pollution episodes which, at intervals, cause discomfort or health risks to, or damage to property of, a significant number of persons or class of persons."

Ultramar argues that AQMD's power to adopt rule 1410 cannot be grounded in former section 40001. It says that under that section, AQMD's regulatory power was limited to the achievement of state and federal ambient air quality standards, that rule 1410 is irrelevant to the attainment of that goal, and that HF is not a substance to which state and federal ambient air quality standards apply (see Cal. Code Regs., tit. 17, § 70200; 42 U.S.C. former § 7412(a)(1)). This last point by Ultramar deserves amplification. Apparently, ambient air quality standards are set by the federal Environmental Protection Agency or the California Air Resources Board for various pollutants such as carbon monoxide, nitrogen dioxide and the like. These are then called, in the *lingua franca* of the environmental field, "criteria pollutants." Air quality standards have not been set for a host of other pollutants such as HF. Those pollutants are referred to as "non-criteria pollutants." So, the linchpin of Ultramar's argument that section 40001 does not give AQMD authority over HF is its claim that the section is restricted to so-called "criteria pollutants." We reject that proposed limitation of section 40001 as being strained and unreasonable. Our reasons are as follows.

First, Ultramar focuses only on the first paragraph of former section 40001, which deals only with AQMD's power vis-a-vis state and federal ambient air quality standards. What Ultramar fails to note is that the second paragraph of the section has no such limitation. In that second paragraph, the Legislature spoke in terms of "air pollution episodes," a subject much broader than "ambient air quality standards." Further, it is too clear for argument that "air pollution episodes" could be caused by any pollutant, such as HF, regardless of whether the pollutant is labeled "criteria"

or "non-criteria." This more general subject of air pollution episodes is specifically made appropriate for AQMD's regulatory powers by that second paragraph. Moreover, such regulation were not limited to abatement. Rather, they could deal with "the prevention and abatement of air pollution episodes . . ." (Italics added.) By using this language, the Legislature clearly intended to vest AQMD with the authority to adopt preemptive measures designed to prevent air pollution episodes, without discrimination as to whether they were caused by "criteria" or "non-criteria" pollutants.

Second, our interpretation that the regulatory power provided under the second paragraph of former section 40001 was broader than that provided under the first paragraph is further supported by an amendment to section 40001. Effective January 1, 1993, section 40001 was amended in the following respects: Without any change in language, the first and second paragraphs were designated as "(a)" and "(b)" respectively, and a new paragraph (c) was added. That new paragraph (c) provides: "Prior to adopting any rule or regulation to reduce criteria pollutants, [district] shall determine that there is a problem that the proposed rule or regulation will alleviate and that the rule or regulation will promote the attainment or maintenance of state or federal ambient air quality standards." If, as Ultramar contends, the second paragraph of section 40001, like the first paragraph, is concerned only with the regulation of "criteria pollutants" and "ambient air quality standards," it would have been totally unnecessary for the Legislature to have included these terms in subdivision (c). Our review of the legislative history of the amendment to section 40001 reveals that, as originally proposed, subdivision (c) did not contain these terms. A reasonable inference from this is that the Legislature perceived a difference between the scope of subdivisions (a) and (b), and intentionally contacted the scope of subdivision (c).<sup>9</sup>

Third, we note that in *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408 the Supreme Court considered the issue of a district's authority to regulate air contaminants. The context in which the question was raised was whether a district could create a permit system. (*Id.* at p. 412.) In that case, a contention similar to that urged by Ultramar was made, to wit, that a district had no power to regulate substances until the State Air Resources Board had "... identified the substance as a toxic air contaminant and adopted a control measure for it." (*Id.* at p. 411.) The Supreme Court rejected the argument, noting that since 1983 "... the board has identified only nine substances as toxic air contaminants, and many years, perhaps decades, may pass before the board will be able to study, identify, and regulate the hundreds of substances discharged into the air. If board identification and regulation were a prerequisite for district control, nearly all substances

would remain unregulated for the foreseeable future." (*Id.* at p. 412.) Further, the Supreme Court cited section 40001 as being one of a number of statutes giving districts such as AQMD broad regulatory powers. (*Id.* at p. 418.) The court made no reference to a district's power being limited to "criteria pollutants."

With respect to California's statutory scheme for control of air pollution, the Supreme Court has said that: "The air pollution control district is the agency charged with enforcing both statewide and district emission controls." (*Orange County Air Pollution Control Dist. v. Public Util. Com.* (1971) 4 Cal.3d 945, 948, original italics.) Given the importance of the role which districts such as AQMD play, we are unwilling to accept the unrealistic limitation on their powers which would result if Ultramar's construction of section 40001 were accepted.<sup>19</sup>

b. Later Enacted Legislation Does Not Affect AQMD's Authority

Ultramar further contends that later enacted statutes demonstrate that AQMD never had the authority to act to prevent air pollution episodes. It points to the Hazardous Materials Management Act (§ 25531 et seq., hereafter "the HMMA"), which requires certain businesses which handle acutely hazardous materials to adopt a "risk management and prevention program." Ultramar also references the California Oil Refinery and Chemical Plant Safety Preparedness Act of 1991 (Gov. Code, § 51020 et seq.), which, inter alia, forms a Technical Advisory Committee to study threats posed to "communities located near oil refineries and chemical plants in the event of a catastrophic release of acutely hazardous material, of fire, or of explosion." (Gov. Code, § 51023.5, subd. (b)(1).) With reference to these statutes, Ultramar argues that, "[i]f air pollution control districts had the broad regulatory powers in this area that [AQMD] claims, it seems improbable that the Legislature would have expressly given extensive duties to other public agencies while consistently and knowingly excluding the districts from all but a marginal advisory role." (Emphasis omitted.) This argument does no more than pose a conundrum. It may have been wise or unwise for the Legislature to have involved air pollution control districts in the matters referenced in each of these statutes. We have no way of knowing. However, the Legislature's failure to so involve the districts is not to us convincing evidence that it never empowered air pollution control districts with preemptive regulatory authority.<sup>11</sup> Indeed, the authorities referenced in the discussion above suggest exactly the contrary to us.

In a similar vein, amici curiae the Hydrogen Fluoride Panel of the Chemical Manufacturers Association and the California Manufacturers Association assert that, by enacting the HMMA, the

Legislature intended that toxic chemicals be regulated by uniform statewide standards, thereby effectively repealing section 40001's grant of power.

The HMMA does not say that the Legislature expressly intended to preempt regulation by local air pollution control districts. We must therefore determine whether enactment of the HMMA constitutes an implied repeal of the power granted to AQMD under section 40001. *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.*, *supra*, 49 Cal.3d 408, is controlling. As referenced, *Western Oil* involved an air pollution control district's power to create a permit system. The challenger to the district's regulation argued that former section 39660, a part of the Tanner Act (§§ 39650-39674), called upon the State Department of Health Services, in conjunction with the State Air Resources Board, to evaluate the effects of substances, other than pesticides, which are emitted into the air. From this premise, the challenger argued that the Tanner Act prohibited air pollution control districts from regulating emissions until the State Air Resources Board had acted.

The Supreme Court rejected this contention. Initially, the Supreme Court acknowledged that air pollution control districts "have long had clear statutory authority to regulate air contaminants, including the power to create permit systems." (*Id.* at p. 419.) The question became whether, by adopting the Tanner Act, the Legislature intended an implied repeal of this authority. Before answering that question in the negative, the Supreme Court set forth the appropriate analytical framework as follows:

"[A]ll presumptions are against a repeal by implication." [Citation.] The presumption is strong "where the prior act has been generally understood and acted upon." [Citations.] The present statutes (and their predecessors) providing districts with the power to regulate nonvehicular air pollution had been in effect for many years when the Tanner Act was passed, and they had been generally understood and acted upon. [Citation.] Furthermore, courts are especially reluctant to find an implied repeal of statutes that serve an important public purpose. [Citation.] The statutes that provide the districts with regulatory authority serve a public purpose of the highest order -- protection of the public health.

"The presumption against implied repeal is so strong that, 'To overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together.' [Citation.] There must be 'no possibility of concurrent operation.' [Citation.] Courts have also noted that implied repeal should

not be found unless "... the later provision gives undebatable evidence of an intent to supersede the earlier ..." [Citation.] (Id. at pp. 419-420, original emphasis.)

Applying the analysis set forth in Western Oil, we find that nothing contained in the HMMA is "irreconcilable, clearly repugnant, and ... inconsistent" with the power granted by section 40001. No logical reason exists why a local air quality management district's adoption of a rule which phases out the use of a toxic air contaminant would interfere with the adoption and enforcement of a risk management and prevention program to control acutely hazardous materials accident risks. The claim of implied repeal is rejected.

Ultramar next focuses on section 42301.7. Among other things, this statute authorizes an air pollution control officer, in responding to "a reasonably foreseeable threat of a release of an air contaminant from a source within 1,000 feet of the boundary of a school that would result in a violation of Section 41700,"<sup>12</sup> to "issue an immediate order to prevent the release ... pending a hearing pursuant to Section 42450 ..."<sup>13</sup>

Ultramar argues that "[s]ection 42301.7 would have been unnecessary, and its enactment superfluous, if [AQMD] already had the power to address potential, as well as actual, discharges."

Ultramar's premise that section 42301.7 would have been unnecessary had the district already possessed the authority to prevent an accidental occurrence is unsound. Section 42301.7, subdivision (c)(1), authorizes an air pollution control officer, in appropriate circumstances, to issue an order, which is effective before an administrative hearing, to prevent a release or mitigate the risk of a release. This power goes beyond anything which existed before the enactment of section 42301.7. In all other circumstances, whether it involves the issuance of an abatement order pursuant to section 42450 or preemptive action under section 40001, a hearing is conducted before the effective date of the action being considered.

Ultramar's attempt to buttress its argument with a passage contained in a letter authored by former Assembly Member Maxine Waters, urging former Governor George Deukmejian to sign the bill enacting section 42301.7, is unavailing.<sup>14</sup> "[I]t is well-settled that, in construing legislation, a court does not consider the motives or understanding of individual legislators even when it is the person who actually drafted the legislation. [Citation.]" (No Oil, Inc. v. City of Los Angeles (1987) 196 Cal.App.3d 223, 248, fn. omitted.)<sup>15</sup>

c. An Unpublished Legislative Counsel Opinion Does Not Alter Our Conclusion

Finally, Ultramar relies on an opinion by the Legislative Counsel, issued January 17, 1991, which it argues is inconsistent with any claim that AQMD had the authority to phase out the use of HF before an actual release of this toxic air pollutant. In opinion No. 23061, the Legislative Counsel opined that, other than the power conferred by section 42301.7, subdivision (c)(1), discussed in the preceding section of this opinion, an air pollution control district "does not have the authority to regulate or prohibit the use of a chemical based solely on the possibility of an accidental release of that chemical." We are not persuaded by this Legislative Counsel opinion.

While opinions of the Legislative Counsel are entitled to great weight, they are not binding. (California Assn. of Psycholev Providers v. Rank (1990) 51 Cal.3d 1, 17.) In this instance, although various statutes were addressed in the four-page opinion, no analysis of former section 40001 was made. As we have held, this section empowered AQMD to adopt regulations designed to prevent air pollution episodes. Accordingly, our conclusion is not altered by Legislative Counsel opinion No. 23061.

#### DISPOSITION

The judgment is affirmed.

MASTERSON, J.

We concur:

SPENCER, P. J.  
ORTEGA, J.

1. Health and Safety Code section 39655, subdivision (4), states that "[a] substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) is a toxic air contaminant." 42 United States Code section 7412, in turn, identifies HF as a hazardous air pollutant.

Unless otherwise stated, all further statutory references shall be to the Health and Safety Code.

2. Ultramar also contends that the EA "was merely an invalid, post hoc rationalization of [AQMD's] decision" to ban HF and that, overall, the EA for rule 1410 was inadequate. However, its reply brief states that if we affirm the judgment on the basis that AQMD "failed to make the draft [EA] available to the public for the required minimum of thirty (30) days," we need not reach the other issues relating to the EA. Since we affirm for AQMD's failure to comply with the 30-day period, we will not discuss the other alleged deficiencies of the EA.

3. City of Sacramento v. State Water Resources Control

Id. (1992) 2 Cal.App.4th 960, a case relied on by AQMD, is distinguishable. There, the Court of Appeal found that the trial court erred by issuing a writ of mandate compelling compliance with CEQA since the petitioners neither alleged nor proved that the public agency failed to comply. In contrast, Ultramar has amply demonstrated AQMD's failure to comply with CEQA, as well as AQMD's CEQA guidelines and rules.

4. We note in passing that the extension of time AQMD offered to Ultramar was limited to comments on the missing chapter, rather than on the whole EA or the rule that was being considered.

5. In its socio-economic impact assessment, AQMD estimated the annual control costs to implement rule 1410's interim measures to be \$2.5 million, and the annual control costs of the total HF phase-out to be \$25.5 million. The capital costs were estimated at \$12.3 million for the interim measures, and \$159.2 million for the total HF phase-out.

6. We note in passing that it would have been highly inappropriate for the trial court to limit further public comment solely to chapter six since, as explained above, this chapter was a significant portion of the EA. (Mountain Lion Coalition v. Fish & Game Com., *supra*, 214 Cal.App.3d 1043; Rural Landowners Assn. v. City Council, *supra*, 143 Cal.App.3d 1013.)

7. Section 39013 defines an air pollutant as "any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof."

8. Section 40001 was amended on January 1, 1993, to add a further paragraph. The effect of that amendment is discussed *infra* at page \_\_\_\_ [typed opp. pp. 24-25]. The language of the first two paragraphs of section 40001, in effect when rule 1410 was adopted, was not changed.

9. At oral argument, Ultramar contended that AQMD in its regulations has interpreted the term "air pollution episodes" as used in section 40001 to refer only to "criteria pollutants." We invited supplemental briefing on the subject. Having reviewed the material supplied by Ultramar, we find nothing to support its contention that AQMD has so limited the interpretation of "air pollution episodes."

10. Since we uphold the trial court's ruling on the basis of section 40001, we need not address the other statutory bases relied on by the trial court (i.e., §§ 40402 and 40440, subd. (a)).

11. In fact, Government Code section 51021, subdivision (c), specifically provides that "[n]othing contained in [the California Oil Refinery and Chemical Plant Safety Preparedness Act of 1991] shall be construed to grant any additional regulatory control or authority to preempt local governmental control or to amend any existing local governmental ordinance or state statute or regulation."

12. Section 41700 provides, in pertinent part: "[N]o

person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property."

13. Section 42450 provides, in relevant part: "The district board may, after notice and a hearing, issue an order for abatement whenever it finds that any person . . . is in violation of Section 41700 . . . or of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air."

14. In urging the necessity of section 42301.7, former Assembly Member Waters wrote that the bill "authorizes air pollution control districts to take action to prevent a release near a school. Under existing law district's [sic] cannot take action until after a toxic discharge has occurred."

15. To the extent that Ultramar is arguing that the adoption of section 42301.7 repealed AQMD's authority under section 40001, we note the Legislature's explicit pronouncement in section 42301.7, subdivision (d), that "[n]othing in th[at] section limits any existing authority of any district."

## CORPORATIONS

### *Provisional Director Is Properly Appointed To Sover Due to Deadlock by Directors Affecting Corporation's Management*

Cite as 93 Daily Journal D.A.R. 9843

In re ANNRRHON, INC.

BRUCE SANDERS et al.,  
Petitioners and Respondents,  
v.  
RONALD LESINSKI et al.,  
Objectors and Appellants.

No. FD18274  
(Super. Ct. No. 464006-6)  
California Court of Appeal  
Fifth Appellate District  
Filed July 30, 1993

APPEAL from a judgment of the Superior Court of

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**BAY AREA  
'91 CLEAN AIR PLAN  
VOLUME 1**

October 1991

*Prepared by:  
Bay Area Air Quality Management District  
in cooperation with the  
Metropolitan Transportation Commission  
and the Association of Bay Area Governments*



Table 2 (cont.)  
1991 CLEAN AIR PLAN STATIONARY SOURCE CONTROL MEASURES (cont.)

ID#	TITLE OF CONTROL MEASURE	Cost Effectiveness \$/ton-reduced	Total ER Potential tons/day	Rate of Reduction imp. date	Technology Feasibility		Public Acceptance	Enforce. A thru D	Proposed Adoption
					A thru D	A thru D			
B1	CONTROL OF EMISSIONS FROM RAILCAR LOADING (a) Require vapor recovery systems on railcar loading of organic liquids.	\$4000	unknown	7/95	B	A	C	1994	
B2	IMPROVED STORAGE OF ORGANIC LIQUIDS RULE (a) Adopt more stringent standards for cone roof tanks (b) Lower or replace small tank exemption with a throughput exemption (c) Require better tank seals/more frequent seal inspections (d) Set tank color requirements (e) Require vapor recovery for certain tanks (f) Require compliance-based floating roof tank vapor recovery retrofit (g) Require emissions to be controlled during tank cleaning	\$2000 (a/g)	1.0 - 1.3	7/95	B	A	A	95 - 97	
				7/95	B	A	A	95 - 97	
				7/92	A	A	C	1992	
				7/96	B	A	A	95 - 97	
				7/96	B	A	A	95 - 97	
B3	IMPROVED ORGANIC CHEMICAL TERMINALS AND BULK PLANTS RULE (a) Reduce emission standard for non-gasoline bulk terminals and plants	savings	.19 - .28	1/94	D	A	A	1993	
B4	FURTHER EMISSION REDUCTIONS FROM GASOLINE DELIVERY VEHICLES (a) Increase stringency of gasoline cargo tank vapor recovery requirements	savings	.05 - .07	1/96	A	A	B	95 - 97	
B5	LIMITATIONS ON MARINE VESSEL TANK PURGING (a) Require control of ballasting and housekeeping emissions	\$4200	1.3 - 1.4	1/94	B	A	C	1993	
B6	CONTROL OF EMISSIONS FROM CLEANING-UP ORGANIC LIQUIDS (a) Require control of emissions from cleaning storage tanks, vessels, and VOC spills	\$42,000	unknown	1/99	A	A	C	98 - 2000	
B7	CONTROL OF EMISSIONS FROM PROPANE HANDLING (a) Require propane tanks to be filled by pumping (b) Ban uncontrolled venting during servicing	unknown unknown	unknown	2000 + 2000 +	D D	C C	A D	2000 + 2000 +	
C.	REFINERY AND CHEMICAL PLANT PROCESSES								
C1	IMPROVED PRESSURE RELIEF VALVES AT REFINERIES AND CHEMICAL PLANTS RULE (a) Require venting to abatement devices and/or rupture disks with fail-safe indicators	\$10,000	.36 - .48	1/94	A	A	B	1993	

## SHELTER IN PLACE

### Proven Safety Method or Industry Scam ?

Dr. Fred Millar, Director of Toxics Program, Friends of the Earth, Washington, DC.

"If you think that gas is entering the building you are in,  
place a wet cloth over your mouth and nose  
and breathe in quick, shallow breaths."

*Bay Area Industry CAER group brochure*

Chemical communities at high risk from toxic gas accidents are being given the hard sell recently on the concept of *shelter in place* by both industry groups and some agencies. You may have been told that *shelter in place* is well accepted by the experts. But have you wondered where did the idea come from and if there is another side to the story?

The glowing way *shelter in place* is referred to, you might expect that it's been around a long time and is well tested. However, in terms of a major emergency response for chemical emergencies, *shelter in place* was really born yesterday. It has very recently been put forth as a new "solution" by industry and local government groups just as many chemical communities have come to realize to their dismay that in many serious chemical toxic gas accidents, timely evacuation may be unlikely, if not impossible. Apparently the following obvious alternatives to evacuation and *shelter in place* are not considered desirable:

- removing the disaster risk of the plant, through the use of "inherently safe" technologies, for example phasing out certain deadly chemicals or replacing them with safe substitutes.
- relocating the nearby population (many dangerous chemical plants are buying out nearby neighborhoods or whole communities)
- relocating the plant farther from residential neighborhoods

Industries such as refineries and chemical plants that store large amounts of deadly toxic chemicals want to convince their residential neighbors that even if a massive poison gas cloud is released in an accident, all that you will have to do is close you doors, windows, and vents and wait for it to blow by. Unfortunately many public health and regulatory agencies, fearful of alarming people, have bought into *shelter in place* hook, line, and sinker. But it's not realistic talk about the threat and evacuation that causes fear, it is failure to talk plainly that alarms people. Accurate risk communication could lead to real actions to prevent and prepare for toxic accidents.

To illustrate the shaky basis of the new *shelter in place* "solution" we can quote from the newly-inserted pages of the phone book in Charleston, West Virginia, a community which has been exposed to numerous toxic gas releases. These pages refer to *shelter in place* as "a proven, effective emergency protective action which is used when there is insufficient time to evacuate in the event of an airborne hazardous materials release." Does this sound like planners have everything under control?

But *shelter in place* is neither proven or time tested. At the recent national meeting\* on *shelter in place*, which the US EPA hosted at the National Fire Academy with 150 of the most-respected emergency planners and fire chiefs, three troubling problems emerged:

1. Not one person present could give a historical example of where *shelter in place* had in fact been pre-planned by a fire department and had worked successfully to save lives in a major gas cloud chemical release. This does not sound like a "proven" technique -- more like wishful thinking.



## SHELTER IN PLACE

### Proven Safety Method or Industry Scam ?

Dr. Fred Millar, Director of Toxics Program, Friends of the Earth, Washington, DC.

2. No one knew of any emergency responder in the US who had in hand a usable, short checklist that a fire chief could use in determining whether to *shelter in place* or evacuate in a toxic gas release. One industry group in West Virginia said they had a draft 4-page checklist, but one fire chief shouted his response to that: "I have about 17 seconds to make this decision, and you're telling me I have to read a 4 page checklist?"

3. Local government officials testified that it is not clear whether chemical community residents would even obey a directive to stay in their homes and shelter in place in the case of a serious toxic gas cloud release. One California official said he was told by his angry citizens near a dangerous petrochemical pipeline, "We want a workable evacuation plan, not a get-gassed-in-your-home plan!"

There is not much real data that supports *shelter in place* as a success. It is being pushed by industries that realize that many toxic accidents should require evacuation. But industry and agencies seem reluctant to tell the public that the threat of deadly chemical accidents is very real. They claim that talk of evacuation will just spread unjustified "fear". Maybe that's because they don't live in the neighborhoods that would be the hardest hit by an accident. Neighbors deserve annual evacuation drills and training in order to be fully prepared. Why are they not receiving it?

If *shelter in place* is not the solution to the threat of a toxic release, what is? Clearly the best response is to train communities at high risk on a regular basis on variety of procedures, including evacuation. *Shelter in place* may have some use, however, it is limited. It may be appropriate for small "puff" releases of toxic gas, but in many other types of releases, gas can seep into your home. For example in Texas City in December 1987, a toxic release lasted 36 hours. As a result of being uninformed about the hazards of the gas, residents were gassed in their evacuation shelters and one thousand people went to local hospitals. That's why many community leaders throughout the nation and independent experts call *shelter in place*, "get gassed in your home." And when that happens, quoting from an industry brochure, "place a wet cloth over your mouth and nose and breathe in quick, shallow breaths." Is that the best we can do?

Of course prevention is the real solution to the toxic threats that petrochemical industries pose to our communities at risk. The World Bank advises poor nations that planning to "run for the hills" is like trying to close the barn door after the horse is out. There are many concrete actions that can be taken if we are willing to stand up to companies and regulatory agencies and demand that risks be reduced to the satisfaction of communities at risk. Some deadly toxics can be eliminated altogether from plants. Others can be stored in small quantities instead of millions of pounds.

Decisions about how much risk should be accepted by chemical communities should be made by those most directly affected. It is time to demand industry and agencies be accountable to the people most at risk. This is not the time for anyone, any company or any agency to offer blanket reassurances and *shelter in place* from the real issues.

For more information contact Dr. Fred Millar, Director of Toxics Program, Friends of the Earth, Washington, DC, 202-544-2600-ext 291.

\*For video and/or audio tapes of the recent national meeting on chemical accidents and *shelter in place*, call David Speights, CEPPPO, US EPA, 202-260-8600.

Mr. MILLER. Mark.

#### STATEMENT OF MARK MASON

Mr. MASON. Chairman Miller, my name is Mark Mason, and I am the Chair of the West County Group of the Sierra Club, and I live in the city of Richmond.

The Sierra Club is grateful for this opportunity to comment on the use, manufacture and transport of hazardous materials as prompted by the recent oleum accident at the General Chemical facility in Richmond. Because of the many issues we need to address, the following is an outline of our concerns:

Low-income and minority people have borne a disproportionate share of the risks associated with industrial toxic chemicals. The Federal Government should create incentives to reduce the production and storage of toxics through mandated pollution prevention audits.

The Federal Government should phase out the most dangerous chemicals and chemical processes and provide incentives to develop alternatives.

Also, a federal task force on transportation of hazardous materials should be created with the charge of developing effective regulations for the transport and handling of such materials. Attention should be paid particularly to eliminating rail car regulatory loopholes with respect to the use of rail cars—both tank and box cars, I must point out—for storage of toxic substances.

Also, particularly the class 111A rail tank car responsible for the July 26 toxic release should be immediately replaced by the safer 105A model.

Also, and this is a critical one, the public has a right to know about hazards associated with the production, use and storage of dangerous chemicals. Passage of a bill similar to the previously introduced H.R. 2880 by Representative Gerry Sikorski, the so-called Community Right-to-Know More Act of 1992, is required in order to protect the public health and safety.

Low-income, African-American and Hispanic people have been subjected to discriminatory practices which have relegated many of them to districts adjacent to petrochemical facilities. The proximity of homes to chemical plants is a condition requiring the Federal Government to protect affected residents from harm. In that regard, the enforcement of existing regulation—just the enforcement of the existing regulations, I want to emphasize—must be as vigorous for minority neighborhoods as it is for the more affluent. In addition, the cumulative impact of the existing concentration of hazardous materials in minority communities must be eliminated through a fair-share distribution. If future facilities with hazardous materials are deemed necessary, then these facilities should be equally distributed in all ethnic communities rather than concentrated in those that are less affluent areas.

The establishment of a national pollution prevention policy is needed because prevention is the key to protecting public safety. We need to reiterate that we need to be on the front end of this and not focus on responses to disasters but take effective measures to prevent them in the first place.

Requiring pollution prevention audits for industrial facilities would effectively identify opportunities to reduce or eliminate the use of dangerous chemicals. As an example, means to manufacture such disparate products as adhesive tapes and wood finishes using less hazardous chemicals—and incorporating chemical recycling in place of disposal—have already been developed. During the past 10 years the ability of pollution prevention audits to dramatically reduce the use and generation of toxics has been demonstrated. Phaseout of the most dangerous industrial chemicals should be implemented immediately through pollution audits.

The regulation of railroad cars used for the purposes of transporting and storing hazardous chemicals is inadequate. A single agency, the Department of Transportation, Federal Railroad Administration, should be responsible for the regulation of railroad cars used to carry hazardous materials. A task force on rail transportation safety is needed to address the current apparent overlap between agencies responsible for regulating the handling and transport of toxics by tank and boxcars. A comprehensive and effective set of safety rules can best be established through the efforts of a single federal regulatory agency. Another serious problem lies with the storage of toxics in rail cars, which has caused so much confusion. The current practice of storing toxics in tank cars for up to 30 days poses unnecessary risks to the public. Highly dangerous chemicals can be left on railroad sidings without due regard for the safety of the surroundings. Homes, schools, businesses and natural resources are thereby unnecessarily threatened. The National Transportation and Safety Board, NTSB, and the General Accounting Office, GAO, have repeatedly informed Congress about the rail safety problems in recent years, and we are calling for action immediately on these issues.

Had General Chemical been using the DOT type 105A tank car, the toxic release of July 26 might have been averted. There is no compelling reason why General Chemical or any other shipper, should continue to use the less safe 111A tank car. Indeed, according to a media report, the 111A car has experienced more than 300 safety vent failures in the last 4 years—Ed English, FRA Director of Safety Enforcement. Concerns about rail car safety should not precipitate a shift from rail to truck transport. Net transport of toxics should be immediately reduced.

The specific hazards associated with dangerous chemicals is a concern to all. The public has a right to know about the presence of toxic chemicals in their communities. Congress should take action to protect the public safety by passing a "Right to Know More Act."

The recent assertion, I might add, 2 weeks ago by the General Chemical company that it will no longer ship oleum by rail but will instead use truck transports on public roadways transporting the very dangerous chemicals, this move by General Chemical, is of rather dubious value. The public safety may not be well served by this decision.

General Chemical has an important question to answer. That question is not why did they use a rail car, but why use a rail car which has been known to be substandard since 1990. It is important to make a distinction between the 105A car and the 111A

model. On the 111A car, a safety vent is currently used to vent the material inside the car directly to the atmosphere and has no means of closure once the pressure inside the car has been reduced.

The type 105A car, which was mandated for use of transporting hazardous materials on rail cars, has the capacity of handling a much higher internal pressure and does not have a safety vent. It has a valve which recloses once the pressure inside the tank car has been reduced or when temperatures occur such that the conditions are appropriate for the valve to close, it closes. It shuts down, and that is it. It doesn't spew out toxins indeterminately for 3 or 4 hours, as we had on the morning of July 26.

Thank you, Congressman Miller, for allowing us to comment today on the use and transport of hazardous materials in our neighborhood.

Mr. MILLER. Thank you.

[Prepared statement of Mr. Mason follows:]



## SIERRA CLUB San Francisco Bay Chapter

Alameda County • Contra Costa • Marin • San Francisco  
 Conservation Offices 5237 College Avenue, Oakland, CA 94618 (510) 633-6127  
 Bookstore 6014 College Avenue, Oakland, CA 94618 (510) 638-7470

09 August 1993

The Honorable George Miller Jr.  
 U.S. House of Representatives  
 Committee on Natural Resources  
 Washington, D.C. 20515-6201

Dear Mr. Miller:

The Sierra Club is grateful for this opportunity to comment on the use, manufacture, and transport of hazardous materials as prompted by the accidental release of oleum on July 26, 1993 at the General Chemical Company facility in Richmond, California.

The following is an outline of our concerns:

- 1) Low-income and minority people have borne a disproportionate share of the risks associated with industrial toxic chemicals.
- 2) The federal government should create incentives to reduce the production and storage of toxics through mandated pollution prevention audits.
- 3) The federal government should phase out the most dangerous chemicals and chemical processes and provide incentives to develop alternatives.
- 4) A federal task force on transportation of hazardous materials should be created with the charge of developing effective regulations for the transport and handling of such materials. Attention should be paid to eliminating rail car regulatory loopholes with respect to the use of rail cars (tank and box cars) for storage of toxic substances.
- 5) The 111A rail tank car responsible for the July, 26 toxic release should be immediately replaced by the safer 105A model.
- 6) The public has a "right to know" about the hazards associated with the production, use, and storage of dangerous chemicals. Passage of a bill similar to the previously introduced H.R. 2880 by Representative Gerry Sikorski (Community Right to Know More Act of 1992) is required in order to protect the public health and safety.

Low-income, African-American and hispanic people have been subjected to discriminatory practices which have relegated many of them to districts adjacent to petrochemical facilities. The proximity of homes to chemical plants is a condition requiring the federal government to protect affected residents from harm. In that regard, the enforcement of existing regulations must be as vigorous for minority neighborhoods as it is for the more affluent. In addition, the cumulative impact of the existing concentration of hazardous materials in minority communities must be eliminated through a fair-share distribution. If future facilities with hazardous materials are deemed necessary, then these facilities should be equally distributed in all ethnic communities rather than concentrated in less affluent areas.

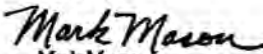
The establishment of a national pollution prevention policy is needed. Requiring pollution prevention audits for industrial facilities would effectively identify opportunities to reduce or eliminate the use of dangerous chemicals. As an example, means to manufacture such disparate products as adhesive tapes and wood finishes using less hazardous chemicals - and incorporating chemical recycling in place of disposal - have been developed. During the past ten years the ability of pollution prevention audits to dramatically reduce the use and generation of toxics has been demonstrated. Phaseout of the most dangerous industrial chemicals should be implemented immediately through pollution audits.

The regulation of railroad cars used for the purposes of transporting and storing hazardous chemicals is inadequate. A single agency, the Department of Transportation, Federal Railroad Administration should be responsible for the regulation of railroad cars used to carry hazardous materials. A task force on rail transportation safety is needed to address the current apparent overlap between agencies responsible for regulating the handling and transport of toxics by tank and box cars. A comprehensive and effective set of safety rules can best be established through the efforts of a single federal regulatory agency. Another serious problem lies with the storage of toxics in rail cars. The current practice of storing toxics in tank cars for up to 30 days poses unnecessary risks to the public. Highly dangerous chemicals can be left on railroad sidings without due regard for the safety of the surrounding community. Homes, schools, businesses, and natural resources are thereby unnecessarily threatened. The National Transportation and Safety Board (NTSB) and the General Accounting Office (GAO) have repeatedly informed Congress about rail safety problems in recent years. It is time to act now.

Had General Chemical Company been using the DOT type 105A tank car, the toxic release of July 26 might have been averted. There is no compelling reason why General Chemical Company, or any other shipper, should continue to use the less safe 111A tank car. Indeed, according to a media report, the 111A car has experienced more than 300 safety vent failures in the last four years (Ed English, FRA Director of Safety Enforcement). Concerns about rail car safety should not precipitate a shift from rail to truck transport. Net transport of toxics should be reduced.

The specific hazards associated with dangerous chemicals is a concern to all. The public has a right to know about the presence of toxic chemicals in their communities. Congress should take action to protect the public safety by passing a "Right to Know More Act". Such an act would provide information for the purposes of preparing appropriate risk management plans and would encourage businesses to reduce risks. Industries using dangerous chemicals have a responsibility to provide full and accurate information about the dangers their materials and processes pose to the public.

Sincerely,



Mark Mason  
Sierra Club  
Chairman, West County Group

enclosure



Mr. MILLER. Greg.

**STATEMENT OF GREG FEERE**

Mr. FEERE. Good morning. It has been a long and interesting morning hearing about all the different aspects of the chemical industry.

The responses that I have here—I don't want to read them all because I would far exceed that three-minute guideline—but I would like to let you know and have them entered into this record.

I have comments from the Teamsters Local 315, the Contra Costa Chapter of the National Electric Association, the Laborers International, Northern California Local 324, the Northern California-Nevada Pipe Trades, District Council 51, Carpenters and Joiners of America, Local 152, the Oil, Chemical and Atomic Workers, Local 1-5, and comments from the Richmond Community Outreach Program.

Mr. MILLER. We will make all of those part of the record of the hearing.

Thank you.

Mr. FEERE. This morning I would like to focus on one small area that I think should be addressed and hasn't been addressed. And for myself, I believe an ounce of prevention could have averted maybe not so much this tank car incident but the other accidents that occurred in Contra Costa County.

It seems like every time you pick up the newspaper, everybody searches for reasons why these accidents occurred, what was there. You know, was it a mechanical failure? But all too often, you hear worker error, worker failure, somebody didn't know exactly what was going on. And we see that as a major, major problem in this county.

I submitted some statistics to the Congressman, and my comments from the U.S. Department of Labor, Bureau of Apprenticeship and Training. And it showed that there was zero certified apprenticeships completed in Northern California from the non-union sector of the construction industry.

Yet these same people, as we speak today, are working within these facilities. Where does that training come from? Where do those skills come from? These people really don't have enough skills and abilities to perform the type of maintenance work that we currently see going on in these facilities.

All too often it never reaches the press. We have fires, accidents, and the major well failures that never come out until there is a major accident. Then everybody runs for cover, and they try to address the issue. But the issue has to be addressed early on long before we reach one of these major disasters.

In the current work force that exists out there, we have both skilled and unskilled workers. We have some of the finest craft people in Contra Costa County here. With the investment of time, money, and effort, we get the very best; but on the other hand, we also get the very worst.

All too often in these industrial facilities, decisions are not based on quality or workmanship or craftsmanship. It is cheap price; who can do the project for the cheapest price. And the bottom line is, nobody ever asked about the workers. Companies don't ask about



the workers. The communities don't ask about the workers. And nobody ever asks until there is a major problem. And then they find out that, holy cow, this person wasn't certified to do this type of work, but they were cheap.

Right now we have people in this county from out of state that lack the qualifications and the skills levels to do the kind of work that keeps the community safe. Yet they are here; they don't pay California income tax. But that is another issue.

But this is the type of work responsibility that somebody has to take account of. These workers that are here, to me they know enough to be dangerous, and they are an accident waiting to happen.

My father was an oil and atomic worker. And I sat across the dinner table when I was growing up and got firsthand accounts of the accidents, the explosions, the near misses. And when I was younger, I really didn't know exactly what my father did in these refineries. But as I got older, I got a firsthand understanding of the everyday risk of these workers that have to stay there after the work and construction is completed. And if that is not done right, the health and safety and livelihood of the people who maintain it, as well as the people of the community, are all at risk.

The recommendations are really pretty simple: Get the most qualified workers working in these facilities. California has a State apprenticeship guidelines certifications and standards that should be required for all workers doing maintenance work or contract work in these facilities.

Currently, for hazardous material handlers, the State requires a minimum of 40 hours. We don't feel that is adequate. We currently perform 80 hours worth of training in that area and are looking to increase that even more. So in the long run, we would like to take these recommendations and look ahead for the future. And then if we take that ounce of prevention and we make sure that the most qualified, most skilled workers are in these facilities, not based on dollars, but based on skills, we will prevent a lot of these accidents and atrocities; and we will have a safer community. But we first have to take that ounce of prevention.

[Prepared statement of Mr. Feere follows:]

## Contra Costa Building and Construction Trades Council

2727 Alhambra Avenue  
Suite No. 2  
Martinez, CA 94553  
FAX (415) 372-7414



Greg Feore  
Secretary - Treasurer  
Business Manager  
Phone (415) 228-0900

August 9, 1993

Congressman George Miller  
367 Civic Drive  
Pleasant Hill, CA 94553

Dear Congressman Miller,

Over the last couple of years we have seen an alarming increase in accidents, explosions and deaths in the San Francisco Bay Area's heavy industrial plants. As I am sure you are aware, Contra Costa County has the highest concentration of heavy industrial plants in Northern California.

The issue I am addressing is contract and maintenance work performed in these industrial facilities. Time and time again we hear "worker error" as the main culprit for these accidents, but very little is ever done except to put a band aid on the problem and hope it doesn't occur again. Unfortunately this band aid doesn't work and these accidents keep re-occurring.

The problem is very simple. Local industrial facilities have in recent years been using more and more untrained, unskilled people to do their contract and maintenance work. No one ever asks about the skill levels or training levels of this type of work force. It is always assumed they know what they're doing. But unfortunately, the bottom line is that the choice of who to hire for the job is always driven by the "cheapest price" or who can perform the work for less. As the old but true saying goes, "you get what you pay for". And, it is a disgrace that in this case thousands of people stand to lose their lives when that the choice boils down to the cheapest in-experienced workers.

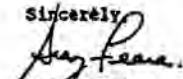
Please take the time to review the statistics from the U.S. Department of Labor, Bureau of Apprenticeship and Training and you will see the non-union segment did not certify one apprentice in all of the entire Northern California area. So where are these so-called skilled non-union workers coming from? It is sure not from State Certified Apprenticeship programs. With these untrained, unskilled, non-union work force working in these local industrial facilities, the whole county is nothing more than just one huge disaster of potentially Biblical proportions waiting to happen.

Feere  
8/9/93  
Pg. 2

I think your office has had the opportunity to review the tremendous amounts time and money that Building Trades locals have invested in safety and training for local workers. My hope is that these hearings will result in requirements that all workers performing contract or maintenance work in local plants where chemicals are handled meet complete minimum training standards and hold certification from a California State Certified Apprenticeship program. Further, that the safety training be set at a minimum 90 hours of training for hazardous material handlers which is twice the State requirements. Building Trades Local unions already require these standards.

Unless some very drastic and aggressive action results from these hearings, I feel we will be facing another General Chemical disaster but maybe next time the citizens of Contra Costa County will not be as lucky.

Sincerely,



Greg Feere  
Secretary-Treasurer

GF:ps

U.S. Department of Labor

Bureau of Apprenticeship  
and Training  
71 Stevenson Street, #775  
San Francisco, CA 94105

Reply to the Attention of:

9 ETA  
Code: 608.4

May 24, 1992

Mr. Barry Luboviski  
SBCTC - AFL-CIO  
921 11th Street, Suite 400  
Sacramento, CA 95814

Dear Mr. Luboviski:

In further response to your FOIA request of January 15, 1992, we have contacted the program sponsors involved in the apprenticeship\* programs of the Associated Builders and Contractors of California.

Their period of time to respond to your request has expired without comment from them. Therefore we are releasing the following information shown below:

Golden Gate Chapter

No. of apprentices* in program in 1991	<u>10</u>
No. of completions in 1991	<u>0</u>
No. of cancellations in 1991	<u>0</u>

San Diego Chapter

No. of apprentices* in program in 1991	<u>22</u>
No. of completions in 1991	<u>5</u>
No. of cancellations in 1991	<u>0</u>

\* The DOL/BAT approved programs for ABC in CA are Trainee programs and the participants are Trainees.

Sincerely,

David G. Turner  
Regional DirectorBureau of Apprenticeship  
and Training

Mr. MILLER. Thank you. Just on that point, Greg, I think each and every time we review an industrial accident, I think for the most part we constantly find that where you have untrained people or you don't have procedures in place, that the costs of putting procedures in place, of training individuals to carry out that particular function, would have been far cheaper than the resulting accident.

Obviously, you are playing the probabilities here and the percentages of whether or not you are going to have an accident; and that is figured in all of the time. But yet we find out that the costs far exceed that.

This committee did the investigation of the *Exxon Valdez*, and they continually try to say, but for one captain who may or may not have been drinking prior to that accident, this accident would have never happened.

The fact was that there are a whole series of procedures that were supposed to be put in place to prevent that from happening. And those procedures were overlooked, and they ended up with one of the most expensive industrial accidents in the history of this country. And it is a series of small steps that usually lead to an accident of people not doing a job or not being trained to recognize what is taking place in these occurrences.

There are just numerous examples. The cost of prevention was so minimal, even when it runs into the millions of dollars, compared to what followed from the failure to have procedures and trained people in place.

So I appreciate your testimony and the work of the Trades Council and that effort.

Let me see if I can reassemble the testimony here.

Dr. Brunner, Mr. Mason pointed out something that we talked about with one of the earlier panels and that is the movement of tank cars for the purposes of storage is done, I suspect, for the most part without regard to prior consideration of community impact.

I suspect much of the movement of tank cars for the purposes of storage is done based upon history, that facilities in the county have leased sidings, they have leased track space for the purposes of storage, or they have storage within the boundaries of their own facility.

But quite clearly there are areas of this county where tank cars can and are stored that, if you tried to bring that substance into that community, nobody would allow you do that; there would be hell to pay on a political front for the consideration of that. And if you move up and down the waterfront, that is happening, and as again is pointed out in Mr. Mason's testimony, in many instances only a matter of a few yards or few hundred yards from community facilities.

Where do we cross over into the question of that being a public health hazard?

Dr. BRUNNER. I think that is an example of the regulatory gaps that occur when people don't look at it from the broader perspective as to what is necessary to protect public health. Concentrated sulfuric acid in a community is dangerous. It is dangerous whether it is regulated under 2185 or the Department of Transportation or whether it is in a tank car moving back and forth. And people need

to think of the material and its impact on the community and then how that material needs to be monitored and handled.

What we have now is this dichotomy in thinking reflected in the dichotomy in regulations. To me it was most dramatic at General Chemical. We were over there being invited to attend a press conference. General Chemical had just had this enormous release of gas over several square miles of the community. This was some days after the event, and there is a great big bulletin board sign up in General Chemical's parking lot, congratulations on the safe start-up of the sulfuric acid reactor. Okay?

And from somebody's point of view, that part went well and was fine. The fact that the tank car storage was intimately associated with it and that gas in the community was the worst impact we have had in 10 years escaped people's thinking.

I think we need to look at hazardous materials as a whole, how it impacts the health, how it impacts the environment and say, okay, now, how are we going to regulate it? Where does it go, and how does it need to be watched?

You know, that is the point about looking at the gaps and getting back a little bit and saying, okay, there is this stuff in the community, what are the risks, what are the comparative risks, how do we regulate them?

Mr. MILLER. I don't mean to make this your problem, but I am looking at it in a generic sense. At what point is it proper for you as public health officials in this county to decide that the storage of this material in an unsecured, unguarded, unmanned, unmonitored area within a community is, in fact, a threat to public health?

Dr. BRUNNER. One of the reasons we are here at this hearing to give our input on the health threats from these kind of events is the fact that material is improperly stored or stored in incompletely regulated tank cars. So there is a variety of issues that we think are public health threats.

We don't necessarily have the legal authority as the local health department to address this or regulate it or make somebody do something about it. But we have the responsibility as the local health department to evaluate the public health impacts and bring it to the attention of the public and the policymakers.

Mr. MILLER. I assume that there is some level of confidence in the community that chemicals stored on site at a refinery or processing plant or what have you, that there is some security there. Usually it is private property. It is guarded; there are guards at the gate; there is ongoing monitoring of the vessels and the procedures.

That is the assumption. But then when you take that very same chemical and you move it into the community and it is standing 24 hours a day with maybe nobody paying attention to it—in all likelihood, nobody paying attention to it—and then you have the Department of Transportation saying that the second most serious risk outside of collision of tank cars is vandalism—

Dr. BRUNNER. Our assistant sheriff has called to our attention a couple of days ago during one of our county debriefings on this event that, in fact, vandalism and robberies of chemicals from tank cars is a real major problem, particularly out in the eastern part



of the county where tank cars are stored without adequate security and people are looking for certain chemicals for drug manufacture and others.

They go out, rip off a few car buoys, leave the valve open—

Mr. MILLER. You are not inspiring confidence at this point.

Dr. BRUNNER. No. I am not intending to inspire confidence.

Mr. MILLER. The Department of Transportation tells me they can't tell me what is in the tank car. But you are telling me that people know enough about the manifest or the location to go out and to hijack the chemicals?

Dr. BRUNNER. Apparently that is true.

I mean, as I said, part of our internal county debriefing is to try to get a picture on what is going on from all the different departments. And the sheriff contributed to that.

Mr. MILLER. Maybe we should subcontract this work on behalf of—just kidding, folks.

Mr. MASON. If I may, Congressman Miller, to emphasize that point, I live approximately three-quarters of a mile from the General Chemical facility in Richmond, and I cannot get in there without proper permission from the company management. There is barbed wire around the facility and security guards as you mentioned.

Yet I live one block from the Southern Pacific Railroad tracks, and I can walk up to those cars and—well, we will leave that to one's imagination.

Mr. MILLER. The purpose of the question—and I think your highlighting of it, Mr. Mason—is this: As I said, we are not going to get the chemical industry to move, nor should we necessarily; but we have got to recognize the extent to which our communities have changed. And if we have been storing chemicals out in the community simply out of history and habit, we have got to reevaluate whether that still is proper within the context of the 1990s in a highly urbanized county. It may have made sense at one point.

When I was growing up in Martinez, we had 1,500 people in the town. We now have 30,000 people in the town. And I think it raises questions as to what is the risk at that point. And clearly the risk as demonstrated by this plume is far different than a lot of people have wanted to discuss publicly.

So I think those are the questions that have got to be asked concerning the change in management and procedures with respect to these chemicals.

If I might, Dr. Brunner, the fact that we had this plume to me says we are now on notice. I mean, we really haven't had a public discussion of this kind of plume in terms of an industrial accident.

I think even in the case of General Chemical there was some discussion—whether it was public or not—that in fact this kind of plume could result. Their particular case with respect to their 5-minute release did not indicate this kind of plume, but a much more concentrated, smaller area. But they had also discussed at some point in the process a much larger plume.

Now it is only a question, it seems to me, absent some kind of prevention, what is the chemical that creates that plume. The people in Hercules, the people in Pinole, and elsewhere are put on notice that actions within the Richmond waterfront community can



now impact them. That is a far different equation than historically what we have seen with respect to accidents, which for the most part—for the most part—have been fairly localized as has been our response to the threat.

Dr. BRUNNER. Yes. This has been the most widespread hazardous materials release. There was the Safeway fire which had a comparable community impact and went on for days. And it does impact larger areas of the community.

I think this does focus public attention on it. I do want to mention that the Contra Costa Health Department has a policy of public participation and public discussion of these issues, and we have held a series of community forums and hearings on each one of our risk management prevention plans as they have been put forward and approved and discussed. And I think that has been very, very important.

But an event like this focuses the intensity of that kind of discussion and really calls into question very dramatically some of the underlying assumptions on which these plans have been presented.

Mr. MILLER. Let me ask you this: Now that we are on notice that this, in fact, can happen and is no longer speculative, what do we do with these risk management and prevention programs?

Mr. Belliveau says that already we are way behind in terms of the adoption of these programs. He cites that the county has requested 26, that 16 have been submitted, and only 2 have been reviewed and accepted. Those plans are in the works.

Do we have to now start them backwards and reengineer those plans in light of the fact that we are talking about the very real potential of much more off-site impact than may have been considered prior to this review?

Dr. BRUNNER. There are two issues. One is, their RMPP program is a statewide program. And, as I think Belliveau mentioned, and others, there have been delays about getting all the regulations together.

In Contra Costa County, we actually, as a local health department, are much further along with the RMPP process than elsewhere in the State; and we are proud of that.

On the other hand, we are not nearly far enough, and I think that point needs to be acknowledged and made, too. We also, I think, need to again open up to public scrutiny, as is being done now, some of the underlying assumptions on which these off-site consequences are based.

Also, some of the underlying assumptions about what is included in the RMPP and what isn't included. Who else hasn't dealt with the issue of tank car loading and unloading. What is going on with pipelines? What about some other materials that may not be classified as ultrahazardous under the RMPP law but may be stored in very, very large quantities so that they could have an impact?

When Chevron blew up in December of 1991 and spread catalysts all over—this time the wind was blowing in the usual direction and went over Port Richmond instead of North Richmond—that was never included in the RMPP plan because that catalyst wasn't considered an ultra-hazardous material and in some ways wasn't. But it certainly had an impact.

So I think some of these issues need to be looked at again. They need to be looked at statewide also.

Mr. MILLER. Where are we with respect to General Chemical's plant? A review of that plant?

Dr. BRUNNER. We are currently in the process of reviewing that now.

Mr. MILLER. That was submitted in 1991; is that correct?

Dr. BRUNNER. Yes.

Mr. MILLER. So there is a fair lag time here.

Dr. BRUNNER. There is a fair lag time.

These are enormous plans that people have mentioned. The Chevron plant, just the haz-ops and all the documentation for it fills 10 filing cabinets. And for some of the larger plants, it is interesting because we have prioritized the industries in terms of which ones we want first. We got in Chevron's early. General Chemical is a smaller plant and didn't necessarily pop out as high on the priority list as some of the others.

It just goes to show that there is a lot of material stored in a lot of agencies here.

Mr. MILLER. How do we get the resources necessary to do this?

Mr. BELLIVEAU. If I could answer that? The prevention program, under State law, is fee supported. Industry pays, and they are not paying enough. There are only three engineers the county has dedicated to this program. That is why there is such a backlog.

Mr. MILLER. The two things that are involved over the years in these issues seem to be constant.

One is, on close review, the plans are somewhat inadequate and very often the review, in fact, catches that and the plans are modified.

But as submitted, they are inadequate. And over time, there is a tendency to drift away from the tenets of the plan. Those procedures assured to public agencies to be in place are, in fact, modified, reduced, changed over a period of time. And there is no resemblance between ongoing procedures and the original submission.

But it takes a lot of resources to stay on top of the assurances given to the public on the operations, in fact. And whether it is at the federal level or local level, I have never seen that match of resources in place to keep on top of it, even where it is industry financed and what have you.

We have a surplus of millions in the Alaska system, and there are reasons, but there still isn't the kind of monitoring going on that the public was assured would, in fact, take place.

How do we close that gap at the local level?

Dr. BRUNNER. It is very difficult to close at a local level. And I think the basic point we need to make is that it is industry's responsibility to function in a safe way. It is industry's responsibility to prepare these plans accurately, carefully, extensively. It is industry's responsibility to function well and not have these releases. The local agencies can review that, but it is a basic review.

We have in our health department three engineers, including chemical engineers familiar with refineries. But we cannot duplicate what is the responsibility of Chevron to do in terms of evaluating and maintaining the safety of their plant.

Mr. BELLIVEAU. If I could add, the other thing we need to do is empower those people most at risk.

Currently there is a technical assistance proposal pending before the Bay Area Air Quality Management District that would create a community safety technical adviser program that would hire a technical expert accountable to community organizations who would review information and advise them and help them develop recommendations so that they have more political power to influence and hold accountable industry and the county with respect to disaster prevention.

Also, the extent of the prevention program up to this point in time is that whatever industry voluntarily agrees to do with respect to prevention is what goes into effect. And we can no longer afford to be totally reliant on industry volunteerism. We need the county and other agencies to be mandating prevention programs, such as venting pressure relief valves into containment and scrubber systems, such as reducing the inventory of acutely hazardous materials.

And the illusion of this prevention program beyond its slow implementation is that it is a voluntary program as it is presently being interpreted. We need mandatory measures.

Mr. MILLER. Two last questions here.

One, Mike and Mark, you make quite a deal about the tank car and the fact it is going to be phased out, and it is subject to a series of accidents.

Do we know whether or not General Chemical would have been advised this car has had these problems and/or phased out?

Is there anything in the regulations that requires the user to be notified?

Or do they simply call up a broker and say we need five tank cars for the following purposes, and they would never know—do you know or not? I don't mean to point fingers.

Mr. MASON. It is my understanding that in December 1990 when the federal regulations came down from DOT, that an advisory went out—I don't know the technical term—but essentially puts everyone on notice who uses tank cars of this type that as of January 1, 1991, the 111A, the other safer car, is permitted for use for oleum and other hazardous materials.

The degree to which the DOT and the Federal Railroad Administration were effective and thorough in getting that message out to the industry is an unanswered question.

Mr. MILLER. Thank you.

And, Dr. Brunner, I don't know what the total number of agencies that responded to this incident is going to be, but is there going to be some opportunity to review where the gaps and the overlaps are in terms of getting a manageable operation here in terms of a quick response or necessary response?

Dr. BRUNNER. There have been. And there will be interagency debriefings and so on.

But the fact of the matter is the very number of agencies that are involved in these things indicate that, on some level, if you got 50 people in charge, nobody is in charge.

Mr. MILLER. That would be my concern—

Dr. BRUNNER. From our point of view, we are the health department, and the primary responsibility is protecting public health. In our view the local health department is in charge, but we understand that is not universally shared.

Mr. MILLER. I understand that may not be universally shared and it may especially not be universally shared at the time of an accident.

Dr. BRUNNER. Fortunately, actually the first responders are the health department and the fire department and local agencies, and we all have a good working relationship. And by the time all the other agencies arrived, in this case, the incident was over. So it worked out all right, but it can get real, real confusing.

Mr. MILLER. In terms of the ongoing assessment as to the margins of safety and impacts on the community, it seems to me the issue is one of community health. I mean, it is a public health issue.

Dr. BRUNNER. It is a public health issue. We are very clear within Contra Costa County that the assessment and the decisions about protecting the health of the public in an acute situation will reside with the Contra Costa Health Services Department.

We do that, when possible, in consultation with experts from the State, Cal EPA and State health department. But it is done by the county health department on site. We made those decisions in this event, and that is our responsibility.

Mr. MILLER. Thank you. Thank you very much, all of you.

**PANEL CONSISTING OF WILLIAM H. WELL, CHIEF, RAILROAD SAFETY BRANCH, AND ACTING DIRECTOR, SAFETY DIVISION, CALIFORNIA PUBLIC UTILITIES COMMISSION, ACCOMPANIED BY BARBARA MASTERS, ASSISTANT TO THE DIRECTOR, CONTRA COSTA COUNTY HEALTH SERVICES DEPARTMENT; ROSEMARY CORBIN, HAZARDOUS MATERIALS COMMISSION, WEST COUNTY CITIES REPRESENTATIVE; AND CHRISTOPHER HOWE, VICE-CHAIRMAN, COMMUNITY AWARENESS AND EMERGENCY RESPONSE GROUP, CONTRA COSTA COUNTY**

Mr. MILLER. The next panel will be made up of William Well, the chief of railroad safety branch, California Public Utilities Commission; Rosemary Corbin, Hazardous Materials Commission, West County Cities representative, a member of the city council; Christopher Howe, vice chair of Community Awareness and Emergency Response; and Barbara Masters, assistant to the director, Contra Costa County Health Services Department.

And my understanding is that Mr. Well, Ms. Corbin, and Mr. Howe will have opening statements.

Mr. Well, we will start with you.

#### **STATEMENT OF WILLIAM H. WELL**

Mr. WELL. Good morning, Mr. Chairman. I am Bill Well, chief of the railroad safety branch and currently acting director of the safety division of the California Public Utilities Commission. And I want to thank you for the opportunity to appear before you today on this issue.

I have submitted written testimony to the subcommittee, and my statement is out on the table. So I will not repeat what is in that written testimony. But I would like to highlight a couple points.

First, the California Public Utilities Commission is the State agency with the greatest jurisdiction at the State level over railroad transportation, and it has issued several orders and regulations regarding railroad operations.

In addition, the Commission has broad investigative authority and, as noted in my written testimony, has two railroad safety investigations currently in progress.

Second, also noted in my testimony, the Public Utilities Commission is the certified State agency in California to participate in the National Railroad Safety Inspection Plan. Under this authority, we can carry out investigative and surveillance activities to enforce the Federal railroad safety standards.

Under this authority, one of our certified railroad inspectors is conducting an investigation into the toxic release that occurred in Richmond. We are very concerned with the impact it has had on the community, and our inspector began his investigation as soon as it was safe to do so. And he is conducting this investigation in concert with the Federal Railroad Administration. He is currently in the fact-gathering stage in the investigation. And when his report is available, I will certainly submit a copy to the subcommittee.

And this, along with my written testimony, concludes my statement. I would be glad to offer any assistance I can.

Mr. MILLER. Thank you.

[Prepared statement of Mr. Well follows:]



STATEMENT OF WILLIAM H. WELL  
ACTING DIRECTOR, SAFETY DIVISION  
CALIFORNIA PUBLIC UTILITIES COMMISSION

BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES

AUGUST 10, 1993

Mr. Chairman and members of the Subcommittee, I am Acting Director of the Safety Division of the California Public Utilities Commission (CPUC) and have been closely involved in several of the CPUC's activities involving the regulation of hazardous materials transportation by rail.

Thank you for the opportunity to appear before you this morning to testify about the recent sulfuric acid leak in Richmond from a railroad tank car and about the issues concerning the transportation of hazardous materials by rail. The Safety Division's investigation into the sulfuric acid leak is continuing, and we have drawn no conclusions with respect to the cause of the incident, so I am unable at this time to provide you with any CPUC conclusion.

My testimony will describe the CPUC's jurisdiction and activities involving rail safety generally and provide an overview of the federal laws governing rail safety and hazardous materials, including a description of federal restrictions on state regulations of rail transportation. Finally, I will summarize recent state action on rail safety, both at the CPUC level and at the California Legislature.

## INTRODUCTION

The CPUC has jurisdiction over rail safety, which includes, among other things, inspecting and enforcing requirements for railroad equipment, track, and operating practices. We exercise this jurisdiction pursuant to state laws and regulations and pursuant to state certification by the Federal Railroad Administration (FRA) under the Federal Railroad Safety Act. When an accident occurs, our inspectors investigate the track, equipment, and operating practices and pursue enforcement of any violations, either independently or through the FRA.

Our jurisdiction does not extend to the direct cleanup of a hazardous materials incident or to the health and environmental impacts of incidents, although our rules do require the railroads to have emergency preparedness plans. Other state or local agencies are involved in cleanup and protecting human health and the environment after an incident; these are not areas in which the CPUC has expertise or authority.

## FEDERAL LAW AND PREEMPTION

There are two major federal laws affecting railroad operations. The Federal Railroad Safety Act of 1970 (FRSA) governs safety in all areas of railroad operations, and the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990, governs the transportation of hazardous materials by rail and other means.

Federal Railroad Safety Act, 45 U.S.C.A. 421 et seq.

The FRSA and the regulations thereunder (49 C.F.R. 200-236) cover a broad spectrum of rail safety issues, including track construction and maintenance, signaling standards, equipment specifications, accident reporting, drug and alcohol testing, and operating practices.

The FRSA provides for state participation in enforcement of the FRSA and regulations. California is certified to participate in this program, as more fully discussed below.

The states' ability to regulate rail safety is restricted by the preemption provision in the FRSA which provides as follows:

"A state may adopt or continue in force any law, rule, regulation, order or standard



relating to railroad safety until such time as the Secretary (of the Department of Transportation) has adopted a rule, regulation, order or standard covering the subject matter of such requirement. A state may adopt or continue in force an additional or more stringent law, rule, regulation, order or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any federal law, rule, regulation, order or standard, and where not creating an undue burden on interstate commerce. 45 U.S.C.A. 434 (emphasis added)

Thus, under the FRSA states can adopt a regulation under two conditions:

- 1) If the Department of transportation has not yet adopted a rule covering the subject matter; or
- 2) Even if the DOT has adopted a rule, if the state requirement is necessary to eliminate or reduce an essentially local safety hazard, the requirement will not be preempted as long as it (a) is not incompatible with federal law and (b) does not create an undue burden on interstate commerce.

The CPUC has certain railroad safety regulations that are not preempted under the FRSA, because there are no federal regulations covering the same subject matter. For example, federal courts have found that the CPUC's railroad clearance and walkway regulations are not preempted, because the federal regulations did not cover clearances and walkways.

Currently the CPUC has two proceedings underway which may adopt railroad regulations under the local safety hazard exception to preemption. One involves the derailments that occurred in 1991 near Dunsmuir and Seacliff and the other involves the Legislative mandate to identify local hazardous railroad sites in California. These will be discussed later in my testimony.

Hazardous Materials Transportation Act,  
49 U.S.C.A. 1801 et seq.

The HMTA and the regulations thereunder govern the transportation of hazardous materials, including requirements for tank placarding, packaging standards, tank specifications, handling, and storage. The threshold question of applicability, however, is whether or not the commodity is classified as a hazardous material under the HMTA. If it is not, none of the requirements apply.

Because of the broad preemption provisions contained in the HMTA, as amended, the states are preempted from reclassifying hazardous materials to trigger the more stringent requirements. Thus, even though the accident near Dunsmuir demonstrated the need to expand the list of materials subject to stringent hazardous material regulations, the state is preempted from expanding the list to prevent similar occurrences in the future, even for solely intrastate transportation.

Although the states are restricted in what they can do to improve rail safety, California has some statutory and regulatory provisions governing the transportation of hazardous materials by rail. These include requirements for notification of hazardous material releases; requirements that the railroad provide system maps showing mileposts, stations, crossings, and other major points; requirements that the railroads submit emergency handling guidelines to the state Office of Emergency Services; and requirements that, if there is a release of a hazardous material, the railroad provides the local emergency response agency with certain information about the contents of the train.

In addition, the CPUC in 1991 adopted rules improving railroad emergency response notification, among other things. In 1991 the California Legislature also adopted new railroad safety requirements. These are discussed in greater detail below.

#### State Certification under FRSA and HMTA

Under FRSA, 45 U.S.C. 434, states cannot adopt federal requirements verbatim (as is frequently done in environmental laws). However a state can participate in carrying out investigative and surveillance activities if it is certified, as is California, to enforce federal standards with respect to equipment safety standards, track standards, general operation practices and hazardous materials (45 U.S.C. 435). The procedure for participation is set forth in the Code of Federal Regulations, Title 49, Part 212. In California, the CPUC is the state agency certified by the FRA. Violations of federal law are referred by CPUC staff to the FRA which has 60 days to assess penalties against the violating carrier. If such action is not

forthcoming, the state agency may seek recover of civil penalties in federal courts (45 U.S.C. 436(a)).

#### CPUC Staff

The CPUC has a staff of fourteen certified inspectors who are responsible for inspections of railroad operations covering 12,000 mile of track throughout California. This includes inspection and enforcement of federal requirements for equipment, track and operating practices. In addition, CPUC staff pursues regulatory compliance with state laws and regulations that address items unregulated by federal regulations, such as walkways, clearances, local and emergency preparedness and notification for hazardous material incidents.

The CPUC staff also conducts field investigations of railroad accidents that result in employee or passenger injury or death or the discharge of a hazardous material commodity. These activities are conducted in concert with any federal investigative effort, typically by the FRA and/or the National Transportation Safety Board. The primary role of the CPUC staff in responding to a railroad accident is to investigate for regulatory compliance of the carrier, to ensure the preservation of perishable technical evidence, and to determine whether additional preventative measures or regulations are required.

Currently one of the CPUC's federally certified railroad inspectors is investigating the incident that occurred in Richmond on July 26, 1993, when a General Chemical Corporation railroad tank car sustained a ruptured relief valve while it was being unloaded. This ruptured valve caused a significant amount of Oleum vapor to be released into the atmosphere and a great number of people in the Richmond area were affected by the spill. The CPUC inspector is conducting interviews with plant management and employees to determine compliance with federal regulations regarding the transportation of hazardous materials. A staff report will be made on the results of this investigation.

#### RECENT STATE ACTION

##### CPUC General Order 161

The CPUC adopted General Order 161 on August 7, 1991, which contains additional rules for the transportation of hazardous materials by rail. The CPUC recognizes that federal rules extensively regulate the transportation of hazardous materials. However, coordination between the state, local agencies, and the railroads, particularly in the area of emergency response, is necessary to enhance safety in the

transportation of hazardous materials. These rules complement the federal regulatory framework by, among other things, encouraging communication between local emergency response agencies and railroads transporting hazardous materials. The key provisions of the rules impose the following requirements on each railroad which transports hazardous materials:

1. Immediately notify by telephone the appropriate emergency response agency (ERA) about a release or threatened release of a hazardous material. Federal law only requires notification at the national level, for example the U.S. Coast Guard Warning Center, so that the public faced with the crisis may be the last to hear about it.
2. Provide ERAs along each rail line the railroad's 24-hour emergency telephone number.
3. Have in place an emergency preparedness plan to respond to hazardous material spills.
4. Ensure that train crew members have the ability to communicate via radio transceiver with each other and with the train dispatcher.
5. Provide, upon request by an ERA or an administering agency, a list of each type of hazardous material transported through a line segment for the prior 12-month period. (Pre-notification of hazardous material shipments has been preempted. However, the above information will allow the ERAs to better prepare for potential releases -- they will be aware of the kinds of materials that they may need to deal with.)
6. Provide, upon written request, information regarding leases for storage of hazardous materials in rail cars.

#### CPHC Investigation

On August 22, 1991, the Commission issued an Order Instituting Investigation (OII) 92-03-029 for the following purposes: (a) to investigate the Southern Pacific Transportation Company (SP) derailment near Dunsmuir on July 14, 1991 and the SP derailment near Seacliff on July 28, 1991, (b) identify any local safety hazards, (c) investigate compliance with existing rules and regulations, and (d) recommend necessary improvements in state or federal laws or regulations to prevent future derailments and to facilitate emergency response.

The incident near Dunsmuir involved a DOT-111A 100W tank car which, upon derailment, was punctured in three places. The contents of the tank car, 19,500 gallons of aqueous metamsodium poured out into the Sacramento River, killing every living thing in that river over a distance of approximately 50 miles downstream.

The incident near Seacliff (Ventura County) involved the derailment of fourteen freight cars. Over 440 gallons of aqueous hydrazine, a corrosive hazardous material, spilled out of 14 damaged barrels in a derailed intermodal container. Clean up efforts resulted in the closing of U.S. Highway 101 for more than five days.

Many days of hearing have been held in this proceeding and numerous documents have been filed by various parties outlining the cause of these accidents and making recommendations involving several aspects of railroad operations. These include proposals involving train operating rules, maintenance practices on locomotives, tank car safety, emergency response preparedness and hot box detector installations. The final day of hearing in this proceeding is scheduled for September 2, 1993. A final CPUC decision on the matter is expected by the end of the year.

#### State Legislature

The California Legislature's interest in the safe transportation of hazardous materials by rail was strongly influenced by the derailments near Dunsmuir and Seacliff. Working around the restrictions imposed by federal preemption, the Legislature passed a package of five bills before adjourning its 1991 session. The key provisions of this rail safety legislation are the following:

1. Impose a user fee on railroads to cover the CPUC's costs of regulating rail safety. (The railroads had previously enjoyed an exemption from the user fee provisions imposed on CPUC's other regulated utilities.)
2. Require the CPUC to identify local safety hazards and propose regulations to eliminate or reduce the hazards. (This clarifies the authority of the CPUC to adopt rules under the local safety hazard exception to preemption contained in the FRSA.)
3. Increase CPUC staffing of rail safety inspection positions, with additional funds to be provided by the user fee.

4. Establish minimum inspection standards of every 180 days for equipment in yards and every year for main line track.
5. Created a Rail Accident Prevention and Response Fund to be administered by the California Environmental Protection Agency.

One of the bills required the CPUC to request the appropriate federal agencies to establish additional regulations regarding the transportation of hazardous materials. In response to that bill, the CPUC by letter July 14, 1992, requested the United States Department of Transportation to act on the following: (1) the reclassification of various chemical compounds not presently classified as "hazardous", (2) safer rail cars for hazardous materials, (3) better information on train manifests, (4) implementation of requirements for dynamic brakes, trackside detectors, end-of-train braking devices, and car weighing and shipper loading certification, and (5) increased accident reporting accuracy.

#### CPUC to Identify and Mitigate Railroad Hazards

In response to the above mandate by the Legislature, on March 11, 1992, the Commission issued its Order Instituting Investigation (OII) 92-03-017 for the purpose of identifying local safety hazards on California's railroads. The CPUC has divided this proceeding into two phases. The first dealt with the identification of local safety hazards throughout the entire California railroad system, which is composed of some 12,000 miles of track owned by 39 railroads. The CPUC ordered the respondent railroads to provide information on areas of derailment, accident frequency, hazardous material transportation and other local safety hazard information. The second phase is the identification and adoption of appropriate measures to mitigate the identified hazards.

The CPUC staff analyzed the railroads submission, did its own investigation and issued a report containing a preliminary list of 38 track segments as local safety hazards which was subsequently adopted by the CPUC in an interim decision issued July 1, 1992. In phase two of this proceeding, the CPUC staff filed its report on April 2, 1993 proposing mitigating measures for seven of the sites. Mitigating measures the staff recommended the CPUC adopt included rules on (1) hazardous materials transportation (2) track train dynamics, (3) dynamic brakes, (4) telemetry systems (5) train defect detectors, (6) employee training, (7) employee requalification requirements, (8) accident notification, and (8) track conditions.

Currently the CPUC's investigation is focused on the issue of federal preemption. Opening briefs have recently been filed in this proceeding and the respondent railroads have taken the position that the CPUC is preempted by Federal law from enacting any of these measures and the investigation should not be pursued any further. Contrary to this assertion, the staff has stated that the CPUC is required by California law to enact regulations to mitigate local safety hazards and that regulations mitigating local safety hazards are exempted from preemption by federal law.

The preemption issues have considerably slowed the CPUC's investigation and adoption of proposed regulations as mandated by the Legislature. In light of the ever present potential of continued rail accidents, contaminating spills and of course, the threat of harm to persons and property, the President of the CPUC is not happy with the time it has taken the formal process to mitigate hazards at these sites. The CPUC staff has been directed to prepare an emergency order to put before the CPUC that will propose regulations containing mitigating measures for all of the sites.

In addition the staff has been directed to begin work on a regulation directed to California railroads regarding shipping paper requirements for the transportation of hazardous materials. As envisioned in the mandate by the Legislature, this regulation would require specific information to be carried in the engine of any train transporting hazardous materials. We recognize the federal preemption issue that is likely to be raised by the railroads upon adoption of this regulation, as well as adoption of the regulations dealing with mitigation of hazardous sites. We believe, however, that the time has come to deal with that issue "head-on".

#### CONCLUSION

As you can see, California is extremely committed to taking the needed steps to improve rail safety. However, Congress should be reminded that the threat of preemption all too often inhibits state regulatory action and serve to blunt local city, county and state efforts to address specific local needs. As evidenced by the incidents in California, the federal laws and regulations are clearly inadequate and should be critically reviewed.

In order to cure the existing problem, the federal preemption provisions in the FRSA and HMTA need to be revised to allow the states to adopt laws and regulations to prevent tragedies such as the derailments near Dunsmuir and Seacliff. In



addition, the federal program itself must be improved. The U.S. Department of Transportation and the U.S. Environmental Protection Agency should be ordered to investigate and review other chemical compounds not currently classified as hazardous materials for possible reclassification as hazardous. In addition, safer rail cars should be required for use in transporting all materials, whether or not they are hazardous, consistent with recommendations of the National Transportation Safety Board. Finally, additional information should be available on trains for all commodities carried by rail, regardless of classification, to facilitate response activities. This would avoid scramble at accident scenes where the response teams are unable to identify the discharged commodity.

Again, thank you for the opportunity to appear before you today. We look forward to working with the subcommittee if we can be of any assistance.

Mr. MILLER. Rosemary.

#### STATEMENT OF ROSEMARY CORBIN

Ms. CORBIN. Congressman Miller, my name is Rosemary Corbin. I am a Richmond City Councilmember, and I represent all of the West County cities on the county Hazardous Materials Commission.

Thank you for the opportunity to comment on the problems highlighted by the General Chemical release.

I will concentrate today on what the Federal Government can do because we have plenty of work to do at the local level, and I don't see the need to harangue you about that. But I am hoping that some positive results will come from this hearing that you will carry back to Washington and work on.

Richmond needs industry to provide jobs. However, part of the price of industry should not be the health and safety of our citizens. And toxic releases hurt business, as this report, "Poisoning Prosperity: the Impact of Toxics on California's Economy," published by the State of California demonstrates.

In the 8 years I have been on the city council, we have been subjected to about half a dozen major calamities in which hazardous materials have been showered upon our community.

Following each release, we were told that any confusion in the chain of command had been solved, that any bugs in the community notification program had been worked out, and that everything was being done to prevent such an accident from happening again.

However, conflicts between responsible agencies, deficiencies in the community notification program, and loopholes in the regulations persist. The credibility of every government agency is in question.

The pledge of mutual cooperation needs to include mutual respect. And I don't know how you legislate that. But professional jealousy seems to have contributed to the confusion reported in each of these recent incidents. The presumption should be that local, first responders have the knowledge to make correct decisions. Other agencies overruling our local first responders have caused confusion in several of the recent incidents. Once it was a federal agency that caused the confusion.

The media, in this latest incident, I think came up with a good compromise. I heard on the radio that they recommended that if you were ahead of the cloud, get out; and if you were in the cloud, shelter in place. And so I thank the media.

We also need to stop finger pointing. There is enough blame to go around, and passing the buck is contributing to certain of our loopholes. We need to look for ways to expand our responsibility instead of looking for excuses for why we aren't responsible.

What is the old saying? "If you aren't part of the solution, you are part of the problem." Let's take that to heart.

With respect to the chain of command and notification issues, we at the local level need to solve those issues with appropriate resolve. But we need help from the Federal Government in order to solve the technical issues which contributed to this latest release.

Since the U.S. Department of Transportation has jurisdiction over tank cars, the Federal Government needs to tighten up its

regulation of them. They must be designed to contain hazardous materials safely during transit. And the maintenance of tank cars must be standardized. And as Greg Feere pointed out, workers need to be adequately trained. Also, tank cars must be prohibited from use as storage.

The public wants the best available technology used for the transportation of hazardous materials without exception. It is my understanding that the components of tank cars are standard but that the maintenance of them is not. For instance, valves are checked by the operator before each car is filled leaving the decision regarding the reliability of that valve to human discretion.

And, again, the issue of training is very important. And also in terms of the storage, if those valves are only inspected at the time that they are going to be filled for transport, that means they are sitting there for long periods of time, as we know through a heat wave here, without being looked at.

Some companies, however, change those valves on a regular schedule, thereby eliminating the possibility of human error and providing better security for tank cars that are used for storage. Federal regulations need to reflect that higher degree of security from regular maintenance rather than maintenance based on employee opinion.

With respect to storage, hazardous materials should only be stored in stationary tanks which are designed for that purpose and which meet earthquake safety requirements, with appropriate catchment basins to contain spills.

We at the local level can adopt all of the land use decisions we want, and companies will drive tank cars through them if you allow them to.

Here is our problem: Until recently there were no land use controls in areas zoned for heavy industry, the theory being that as long as industry made money and produced jobs, we didn't care what happened behind their fences. Then came the Three Mile Island, Love Canal, and Bhopal; and we changed our minds. But we had facilities in our midst that were grandfathered in. Richmond adopted an ordinance which I introduced requiring permits in heavy industrial areas for companies handling hazardous materials, but that can only deal with new or expanding facilities.

And I am wondering if more tanks are around in rail yards and rail lines to get around the need to get land use permits because now the only way we can put controls on the construction of tanks is through this land use permit. And if they are expanding by using tank cars, then we will never get a handle on existing companies that have hazardous materials.

The State took a shot at the problem by requiring inventories of hazardous materials and emergency plans to anticipate accidents. That was AB2185. Then they took it one step further and they required businesses that handled the relatively few chemicals regarded as acutely hazardous to figure out what accidents might happen and not only plan for them but to figure out how to prevent them, risk management prevention plans.

Industries reported their inventories, submitted their emergency plans, and their prevention plans, as inadequate as they are, as we have heard; but none of those apply to tank cars.

In an attempt to regulate the storage of hazardous materials in tank cars, a 30-day limit was placed on that use, so companies such as General Chemical moved them around to avoid the 30-day requirement.

Even 30 days is too long. Tank cars do not have the stability or the catchment basins that stationary storage tanks do.

The industrial rim of Contra Costa County is loaded with industry, railroad lines, and housing; and it is next to San Francisco Bay. Much of it is on alluvial soil and earthquake faults run through it. Hazardous materials should not be in railroad tank cars any longer than is necessary in that environment.

The accident which occurred a couple of weeks ago should not have happened for a variety of reasons. We were lucky it was not worse. More dangerous chemicals than oleum are stored in tank cars throughout the region right now. And I was told not long ago that there was a string of tank cars containing hazardous materials stored on the rail behind Peres School here in Richmond.

We need your help. Ensure that the best available technology is always required for tank car components, tighten up the regulations regarding maintenance of tank cars so it is not left up to operator discretion or inadequately trained operators, and outlaw the use of tank cars for storage beyond the reasonable time it takes to unload a car, period, regardless of where the car is located.

Thank you again for holding these hearings. I hope that Congress takes these suggestions to heart. They have nationwide ramifications.

Thank you.

Mr. MILLER. Thank you.

[Prepared statement of Ms. Corbin follows.]

Testimony of Councilmember Rosemary Corbin before the U.S. Congressional Subcommittee on Oversight and Investigations, August 10, 1993

Congressman Miller and Committeemembers:

My name is Rosemary Corbin, I am a Richmond City Councilmember and I represent all of the West County Cities on the County Hazardous Materials Commission. Thank you for the opportunity to comment on the problems highlighted by The General Chemical release.

Richmond needs industry to provide jobs; however, part of the price of industry should not be the health and safety of our citizens.

In the eight years I have been on the City Council we have been subjected to about half a dozen major calamities in which hazardous materials have been showered upon the community.

Following each release we were told that any confusion in the chain of command had been solved, that any bugs in the community notification program had been worked-out, and that everything was being done to prevent such an accident from happening again. However, conflicts between responsible agencies, deficiencies in the community notification program, and loopholes in regulations persist. The credibility of every government agency is in question.

The pledge of mutual cooperation needs to include mutual respect, and I don't know how you legislate that, but professional jealousy seems to have contributed to the confusion reported in each of the recent incidents. The presumption should be that local, first responders have the knowledge to make correct decisions. Other agencies overruling our local, first responders have caused confusion in several of the recent incidents.

We also need to stop finger-pointing. There is enough blame to go around. And, passing the buck is contributing to the creation of loopholes. We need to look for ways to expand our responsibility instead of looking for excuses why we aren't responsible. What's the old saying? "If you aren't part of the solution, you are part of the problem." Let's take that to heart.

With respect to the chain of command and notification issues, we at the local level need to solve those issues with appropriate resolve. But, we need help from the federal government in order to solve the technical issues which contributed to the latest release.

Since the U.S. Department of Transportation has jurisdiction over tank cars, the federal government needs to tighten-up its regulation of them. They must be designed to contain hazardous materials safely during transit. And, the maintenance of tank cars must be standardized. Also, tank cars must be prohibited from use as storage.

The public wants the best available technology used for the transportation of hazardous materials without exception. It is my understanding that the components of tank cars are standard, but that the maintenance of them is not. For instance, valves are checked by the operator before each car is filled leaving the decision regarding the reliability of that valve to human discretion. Some

companies, however, change those valves on a regular schedule eliminating the possibility of human error and providing better security for tank cars that are used for storage. Federal regulations need to reflect that higher degree of security from regular maintenance rather than maintenance based on employee opinion.

With respect to storage, hazardous materials should only be stored in stationary tanks which are designed for that purpose, and which meet earthquake safety requirements, with appropriate catchment basins in case of spills.

We at the local level can adopt all of the land use decisions we want, and companies will drive tank cars through them if you allow them to.

Here is our problem: Until recently there were no land use controls in areas zoned for heavy industry, the theory being that as long as industry made money and produced jobs, we didn't care what happened behind their fences. Then came Three-mile Island, Love Canal, and Bophal, and we changed our minds. But, we had facilities in our midst which were "grand-fathered-in". We adopted my ordinance which requires permits in heavy industrial areas for companies handling hazardous materials, but that can only deal with new or expanding facilities. The State took a shot at the problem by requiring inventories of hazardous materials and emergency plans to anticipate accidents (AB2185). Then, they took it one step further and required businesses that handle the relatively few chemicals regarded as acutely hazardous to figure out what accidents might happen, and not only plan for them, but to figure out how to prevent them (Risk Management Prevention Plans). Industries reported their inventories, submitted their emergency plans, and their prevention plans, but none of those apply to tank cars. In an attempt to regulate the storage of hazardous materials in tank cars, a thirty day limit was placed on that use, so companies such as General Chemical move them around to avoid the thirty day requirement. Even thirty days is too long. Tank cars do not have the stability or the catchment basins that stationary storage tanks do.

The industrial rim of Contra Costa County is loaded with industry, railroad lines, and housing, and is next to San Francisco Bay. Much of it is on alluvial soil, and earthquake faults run through it. Hazardous materials should not be in railroad tank cars any longer than necessary in that environment.

The accident which occurred a couple of weeks ago should not have happened for a variety of reasons. We were lucky it was not worse. More dangerous chemicals than oleum are stored in tank cars throughout our region right now.

We need your help: Insure that the best available technology is always required for tank car components, tighten-up the regulations regarding maintenances of tank cars so it is not left up to operator discretion, and outlaw the use of tank cars for storage beyond the reasonable time it takes to unload a car - period - regardless of where the car is located.

Thank you again for holding this hearing. I certainly hope that the Congress takes these suggestions to heart. They have nationwide ramifications.



Mr. MILLER. Mr. Howe.

**STATEMENT OF CHRISTOPHER HOWE**

Mr. HOWE. Good afternoon, Chairman Miller. My name is Christopher Howe. I am the Vice Chairman of the Contra Costa County Community Awareness and Emergency Response group and manager of government affairs for Chevron in Richmond.

I am here today representing CAER. The CAER group was formed in 1987 and has since grown in membership to over 100 individuals representing various government and industry organizations. Our group's mission is to encourage and facilitate dialogue on issues of emergency preparedness and response here in Contra Costa County.

As members of industry, government, and our community, we are very concerned any time operations adversely impact neighbors. I am here today to describe some of the activities we are involved in and identify areas where our group may contribute to the continual improvement of this county's preparedness and response to emergencies.

While I may not be prepared today to respond directly to issues of rail cars and their use, I can commit the resources of the CAER group to help collect and prepare any response that the subcommittee thinks is needed in that area.

Since 1990, the CAER group has been involved in discussions about emergency notification here in Contra Costa County. We believe the most effective system for notification is one that integrates several available technologies, not relying on any one means of communication in an emergency.

Any system that is developed must not provide a false sense of security but be one on which the community can rely. It is clear more can be done. This county uses a local radio station to broadcast emergency information in an emergency. In areas of the county where reception is poor, a local traveler's information system has been established. There is one operating now in Martinez. These systems operate like systems at some national parks that are used to broadcast park access and parking information on a very localized basis. In addition, regional radio and television broadcasts are used in an emergency.

There has been reference made to the local media action in this incident today. The county also uses a CAN system, the computerized phone system that Dr. Walker described. We have been participating in discussions about the use of sirens and the need for community education on any system that is established. We recognize the complexity of the notification issue, including the need to get input from the communities, their first responders and elected officials.

In closing, I would like to reaffirm our group's commitment to be a part of the solution to these issues. I thank you for the opportunity to testify, and I would be glad to answer any questions you may have.

[Prepared statement of Mr. Howe follows.]



**STATEMENT BEFORE THE  
HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES  
OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE**

**AUGUST 10, 1993**

Chairman Miller and members of the Subcommittee.

My name is Christopher Howe. I am the vice-chairman of the Contra Costa County Community Awareness and Emergency Response Group and Manager of Government Affairs for Chevron in Richmond. I am here today representing CAER.

The CAER Group was formed in 1987 and has since grown in membership to over 100 individuals representing various government and industry organizations. Our group's mission is to encourage and facilitate dialogue on issues of emergency preparedness and response here in Contra Costa County.

As members of industry, government, and our community, we are very concerned any time operations adversely impact neighbors. I am here today to describe some of the activities we are involved in and identify areas where our group may contribute to the continual improvement of this County's preparedness and response to emergencies. While I am not prepared today to respond to issues related directly to railcars and their use, I can commit the resources of CAER to collect and prepare a response to the Subcommittee if necessary.

Since 1990, the CAER Group has been involved in discussions about emergency notification in the County. We believe the most effective system for notification, is one that integrates several available technologies; not relying on any one means of communication in an emergency. Any system that is developed must not provide a false sense of security, but be one on which the community can rely.

It is clear, more can be done.

This County uses a local radio station, KISS, to broadcast information in an emergency. In areas of the County where reception is poor, a local Travelers Information System has been established. One is operating in Martinez. These systems operate like the systems at some National Parks where they are used to broadcast park access or parking information. In addition, regional radio and television broadcasts are used in emergencies. The County also uses the CAN system, a computerized phone system.

We've also discussed the use of sirens and the need for community education on any system that is established. We recognize the complexity of the notification issue, including needed input from communities, their first responders, and elected officials.

In closing, I would like to reaffirm our group's commitment to be a part of the solution to these issues.

I thank you for the opportunity to testify, and would be glad to answer any questions I can.

Mr. MILLER. Thank you.

Mr. WELL, let me ask you a couple of questions. Where is this issue with respect to the PUC of the storage of hazardous materials in railway cars?

Earlier the Department of Transportation suggested that this is properly within the jurisdiction of the State for the moment, that it does have the ability to regulate the storage of materials and cars not in transit.

Mr. WELL. There is nothing before the Commission right now regarding the storage of hazardous materials.

Mr. MILLER. Has this issue been discussed in the recent past? Do you know or—

Mr. WELL. Well, assisted in investigation with the district attorneys of three counties on storage of hazardous material in Southern Pacific tank cars.

Our role there is, one, as inspectors, we are entitled to have access to the railroads, railroad yards; so our role there was one of assistance. There isn't any proceeding right now before the Commission that involves storage.

Mr. MILLER. The finding of that investigation was, in fact, substantial noncompliance, was it not, with the 30-day rule and notification rule?

Mr. WELL. That is correct. Southern Pacific was fined for not complying with the rule.

Mr. MILLER. What party does the burden fall on if you are going to store materials on a siding or on a leased track or on private track?

Is that with the railroad? Is that with the owner of the material? The lessee of the car?

Mr. WELL. As long as it is in transportation, the burden is on the railroad. When it reaches its destination, it becomes consigned to the shipper; then it is the shipper's responsibility.

In some instances, as you have heard today, the railroad will lease its tracks to the shipper so that the railroad is no longer obligated.

Mr. MILLER. And if I store hazardous material on that track, I am under no requirement to notify the community and/or the State or the PUC?

Mr. WELL. You are after 30 days.

Mr. MILLER. After 30 days?

Mr. WELL. But not up to 30 days.

Mr. MILLER. So there is currently no way that, be it the county and/or the State or the local community, if they wanted to know what inventory of chemicals existed in their community on railroad sidings—

Mr. WELL. Well, there is a requirement in the Commission's General Rule 161.2 that deals with transportation of hazardous materials, that if an administrative agency or an emergency response agency requests information from a railroad on what they have in leased track, the railroad is supposed to give them that information.

Mr. MILLER. So you would have it on a daily basis, make an inquiry on behalf of the city of Richmond or the city of Martinez or the county or something, in order to find that out?

Mr. WELL. Correct. You would have to ask them daily what is on the track.

Mr. MILLER. And again the theory is, as of 30 days, the railroad, somebody, is responsible for notifying you as to the storage of that material?

Mr. WELL. Well, not us. But after 30 days, then they have to file a business plan with the administering agency. That is the law. That is the requirement in law.

Mr. MILLER. In your investigation of this incident, the issue that has been raised as to whether the procedures that were being followed were proper or not, whether there was an overheating of the tank car for the purposes of getting the flow of the material, have you looked into that? What are your preliminary findings?

Mr. WELL. Our inspector is looking into that along with the FRA inspectors. And to date, I haven't heard of any—

Mr. MILLER. Has there been a preliminary finding or determination?

Mr. WELL. No, there hasn't. Just the information they have collected.

Mr. MILLER. So that is still open to speculation at this time?

Mr. WELL. Still open to speculation at this time.

Mr. MILLER. The issue that Councilwoman Corbin raised about the duty to inspect, is that correct, that the duty to inspect goes to the user?

Mr. WELL. The duty to inspect goes to—

Mr. MILLER. Valves or the suitability of the tank car.

Mr. WELL. That would be the shipper's responsibility, yes.

Mr. MILLER. That is the shipper's responsibility. But do we know the qualifications of the person making that inspection?

Mr. WELL. I would not know that.

Mr. MILLER. Is there a requirement as to the qualifications?

Mr. WELL. No, there is no requirement as far as the State Public Utilities Commission has.

Mr. MILLER. So George Miller, your local congressperson, could go out and inspect the valves and pass on its suitability if I was employed by General Chemical or someone else?

Mr. WELL. Well, we would not review that.

Mr. MILLER. You would not review that, or you would not suggest that, or both?

Mr. WELL. There are requirements for employees handling rail transportation.

You have to realize our jurisdiction doesn't extend to the private plant.

Mr. MILLER. No. I understand that, but that tank car at some point is going to enter the stream of commerce under your jurisdiction and/or the Department of Transportation. It is going to move through those jurisdictional boundaries.

What I am trying to get at is: Are there any requirements that the PUC has as to who inspects these tank cars, what are their qualifications, training, and know-how to handle that decision?

Mr. WELL. The answer to that is no.

Mr. MILLER. The answer to that is no because I think Councilwoman Corbin points out a great potential conflict; and that is, you are the worker in the yard, and you are getting ready to run a pro-

cedure and somebody is asking you to certify whether or not a valve is proper or not. If you say no, or I don't know, or I think not, then you are changing the whole operation, and somebody will say, you are costing us money.

And I don't know if that burden is properly put on that individual as opposed to somebody who has a job description with the authority to make that determination, because I suspect the supervisor says, what do you know about tank car valves.

In the case of General Chemical, they said this is the first time they have ever used one. So who says whether this valve is good at 55 pounds pressure or 100 pounds or 120 pounds or whatever? So we have the problem raised by Mr. Feere, and that is, who is running the show?

But it is going to come across your jurisdiction at some point. General Chemical suggested that those cars are about to be headed or are heading for Nevada or somewhere.

So what do we know about those tank cars? The fact is, we don't know much, do we?

Mr. WELL. Well, we know what the standards are they were designed to meet. But we don't know the individual tank car, whether it meets that standard or not.

Mr. MILLER. Whether those standards are effective or not over a period of time?

Mr. WELL. Right.

Mr. MILLER. So theoretically, that tank car could go to multiple users over a period of a year?

Mr. WELL. That is right.

Mr. MILLER. And all of them or none of them may inspect it as to its suitability, and those who inspect it may or may not have people who are technically qualified to make that determination.

I just say that as a matter of fact. I don't mean that in an accusatory manner. But that, in fact, could be the situation.

Mr. WELL. That is correct.

Mr. MILLER. Are you aware of the matter that was brought up earlier with the Department of Transportation that there is a request to end the rights of States to determine rules and regulations with respect to storage?

Mr. WELL. That is the first I have heard about it this morning.

Mr. MILLER. Could I request of you that the PUC might take a look at that issue?

Mr. WELL. We certainly will.

Mr. MILLER. Because obviously if I am told, again, that we have one of the most comprehensive and effective laws in that area and if that is about to be preempted, that is a serious blow to this discussion in terms of safety within the State of California.

Mr. WELL. It certainly is. And it points out what I have raised in my written testimony, that preemption is a very frustrating situation for the Public Utilities Commission and State agencies in handling local problems.

Mr. MILLER. That is because of the very heavy involvement of Department of Transportation, right, in rail regulation? I mean historically that is.

Mr. WELL. Right.

Mr. MILLER. Ms. Masters, let me ask you a question. I believe you and I talked earlier this year about chlorine manufacturers seeking an exemption from State regulation that requires them to notify you, right, of storage for chlorine; is that correct?

Ms. MASTERS. Mr. Chairman, the exemption you have been discussing with the other agencies?

Mr. MILLER. Right.

Ms. MASTERS. The application is actually made by the Swimming Pool Manufacturers Association on behalf of its members. And what they are requesting is that the Department of Transportation regulations preempt State 2185 and risk management and prevention program regulations because what they say is that unloading and loading activities and storage activities are actually incidental to transportation, and therefore, Transportation's regulation in jurisdiction should supersede the State's.

Mr. MILLER. Where is that at this moment?

Ms. MASTERS. As I understand it, that application has been made. Public comment period was open. We filed an objection to that application.

I do understand that State ES also did file an objection to that.

And, Congressman Miller, I want to offer our appreciation for your efforts in that regard, too. I don't think a ruling has been made on that, but the concern for us is that if that exemption is granted, countless other industries may then follow suit in arguing that storage unloading and loading activities would also be incidental to transportation and our laws would be severely undermined.

Mr. MILLER. Okay. I mean, it just seems to me that, as a lay person, as I travel back and forth across the country, somebody is always running from a chlorine cloud somewhere. At any given moment it seems in the United States, somebody is trying escape a chlorine cloud so—

Ms. MASTERS. I believe we have over 200 million pounds of chlorine stored in this county.

Mr. MILLER. I think I am into your authority here. What is your assessment of this question of the 30-day provision and the timely notification of the county of these actions?

Ms. MASTERS. Even though State law does require reporting of materials stored for greater than 30 days in a rail car, as a matter of practice, it doesn't occur very often. There are a couple of companies that do routinely report to us rail cars that come in and out and that are storing for greater than 30 days. But that is not a common practice, and it is very difficult for us to get a handle on what is occurring if it is not reported to us.

There is reporting in many of the business plans of rail cars that are used for storage on a more permanent long-term basis. That does occur. But it is these transitional periods that we really don't have a handle on.

Mr. MILLER. Are those on-site storage?

Ms. MASTERS. Yes.

Mr. MILLER. Rosemary, you don't draw a boundary, right, between on-site and off-site storage?

Ms. CORBIN. I don't think that should happen either when you look at the soil conditions around in here and the fact that the earthquake runs through it.



We almost had a major spill when the earthquake occurred in 1989 down off of Cutting Boulevard, the Texaco facility. If that had been in a tank car, we would have had a major spill. The reason we didn't was because there was a catchment basin and a containment system, and that is what you have to have around these stationary tanks in this earthquake area on this unstable soil.

I don't think hazardous materials should be stored in tank cars ever. If you picture them sitting on a rail kind of high up and heavy, you would have to do an awful lot of—

Mr. MILLER. I am raising this issue because, again, our survey suggested something around 8 million gallons of material. And I don't want to suggest that that is all hazardous, but it is a substantial volume of material that is out there in this variance zone, if you will, from regulation.

Ms. CORBIN. I have a hunch it gets moved, too. There is a 30-day requirement.

Then if they move it again, I think the 30 days starts over. So I am afraid that, in order to get around having to come in for a land use permit, companies are putting stuff in tank cars. And I think it is a terrible loophole in the law.

Mr. MILLER. Well, I think the companies—and maybe even General Chemical—would make an argument that in some instances, due to turnarounds, shutdowns that take place within a refinery, you may find yourself with a short-term excess of one product or another because of that; or you are seeking to increase your storage on a very short-term basis, which sort of makes sense, I guess, in the general vein.

But again, here, nobody asked what kind of tank car General Chemical was going to put that storage in for this period of time, apparently.

Ms. CORBIN. I should think, under those circumstances, allowances could be made; but maybe a catchment basin would have to be constructed around that tank car for a period of time or the possibility of hooking it up so that any venting would go into a tank.

Mr. MILLER. The problem is now that the community really isn't notified, right?

Ms. CORBIN. Right. Right.

Mr. MILLER. From your point of view.

So you don't get to make the suggestion if there is going to be 5 tank cars or 20 tank cars to be stored, that they be secure, that they have a response mechanism, whether it is vapor control or what have you on site?

Ms. CORBIN. That is right. I watched a string of tank cars next to the Bay along 580, which used to be the Hoffmann Freeway, for a long time. And they sat there and they sat there and they sat there, and I don't know what was in them. But I wondered.

And the other issue of checking the valves, you know the responsible companies change them on the regular basis. It is just automatic. After so many days or so many weeks, I don't know what the time is, they just get changed.

If you don't have that requirement and you are using these things for storage, those things don't get checked. Even the whole issue of possibility for employee error, when he looks at it and pokes at it when somebody is waiting to get this shipment out, he

may make a mistake. It may look okay and it may break down in a few hours. But if it is not even looked at for long periods of time, when these things are used in storage, especially, as I said, through the heat wave, I should think that we are leaving ourselves open for accidents.

Mr. MILLER. Again, it may very well be and probably is the case that when you are using tank cars all the time in your business, as are the large refineries, you may have skilled staff on board. They may be a permanent part of your operation.

In this case, you are casually using this tank car on a one-time basis, or in a very rare instance. You may not, in fact, have those people. But again, nobody gets to review that process to say, we will let you do this; but we want somebody to come look at these tank cars prior to the action.

Ms. CORBIN. Well, the person who really alerted me to this problem also suggested that even if you are an expert, looking at it and poking at it may not be enough. If you change it on a regular basis, then you don't even have to rely on that.

Mr. MILLER. From your point of view—you represent this community—we are not going to get to a zero risk system here, but in terms of the procedures that are necessary, where do we go on this? Is there really a need for more community right to know and input prior to decisions being made?

Ms. CORBIN. Well, everybody lets their imaginations run away with them if they don't get the information, and I think we have gotten to the point where industry is afraid of the public and the public is afraid of industry, and we have to break that down. And the best way to break it down is to start communicating and giving out some more information so everybody's imagination does not run away with them.

There may be less of a risk, but people are going to assume the worst unless it can be proven otherwise. So I think that in terms of the "right to know," we do have a "right to know" what is next to us.

I think the point was made earlier that times have changed, and we need to know what is in our midst. And we all know that we need business and industry and jobs and a tax base, but if our health is gone, we cannot enjoy it, so it is not worth it.

So we have to work out a system whereby we can all live together. And industry loses more money through these accidents than they would spend if they would prevent them. So I think that we have to find out what is there and demand that the best available technology be used. And there are some instances in which present practices need to be stopped, and I think the use of tank cars for storage, except in exceptions that can be demonstrated such as you described, otherwise I think we just have to say no more.

Mr. MILLER. Well, thank you. Thank you very much for your time and your testimony and for sticking with us throughout the day.

Mr. MILLER. Thank you again very much for your testimony.

Let me publicly thank two individuals that are from the county hazardous materials team, Roger Lewis and Bruce Benike, who



were given a great deal of credit for the stoppage of this leak and for their training and their expertise.

I don't know if they are in the room or not, but if they are, we would simply want to thank you publicly for that effort.

I do again want to say that those who have comments on what they have heard or who think that they can help add to the insight into this problem and to the larger issue regarding toxic and hazardous materials in our community, I would certainly hope that you would feel free to let my office and committee know. We will get the information to the committee.

And I also want to publicly thank the staff of the committee, my office and others, for their help here today.

With that, the committee is adjourned.

Thank you.

[Whereupon, at 1:50 p.m., the subcommittee was adjourned.]

# A P P E N D I X

AUGUST 10, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD  
STATEMENT OF THE US ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
HAZARDOUS WASTE MANAGEMENT DIVISION,  
OFFICE OF HEALTH & EMERGENCY PLANNING

For the Committee on Natural Resources,  
Subcommittee on Oversight and Investigations,  
US House of Representatives  
August 10, 1993

We appreciate the opportunity to express our perspective of the General Chemical incident and on the issues of community right to know and emergency planning. We will outline the steps that EPA has taken and will take to improve emergency planning, prevention, and community awareness.

## BACKGROUND

On July 26, 1993, when the General Chemical release occurred, EPA provided technical assistance in the emergency response actions at the request of the US Coast Guard, who acted as the Federal On Scene Coordinator (FOSC). EPA and the Coast Guard divide FOSC jurisdiction according to predetermined boundaries, which are outlined in the Regional Contingency Plan.

Before the incident occurred, EPA had undertaken some projects in the general area around the General Chemical Facility.

•General Chemical was inspected recently for hazardous waste compliance, under the Resource Conservation and Recovery Act authority. The facility was notified in mid July of the deficiencies documented during the inspection. The deficiencies were two minor problems with its contingency plan for emergencies and are unrelated to the current release of hazardous material.

•On April 21, 1993 USEPA had co-sponsored a full-scale hazardous materials emergency response training exercise for State and local emergency responders at the nearby Chevron Refinery in Richmond. We are in the process of following up with Contra Costa County to determine ways in which we can offer technical assistance to improve the public notification system which supports emergency response in the County.

•Richmond has a large minority population located in the vicinity of a high concentration of industry. The previous Regional Administrator for USEPA-IX had visited the community and discussed their environmental concerns, which were raised in the context of environmental justice.

## ISSUES

Emergency spills notification and followup reporting requirements are found in the Emergency Planning and Community Right To Know Act (EPCRA) and in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)/§103. We are evaluating Federal enforcement actions available under these statutory authorities.

Authorities for the Clean Air Act and the Clean Water Act have been delegated to the State of California. We understand that the Bay Area Air Quality Management District is pursuing air and permit violations.

The Federal, State, and local agencies which have jurisdiction and interest in this release are meeting weekly to discuss their individual followup activities and to assure that their combined actions are complementary. We intend to continue this coordination.

EPA believes the way to reduce the possibility of future such releases must include the following activities.

**Continue to evaluate potential risks, review plans, identify plan deficiencies and focus technical assistance toward correcting those deficiencies.**

•EPA convened a special meeting of the Regional Response Team (RRT) on August 2, 1993 to review the incident, the activities of the member agencies, and the strategies for resolution to be sure that the concerns of the agencies were being addressed and the followup activities were coordinated. During the next regular meeting of the RRT (September 28-29, in San Francisco), the status of the incident, pertinent emergency plans, and other related topics will be discussed.

•EPA has begun discussions with Contra Costa County to determine where EPA-sponsored simulation exercises of existing plans should be scheduled during the next year to test vulnerabilities and to improve the plans.

•EPA will continue to work with the State and local community to understand the emergency planning and risk evaluation issues and to offer technical assistance to help solve problems.

**Review management practices which can improve process safety at chemical facilities.**

•EPA conducts a limited number of chemical safety audits at facilities which have had significant releases or which have the potential for such releases. In the course of conducting such an audit EPA works with State and local agencies to identify facility practices which may be improved and EPA encourages States to develop audit programs which will focus more attention on process safety and lead to improved compliance.

•EPA conducted an audit in 1992 to review process safety and management at the General Chemical Facility in Bay Point. Some recommendations were pertinent to the Richmond facility in that oleum is handled at both locations; the prime focus of this audit had been on the handling of hydrofluoric acid. EPA intends to follow up this earlier audit to examine corporate management practices which may pertain to process safety and community awareness at both these facilities.

**Improve the effectiveness of the existing Emergency Planning and Community Right To Know Law (EPCRA).**

•EPA will continue to encourage the State of California and the local entities to work with industry and the community on the issues of accident prevention, source reduction, and availability to the community of emergency planning information.

•EPA will continue to work with the agency designated by the Governor to implement EPCRA - the California Office of Emergency Services - to encourage Local Emergency Planning Committee attention to the chemical risks in Contra Costa County and to building community awareness into the planning process.

**Integrate Environmental Justice into all aspects of EPA operations: rulemaking, permitting, enforcement, education, hiring, and outreach.**

•EPA, Region IX has developed a Region IX Environmental Equity Program Charter. The Charter sets forth goals, an Environmental Equity Framework for action, and an implementation plan, and it establishes a full-time Environmental Justice Coordinator position. The Charter will serve as a foundation as the Region explores particular problems and finds opportunities to prevent and/or redress inequitable risk burdens in Region IX communities.

•As a followup to former Regional Administrator McGovern's site visit to the Richmond Area, Regional staff and management met on August 6, 1993 with representatives from the West County Toxics Coalition (WCTC) and the Southwest Network for Environmental and Economic Justice (SWNEEJ) to begin facilitating ongoing dialogue among EPA, community representatives and other regulating agencies.

•As a result of the August 6, 1993 meeting, EPA will be (1) facilitating meetings among the Bay Area Air Quality Management District, EPA, WCTC, and SWNEEJ to discuss air emissions in the Richmond Area; (2) facilitating meetings among the California Department of Toxic Substances, EPA, SWNEEJ and WCTC to discuss waste minimization and the National Combustion Strategy and (3) recommending that the California Office of Emergency Response arrange a meeting of the regional LEPC in Richmond in the near future, to incorporate community views into the planning process.

**CONCLUSION**

Under the provisions of EPCRA, the State has primary responsibility for establishing systems for managing information on hazardous materials and for preparing integrated, emergency response plans. EPA can offer technical assistance and training, and EPA can develop Federal area plans to coordinate Federal response in geographical areas which present especially high risks to the public health and environment. If the State does not perform effectively, EPA cannot take back the program and implement it solely at the Federal level. EPA will continue to offer the State and local entities technical assistance and encouragement to improve the emergency planning process, to evaluate risks and to build a cohesive network of information and communication with government, the community and industry.

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TESTIMONY OF  
 ROBERT D. BULLARD  
 SUBMITTED TO THE U.S. HOUSE OF REPRESENTATIVES  
 COMMITTEE ON NATURAL RESOURCES

Chairman Miller and Members of the Subcommittee on Oversight and Investigations:

I am a professor of sociology at the University of California, Riverside. Communities all across the United States have come to realize that the current environmental protection apparatus is "broken" and needs to be "fixed." The July 26, 1993 explosion in Richmond, California typifies the national problem of communities that are at special risk from industrial pollution. General Chemical Corp., a company which has had repeated violations, was responsible for a ruptured railroad car that spewed an estimated 9,500 gallon of concentrated sulfuric acid into the air sending more than 5,600 people to the hospital.<sup>1</sup> Residents who live near polluting industries need protection now. They should not have to depend upon "divine intervention," the luck of the prevailing winds, for protection.

The current environmental protection paradigm is inadequate. First of all, it reinforces instead of challenges society's stratification of people (race, ethnicity, status, power, etc.), place (central cities, ghettos and barrios, suburbs, rural areas, unincorporated areas, Native American reservations, etc.), and work

(i.e., protection given to office workers versus farm workers).

The nation's environmental protection apparatus manages, regulates, and distributes risks. As a result, the current system (1) institutionalizes unequal enforcement, (2) trades human health for profit, (3) places the burden of proof on the "victims" and not the polluting industry, (4) legitimates human exposure to harmful chemicals, pesticides, and hazardous substances, (5) promotes "risky" technologies such as incinerators, (6) exploits the vulnerability of economically and politically disenfranchised communities, (7) subsidizes ecological destruction, (8) creates an industry around risk assessment, (9) delays cleanup actions, and (10) fails to develop pollution prevention as the overarching and dominant strategy.<sup>2</sup>

Environmental decision-making operates at the juncture of science, economics, politics, and special interests. The nation's environmental laws, regulations, and policies are not applied uniformly---resulting in some individuals, neighborhoods, and communities being exposed to elevated health risks. For example, African American and other people of color communities are often victims of land-use decision making that mirrors the power arrangements of the dominant society.

Race still plays a significant part in distributing public "benefits" and public "burdens" associated with industrial growth. Apartheid-type housing, development, and environmental policies limit mobility, reduce neighborhood options, diminish job opportunities, and decrease choices for millions of Americans.<sup>3</sup>

Why do some communities get polluted on and others do not? Why do some communities get cleaned up while others have to wait? Waste generation is directly correlated with per capita income. However, few waste and other noxious facilities are proposed and actually built in the affluent areas.

Many of the differences in environmental quality between white communities and communities of color result from institutional racism. Institutional racism influences local land use, enforcement of environmental regulations, industrial facility siting, and where people of color live, work, and play. The roots of institutional racism are deep and have been difficult to eliminate.<sup>4</sup> Historically, racism has been and continues to be a "conspicuous part of the American sociopolitical system, and as a result, black people in particular, and ethnic and racial minority groups of color, find themselves at a disadvantage in contemporary society."<sup>5</sup>

Environmental racism is real.<sup>6</sup> It is just as real as the racism found in the housing industry, educational institutions, employment arena, and judicial system. Environmental racism refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color. Environmental racism combines with public policies and industry practices to provide benefits for whites while shifting costs to people of color.<sup>7</sup> Environmental racism is reinforced by government, legal, economic, political, and military institutions.



Racism influences the likelihood of exposure to environmental and health risks as well as accessibility to health care.<sup>8</sup> Numerous studies, dating back to the seventies, reveal that people of color have borne greater health and environmental risk burdens than the society at large.<sup>9</sup> Race has been found to be independent of class in the distribution of air pollution,<sup>10</sup> location of municipal landfills and incinerators,<sup>11</sup> abandoned toxic waste dumps,<sup>12</sup> assessment of fines and cleanup of superfund sites,<sup>13</sup> and lead poisoning in children.<sup>14</sup>

Virtually all of the studies of exposure to outdoor air pollution have found significant differences in exposure by income and race. African Americans and Latinos are more likely to live in areas with reduced air quality than are whites. The public health community has insufficient information to explain the magnitude of some of the air pollution-related health problems. However, we do know that persons suffering from asthma are particularly sensitive to the effects of carbon monoxide, sulfur dioxides, particulate matter, ozone, and nitrogen oxides. African American, for example, have significantly higher prevalence of asthma than the general population.<sup>15</sup>

Unequal protection is endangering the health of millions of Americans all across this nation. A 1992 study by staff writers from the National Law Journal uncovered glaring inequities in the way the federal EPA enforces its laws. The authors write:

There is a racial divide in the way the U.S. government cleans up toxic waste sites and punishes

polluters. White communities see faster action, better results and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor.<sup>16</sup>

These findings suggest that unequal protection is placing communities of color at special risk. The National Law Journal study supplements the findings of earlier studies and reinforces what many grassroots leaders have been saying all along: not only are people of color differentially impacted by industrial pollution they can expect different treatment from government.

#### A Model Environmental Justice Framework

The question of environmental justice is not anchored in a debate about whether or not decision makers should tinker with dominant risk-management paradigm. The environmental justice framework rests on an analysis of strategies to eliminate unfair, unjust, and inequitable conditions and decisions. The framework seeks to prevent environmental threats before they occur.

The environmental justice framework attempts to uncover the underlying assumptions that may contribute to and produce unequal protection. This framework brings to the surface the ethical and political questions of "who gets what, why, and how much." Some general characteristics of the framework include:

(1) The environmental justice framework incorporates the principle of the "right" of all individuals to be protected from environmental degradation.

(2) The environmental justice framework adopts a public health model of prevention (elimination of the threat before harm occurs) as the preferred strategy.

(3) The environmental justice framework shifts the burden of proof to polluters/dischargers who do harm, discriminate, or who do not give equal protection to racial and ethnic minorities, and other "protected" classes.

(5) The environmental justice framework redresses disproportionate impact through "targeted" action and resources.

Finally, environmental decision making has failed to address the "justice" question of who gets help and who does not, who can afford help and who can not, why some contaminated communities get studied while other get left off the research agenda, why industry poisons some communities and not others, why some contaminated communities get cleaned up while others are not, and why some communities are protected and other are not protected.

The solution to unequal protection lies in the realm of environmental justice for all Americans. No community, rich or poor, urban or suburban, black or white should be allowed to become a "sacrifice zone."

How can environmental justice be incorporated into decision making? First, the environmental justice framework demands that the current laws are enforced in a nondiscriminatory way. Second, a legislative initiative is needed. Unequal protection needs to be attacked via a federal legislation that moves protection from a "privilege" to a "right." Third, legislative initiatives will also

need to come from states. Since many of the decisions and problems lie with state actions, states will need to model their legislative initiatives (or develop stronger initiatives) after the federal legislation.

#### Endnotes

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9. See Robert D. Bullard, "Solid Waste Sites and the Black Houston Community." Sociological Inquiry 53 (Spring, 1983): 273-288; United Church of Christ Commission for Racial Justice, Toxic Wastes and Race in the United States; Dick Russell, "Environmental Racism." The Amicus Journal 11 (Spring, 1989): 22-32; Eric Mann, L.A.'s Lethal Air: New Strategies for Policy, Organizing, and Action (Los Angeles: Labor/Community Strategy Center, 1991); D. R. Wernette and L. A. Nieves, "Breathing Polluted Air: Minorities are Disproportionately Exposed." EPA Journal 18 (March/April, 1992): 16-17; Robert D. Bullard, "In Our Backyards: Minority Communities Get Most of the Dumps." EPA Journal 18 (March/April, 1992): 11-12.

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**National Association For The Advancement of Colored People**  
1117 MACDONALD, Richmond, CA 94801

RICHMOND BRANCH

(510) 238-1188

August 3, 1993

Honorable Congressman George Miller  
Seventh District  
Congress of the United States  
3220 Blume Drive  
Richmond, CA 94806

Re: General Chemical Inc. Toxic Release

Dear Congressman Miller:

The Richmond Branch of the National Association for Advancement of Colored People (NAACP) is deeply concerned about the health and safety of residents living in close proximity of industries that produce, store and/or transport toxic chemical/hazardous material. Over the past few years we have experienced several chemical accidents in Contra Costa County. In Contra Costa County environmental hazards continues to pose increasingly significant health risks for individuals who are exposed to toxic effects.

As you are aware, the most recent and devastating accident is the General Chemical toxic release that occurred on July 26, 1993. This accident caused over 18,000 people to seek medical attention at local hospitals and clinics for exposure to toxic sulfur trioxide. As a result of this life threatening accident, we have become aware that a split exist in the regulatory authority. This confusion has the potential of paralyzing, if not eliminating, our community through infant mortality, birth defects, cancer, and respiratory illness, if it is not corrected.

The NAACP is particularly concerned because of the disproportionate presence of toxic generating facilities and pollutants in African American communities throughout the United States.

The NAACP, through it's Washington Bureau, routinely monitors, analyzes and mobilizes support for or opposition to federal legislative proposals. The NAACP has critical responsibility to constantly protect and promote the governmental interest of African-Americans. One of the NAACP's Legislative Priorities for 1993 is Environmental Justice.

The NAACP will support legislation to establish a program to ensure nondiscriminatory compliance with environmental, health, and safety laws to ensure equal protection of public health.

At the 84th Annual Convention of the National Association for the Advancement of Colored People (NAACP) held July 10-15, 1993, the Association adopted a resolution in support of enactment of the Environmental Justice Act.



The resolution adopted by the Association reads as follows:

**WHEREAS**, improving conditions which affect the health status of African Americans is a high priority for the NAACP; and,

**WHEREAS**, environmental hazards pose increasingly significant health risks for African Americans and others who are exposed to their toxic effects; and,

**WHEREAS**, the problem of environmental injustice confronts African American, Indian American, Latino, and Native American communities across the country. African Americans and other "people-of-color" communities nationwide suffer disproportionately from environmental degradation. Specifically, three out of five African Americans and Latinos live in communities with one or more hazardous waste sites; and,

**WHEREAS**, there is a direct correlation between the disproportionate presence of toxic generating facilities and pollutants in African American communities, and the disproportionate increase in infant mortality, birth defects, cancer, and respiratory illness.

For example, lead poisoning affects three (3) to four (4) million children in the United States, most of whom are African American and Latinos who live in urban areas. Among children five (5) years old and younger, the percentage of African American children who have excessive levels of lead in their blood far exceeds the percentage of whites at all income levels; and,

**WHEREAS**, all communities and individuals across this nation have an equal right to a safe, healthful and productive environment which must be protected equally by federal, state and local government among all communities; and,

**WHEREAS**, a 1992 National Law Journal investigation has found that the federal government, in it's cleanup of hazardous sites and it's pursuit of polluters, favors white communities over communities of color under environmental laws meant to provide equal protection for all citizens.

For example, penalties under hazardous waste law at sites that have the greatest white population were about 500 percent higher than penalties at sites with the greatest population of people of color averaging \$335,566 for the white areas, compared to \$55,318 for minority areas; and,

**WHEREAS**, the National Law Journal found that the disparity in enforcement under toxic waste law occurs by race alone not income; and,

**WHEREAS**, existing federal law does not require the federal government to routinely collect and analyze environmental and health data by ethnicity, race and income; nor does it ensure equitable application, implementation, and enforcement of national environmental laws; and,

Congressman George Miller

-3-

August 3, 1993

WHEREAS, the pursuit of "environmental justice" is a paramount priority of the NAACP since it involves the fundamental question of life and death for African Americans, and invokes principles of social justice and equal protection of the law; and,

WHEREAS, the issue of environmental justice involves the pursuit of equal protection for African Americans and others under all environmental laws and regulations without discrimination based on race, ethnicity or socio-economic class.

BE IT THEREFORE, RESOLVED, that the NAACP support the swift enactment of federal legislation which seeks to address these concerns, including legislation that would require that actions be taken by authorized federal agencies to curtail those activities having substantial adverse impacts on human health; and,

BE IT FURTHER RESOLVED, that the NAACP particularly support enactment of the Environmental Justice Act and considers it to be a legislative priority for the 103rd Congress.

We strongly support a comprehensive investigation into the general Chemical accident, revision of regulations governing tank car railroad operations and storage of hazardous chemicals. The question of responsibility and authority must be also resolved to eliminate the adverse impact on our communities at risk.

If the NAACP can help in any way, please do not hesitate to call me at (510) 236-1166 or (510) 646-1732 (work).

Sincerely,

*Lloyd G. Madden*

Lloyd G. Madden, President  
NAACP Richmond Branch

cc: Dr. Benjamin Chavis, Executive Director, NAACP  
Shannon Reeves, Regional I Director, NAACP  
U. S. Department of Transportation  
National Transportation Safety Board  
House Natural Resources Committee  
Federal Railroad Commission  
Environmental Protection Agency  
State Public Utilities Commission  
Assembly Comm. on Environmental Safety and Toxic Materials  
Governor Pete Wilson  
Senator Daniel Boatwright 7th District  
Senator Nicholas Petris 9th District  
Assemblyman Robert Campbell 11th District  
Assemblyman Tom Bates, 12th District  
Contra Costa County Board of Supervisors  
Contra Costa County Hazardous Materials Commission  
George Livingston, Mayor City of Richmond  
W. Mae Rits, Mayor City of El Cerrito  
Joe Gomes, Mayor City of San Pablo  
Gretchen Mariotti, Mayor City of Pinole  
Alex Sample, Mayor City of Hercules  
West County Toxic Coalition

**BOARD OF SUPERVISORS  
CONTRA COSTA COUNTY**GAYLE BISHOP  
SUPERVISOR, THIRD DISTRICT

August 5, 1993

Representative George Miller  
2205 Rayburn House Office Building  
Washington, D.C. 20515-0507

Dear Representative Miller:

Thank you for alerting this office about the upcoming hearing on the recent sulfuric acid leak in Richmond. As you know, this incident is another in a series of accidents involving hazardous and toxic materials that have occurred in the county over the past few years.

Ironically, in between accidents industry has expressed concern that "burdensome regulations" designed to protect public health and safety are unnecessary and duplicative. In reality, the increasing frequency of such accidents suggests a need for more comprehensive regulation that will ensure that our community will never again be put at risk from this type of toxic release.

The county's Community Alert Network, a computerized phone warning system, needs to be supplemented by a siren system. In addition, a public education program should be carried out in conjunction with the implementation of a siren system. Another alternative that should be considered is a community inspector program. The cost of these additional safeguards should be, in great part, borne by the companies whose activities put the greater general public at risk from close proximity to dangerous toxic and hazardous materials.

I would also recommend that legislation be introduced that holds companies such as General Chemical Corp. to a greater degree of accountability. Flagrant violators cannot be allowed to continue handling toxic and hazardous materials. Public safety must always be our number one priority. I am not convinced that those of us who are charged with protection and preservation of the public interest should find any legitimacy in the argument that it is "jobs" against the "environment", e.g. public safety and quality of life.

I urge your pursuit of legislation that would deal with the regulation of tank cars which are frequently used for storage of toxics and hazardous materials on site. Clearly, regulations must be promulgated by the Department of Transportation which closes the loophole which circumvents regular inspections of such tank cars. Alternatively, such responsibility might be designated for local oversight.

Additionally, relatively cost efficient and effective methods exist which would result in reduction or elimination of atmospheric releases must be required of entities dealing with

Representative George Miller  
August 5, 1993  
Page Two

potentially hazardous materials. Consultants with Citizens for a Better Environment have suggested a shuttle system which has a cost of less than \$100,000 that might have averted the July 26 accident.

Because of my concern over the recent incidents, I have agreed to serve on the County's Hazardous Materials Commission. Our Board of Supervisors is committed to developing a comprehensive plan and working with other agencies to prevent future accidents. I know that our state and federal legislative delegation will work with us to achieve goals which are consistent with our commitment to public health and safety.

Very truly yours,

A handwritten signature in cursive script that reads "Gayle Bishop".

GAYLE BISHOP

GB/sc

cc: Board of Supervisors

Northern California Millwright Local 102  
8400 Enterprise Way Rm. 201  
Oakland Ca. 94621

08-06-1993

Dear Congressman Miller:

As Business Representative of a Construction Union and a taxpaying citizen of Contra Costa County, I am appalled at the negligence and subversive techniques exhibited by General Chemical resulting in the massive chemical leak a few weeks ago. The negligence was the fact that type of valve had been prohibited as of three years ago. The subversive technique was in keeping chemicals in tank cars on rail so that, it was not considered as being stored there.

How many Bhopals, Exxon Valdez, Dunsmuir and now General Chemicals do we need to have before serious concern for the safety of the community is considered and The LATEST SAFETY STANDARDS rigidly adhered to.

I know that America is going through a psychologically transformative stage where it is accepted as "acknowledged" Business Bottom Line procedure to cut as many costs as possible regardless of the human factor and apparently the safety factors also. I feel fortunate that I live in Contra Costa and have a Congressman that has been in the forefront in many areas demanding positive changes for the people of this area, the State and the whole Country i.e. the Exxon Valdez Spill.

The Contra Costa Bldg. Trades singularly and as a whole have tried to impress on the Refineries and Chemical Companies in particular our willingness and ability to provide well trained Craftspeople that take pride in their work and have standard safety training. Many of these people also have training in asbestos removal, Haz.Mat., and as of the last year have been certified in the new B.A.T.T. program.

I believe that any Contractor working in the Ecological, Environmental timebombs in our Communities should be signatory to and utilizing people from a LEGITIMATE Union that has a recognized Apprenticeship, safety training and Journeyperson upgrading. We live here and may die here,(hopefully from old age) we should demand no less of these "Global Economy" residents. There should be immediate legislation demanding and defining resposible Contractors at these sites.

Myself as well as thousands of Construction workers, shop workers, merchants and general citizenry are praying that you will carry out your duties as always: fairly, objectively and with the utmost concern for the human factor. US!

Respectfully Yours



Stan Boren

Business Representative

James O. Cole  
Vice President  
Corporate Affairs



August 9, 1993

The Honorable George Miller  
United States House of Representatives  
367 Civic Drive, Suite 14  
Pleasant Hill, CA 94523

Dear George:

This is in response to a request from Lynelle Johnson of your staff to submit a written statement for inclusion in the record for the August 10 hearings on "Management and Safety Issues Concerning Hazardous Materials in Contra Costa County."

About ten days ago, Bob Canter of my staff supplied Ms. Johnson with two folders of information which outline in some detail our chlorine handling safety procedures. This information will serve as our written statement. Please feel free to reproduce any of this material and distribute it as you see fit.

As you know, we were invited to participate in the August hearings. After canceling my trip to the American Bar Association meeting in New York to help prepare Clorox Vice President for Corporate Health, Safety and the Environment Gene Wheeler for his testimony, we received a call from Ms. Johnson indicating Clorox would not be permitted to testify. We felt that the real value of Clorox's participation at the hearings would have been the opportunity for Mr. Wheeler to further explain the materials we previously provided. Mr. Wheeler, accompanied by myself and technical staff from Clorox, would have been happy to answer questions you and your staff had.

When we recently met in Washington, I extended an invitation for you to tour our Fairfield plant. Our invitation remains open. Please feel free to contact me at any time when you are ready for such tour; we think you will be impressed.

In the meantime, I look forward to continue working with you.

Sincerely,

James O. Cole  
Vice President-Corporate Affairs

The Clorox Company

P.O. Box 24305  
Oakland, California  
94623-1305  
(510) 271-7529

JOC/ras



**Heat and Frost Insulators and  
ASBESTOS WORKERS**



**LOCAL UNION 16**

AFFILIATED WITH THE AFL-CIO AND BUILDING AND CONSTRUCTION TRADES DEPARTMENT  
2001 MISSION STREET, ROOM 700 • SAN FRANCISCO 94110 • PHONE 828-1288



August 10, 1993

Dear Congressman Miller:

Local #16 has had a recognized apprentice program since 1941. Part of this program is training new workers on the responsibilities they and their employers have to maintain a safe workplace. To this end, Local #16 has two staff members trained and certified at the OSHA Institute (Des Plaines, Illinois) in the OSHA 500 Basic Safety Course.

Local #16 has been a leader in the fight to obtain better laws and regulations to protect workers from Asbestos and other workplace hazards, on the Local, State and Federal levels. Local #16 was a leader in organized labor's victorious fight to reinstitute CAL-OSHA as the voter mandated State OSHA program in the United States. We continue to support CAL-OSHA by participating on advisory committees as well as supporting worker safety legislation. As testimony to the benefit and quality of our apprenticeship program, we now have 16 signatory contractors that received their craft education through our program. Union trained workers have advantage of support from the local Union on issues of health and safety as well as alternate employers. We supply the best trained and supported workers in the Insulation Industry. Our journeymen undergo four years of on-the-job and classroom training, and upon completion of the four years, must pass a rigorous matriculation exam which includes a 7 hour written and 14 hour shop (hands on) examination which is graded by examiners representing Management as well as the Union.

It is in the communities best interest to have high standards on the issue of well trained, safety motivated, contract personnel. Our members live in, and support the communities we serve through our economy and our society.

Local #16 has enjoyed an excellent relationship with the local FRD-OSH Administration and staff (Gabe Ghilotti) and is happy that FRD-OSHA has retained enforcement of the process safety regulations until CAL-OSHA adopts an adequate program. The process safety standard was welcomed by this Organization as a response to the hazardous conditions in the industry. We have

Heat and Frost Insulators and  
**ASBESTOS WORKERS**



**LOCAL UNION 18**

AFFILIATED WITH THE AFL-CIO AND BUILDING AND CONSTRUCTION TRADES DEPARTMENT  
 2801 MISSION STREET, ROOM 700 • SAN FRANCISCO 94110 • PHONE 826-1286



Page 2 of page 1 - Congressman George Miller

had numerous experiences with "un-scheduled releases" in the refinery and chemical plants we service, including one fatality (burn victim), in a runaway chemical reaction explosion, which also resulted in exposure to unknown levels of chemicals, which had undergone very little scrutiny as to their health effects.

Labor would welcome any opportunity to be involved in the safe operation and maintenance of Bay Area Petro-Chemical facilities.

Sincerely,  
  
 James W. Schwandt  
 Business Manager

JWS/dg  
 ope-3-afl-cio

**OCAW**Oil, Chemical & Atomic Workers  
International Union, AFL-CIOMarinez Local 1-5  
1015 Estudillo Street  
P.O. Box 268  
Marinez, CA 94553-0134  
510-228-3100  
Fax: 510-370-8888

August 10, 1993

Honorable George Miller  
Member of Congress, District 7  
367 Civic Drive #14  
Pleasant Hill CA 94523

Dear Congressman Miller:

In light of the events of the past several weeks including the sulfuric acid release at General Chemical in Richmond, CA and the deadly accident at the Exxon Refinery in Baton Rouge, LA, the Oil, Chemical & Atomic Workers International Union welcomes the opportunity to discuss conditions in plants which manufacture, use, store, and transport hazardous materials. While we focus primarily on worker health and safety issues, by extension these issues also directly impact the surrounding communities and the environment.

The historical need for OSHA regulations governing these types of facilities is self evident; as is the industry's lack of self control and internal regulations:

In 1984, a release at the Dow Chemical plant in Bhopal, India killed 2000 and injured thousands more;

In 1987, a hydrofluoric acid leak at Marathon Refinery in Texas the evacuation of thousands of residents, injuring scores of citizens;

An October 1989 explosion at the Phillips 66 Chemical Plant killed 23 workers and injured 132;

A July 1990 "accident" at ARCO Chemical in Channelview, Texas kills 17 workers;

Another July 1990 accident, at BASF kills two workers and injures 41;

May 1991, IMC incident resulting in eight deaths and 128 injuries in another petrochemical plant accident.

Countless other releases and accidents have occurred since then. Though most have resulted in individually small numbers of deaths and/or injuries, many have had tremendous potential for disaster and have caused great degrees of public injury and property damage. Concern for public safety, and to a lesser degree worker safety, created the foundation for what could have been the much needed regulatory control of these industries.

Fed-OSHA first aired their concept of PROCESS SAFETY MANAGEMENT - 29CFR 1910.119 in July, 1990. This was followed by public hearing later in 1990 and again in spring 1991. Also during this time, Congress was developing the 1990 Amendments to the Federal Clean Air Act.



For the first time, the Clean Air Act mandated a level of workplace safety and procedural regulations to mitigate if not prevent hazardous emissions caused by releases from oil and chemical facilities. Among the requirements were to develop and maintain written safety information; comprehensive assessment of workplace hazards; develop and maintain written operating procedures; establish comprehensive mechanical and maintenance monitoring programs; implement incident investigation procedures; provide comprehensive training for all workers in emergency response; ensure worker competency through training; and, perhaps most importantly, consult with employees and their representatives on hazard assessments, chemical accident prevention plans, and providing access to all material developed and required by the regulations.

The final Process Safety Management standards were issued in February 1992, becoming effective in late-May 1992. Unfortunately, the noble intent of the Clean Air Act mandates were strongly diluted during the regulatory development process of OSHA. Under continuous pressure from powerful industry groups and lobbyists such as Organization Resources Counsellors (ORC) American Petroleum Institute (API), Western States Petroleum Association (WSPA), Chemical Manufacturers Association (CMA), and while under a deregulatory atmosphere from the White House, OSHA capitulated to many industry requests to softly enact by regulation what was firmly mandated by legislation.

We are not blaming OSHA for the results of their efforts; they were in a lose-lose situation. We are, however, saying that the eye-catching buzz words used in the regulations such as hazards analysis, worker training and mechanical integrity are by themselves useless. Even employee participation is meaningless if it simply memorializes the historical industry practice of management hand-selecting those persons it wishes to provide access to for the information required to be developed by this standard.

With few exceptions, industry has failed to involve those who are or would be chosen by the workers as their representatives. In unionized work places, employers mostly fall into three broad categories on this issue; (1) Those that have had no discussions with the workers union representatives, (2) Those who have developed a program without the union's input, and have placed that program before the union for a cursory review, (3) Those who have allowed the union to sit at the table during program development, but refuse to seriously address concerns of the employees when raised through the union representative. What most have failed to realize is that if a loophole exists in the process safety management regulations large enough to allow employers to eliminate employees' union representatives from the decision-making process, then there probably exists a similar loophole large enough to allow the continued release of toxic or flammable materials.

Another area critical concern to our members is the continued dependance on contract workers by the proprietary employer. The Clean Air Act recognized that all workers within these facilities who perform operation or maintenance task must demonstrate competency of the skill required for their duties. OSHA's response to this was to continue the existing industry practice of an allegedly "separate but equal" training and education philosophy. This allows proprietary employers to evade their responsibility to train, document, and certify that each contract worker has the skills and experience necessary to safely perform their jobs within the confines of the proprietary employers' facility. At the request of OSHA, the John Gray Institute at Lamar University found many aspects of contract workers

skills, training and experience to be seriously deficient and the current "separate but equal" treatment continues these inadequacies. *Brown v. the Board of Education* put an end to preposterous notion of "separate but equal" education for students; it's time to do the same to the education of oil and chemical plant workers.

Also along the line of contract workers, we are quite concerned about the contractor selection process. We represent plant operators and plant maintenance workers, and strongly desire to be integrally involved in the contractor selection process. As one of our members puts it "We'll be there if it blows, so it only makes sense we should have a voice in who builds it, who maintains it, and who repairs it!"

While we have identified some problem areas with the current process safety management standards, we would also strongly support these regulations with some modifications.

Please consider the following recommendations:

- Modify and strengthen provisions including, but not limited to, contract and direct hire worker involvement sections;

- Aggressively enforce parallel OSHA regulations, such as lock out/tag out, confined space entry, etc.

- Compel Congress to enact Worker-Right-To-Act Legislation. Such legislation is built on the foundation that community protection depends on worker participation. Worker-right-to-act legislation would give workers and/or their representatives the following;

- Workers shall be empowered to inspect, monitor, verify and, if necessary, halt the operation of any process which represents an imminent threat to life and health.

- The right to accompany all environmental, fire, safety, and health representatives and consultants, whether employees of regulatory agencies or retained by the facility owner/operator, on inspections and investigations of the facility,

- The right to refuse work without threat of intimidation or retaliation by the employer if such task might endanger the safety of workers or the environment.

- That contract workers shall be subject to the same standards and practices as regular workers, including skills and safety training, experience requirements, health monitoring and record keeping, etc.

- The right to full access to all materials used in developing hazard analyses and risk assessments.


- To make public all hazard analyses and risk assessments prepared by or at the request of the facility owner or insurer,

- Oblige Congress to create and install a Petroleum and Chemical Industry Joint Labor/Management Health and Safety Commission and empower this committee to facilitate real change.

- Encourage the President to fund and fill appointments to the Chemical Safety and Hazard Investigation Board per the Clean Air Act Amendments of 1990.

Hopefully, by working together we can bring about meaningful change and devote our energies towards fighting for rights of the living, rather than mourning for the souls of the dead.

Again, thank you for providing a forum for us to voice our concerns.


**IMPERIAL WEST CHEMICAL CO.**

P.O. BOX 606 • 1701 WILBUR AVENUE • ANTIPOCA, CA 94509 • (510) 757-8230 • FAX: (510) 757-0493

August 9, 2003

Lynelle Johnson  
 Congressman George Miller's Office  
 367 Civic Drive, No. 14  
 Pleasant Hill, Ca. (4523)

Re: The House Natural Resources Subcommittee on Oversight and Investigations hearing on August 10th.

Ms. Johnson:

Contra Costa County CAER is establishing a TRANSCAER (Transportation Community Awareness and Emergency Response) chapter in this County. We are currently functioning as a subcommittee of CAER.

TRANSCAER is a CMA nationwide community outreach program. It addresses community concerns about the transportation of hazardous materials through planning and cooperation. The program provides assistance for communities to develop and evaluate their emergency response plan for hazardous material transportation incidents.

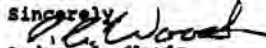
The Community Awareness portion of TRANSCAER addresses the concerns of the public and answers questions about the transportation of hazardous materials. The Emergency Response portion is directed to the community emergency planning groups.

The Purpose of TRANSCAER is to:

1. Encourage partnerships between citizens and industry to develop mutual understanding about the transportation of hazardous materials moving through their communities.
2. Help community emergency planning groups identify hazardous materials moving through their communities.
3. Provide guidance for local officials to develop and/or evaluate their community's emergency response plan.
4. Assist with training and testing for emergency preparedness.

I am currently chairing the TRANSCAER subcommittee at Contra Costa County CAER. If you have any questions or need assistance, please call or fax me a message.

Sincerely,



Andrew A. Woods  
 Manager, Safety and Emergency Response

Submittal for Hearing Record  
 FROM: Ethel Dotson  
 396 South Street  
 Richmond, CA 94804

State Legislature  
 State of California  
 Sacramento, Ca. 95814

RE: Proposed Legislation

Dear:

I, Ethel Dotson, am a resident of the City of Richmond, County of Contra Costa, State of California. I live in a residential neighborhood which has a food processing plant across the street from my home. There is a Public Storage facility, (which has caused an increase in automobile traffic and its accompanying air pollution), located on the corner of the block where I live. There are additional industries located two blocks west and south of my home, in fact my home is surrounded on three sides by stationary industrial sources of air pollution.

I am a recipient of disability benefits due to my physical condition. This is my sole source of income and I cannot afford to relocate to a more pleasant location. The food processing plant discharges noxious fumes, gases and odors into the air through-out the day and night. Many of the other industries discharge air contaminants into the air during the day. My bedroom faces the street and the food processing plant and I receive their discharges directly from the north.

I am aware of the Bay Area Air Quality Management District and its responsibilities. I have repeatedly called the District's complaint line to register my complaints and concerns. My complaints have been for nothing as the plant continues to discharge air contaminants into the air. I have attempted to get the District to make the plant curb or restrict its discharge, but I have been unsuccessful. As the activities of this plant is causing harm to myself and my property I propose that myself and others similarly situated as property owners be provided specific relief in the form of special zones and differing tax formulas from residential areas that are not adjacent to stationary industrial sources of air pollution. The special zones would be established by cities zoning processes inconjunction with the appropriate scientific and technical expertise. Subsequently through the joint powers agreements between cities and counties a tax formula would be established to become effective with the date of the implementation of Proposition 13. Said tax formula would reflex the disadvantage of residing adjacent to stationary industrial sources of air pollution.

The above outlined procedures would alleviate the multiplicity of law suits and delinquent payment of taxes. I am requesting that the Legislature through its constitutional powers stop the Tax Collector of Contra Costa County, from selling my property for tax default, schedule for February 27, 1991. I have attached proposes changes in the respective laws governing these areas.

Sincerely



ETHEL DOTSON, 396 South Street, Richmond, Calif. 94804

415/236-4234

518 -



PROPOSED LEGISLATION

## I. Proposed Changes.

## A. Health and Safety Code, Section 40230. Zones; special regulations.

"The bay district board shall establish, in-conjunction with the local municipal and county governmental zoning, assessing and tax collecting agencies, pursuant to their joint powers of agreements, within the bay district, zones wherein special regulations are warranted. In establishing such zones, the bay district and other responsible agencies, shall consider the degree of concentration of population, the number, nature, and dispersal of the stationary sources of air pollution, whether the area is a rural agricultural area, and the presence or absence of industry."

B. Present Law. Health and Safety Code, Section 40230.

"The bay district board may establish, within the bay district, zones wherein special regulations are warranted. In establishing such zones, the bay district board shall consider the degree of concentration of population, the number, nature, and dispersal of the stationary sources of air pollution, whether the area is a rural agricultural area, and the presence or absence of industry."

## II. Proposed Changes.

## A. Health and Safety Code, Section 40231. Zones; differing tax formulas.

"The bay district board shall establish, in-conjunction with the local municipal and county governmental zoning, assessing, and tax collecting agencies, pursuant to their joint powers of agreements, within the bay district, zones wherein differing tax formulas shall be applied. In establishing such zones, the bay district board shall consider the degree of concentration of population, the number, nature, and dispersal of the stationary sources of air pollution, whether the area is a rural agricultural area, and the presence or absence of industry."

B. Present Law. Health and Safety Code, Section 40231.

"The bay district board may establish, within the bay district, zones wherein differing tax formulas may be applied. In establishing such zones, the bay district board shall consider the degree of concentration of population, the number, nature, and dispersal of the stationary sources of air pollution, whether the area is a rural agricultural area, and the presence or absence of industry."

## III. Revenue and Taxation Code, Sections 2187, 2193, 2194, etc.

Any and all sections specifying the authority of the State of California, or any local governmental agency to zone, assess, collect taxes or force the sale of tax defaulted property, shall be changed to reflect the changes in the H & SC sections. The H&SC sections shall be made an intrinsic part of the State's property taxation powers and local agency public finance process.

Property owners residing adjacent to stationary industrial sources of air pollution shall be provided an exemption against the forfeiture of property for sale as tax defaulted property, specifically those properties adjacent to air pollution sources.

CIVIL NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ETHEL DOTSON, )  
 )  
 APPELLANT )  
 )  
 vs. )  
 )  
 BAY AREA AIR QUALITY )  
 MANAGEMENT DISTRICT, )  
 ET AL., )  
 )  
 RESPONDENTS )  
 \_\_\_\_\_ )

CIVIL NO. \_\_\_\_\_

PETITION FOR REVIEW

On Appeal From the Judgment of the Superior Court of the  
 State of California, Contra Costa County,  
 Honorable Ellen S. Jones, Judge

ETHEL DOTSON  
 306 South Street  
 Richmond, Ca. 94804  
 (415) 731-4236  
 IN W/O PER

1	TOPICAL INDEX	PAGE NO.
2		
3	STATEMENT OF ISSUES PRESENTED FOR REVIEW .....	1
4	POINT I. SUSPENSION OF ACTION PENDING FINALITY OF JUDGMENT.....	2
5	POINT II. CITIZENS SUITS ARE AUTHORIZED UNDER FEDERAL LAW.....	3
6	POINT III. ALTERNATIVE MECHANISMS AVAILABLE TO OFFSET AIR POLLUTION.....	253
7		
8	CONCLUSION.....	4
9	TABLE OF AUTHORITIES	
10	FEDERAL STATUTES:	
11	42 U.S.C.A. SECTION 7604(a).....	3
12	42 U.S.C.A. SECTION 7604(b)(1)(2).....	3
13	42 U.S.C.A. SECTION 7412(c)(1)(b).....	3
14	CALIFORNIA STATUTES:	
15	CODE OF CIVIL PROCEDURE, SECTION 1049.....	2
16	HEALTH AND SAFETY CODE, SECTION 40001 ET SEQ.....	3
17	GOVERNMENT CODE, SECTION 5500 ET SEQ.....	3
18	CASES:	
19	PACIFIC GAS & ELEC. CO. v. MAKANO 12 CAL 2d 711, 714, 87 P. 2d 700.....	2
20	IN RE MOLERA'S ESTATE 100 CAL RPTR 696, 699, 23 C. A. 993.....	2
21	KNOFF v. CITY AND COUNTY OF SANFRANCISCO (1959) 1 CAL APP 3d 134, 198, 18 CAL RPTR 633.....	3
22	BAUGHMAN v. BRADFORD COAL CO., INC., C. A. Pa. (1979) 592 F. 2d 215, CERTIORARI DENIED 99 S.Ct. 2406, 461 U.S. 961, 60 L. Ed. 2d 1066.....	6
23	TEXT AUTHORITIES:	
24	WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, JURISDICTION, 2d SECTION 3531.4.....	3
25		
26		
27		
28		

1 CIVIL NO. \_\_\_\_\_  
 2  
 3

4 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
 5

6 ETHEL DOTSON, )  
 )

7 APPELLANT )  
 )

8 vs. )  
 )

CIVIL NO. \_\_\_\_\_

9 BAY AREA AIR QUALITY )  
 10 MANAGEMENT DISTRICT, )  
 ET AL., )

11 RESPONDENTS )  
 12 \_\_\_\_\_ )

13 PETITION FOR REVIEW

14 On Appeal From the Judgment of the Superior Court of the State of  
 15 California, Contra Costa County.

16 Honorable Ellen S. James, Judge

17 To the Honorable Malcolm Lucas, Chief Justice, and to the Honorable  
 18 Associate Justices of the Supreme Court of the State of California:

19 STATEMENT OF ISSUES PRESENTED FOR REVIEW

20 1. Suspension of Action Pending Finality of Judgment.

21 In an action where the trial court has rendered judgment and the judg-  
 22 ment is subject to appeal, all action is suspended on the judgment and the  
 23 judgment does not become final until completion of the appeal process or until  
 24 the time for appeal has expired.

25 2. Citizens Suits are Authorized under Federal Law.

26 A citizen may bring a citizen suit in the form of a mandamus to compel  
 27 state and local agencies into compliance with the federal Clean Air Act.

28 3. Alternative Mechanisms Available to Offset Air Pollution.

1 State and local agencies are empowered to utilize alternative mechan-  
2 isms to goad responsible businesses in the reduction of air pollution.

3 Appellant hereby petitions for review of the decision of the Court of  
4 Appeal of the State of California, First Appellate District, Division Two,  
5 filed in this action on November 6, 1990, affirming the judgment of the trial  
6 court in favor of respondents. A copy of the decision of the Court of Appeal  
7 showing the date of its filing is set forth herein as Appendix "A".

8 Review by this Court is necessary on the grounds that the decision  
9 of the Court of Appeal is not in line with the authorities cited herein and  
10 this Court's ruling is necessary to secure uniformity of decision and import-  
11 ant questions of law are at issue herein requiring settlement by this Court.

12  
13 BRIEF IN SUPPORT OF REQUEST FOR REVIEW

14 POINT I

15 Appellant filed a petition for writ of mandate in the trial court,  
16 (Superior Court of California, County of Contra Costa), on 4-12-89, seeking  
17 to compel state and local agencies to comply with the Clean Air Act, or in the  
18 alternative to implement alternative mechanisms providing relief to herself  
19 and other citizens from the illegal discharges of air contaminants and  
20 pollutants which are a hazard to personal health and property.

21 After the trial court issued its decision appellant filed her appeal  
22 and a petition for a writ of mandate to compel respondent, Treasurer-Tax  
23 Collector, to cease and desist from attempting the collection of property taxes  
24 pending completion of appellant's appeal.

25 "A judgment is not final so long as the action  
26 in which it is rendered is pending..." Pacific  
27 Gas and Electric Company v. Nakano, 12 Cal 2d  
28 711, 714, 87 P.2d 700; In re Molera's Estate  
100 Cal Rptr 696, 699, 23 C.A. 3d 903; Code of  
Civil Procedure section 1009.



1 against air polluters but include the establishment and maintenance of special  
 2 zones and tax formulas. The effect is to reduce the property tax amounts  
 3 assessed and levied against citizens and property owners who reside adjacent  
 4 to stationary industrial sources of air pollution, coupled with higher  
 5 assessments and levies against stationary industrial sources of air pollution.  
 6 (See *Baughman v. Bradford Coal Co., Inc.*, C.A. Pa. (1979) 592 F. 2d 215,  
 7 certiorari denied 99 S.Ct. 2405, 441 U.S. 951, 60 L.Ed 2d 1015).

8 CONCLUSION

9 For the reasons herein advanced, and on the authorities cited, appellant  
 10 Ethel Dotson, respectfully urges that review be granted and that this Court  
 11 order, (a) respondent, Treasurer-Tax Collector, Contra Costa County, to  
 12 rescind its notice, (dated January 7, 1991, see Appendix "C"), of the sale of  
 13 appellant's property scheduled for February 27, 1991, pending exhaustion of  
 14 appellant's appeal rights; (b) respondents be instructed to establish and  
 15 maintain special zones and tax formulas resulting in lower assessments and  
 16 levies against property owners who reside adjacent to stationary industrial  
 17 sources of air pollution; (c) instruct all parties to meet together, (including  
 18 representative(s) of the Legislature of the State of California), to establish  
 19 and maintain special zones and tax formulas for those areas impacted by  
 20 stationary industrial sources of air pollution; and (d) the trial court be  
 21 instructed to consider appellant's case on its merits.

22  
 23 DATED: January 14, 1991.

24  
 25 Respectfully submitted

26  
 27   
 28 \_\_\_\_\_  
 ETHEL DOTSON - APPELLANT



COPY

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO



ETHEL DOTSON,

Plaintiff/Appellant,

v.

BAY AREA AIR QUALITY MANAGEMENT  
DISTRICT et al.,

Defendant/Respondent.

HEALTH SERVICES DEPARTMENT,  
CONTRA COSTA COUNTY,

Real Party in Interest.

NOV - 6 1990

Court of Appeal - First App. Dist.  
RON D. BARROWBy \_\_\_\_\_  
DEPUTY

A048046

Contra Costa Superior  
Court No. C 8901420

Appellant contends the trial court improperly granted a demurrer on the petition she filed in propria persona, seeking a writ of mandate against various public agencies. We conclude we must affirm.

#### I. FACTS AND PROCEDURAL HISTORY

For purposes of our analysis on this appeal following the sustaining of a demurrer, we assume the truth of the facts stated in appellant's petition. It is there alleged that she resides in the city of Richmond, adjacent to certain industrial facilities which are air polluters, and "is forced into continued contact with stationary sources of air pollution because the [respondent Bay Area Air Quality Management]

APPENDIX "A"

District has failed to meet its responsibilities." The gist of the writ petition was that do-nothing bureaucrats were allowing polluters to get away with light penalties for making appellant's life miserable.

Respondents demurred on the grounds that there was no violation of a nondiscretionary duty which would allow appellant to seek relief through mandamus. The trial court sustained the demurrers. Appellant took a premature appeal from the order granting the demurrers, rather than from the ensuing judgment. Nevertheless, we have the power to treat this premature appeal as properly brought, and do so. (Reyna v. City and County of San Francisco (1977) 69 Cal.App.3d 876, 879.)

## II. DISCUSSION

We conclude we must affirm. We are unable to find any nondiscretionary duty, or any allegation of an actionable abuse of discretion here, which could make mandamus available as a remedy. Rather, it appears that respondent air quality agency has the discretion to decide on the manner and methods by which it will enforce standards for air quality; and no nondiscretionary duty imposed by statute requires the agency to give a higher priority to the particular abatement of noxious conditions around appellant's home, which is sought in the petition. Since there was no nondiscretionary duty, mandamus was unavailable. (Lindell Co. v. Board of Permit Appeals (1943) 23 Cal.2d 303, 315.) "It is the general rule that the writ of mandamus may not be employed to compel a public administrative agency possessing discretionary power to act in a particular

manner." (Ibid.) "In technical matters requiring the assistance of experts and the study of marshalled scientific data as reflected herein, courts will permit administrative agencies to work out their problems with as little judicial interference as possible." (Stauffer Chemical Co. v. Air Resources Board (1982) 128 Cal.App.3d 789, 795.)

Appellant refers, surprisingly, to Baughman v. Bradford Coal Co., Inc. (3d Cir. 1979) 592 F.2d 215. Baughman observed that a citizen could file suit in federal district court against a polluter under the citizen suit provision of the Clean Air Act (42 U.S.C. § 7604). (P. 217.) However, such an action, subject to federal district court jurisdiction, may apparently only be filed against a public enforcement agency when there is a violation of a nondiscretionary duty. (Farmers Union Cent. Exchange, Inc. v. Thomas (9th Cir. 1989) 881 F.2d 757, 760 ["Under the 'citizen suits' provision, any person may commence an action in the [federal] district court . . . for fail[ure] to perform a nondiscretionary act or duty."]; accord Bethlehem Steel Corp. v. U.S. E.P.A. (7th Cir. 1986) 782 F.2d 645, 655 ["If the [agency's] refusal . . . was the failure to perform a nondiscretionary duty, then exclusive jurisdiction to remedy that failure lies in the [federal] district court, while if the failure was a failure to perform a discretionary duty, . . . there is jurisdiction in no court."].) In any event, the Clean Air Act did not provide a basis for this suit in the state trial court.

We are also unable to find any nondiscretionary duty whatsoever on the part of respondent city and county, or their officers, which would allow mandamus to be made available here as a remedy, so as to force them to exercise their discretion in such a way as to impose higher fines on air polluters or reduce the taxes on appellant's home. Of course, appellant may retain the right to sue the actual polluting parties in state or federal court on other theories, and may in that context have some further right to invoke the jurisdiction of the federal district court, a question we need not address. We only hold, here, that mandamus may not be used by this appellant to compel the exercise of discretion in a particular way, absent a nondiscretionary duty imposed by statute. We also deny the request for sanctions against appellant for having prosecuted this appeal. (Cf. In re Marriage of Flaherty (1982) 31 Cal.3d 637, 650.)

### III. DISPOSITION

The order sustaining the demurrers, construed as an order granting judgment of dismissal, is affirmed. Each party shall bear its own costs.

\_\_\_\_\_  
PETERSON, J.

WE CONCUR:

\_\_\_\_\_  
KLINE, P.J.

\_\_\_\_\_  
SMITH, J.

Dotson v. Bar Area Air Quality Management District A048046

1 | ETHEL DOTSON  
 2 | 396 SOUTH STREET  
 3 | RICHMOND, CA 94804  
 4 | (415) 236-4234  
 5 | IN PRO PER

6 | IN THE COURT OF APPEAL  
 7 | STATE OF CALIFORNIA  
 8 | FIRST APPELLATE DISTRICT  
 9 | DIVISION TWO

9 | ETHEL DOTSON, )  
 10 | )  
 11 | PETITIONER )  
 12 | )  
 13 | v. )  
 14 | )  
 15 | TAX COLLECTOR, CONTRA )  
 16 | COSTA COUNTY, )  
 17 | )  
 18 | RESPONDENT )  
 19 | )  
 20 | TAX ASSESSOR, CONTRA )  
 21 | COSTA COUNTY )  
 22 | )  
 23 | REAL PARTY IN INTEREST )

CIVIL NO. \_\_\_\_\_  
 PETITION FOR WRIT OF MANDATE  
 (RELATED APPEAL PENDING)

24 | TO THE HONORABLE PRESIDING JUSTICE AND  
 25 | ASSOCIATE JUSTICES OF THE COURT OF  
 26 | APPEAL OF THE FIRST APPELLATE DISTRICT,  
 27 | DIVISION TWO OF THE STATE OF CALIFORNIA

28 | Petitioner alleges:

1. Petitioner has a related appeal pending in this Court from the Superior Court of California, Contra Costa County, titled 'Petition for Writ of Mandate' number C 89-01420, which is docketed in this Court A048049.
2. Petitioner is a single woman residing at 396 South Street, Richmond, California, Contra Costa County, and is the owner of her residence.
3. Respondent is the entity encharged with the collection of property taxes, (commercial and residential). Respondent is a department under the

APPENDIX

1 jurisdiction of the governing body identified as Contra Costa County.

2 4. Real Party in Interest, The Tax Assessor, Contra Costa County, is  
3 responsible for the correct assessment of all property taxes located within  
4 the boundaries of Contra Costa County. Real party in interest is under the  
5 jurisdiction of the governing body identified as Contra Costa County.

6 5. Petitioner filed a petition for writ of mandate in the trial court on  
7 or about 4-12-89, of which the subject matter was in part the amount of tax  
8 obligations levied against her property, (home). After a perfunctory review  
9 by the trial court of petitioner's petition, said petition was summarily  
10 denied by the trial court granting respondent and other defendants their request  
11 for demurrer. Petitioner filed a 'Notice of Appeal' on or about 10-30-89,  
12 even though she did not receive written notification of the order, (filed 11-0-  
13 89), until 11-11-89.

14 6. On or about 6-6-90, petitioner received a 'Notice-Power to Sell Tax-  
15 Defaulted property' from respondent's office. (See attachment Exhibit "A").

16 7. Respondent has a clear, present, and ministerial duty to suspend,  
17 cease and desist any and all collections of any property taxes from petitioner  
18 as the action described in number 5 above is still pending. And pursuant to  
19 the Code of Civil Procedure section 1049 petitioner's action is still pending.  
20 (See *In re Molera's Estate* (1972) 100 Cal Rptr 693, 699, 23 C.A. 3d 993).

21 8. Petitioner has a clear, present, and substantial right to the per-  
22 formance of respondents's duty to suspend, cease, and desist any and all collec-  
23 tion of property taxes assessed against petitioner's property pending completion  
24 of petitioner's appeal:

25 A. Petitioner exercise of her conditional right to review of the  
26 trial court's action and abuse of discretion.

27 B. Respondent is responsible to make provisions of exceptions  
28 in the assessment and collection of property taxes in



1 instances where the property owner is impacted by  
2 pollution from stationary air pollution sources.

3 9. Petitioner is a citizen and taxpayer and is concerned that respondent  
4 comply with the laws, perform its duty under the law, and obey the laws as  
5 all private citizens are required to do. Also to obey and comply with the  
6 procedural requirements pertaining to any action brought against respondent.

7 10. Petitioner is a person beneficially interested in the issuance of a  
8 writ by virtue of the fact that it is petitioner's property that have been  
9 'Noticed-Power to Sell Tax Defaulted Property'. The other factor which is a  
10 part of this equation is petitioner resides adjacent to a stationary source of  
11 air pollution.

12 11. Petitioner has performed all conditions precedent to the filing of  
13 this petition by requesting and appearing before the Assessment Appeals Board,  
14 Contra Costa County, March 1990. Petitioner also met with the Deputy Tax  
15 Collector, Mr. Joseph L. Martinez to discuss the suspension of the collection  
16 of taxes assessed against her property pursuant to the pending appeal.  
17 Petitioner can make available to this Court a tape of the proceedings before  
18 the Assessment Appeals Board, County of Contra Costa. Petitioner currently has  
19 an appeal before this Court which addresses these issues, Docket number AN43047.

20 12. Petitioner has informed respondent of respondent's duty to suspend,  
21 cease, and desist the attempts to collection of any and all property taxes  
22 assessed against petitioner, in a personal meeting with Mr. Joseph L. Martinez.

23 13. At all times herein mentioned respondent has been able to perform the  
24 duty mentioned above. Notwithstanding such ability and despite petitioner's  
25 demand for the performance of the duty, respondent continues to fail and refuse  
26 to perform such duty.

27 14. Petitioner has no plain, speedy, and adequate remedy in the ordinary  
28 course of law, other than the relief sought in the petition, in that the

1 'Notice-Power to Sell Tax Defaulted Property goes into effect July 1, 1990.  
 2 Respondent seeks to force petitioner to become a homeless person. Petitioner  
 3 cannot bring any ordinary legal action to prevent this action as respondent  
 4 has used its police powers to remove from petitioner any and all avenues  
 5 normally available to petitioner.

6 15. Respondent's failure to perform the duty herein mentioned has damaged  
 7 petitioner in the sum of \$10,000, in that petitioner has expended time and  
 8 energy to bring this unnecessary action and subjected petitioner to become a  
 9 homeless person. Also respondent has illegall charged petitioner with a  
 10 tax bill in excess of \$6,000. Respondent has also conspired with others to  
 11 attempt to obtain petitioner's property, (verbally expressed to petitioner on  
 12 several occasions by personnel employed in the office of the real party in  
 13 interest).

14 16. This Petition is made in this Court in the first instance rather than  
 15 to the Superior Court of the State of California, County of Contra Costa, for  
 16 the reason that petitioner has a "Related Appeal Pending" docket number A048046,  
 17 and therefore respondent's actions are subject to the jurisdiction of this Court.

18 WHEREFORE, petitioner prays:

- 19 1. That the Court issue an alternative writ of mandate commanding respondent  
 20 to suspend, cease, and desist collection of any and all property taxes assessed  
 21 against petitioner pending completion of petitioner's appeal docket number  
 22 A048046.
- 23 2. That on the return of the alternative writ and the hearing of this  
 24 petition, thi Court issue its peremptory writ of mandate commanding respondent  
 25 to withdraw its 'Notice-Power to Sell Tax Defaulted Property', pending completion  
 26 of petitioner's appeal docket number A048045.
- 27 3. For damages in the sum of \$10,000; and
- 28 4. For costs of this proceeding and for such other and further relief as

1 the Court deems just and proper.

2  
3 Dated: June 29, 1990.

4  
5   
6 ETHEL DOTSON - PETITIONER

7  
8  
9 VERIFICATION

10 I, Ethel Dotson, am the petitioner in this proceeding. I have read the  
11  
12 foregoing petition and know the contents thereof. The same is true of my own  
13 knowledge, except as to those matters which are therein alleged on information  
14 and belief, and, as to those matters, I believe it to be true.

15 I declare under penalty of perjury that the foregoing is true and correct  
16 and that this declaration was executed on June 29, 1990, at Richmond, Calif-  
17 ornia.

18  
19   
20 ETHEL DOTSON - PETITIONER

1 ETHEL DOTSON  
 2 396 SOUTH STREET  
 3 RICHMOND, CA 94804  
 4 (415) 236-4224  
 5 IN PRO PER

6 IN THE COURT OF APPEAL  
 7 STATE OF CALIFORNIA  
 8 FIRST APPELLATE DISTRICT  
 9 DIVISION TWO

9 ETHEL DOTSON, )  
 10 PETITIONER )  
 11 v. )  
 12 TAX COLLECTOR, CONTRA )  
 13 COSTA COUNTY, )  
 14 RESPONDENT )  
 15 TAX ASSESSOR, CONTRA )  
 16 COSTA COUNTY, )  
 17 RESPONDENT )

CIVIL NO. \_\_\_\_\_

MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF PETIT'  
 FOR WRIT OF MANDATE: (RELATED  
 APPEAL PENDING)

18 I

19 A WRIT OF MANDATE SHOULD ISSUE TO COMPEL  
 20 THE LOWER TRIBUNAL TO SUSPEND ANY AND ALL CO  
 21 COLLECTION OF PROPERTY TAXES ASSESSED  
 AGAINST PETITIONER'S PROPERTY PENDING  
 COMPLETION OF PETITIONER APPEAL ACTION.

22 A writ of mandate may issue from any court, except a municipal or justice  
 23 court, to any inferior tribunal, corporation, board, or person to compel the  
 24 performance of a lawful act and duty. Specifically the Code of Civil Proc-  
 25 edure section 1049 states, "An action is deemed to be pending from the time  
 26 of its commencement until its final determination upon appeal, or until the  
 27 time for appeal has passed, unless the judgment is sooner satisfied".

28 Petitioner appealed the decision of the Superior Court of the State of

1 California, Contra Costa County, the Honorable Ellen S. James, granting the  
2 respondent's and the other defendants/respondents request for demurror to  
3 petitioner's petition for writ of mandate case number C 89-01420 which is  
4 docketed in this Court A048046.

5 Upon perfecting her appeal respondent, (who is a defendant/respondent in  
6 the 'Related Appeal Pending), by law is required to suspend any and all coll-  
7 ection of property taxes assessed against petitioner.

8 "A judgment is not final so long as the  
9 action in which it is rendered is pending,  
10 and an action is deemed to be pending until  
11 its final determination on appeal or until  
12 the time for appeal has passed, unless the  
13 judgment is sooner satisfied. (Code Civ.  
14 Proc. section 1049; Pacific Gas & Elec. Co.  
15 v. Nakano, 12 Cal 2d 711, 714, 87 P. 2d  
16 700; Jennings v. Ward, 114 Cal App 536,  
17 537, 300 P. 129). In re Molera's Estate  
18 100 Cal Rptr, 696, 699, 23 C.A. 3d 993.

19 Petitioner resides adjacent to a stationary air pollution source which  
20 discharges pollution regularly into the air. Petitioner has appealed the  
21 assessment and collection of any and all property taxes to the appropriate  
22 reviewing body, (Assessment Appeals Board, Contra Costa County), alleging  
23 the violation of the laws respecting pollution control pursuant to the Health  
24 and Safety Code sections 41700 and 41701.

25 Petitioner is the lawful owner of her residence and as a property owner is  
26 obligated by the laws of the State of California, to pay property taxes  
27 properly and correctly assessed against her property. Petitioner's interest  
28 is paramount regarding respondent's actions to seize her property thereby  
making petitioner a homeless person. (See Knoff v. City and County of San  
Francisco (1939) 1 Cal App 3d 184, 193, 81 Cal Rptr 583).

## II

A PETITION FOR A WRIT OF MANDAT MAY PROPERLY  
BE ISSUED TO A PETITIONER WHO IS HARMED BY  
THE DISCHARGE OF POLLUTANTS INTO THE AIR AND  
ENVIRONMENT.

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Petitioner has brought to the attention of respondent and the real party  
in interest the harmful effects of the inaction of respondent and the other  
defendants/respondents of the 'Related Appeal Pending', docket number AD5304.  
Each of the defendants/respondents has refused to take action to remove or  
curtail the pollution and harmful effects upon petitioner.

Dated: June 29, 1990.

  
\_\_\_\_\_  
ETHEL DOTSON - PETITIONER

1     PROOF OF SERVICE     DOTSON v TAX COLLECTOR, CONTRA COSTA COUNTY

2     I am a resident of the United States and the County of Contra Costa.  
 3     I am over the age of eighteen (18) years and not a party to the action  
 4     within. My business address is 376 South Street, Richmond, California.

5     On the date set forth below, I served the within:

6  
 7     PETITION FOR WRIT OF MANDATE  
 8     MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
 9     PETITION FOR WRIT OF MANDATE

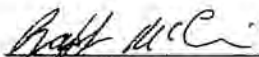
10    by placing a true copy thereof enclosed in a sealed envelope in the United  
 11    States Post Office, with postage prepaid in Richmond, California, addressed  
 12    as follows:

13    PHILLIP S. ALTHOFF  
 14    Deputy County Counsel  
 15    Contra Costa County  
 16    P.O. Box 69  
 17    County Admin. Bldg.  
 18    Martinez, Ca. 94553

JACK JUDKINS  
 Deputy City Attorney  
 City of Richmond  
 P.O. Box 6045  
 2500 Barrett Avenue, Rm. 330  
 Richmond, Ca. 94804

19    Thomas H. Crawford  
 20    Asst. Counsel  
 21    Bay Area Air Quality Management District  
 22    939 Ellis Street  
 23    San Francisco, Ca. 94109

24    I declare under penalty of perjury that the foregoing is true and correct.  
 25    Executed on June 29, 1990, at Richmond, California.

26  
 27  
 28  
  
 PHILLIP S. ALTHOFF



1 PROOF OF SERVICE DOTSON v. BAY AREA AIR QUALITY MANAGEMENT DISTRICT, ET AL.

2 I am a resident of the United States and the County of Contra Costa.

3 I am over the age of eighteen (18) years and not a party to the action within.

4 My business address is 375 South Street, Richmond, California.

5 On the date set forth below, I served the within:

6  
7 PETITION FOR REVIEW

8  
9 by placing a true copy thereof enclosed in a sealed envelope in the United  
10 States Post Office, with postage prepaid in Richmond, California, addressed  
11 as follows:

12  
13 Phillip S. Althoff  
Deputy County Counsel  
14 Contra Costa County  
P.O. Box 69  
15 County Admin. Bldg.  
Martinez, Ca. 94553

Jack Judkins  
Deputy City Attorney  
City of Richmond  
P.O. Box 4045  
2300 Barrett Ave., Rm. 230  
Richmond, Ca. 94204

16  
17 Thomas H. Crawford  
Asst. Counsel  
18 Bay Area Air Quality Management District  
939 Ellis Street  
19 San Francisco, Ca. 94109

20  
21 I declare under penalty of perjury that the foregoing is true and  
22 correct.

23 Executed on January 17, 1991, at Richmond, California.

24  
25   
26 \_\_\_\_\_  
27  
28

NOTICE OF SALE OF TAX-DEFAULTED PROPERTY  
 CONTRA COSTA COUNTY TAX COLLECTOR'S OFFICE  
 ALFRED P. LOMELI, TREASURER-TAX COLLECTOR  
 January 7, 1991

PA-6

Ethel Dotson  
 396 South St.  
 Richmond, CA 94804

IMPORTANT NOTICE TO PARTIES OF INTEREST

Our records indicate you may have a legal interest in the property described below. This property will be offered for sale at PUBLIC AUCTION to the highest bidder, and for not less than the minimum price, at the place, date and time indicated. The proposed sale is for the purpose of satisfying unpaid taxes, penalties and costs.

You can prevent the proposed sale by redeeming the property. The amount currently required for redemption is shown below. YOUR RIGHT OF REDEMPTION WILL TERMINATE AT THE CLOSE OF BUSINESS ON THE LAST BUSINESS DAY PRIOR TO THE DATE THE SALE BEGINS.

DATE & TIME OF SALE: February 27, 1991; 10:00 a.m.  
 PLACE OF SALE: Room 107, 651 Pine St., Martinez, CA

DESCRIPTION: 513-162-004; 79-2072  
 396 South St., Richmond, CA  
 Assessee: Ethel Dotson  
 REDEMPTION AMOUNT: Jan.: \$ 7454.81; Feb. \$ 7506.56  
 MINIMUM PRICE: \$ 8,000.00

RIGHTS OF PARTIES OF INTEREST AFTER SALE

Should you not redeem this property and it is sold, you have the right to claim proceeds remaining after the tax and assessment liens and costs of the sale are satisfied. To claim the excess proceeds you must be a "party of interest" as defined by Section 4675 of the Revenue and Taxation Code.

Your claim for excess proceeds MUST be filed within ONE YEAR after the tax collector's deed to the purchaser is recorded.

The law protects parties of interest by requiring that any assignment to another person of the right to claim excess proceed can be made only by means of a dated, written document. This document must specifically state that the right to claim excess proceeds is being assigned and that each party to the transaction has informed the other of the value of the right being assigned.

If you have any questions concerning redemption, the proposed sale of the property, or your right to claim excess proceeds, call the person named below or the REDEMPTION DEPARTMENT between the hours of 8:00 a.m. and 5:00 p.m. weekdays.

ERIC MOE (415) 646-4122

APPROVED









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