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OVERSIGHT ON THE ADMINISTRATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT, 1978

DOCUMENTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

EXAMINATION ON THE ADMINISTRATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (PUBLIC LAW 91-596)

OCTOBER 3, 4, AND 5, 1978



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OVERSIGHT ON THE ADMINISTRATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT, 1978

TUESDAY, OCTOBER 3, 1978

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:47 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams and Javits.

OPENING STATEMENT OF SENATOR WILLIAMS

The CHAIRMAN. The committee will come to order please.

I would like to say at the outset the Occupational Safety and Health Act of 1970 is among the most important worker protection laws on our books. It represents a national commitment that our workers will enjoy the safest and healthiest workplaces possible.

When OSHA was enacted into law, it enjoyed broad support among legislators and the public. Since its enactment, however, our occupational safety and health program has been embroiled in controversy.

OSHA is now perceived by some as a meddling, mischievious intrusion by the Government into the affairs of our Nation's businesses. Others see OSHA as a paper tiger, unable to encourage employers to clean up their workplaces, and unable to effectively safeguard workers.

There are many suggestions as to where the "fault" for OSHA's current problems lie—the nitpicking and misdirected administration of the program—the complex and burdensome standards—the unions which use and abuse the OSHA program for advantages at the bargaining table—the recalcitrant employers who must be dragged kicking and screaming into the 20th century, and who are all too willing to trade the limbs and health of their employees for short-term gains on the balance sheet—and the statute itself, which assigns OSHA too broad and too complex a responsibility.

But, the intent of this hearing is not to assign fault or to determine at whom the finger of blame should be pointed.

Rather, it is to ascertain and understand the shortcomings of the OSHA program, and to eliminate them. Our goal is to assure the safety and health of our Nation's workers, and our purpose in these hearings is to determine just what must be done to attain this goal.

In our 3 days of hearings, we will hear from witnesses who are affected by the OSHA program—from the employers, from the work-

ers, and from the administrators of the program. We expect them to explain the problems currently confronting OSHA, and how they can be eliminated. We expect their recommendations not as to how the program can be weakened, but rather as to how the program can be made both more effective and efficient.

It is our great hope that we will come out of these hearings with concrete recommendations for resolving our workplace safety and health problems.

For we remain convinced that every American worker is entitled, as a matter of right, to the most safe, most healthful workplace that American technology can provide. And we remain convinced that this goal can and must be achieved without bureaucratic regulations which only hinder compliance and inflict exhorbitant costs on legitimate businesses.

And finally, we remain convinced, as we were in 1970, that the Federal Government must play an active role in assuring that the price consumers pay for goods and services does not include the limbs, the health, and the very lives of our Nation's workers.

[A copy of Public Law 91–596 follows:]

Public Law 91-596
91st Congress, S. 2193
December 29, 1970

An Act

84 STAT. 1590

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970".

Occupational Safety and Health Act of 1970.

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. (2) The Congress finds that personal injuries and illnesses arising out of work situations impcse a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" mean the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this Act.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1), has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested

and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this Act.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this Act.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this Act.

APPLICABILITY OF THIS ACT

SEC. 4. (a) This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no United States district courts having jurisdiction. 67 Stat. 462. 43 USC 1331 note.

(b)(1) Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. 73 Stat. 688.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts. 49 Stat. 2036. 79 Stat. 1034. 83 Stat. 96. 72 Stat. 835. 79 Stat. 845; Ante, p. 443.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws. Report to Congress.

(4) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

DUTIES

SEC. 5. (a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

80 Stat. 381; 81 Stat. 195. 5 USC 500.

SEC. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

Advisory committee, recommendations.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission. Publication in Federal Register.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing. Hearing, notice. Publication in Federal Register.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired. Toxic materials.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as Temporary variance order.

practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

Notice, hearing.

Renewal.

Time limitation.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

Labels, etc.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

Protective equipment, etc.

Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In

addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

Medical examinations.

80 Stat. 383.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

Publication in Federal Register.

(c)(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

Temporary standard. Publication in Federal Register. 80 Stat. 381; 81 Stat. 195. 5 USC 500.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

Time limitation.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6(b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they

Variance rule.

differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

Publication in Federal Register.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

Petition for judicial review.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

ADVISORY COMMITTEES; ADMINISTRATION

Establishment; membership.

SEC. 7. (a)(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of manangement, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

80 Stat. 378. 5 USC 101.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

Public transcript.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5, United States Code.

80 Stat. 416.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members

and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

80 Stat. 416.

Recordkeeping.

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

Ante, p. 198-1.

80 Stat. 499; 83 Stat. 190.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 8. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

Subpoena power.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Recordkeeping.

(c)(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

Work-related deaths, etc.; reports.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f)(1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g)(1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section. Reports, publication.

(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment. Rules and regulations.

CITATIONS

SEC. 9. (a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(b) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.

Limitation.

(c) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

PROCEDURE FOR ENFORCEMENT

SEC. 10. (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days

of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection. 80 Stat. 384.

JUDICIAL REVIEW

SEC. 11. (a) Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evi- 72 Stat. 941; 80 Stat. 1323.

dence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, 62 Stat. 928. United States Code. Petitions filed under this subsection shall be heard expeditiously.

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Establishment; membership.

SEC. 12. (a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason

of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.

Terms.

(b) The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

80 Stat. 460.

(c)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(57) Chairman, Occupational Safety and Health Review Commission."

Ante, p. 776.

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(94) Members, Occupational Safety and Health Review Commission."

Location.

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(e) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.

5 USC 5101, 5331.

Ante, p. 198-1.

Quorum.

(f) For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

Public records.

(g) Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

28 USC app.

(h) The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

61 Stat. 150; Ante, p. 930.

(i) For the purpose of any proceeding before the Commission, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Commission.

Report.

(j) A hearing examiner appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the hearing examiner shall become the final order of the Commission within thirty days after such report by the hearing examiner, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Except as otherwise provided in this Act, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code. Each hearing examiner shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code.

80 Stat. 453.

Ante, p. 198-1.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

SEC. 13. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

28 USC app.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

REPRESENTATION IN CIVIL LITIGATION

SEC. 14. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General. 80 Stat. 613.

CONFIDENTIALITY OF TRADE SECRETS

SEC. 15. All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. 62 Stat. 791.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

SEC. 16. The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

PENALTIES

SEC. 17. (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than $10,000 for each violation.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to $1,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to $1,000 for each such violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than $1,000 for each day during which such failure or violation continues.

(e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

65 Stat. 721; 79 Stat. 234.

(h)(1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

62 Stat. 756.

(2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to $1,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

STATE JURISDICTION AND STATE PLANS

SEC. 18. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing. Notice of hearing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 8, 9, 10, 13, and 17 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the

State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.

Continuing evaluation.

(f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

Plan rejection, review.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

72 Stat. 941; 80 Stat. 1323.

62 Stat. 928.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

SEC. 19. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof)—

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action; Recordkeeping.

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5, United States Code. Annual report. 80 Stat. 530.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his evaluations of and recommendations derived from such reports. The President shall transmit annually to the Senate and the House of Representatives a report of the activities of Federal agencies under this section. Report to President. Report to Congress.

(c) Section 7902(c)(1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a)(3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy. Records, etc.; availability.

RESEARCH AND RELATED ACTIVITIES

SEC. 20. (a)(1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.

(3) The Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that

which is otherwise provided for in the operating provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

Toxic substances, records.

(5) The Secretary of Health, Education, and Welfare, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health, Education, and Welfare reasonably believes may endanger the health or safety of employees. The Secretary of Health, Education, and Welfare also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health, Education, and Welfare shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expense incurred by him in carrying out the measuring and recording as provided in this subsection.

Medical examinations.

Toxic substances, publication.

(6) The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary, together with all pertinent criteria.

Annual studies.

(7) Within two years of enactment of this Act, and annually thereafter the Secretary of Health, Education, and Welfare shall conduct and publish industrywide studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults.

Inspections.

(b) The Secretary of Health, Education, and Welfare is authorized to make inspections and question employers and employees as provided in section 8 of this Act in order to carry out his functions and responsibilities under this section.

Contract authority.

(c) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities

under this subsection, the Secretary shall cooperate with the Secretary of Health, Education, and Welfare in order to avoid any duplication of efforts under this section.

(d) Information obtained by the Secretary and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

(e) The functions of the Secretary of Health, Education, and Welfare under this Act shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 22 of this Act. Delegation of functions.

TRAINING AND EMPLOYEE EDUCATION

SEC. 21. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

SEC. 22. (a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health, Education, and Welfare in order to carry out the policy set forth in section 2 of this Act and to perform the functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act. Establishment.

(b) There is hereby established in the Department of Health, Education, and Welfare a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health, Education, and Welfare, and who shall serve for a term of six years unless previously removed by the Secretary of Health, Education, and Welfare. Director, appointment, term.

(c) The Institute is authorized to—

(1) develop and establish recommended occupational safety and health standards; and

(2) perform all functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

(d) Upon his own initiative, or upon the request of the Secretary or the Secretary of Health, Education, and Welfare, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after

consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health, Education, and Welfare.

(e) In addition to any authority vested in the Institute by other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to—

(1) prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

80 Stat. 416.

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

83 Stat. 190.

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;

(8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(9) make other necessary expenditures.

Annual report to HEW, President, and Congress.

(f) The Director shall submit to the Secretary of Health, Education, and Welfare, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as he deems appropriate.

GRANTS TO THE STATES

SEC. 23. (a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them—

(1) in identifying their needs and responsibilities in the area of occupational safety and health,

(2) in developing State plans under section 18, or

(3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate. Report to President and Congress.

STATISTICS

SEC. 24. (a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

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(b) To carry out his duties under subsection (a) of this section, the Secretary may—

(1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

(2) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

Reports.

(e) On the basis of the records made and kept pursuant to section 8(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

AUDITS

SEC. 25. (a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health, Education, and Welfare shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary or the Secretary of Health, Education, and Welfare, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

ANNUAL REPORT

SEC. 26. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress toward achievement of the purpose of this Act, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this Act, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards, and a summary

of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this Act during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this Act.

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

SEC. 27. (a) (1) The Congress hereby finds and declares that—

(A) the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation; and

(B) in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

(2) The purpose of this section is to authorize an effective study and objective evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment.

(b) There is hereby established a National Commission on State Workmen's Compensation Laws. Establishment.

(c) (1) The Workmen's Compensation Commission shall be composed of fifteen members to be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial medicine or in workmen's compensation cases, educators having special expertise in the field of workmen's compensation, and representatives of the general public. The Secretary, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare shall be ex officio members of the Workmen's Compensation Commission: Membership.

(2) Any vacancy in the Workmen's Compensation Commission shall not affect its powers.

(3) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Workmen's Compensation Commission.

Quorum.

(4) Eight members of the Workmen's Compensation Commission shall constitute a quorum.

Study.

(d)(1) The Workmen's Compensation Commission shall undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation. Such study and evaluation shall include, without being limited to, the following subjects: (A) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon, (B) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician, (C) the extent of coverage of workers, including exemptions based on numbers or type of employment, (D) standards for determining which injuries or diseases should be deemed compensable, (E) rehabilitation, (F) coverage under second or subsequent injury funds, (G) time limits on filing claims, (H) waiting periods, (I) compulsory or elective coverage, (J) administration, (K) legal expenses, (L) the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws, (M) the resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects, (N) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist, (O) the relationship between workmen's compensation on the one hand, and old-age, disability, and survivors insurance and other types of insurance, public or private, on the other hand, (P) methods of implementing the recommendations of the Commission.

Report to President and Congress.

(2) The Workmen's Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

Hearings.

(e)(1) The Workmen's Compensation Commission or, on the authorization of the Workmen's Compensation Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, take such testimony, and sit and act at such times and places as the Workmen's Compensation Commission deems advisable. Any member authorized by the Workmen's Compensation Commission may administer oaths or affirmations to witnesses appearing before the Workmen's Compensation Commission or any subcommittee or members thereof.

(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Workmen's Compensation Commission, upon request made by the Chairman or Vice Chairman, such information as the Workmen's Compensation Commission deems necessary to carry out its functions under this section.

(f) Subject to such rules and regulations as may be adopted by the Workmen's Compensation Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule

80 Stat. 378.
5 USC 101.

5 USC 5101, 5331.

pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

Ante, p. 198-1.

80 Stat. 416.

(g) The Workmen's Compensation Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

Contract authorization.

(h) Members of the Workmen's Compensation Commission shall receive compensation for each day they are engaged in the performance of their duties as members of the Workmen's Compensation Commission at the daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Workmen's Compensation Commission.

Compensation; travel expenses.

(i) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Appropriation.

(j) On the ninetieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.

Termination.

ECONOMIC ASSISTANCE TO SMALL BUSINESSES

SEC. 28. (a) Section 7(b) of the Small Business Act, as amended, is amended—

72 Stat. 387; 83 Stat. 802.

(1) by striking out the period at the end of "paragraph (5)" and inserting in lieu thereof "; and"; and

15 USC 636.

(2) by adding after paragraph (5) a new paragraph as follows:

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in the equipment, facilities, or methods of operation of such business in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act of 1970, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of he Small Business Act, as amended, is amended by striking out "or (5)" after "paragraph (3)" and inserting a comma followed by "(5) or (6)".

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b)(6)," after "7(b)(5),".

80 Stat. 132. 15 USC 633.

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

79 Stat. 556. 42 USC 3142.

ADDITIONAL ASSISTANT SECRETARY OF LABOR

SEC. 29. (a) Section 2 of the Act of April 17, 1946 (60 Stat. 91) as amended (29 U.S.C. 553) is amended by—

75 Stat. 338.

(1) striking out "four" in the first sentence of such section and inserting in lieu thereof "five"; and

(2) adding at the end thereof the following new sentence, "One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health.".

80 Stat. 462. (b) Paragraph (20) of section 5315 of title 5, United States Code, is amended by striking out "(4)" and inserting in lieu thereof "(5)".

ADDITIONAL POSITIONS

SEC. 30. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (8);

(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (9) the following new paragraph:

"(10)(A) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS–16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970;

"(B) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS–16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970."

EMERGENCY LOCATOR BEACONS

72 Stat. 775. 49 USC 1421. SEC. 31. Section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

"EMERGENCY LOCATOR BEACONS

"(d)(1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator beacons shall be installed—

"(A) on any fixed-wing, powered aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

"(B) on any fixed-wing, powered aircraft used in air commerce after three years following such date.

"(2) The provisions of this subsection shall not apply to jet-powered aircraft; aircraft used in air transportation (other than air taxis and charter aircraft); military aircraft; aircraft used solely for training purposes not involving flights more than twenty miles from its base; and aircraft used for the aerial application of chemicals."

SEPARABILITY

SEC. 32. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

APPROPRIATIONS

SEC. 33. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

SEC. 34. This Act shall take effect one hundred and twenty days after the date of its enactment.

Approved December 29, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1291 accompanying H.R. 16785 (Comm. on Education and Labor) and No. 91-1765 (Comm. of Conference).
SENATE REPORT No. 91-1282 (Comm. on Labor and Public Welfare).
CONGRESSIONAL RECORD, Vol. 116 (1970):
Oct. 13, Nov. 16, 17, considered and passed Senate.
Nov. 23, 24, considered and passed House, amended, in lieu of H.R. 16785.
Dec. 16, Senate agreed to conference report.
Dec. 17, House agreed to conference report.

The CHAIRMAN. We have been talking about the need for these hearings, Mr. Secretary, and the time is now.

We are very pleased it could happen right now as we wind up the weeks of our session here. Everybody looks forward to the content of this hearing.

Senator Javits?

Senator JAVITS. Mr. Chairman, first, I associate myself with everything the chairman has said.

Second, let us realize that OSHA is under very concentrated attack, and the attack is heavily concentrated in small business. This was evidenced by the difficulties we experienced on the floor with the labor law reform bill. Big business has become convinced that the way it can have leverage in the Congress is through small business. And, now this has become the theory on every issue and a very key one. Big business attempts to get millions of small businesses into thinking that they are about to be put out of business by labor law reforms or by OSHA, and tomorrow it will be something else. Workers' compensation or pension reform perhaps. It could be anything at all.

This is a real threat, not just to organized workers, but to the millions upon millions of workers in the United States.

Now I do not think that anybody is being malicious or conspiratorial about it, but it has been found to be a very good technique, and it is going to be employed more and more.

Now the light of truth is what is needed, Mr. Secretary, and the wisdom of strong and sound administration. I am not trying to get the last $2 from anybody. You cannot do it. It just causes fixation and difficulty.

Now Mrs. Bingham has realized that. She has done a great job in that regard. But what you can do with this program could easily determine whether it is going to be further emasculated. It is already being very seriously emasculated. Everything my chairman says about the lives and limbs of workers is entirely valid.

One last point. We are in trouble in this country partially for lack of productivity. And partially also because we are devoting great capital resources to antipollution and OSHA.

We have got to make a national decision that it is worth it. But we should not have to make that national decision if there is a lot of waste and a lot of excess regulation. Again, I speak of the last $2. We have to hit the main points. We cannot be vexatious.

Those are my views, Mr. Secretary, as ranking member of this committee. The erosion of what has happened in OSHA is one of the most serious things, in my judgment, that I have seen. It is damaging the future and rights of workers, and business has got a legitimate gripe considering from where we started. But like every gripe, it should not be used to dismantle the program, which is the inevitable swing of the pendulum. Once you get going, they cannot stop it themselves, and the extremists take over.

That is our problem, Mr. Secretary, and the problem of the Nation and its 90 million workers.

Thank you, Mr. Chairman.

The CHAIRMAN. I certainly associate myself with that, Senator Javits.

We are fortunate, indeed, that in this period of crisis for OSHA that Secretary Marshall is where he is and Dr. Bingham is in her position.

We look forward now to hearing from you, Mr. Secretary and Dr. Bingham.

STATEMENT OF HON. F. RAY MARSHALL, SECRETARY, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY DR. EULA BINGHAM, ASSISTANT SECRETARY OSHA

Secretary MARSHALL. Thank you, Mr. Chairman and Senator Javits.

We appreciate the opportunity to appear today. As you have pointed out, in 1970, this Nation faced a spreading epidemic of occupational injuries and disease.

More than 14,000 American workers were being killed on the job every year. Over 2 million suffered a disabling condition each year. Untold millions more were slowly, day-by-day, being sentenced to an early grave.

The Congress took action. Under your leadership, a landmark piece of protective legislation, the Occupational Safety and Health Act, was developed and passed by overwhelming majorities in both Houses of Congress.

Mr. Chairman, you best described the significance of this law when you pointed out that:

> [T]he Occupational Safety and Health Act of 1970 represented the promise by the Government to millions upon millions of American working men and women, a promise that the greatest industrial Nation in the history of the world would assure a safe and healthful working environment.

President Carter noted shortly after taking office that:

> [O]f all the beneficial legislation that has been passed by the Congress in recent years, the one that has the best prospect of improving the lives of American workers has been the OSHA program.

The passage of the act brought a ray of hope into thousands of hazardous factories and mills. The act indeed offered a promise—a promise of safe and healthful working conditions to millions of Americans.

Sadly, during OSHA's initial 6 years, this promise was unfulfilled. The hopes of millions of workers were dashed as they watched past administrations fail to fully implement the mandate of this historic legislation.

OSHA, in its short history, managed to alienate both industry and labor, failed to gain the respect of the medical and scientific communities, and was constantly under attack by Congress.

Mr. Chairman, it is sad to think that after so many people had fought so hard for passage of the act the real fight would be to save the program from its initial years. As Vice President Mondale pointed out recently:

> [T]he tragedy is that after the legislation was finally passed, Congress had to fight another 6 years to keep OSHA from being sabotaged. It is hard to believe that systematic effort was not made by the previous administration to undermine support for occupational safety and health.

In the early days OSHA was criticized by the business community for enforcing trivial safety standards that had little to do with protecting workers. Labor criticized the agency for not focusing its re-

sources on the really serious hazards facing working men and women. Unfortunately, they were both justified in their criticism.

Frequent changes of leadership and several internal reorganizations had left personnel and policies in a constant state of turmoil.

In the area of standards, it was decided that in order to get rolling as soon as possible, OSHA should adopt more than 5,000 safety standards. Most of these were so-called consensus standards which had been compiled years earlier by independent business groups as voluntary standards. We soon discovered that many of them were trivial and unrelated to actual workplace hazards.

In the first 6 years, OSHA adopted only four major occupational health standards. The agency was unconscionably slow in issuing vital health standards needed to protect workers from carcinogens and substances causing irreversible disease. It has been pointed out that political considerations intruded into the administration of the act with the result that the standard-setting process had been deliberately slowed. Insufficient emphasis was placed on worker and employer training and education. Small business employers were particularly bewildered in trying to understand their obligations under the act. OSHA safety and health inspectors wrote up everything from coathooks to split toilet seats. The press had a field day and OSHA's critics ran rings around the agency.

In fact, when the Carter administration took office, the flame of hope that the passage of the act had kindled was almost out. The promise of the act was unfulfilled.

Mr. Chairman, I am thankful that I can report to you today that we have taken great strides in fulfilling that promise—in rekindling that hope.

I welcome these oversight hearings on the Occupational Safety and Health Act. These hearings will provide a comprehensive look at the act and at our record over the last 18 months.

Mr. Chairman, we have found that, in spite of problems in the past, it is clear that if implemented effectively and equitably the act can protect the work force of the Nation.

What OSHA needed was a healthy dose of good commonsense—and that is exactly what Eula Bingham has brought to her task. Some people say that commonsense is as rare as genius, but I've always said that commonsense is really just genius dressed up in its workclothes. And I believe that it's the commonsense approach of this administration that has turned OSHA from an ineffective whipping boy into a model for regulatory reform.

Beginning in the spring of 1977, Dr. Bingham and I completely redirected OSHA's approach to protecting the American workforce. We ordered that 95 percent of OSHA discretionary inspections were to be focused on the high-hazard industries. There was no justification for squandering precious compliance resources on workplace situations that presented little danger to workers when there were thousands of American worksites with deadly threats to their employees. As a result of this redirection, the percentage of serious, willful and repeated violations discovered by OSHA inspectors has climbed from 3 percent of all violations cited in 1976 to 27 percent in the first 9 months of this fiscal year.

In addition, as you know, the act requires OSHA to respond to valid employee complaints of workplace dangers. Accordingly, OSHA policy now provides that any complaint which may constitute an imminent danger, whether received from an employee or any other source, is to be inspected within 24 hours, while complaints about conditions that may represent serious hazards to workers are to be investigated within 3 working days of receipt of the complaint. As a result of OSHA's increased attention to worker complaints, worker awareness of their right to request an inspection has been heightened with the result that employee complaints are becoming the basis of an increased portion of total OSHA inspections.

OSHA has taken several steps to insure that the agency's field offices implement priorities in a consistent and thoroughly professional manner. Training for inspectors has been increased, with a three-phase program of classroom instruction and on-the-job training now a requirement for all new compliance officers. Additional courses have been added to OSHA training institute.

For example, all compliance officers now receive instruction on the interpersonal aspects of a workplace visit. This course is designed to eliminate much of the unnecessary antagonism between employers and inspectors that characterized OSHA's early years. As a result, OSHA has begun to receive letters praising our compliance officers. One recent communication described an inspector in Florida as "very cooperative, courteous, and knowledgeable." Another noted that "everyone involved with our company was most impressed with the professionalism of the manner in which this inspection was conducted." These comments are most gratifying to me.

Under Dr. Bingham, OSHA has moved to insure that worker rights guaranteed in the act are fully realized in the workplace, including those rights embodied in section 11(c) which protect workers from discrimination for exercising other rights under the act. Implementing this provision presents a true challenge since the workload of these cases has also increased as more workers learn to exercise their rights.

OSHA is now enforcing section 11(c) to insure that workers who accompany compliance officers on inspections are paid for their time. Also, OSHA's field staff has been instructed to actively encourage worker participation in all conferences between OSHA and employers before and after a workplace inspection. Employee representatives are to be provided with copies of all citations, proposed monetary penalties, and data gathered in the sampling of workplace substances.

In order that workers have all available information regarding hazards in their workplace, OSHA has taken several actions to increase access to data. Regulations have been issued to guarantee employees, former employees, and employee representatives regular access to the employer's log of job-related injuries and illness.

Previous OSHA regulations had provided workers access only to the annual statistical summary of workplace mishaps; the logs had been continuously available only to Federal and State officials.

In addition, OSHA has proposed rules requiring employers to preserve employee medical records and to provide employees access to their own medical records as well as to records of worker exposure to toxic materials. This is designed to increase employee awareness of workplace risks and the need for protective work practices. Until a

final regulation is issued, OSHA is requiring that employee medical records and records of toxic exposures not be destroyed or tampered with.

In the last 18 months, the number of final health standards issued by OSHA has more than doubled with the issuance of standards covering benzene, DBCP, inorganic arsenic, cotton dust, and acrylonitrile. A standard covering lead will be issued shortly.

OSHA has also begun to aggressively use the authority to promulgate emergency temporary standards, which is provided in section 6(c)(1) of the act. Three such standards have been issued under this administration and we will continue to use this provision when necessary.

In addition to the health standards dealing with specific substances, OSHA has proposed a regulation to identify, classify, and regulate workplace carcinogens. This is a far-reaching proposal that will have a significant effect upon our approach to regulating cancer-causing chemicals. It is designed to establish new procedures and a regulatory framework for limiting exposures to potential occupational carcinogens. The agency has conducted extensive hearings on this issue and is reviewing public comment.

It is impossible to underestimate the importance of protecting workers from hazards to their health. An estimated 100,000 American workers die annually from occupational disease, and annual figures larger than the total number of Americans killed in the Korean conflict and Vietnam war. And this figure is regarded by many experts as extremely conservative. As HEW recently reported, at least 20 percent and perhaps as much as 38 percent of all cancers have been or will be caused by exposure to workplace carcinogens.

OSHA's experience with health regulation has proven that it is possible to protect workers without causing undue economic hardship for the affected industry. In 1975, for example, the agency issued a standard for vinyl chloride, significantly reducing permissible exposure limits. Industry predictions warned of great economic harm and an inability to meet the technical requirements of the regulation. In fact, the industry has thrived. Vinyl chloride production rose to new heights in 1976. New plants have been opened. OSHA has inspected 500 of these workplaces and found 93 percent of them in compliance. An estimated 25,000 workers have been removed from this risk of cancer as a result of this regulation.

Mr. Chairman, I don't have to explain what that means in human terms, as well as in terms of hospital and medical costs and productivity that would have been lost to our economy were that standard not in effect.

In the area of safety standards, our most significant effort is to achieve the elimination of those former consensus standards that have little or no effect upon worker protection. Although OSHA has not been enforcing any of these provisions since they were proposed for revocation, some have expressed doubt concerning the Agency's commitment to the deletion project. Let me take this opportunity to assure you that we plan to sign the final rule eliminating over 900 of these regulations in the immediate future.

Another effort to streamline and simplify OSHA regulations is the "verticalization" project, the first phase of which, I can announce,

has been completed. This project will consolidate into a single package OSHA's construction standards and those elements of the general industry regulations applicable to the construction industry. Both industry and workers in this sector have requested this change for many years.

Over the next 18 months, OSHA will also revise and streamline its entire body of general industry standards beginning with the subparts that deal with fire protection, walking-working surfaces, and electrical requirements. These consensus standards have been a source of great controversy and have contributed to the negative image of OSHA in the past.

One of the most frequent past complaints about OSHA has been the lack of information and assistance to small business employers. Many conscientious employers did not fully understand their responsibilities under the law and were not aware of the hazards present in their workplaces. Under Dr. Bingham's leadership, there has been a widespread effort to disseminate information about OSHA. A number of small business organizations have cooperated in this effort. They have assisted in distributing the standards revision proposal to small business employers.

A regular news feature discussing various facets of OSHA's program is being prepared and distributed to union publications and to employer associations upon request. More than 2 million copies of a well-received publication, "OSHA Handbook for Small Businesses," have now been distributed. This booklet informs employers about possible workplace hazards and lists other sources of assistance.

Another aid to small business has been the expansion of onsite consultation. Federal matching funds to the States for onsite consultation have been increased from 59 to 90 percent of the cost of the program. Presently, consultation is available in almost every State, whether through a State program or from private consultative sources under contract with OSHA. Consultants advise employers on recognizing and eliminating workplace hazards, at no cost to employers, upon their request. Preference is given to small business employers in high-hazard industries. This service has been requested by the small business sector for many years and is becoming increasingly popular with employers.

The program has been designed to give maximum assistance to employers, and OSHA has been careful to require that consultation and enforcement activities are kept separate. At the same time, the program avoids reducing worker protection, since imminent dangers and serious hazards to workers must be abated or enforcement actions will result. We believe that the State/private-sector mix of consultants is the best approach to providing this service.

There is a critical need for training and education in the area of occupational safety and health. Unfortunately, in the past, OSHA had devoted an inadequate portion of its budget to this effort. We have increased training and educational resources and are implementing a grant program to fund trade associations, unions and educational facilities interested in providing job safety and health instruction. Forty such grants are being awarded this week.

By building the competency of these institutions, OSHA can more effectively insure that workers and employers have the necessary skills and knowledge to improve the work environment.

We have also taken a number of actions to reduce OSHA paperwork. These include exempting employers with 10 or fewer workers from virtually all basic OSHA recordkeeping requirements; combining certain recordkeeping forms and minimizing the amount of data required; and also reducing the sample size of the annual Bureau of Labor Statistics' occupational injury and illness survey, by 40,000 this year alone, thus requiring fewer businesses to respond to this survey.

Finally, Mr. Chairman, OSHA has built an organization that can efficiently carry out the provisions of the act. In order to insure that inspection policy is consistent throughout the Nation, an individual with extensive field experience has been selected for the post of Field Coordinator. A long-needed capability to provide technical assistance to OSHA compliance personnel and to employers has been established through a directorate of technical support.

Safety and health standards-setting is accomplished by separate offices, staffed by professionals in their fields. OSHA's educational, consultative, and informational functions have all been expanded to insure that both workers and employers can recognize and eliminate hazards in their workplaces. The 23 States with their own safety and health programs are being closely monitored to insure that they effectively protect workers in their jurisdiction. And OSHA's role in advising and monitoring safety and health programs in the Federal sector has been enhanced: I am preparing to recommend further improvements in this area to the President.

Mr. Chairman, I realize that OSHA's past performance has, at times, dismayed those of you who have labored so long to protect our working men and women. But under Dr. Bingham's leadership, we have made great strides in turning this agency around. And even in the agency's darkest hours, the guiding light of the act continued to point the way toward safer and healthier workplaces.

From 1972 to 1976—the only years for which figures are available—occupational injury and illness incidence rates decreased almost 16 percent. There were even larger decreases for certain highly hazardous industries such as contract construction, where the injury/illness rate fell 20 percent. Worker fatalities in this period also fell nearly 20 percent.

But perhaps even more significant than these statistics is the heightened concern for workplace safety and health that has been promoted as a result of this path-breaking legislation. This concern is reflected in the number of collective bargaining agreements with safety and health provisions, the formation of labor management safety and health committees, and the increase in safety and health expertise employed by industry and labor.

Mr. Chairman, let me once again state that we welcome oversight hearings by this subcommittee. For as you know, despite our efforts to improve the administration of this Act, to improve worker protection while eliminating unreasonable burdens for employers, and to make OSHA a model for regulatory reform—and despite the constant encouragement and support which we have received from you and the other members of this subcommittee—we have once again this year faced a strong attack on the very heart of the act itself. These attacks are based not on the facts, but rather on continued misperception of those facts.

The recent Senate action to delay OSHA enforcement of the cotton dust standard is a good example. This is a serious blow to hundreds of thousands of American workers who have waited years for OSHA to protect them from crippling respiratory disease. Although the standard was not issued until consideration was given to over 100,000 pages of detailed medical, scientific, and public testimony, and full discussion of the facts with all interested parties, the Senate voted to delay its enforcement.

It is conservatively estimated that this standard, when enforced, will save more than 5,000 workers a year from the tragedy of irreversible disease, so that they need not join the 40,000 workers already chronically disabled by brown lung. I sincerely hope that the conferees on the Labor/HEW appropriations measure will prevent this ill-considered action from becoming the law of the land, and that these hearings will provide the opportunity to air all concerns about OSHA, and eliminate what misperceptions may remain.

I have no illusions that it will be easy to adequately protect every American worker. But the American people are on the side of worker protection; virtually every public opinion poll shows this. Our job is to demonstrate through OSHA's performance, that we are worthy of the great responsibility which you and the American people have placed upon us.

Thank you, Mr. Chairman. I will be glad to answer your questions.

The CHAIRMAN. Thank you very much, Mr. Secretary.

Again, we are glad Dr. Bingham is with you at your side here.

I know that you followed the debates on OSHA that we have had annually. They have been coming up regularly, like clockwork, on the appropriations bills. It impresses those of us who were part of the enactment of this legislation, that so much of that debate is centered on the maladministration of OSHA as we knew it was.

We know great strides have been made.

Somehow the improvements that have been made already, that you addressed yourself to in this testimony this morning, have not yet become apparent to many members. That seems to be so as we listen to the debate over there and have to resist it. You know what has happened here. Even twice last week we had to go back behind our own goalline and accept a tackle to lose two points in order to save the possibility of the opponents scoring with a big one.

You saw it both with respect to the cotton dust standard and on the Dole amendment. How does this impress you as you read this?

It must be the most frustrating feeling to read the record, and know it is the old record being played again.

Is that the way it impresses you?

Secretary MARSHALL. Yes; it is frustrating for a variety of reasons. We are trying to understand why those forces and their criticisms persist. I think part of the problem is a lack of understanding about OSHA's present performance as compared to the agency's past record. It is also frustrating when you consider the fact that our approach is to develop the best possible relationship with private industry. This cooperative relationship is based on the assumption that most employers want to have a safe and healthful workplace and that they will cooperate with us in achieving this goal. We do not believe that

labor standards, particularly occupational safety and health standards, should be used to give some employers an unfair economic advantage. We believe that most employers share that conviction with us. We ask that employers help us write the standards, enforce the law, and give their support to a program which is beneficial to them. We also have taken a number of measures to meet the concerns of small businessmen. We understand their frustrations. We have talked extensively with small business people, both as representatives of associations and individually, to try to understand their special needs.

We believe many of these needs are legitimate. We have tried to be responsive to them by removing most of the paperwork which they complained about, and by trying to give technical assistance to them. We recognize that many small businesses do not have the expertise on their staff to keep an employer fully aware of potential safety and health hazards.

But we also recognize that some of the most hazardous workplaces in the country are small businesses. Therefore, we have an obligation to do everything we can to prevent danger to workers in those places.

I believe some of the opposition to OSHA is partly an effort by a small segment of the business community to use our past record, as well as sympathy for small businesses, to undermine the OSHA program. I feel that this opposition would exist even if OSHA were completely free from administrative or other problems, which it is not.

I think we have made great strides forward, but we still have a long way to go. There are some people who profit by delaying our regulations and preventing us from effectively carrying out the purposes of the act. I believe, as you have emphasized in your statements, that the country has a great deal to lose, both in economic terms as well as in human terms, from not effectively implementing this law.

For example, it costs a great deal to cure people of cancer, when it can be done at all. The best and most effective way to deal with that problem, is to prevent workers from ever contracting cancer.

We acknowledge that it costs money to implement safety and health measures. But we believe, as you do, that those are legitimate costs of doing business and always should have been. Our early estimates of the effects on productivity and costs of a given standard were exaggerated because they did not include this legitimate cost of doing business. Therefore, we tended to exaggerate the extent to which productivity has declined as a result of the action we have taken to try to protect the workers. We need to give more attention to our efforts for estimating compliance costs.

Thus implementing safety and health measures is a frustrating process, but our view about it is that we welcome the chance to defend our actions. We are ready to make our case, to admit our mistakes and errors, to learn as much as we can from the process of discussion and debate, and to further improve our program.

The CHAIRMAN. Now let us deal with one area where Congress has taken action that limits the enforcement.

I am thinking about the prohibition on first instance penalties, for first instance violation, which are other than of a serious, willful, or a repeated nature. We know the arguments, the employer's arguments.

They feel that the first instance penalty only fosters antagonism between OSHA and employers, and there are others on the other side that says the first instance is necessary to get compliance.

I guess you have been without funds to assess and collect first instance penalties for 2 years, so you have had some experience under that limitation. Is there a record to indicate what the results have been, and whether this has encouraged, or discouraged, compliance with the act by employers?

Secretary MARSHALL. Let me ask Dr. Bingham who had information at her fingertips to answer that.

Dr. BINGHAM. The whole philosophy of penalties is very complex. I would like to point out this act is now 8 years old and it would seem to me that in those 8 years employers would have made an attempt to investigate potential hazards at their worksite and correct those hazards. Thus, I cannot see a very compelling argument to do away with first instance sanctions at this point in history. Perhaps it was a compelling argument during the initial years of the act, but by now employers surely should understand what is required of them.

In order to encourage employers to voluntarily comply with the act, it is imperative that OSHA have a penalty structure. One argument against our issuing penalties is that the small size of a business may make this practice undesirable. However, the act already provides that size be taken into consideration in assessing penalties. I would also like to point out that the term "nonserious violations," is often misleading since a failure to educate workers about a hazardous operation is considered nonserious. It would be a mistake if we were not allowed to propose penalties in these instances, since employers should receive as much encouragement as possible to instruct his or her employees about the nature of a hazardous operation. Thus it is very useful to the agency to have the discretion to levy first-instance penalties.

Senator JAVITS. You do not want it mandatory. You want discretion?

Dr. BINGHAM. Yes, sir. We do use commonsense in assessing penalties, within the current statutory provisions. We use the guidance Congress gave us in the act. Section 17(j) spells out criteria for proposing penalties—namely, size of business, gravity of the hazard, good faith of the employer, and history of previous violations. I believe that these criteria provide for the flexible, yet equitable, enforcement envisioned by Congress.

Senator JAVITS. It is a fact that in the Small Business Act the provision was, that if the small businessmen carried out the recommendation of a consultant, that then he should be free of the first instance penalty—excuse me— that is Dole, that is not the Bartlett amendment—what about that one? Does that do any good?

Dr. BINGHAM. Even with the amendments there are no guarantees that the employer will actually make an honest effort to correct hazardous situations—even if he has received adequate advice from a competent consultant. Thus I still think that discretion would be a better option. We do reduce penalties if an employer has shown good faith. For example, if we go into a factory and we see that the employer has developed a plan to correct a hazardous situation, we will consider that factor in assessing a penalty.

Senator JAVITS. If these two amendments were repealed, that is, Bartlett and Dole, would the law as then in effect give you discretion?

Dr. BINGHAM. Yes, sir.

Senator JAVITS. The main question I have, Dr. Bingham and Secretary Marshall, relates to workers' compensation. Senator Williams and I are authors of the bill to establish Federal minimum standards which will, at least, give some minimal concrete base to workers' compensation among the States. We have no desire to do anything about the State system, but we do feel that Federal standards in respect to compensation for business among the State, which is very keen, is very esential.

If we do that, will a higher workers' compensation benefit standard tend to have an effect upon safety in OSHA?

Dr. BINGHAM. In some cases, workers' compensation would be an incentive in the safety area for the employer if he or she can draw a direct relationship between higher costs and accidents. There is some debate of course as to whether compensation truly is an effective incentive. In the occupational disease area, there are some States, as you well know, that have almost no workers' compensation and do not recognize job-related diseases as compensable. If workers' compensation programs recognized occupational diseases as they do work-related injuries, it would help public awareness of the need for improved safety and health protection.

Senator JAVITS. Secretary Marshall, if you would be kind enough to answer that, and also, could you tell us when you expect to give us the departmental report on our workers' compensation bill?

Secretary MARSHALL. Let me answer the first part by saying that I think the coordination of workers' compensation programs and minimum standards with occupational safety and health programs can be a very effective way to achieve safe and healthful workplaces. I do not believe they are a suitable substitute for our regulatory activities, but they can be complementary, and as such, could strengthen the Occupational Safety and Health Act. They can help by promoting the incentive structure that Dr. Bingham mentioned. By providing these incentives, we can achieve a safer and more healthful workplace. The workers' compensation program is likely to be most effective with respect to accidents and less effective with respect to health hazards. One of the reasons for that is that the relationships between the environment and accidents are well documented. These casual patterns are much more easily measured and the time dimension is much shorter. The problem with many of the health hazards is that the incidences frequently manifest themselves only after a long latency period. We, therefore have great difficulty in establishing causation for any kind of insurance program. That means, of course, if we were to modify workers' compensation programs to create an incentive system, we would reduce the safety burden on OSHA so that we could devote a much larger proportion of our resources to the health area which is the area we are emphasizing anyway. We think that we need to pay much more attention to health than has been the case in the past.

I will ask Mr. Elisburg exactly when our report on your bill will be available.

Senator JAVITS. I think that will be very useful inasmuch as our bill bears on the second element of your testimony. For the first time, we do reduce the requirement to deal with industrial diseases.

Secretary MARSHALL. I know that.

Senator JAVITS. It carries both elements. I would appreciate it very much and hope Senator Williams would too, if we could expedite

that for this reason. The new Congress comes very quickly, and I hope very much that we will really make a major drive in the new Congress for the workers' compensation bill as one of the great reforms that is entirely possible. I think that probably the opposition of business to OSHA has left it wide open for some effort to upgrade, which is all we are trying to do, the State Workers' Compensation Act. They cannot have it both ways. That would really be outrageous.

Secretary MARSHALL. Yes.

Senator JAVITS. I think, therefore, if business is unwilling to do what you wish them to do, the least they can do in return is to insure against their own hazards. If their hazards are greater, no doubt, they want you to take more chances. Well, at least, they ought to insure against it.

I think that a workers' compensation bill becomes a very critical effort in this strategy.

One last question, Dr. Bingham. Is it not a fact that, relatively speaking, with your present inspection program, the average employer is unlikely to be inspected very often? Do you want to give any figure? Is it desirable to do that?

Dr. BINGHAM. We have attempted to calculate that many times. It is an enormous problem, but we have determined that the probability of being inspected for most businesses is low. I think that is why it is very important for us to encourage voluntary compliance. I will submit some specific answers to that question for the record.

One of the ways that we have sought to better utilize our resources is to concentrate on the serious health hazards. This is reflected in our data which show that penalties for serious and willful and repeated violations have increased while our penalties for nonserious violations have gone down markedly in the last year and a half. In addition OSHA's educational program and our encouragement of worker participation is a reflection of the fact that we will not be able to inspect each worksite very often. Thus since we have limited resources for inspections, we encourage the education of workers and employers—especially small employers who may not understand the hazards of their own workplace.

I think this will go very far toward realizing the goals of the act. As far as I am concerned, one of the portions of the act that had not been implemented sufficiently is the area of worker education.

Senator JAVITS. I would suggest that you wrap up what you have told us with such facts and figures as you feel should be made public and could be made public in a paper which can be widely disseminated and which we can use. We are constantly met with these broad generalizations on the floor.

Now it is a fact that our colleagues are often persuaded by the complaints of small business concerning OSHA. But we also are unable to hit those exaggerations with the basic facts ourselves.

I think it would be extremely useful if this could—in connection with this oversight—be wrapped up. We now have 8 years of experience. We have had 2 years of experience, as Chairman Williams says, with these amendments, and efforts to bail small business out of OSHA, and we are entitled now to use the facts against proponents of these emasculatory amendments and prove them to be the reckless amendments that they actually are.

So if you can help us with this type of case, it will be very helpful.

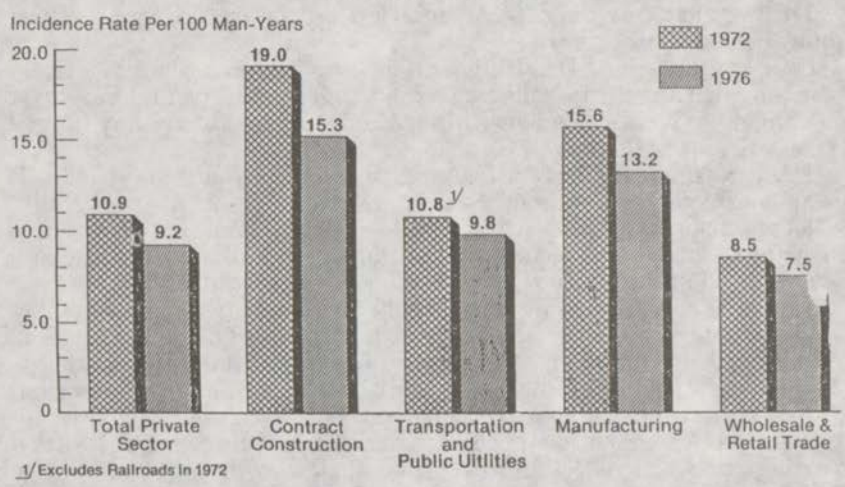
Dr. BINGHAM. We can do that and show you the targeting process which determines what industries we are emphasizing, thus showing you that these really are high-hazard industries.

Secretary MARSHALL. Senator Javits, I had some charts attached to my testimony that I did not go over. The main points I made in my testimony were supported by these charts.

Senator JAVITS. They are included, so they will be in the record.

[Charts referred to follow:]

Occupational Illnesses and Injury Incidence Rates 1972 to 1976

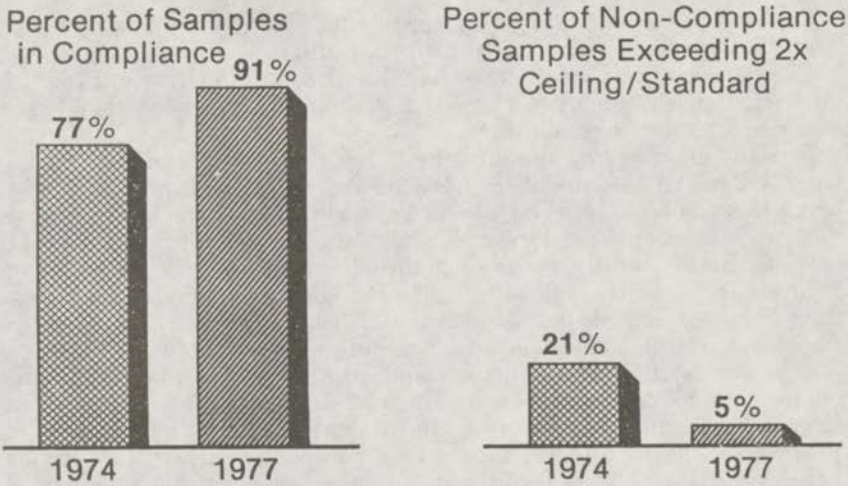


1/ Excludes Railroads in 1972

Estimated Number of Occupational Exposures for Selected Substances that OSHA has Regulated

Substance	Estimated Number of Exposures Nationally 1973
Arsenic & Compounds	1,491,700
Acrylonitrile	594,700
Asbestos	2,479,900
Benzene	2,976,000
Coal Tar Pitch Volatiles	104,700
Cotton Dust	827,100
Vinyl Chloride	3,546,700

Compliance with OSHA's Health Standard for Vinyl Chloride, 1974 and 1977



Secretary MARSHALL. We can go beyond that.

Senator JAVITS. I think you should help make the case. That is the important thing that I want. The case is very hard to make in the case of somebody picking out some guy in their district and their State, and he had an unfortunate experience, well, he might have had an unfortunate experience with General Motors, General Electric, IBM, and so on. They do not tell us about that. We have to meet it. So far, all our members need is something to hang their hats on, and the way they go on OSHA.

Therefore, I think it is important that we have the hard facts.

The CHAIRMAN. Thank you, Senator Javits.

I wonder if we could go through one area that is under a great deal of scrutiny at this time, and from many quarters really: The cotton dust situation.

Now is it a fact, Dr. Bingham, that we see demonstrated with cotton dust a relationship between the exposure to dust and the respiratory disease that is very much comparable to the clear relationship between coal dust and pneumoconiosis that we understood prior to the enactment of the Coal Mine Health and Safety Act? We responded there two ways: With strong law, legislating standards of permissible dust, and a specific law for compensation for those who were the victims of the disease.

First of all, there is a comparability here in the factual situation between exposure to cotton dust and a disease and exposure to coal dust and the disease?

Dr. BINGHAM. It is fair to say that if we examine the public record of the hearing on the cotton dust standard and all relevant scientific literature, it shows that in every segment of the cotton industry where there have been epidemiological studies conducted and where those

studies have been directed toward an adequate number of workers to be statistically significant, we see evidence of acute and/or chronic disease, such as emphysema, byssinosis, and chronic bronchitis.

So the answer is yes.

I can supply a summary of the specific studies that demonstrate this scientifically to you for the record if you would like.

The CHAIRMAN. That is unequivocal and clear, and I would like to go from that statement to the next. It would impress me that logic would lead us to two conclusions.

First of all, the law should reflect the opportunity for those who have contracted the disease to have an orderly procedure that would bring them to remedy. We have no Federal standards on occupational disease. This is the legislation Senator Javits was talking to. Absent that legislation, and given a vacuum of law in the States, we have before our committee specific legislation designed for compensating the victims of cotton dust disease that is comparable to the program for compensating the victims of black lung disease due to coal dust.

It is our feeling that Federal standards legislation that would include worker's compensation coverage of all occupational diseases in the most efficient and most fair approach. We expect that those who proposed a specific bill for brown lung compensation will support us here, and I think they will ultimately. We also expect that they would support us when attempts are made to suspend your standards on cotton dust. That was not as evident last week.

But at any rate you have moved, as we did with coal, you have moved with a cotton dust standard. We heard a lot about that last week, and we are going to hear more about this today.

But I just want to be prepared for what will be coming. I would like to know if you think that the current standard-making procedure gives all interested parties the opportunity to effectively participate and to make their case if they have one? With respect to the cotton dust standard, what were the procedures in terms of providing interested parties an opportunity to be heard and to have their views considered?

Dr. BINGHAM. First of all, there was an enormously lengthy proceeding that went on for several years. In fact, the Department was ordered to expedite these proceedings. There was a proposal issued during the Ford administration that set a level for cotton dust that was uniform throughout the industry. That particular standard was estimated to be very costly—about $2.7 billion for compliance costs. During the public hearings held in Washington and in Texas and Mississippi, a large number of people presented testimony, including various segments of the industry, the workers themselves, public interest groups, and scientists from all segments of the academic community. And as a result of our thorough review of the record, we promulgated a cotton dust regulation that treated the various segments of the industry separately, based upon the evidence in the record.

The final standard considered a number of factors. The most important factor concerns the diseases that result from workers exposure to cotton dust. It is also based, as required by the act, upon the feasibility considerations. The latter has to do with what is technically possible regarding correction of the problem. A recent court decision concerning asbestos states that we are not required to base a standard's feasi-

bility on the segment of the industry that is least able to comply, the "laggards"; rather we must look at the ability of the industry as a whole to implement this standard.

Our final regulation set permissible exposure levels of 200 micrograms per cubic meter of air in yarn preparation, 750 micrograms in weaving, and 500 micrograms in the nontextile segments of the industry. In the ginning industry no permissible exposure level was set pending a further evaluation of the chronic disease hazard. Instead, we asked that medical surveillance be instituted so we can identify workers exhibiting early symptoms of byssinosis.

The final regulations issued by OSHA cost considerably less and are significantly more cost effective than the proposal under the Ford administration. The price tag for the two standards (cotton industry and cotton gins) would be somewhere around $650 million as opposed to the estimated $2.7 billion for the earlier proposal. This represents a substantial reduction in compliance costs to the industry.

I believe that we listened to all the evidence that was presented to us, assessed it fairly and promulgated a standard that will afford adequate protection and is at the same time economically and technically feasible. Maybe a year from now or 5 years from now, we will have new evidence submitted and we are always willing to review data that expands our knowledge of workplace hazards—but we cannot delay any longer. It was imperative for health reasons that we issue a standard at this time. We have more than adequate evidence on which to issue a standard to protect workers against chronic respiratory disease resulting from cotton dust exposure. Testimony from Dr. Arend Bouhuys of Yale indicated that there would be substantial numbers of workers afflicted with byssinosis if there were a delay.

Our research will continue, for example, a better dose-response relationship in giving and when we have more evidence we will, where appropriate, reconsider a permissible exposure level. I believe the process as a whole has been a very fair one and permitted full participation by all interested parties.

The CHAIRMAN. Now the technology that is contemplated to assure compliance with the limits of cotton dust is a ventilation technology, is it not, basically?

Dr. BINGHAM. Yes, sir, we feel that some form of ventilation or enclosure seem to be the best methods for reducing exposure. There are several industries that have come up with innovative ideas in terms of enclosures of various segments of their operations. Both ventilation and enclosure with adjust suppression system are of course engineering approaches to the cotton dust problem.

The CHAIRMAN. Is there any other technology or advanced engineering which could also be effective? We have heard suggestions that the washing of cotton might be effective?

Dr. BINGHAM. Washing cotton prior to processing is a technique that was suggested early in the hearings. Studies concerning this technique have produced results which are inconclusive, in that this technique has not been properly tested. There were some experimental studies, as I recall, by Dr. James Merchant of NIOSH on the washing of cotton. It may turn out that this particular process could be of some use. The standard allows for the future demonstration of the feasibility and effectiveness of this sort of technology.

The CHAIRMAN. Dr. Merchant is in Morgantown?

Dr. BINGHAM. Yes, sir. I think he did this week when he was at the University of North Carolina. That study was first done a number of years ago.

The CHAIRMAN. When it came to the question of limiting money for enforcement of that standard, we expected that those who were advancing the cause of the workers in compensation of their disease would see the benefit of not delaying enforcement of the standard, but quite frankly, I do not recall that we had that kind of support at all. So the Senate adopted a temporary suspension of enforcement.

I am told that there are numerous lawsuits on this standard and that there are appeals to the circuit court. What is the status of this litigation?

Dr. BINGHAM. Twenty-three suits have been filed concerning this standard. I would like to point out, Senator, that we in this country are behind the times. Another civilized country, Great Britain, early this century under the British Factory Act limited exposure to cotton dust. So it is not a new phenomenon. Regulating cotton dust has been around for a long time. For us to fail to address this hazard is taking a step backward and the time to act is now. It is not 5 years from now or 10 years from now. We are already a century behind.

The CHAIRMAN. That is exactly the way we looked at the coal dust problem. Now that was nearly 10 years ago that we acted in much the same way.

I think, Secretary Marshall, you have helped us greatly with your description of your inspectors, and your efforts to enhance their interpersonal relationships within their workplaces where the places where they are inspecting. I think this is responsive to a lot of those early criticisms.

Where do you stand on the total inspector force, the number of inspectors and the opportunities to provide the training that you feel they need? Are you in good shape there?

Secretary MARSHALL. We have about 1,600.

Dr. BINGHAM. Yes; we have about 1,600 compliance officers. We have approximately 500 in the health field, of which several hundred are still in training and not fully qualified or experienced. We have also been providing an opportunity for some of the compliance officers to take a year of professional training at a university. We are now beginning to see benefits of that additional education. We have 10 individuals who have finished the equivalent of a master's degree in industrial hygiene, and we will continue helping our personnel receive advanced degrees. I think this is a wise investment in upgrading the technical competence of our compliance officers because an industrial hygienist is called upon to perform highly technical investigations and make judgments based upon scientific evidence.

The CHAIRMAN. This has grown to be an important academic department in the university; am I right on that?

Dr. BINGHAM. Yes. Throughout the United States there are a number, I believe there are 11 educational resource centers for occupational safety and health. NIOSH set up the educational resource centers at various universities and as a result we have excellent training centers for training in occupational medicine, industrial hygiene, safety, and occupational health nursing. We are sending essentially

all of our students to one of these 11 centers so they can be better trained.

I think this has been a very important contribution that NIOSH has made, and we are able to use that to upgrade our compliance officers in their scientific training.

The CHAIRMAN. We have a great deal of subject matter remaining to be discussed, and for our purposes it would be useful if we could put some questions to you in written form for answers.

Secretary MARSHALL. We would be happy to do that.

Dr. BINGHAM. We would be happy to do that.

The CHAIRMAN. This will help us to make the kind of record we know can be made here. That will be part of the educational process so our members can know more about the system—more than the emotional description of the situation which we often hear.

We appreciate very much all you are doing and will be benefited by the further inclusion in our record of your written responses to our questions.

Thank you very much.

Secretary MARSHALL. Thank you.

[NOTE: Responses to questions submitted to Secretary Marshall appear on p. 448]

The CHAIRMAN. Next we will hear from the National Institute for Occupational Safety and Health: Edward J. Baier, Deputy Director, Vernon E. Rose, Director, Division of Criteria Documentation and Standards Development, and Philip J. Bierbaum, Deputy Director, Division of Surveillance, Hazard Evaluations and Field Studies.

We welcome you.

STATEMENTS OF EDWARD J. BAIER, DEPUTY DIRECTOR; VERNON E. ROSE, DIRECTOR, DIVISION OF CRITERIA DOCUMENTATION AND STANDARDS DEVELOPMENT; AND PHILIP J. BIERBAUM, DEPUTY DIRECTOR, DIVISION OF SURVEILLANCE, HAZARD EVALUATIONS AND FIELD STUDIES, A PANEL

Mr. BAIER. Vernon Rose is on my right and Philip Bierbaum is on my left.

I am pleased to appear before you today to review our experience in implementing the Occupational Safety and Health Act during the last 7 years.

I am accompanied by Vernon E. Rose, Director of the NIOSH Division of Criteria Documentation and Standards Development and Philip J. Bierbaum, Deputy Director of the NIOSH Division of Surveillance, Hazard Evaluations, and Field Studies.

Since there has been an occupational health program in the Public Health Service for 64 years, we are in a good position to assess what difference the act itself has made. Before the act was passed, predecessors of NIOSH conducted research and provided technical assistance on occupational safety and health problems to employers at their request or at the request of State and local health departments. It was not until after the act was passed that specific authority existed to translate research into enforceable standards governing general industry and to conduct health hazard evaluations at the request of employees as well as employers.

Since May 1970, the NIOSH budget has increased from $10 million to $65 million and the staff has increased from 340 to over 900. Last year Congress gave NIOSH additional responsibilities for research on the occupational health problems of the approximately 500,000 miners in the United States.

In May 1978, a special board chaired by the Assistant Secretary for Health recommended to Secretary Califano that NIOSH continue to expand its programs to make it commensurate with the size of the occupational safety and health problem and more responsive to the demanding legislative requirements. They concluded that the current laboratories in Morgantown and Cincinnati could be expanded to accommodate the growing research program.

We will discuss the progress we have made since 1971 in implementing programs in standards development, safety research, health hazard evaluations, and how we relate to the Occupational Safety and Health Administration [OSHA] in these areas. We will also discuss record-keeping requirements, an important joint responsibility of NIOSH and OSHA under the act.

CRITERIA FOR RECOMMENDED STANDARDS

The Senate report on the Occupational Safety and Health Act noted that:

> Not only do we still have insufficient information regarding many of the threats to health which have long been known to exist in industry, but, in addition, the modern worker encounters health hazards involving complex, often synergistic, interactions of numerous physical and chemical agents, and that the introduction of such agents into industry is proceeding at a rapid pace * * *

NIOSH has made considerable progress since the act was passed in developing recommended standards for some of the most serious occupational health hazards. Asbestos, silica, lead, mercury, coke oven emissions, and benzene along with 13 other substances were addressed within the first 2 years of our criteria documentation effort. As of last week, a total of 100 documents recommending occupational safety and health standards will have been transmitted to OSHA, covering more than 2,000 toxic substances and physical agents.

Increasingly, we are developing single documents covering groups of substances with similar chemical characteristics or covering industrial processes such as coal gasification, coal liquefication, the roofing industry, and welding and brazing. The document on pesticides manufacturing and formulation, transmitted this year, covered 1,500 registered pesticides. Over 60 percent of the criteria documents developed during the next 3 years will deal with groups of substances.

NIOSH recommendations are based on occupational safety and health information published in the scientific literature and on studies conducted by the NIOSH research divisions. Research conducted by NIOSH each year includes approximately 90 field studies evaluating worker exposure to toxic substances, physical agents, and injury-producing hazards, and approximately 70 studies conducted in NIOSH laboratories in Morgantown and Cincinnati.

We have also provided NIOSH experts to testify at all OSHA public hearings and recently we have assisted in the questioning of witnesses. We believe it is important to coordinate our work in this area

with OSHA so that standards can be established which effectively control workplace exposures.

NIOSH criteria documents are valuable even before they are translated into enforceable standards. They are widely distributed and many companies use them as a basis to control hazards even though the documents do not have the force of law. They provide a thorough review of the existing literature and state of knowledge on a hazard and serve as an impetus for further research by NIOSH and others. They are also being used by other Government agencies and by international bodies, such as the World Health Organization, as the basis for developing international permissable limits for occupational exposures.

Currently, NIOSH is conducting on contract a review and evaluation of our procedures for developing recommended occupational safety and health standards. This evaluation will elicit the viewpoints of occupational safety and health professionals from organized labor, industry, government, and academia, those who are users of our recommendations or who are experts in the field. Included in the evaluation will be the following questions:

One: Is NIOSH addressing the most important occupational safety and health problems?

Two: How valid are the recommendations for standards?

Third: How useful are the recommendations, either within or in addition to the regulatory process?

We will advise this subcommittee on the results of this evaluation effort, and any changes in our criteria documentation efforts that may result.

SAFETY RESEARCH

The statistics on industrial accidents are well known—each year over 2.3 million workers suffer disabling injuries and over 12,000 die as a result of work-related accidents, totaling over $7 billion annually in medical care and wage compensation costs alone. Yet, we have very little information on the causes of these accidents. In 1977 NIOSH created a special Division of Safety Research in Morgantown, W. Va., with programs in safety data analysis, safety surveillance, epidemiology, testing and certification of personal protective equipment, and safety criteria document development.

This division is working on several projects to learn more about what causes accidents to provide a basis for promulgating new safety standards or revising current ones. One project involves categorizing accidents in the building and highway construction industries according to whether an existing standard has been violated, whether a standard was in existence but not violated, or whether there was no applicable standard. If this classification scheme is successful in understanding the causes of accidents and in developing safety standards, future projects will use this approach.

Research is also being conducted on the causes of accidents in specific industries such as the oil and gas industries, as well as in broad categories such as the storage and manufacture of explosives and in materials handling. The human factors aspects of accident prevention and

control, particularly the complex interaction of man, machine, and environment, are also being studied so that future standards consider these relationships.

NIOSH also conducts safety research in support of standards for personal protective equipment. Although personal protective equipment should not be a substitute for safe design of processes, it will continue to be used in emergencies, for maintenance operations, and to protect workers when engineering controls break down.

Little research has been done to identify injuries that could be prevented through proper design and use of personal protective equipment. Existing standards are usually based on the consensus of committees representing various interest groups which often do not consider performance characteristics of the devices.

For example, protective helmets have traditionally been designed to protect against blows on the top of the head but there is considerable evidence the helmets do little to protect the side of the head or the neck which often suffers more than the skull from blows to the top of the head. We have a study underway to provide data on the epidemiology of these injuries so that standards can be established for testing and certifying this equipment which more realistically reflect conditions under which it is used.

In addition to criteria documents on health issues, NIOSH has transmitted recommendations to OSHA for development of standards for emergency egress from elevated workstations and for logging. A criteria document containing recommendations to protect employees working in confined spaces is in final review and should be transmitted soon. Both safety and health recommendations are being included in process standards for slaughtering and rendering plants, welding and brazing, printing industry, and foundries. Plans for future safety criteria documents are being coordinated with the OSHA Directorate of Safety Standards Program.

NIOSH has continuing contact with OSHA staff to coordinate our safety research to avoid duplication of effort. We have participated with OSHA and the Bureau of Labor Statistics in developing methods to obtain data on the causes of selected high accident areas, including accidents involving ladders, power saws, welding, and scaffolds.

NIOSH, through interagency agreement with the National Bureau of Standards [NBS], is conducting a study of scaffolds, their use, construction and loading requirements. Current standards will be thoroughly reviewed and accident data analyzed to develop recommendations to improve the safety of workers using scaffolds. All such research is aimed toward preventing other tragedies such as the scaffolding collapse at Willow Island, W. Va.

HEALTH HAZARD EVALUATION

Under the health hazard evaluation program, authorized by section 20(a)(6) of the act, NIOSH responds to written requests from employees and employers to determine whether substances found in the workplace have potentially toxic effects. NIOSH submits such determinations to employers and affected employees as soon as possible. NIOSH also routinely submits final reports to OSHA and to certain

other Federal and State agencies. In addition, NIOSH provides consultation and technical assistance not specifically authorized by section 20(a)(6).

Since the program began in 1972, we have completed over 500 health hazard evaluations on a variety of industrial hazards. Approximately half of these have resulted in findings of toxic conditions. NIOSH has completed over 130 technical assistance reports, many at the request of OSHA and other Federal, State, and local agencies.

In a report issued in May 1978, the General Accounting Office (GAO) concluded that the NIOSH health hazard evaluation program has helped to protect workers and should be widely promoted and made available to more workers. We agree with GAO that the program is important, however, we are concerned about creating a demand for assistance that we will not be able to meet. We are considering various alternatives by which we could double or triple our current program. This might include expanding our own staff in this area as well as expanding our use of contract personnel. We plan to involve one of our Educational Resource Centers (ERC) in a pilot effort to determine how they might assist us in conducting health hazard evaluations. We are also exploring how we can best work with staffs of other Federal and State agencies to respond to occupational health problems among their employees.

The report also made a number of specific recommendations to improve the program. These included notifying requestors more quickly about results of the evaluation, notifying requestors if recommendations for exposure levels change after the report is issued, sending reports to other companies with similar exposures, and establishing a program for measuring program effectiveness.

They also recommended responding to requests for investigations even at worksites where OSHA is conducting or planning to conduct compliance action.

GAO further recommended that NIOSH actively implement its policy to provide OSHA with additional pertinent criteria for toxic substances encountered in health hazard evaluations which are not adequately covered by existing standards.

NIOSH generally concurred with these recommendations and has already taken steps to implement them. NIOSH has made several changes to improve the timeliness of reports. Requestors are usually contacted within a week and the most urgent problems are given the highest priority. NIOSH responds within 24 hours to emergencies. The internal review process for health hazard evaluation reports has been shortened and interim reports are issued as soon as the fieldwork has been completed. Since 1977, NIOSH has made use of professional services contracts with physicians in different sections of the country who can be called upon to conduct medical examinations.

We are now abstracting important information from health hazard evaluations and placing it in a computerized data base that will serve a number of purposes. In one pilot project, we are using the computer to select reports documenting significant health hazards and identify firms manufacturing or using a similar process or chemical. We will send these firms a synopsis of the pertinent health hazard evaluation report. The computerized data base should also be useful in obtaining information to set priorities for research and standards development and for current intelligence bulletins.

We are conducting a study to determine whether it would be useful to notify requesters if NIOSH substantially reduces the recommended level of safe exposure to a substance after the report was issued.

We have also established procedures to be followed when it seems necessary for both NIOSH and OSHA to investigate the same plant and for transmittal of criteria when health hazard evaluations document substances for which adequate standards do not exist.

In response to the GAO recommendation to review the program's effectiveness, we are asking for critical evaluations from the employers and employees involved in the last 200 health hazard evaluations NIOSH has conducted. We will inform this committee on the results of the survey.

RECORDKEEPING

We are pleased that OSHA has published proposed regulations for retention and access to employee exposure and medical records. Such records are important not only to the employee but also to NIOSH in carrying out its research function and to OSHA in its standard-setting and enforcement activities.

It has been our experience that work history information and demographic data—such as age, sex, race, social security number, last known address and any cause of death information—as well as medical, exposure, and accident records are vital to our epidemiologic and surveillance studies. In our formal response to the OSHA proposed standard, we stressed that it is important that such records be systematically linked so all available data on each individual can be examined. We feel strongly that such records be retained for a period consistent with the latency for development of chronic diseases, which can be 30 years or more. Such a retention period would be consistent with section 8(c) of the Toxic Substances Control Act and this retention period is now being recommended in recent NIOSH criteria documents. It is our view that once an employer establishes a systematic recordkeeping system, it does not pose a significant additional burden to retain them for the required time, particularly with the use of techniques such as microfilm and computers.

Another important part of the proposed regulation is employee access to records. We believe that an employee should have the right of access to any record an employer maintains on that individual, including medical records, and that disclosure to a third party requires consent of the individual, with the exception of Federal, State, or local agencies with legal right of access to the records.

Since NIOSH research is a key element in the adversarial standard-setting process, it is essential that it be based on the best available evidence. For epidemiologic and surveillance studies, such evidence is often obtained from records maintained by the employer.

CONCLUSION

In reviewing our experience in implementing the Occupational Safety and Health Act, we have found it to be a strong and well-drafted law. It gave NIOSH important authorities that have enabled us to obtain the data we need to conduct our research, including the right to enter the workplace and to examine pertinent records. These

rights have been upheld in subsequent court decisions. The act has enabled us to be more responsive to workers through our health hazard evaluation program. This provision recognizes that it is often the worker who is first aware of occupational safety and health problems. We have also continued to provide technical assistance to employers by onsite evaluations and providing information on controlling workplace hazards. Each year the institute responds to nearly 200 requests for technical information and publishes about 120 technical reports.

It is, indeed, unfortunate that the implementation of the Occupational Safety and Health Act has created such controversy, but it is understandable. We at NIOSH and at OSHA are attempting to deal directly with vital problems affecting millions of lives. The solutions to these problems range from minor changes to complex expensive engineering modifications. We would expect this to create controversy.

We welcome continued oversight and evaluation of our efforts to make this law work. The differences between Government, management, and labor surrounding OSHA are really with its implementation, with the law itself.

After all, the act spells out employee rights and employer responsibilities very well.

Mr. Chairman, we will be pleased to attempt to answer any questions you or Senator Javits may have.

The CHAIRMAN. Thank you very much, Mr. Baier.

You have mentioned that your research includes standards for personal protective equipment.

Mr. BAIER. Yes.

The CHAIRMAN. You mentioned the situation with regard to hardhats and the limitations of the hardhat which may not adequately protect certain areas. You know for many, many years, we have known that there is personal protective equipment to protect from coal dust until better measures were in place to control dust in the workplace. We are in this same situation now with respect to cotton dust.

First of all, what is the present requirement under the regulation for the use of masks in workplaces where there is cotton dust? Are you familiar with that?

Mr. BAIER. You mean what kind of masks?

The CHAIRMAN. Is there a requirement that a mask be worn in certain manufactured process of cotton?

Mr. BAIER. I am not sure. That would be under Occupational Safety and Health Administration.

The CHAIRMAN. I am raising it with you because you mentioned that personal protective equipment is part of your research.

This mask business, believe me, has been one of the great mysteries for us. We have never found an industry yet that could develop a mask that the worker would wear even when the worker knew it would protect him from danger that he had to walk into everytime he went to work. The mask for the coal miner was carried in, never placed on, and there we were. Now we hear suggestions that use of the mask will adequately protect workers from cotton dust. That was the big answer last week for those who said let us stay the enforcement of the cotton dust standard because we have got the mask.

We had a demonstration here in the office. I have not talked to those who demonstrated it—but here is the mask [indicating]. I just won-

dered whether this was part of your personal protective equipment research, the mask?

Mr. BAIER. There are quite a number of problems with personal protective devices as opposed to designing hazard out of the process itself——

Senator JAVITS. I find it very hard to hear you.

Mr. BAIER. I am sorry.

I said it is very difficult to think of personal protective devices as an "ends-all" kind of control. We look at the thing, a respirator, or any personal protective device, as an interim kind of device until you have adequate engineering control in place, or for use during an emergency or during equipment breakdown, or if you are changing processes. We have studied respirators particularly, and they are satisfactory for a short-term kind of exposure, but even there we find difficulties in that unless you have the proper mask for the particular contaminant; in other words, if you have both a gas and a dust exposure simultaneously, a dust respirator will not protect you.

The other thing is the way the respirator tends to fit. We have done several studies on this and find that the face seal which actually protects you from contaminants in the air is very easily broken. A beard or a scar of some kind—and we have even done studies in terms of the effect of 5 o'clock shadow—where the face seal is actually weakened during the day. With respirators, while the air comes through the filter, it is still easy to leak around the side. If that seal is not just right and there are many shapes of faces, we must look into the anthropology of the situation. That is the kind of research we have done.

Mr. ROSE. I would like to mention one other point concerning our research.

That is the fact that some manufacturers of masks have developed more lightweight, more usable masks that might be more acceptable to workers. Generally, these types of masks will not provide a high degree of protection. In other words, if the dust level is many times the existing standard, then they would not generally be acceptable.

They are just acceptable for excursions slightly over the standard. There is an argument that has been made in many situations in rulemaking that industry should not have to put engineering controls in place unless they can get all the way down to the standard that has been promulgated.

From our viewpoint, and certainly from a preventive health standpoint, it is well to use engineering controls to get as close to the limit as possible. Then lightweight respirators, which are more acceptable to employees, could be used to get that final measure of perfection if engineering controls alone are not sufficient.

The CHAIRMAN. Having started down the mask road, let me have Mr. Goldberg stand up here.

What have you got there, Mike? You have got three masks.

Mr. GOLDBERG. This is the heavy-duty mask [indicating].

The CHAIRMAN. Are these for cotton dust?

Mr. GOLDBERG. Yes, sir. These are recommended for cotton dust use.

The CHAIRMAN. Where did you get them?

Mr. GOLDBERG. These were provided by OSHA. These are the kind that Mr. Rose referred to.

Mr. ROSE. They do not have a high degree of protection. They are less expensive, and they probably are more acceptable to workers in that they are lightweight and are not as irritating to wear.

The CHAIRMAN. What is the conclusion that you have on these masks? Are they used?

First, are they required?

Mr. GOLDBERG. The cotton dust standards require the use of respirators where there is a difference between the ability of the environmental control system in place to eliminate cotton dust and that which is required as a safe level of exposure for the workers.

This one, the reusable head gear, costs about $9—a pair of replacable filters which screw into the side costs about 58 cents.

This one costs anywhere between 40 and 50 cents apiece.

The yellow one, which is a heavier duty mask, costs about $1. These are intended to be disposed at the end of each day.

The CHAIRMAN. What is the situation as to their required use?

Is it recommended or is it required?

Mr. GOLDBERG. The standard requires it where the environmental control is not capable of bringing down the dust to the required level.

The CHAIRMAN. These masks were not part of your research? Am I accurate in that?

Mr. BAIER. As a matter of fact, they were.

The CHAIRMAN. They were?

Mr. BAIER. Yes, the very first particulate mask that NIOSH tested, approved, and certified, I think, was made by 3M. It is a throwaway. We test and certify. We do not develop.

The CHAIRMAN. A lot of people say this is adequate now to satisfy the standard.

What do you say about these that we have researched?

Mr. BAIER. When we certify any respirator, we spell where it can be used, to what extent it can be used, and, roughly, in what concentration of contaminant. That is spelled out with the respirator.

The CHAIRMAN. This is an interim measure until the engineering controls are in place?

Mr. BAIER. That is right; or during emergencies or equipment breakdown or something like that.

The CHAIRMAN. Let me take a moment to review your activities with respect to the cotton dust standards.

As I understand it, NIOSH research formed the foundation for the initial cotton dust proposal?

Mr. BAIER. Yes.

The CHAIRMAN. And, then, of the revision ultimately adopted by the Secretary of Labor?

Mr. BAIER. Yes, that is right. Dr. Merchant, whom we referred to earlier, was our coordinator. We always assign someone from NIOSH to coordinate the NIOSH testimony and also to cross-examine the other witnesses, and Dr. Merchant was that person.

The CHAIRMAN. Now, since promulgation of the cotton dust standard, it is my understanding that a draft of a health hazard evaluation conducted by NIOSH of a mattress plant resulted in an administrative stay of the applicability of the standards to certain segments of the industry and specifically cotton-waste processing, and cotton-batting users.

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OSHA has also sought comment on the NIOSH health hazard evaluation.

I know that witnesses from the Cotton Council will point to the NIOSH work to indicate that the cotton dust standards were issued prematurely.

For this reason, it might be a good idea to have you, who represent NIOSH, describe the work you are currently doing in connection with the cotton dust standards.

Mr. BAIER. As I heard it, there were really two questions. One about our health hazard evaluation. The study that we did there was actually on a small number of people and the people were in fact wearing respirators. So there was some question as to whether or not there would have been pulmonary function differences or the ability to breathe properly whether or not that was changed as a result of that exposure.

Actually, as that health hazard evaluation report points out in detail, and it is many pages of the report, there were not enough data to conclude that it was safe or unsafe in terms of long-term cotton dust exposure. That was a condition found in a particular process at a particular point in time.

Phil Bierbaum can describe it in detail.

Let us keep it on cotton dust for a moment. We had researched the byssinosis problem for several years. This goes back to the British studies. What epidemiological studies were available from the world literature were all considered in the NIOSH recommendation. As far as we are concerned, there is really not a question that the cotton dust can give rise to a condition known as byssinosis.

The question is, are there differences in terms of cotton in different parts of the process? I think Eula Bingham spelled out pretty well that if you look at any phase of cotton dust processing, from the picking of it through the final material, you will find some cases of byssinosis. What we are trying to do now, in terms of research, to answer your second question, is that we are looking at different phases of the process and we have groups of about 300 or 400 workers in different stages of the cotton process to see if there are, in fact, differences. When we do this, the studies, we will consider what levels of cotton dust people are exposed to and also the effects by pulmonary function measurements. It is going to take time which is the problem. At this time, we can say that cotton dust causes byssinosis. The question is, are there changes in rates of byssinosis during different processes.

You also mentioned about the wetting of cotton earlier and what effect that had.

The CHAIRMAN. I said, "washing."

Mr. BAIER. Early on when we were to transmit the criteria, I do not know when we transmited it.

Mr. ROSE. 1974.

Mr. BAIER. We were going to transmit it slightly before then. Then someone mentioned if the cotton dust was steamed, the likelihood of byssinosis would decrease. We went back to the drawing board and researched that aspect of it. We found the steaming wetted the dust enough so that it settled down, but when the cotton in later processes dried out again, we had transferred the byssinosis hazard from one

stage of the process to another stage of the process so that, in effect, steaming did not control the hazard.

The CHAIRMAN. You at first said "wetting," and now the last word was "steaming."

Mr. BAIER. Yes, you can break up the water particles. The smaller you can break them up, the more efficient wetting you have and by generating steam out of water, you have the smallest water particles that you can possibly get.

Mr. ROSE. Plus there was also some consideration that there might be a biological agent or toxin that might be involved with the cotton itself. And possibly the hot steam would render such organisms incapable of causing disease of the lungs.

What we have seen has not solved the problem. It just distributed the problem to a larger number of workers in the process and this was not the answer based on our evaluation of the data.

The CHAIRMAN. Was there some thought within the professional community that whatever it is in cotton dust that is causing the disease, that that agent, whatever it is, is water soluble? Is there any thought that that might be the situation?

Mr. BAIER. No. the idea here about the steaming, the wetting process, is that we were looking at it as Vern points out not as sterilization, but as an antiseptic where you could kill the bug with steam, if it were a bug, but this cost us a lot of time in moving forward with the cotton dust standard years ago.

We had gone back and researched it. I think one of the main problems we have is that at any given time, we do not know enough and we do not have all the answers to do something. At this point in time, we would like to have a study. If we kept waiting—and this has been our problem—we have kept waiting and waiting and waiting longer until we get more and more answers. In that process of waiting, more and more people are exposed and more and more people become affected by the exposure. So what we are saying is that in developing the recommended cotton dust standard, had we known that steaming was not the right answer, we could have had a cotton dust standard several years ago.

As it turns out, we have gone back to the drawing board. In the meantime, since September 1974, we don't know how many more people have been affected. Somewhere along the line you have got to say: OK, we know enough.

Another example, if I may interrupt, is on the coke oven issue. Years ago we discovered that steel workers who work on top of a coke oven developed lung cancer. If you work alongside of the coke oven, you develop kidney cancer. To this day, we have not identified the specific agent that caused the lung or kidney cancer. But OSHA has gone ahead with a coke oven standard. It has been preventing the disease, so, while you don't have the bottom line answer in every case, you have the index.

As you mentioned earlier when OSHA was testifying, this hearing did go for many, many weeks. All of these pieces of information were put into the record and, while we don't have a conclusive answer to say every phrase in the operation—if something changes in the cotton—we can show cases of byssinosis at any part of the process. Now to what extent these exist is another question. I hate to keep kind of going

around other issues, but one of the problems we find with all occupational diseases is that they are just not recognized. The general practitioner does not recognize all the diseases of occupations.

The CHAIRMAN. But you find a difference here with respect to some of the processes which would cause you to recommend that the standard be stayed and in some applications, and not in others. I gather in the mattress business and with respect to the use of cotton batting and the handling of waste processing, that you recommended an administrative stay because the risk——

Mr. BAIER. We did not recommend that.

Mr. ROSE. It is my understanding that the HHE, the draft HHE was used by industry.

The CHAIRMAN. Oh, I see. The agency stayed the standard in those segments of the industry based on what you told them. They made that jump. You did not recommend it?

Mr. ROSE. That is correct.

Mr. BAIER. That is correct.

The CHAIRMAN. You did not recommend that.

There is something missing in our information as to why they would stay that. You said that you must have told them that the amount of exposure in these processes is inconclusive.

Mr. BAIER. Let me discuss the health hazard evaluation. We are asked either by an employer or an authorized representative of employees and, for practical purposes, one person can be that authorized representative. This request was for a study in a particular process and we responded by evaluating the dust exposure that we found there and also medically evaluating the exposed workers, and we reported those findings of what we did.

We said that here are the levels of dust found and here are the results of our pulmonary function tests. That is all we did at that particular plant.

They said that some of these people were exposed to pretty high levels of dust and yet their pulmonary function had not changed significantly, and it was on that basis that the report was submitted, not anything we said that was good, bad, or indifferent.

We were simply reporting our findings. The interpretation of the findings could be used either way.

Mr. ROSE. Could I make a few points, Senator, to add to that very briefly?

When we conduct an HHE, an employer and/or employee requested us to look at the problem. We sent a draft of the HHE to the employer to see if there were any inadvertent release of trade secret information. That draft was submitted by the employers, by some means, to OSHA to indicate that there was not a health problem with the workers in the mattress company.

It was on that basis that OSHA decided to grant a 30-day stay while they looked at the problem and contacted us to see what our findings were.

We advised OSHA that the study was not sufficient information to draw conclusions regarding health hazards throughout the cotton industry. It was a small study, one plant. The workers were wearing protective equipment. It was not a definitive study. It was not our position,

with regard to the use of one in-plant, quick study, to draw significant conclusions regarding an occupational health standard. That is the chronology of the way the situation developed.

We are conducting further research on these types of industries but it is our position that the hazard does exist. The workers are being exposed, but we do have enough information at the present time to act to put a standard in place. And as we further refine the research and collect more data, as Dr. Bingham pointed out, we could then provide data to OSHA for reevaluation of the standard and determining its appropriateness and how tight it should be.

But at the present time to not put a standard in place would leave the workers exposed and put them in a position of being in an experimental situation to determine whether or not their health is being affected.

The CHAIRMAN. I know that Senator Javits wants to return.

Senator JAVITS. I only want to question you about one thing which I should have asked Secretary Marshall about, but I can do that in writing.

However, I am interested in the relationship between national health insurance and health hazards.

Now, obviously, the health hazard business is a slow one and yet everyday we discover more and more seriousness. It is also a very difficult one because it involves large financial questions both in the compensation to the individual and in the problems of cost to the consumer, so probably it is a network of national health, workers' compensation and health hazards and OSHA.

Should not we now consider catching up with these health hazards and developing them, et cetera?

Should we not consider another approach not as an alternative, but as a complement of finding some way of requiring periodic health examinations by employers of employees of what we can designate as hazardous environments for the worker?

In other words, should not we try to help the worker with these long-distance, long-range incubations of industrial disease by requiring some form of periodical medical examination?

Then at least the worker would know a lot sooner than today as to his or her condition. Any permutations that you gentlemen see in that as technicians, I would like to have even now or in a supplemental memorandum. We do not have to have it necessarily from Mr. Baier. We just want it from whoever knows the facts.

Mr. BAIER. One of the problems in the workers' compensation area is that there are very few diseases caused by chemicals or hazards in the workplace which are compensated. This is a fundamental problem in our recordkeeping and why we don't have very good records to start with in terms of the magnitude of the problem.

Where we know of a serious situation, and I think black lung is a classic example of that, the disease was often not diagnosed as such. It was "normal" for a coal miner to have certain kinds of x-ray changes.

As coal workers with pneumoconiosis became more recognized, result from occupational exposure and compensated as such, then the compensation costs started to increase fantastically.

When industry advised us of the problem of vinyl chloride and angiosarcomas, at the time there were less than a dozen cases of angiosarcoma of the liver reported annually in the United States. Here were three cases in 1 month. When they went back and looked, they found cases diagnosed as cirrhosis which were, in fact, angiosarcomas of the liver.

One of the things we have done to create a Federal awareness of these problems was the standard completion which NIOSH started several years ago and OSHA joined in on, and we did it as a joint effort. Initially, our plan was to publish several booklets so that people would be made aware of the existing 400 standards, or startup standards, for occupational health. One of these booklets is aimed at physicians so the physician can recognize certain kinds of symptoms which indicate overexposure.

One of NIOSH's mandates is a list of all toxic substances, 28,000 different substances, and a book containing about 37,000 entries—what is the diagnosis for overexposure to each of these substances? It became a very complex situation.

One of the sad things about carcinogens, and maybe why NIOSH is very much concerned about exposure to carcinogens, is that the latency period is so long that by the time the disease is diagnosed, it is too late to intervene. If we could pick up some of the early symptoms of exposure and be able to have some sort of intervention system in here, that would be great.

I think our problem right now is still one of recognition of these occupational diseases.

Senator JAVITS. What chance do we have in the law for thinking about something like that?

Mr. BAIER. We have recommended in each of our criteria documents a method for determining over exposure. If we said do a routine physical examination, that would vary with every general practitioner.

How comprehensive would the study be? If something is going to affect the lungs, you don't have to check the liver.

On the other hand, if the substance affects the liver and there is an enzyme we could measure in the blood, then that is the kind of test we would advise. We made it specific. Maybe Vern could expand on the criteria.

Mr. ROSE. In your bill on worker's compensation from last year, and Senator Williams' bill, you included some direction for NIOSH or HEW to develop standards on what is an occupational disease, how do you define it, to be then used to guide the workers' compensation situation.

It would also follow the same line for national health insurance in that there does need to be a basis for what is an occupational-related disease, what kind of rules are we going to follow and, consequently, what kind of tests and examinations will we give.

NIOSH has been working with the World Health Organization to develop early indicators of potential occupationally-related disease. Such tests would pick up early symptoms or signs and, if we could have prevention before you get into a frank disease and the workers' health is already affected——

Senator JAVITS. I was thinking about the elementary matter of protection now. If you wait until you run all these things down, thousands of workers will die or become disabled.

Could we do anything along that line? Could we standardize?

Mr. BAIER. We have the basic 400.

Senator JAVITS. Just a minute.

Could we standardize the matter of examination for workers who are within a hazardous environment? You certainly know which environments are hazardous. Could we require an annual examination of workers to deal with the particular hazard that they face within the hazardous environment?

You know the environment and the hazard. You do not know what to do about it as yet, and you have not spelled it out in detail.

But the question is, could be do anything like that and, if so, do we have authority or would we have to get it?

Mr. ROSE. One thing we could do is develop standards based on a process, a type of industry, say a rubber manufacturer or a manufacturer of dyes for the textile industry. This does not deal with all of your 25,000 hazards, but it looks at the real world situation and makes an identification of what hazards would be in that type of work process, that type of industry and, based on that, you could put in recommendations for medical examination for known toxic substances for use in that industry. That is a feasible way to approach it.

I don't think a basic overall type of medical examination for all of industry would gain us as much as opposed to taking a look at selected high-risk industries identifying what are the major spectrum of hazards and making basic recommendations for putting medical examinations and other types of measures in place. I think it can be done under the occupational health and safety plan.

The CHAIRMAN. Can it be done under NIOSH?

Mr. BAIER. Yes. The vinyl chloride standard addresses exactly those issues.

Senator JAVITS. I am thinking about what he said now. Could we require periodic, say annual or other examinations under OSHA even before you established standards simply by the fact that you identify hazardous environments?

Mr. ROSE. Yes, you could, Senator, because you were wise enough when you created the act to identify that a standard is not just an environmental limit, such as 200 micrograms of cotton dust. It may include other factors, even medical examinations. A standard could start out with: Advise the workers that they are at risk and give minimal examinations and later on add on other things such as a definitive permissible environmental level.

Mr. BIERBAUM. One of the important things that you have to consider is if you implement something like this in a regulatory form just establishing the fact that periodic examinations have to be conducted definitely would not go far enough. We recognize that we need some kind of standardized flexible medical procedures and recordkeeping procedures, such as NIOSH has proposed to OSHA on recordkeeping. Some kind of joint effort is long overdue in developing these medical procedures.

Senator JAVITS. In all respects, do not get me on recordkeeping. You are wrong about what I am talking about. Nothing will kill it faster than recordkeeping.

Mr. BIERBAUM. Our belief is that by saying you need certain periodic physical examinations, unless you have some kind of systematic approach, you may not solve it.

Senator JAVITS. You would have a systematic approach by prescribing medical examination. Let the reports be filed. Let us not have any more reports. It will kill this idea.

I would like a memorandum as to how this might be done and what number less than 20,000 fields would be required to be covered, what estimated number of employees and so on.

Gentlemen, I would not figure on one medical examination a year. Limit the medical examination as to the quality. You cannot, under this rubric, examine if he has flat feet. Let the report be filed with the worker's file. As you get around to needing it, you can collect it.

Let us not have reports. We do not need them. We just want to get the poor worker looked at.

Ninety or 95 percent of the employers will give it a good break if you do not load it down with recordkeeping. I do not disrespect it, but it is killing us in practically every regulatory activity we undertook. You cannot handle the volume and the business is readheaded about the whole thing, so I would appreciate it, and I think it would be very useful to us here in the committee, if we could get some idea from the technical point of view of what it would mean and then we can go into it with Dr. Bingham and the Department to see if there is any possibility with it.

It strikes me that we know enough and we cannot get the standards built-up fast enough. So we have to find some other way to bring the worker some greater protection.

I thank you very much.

The CHAIRMAN. We will now call on the Alliance of American Insurers, represented by Mr. James Gillice. We appreciate, Mr. Gillice, that you are here today to testify at the Oversight Hearings on the Occupational Safety and Health Act. Your testimony is going to be significant.

STATEMENT OF JAMES T. GILLICE, LOSS PREVENTION DIRECTOR OF THE ALLIANCE OF AMERICAN INSURERS

The CHAIRMAN. You are the representative for the Alliance of American Insurers, and you are the Loss Prevention director?

Mr. GILLICE. Yes, sir. I am in the Washington office. I thank you for your remarks, Mr. Chairman.

We have been requested to limit our oral presentation to 10 minutes or less, and I shall do just that and do respectfully request that our entire statement be incorporated into the record.

The CHAIRMAN. Your entire statement will be made a part of the record.

Mr. GILLICE. My name is James T. Gillice and I am the Loss Prevention director for the Washington Office of the Alliance of American Insurers. The Alliance is a major national association of property and casualty insurance companies. On behalf of our members, who provide workers' compensation, general liability, fire, and other property and casualty coverage in all 50 States and the District of Columbia, we appreciate this opportunity to appear before the subcommittee for the purpose of describing and discussing the insurance industry's safety and health service and its contributions to the voluntary compliance efforts of the business community.

Our member companies write about 30 percent of the workers' compensation business placed with insurance companies in the country. It is in connection with workers' compensation that our industry offers the bulk of the occupational safety and health services to policyholders. The safety services of insurance carriers rendered under coverage other than workers' compensation also play an important role in the total picture of job safety. This would include, in particular, services offered under fire, general liability, and product liability policies.

The consultative services provided by most carriers are extensive and by necessity are becoming increasingly sophisticated. Because of the tendency within the insurance industry to refer to the "onsite consultation" by Government as "compliance assistance," and the distinction that is to be made between "compliance assistance" and "loss prevention consultation," provided by insurers, it seems desirable to broadly define our industry's service cite a few specific examples of the service rendered.

"Insurance Loss Prevention Consultation" as used generally by the insurance industry, means loss prevention services available to insureds as appropriate to their needs. This includes, but is not restricted to management and technical advice on matters pertaining to management support and direction; supervisory responsibility; employee selection, training, and education; evaluation and identification of specific hazards; and recommendation of effective control measures. Moreover, such consultation service includes rendering specialty services as needed in such highly technical areas as industrial hygiene, in-plant medical programs, construction safety, machine guarding, material handling, et cetera.

The consultation services offered by the insurer also include the kinds of technical advice given by Government compliance assistance officials. The insurance safety and health consulting service results in specific recommendations for corrective action, which take into consideration applicable Government-mandated standards and other national standards which may not yet have been adopted by OSHA.

Virtually all the insurance safety services, described in this presentation which have been offered to policyholders over the years, contribute to the objective of achieving safe and healthful working conditions. Thus, all would seemingly serve, in their respective ways, the declared purpose of the act.

Since the passage of the act, it has been the belief of the Alliance that the inspection of premises or operations of the purpose of enforcing OSHA standards and regulations must be performed by governmental personnel and not the insurance industry. Nor can insurance personnel certify compliance with the act. However, as consultants to policyholder management if their responsibility under the act is to be met, there remains a large area of service to be delivered by insurance industry personnel. To cite just a few examples this would include:

Evaluate and then recommend necessary adjustments to strengthen the insured's safety and health administrative plan so that it will be responsible to OSHA regulations and standards.

Help evaluate and identify specific hazards' then consult with policyholder on effective control measures. Recommendations should cover what is needed to control the hazard and not be restricted to minimum standards.

Recommend that the insured analyze the promulgated standards in terms of significance to their operation. Offer assistance in an advisory capacity.

Advised the insured on the manner in which an effective self-inspection procedure can be developed, so that they might maintain continued surveillance of all conditions relative to their compliance with the safety and health standards.

Offer consultation in the development of job hazard analyses for selected operations where the potential for injury or occupational illness may be significant.

Analyze and, when necessary, recommend modification in the internal safety training program for employees of policyholder, to help assure that OSHA regulations and standards are understood.

There are other examples along these lines that are included in our statement.

I would like to use the remaining time to somewhat briefly cover a few of the Alliance views pertinent to certain OSHA programs and legislative issues.

First, I should like to mention the problems of small business exemptions. The Alliance is distressed by continuing efforts to exempt smaller businesses or certain industries from the act or from compliance activity. Considering the many positive aspects of the act, blanket exemptions from coverage based on size of work force or type of industry would obviously not contribute to safe and healthful working conditions in these groups.

The impact most of the proposed numerical exemptions will have on total coverage of the act is substantial. Also, many of the more hazardous industries—"target industries"—would be in the group exempted since they are industries composed principally of small businesses.

The alliance has therefore consistently opposed exemptions from the act which are based on the number of employees.

The Small Business Administration authorization bill amendment recently introduced by Senator Bartlett did however prove to be an interesting approach to small business exemption from OSHA and it crossed two positions the Alliance had established with respect to the act. Whereas the Alliance has opposed blanket exemptions, clearly it has been our position that administratively OSHA should direct its attention to the potential problem areas and target its efforts, to the extent possible, on the "worst first" locations. The Bartlett amendment did seek to overcome one of the chief objections to blanket exemptions by excluding the more hazardous businesses from the exemptions.

The Alliance did however oppose the amendment and expressed its views by letter to the conferees. We believed, as did others, that the 2-digit SIC code was entirely too broad a classification to identify the more hazardous industries and certainly could not identify, and indeed would exclude from coverage, the more hazardous locations within borderline industries. Moreover, the BLS data collection system would likely need much further refinement to produce the needed statistics for such a program, particularly if the criteria was more selective by changing to 3- or 4-digit SIC classifications.

Further, this small business exemption would have severely hampered OSHA's efforts to increase surveillance over industries with po-

tential occupational disease exposures, in particular, those where there is a lengthy latency period which would not necessarily be reflected in the injury/illness incidence rate.

COLLECTION AND ANALYSIS OF STATISTICS

One of the compromise amendments agreed to in the SBA conference would require the Secretary of Labor to conduct a study of the collection and analysis of statistics dealing with work-related injuries and illnesses. The Alliance has long expressed support for both public and private data collection and research into the causes of occupational injuries and diseases in an effort to better identify and control such exposures. We, therefore, have been pleased to note the development of the supplemental data system within OSHA during the past year or so, and would, indeed, support any further studies on the collection and analysis of statistics.

The insurance industry may be able to offer some measure of assistance in efforts such as targeting OSHA compliance activities on a worst first basis, preferably a worst location first. It may be possible that national rating data and assigned risk pool data could be used in such programs.

STATE PLANS AND 7(C)(1) AGREEMENTS

The alliance has been a strong supporter of the concept of States developing their own plans so that they might assume and retain their respective roles of responsibility in administering the act. We are, therefore, somewhat concerned over the declining role of State plans chiefly due to financial problems. We would indeed encourage any consideration that may be given to OSHA programs that might motivate further State participation and, further, we would support any legislative proposals which would increase the Federal funding level available to the States.

The compliance assistance or onsite consultation programs have been adopted by some 45 States either through the 18b plans or the 7(c)(1) agreements. The alliance clearly supports such compliance assistance programs, as defined previously in our statement, particularly when rendered by State consultants. Unquestionably, the 90-percent Federal funding of the 7(c)(1) agreements, coupled with the concerted efforts of OSHA, has enhanced this project and stimulated State participation. We trust the program will continue to receive an appropriate level of funding.

CONCLUSION

The Alliance has attempted to describe rather broadly, the safety and health services of our member companies to afford the subcommittee with further knowledge of some of the efforts of the private sector relative to OSHA. Efforts which we trust contribute, in part, to the vitally important role of voluntary compliance under the act.

Thank you. That concludes my summary.

The CHAIRMAN. Thank you very much, Mr. Gillice.

Would you describe the Alliance of American Insurers a little more for our record?

How many members do you have? Can we get the dimension of the alliance in terms of companies? And then, in the second degree, the number of employers covered by your workers' compensation lines? And then, in the third degree, the number of workers that are really embraced within those lines?

Mr. GILLICE. I regret I may not be able to get down to that level.

The CHAIRMAN. Just to give us the ball park picture of what the Alliance is.

Mr. GILLICE. We are one of the major national trade associations representing property and casualty insurance industries and, as I believe you knew or know, we formally represented chiefly the mutual insurance companies. We recently had an organizational change in the nature of our membership. We represent between 100 to 120 companies today, largely chiefly still mutual insurance companies, writing all lines of property and casualty insurance.

Some of our members are the principal writers of workmen's compensation. Consequently, we have had a heavy involvement in the loss prevention service area relative to the workmen's compensation policy and, of course, in conjunction with OSHA.

It would be difficult to identify—I don't know if we have ever done a survey of the number of policyholders that we have. I did indicate in my statement, we wrote something like 30 percent of the insurance placed with the private insurance market.

The CHAIRMAN. I knew it as basically an alliance of mutual companies, but you are no longer exclusively mutuals?

Mr. GILLICE. That is correct, Mr. Chairman. We were formerly the American Mutual Insurance Alliance, and we are now the Alliance of American Insurers.

The CHAIRMAN. And again, it is about 100?

Mr. GILLICE. It varies between 100 and 120, with affiliates and associates, and so forth.

The CHAIRMAN. Some are very prominent national companies?

Mr. GILLICE. Yes, sir. One of our larger members writes between 7 or 8 percent workmen's compensation alone.

The CHAIRMAN. We have had testimony from some of your members.

Mr. GILLICE. I understand you have.

The CHAIRMAN. We have had testimony from some of your members describing some of the loss prevention programs that they bring to their policyholders. It was very impressive.

Mr. GILLICE. I believe Liberty Mutual was one.

The CHAIRMAN. I gather this whole activity is growing?

Mr. GILLICE. Yes, sir. We operate pretty much like any trade association. We have advisory committees. The advisory committee involved in this area, with respect to lose prevention, has a membership which is comprised of the executive officers of the loss prevention departments of some 20 of our larger companies.

The CHAIRMAN. You have been involved in the consensus standards, the development of industry standards?

Mr. GILLICE. Yes, sir. That is described in our complete statement.

The CHAIRMAN. You know, this was one of the early practical decisions that was made both legislatively and administratively—the decision to blanket in those standards—and this started us down one of our troubled roads.

Mr. GILLICE. Yes, sir.

The CHAIRMAN. I can still remember today the time when I was first exposed to what this meant as a practical matter to employers. I learned of a barbershop that was hit with consensus standards, 99.9 percent of which had nothing to do with this man's business, and he got hit with it. It was dumbfounding and confusing, and most irritating to him.

Were you here when the testimony was given this morning from the Department of Labor that some 900 of the industry consensus standards will be eliminated in an effort to focus on the more meaningful standards?

Mr. GILLICE. Yes, sir.

The CHAIRMAN. It impresses me that this will be a great improvement.

Mr. GILLICE. I am certain it will help OSHA tremendously in their administrative efforts.

The CHAIRMAN. Now we really have, basically, three approaches to reaching the objective and that objective, of course, is safety and health at work.

First, we have, of course, the Federal program, the OSHA Federal program which has options of State or Federal enforcement, right?

Then we have, actually, we have rather backed into consultation. The philosophy of consultation basically at the beginning was to bring consultants to the working places to advise employers on how to comply with the law, the OSHA law; is that right?

Mr. GILLICE. Yes, sir.

The CHAIRMAN. The consultation then divided, an opportunity was provided for the State to be the agency that offered the consultation service.

If the State did not, OSHA would; is that right?

Mr. GILLICE. Well, I believe first of all, it was available for the States to get into consultation through 18(b), and they recognized that there was some lack of participation in that area and along came the 7(c)(1) agreement which chiefly started, I believe, by the amendment by Congressman Steiger. Recognizing still that it is a voluntary program on the part of the States to join in these agreements. There are still a few States that are not providing consultation. I think that number is down to a relative few today.

Also, there is now a program that has been established through contracting with outside private contractors, in these few remaining cases, to provide consultation service.

It was clearly OSHA's objective to provide this coverage nationally, and it would appear very shortly that they would achieve this.

The CHAIRMAN. As a matter of fact, the Federal appropriations for OSHA consultation for this coming year will be nearly $15 million for this purpose.

Now, I just wondered about this. You have addressed yourself to consultation, what it is, and what it should be.

There are still some questions that I have in mind of the broad picture, and then the specific picture of how this contracting out to private contractors for consultation is working out in terms of the competence of the contractors, and how that is to be judged.

We have two contracting agencies. OSHA contracts, right?

Mr. GILLICE. Yes.

The CHAIRMAN. And the State?

Mr. GILLICE. I do not know that the States are engaged in the contracts. I may stand corrected on that. I think the State has the opportunity to provide consultation with State employees through 7(c)(1) agreements, which is a contractual agreement, you might say.

The CHAIRMAN. With the State, they do their own consulting?

Mr. GILLICE. Yes, sir.

The CHAIRMAN. They have the opportunity to go private?

Mr. GILLICE. I don't know.

The CHAIRMAN. I do not know. Let me get to the end of this.

Mr. GILLICE. Yes, sir.

The CHAIRMAN. Your people are out there and they must cross paths with these consultants all the time.

What is the broad evaluation of how this is working, this consultation?

Mr. GILLICE.To the extent I have heard from our member companies, we are very supportive of the availability of the consultant service. It complements that which we offer. There have been a number of occasions, we are told, where our consultants are in the workplace making recommendations having convinced management that they have a problem, whether it is a OSHA standard or not, and that it should be corrected. They have agreed to do so. We might assure them that, in our minds, it would be in compliance with existing standards under OSHA, but to provide them some comfort for going ahead and making the expenditure, many times they will call in a consultant. That does not give them 100 percent guarantee that the compliance officer might still not come in and find a violation of the standard, because of a difference in interpretation. But to the extent that we can reach that point, the consultant has been a complement to our efforts to achieve compliance in the workplace.

The CHAIRMAN. It is a beneficial input to safety and health in the workplace?

Mr. GILLICE. Yes, and I think that that process I have just described has worked in the reverse fashion, whereby the employer may have called in a consultant or had an opportunity to seek a consultant's advice, and sought the advice of the insurer to see if he would be in agreement in the way described by the consultant.

The CHAIRMAN. When it comes to the enforcement of the law, some have urged that when an employer receives consultation, and relies on the consultant's advice, then the employer should be immune from enforcement sanctions. We have opposed that, and we have used the analogy to the taxpayer who relies on an accountant for the filing of his return. That does not relieve him of the responsibility for a correct return.

Mr. GILLICE. Correct. Certainly, Mr. Chairman, we have to be very cautious in making our recommendations to make sure they meet at least the minimum level of the standard that is in existence in OSHA. This does not necessarily relieve the employer of his statutory responsibility, nor do we pretend that it does.

The CHAIRMAN. We used that argument without complete success last week when an amendment was offered to relieve the employer,

when consultation had been requested, and received and followed, from penalties where there was noncompliance with the regulations.

Mr. GILLICE. It has always been our concern. We not only do not assume the statutory responsibility, but we do not wish to serve in a quasi-governmental manner, because we have a cooperative relationship with our policyholders, our client, and once that cooperation breaks down because he feels we have a statutory responsibility to enforce or report, or whatever it might be, it destroys this relationship.

The CHAIRMAN. You have a section on training in your statement. I have not had the chance to read this, and you did not include it all in your oral statement here. This, I would think, would be one of the major activities that you would be faced with—training the personnel that you sent forth for your preventive and consultative work?

Mr. GILLICE. Yes, sir.

The CHAIRMAN. I know it is important to the Alliance and your members, and I am just wondering whether there is a relationship between your training education efforts and that of OSHA?

Is there some cooperation—some way that you get from them anything you need?

Mr. GILLICE. They use some of our materials and some of our people have gone to some of their schools. That was quite sometime ago. I don't know if that is true today that outsiders, whether they be private insurance company personnel or others, would attend OSHA training courses.

Various OSHA training courses have used a variety of materials that we have developed in the past, and are still references and in some of the instances are in some of the standards.

The courses that the Alliance develops are chiefly for advanced training for insurance company personnel. Insurance companies also provide some training for their own personnel as well, and then third, of course, out in the workplace with respect to supervisory training courses and so forth, insurance companies are offering advice, consultation, and assistance in developing these programs. our members are conducting some courses for their personnel not only to upgrade the professional level and standing of the safety representative, or industrial hygienists, or other health consultants, but also to make them more cognizant of the new standards being developed by NIOSH and OSHA. It is very important to keep abreast of this.

The CHAIRMAN. You know when standards are developed, it is a long, long process under law until we get to the promulgation of a final standard. Generally, there is a lot of discussion, for a long time, and debate is intense. We saw this most recently with respect to the cotton dust standard.

I wonder if, in the long process of developing a standard, whether the Alliance would have an interest, would have knowledge, would have an opinion, and would be a participant in the standard development?

Mr. GILLICE. Absolutely. As far as being a participant in the public comment period, we review and make a determination of whether we wish to comment on every administrative regulation or standard OSHA has published in the Federal Register. We consistently do it. We review it at a technical level through the use of subcommittees.

Our industrial hygiene safety subcommittee, for example, reviews all the health standards. Its recommendations would go to the full advisory committee or to an ad hoc committee. We review every document and make our determination as to what, if any comment, we are going to submit on it.

We have submitted scores over the last few years on both administrative regulations and standards. On some issues we elect to remain silent or, for example, something like on walkaround pay. But certainly in other areas, yes; we do.

The CHAIRMAN. With respect to the cotton dust standard, particularly, did you participate?

Mr. GILLICE. Our industrial hygiene subcommittee reviewed that. I can't recall that we had any particular comments to submit on that one. I really cannot recall, sir.

The CHAIRMAN. Way back on the vinyl chloride standard, were you in on that?

Mr. GILLICE. Yes, we did some commentary on that and on the standards completion project, we were submitting comments pretty regularly on the processes that were developed.

The CHAIRMAN. And I believe the roof fell in when that standard was proposed. The vinylchloride standard was to be the ruination of many companies, or so it was claimed. This morning Secretary Marshall said that the Department went forward with the standard anyway, it went into place and just the reverse has happened. Everybody has benefited. The workers certainly and the companies have prospered, too, even though at the beginning it was claimed that it would be the backbreaker of that industry, those that made vinyl chloride, and those that used vinyl chloride.

I wonder if this couldn't be true with many other areas? When that initial cost of compliance bulked so large, they often overlooked the other factors, such as what it would cost if you did not do it.

That is where you insurers should come in. You look at the whole balance, do you not?

Mr. GILLICE. Yes, but I would say that we, perhaps, do not have the level of great concern that industry has expressed with economic impact. We certainly have cognizance of the importance of that to our policyholders. I would say, by and large, our comments with respect to the standards would be pretty much based on technical data, based upon our experience in monitoring the exposure or similar technical experience. We do not necessarily have a good handle of measuring what the economic impact would be.

So to the extent that we are talking about an industrial hygiene subcommittee subcommittee reviewing it, these are people who have been out in the workplace and monitoring these exposures and our viewpoint would be pretty much from that perspective.

The CHAIRMAN. In that profession, industrial hygiene, is there a two-way movement, with your industrial hygienists coming to OSHA, and OSHA people coming to the private side?

Is there a growing community of OSHA people in whom you have confidence?

Mr. GILLICE. Yes, there is some. I wouldn't say there is a great amount of interchange necessarily. There are a vast number of people

in OSHA who have had insurance company background because years ago that was the chief area of employment for safety and health personnel.

Now as we are seeing people come out of college with a little experience in industry and elsewhere, they might end up with OSHA. We have not seen too many come from OSHA to the insurance industry. But perhaps there has been some.

The CHAIRMAN. In your experience, have you seen companies develop departments where there were no departments of industrial hygiene?

Mr. GILLICE. Yes, some certainly have done so. As we have recognized the increase of technology and increased use of chemicals and toxic substances in industries, it is necessary for us to be more cognizant of the dangers of these exposures, to evaluate the exposures before we write the account so there has been increased use of industrial hygienists.

It is difficult for a small insurance company to have a staff of industrial hygienists, but even those companies have made arrangements with outside industrial hygienists and they have trained their other field representatives to at least have some knowledge of hazard recognition so they know when to call in an industrial hygienist. There is no need to send industrial hygienists out on every service call.

The CHAIRMAN. You look with favor, then, on the Small Business Conference report that called for a study of the OSHA data collection. You indicated that you would be in a position to be cooperative with that endeavor?

Mr. GILLICE. Yes, absolutely.

The CHAIRMAN. Yours has been a very constructive statement, most constructive, and we appreciate it very much.

I thank you.

Mr. GILLICE. Thank you.

[The prepared statement of Mr. Gillice follows:]

PREPARED STATEMENT OF JAMES T. GILLICE ON BEHALF OF THE ALLIANCE OF AMERICAN INSURERS

My name is James T. Gillice and I am the Loss Prevention Director for the Washington Office of the Alliance of American Insurers. The Alliance is a major national association of property and casualty insurance companies. On behalf of our members, who provide workers' compensation, general liability, fire, and other property and casualty coverage in all fifty states and the District of Columbia, we appreciate this opportunity to appear before the Subcommittee for the purpose of describing and discussing the insurance industry's safety and health service and its contributions to the voluntary compliance efforts of the business community.

Our member companies write about 30% of the workers' compensation business placed with insurance companies in the country. It is in connection with workers' compensation that our industry offers the bulk of the occupational safety and health services to policyholders. The safety services of insurance carriers rendered under coverages other than workers' compensation also play an important role in the total picture of job safety. This would include, in particular, services offered under fire, general liability and product liability policies.

The provision of policyholder safety service was not only an integral part of the formation of many insurance companies around the turn of the century but indeed these services helped motivate the organized safety movement in the United States. In over 60 years since the early development of this service, it has grown substantially, becoming increasingly sophisticated, to meet the demands of the business community, and today stands as a key competitive factor in the marketing of insurance to the private sector.

I. DESCRIPTION OF INSURANCE SAFETY AND HEALTH ACTIVITY

A. Scope of safety services

Well over 10,000 full time technical personnel are estimated now to be employed by insurance companies to provide safety and health services. Although there are no statistics as to the extent the insurance industry is represented in the total safety profession, the percentage is great. Also, many of the safety professionals presently serving in general industry received their early training in the insurance industry.

Insurance company financing for safety and health is vast. These expenditures cover not only the insurance carrier's own safety and health services but also the financial support for numerous organizations engaged in a great variety of accident prevention efforts. And this is only "seed money." Policyholders receiving these services subsequently spend additional amounts, vastly exceeding insurance company expenditures, to upgrade the operation of their own programs.

We previously noted that the services provided policyholders under coverage other than workers' compensation also contributed directly and indirectly toward the control of occupational exposures. In addition, there are other insurance functions which enhance the loss control efforts. Accident investigation by claims personnel is one. The motivation to safety of policyholder management by sales personnel is another.

Another perspective which reflects the scope of the insurance activity is offered by statistical comparison with OSHA compliance efforts. Recently, we requested that our member companies serving on our Loss Control Advisory Committee, provide us with data on the total number of safety service visits made during 1977 and of this total, the number rendered under workers' compensation which is solely related to occupational safety and health. Of the 12 companies responding there was a total of 439,155 safety service visits made during 1977, of which an estimated 214,475 were rendered under workers' compensation. This compares with 59,932 workplace inspections made by Federal OSHA forces during 1977. We hasten to add that this statistical comparison is drawn simply to aid in describing the magnitude of private sector services and is not intended as criticism of the OSHA compliance activity, an activity which we further acknowledge has been inreasing each year. Moreover, such quantitative statistical data clearly does not serve as the sole measurement of performance. Obviously, the quality of the effort, although a more elusive measure, certainly is of equal if not primary importance.

B. Nature of safety services

There are two basic functions which insurance safety services provide. One is to survey and evaluate risks for underwriting purposes, the other is to provide consultative services to policyholders. These two broad functions are intimately related. The safety consultant, in his initial fact-finding and evaluation of a prospective policyholder for underwriting, gains the background data for developing a valuable safety service program when coverage is provided. In addition to effectively handling the fact-finding and evaluation functions in an initial survey of a prospective risk, the alert insurance representative will encourage the use of the loss control services of his company. Enlightened management knows the value of such services for they often become the deciding factor in selecting the carrier. Certainly, this competitive pressure to expand safety services is healthy and insurance companies have welcomed and responded to the challenge.

The consultative services provided by most carriers are extensive and by necessity are becoming increasingly sophisticated. Because of the tendency within the insurance industry to refer to the "on-site consultation" by government as "compliance assistance," and the distinction that is to be made between "compliance assistance" and "loss prevention consultation," provided by insurers, it seems desirable to further define these terms.

"Compliance assistance" incorporates the following:

Is rendered only upon specific request of the employer seeking advice on specific matters pertaining to compliance with OSHA rules, standards, and regulations.

Is to be rendered by government officials or other parties under contract other than enforcement officials.

The compliance assistance official is not authorized to issue citations or penalties for violations detected. However, when "imminent danger" or "serious danger" conditions or practices are found, the "consultant" must request the

employer to take appropriate corrective action within a specific period. Failure of the employer to take corrective action within the specified period may result in referral to OSHA for the initiation of appropriate compliance enforcement.

Requests for government compliance assistance service generally are considered in terms of priority. Smaller plants and those with high injury and illness incidence rates will receive higher priority than others.

The government compliance assistance officials will provide preliminary technical advice on approaches, means, techniques, etc., by which the employer may attempt and/or achieve correction of conditions or practices determined to be hazardous and in violation of OSHA standards.

"Insurance loss prevention consultation" as used generally by the insurance industry, means loss prevention services available to insureds as appropriate to their needs. This includes, but is not restricted to management and technical advice on matters pertaining to management support and direction; supervisory responsibility; employee selection, training and education; evaluation and identification of specific hazards and recommendation of effective control measures. Moreover, such consultation service includes rendering specialty services as needed in such highly technical areas as industrial hygiene, in-plant medical programs, construction safety, machine guarding, material handling, etc.

"The consultation services offered by the insurer also include the kinds of technical advice given by government compliance assistance officials. The insurance safety and health consulting service results in specific recommendations for corrective action, which take into consideration applicable government-mandated standards and other national standards which may not yet have been adopted by OSHA.

C. Occupational health and industrial hygiene services

The identification, evaluation and control of health hazards in the workplace is an integral part of effective insurance safety services. In recognition of the increasing emphasis by OSHA on controlling health exposures in the workplace, it seems suitable to briefly focus on the health services provided by insurers.

In the evolution of insurance company safety services the need for establishing specialized service in occupational health and industrial hygiene was early recognized. It was in the 1920's that companies first created and offered occupational health services, supplementing the industrial safety services firmly established by that time. Competition between insurers since then has broadened their role in providing such services and in improving control over this increasingly intricate aspect of industrial safety. Perhaps, in no other area of service to industry has the insurance business had such pre-eminent capability as in occupational health and industrial hygiene. Department of Health, Education and Welfare studies have indicated that insurance companies provide health and hygiene services to about two-thirds of all firms requiring such services, and account for at least 50% of the total health and hygiene services rendered to general industry. Many of the firms not receiving insurance assistance are self-insurers.

Availability of these specialized insurance services is expanded substantially by providing basic training in industrial hygiene and occupational health to field safety service representatives. Through such training, the safety representative is better prepared to identify and to a limited degree evaluate the seriousness of specialized exposures. He can then alert and call on the services of his company's staff of industrial hygienists and occupational health consultants. These professionals also contribute to the development of occupational health and industrial hygiene standards produced by organizations such as the American National Standards Institute.

D. Training, education and publication

The Alliance has developed many programs and publications to assist member companies in continuing to provide quality safety and health service to policyholders. Technical schools and conferences are regularly conducted in occupational safety, industrial hygiene, motor vehicle fleet safety, products safety, and fire protection. Through advisory committees of member company personnel the Alliance develops and publishes a variety of specialized safety and health materials. Much of the material published by the Alliance is made available in quantity as a public service to organizations for use in local and nationally recognized campaigns. The Alliance also has provided the Labor Department, Department of Health, Education and Welfare, the Bureau of Mines and Department of Interior

with publications for use in their training and education courses. The Alliance and member companies participate with a variety of other organizations in the development and publication of safety materials, visual aids and films.

In addition to training and development programs which the Alliance and its member companies provide for insurance company personnel, a number of Alliance companies provide extensive training for policyholder personnel. Some offer courses on a continuing basis, utilizing staffs of skilled training consultants. They typically service policyholders through regional seminars and at established company institute centers. The courses are directed toward management, supervisory, and employee levels. They cover not only occupational safety and health but other relevant areas such as motor vehicle and fire safety. Some insurance company institutes instruct key policyholder personnel in training methods so that effective internal safety training programs can be carried on within their own companies.

II. INSURANCE SAFETY ACTIVITY SPECIFICALLY PERTINENT TO OSHA

A. Safety and health standards

The insurance industry, for a great number of years prior to OSHA, has supported safety standards development and has been an important contributor to virtually all of the voluntary safety standards now in existence. Individual insurance companies, through trade associations such as the Alliance, have given generous financial support and provided competent personnel representation to two principal consensus standards organizations, the American National Standards Institute and the National Fire Protection Association.

For example, the Alliance currently has either staff or member company representation on over 70 of the ANSI Safety Standards Committees. We also serve on several of their technical advisory boards. In addition, the Alliance is the Secretariat of two of the major safety standards: A14, Safety Code for Construction, Care and Use of Ladders, and the A92 project, Mobile Scaffolds, Towers and Platforms.

The Alliance will continue working with ANSI, NFPA and others to develop effective standards that may subsequently be used for federal government consideration.

B. Insurance consultive service relative to OSHA

Virtually all the insurance safety services, described in this presentation which have been offered to policyholders over the years, contribute to the objective of achieving safe and healthful working conditions. Thus, all would seemingly serve, in their respective ways, the declared purpose of the Act. Recognizing however, that there would be increased demand for our services, specifically prompted by the compliance activity under the Act, special consideration of the expanded role of insurance services pursuant to OSHA is quite appropriate. Since the passage of the Act, it has been the belief of the Alliance that the inspection of premises or operations for the purpose of enforcing OSHA standards and regulations must be performed by governmental personnel and not the insurance industry. Nor can insurance personnel certify compliance with the Act. However, as consultants to policyholder management if their responsibility under the Act is to be met, there remains a large area of service to be delivered by insurance industry personnel. Working with our Loss Control Advisory Committee and keyed to the Department of Labor's list of "What Employers Can Do To Comply With The Occupational Safety and Health Act," such insurance safety consulting services include:

Evaluate and then recommend necessary adjustments to strengthen the insured's safety and health administrative plan so that it will be responsive to OSHA regulations and standards.

Help evaluate and identify specific hazards; then consult with policyholder on effective control measures. Recommendations should cover what is needed to control the hazard and not be restricted to minimum standards.

Recommend that the insured analyze the promulgated standards in terms of significance to their operation. Offer assistance in an advisory capacity.

Advise the insured on the manner in which an effective self inspection procedure can be developed, so that they might maintain continued surveillance of all conditions relative to their compliance with the safety and health standards.

Offer consultation in the development of job hazard analyses for selected operations where the potential for injury or occupational illness may be significant.

Analyze and, when necessary, recommend modification in the internal safety training program for employees of policyholder, to help assure that OSHA regulations and standards are understood.

Encourage the policyholder to conduct special seminars for the purpose of disseminating information to the end that management, supervisors and employees know their respective responsibilities under the Act. Offer assistance in organizing such seminars and serve as a participant, especially to discuss the proper role of the insurance carrier.

Assist the policyholder in identifying specific safety goals and pattern safety services accordingly. Periodically, evaluate and report on their progress in meeting goals and objectives.

Encourage and assist the insured in providing appropriate emphasis on safety and health matters in their publications, and other communications made, including the annual mettings.

Encourage policyholder job safety and health activity in their industry trade associations.

Encourage the policyholder to participate in the preparation of new and revised standards. This can best be done by helping to finance voluntary standard making organizations and, of equal importance, volunteering technical experts for Standard Making Committees.

Assist risk management in drafting appropriate policy statements on occupational safety and health; and encourage that they periodically publicize the importance of job safety to employees and stockholders.

Provide appropriate information services to risk management and encourage that they acquire in-depth knowledge about the Act. Assist them in keeping up-to-date on new developments. If the risk is of sufficient size, encourage them to maintain their own information service.

Identify for the insured the appropriate agencies from which they might receive interpretive guidance and encourage that they establish necessary liaison with OSHA and state government people.

Advise the policyholder on the availability of outside consultation services when there is a technical need beyond the services offered by the insurance carrier.

C. State legislative developments affecting insurance safety services

In its final report several years ago, the National Commission on State Workmen's Compensation Laws, which was created by the Occupational Safety and Health Act, recommended that insurance carriers be required to furnish effective loss prevention services to all employers and, in particular, that reasonable efforts be devoted to safety programs for smaller firms.

Two states, Texas and Oregon, have adopted legislation mandating the availability of such insurance safety services and there is consideration in several other states on this Commission recommendation.

This legislative activity at the state level is mentioned simply to illustrate to the Subcommittee that the private sector is deeply involved in safety and health, whether it be through voluntary or legislative means.

III. ALLIANCE VIEWS PERTINENT TO CERTAIN OSHA PROGRAMS AND LEGISLATIVE ISSUES

A. Small business exemptions

The Alliance is distressed by continuing efforts to exempt smaller businesses or certain industries from the Act or from compliance activity. Considering the many positive aspects of the Act, blanket exemptions from coverage based on size of work-force or type of industry would obviously not contribute to safe and healthful working conditions in these groups.

The impact most of the proposed numerical exemptions will have on total coverage of the Act is substantial. Also, many of the more hazardous industries—"target industries"—would be in the group exempted since they are industries composed principally of small businesses.

The Alliance has therefore consistently opposed exemptions from the Act which are based on the number of employees.

The Small Business Administration authorization bill amendment recently introduced by Senator Bartlett did however prove to be an interesting approach to small business exemption from OSHA and it crossed two positions the Alliance had established with respect to the Act. Whereas the Alliance has opposed blanket exemptions, clearly it has been our position that administratively OSHA should direct its attention to the potential problem areas and target its efforts, to the extent possible,, on the "worst first" locations. The Bartlett amendment did seek to overcome one of the chief objections to blanket exemptions by excluding the more hazardous businesses from the exemptions.

The Alliance did however oppose the amendment and expressed its views by letter to the conferees. We believed, as did others, that the two-digit SIC Code was entirely too broad a classification to identify the more hazardous industries and certainly could not identify, and indeed would exclude from coverage, the more hazardous locations within borderline industries. Moreover, the BLS data collection system would likely need much further refinement to produce the needed statistics for such a program, particularly if the criteria was more selective by changing to 3 or 4 digit SIC classifications.

Further, this small business exemption would have severely hampered OSHA's efforts to increase surveillance over industries with potential occupational disease exposures, in particular those where there is a lengthy latency period which would not necessarily be reflected in the injury/illness incidence rate.

B. Collection and analysis of statistics

One of the compromise amendments agreed to in the SBA conference would require the Secretary of Labor to conduct a study of the collection and analysis of statistics dealing with work-related injuries and illnesses. The Alliance has long expressed support for both public and private data collection and research into the causes of occupational injuries and diseases in an effort to better identify and control such exposures. We therefore have been pleased to note the development of the supplemental data system within OSHA during the past year or so and would indeed support any further studies on the collection and analysis of statistics.

The insurance industry may be able to offer some measure of assistance in efforts such as targeting OSHA compliance activities on a "worst first" basis, preferably a "worst" location first. It may be possible that national rating data and assigned risk pool data could be used in such programs.

C. State plans and 7 (c) (1) agreements

The Alliance has been a strong supporter of the concept of states developing their own plans so that they might assume and retain their respective roles of responsibility in administering the Act. We are therefore somewhat concerned over the declining role of state plans chiefly due to financial problems. We would indeed encourage any consideration that may be given to OSHA programs that might motivate further state participation and, further, we would support any legislative proposals which would increase the federal funding level available to the states.

The compliance assistance or "on-site consultation" programs have been adopted by some 45 states either through the 18b plans or the 7(c)(1) agreements. The Alliance clearly supports such compliance assistance programs, as defined previously in our statement, particularly when rendered by state consultants. Unquestionably, the 90 percent federal funding of the 7(c)(1) agreements, coupled with the concerted efforts of OSHA, has enhanced this project and stimulated state participation. We trust the program will continue to receive an appropriate level of funding.

IV. CONCLUSION

The Alliance has attempted to describe rather broadly the safety and health services of our member companies to afford the Subcommittee with further knowledge of some of the efforts of the private sector relative to OSHA. Efforts which we trust contribute in part to the vitally important role of voluntary compliance under the Act.

Thank you. That concludes my summary.

The CHAIRMAN. We have a panel now from the Cotton Council: Lon Mann, president, National Cotton Council of America, from Marianna, Ark.; Joe Lanier, Jr., president, Pepperell, Inc., West Point, Ga., chairman, American Textile Manufacturers' Institute Safety and Health Committee; and George H. Dunklin, president, Planters Cotton Oil Mill, Pine Bluff, Ark.

STATEMENT OF LON MANN, PRESIDENT, NATIONAL COTTON COUNCIL, MARIANNA, ARK.; JOE LANIER, JR., PRESIDENT, PEPPERELL, INC., WEST POINT, GA., CHAIRMAN, AMERICAN TEXTILE MANUFACTURERS' INSTITUTE, SAFETY AND HEALTH COMMITTEE; AND GEORGE H. DUNKLIN, PRESIDENT, PLANTERS COTTON OIL MILL, PINE BLUFF, ARK., A PANEL

The CHAIRMAN. All right, who speaks first?

Mr. MANN. I will, sir, Mr. Chairman.

I am Lon Mann, president of the National Cotton Council. I am a cotton farmer, a cotton ginner. I married a cotton buyer's daughter, and I am president of a cooperative.

The CHAIRMAN. How many processes of cotton does your company run through? Let me understand this.

Mr. MANN. I am a cotton farmer. I operate a cotton gin. This time yesterday I was in that cotton gin, and I will be back in the cotton gin tonight. I married a cotton buyer's daughter and I am president of a cooperative.

The CHAIRMAN. Very good.

Mr. MANN. Gentlemen, I appreciate the opportunity to appear today before this committee.

Mr. Chairman, I would like to preface my statement by observing that the cotton industry shares OSHA's concern for the health and safety of workers.

We are on record as favoring reasonable regulations where a need has been shown and technological and economic feasibility demonstrated.

If this had been the case, OSHA would not be faced with 23 lawsuits as it is now.

Our statement centers on OSHA's cotton dust rulemaking and, to a large extent, our concern relates to OSHA's misuse of certain numbers in attempting to justify the actions it has taken.

In brief, OSHA has decreed two controversial, very rigid dust standards for our industry.

One applies to cotton compresses, warehouses, cottonseed oil mills, cotton merchants, cotton textile mills, and related industries such as railroads and motor carriers. The other one applies to gins.

Much of the controversy and confusion surrounding the cotton dust standards have centered on their cost and potential impact. Gentlemen, I would like for you to recall some of the activities that were very much in the news during the few weeks immediately preceding issuance of the dust standards.

You will recall that the President's Council on Wage and Price Stability and the Council of Economic Advisors were expressing grave concern about the standards' cost and inflationary impact. At that time, OSHA was using a figure of $625 million for the standards' capital cost.

Even that figure, which we will show is far below the standards' real cost, was alarming to the administration's inflation watchers and rightfully so. On May 23, the President's Council of Economic Advisors asked OSHA to postpone all congressional and industry briefings on the standard pending an inflationary impact assessment by the White House Regulatory Analysis Review Group.

That request brought forth a May 24 memorandum, from Secretary Marshall to President Carter, in which several inaccurate numbers were used to depict the number of people at risk from exposure to cotton dust and the cost of the standards. Mr. Lanier will discuss our concerns about the numbers relating to exposure. The balance of my statement will relate to OSHA's misrepresentation of the standards' cost.

I will begin by quoting from Secretary Marshall's May 24 memorandum to the President:

> The economic considerations which are legitimately the concern of CEA/CWPS have been taken into account in this standard to the maximum extent possible. The standard is approximately one-quarter as costly as the proposal made by the Ford administration. Our administration can claim credit for this cost reduction which, I think, will surprise even the cotton industry. Much of the recent clamor represents industry fears that OSHA will issue a final standard close to its initial proposal involving costs of $2.7 billion.

Gentlemen, that was precisely our concern and the record shows that our concerns were entirely justified.

In the preamble to its standards, OSHA makes a lengthy review of the cost estimates placed in the record by industry sources and by its own contractor, Research Triangle Institute. For the cost of reducing dust levels in yarn manufacturing areas, OSHA cites estimates from industry witnesses that relate to the cost of reducing dust levels to 0.5 mg/m^3 for spinning through warping operations rather than the 0.2 mg/m^3 permissible level specified by the standards.

The end result is simply this—OSHA cited costs for regulations that were not nearly as severe as the regulations it issued. We don't know whether this misrepresentation of the standards' cost is the result of an amateurish oversight on the part of OSHA or whether there is another explanation. We are sure that the cost cited by the Labor Department, during the time OSHA was attempting to win White House approval to issue the standards, were gross understatements of the standards' real cost. And we are confident that these understated cost estimates were a major factor in winning White House approval for issuance of the standards.

OSHA cannot claim that the cost difference between compliance with a 0.2 mg/m^3 and a 0.5 mg/m^3 exposure level in yarn manufacturing is insignificant. Nothing could be further from the truth. For example, OSHA's own contractor found the capital cost to reduce dust levels to 0.2 mg/m^3 throughout yarn manufacturing to be more than four and one-half times greater than the cost of lowering dust levels to 0.5 mg/m^3. The cost difference between 0.5 and 0.2 mg/m^3 in the spinning through warping operations is approximately $660 million. Making that adjustment alone would double OSHA's estimate of the standards' industrywide cost.

Gentlemen, that will give you an idea of the magnitude of OSHA's error. Taking that tremendous cost understatement into account, and then adjusting for inflation, the standards' real capital cost is $1.8 to $2.6 billion, not $657 million as OSHA claims. Annualized costs are $550 to $800 million. These compliance costs would add 17 cents to 24 cents per pound to the cost of producing cotton fabrics and, even then, all work areas would not be in compliance because compliance technology for some work areas does not exist.

The final standards' cost is near the cost of the initial proposal and, indeed, our concerns about the regulations' economic impact have been justified. The American cotton industry is paying the price for OSHA's reckless, irresponsible handling of the record which was compiled during the lengthy hearings. The textile industry is already making decisions that will result in irreparable harm for the American cotton industry.

Even the Nation's largest textile companies find the standards to be technologically and economically infeasible. For example, a spokesman for Burlington Industries was recently quoted by Commodity News Service as saying: "In every case where it is humanly possible, the directive to industry is to switch to 100 percent synthetics."

Another large mill, M. Lowenstein & Sons, has switched one of its plants from polyester/cotton to polyester/rayon saying, "This is just the beginning."

The cotton industry has sought relief in the form of a stay of enforcement pending judicial review, but our application was denied by OSHA. We believe this committee will agree, after hearing all the reports this morning, that OSHA has not handled this issue with proper discretion. The erroneous cost figures proffered by OSHA totally invalidate the Agency's assessment of the standards' economic feasibility, which is required by the Occupational Safety and Health Act.

We believe the committee will agree that:

(*a*) A compliance cost three to four times greater than the figure which stirred inflation concerns by the administration's economists prior to the standards' issuance has an alarming inflation potential; and

(*b*) The inevitable result will be a reduction in the output of the American cotton industry, a significant increase in imported cotton products, and serious loss of American jobs.

We believe the committee will further agree that enforcement of the standard should be stayed until the cost implications are fully assessed and the impact better understood.

Senator Williams, we represent seven segments of the cotton industry that takes it all the way from the producer up to the manufacturer: The producer, the ginner, the crusher, the warehouseman, the cooperative, the shipper, and the textile manufacturer.

Thank you, sir. We would be glad to answer any questions.

The CHAIRMAN. Thank you very much. Your full statement will be made a part of the record.

Mr. MANN. Thank you.

[The prepared statement of Mr. Mann with attachments follows:]

Testimony of
Lon Mann, President
National Cotton Council of America
Before
Subcommittee on Labor
Senate Committee on Human Resources
October 3, 1978

Gentlemen, we appreciate the opportunity to appear today before this committee.

Our statement centers on OSHA's cotton dust rulemaking and, to a large extent, our concern relates to OSHA's misuse of certain numbers in attempting to justify the actions it has taken.

In brief, OHSA has decreed two dust standards for our industry.

One applies to cotton compresses, warehouses, cottonseed oil mills, cotton merchants, cotton textile mills, and related industries such as railroads and motor carriers. It requires employers to assure that workers are not exposed to dust levels 1/ exceeding specified limits.

For example, in yarn preparation, OSHA's limit is 0.2 mg of dust per cubic meter of air. That's equivalent to two grains of common table salt per cubic meter. The rule for cottonseed oil mills and other non-textile sectors is 0.5 mg -- equivalent to five grains of salt.

Under certain circumstances, employers are obligated to provide and require employees to wear respirators. The standard also requires highly sophisticated and expensive employee exposure monitoring and medical examinations -- services often over-burdened or not available in many of our rural communities. The records, on what in many cases is a highly mobile work force, must be maintained for 20 years.

1/ OSHA has, in effect, issued a dust standard rather than a cotton dust standard because the instrument for measuring dust (vertical elutriator) is incapable of distinguishing between cotton dust and other dusts. Similarly, OSHA has issued a respiratory disease standard rather than a byssinosis standard. Cotton will be blamed for all respiratory diseases (e.g., bronchitis, emphysema, etc.) found in workers regardless of the true cause. Workmens' compensation claims and expenses among cotton industry employers will increase unjustifiably.

Cottonseed oil mills and the other non-textile processing sectors are covered, despite the fact that NIOSH, sister agency of OSHA, currently is studying these sectors to determine if a significant health problem exists.2/ Also, the hearing record clearly shows there are no medical studies that give a basis for establishing a dust level in these sectors. In fact, OSHA states in the preamble to the standard that it was forced "to draw conclusions from data which do not totally lend themselves to specifying a safe exposure for each operation." The other standard mandates similar requirements for cotton gins, except they are not required to meet a specific dust level.

Much of the controversy and confusion surrounding the cotton dust standards have centered on their cost and potential impact. Gentlemen, I would like for you to recall some of the activities that were very much in the news during the few weeks immediately preceding issuance of the dust standards.

You will recall that the President's Council on Wage and Price Stability and the Council of Economic Advisors were expressing grave concern about the standards' cost and inflationary impact. At that time OSHA was using a figure of $625 million for the standards' capital cost (see Exhibit A appended: May 24, 1978 memorandum from Secretary Marshall to President Carter).

Even that figure, which we will show is <u>far</u> below the standards' real cost, was alarming to the administration's inflation watchers and rightfully so. On May 23, the President's Council of Economic Advisors asked OSHA to postpone all Congressional and industry briefings on the standards pending an inflationary impact assessment by the White House Regulatory Analysis Review Group.

2/ For the last 2 years, the cotton industry has been cooperating with NIOSH in establishing these studies in gins, warehouses, oil mills, cotton classing offices and the waste cotton industry. Additionally, NIOSH has studies underway with industry cooperation to determine the availability of dust control technology for spinning, winding, warping, weaving and knitting areas in textile mills and in gins, oil mills and waste cotton plants.

That request, brought forth a May 24 memorandum from Secretary Marshall to President Carter in which a number of inaccurate numbers were used to depict the number of people at risk from exposure to cotton dust and the cost of the standards. Mr. Lanier will discuss our concerns about the numbers relating to exposure. The balance of my statement will relate to OSHA's misrepresentation of the standards' cost.

I will begin by quoting from Secretary Marshall's May 24 memorandum to the President:

> The economic considerations which are legitimately the concern of CEA/CWPS have been taken into account in this standard to the maximum extent possible. As mentioned above, the standard is approximately one-quarter as costly as the proposal made by the Ford Administration. Our Administration can claim credit for this cost reduction which, I think, will surprise even the cotton industry. Much of the recent clamor represents industry fears that OSHA will issue a final standard close to its initial proposal involving costs of $2.7 billion.

Gentlemen, that was precisely our concern and the record now shows that our concerns were entirely justified.

In the preamble to its standards, OSHA makes a lengthy review of the cost estimates placed in the record by industry sources and by its own contractor, Research Triangle Institute. For the cost of reducing dust levels in yarn manufacturing areas, OSHA cites estimates from industry witnesses that relate to the cost of reducing dust levels to 0.5 mg/m^3 for roving through spinning operations rather than the 0.2 mg/m^3 permissible level specified by the standards (43 Fed. Reg. 27373, Col. 1, para. 1 and 27380, Tables 1, 2 and 3 appended as Exhibit B).

The end result is simply this -- OSHA cited costs for regulations that were not nearly as severe as the regulations it issued. We don't know whether this misrepresentation of the standards' cost is the result of an amateurish oversight on the part of OSHA or whether there is another explanation. We are sure that the cost cited by the Labor Department, during the time OSHA was

attempting to win White House approval to issue the standard were gross understatements of the standards' real cost. And we are confident that these understated costs estimates were a major factor in winning White House approval for issuance of the standards.

OSHA cannot claim that the cost difference between compliance with a 0.2 mg/m^3 and a 0.5 mg/m^3 exposure level in yarn manufacturing is insignificant. Nothing could be further from the truth. For example, OSHA's own contractor found the capital cost to reduce dust levels to 0.2 mg/m^3 throughout yarn manufacturing to be more than 4½ times greater than the cost of lowering dust levels to 0.5 mg/m^3. The cost difference between 0.5 and 0.2 mg/m^3 in the opening through roving operations is approximately $660 million (see Exhibit C appended). Making that adjustment alone would double OSHA's estimate of the standards' industrywide cost.

Gentlemen, that will give you an idea of the magnitude of OSHA's error. Taking that tremendous cost understatement into account, and then adjusting for inflation, the standards' real capital cost is $1.8 to $2.6 billion, not $657 million as OSHA claims. Annualized costs are $550 to $800 million (Exhibit C). These compliance costs would add 17¢ to 24¢ per pound to the cost of producing cotton fabrics and, even then, all work areas would not be in compliance because compliance technology for some work areas does not exist.

The final standards' cost is near the cost of the initial proposal and, indeed, our concerns about the regulations' economic impact have been justified. The American cotton industry is paying the price for OSHA's reckless, irresponsible handling of the record which was compiled during the lengthy hearings. The textile industry is already making decisions that will result in irreparable harm for the American cotton industry.

Even the Nation's largest textile companies find the standards to be technologically and economically infeasible. For example, a spokesman for Burlington Industries was recently quoted by Commodity News Service as saying "In every case where it is humanly possible, the directive to industry is to switch to 100 percent synthetics."

Another large mill, M. Lowenstein and Sons, has switched one of its plants from polyester/cotton to polyester/rayon saying, "this is just the beginning. Whenever possible, we will try to use polyester instead of cotton. The OSHA dust standard is so onerous, we will not put up with the red tape."

The cotton industry has sought relief in the form of a stay of enforcement pending judicial review, but our application was denied by OSHA. We believe this Committee will agree, after hearing all the reports this morning, that OSHA has not handled this issue with proper discretion. The erroneous cost figures proffered by OSHA totally invalidate the Agency's assessment of the standards' economic feasibility, which is required by the Occupational Safety and Health Act.

We believe the Committee will agree that:

a) a compliance cost three to four times greater than the figure which stirred inflation concerns by the Administation's economists prior to the standards issuance has an alarming inflation potential; and

b) the inevitable result will be a reduction in the output of the American cotton industry, a significant increase in imported cotton products and serious loss of American jobs.

We believe the Committee will further agree that enforcement of the standards should be stayed until the cost implications are fully assessed and the impact better understood.

EXHIBITS

EXHIBIT A

MEMORANDUM BY LABOR SECRETARY RAY MARSHALL TO PRESIDENT CARTER URGING ISSUANCE OF COTTON DUST STANDARD

May 24, 1978

MEMORANDUM FOR THE PRESIDENT

FROM: Secretary of Labor, Ray Marshall

SUBJECT: OSHA's Cotton Dust Standard

Background: In December 1976 OSHA published a proposed standard for employee exposure to cotton dust. Cotton dust is known to cause byssinosis (brown lung). The effects of byssinosis range from acute but reversible respiratory symptoms to chronic disabling lung disease. More than 800,000 U.S. workers are exposed to cotton dust in various segments of the industry. OSHA estimates that over 150,000 of these employee suffer some degree of respiratory disease from cotton dust exposure.

The Ford Administration proposal called for a single, industry-wide permissible exposure level (PEL) of 200 micrograms/cubic meter. The compliance cost of this proposal was estimated to be $2.7 billion in capital costs and $260 million in annual operating expenses. Due to the high cost and importance of the proposal, extensive public (including regional) hearings were held on the matter. Over 5,000 pages of oral testimony and 100,000 pages of written comments and exhibits were amassed from all concerned parties. I have carefully reviewed these findings.

Based on this exhaustive work, OSHA is prepared to issue a final standard for cotton dust on or about June 1. The final standard will meet the cotton industry's major concern that different segments of the industry be subject to different standards depending on the risk involved. Thus, for example, in the textile mill operations from opening to, but not including slashing/weaving, it would have a PEL of 200 ug/cu.m. Because the hearing record did not establish a substantial health risk in that sector, there will be no PEL set for cotton gins, but rather a system of medical monitoring will be instituted. The costs for the final standard are estimated at $625 million in capital costs and $84 million in annual operating costs. This is approximately one-quarter of the estimated costs of the proposed standard.

It is my belief, after personally reviewing this matter, that OSHA has taken considerable care in balancing the concerns of industry against the need to reduce the incidence of byssinosis. They have done an excellent job of sorting out the very complex, technological, economic, social, and policy considerations that go into developing such a health standard.

Current Controversy: On May 2, Charlie Schultze requested that the Regulatory Analysis Review Group informally review the cotton dust standard. Although this request came at the very end of the decision process and outside of the agreed upon procedures for regulatory review, I assured my full support. I felt that OSHA had produced an excellent standard that could stand up under any reasonable scrutiny. As part of that review, the Council on Wage and Price Stability (CWPS) raised a number of questions most of which were reconciled at the staff level. The CEA and CWPS apparently believe two key issues remain and require your attention:

1) Modification of the Yarn Preparation Standard: CEA/CWPS has recommended modification of the standard as it applies to yarn preparation. CWPS suggested that through a combination of a higher exposure standard, greater reliance on medical surveillance and the use of respirators, an additional $125 million could be pared from compliance costs.

There are several difficulties with this approach:

- Extensive testing and evidence presented by experts in OSHA's public hearings shows that respirators in this case are *not* an effective alternative. In addition to the difficulties normally associated with respirators, (cumbersome, hard to fit, uncertain results, etc.) they are particularly inadequate for protecting workers who cannot bear the extra resistance to breathing because of the decreased lung function which accompanies byssinosis.
- Even assuming that one could use respirators, and, through medical monitoring, identify the early stages of byssinosis, the question remains as to what to do with the disabled worker. With limited retraining possible, the primary option now is to lay the worker off.
- The adoption of the CWPS proposal would lead to lengthy suits and possibly spur pending Brown Lung Compensation Legislation similar to the costly Black Lung Act.
- The loss in worker productivity because of the respirators plus the societal costs of maintaining increased numbers of disabled workers may easily offset the lower compliance costs.

This CEA/CWPS proposal raises the broader issue of whether OSHA should rely on performance or specification standards. Everything else being equal, performance standards are attractive since they allow an industry to solve its own problem while specification standards give detailed directions on how the problem should be solved. The cotton dust standard is a performance standard in the sense that no specifications are made as to the type of engineering controls required. Furthermore, everything is not equal in this case since it is OSHA's best judgment that allowing substantial reliance on respirators would not reduce the incidence of byssinosis to acceptable levels.

2) Timing of compliance: CEA/CWPS have indicated that insufficient time is being allowed for the industry to comply with the standard. I am puzzled by this complaint. The standard permits employers who cannot feasibly (in either a technical or economic sense) comply immediately with the PEL to develop written compliance plans which describes the steps to be taken to achieve compliance and the completion dates. OSHA may request copies of these plans and will determine the time necessary to achieve compliance on a plant-by-plant basis. This approach recognizes the differences in the circumstances of individual employers and is a flexible, performance oriented approach to regulation. Thus an employer could theoretically have an unlimited period of time to comply. Although I will strive to bring all firms into compliance as soon as possible, the technical and economic realities of each case will be taken into consideration.

Reasons to Proceed with the Final Standard: Based on the concerns discussed above, CEA/CWPS plan to ask you to instruct me to delay issuance of the final standard for cotton dust. They apparently feel that the standard does not regulate this health problem in the most efficient manner. I strongly disagree with this conclusion and recommend that you allow me to proceed to issue the standard on schedule. I base my recommendation on the following reasons:

(1) I am convinced that OSHA has produced an eminently reasonable standard which the Carter Administration can be proud to support. As you know, OSHA under Eula Bingham has made excellent progress in concentrating its efforts on serious hazards and formulating common sense solutions to the difficult issues of worker protection. This standard is a further reflection of the competency of the agency. Unfortunately, I can only consider it presumptuous for CEA/CWPS to second guess OSHA on technical grounds, such as the respirator issue.

(2) The economic considerations which are legitimately the concern of CEA/CWPS have been taken into account in this standard to the maximum extent possible. As mentioned above, the standard is approximately one-quarter as costly as the proposal made by the Ford Administration. Our Administration can claim credit for this cost reduction which, I think, will surprise even the cotton industry. Much of the recent clamor represents industry fears that OSHA will issue a final standard close to its initial proposal involving costs of $2.7 billion.

(3) Delaying the standard will cause a major political upheaval among such groups as the textile unions, the AFL-CIO, the Brown Lung Association, public interest groups and the Congress. These groups are very sensitive since there is documentation that the Nixon Administration held out delaying this standard as an enticement to generate political contributions on the 1972 campaign. Indeed the Department was sued by the textile worker union to force the issuance of a cotton dust standard. The suit is now pending in the Federal District Court and Eula and I have pledged to the judge that the final standard will be issued by May 31.

I request that I have the opportunity to meet with you on this matter at your earliest convenience.

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EXHIBIT B

For total industry control costs, both RTI-I and RTI-II, the initial and adjusted RTI estimates, are substantially higher than the Hocutt-Thomas figures prepared for ATMI. For the combined yarn preparation and processing costs, the Hocutt-Thomas estimate was $543 million in capital costs, compared to the $988.5 and $692.9 million estimates in RTI data. Because annualized capital costs dominate annual costs, the costs based on Hocutt-Thomas data, at $165.3 million, was also lower than either of those based on RTI data, $274.7 and $192.8 million. This was the case despite the increase in RTI estimates of annualized capital costs associated with the use of a shorter depreciation period, and reduction of energy and other costs in RTI-II.

B. *Costs for Other Provisions.* The regulation includes requirements on monitoring, medical surveillance, respirators, and work practices that affect costs. However, costs for these provisions are minimal compared to the costs entailed in engineering controls. Further some of the changes from the proposed regulation (e.g., use of disposable respirators) have cost reducing effects.

Except as indicated below, very little evidence on these provisions was given by industry. Therefore OSHA has relied primarily on RTI's estimates.

1. *Monitoring.* The final regulation permits use of alternative equipment for monitoring which is equivalent in accuracy to the vertical elutriator. While the development of such alternatives may be expected to lead to faster and easier delivery of monitoring devices and to easier and less expensive monitoring, such cost reductions were not calculated.

Figures developed by Dr. John Neefus of Burlington, indicates the industry cost would be $7.5 million a year for sampling using the vertical elutriator (Ex. 49).

RTI used the vertical elutriator to estimate costs in the IIS (IIS, p. IV-6). Total monitoring costs for yarn production and processing would be $5.63 million for capital and $.56 million for annual costs.

2. *Medical Surveillance.* RTI calculated separately the costs of each major provision of the medical surveillance program in the proposed regulation. Detailed estimates were presented for yarn production workers. These figures are set forth in the IIS Table B-Z page B-10. Costs were estimated at $72,421 a year for pre-employment testing; $13,835 for counseling, $48,925 for retest, $1,008,271 for periodic medical exams, $1,058,313 for equipment and $130,977 for training and total costs of medical surveillance for yarn preparation workers were $2,282,942 the first year and $1,093,452 annually. In some sectors there was testimony that RTI had used a monthly rather than an annual accession rate. Where this may have been the case, the result would be an underestimate of costs of pre-employment testing. Moreover, this would also mean that fewer employees would receive semi-annual retesting, so that the understatement of pre-employment test costs may be offset by an overstatement of retest costs as part of the medical program. However, the inclusion of the wage cost for the tested worker, which comprised one third of the cost per test, would not be applicable in pre-employment testing, and costs may be overstated on this account. Costs of informing certain applicants about their occupational exposure were calculated on the same basis, at $13,835 per year for yarn production companies. The same comments on accession rates, wages for tested workers and wage rates for those conducting the tests also apply to costs of informing the worker. Estimates of retest costs were $36,354 a year for yarn firms. costs of periodic reexaminations for continuing employees were estimated at $1 million a year if performed by a company nurse. Use of an outside contractor would cost $1.1 to $1.23 million a year for the yarn industry.

In addition, RTI estimated that each plant would buy a spirometer for $727.50, for a yarn industry capital cost of $1 million, and that nurses would be offered training courses in the use of the equipment for $131,000. These were included in RTI's estimate of $2.3 million in first year costs, in yarn production firms, and annual costs estimated at $1.2 million (IIS, pp. B-2 B-10).

Costs for the textile industry as a whole would include the yarn costs above and $.3 million for capital and $1.0 million for annual costs in weaving or a total of $2.6 million and $2.2 million, respectively, for the textile industry.

3. *Respirators.* Respirator costs calculated by RTI reflect allowance for the single use respirator. For Yarn production processes, annual costs were estimated for each level of permissible dust concentration for the periods before and after the installation of engineering controls for disposable respirators or for maintenance and materials for reuseable (half mask) respirators where they would be required. Costs of training in respirator use were also calculated. For yarn production, in a program using disposable respirators, these initial year costs were estimated at $18.5 million for 200 $\mu g/m^3$ exposure level. After controls are installed, yarn industry annual costs of disposable respirators would fall to 3.91 million. For reuseable respirators, yarn industry costs would have been about 50 percent higher.

4. *Other Provisions.* RTI reviewed the cost of other provisions of the standard. RTI noted that informing the employee is required as part of the medical surveillance program and that training is required as part of the respirator program. Since those costs were estimated for those efforts, RTI said the additional costs of providing employee information and training and of filing reports on such programs would not be significant (IIS, p. B-48).

RTI estimates of posting (at $4 a sign) were, for the yarn producers, $79,688, $136,088 (IIS, pp. B-15-B-19). RTI also estimated the costs of specifying work practices for the yarn producing industries at $3.3 million in the first year and $14,774 in annual costs for ensuing years.

C. *Total Textile Costs—Conclusions.* There was no testimony that offered independent estimates for the textile industry of costs of compliance with the non-engineering provisions in the regulation. In order to compare estimates of total costs for the industry RTI estimates noted above for other provisions were added to the capital and annual cost estimates for engineering controls noted in Table 1. The results are in Table 2. The only costs excluded are initial year, non-capital costs for respirators and work practices.

For the industry as a whole, the Hocutt-Thomas estimates for all types of costs are lower than those of RTI, even after adjustment of RTI estimates by 30 percent for equipment related costs to exclude machines processing synthetic fibers only. Yet OSHA believes that the Hocutt-Thomas estimates of $550 million in capital and $171 million in total annualized costs are overstatements for several reasons:

(1) Compliance with the final regulation will be less costly than it would have been for the proposed regulation; (2) While OSHA did not have the data from the 1976 survey by ATMI, the equipment reported and estimated for retrofit control may have included some equipment which is used exclusively for synthetics; (3) While OSHA recognizes the validity of estimating compliance costs for retrofit controls, OSHA also recognizes the existing trend toward replacement of conventional machines with newer equipment which is more productive and produces less dust and which would lead to the predicition of fewer machines to be retrofitted or to be controlled; (4) While the costs to retrofit are based on currently and commercially available technology of controls, the estimates fail to reflect improvements in technology that are likely to continue during the period for compliance; and (5) RTI estimates of non-engineering provisions, such as for respirators and medical programs, did not account for

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current spending toward compliance in existing programs in the industry.

For these reasons, though the ATMI estimates of compliance costs are lower than those offered by RTI, OSHA believes the ATMI estimates are on the high side. Since ATMI estimates are based on the most recent data, OSHA believes them to be more realistic than those offered by the IIS on the information available to RTI. However, since the ATMI estimates include some costs of compliance with the current regulation OSHA finds them to be overstatements of the incremental costs of this regulation. This is true to some extent for yarn preparation, and it is almost wholly true for the weaving costs shown because the exposure limit of this regulation, though stated in terms of respirable as opposed to total dust, is very similar if not higher than that of the previous regulation. Despite these qualifications however, OSHA recognizes that, in the absence of the ATMI survey data, OSHA cannot develop more accurate estimates of compliance costs. Therefore, OSHA's estimated costs of compliance, as stated in Table 3, are the Hocutt-Thomas estimates for capital costs and annualized costs plus the RTI estimates for costs of other provisions. Moreover, as noted below, OSHA finds that such costs can be borne by the industry.

OTHER COVERED SECTORS

In this section, the record evidence is examined separately for each of the other covered sectors, primarily the non-textile industries. Primary attention is given to engineering controls since the cost of other compliance provisions per employee in non-textiles industries approximate the cost of these activities for textile workers examined in the preceding section. For some of these industries, RTI did not have industry-specific data to assess costs, and for others only partial costs were reported (IIS, p. I-2).

A. *Waste Processing.* Several types of industries are engaged in the processing of by-products, including production of padding and upholstery fillings, garnetting of batting, production of nonwoven fabrics and surgical dressings, waste spinning, and bedding manufacture. Total costs for these waste processing industries were reported by RTI. The breakdown by industry classification reflected principal products of firms that may be involved in processes normally associated with other groups; for example, many bedding makers do the garnetting of their batting. As a result, while in other cases RTI assessments of economic costs may be related directly to industry testimony, in some cases RTI cost estimates may not be readily comparable with those offered in testimony.

Mr. Booker of NCCA said 19 plants in SIC 2294 (processed textile wastes mills) are processors of soft waste (Ex. 99E, pp. 16-18). NCCA then estimated installation costs of control at $13.6 million, at current prices, for the 19 plants, with costs of operation and maintenance (exclusive of power) at 2 percent of such costs, $273,000 a year, and energy costs of $237,000 a year. The report also noted that a number of workers would need respirators to comply with the proposed regulation after the installation of controls, and costs of that and other provisions were estimated on the basis of RTI methods, current wages or costs and survey results. As a result, the report indicated total capital costs of $13.648 million to achieve 500 $\mu g/m^3$, total direct costs of $.435 million for the first year and $.405 million for ensuing years. Annualized capital costs were $2.2 million at 500 $\mu g/m^3$ on the basis of the interest, depreciation and other cost assumptions used by RTI, and total annualized costs for the 19 plants were estimated at $2.8 million (Ex. 99E, pp. 18, 19, 25).

RTI used different methods for assessing costs of controls as stated in the IIS. RTI estimated installed costs at $3.8, $6.7 and $11.8 million for 500, 200 and 100 $\mu g/m^3$ levels, respectively (IIS, p. I-14). Thus, even the highest of these estimates, and consequently of estimates for annualized capital costs, was lower than that of NCCA, to achieve a higher predicted level of dust concentration. RTI estimated operating and maintenance costs at 3 percent of capital costs, while NCCA estimated them at 2 percent. NCCA also assumed reusable respirators would be required and current wage rates instead of the 1972 levels used by RTI. RTI's estimates of energy costs, from $.596 to $1.4 million a year, exceeded the $237,000 estimate of NCCA.

As a result of all of the differences noted above, the NCCA estimate of $2.8 million projected to attain 500 $\mu g/m^3$, for total annualized costs exceeded the $2.1 million RTI estimate to achieve 200 $\mu g/m^3$. Differences in control strategies and estimating methods played a major role in these differences, as did other differences in assumptions of price levels, in data available to NCCA but not to RTI, and the RTI inclusions of some costs of nonwoven fabric and spun yarn production. OSHA recognizes some reasons for costs higher than those estimated by RTI, such as estimating costs of reuseable respirators and price level differences, and feels that RTI estimates may then be on the low side. However, RTI did not exclude costs of compliance with the current standard from these estimates and did not assume such compliance for the waste processing industries, since there was some question on the part of RTI as to the applicability of the previous standard to these industries (IIS, p. V-8). Moreover, NCCA itself noted that estimates of costs of compliance with the proposed regulation might be overstated because they included control of equipment used exclusively on synthetic materials. In addition costs of compliance with the proposed OSHA regulation were commingled by NCCA with costs of meeting EPA requirements. Therefore while OSHA has accepted the NCCA estimates for the waste processing sectors, OSHA views the NCCA estimate as conservatively high, even for the high side of a possible range of estimates of compliance costs to retrofit currently used equipment, and recognizes that, with some technological adaptation, some machinery may be replaced by similar machinery used in the textile processes that generates less dust.

It is possible that firms listed as being in one SIC may be involved in several processes, some of which are likely to be in other classifications. While this was not likely to affect estimates for SIC 2294 (Processed textile wastes mills), it could affect some of the other waste processing and user industries. Garnetting, which may be done by certain waste processors for resale or by bedding manufacturers for use in mattresses and box springs included; although not exclusively, in SIC 2293 (paddings and upholstery fillings mills), and 2515 (mattress and bedspring mills). The RTI discussion of compliance feasibility for garnetting was included as part of the description for waste processing-batting, (IIS, pp. IV-16), IV-17), and the general conclusions noted above apply to this process, as well.

However, industry witnesses treated garnetting as a process separate from the other work of waste recyclers, in a separate section of the NCCA report (Ex. 99E) and with separate testimony.

Mr. Booker said there are 64 commercial and 120 bedding garnetters whose 1974-1975 output was 337.8 million pounds valued at $60.8 million. Engineering controls may achieve a dust level of 500 $\mu g/m^3$ in some areas, he said, but there is no knowledge of how to reduce concentrations to 200 $\mu g/m^3$ (Tr. 3508-3510, 3533). Installed costs for engineering controls were estimated by NCCA at $17.7 million, operating and maintenance costs for controls at 2 percent of capital, or $354,000 a year, and energy costs at $539,000 a year.

Costs of other provisions were also estimated as outlined in the NCCA report. The NCCA report estimated cost for these provisions for garnetting with assumptions and methods similar to those used for waste recycling. Capital costs of these provisions were estimated at $138,000 for medical equipment and respirators, so that the total

TABLE 1.—*Estimates of costs of engineering controls for the textile industry*[1]

	Yarn preparation			Yarn processing		Total textile costs		
	Hocutt-Thomas[2]	RTI I[3]	RTI II[4]	Hocutt-Thomas[2]	RTI[5]	Hocutt-Thomas	RTI I	RTI II
Capital costs of equipment	487.3	978.5	858.3	75.7	7.7	843.0	986.5	892.9
Annual:								
Maintenance	7.8	10.1	7.0	.9	.1	8.5	10.2	7.1
Energy	40.5	67.9	47.5	8.2	.8	49.0	68.5	48.1
Equipment, annualized[6]	92.8	194.4	136.1	15.0	1.5	107.8	196.0	137.6
Total	141.2	272.4	190.6	24.1	2.3	165.3	274.7	192.8

[1] In millions of dollars.
[2] Assumes achievement of 0.2 mg/m³ (VE) for opening through roving, 0.5 mg/m³ (VE) for spinning-warping. In 1977 prices. Does not assume compliance with current cotton dust standard, but allows for $44.3 million in controls already installed.
[3] Assumes achievement of 0.2 mg/m³ (VE) for opening through spinning, compliance with current standard but without allowance for other installed controls, and controls installed on all production equipment, regardless of fiber processed. In 1974 prices.
[4] Adjusts RTI-I estimate by 20 pct reduction to eliminate controls on equipment to process only synthetics.
[5] Assumes achievement of 1.0 mg/m³ (VE) for yarn processing. In 1977 prices. Does not assume compliance with current standard.
[6] Assumes achievement of 0.5 mg/m³ (VE) for yarn processing, compliance with current standard but without allowance for any other installed controls. In 1974 prices.
[7] Capital costs annualized by factor of 0.12584 to reflect 9-yr depreciation period, 10 pct rate and allowances for equipment taxes and other costs. RTI estimates, initially estimated on the basis of a factor of 0.15079 to reflect an assumption of a 14-yr depreciation period, have been recalculated with the 0.12584 factor.

Sources: Ex. 60, Hocutt statement, for engineering control costs; Ex. 62, Thomas statement, for costs of temperature, humidity controls associated with Hocutt equipment costs; IIIS, pp. 1-15, V-17, V-29.

TABLE 2.—*Estimates of total compliance costs for the textile industry*[1]

	Hocutt-Thomas[2]	RTI I[3]	RTI II[4]
Capital costs:			
Engineering controls	$43.0	$986.5	$892.9
Other provisions[5]	7.0	7.0	7.0
Total	$50.0	$993.5	$899.9
Annualized costs:			
Capital, total	109.2	197.3	139.0
Operating, maintenance, and engineering controls	8.5	10.1	7.0
Other provisions[6]	4.3	4.3	4.3
Energy	49.0	67.9	47.5
Total	171.0	279.6	197.8

[1] See Table 1, note (1).
[2] See Table 1, notes (2), (5).
[3] See Table 1, notes (3), (6).
[4] See Table 1, note (4).
[5] Includes costs for medical, monitoring and other provisions as estimated by RTI.

Sources: Table 1, supra, and IIIS, pp. 1-15, V-17, V-29.

TABLE 3. ESTIMATED COSTS OF COMPLIANCE BY INDUSTRY SECTOR, IN MILLIONS OF DOLLARS

	Capital	Total annualized
Textiles[1]	$50.0	171.0
Waste processing[2]	31.5	8.9
Seed processing[3]	75.0	26.7
Warehousing[4]		1.5
Total	656.5	208.1

[1] See notes on assumptions in Table 1, supra.
[2] The sum of estimates for waste recyclers and ginnerlling in Ex. 99e.
[3] Estimates from Ex. 93i.
[4] Estimates of Ex. 93i adjusted to exclude capital costs because of .5 μg/m³ permissible exposure limit of final regulation and to reduce monitoring and other costs in accordance with final provisions.

Sources: Table 2, supra, and Ex. 93i, 99i and 99e.

I. SUMMARY AND EXPLANATION OF THE STANDARD

The following sections discuss the individual requirements of the standard. Each section includes an analysis of the record evidence and the policy considerations underlying the decisions adopted pertaining to specific provisions of the standard. Based on consideration of all the evidence in the record, the final standard sets different limits of exposure to the lint-free respirable fraction of cotton dust for different segments of the cotton industry. To the extent appropriate, the requirements in this standard are similar to requirements in other OSHA health standards and reflect OSHA's regulatory policy for protection of the health of workers.

CONTINUATION OF STANDARD UNDER 1910.1000 TABLE Z-1

During the time period provided for instituting engineering controls to comply with the permissible exposure limit promulgated in this rulemaking, the current standard for cotton dust contained in 29 CFR 1910.1000 will continue in effect for yarn manufacturing. The current standard, which includes a requirement to implement engineering controls whenever feasible, was adopted in 1971 under section 6(a) of the Occupational Safety and Health Act. Since that time, employers have been under an obligation to comply with the 1.0 μg/m³ level for "cotton dust (raw)" provided under the standard. Although the current standard contains an exposure limit for total dust, whereas the new standard establishes a limit for respirable dust, efforts to comply with the standard importantly contribute to the employer's ability to comply with the new standard. The proposal envisioned that the new standard would generally build upon the protection provided under the current standard and would provide employees with greater protection consistent with new data concerning cotton dust exposure. No lessening of protection or hiatus of coverage was intended as a result of the proposal and promulgation of a new standard.

For employers who have complied with the current standard, compliance with the new standard will involve development of a compliance program to reduce exposures to the new 200 μg/m³ level and implementation of those new engineering controls over the time period provided. For employers, however, we have not yet complied with the current standard through engineering controls, the promulgation of the new standard is not intended to terminate the obligations to protect employees under the current standard. OSHA does not intend the 4-year compliance period under the new standard to reward employers who have not met their burdens under the current standard. By continuing to enforce the current standard until the employer complies with the new standard, OSHA will ensure that all yarn workers are accorded the protection provided by the current standard, while their employers work toward compliance with the new standard.

The requirements that employers who have not yet satisfied the current standard comply with as well as develop a compliance plan to meet the new standard are neither inconsistent nor inequitable. There is evidence that installation of engineering controls will be required to meet the current stand-

EXHIBIT C

Estimated Capital Cost by Industry Sector
($ Millions)

	OSHA's Estimate	Corrected Estimate
Textile	550.0	1200.4
Yarn Production	467.3 1/	1127.7 5/
Yarn Processing (Weaving)	75.7 2/	65.7 6/
Other Costs	7.0 3/	7.0 3/
Waste Processing	31.5 4/	31.5 4/
Seed Processing	75.0 4/	75.0 4/
Warehousing	-- 4/	* 4/
TOTAL	656.5	1306.9 7/
TOTAL (1978 dollars)	--	1782.4 8/
Adjustment for Automated Opening	--	818.4 9/
ADJUSTED TOTAL	--	2600.8 10/

1/ 43 Fed. Reg., 27380, Table 1 (June 23, 1978). This figure is incorrectly attributed to Hocutt-Thomas testimony. See footnote 2 to Table 1 which indicates that this in fact is Hocutt-Thomas estimate of capital cost for 0.2 mg/m^3 in opening through roving and 0.5 mg/m^3 for spinning through warping.

2/ 43 Fed. Reg., 27380, Table 2 (June 23, 1978). Apparently another OSHA error involving Hocutt-Thomas data. Hocutt-Thomas estimate puts cost of meeting 1.0 mg/m^3 in yarn processing at $65.7 million.

3/ 43 Fed. Reg., 27380, Table 2 (June 23, 1978). Medical monitoring and other provisions as estimated by OSHA.

4/ 43 Fed. Reg., 27380, Table 3 (June 23, 1978). Capital costs as estimated by National Cotton Council for warehousing and waste processing and by Development Planning and Research Associates for seed processing.

5/ OSHA Exhibit 69: Testimony of L. K. Fitzgerald on behalf of ATMI, page 6. Table I-6-b. Mr. Fitzgerald's testimony was based on Research Triangle Institute's work which was the only data available for a 0.2 mg/m^3 exposure level in all yarn manufacturing areas.

6/ OSHA Exhibit 69: Testimony of L. K. Fitzgerald on behalf of ATMI, page 22, Table A. The estimate relates to meeting a 1.0 mg/m^3 permissible exposure limit. While no estimate exists of the cost of meet a 0.75 mg/m^3 permissible exposure limit, it would no doubt be substantially more than for meeting a 1.0 mg/m^3 limit. Mr. Fitzgerald's testimony was based on Hocutt-Thomas cost estimates.

7/ Estimated cost of the standard in 1974 dollars, except for waste processing costs which are 1976 dollars.

8/ Adjusted for 37% inflation in machinery and equipment prices between 1974 and mid-1978 (except for waste processing where costs were adjusted for 12% inflation between 1976 and 1978.
SOURCE: "Survey of Current Business," Bureau of Economic Analysis, U. S. Department of Commerce, Vol. 58, No. 6, June 1978, p. 5-8 and Vol. 56, No. 7, July, 1976, p. 5-8.

9/ OSHA Exhibit 69: Testimony of L. K. Fitzgerald, on behalf of ATMI, pages 25-28.

10/ Capital cost as estimated by sources cited by OSHA, adjusted for inflation and further adjusted to account for the possibility that OSHA may mandate automated stock handling.

* Capital costs expected to be minimal.

EXHIBIT D

U.S. Cotton Dust Regs Liked...In Hong Kong

HONG KONG (FNS) — The new and strict cotton dust standards for U.S. textile manufacturers could be a blessing for Hong Kong fabric exporters, a top export official here said.

If U.S. manufacturers don't comply with the new standard, which is seven and one-half times more stringent than West Germany's," said T.K. An, chairman of Windsor Industrial Corporation, the resulting cotton fabric shortage "will open up export opportunities to the U.S. no matter what happens to the general economy."

In a far-ranging comment on Windsor's successful business year, which ended in March, An made a number of observations about the U.S. market.

The plummeting dollar means "prospects for U.S. textile exports have improved tremendously" — an opportunity that trade figures show hasn't been seized by U.S. exporters. "While the U.S. industry struggles to modernize, Far Eastern exporters who are fashion conscious and quick responding, should find a good market for their goods in the United States," An said.

"Textile imports by the U.S. have had their dampening effect on inflation," said An, who is chairman of the Hong Kong Trade Development Council, an organization dedicted to promoting the colony's exports.

Despite the large volume of apparel imports to the U.S., An pointed out, retail price increases in the U.S. are less than half the over-all rise in consumer prices this year.

The Windsor Group certainly has contributed its share to the flow of exports to the U.S. market. Profits for the 12 months ending in March for the Hong Kong textile giant were up 12 per cent to a record $11.2 million, and even better when one-time profits from property sales were included. Windosr subsidiaries are some of the industry's top producers of fabrics, yarn, knitwear and other garments, including Oriental Pacific, Macao & Miami Knitters, Soco Textiles, the Winner Co. and Oceanic Cotton Mill.

Certainly not all of Hong Kong's textile firms have enjoyed a year like Windosr's, but the changes from 1977 generally reflect patterns in the industry. Sales for yarn, fabrics and finishing dropped 10 per cent, while garments took up the slack on total turnover of almost $200 million, up about 2 per cent from 1977.

An doesn't expect completely smooth sailing ahead because Hong Kong, as always, is "very much dependent on the economic growth of its major trading partners." But Windsor, like a number of other companies seeking to weather the textile slump, is moving ahead — $3.4 million worth of new machinery purchased last year and another $4.3 million on tap for 1978-79.

The CHAIRMAN. Do your associates have statements that they would like to make?

Mr. LANIER. Yes, Mr. Chairman. We respectfully request that prior to the closing of the record of your hearing, we be permitted to file a comprehensive statement which will express our views concerning several aspects of the OSHA program and which we hope will be helpful to this committee in its consideration of these issues.

For the sake of brevity, however, we shall confine our remarks at this time to only one aspect of this question—the cotton dust matter.

The CHAIRMAN. Very well. The statement will be made a part of the record.

Mr. LANIER. My name is Joseph L. Lanier and I am chairman of the Safety and Health Committee of the American Textile Manufacturers Institute. ATMI is the central trade association for the American textile industry. It represents some 85 percent of the spinning, weaving, and knitting industry. I am also chief executive officer of West Point Pepperell, a textile company with annual sales of more than $805 million and upward of 24,000 employees. About 50 percent of our people are engaged in cotton textile manufacturing. Because of these two responsibilities, I am deeply involved in the issue of cotton dust, as well as other safety and health matters. Our foremost concern has been—and continues to be—the well-being of our employees who are our greatest asset.

Since 1970, my company has spent many millions of dollars trying to eliminate any threat cotton dust may have on the health of employees.

Since 1973, we have conducted comprehensive programs involving not only the reduction of dust levels through engineering means, but also monitoring the dust levels in each plant. We have also had a medical surveillance program which includes lung function testing and the compilation of medical histories.

I bring this to your attention, sir, not because West Point Pepperell is unique in its concern for the health of employees. It is not. But because it is but one example of what textile companies have done well in advance of OSHA's unreasonable mandate.

The concern of textile companies for employees is borne out by Labor Department statistics. The latest data available show the textile industry is one of the eight safest manufacturing industries.

Since the problem of byssinosis was first brought to the attention of the textile industry, certain myths have developed concerning its characteristics and prevalence. The first is the so-called brown lung myth.

No pathological examination has ever shown a discoloration of lungs due to cotton dust exposure. There is no such thing as a brown lung disease. The terms is a misnomer invented purely for its emotional impact. Indeed, there is no pathological evidence at all to distinguish byssinosis from other chronic destructive lung diseases.

Furthermore, it is impossible to determine from an X-ray if a person has byssinosis. Extensive medical research has been conducted or sponsored by industry associations as well as individual textile companies, as well as various medical universities. But there is still a great deal of disagreement among the experts as to what constitutes a valid diagnosis of byssinosis. Such a diagnosis is made primarily through subjective medical questionnaires and by objective pulmonary function tests.

Next, we have the myth of prevalance. Secretary Marshall and OSHA in the previously mentioned memorandum by the National Cotton Council representative to President Carter presented estimates claiming that from 600,000 to 800,000 employees are at risk from cotton dust. This is simply not the case. In fact, there are only some 535,000 cotton-related jobs in the United States. Of these, over 160,000 are farmers who are not covered by the standard.

Based on a study conducted by the industry involving medical examination of 37,000 cotton textile workers, along with other medical evidence, less than 1 percent were found to have both subjective and objective symptoms of reactions to cotton dust.

If you take that 1-percent frequency rate and apply it to OSHA's contractor's own figure of 300,000 persons exposed to cotton dust in the cotton industry, then you come up with a figure of only 3,000 employees who have any respiratory problem that could possibly be attributable to cotton dust. For the textile industry these figures are 233,000 employees exposed and 2,330 who may have a problem. Clearly, we are not faced with a problem of the magnitude OSHA would have the uninformed public to believe.

I hasten to add, sir, that of the total number showing some degree of reaction to the dust only a few could be considered to be chronically affected. Which is not to say that the industry is indifferent about the health of even one single employee. As previously explained, the industry firmly believes that adequate steps have been taken or are in the process of being taken to protect our workers.

May I direct your attention now to the matter of cost, and what the industry means when it says the standard is neither economically nor technically feasible.

ATMI estimates the capital cost alone of compliance with the cotton dust standard—if it were technically feasible—at about $2 billion. The textile industry, with profits rarely more than 3 percent of sales, realizes all too well the value of $2 billion.

For the cotton textile industry, $2 billion represents the approximate equivalent of more than 7 years of profit. If these capital costs plus the increased operating costs were not passed on to the consumer, this means that for 7 years there would be no returns on investment for stockholders, no wage increases or employee profit sharing, and no investment for capital improvements, research and development, and the creation of new products and new jobs. Seven years when the industry would literally dry up and even greater chunks of its markets would be lost to overseas manufacturers who do not have to meet such a standard.

Many plants will simply have to close their doors because there will not be enough money to meet their share of the cost. Others will have to change their production to other fibers, drastically decreasing the demand for cotton. The result in either case could be that thousands of persons will be jobless, including many who are members of minority groups or whose industrial skills will not allow them to qualify for employment in more sophisticated industries.

I have talked about $2 billion as though it were a figure that could actually be determined. The fact is this figure is the result of estimates based on existing technology. Much of what OSHA has imposed on the industry, however, cannot be done because the technology simply does not exist. For example, there is no way to meet the standard im-

posed in spinning operations without enclosing the spinning frames or completely rebuilding the plants.

You cannot enclose a spinning frame, because there would be no way to operate it. And to rebuild entire plants would be so enormously expensive as to make the $2 billion estimate appear to be only a drop in the bucket.

If you will, trying to determine a cost figure for compliance with the dust standard is a little like Ben Franklin trying to determine the cost of light bulbs before the discovery of electricity.

OSHA has simply provided lipservice on how to reach the required dust levels. It has offered no solution because none exists. Instead, OSHA has told us that where engineering controls are not sufficient to meet the required dust levels, the industry must provide personal protection in the form of respirators. The standard requires that all personnel in work areas above the permissible level must wear respirators regardless of whether they react to cotton dust or not. Our employees, reactors or not, will be faced with the choice of wearing these masks or seeking employment elsewhere.

The impact on the industry of this unreasonable standard will be severe. But there is even more trouble ahead. In a recent speech quoted by a New York textile trade paper, the chairman of the Hong Kong Trade Development Council, Mr. T. K. An, said that the strict cotton dust regulations in the United States could be a blessing for Hong Kong fabric exporters. The implications for the American textile industry are obvious. And if Hong Kong is thinking this way, other exporters are probably looking at the situation in a similar fashion. How can we survive this threat and still maintain a viable textile industry and the jobs which it provides?

Interestingly, the National Institute for Occupational Safety and Health, OSHA's sister agency, is just now conducting a study to determine what controls are in use, and the feasibility of additional controls. This study, of course, should have been conducted before the issuance of any standard. In classic fashion, we are faced with a Federal agency putting the cart before the horse.

The textile industry presented extensive evidence to readily substantiate all contentions we have made concerning the dust standard.

To review briefly, the industry has a deep concern for the health and safety of its employees and the record bears this out.

Second, even without OSHA's new cotton dust standard the industry is well on the way to eliminating byssinosis in textile manufacturing.

Third, OSHA has issued a standard which is technologically and economically infeasible and which will not accomplish its intended purpose. They have validated this standard by a calloused disregard of the essential facts presented to them for the record. A rational and practical approach in standard promulgation is the only answer to properly fulfilling the OSHA mandate.

Finally, the only certain result of this new standard may be "protecting" workers right out of their jobs.

I would like to comment, Mr. Chairman, on the Assistant Secretary's comment that another civilized country, the United Kingdom, has had a cotton dust standard since the last century. It is true, but that standard is 0.5 milligram per cubic meter and is a guideline and it is not mandatory.

[The prepared statement of Mr. Lanier, Jr., follows:]

TESTIMONY

OF

JOSEPH L. LANIER, JR.

ON BEHALF OF

THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC.

BEFORE

THE SUBCOMMITTEE ON LABOR

SENATE COMMITTEE ON HUMAN RESOURCES

OSHA OVERSIGHT HEARINGS

OCTOBER 3, 1978

Mr. Chairman and Members of the Subcommittee:

My name is Joseph L. Lanier and I am chairman of the Safety & Health Committee of the American Textile Manufacturers Institute. ATMI is the central trade association for the American textile industry. It represents some 80 percent of the spinning, weaving, and knitting industry. I am also chief executive officer of WestPoint Pepperell, a textile company with annual sales of more than $800 million and upwards of 24,000 employees. About 50 percent of our people are engaged in cotton textile manufacturing. Because of these two responsibilities, I am deeply involved in the issue of cotton dust, as well as other safety and health matters. Our foremost concern has been--and continues to be-- the well-being of our employees who are our greatest asset.

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The concern of textile companies for employees is borne out by Labor Department statistics. The latest data available show the textile industry is one of the eight safest manufacturing industries.

Since the problem of byssinosis was first brought to the attention of the textile industry, certain myths have developed concerning its characteristics and prevalence. The first is the "brown lung" myth.

No pathological examination has ever shown a discoloration of lungs due to cotton dust exposure. There is no such thing as a "brown lung" disease. The term is a misnomer invented purely for its emotional impact. Indeed, there is no pathological evidence at all to distinguish byssinosis from other chronic destructive lung diseases.

Furthermore, it is impossible to determine from an X-ray if a person has byssinosis. Extensive medical research has been conducted or sponsored by industry associations and individual textile companies, as well as various medical universities. But there is still a great deal of disagreement among the experts as to what constitutes a valid diagnosis of byssinosis. Such a diagnosis is made primarily through subjective medical questionnaire and by objective pulmonary function tests.

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If you take that one percent frequency rate and apply it to OSHA's contractor's own figure of 300,000 persons exposed to cotton dust in the cotton industry, then you come up with a figure of only 3,000 employees who have any respiratory problem that could possibly be attributable to cotton dust. For the textile industry these figures are 233,000 employees exposed and 2,330 who may have a problem. Clearly, we are not faced with a problem of the magnitude OSHA would have the uninformed public to believe.

I hasten to add that of the total number showing some degree of reaction to the dust only a few could be considered to be chronically affected. Which is not to say that the industry is indifferent about the health of even one single employee. As previously explained, the industry firmly believes that adequate steps have been taken or are in the process of being taken to protect our workers.

May I direct your attention now to the matter of cost, and what the industry means when it says the standard is neither economically nor technically feasible.

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lost to overseas manufacturers who do not have to meet such a standard.

Many plants will simply have to close their doors because there will not be enough money to meet their share of the cost. Others will have to change their production to other fibers, drastically decreasing the demand for cotton. The result in either case could be that thousands of persons will be jobless, including many who are members of minority groups or whose industrial skills will not allow them to qualify for employment in more sophisticated industries.

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You cannot enclose a spinning frame, because there would be no way to operate it. And to rebuild entire plants would be so enormously expensive as to make the $2 billion estimate appear to be only a drop in the bucket.

Trying to determine a cost figure for compliance with the dust standard is a little like Ben Franklin trying to determine the cost of light bulbs before the discovery of electricity.

OSHA has simply provided lip service on how to reach the required dust levels. It has offered no solution, because none exists. Instead, OSHA has told us that where engineering controls are not sufficient to meet the required dust levels, the industry must provide personal protection in the form of respirators. The standard requires that all personnel in work areas above the permissible level must wear respirators regardless of whether they react to cotton dust or not. Our

employees, reactors or not, will be faced with the choice of wearing these masks or seeking employment elsewhere.

The impact on the industry of this unreasonable standard will be severe. But there is even more trouble ahead. In a recent speech quoted by a New York textile trade paper, the chairman of the Hong Kong Trade Development Council, Mr. T. K. An, said that the strict cotton dust regulations in the United States could be a blessing for Hong Kong fabric exporters. The implications for the American textile industry are obvious. And if Hong Kong is thinking this way, other exporters are probably looking at the situation in a similar fashion. How can we survive this threat and still maintain a viable textile industry and the jobs which it provides?

Interestingly, the National Institute for Occupational Safety and Health, OSHA's sister agency, is now conducting a study to determine what controls are in use, and the feasibility of additional controls. This study, of course, should have been conducted before the issuance of any standard. In classic fashion, we are faced with a federal agency putting the cart before the horse.

The textile industry has the evidence to readily substantiate all contentions we have made concerning the dust standard.

To review briefly, the industry has a deep concern for the health and safety of its employees and the record bears this out.

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this standard by a calloused disregard of the essential facts presented to them for the record. A rational and practical approach in standard promulgation is the only answer to properly fulfilling the OSHA mandate.

Finally, the only certain result of this new standard may be "protecting" workers right out of their jobs.

Thank you.

PROFILE OF AN ESSENTIAL U.S. INDUSTRY: COTTON

STATE	NUMBER OF BUSINESSES	NUMBER OF JOBS	$ REVENUE	$ STATE TAXES
ALABAMA	7,125	36,455	965,490,000	54,354,000
ARKANSAS	7,975	20,598	471,100,000	26,746,000
FLORIDA	151	723	14,440,000	1,467,000
GEORGIA	4,544	35,103	1,043,561,000	55,153,000
KENTUCKY	38	645	22,383,000	1,270,000
LOUISIANA	4,844	13,637	218,098,000	7,716,000
MARYLAND	5	400	13,900,000	935,000
MISSISSIPPI	11,769	31,087	747,634,000	50,463,000
MISSOURI	2,879	6,035	91,922,000	4,042,000
NORTH CAROLINA	2,859	88,969	3,016,251,000	143,269,000
OKLAHOMA	6,206	11,201	100,938,000	6,074,000
SOUTH CAROLINA	2,860	79,398	2,425,456,000	135,337,000
TENNESSEE	8,387	22,898	1,050,309,000	40,434,000
TEXAS	27,520	69,448	2,057,558,000	66,250,000
VIRGINIA	58	14,947	278,813,000	20,323,000
ARIZONA	1,281	9,218	283,951,000	31,204,000
CALIFORNIA	4,308	30,803	1,133,361,000	90,779,000
NEW MEXICO	1,552	4,020	66,620,000	10,990,000
OTHER STATES	849	59,768	2,771,182,000	161,507,000
TOTAL	94,810	535,353	$16,772,977,000	$908,313,000

SECTOR	NUMBER OF BUSINESSES	NUMBER OF JOBS	$ REVENUE	$ STATE TAXES
FARMERS	89,536	160,247	2,355,942,000	144,014,000
GINNERS	2,865	60,015	495,572,000	27,730,000
COTTONSEED OIL MILLS	83	5,600	791,000,000	44,797,000
WAREHOUSES	372	6,900	121,000,000	6,189,000
MERCHANTS	557	3,291	3,569,663,000	182,398,000
TEXTILE MILLS	1,397	299,300	9,439,800,000	503,185,000
TOTAL	94,810	535,353	$16,772,977,000	$908,313,000

The CHAIRMAN. How long have they had that?

Mr. LANIER. Since the last of the last century.

Dr. PHIL WAKELYN. Since 1973.

The CHAIRMAN. You said since the last when?

Mr. LANIER. Century.

The CHAIRMAN. You are 100 years apart.

Mr. LANIER. When was the British cotton standards set?

Dr. WAKELYN. 1972 or 1973. He was referring to the last century. There was some mention of something with flax workers in British mills back in the 1800's, but they have not had a standard since that time, and their present standard is half a milligram—as Mr. Lanier said—and it is a guideline. It is the type of standard that allows the industry to protect the worker in an efficient way and allows the industry still to function, and the government and industry are working together on it.

Mr. DUNKLIN. Mr. Chairman, I am George H. Dunklin, president of Planters Cotton Oil Mill, Inc., Pine Bluff, Ark.

Gentlemen, we appreciate the opportunity to appear before this committee.

Through my comments, I want to request your consideration of OSHA's conclusions—and the stated justification of those conclusions—in two areas.

The first area is OSHA's decision to include cottonseed oil mills and other nontextile processing sectors in the standard.

As indicated earlier, NIOSH, the sister agency of OSHA, now is conducting research to find if a dust problem exists in cottonseed oil mills and the other sectors. The cotton industry is cooperating with NIOSH in implementing and carrying out these studies.

We have a situation comparable to the judge [OSHA] pronouncing sentence on the defendant first, and then proceeding with the trial to determine whether the jury [NIOSH] will find guilt or innocence.

The hearing record, as stated earlier, clearly shows there is no actual evidence that oil mill and other nontextile employees have any greater pulmonary problems than the general population.

We also would like to call your attention, sir, to several key OSHA statements in the preamble to the published standard.

For example, OSHA states it had "to draw conclusions from data which do not totally lend themselves to specify a safe exposure for each—nontextile—operation."

Gentlemen, I believe you will agree that if OSHA had seen fit to communicate in plain ordinary language, the statement would have said, "We don't have the facts necessary to determine a proper exposure level."

Yet the OSHA standard mandates a dust exposure limit of 0.5 mg per cubic meter, or the equivalent of 5 grains of common table salt in volume.

It also is significant that the preamble states:

> The new standard is about as protective of health as the old standard, and OSHA would require much more definitive data than has been presented to justify a relaxation of protection.

This statement is significant because the old standard did not apply to cottonseed oil mills and nontextile sectors, according to court rulings. The reference to relaxation has absolutely no meaning; one cannot relax a thing that does not exist.

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If time allowed, other examples could be cited to illustrate the twisted road of reasoning OSHA followed in attempting to justify putting oil mills and other nontextile sectors under the standard. All add up to one simple fact—OSHA did not establish a clear-cut need.

Such action is tragic, especially when you examine the economic consequences. Here, again, OSHA cut a curious path in order to arrive at its assessment of the economic impact of the standard.

A study conducted for our industry just prior to OSHA's hearing last year showed that the best available dust control technology would cost $75 million. Since there are 83 cottonseed oil mills in our industry, the average capital cost would come to $900,000 per plant. The average annualized operation cost was estimated at more than $325,000 per plant. Since these figures are based on 1974 costs, adjustment for inflation would put them at a higher level today.

The study also indicated that OSHA's standard would force 62 of the 83 active cottonseed oil mills to close their doors. It also estimated that these plant closings would result in the loss of 52 percent of our industry's production capacity and put about one-half of our employees out of work.

While OSHA used the $75 million capital and the $26.7 million annual cost figures, the Agency rejected the study's finding that these expenditures would, in effect, close the doors of many of our plants. It also admitted that there are no other estimates of industrywide costs.

OSHA did state it is unlikely that mills will be able to pass these excessive dust control costs forward. Unlikely is not the word. Cottonseed oil faces fierce competition from soybean, palm, and other edible oils. These other oils, especially soy, dominate the market and establish the basic price level. Likewise, cottonseed meal must compete with soybean, fish, and other high protein meals, which hold nearly 90 percent of the market.

The solution, in OSHA's view, is to pass the cost burden backward to the cotton farmer. Since seed is regarded as a byproduct of fiber, OSHA reasons that the farmers would be forced to accept whatever is offered for the seed.

OSHA's naive assumption that compliance costs can readily be passed forward came in a hair's breadth of destroying one industry sector that depends on a cotton fiber byproduct for its raw material. The agency's initial assessment of the standard's feasibility for the waste recyclers and garnetters ignored the fact that their downstream customers have alternatives in synthetic fibers and foam. OSHA has temporarily suspended the standard as it relates to this sector and has, for the moment at least, retained an outlet for linters sold by the cottonseed crushing industry.

Yet OSHA apparently cannot see that the same principle applies to passing the costs backward. Farmers will be forced to cut back cotton production in an effort to maintain price and the result will be a reduction in the number of businesses and jobs throughout all sectors of the fiber and byproduct industries.

Mr. Chairman, in conclusion, we believe the information we have presented adds further urgency to Lon Mann's statement that enforcement of the standard should be stayed until the cost implications are fully assessed and the consequences better understood.

Thank you.

[The prepared statement of Mr. Dunklin follows:]

Testimony of
George H. Dunklin, President
Planters Cotton Oil Mill, Inc.
Pine Bluff, Arkansas
Before
Subcommittee on Labor
Senate Committee on Human Resources
October 3, 1978

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Gentlemen, we believe the information we have presented adds further urgency to Lon Mann's statement that enforcement of the standard should be stayed until the cost implications are fully assessed and the consequences better understood.

The CHAIRMAN. Thank you, Mr. Dunklin.

Now, in my mind, there is a little confusion here on just what we are dealing with in terms of the disease called byssinosis. Certainly one thing was clear, your feeling that there is no disease that should be described as brown lung disease; is that right?

Mr. LANIER. Exactly, sir.

The CHAIRMAN. There does exist the disease technically described as byssinosis; is that right?

Mr. LANIER. Yes.

The CHAIRMAN. Is there a layman's way of understanding why byssinosis is?

Mr. LANIER. Whether it is understandable or not, that is the only way I can explain it, as a layman, not as a doctor—please.

The CHAIRMAN. I am not a doctor either, so we are peers there.

Mr. LANIER. I will see if I can explain it. It is commonly agreed that byssinosis can best be diagnosed by subjective medical questionnaire and objective physical testing.

The subject questionnaire goes along the line of on Monday morning—this is to a worker exposed to cotton dust—do you have a tightness in your chest?

If the answer is affirmative for whatever reason, then they are considered to have a subjective symptom of byssinosis.

The second is a medical aspect and this is done on a spyrometer. You blow into a machine which measures the capacity of your lung. If, on testing, a person who has been exposed over a significant period of time to a drop in their lung capacity, they are assumed to have some chronic lung ailment. It could be byssinosis. But when you match the two together—the subjective and the objective—this is when we say we have a byssinotic.

I don't know if I did that very well or not.

The CHAIRMAN. You did it very well. You do state that where there is this subjective and objective finding, it is related to inhalation of cotton dust?

Mr. LANIER. We suspect strongly so.

The CHAIRMAN. What is the explanation of the Monday morning tightness?

Mr. LANIER. They have been away from cotton dust over the weekend—that is one of the thoughts. They have been out of the workplace. Please don't get me off on a medical subject which I cannot discuss, I am afraid.

The CHAIRMAN. Let me ask Dr. Goldberg. I have heard of other Monday morning problems.

Mr. LANIER. I have a problem some Sunday mornings, Mr. Chairman.

Mr. MANN. Mr. Chairman, we have two gentlemen here with us who spent the last 2 years doing nothing but studying byssinosis and byssinosis statistics. That is Dr. Wakelyn and Mr. Booker who are with the National Cotton Council. The only reason they are here is to be helpful to you. I am sure that Dr. Wakelyn could explain what happens to you on Monday morning.

The CHAIRMAN. Dr. Wakelyn?

Dr. WAKELYN. Briefly, what they notice as he mentioned, if you have been away from work for something like 24 to 48 hours and you go

back in, the people who do react—the small number of people who do react—show a subjective response, or you can measure it with the pulmonary function tests.

Supposedly in the initial stages, in the acute response, you would see this on Monday, but you would not see it the next day. I think medical doctors—I am not a medical doctor, I am a chemist—medical doctors explain that you either have something being released in your lung or something in the body that is being released that is causing this bronchial constriction, the chest tightness.

As the week progresses, you will build them up. Or after the weekend and nonexposure, you build these levels back up so you would again respond on Monday. That is how we explain the Monday morning response. That is what distinguishes the cotton dust or the reaction of byssinosis from some other respiratory diseases.

The major cause of chronic bronchitis and emphysema is cigarette smoking. Cotton dust is not distinguishable from that. That is what causes the real confusion.

The CHAIRMAN. Is there any synergistic effect, any combination of smoking and cotton dust that exacerbates the situation?

Dr. WAKELYN. Yes. Cigarette smoking greatly exacerbates it.

Mr. LANIER. In an examination of some 5,960 of our employees, we found only 6 percent had both the subjective and objective symptoms of byssinosis which we described. Of that number, 88 percent were described as being heavy smokers at the time or had been heavy smokers. I pass that along without editorial comment.

The CHAIRMAN. Well, this is moving into scientific findings basically, the relationship of one agent with another. In asbestosis, all parties agree when you have a combination of cigarette smoking—I will limit it to that—and exposure to asbestos, then you have got just a dramatic increase of conditions which cause cancer. Everybody agreed to that on all sides, the Johns-Manville people, the president of the company was in here 2 or 3 weeks ago and described that to us.

At any rate, we do have exposure to cotton dust as a possible factor in the incidence of byssinosis?

Mr. LANIER. Yes, sir.

The CHAIRMAN. Without that colloquial express "brown lung?"

Mr. LANIER. I will say that that description of a lung disease in terms of the color of the lung started with black lung, and I can tell you that coal miner's lungs are black.

The CHAIRMAN. We had the help of Dr. Isidor Buff who came here from West Virginia. He was our ally in developing the coal dust standards. I was on a trip with him 1 day and he was filled with zeal—appropriate zeal—in trying to deal with black lung—pneumoconiosis.

We went on a trip to Czechoslovakia to see what was happening over there in the coal mines. We got reports that they were free of both the safety problems of roof fall, explosion, and also the coal dust problem—which leads to pneumoconiosis.

That happened to be accurate.

See these things, these masks? I will tell you, it defies me to see how any worker could wear that for very long; am I right on that?

Mr. LANIER. Tomorrow is the deadline and we have to put all of those on all our people in West Point Pepperell in our cotton-related activities whether or not they are reactors.

The CHAIRMAN. This one, the black one, is not going to work. It would not be used through the 8-hour day.

Mr. LANIER. It is the law and we intend to obey the law. It would be a condition of employment with our people.

The CHAIRMAN. You can make a better mask. We saw coal miners over in Czechoslovakia who spent 8 hours in the mine with a mask on and they were comfortable and workable. However, that was in the days when we would not deal with a Communist country. If we ever change that, we ought to get those masks.

I was talking about Dr. Isidor Buff. He went to a reception and he got all the ladies excited about the cause of black lung. They were polite perhaps, but they seemed interested and he said, "Let me show you."

He went out in the car and brought in a lung and it was black. He did it.

Whether or not we call it brown lung, it is a disease and it is called byssinosis. At least that is what we will call it.

You have some concern about the cost the industry will have to bear to meet the standards, on the one hand, and your statement, on the other hand, indicates that the technology is not known or is not available. I do not see how you can price out something that does not exist.

Mr. LANIER. That, sir, goes back to the analogy of the price of the light bulb being determined before the invention of electricity. In our presentations on cost estimates, we carefully excluded spinning. We do not know what in the world we can do there. Many areas of weaving are going to be very difficult with massive expenditures of money such as we described. We think we could get down close to a point in other areas, but far more knowledge than OSHA has made known in their estimate.

The CHAIRMAN. What technology is available to meet this standard and for what processes and in what areas can known technology reach?

Mr. LANIER. In the textile business, we receive a raw bale of cotton. There is automatic bale handling. These are automatic devices that will feed the cotton into the operating machines. The next process can be eliminated by the installation of high-speed cards. They would be high-speed cards with air cleaning equipment.

From there, we go from drawing then warping.

Then here again, we are trapping. These operations are small enough where we can try to trap air and it gets back to filtration. We are absolutely buffaloed on the ring spinning frame. It depends on gage and number of spindles. It is a drafting system that is open and it is a bobbin of yarn being turned around. The only feasible way I know, and that is not feasible, would be to enclose the machines and then the operatives would not get at them.

Another thing would be to build a plant so darn big that we would space those things far enough apart so you will get enough air in there. This is counterproductive.

We think our people are adequately protected at a level far less than that proposed by OSHA.

Industry proposed 0.5 mg/m through spinning up through warping and then a 1 mg/m in spinning.

Our estimate was $265.5 million instead of the $2 billion we are looking at now.

But with respect to Senator Javits statement this morning, this is reaching for those two extra bucks by tightening it up through two different preparatory processes.

The CHAIRMAN. How are you treating this, you as the industry? Voluntarily? You people who have gone in what processes to 0.5 milligram.

Mr. LANIER. We suggested that as a standard, sir.

The CHAIRMAN. I am sorry. I thought I understood that you were prepared to go to it. You are not there, you are moving in that direction?

Mr. LANIER. Exactly.

The CHAIRMAN. What are you doing to get there?

Mr. LANIER. Principally high-speed carding and air cleaning equipment in the preparatory process.

The CHAIRMAN. That is in your area of manufacture. This does not go back to ginning?

Mr. LANIER. No, sir.

Mr. MANN. I would like to go back to that point. Burlington Mills has spent over $30 million on dust abatement equipment in some of their mills, not all of them. They have not had a new case of byssinosis in 2 years where they have installed this equipment, but they had not met the standard and this is kind of frustrating. I do not know how much it would take to meet the standard. It is like the cost of getting the rocks off the sand in Cape Canaveral and getting them to the Moon.

A gin is almost like a baby being nursed by the mother. If you kill it in this country and it is moved to Mexico or Brazil or Hong Kong, it will cut the cotton market so drastically there will not be enough cotton grown to support the cotton gin.

When the gin starts dropping out, then the cotton seed oil mills and warehouses do too.

In my own gin, I have put up a sign warning: "It is a dangerous place to work."

I have got folks who have been working there for 20 years. I have got one man who has been working for me for 60 years. And I am telling him it is dangerous to work there.

We will obey the law just like if the law has been passed. We are going to be responsible. I will have the workers working with me, but you are going to kill an industry.

The CHAIRMAN. Well, this seems to be a hardy industry. We have heard predictions of the demise of the cotton industry previously, and it is functioning now as it has not in a long, long time.

When synthetics came along 20 years ago, that was the end of cotton we heard. Now it is the opposite. Cotton is king.

Mr. LANIER. We produce 27 percent and synthetics produce 73 percent.

The CHAIRMAN. Cotton is king in fashion.

Mr. MANN. We may be a little king.

The CHAIRMAN. They make jokes about your competitors. They do not make jokes about cotton.

Mr. MANN. We are fighting hard to stay in the money. We put up our own money for researching byssinosis. I put up $2 a bale for every bale of cotton.

The CHAIRMAN. How did you meet that competition of synthetics? Has that not been a competitive factor for 20 years?

Mr. MANN. We opened the door when we developed the durable-press concept.

The CHAIRMAN. Am I right about a 20-year process?

Mr. MANN. Yes, the rayon was the forerunner. Then you got the polyesters.

The CHAIRMAN. It was probably a war time development and then a postwar application essentially, is that not right?

Mr. MANN. Yes.

Mr. LANIER. Yes.

The CHAIRMAN. Becky, are you not a cotton person? I am saying it is high fashion.

Mr. MANN. Durable press changed everything.

The CHAIRMAN. You put in a synthetic to make it durable press?

Mr. MANN. Yes. The reason we stay in business is that it is comfortable and it has absorption properties.

Now we are being told: "Don't handle it in the gin with your hands. Pick it up with a scoop or seed fork."

I told my men and they though I had lost my mind.

The CHAIRMAN. Is that for protection from dust?

Mr. MANN. This is one of the regulations that has come to a cotton ginner. If you have a chokeup in a machine and cotton spills out, pick it up with a scoop or seed fork. This is no inconvenience. We would be glad to pick it up with a scoop if that would be the end of it, but it just shows you how ridiculous the regulation is.

STATEMENT OF GAYLON B. BOOKER, ON BEHALF OF NATIONAL COTTON COUNCIL

Mr. BOOKER. I am Gaylon B. Booker. I am on the staff of the National Cotton Council.

With regard to cotton and the competitive situation, we certainly acknowledge that in the fashion area, cotton has gained momentum in recent years.

One of the stronger gainers has been imported cotton. It accounts for one-fifth of domestic consumption. If we put another 14 to 17 cents per pound on domestically produced cotton, we will increase the rate of imports. Cotton fabric will be coming in from abroad and in big chunks if we assess the market properly.

The CHAIRMAN. Where did Sea Isles cotton start?

Mr. MANN. Sea Island, Ga.

The CHAIRMAN. I understand that there are Sea Isles cotton from abroad. But it did start in Georgia?

Mr. MANN. Yes.

The CHAIRMAN. Is not that known to be high-quality cotton? At least the shirts are most expensive.

Mr. MANN. Well, the cost of the cotton and the cost of the shirts are two different things to the producer.

The CHAIRMAN. I sense, perhaps, the advisability of this committee and the staff thinking about visiting some of these operations. We have been to the mills, but that is the last step in manufacturing, and that was some years back as a matter of fact. But when we did visit the mills, I was impressed at that time with how intent they were on finding ways to deal with their dust problem.

Mr. LANIER. We would certainly welcome you or any members of your committee.

The CHAIRMAN. But the one thing that impressed me, that they did not seem to have the answer to, was the noise in the mills. I do not know, if they have found any way to take care of it.

Mr. LANIER. We have not been able to quiet the flash shuttle.

The CHAIRMAN. Those shuttles when they are pounding away, hundreds of them, it is almost unbearable for newcomers.

Mr. LANIER. My company has had a hearing conservation program going back to the late sixties and it is mandatory that they wear ear plugs.

The CHAIRMAN. They are more practical than the masks. Just as the hardhat is one personal protective device that seems to be used, the ear protection that you see at the airports and other places, they are worn. With the masks, it is another thing. We would probably have to go to get a court order. We would be back to the warrant situation. The OSHA people got a surprise from the Supreme Court on warrants for inspections.

Yet, almost 90 percent of the businesses recognize the desirability of having this safety law and are cooperating, so OSHA does not have to go to court and secure a warrant in most cases.

Anything further?

Mr. MANN. Mr. Chairman, I would like for Mr. Booker to make a comment or two on how costs have been arrived at. There is such a difference between what OSHA people say as to cost and what we are saying.

The CHAIRMAN. All right.

Mr. BOOKER. The only assessment of what this standard would cost at 0.2 mg/m per cubic meter in all areas of yarn manufacturing was determined by OSHA's own contractor. They put it at $1.1 billion to achieve that in all areas.

When OSHA quoted a cost of $657 million—and of that, about $467 million was in yarn manufacturing—they took estimates which were put into the record by industry witnesses. You will find these data in tables 1 through 3 on page 23380 in the Federal Register. They include a footnote on table 1 saying what they have costed out is a standard that calls for a 0.5 mg/m per cubic meter dust level in spinning through warping processes. That is the most important part of the yarn manufacturing process.

Mr. Lanier indicated that ATMI has not tried to put a cost figure on compliance in the spinning area because it cannot be accomplished. To give you an idea of the magnitude of the error, it amounts to $660 million. That is equal to what OSHA said industrywide costs were. That was in 1974 dollars. There has been 37 percent inflation in equipment costs since 1974. There is a significant difference between OSHA's estimate of compliance cost and the real cost. The administration was concerned about the $650 million for capital costs. We take the position, as Mr. Mann has said, that had the administration economists known what the standard's, real cost was, we do not believe the standard would have been issued in its final form.

We believe OSHA has not properly assessed the standard's economic feasibility as the act requires; therefore, the standard ought to be stayed until the matter is cleared up.

The CHAIRMAN. Are you parties to any of the current law suits?

Mr. LANIER. Yes.

Mr. MANN. Yes.

The CHAIRMAN. A lot of this will be dealt with in those cases, I imagine? A lot of the things you have said here this morning?

Mr. BOOKER. Yes. These points are made in the petition.

Mr. MANN. Unfortunately, we feel like we are ignored. That is our problem. That is the reason we are here today, Mr. Chairman.

The CHAIRMAN. In the standard-setting process, you felt that you were ignored?

Mr. MANN. We thought that the statistics were; yes, sir.

The CHAIRMAN. Were you part of the proceedings in developing the information that was the forerunner of the standards?

Mr. MANN. Yes, sir. They held hearings all over the country. I testified in a hearing down at Greenville and the council has testified at every opportunity on this situation.

Mr. LANIER. ATMI were parties. There are 104,000 pages in that hearing, Mr. Chairman.

The CHAIRMAN. It boils down in part to what you describe as an error.

Mr. BOOKER. We assume that it was an error. At any rate, it is an erroneous figure insofar as the true costs are concerned, as the record shows.

The CHAIRMAN. The dollar figure was fixed on a different percentage?

Mr. BOOKER. Yes. The dollar figure which OSHA used was based on a different exposure level. It was based on reducing the dust level much less than what the final standard required.

The CHAIRMAN. You are claiming that the cost estimates were based upon a level of exposure, a higher level of exposure than was finally permitted by the standard?

Mr. BOOKER. The figures for part of the yarn manufacturing were based on a permissible exposure level of 0.5 rather than the required 0.2.

Mr. MANN. Senator Williams, you have got two jokers in the deal. In one part, they use 1974 dollars. You cannot do that in 1978. When you are talking about 0.5 and 0.2 and jump back and forth and you put those two together, you can really come out with the mixed bag of tricks. We keep claiming it. We hope somebody will check the record because it is there.

The CHAIRMAN. All right. This has been very valuable and I appreciate your accepting our invitation to come here.

Mr. MANN. We certainly appreciate being being here and we appreciate the questions you have asked. I have been tremendously impressed with your desire to find out what it is all about. We hope we have answered all of your questions. If we have not, we will be happy to answer at another date.

Mr. DUNKLIN. The latch strings are out.

Mr. LANIER. For you to visit us. We will be happy to answer any further questions.

[The following information was subsequently supplied for the record:]

NATIONAL COTTON COUNCIL OF AMERICA
EXECUTIVE BUILDING / 1030 FIFTEENTH STREET, N.W. / SUITE 700
WASHINGTON, D.C. 20005
TELEPHONE: (202) 833-2943

October 20, 1978

The Honorable Harrison A. Williams
Chairman
Subcommittee on Labor
Human Resources Committee
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Williams:

We appreciated very much the opportunity to appear before your Committee to review our industry's concern with the cotton dust regulations issued by the Occupational Safety and Health Administration.

Our industry is deeply committed to protecting the health and safety of its employees. But we feel that OSHA's standards for cotton dust go far beyond what is necessary to provide adequate protection. There also are serious questions regarding OSHA's procedure and the evidence used to support its decision. These, of course, were addressed in our testimony. However, several issues were raised during the course of your questioning that we felt needed additional elaboration. Your question about washed cotton was particularly relevant, but there appeared to be some confusion in the NIOSH response. Additionally, we want to set the record straight regarding Dr. Bingham's misleading reference to the "centry-old" British standard. We feel that the discussion on these issues needs clarification and therefore request that this letter and its attachments be included as a part of the official hearing record. At your request, we will gladly provide any additional information that the Committee might desire.

The NIOSH witness discussed steamed cotton in response to your question on washed cotton. This is an entirely different process and produces different results from washed cotton. Steaming cotton apparently does not remove dust, as the witness said. But the attached paper documents studies showing that washing the cotton removes the dust and the byssinosis agent.

Dr. Bingham suggested that the U.S. is "backward" in establishing a cotton standard, saying a standard had been effective in Great Britain for a century. We are attaching a description of the British standard -- which was issued in the early 1970's -- and those of a number of other developed nations. These document the fact that no nation has a rule as strict as the standard OSHA has mandated in the U.S.

Because of your strong interest in this issue, I want to extend again my personal invitation to you and your staff to visit the various work areas within each segment of the cotton industry to see first-hand the conditions that do exist and the difficulty in complying with OSHA's regulations.

Again, we appreciate your interest and the devotion of your Committee's time to this important issue. I look forward to hearing from you.

Sincerely,

Lon Mann

Lon Mann
President

WASHED COTTON

OSHA's exemption of "the handling or processing of washed cotton" has aroused considerable interest in the cotton-growing and processing industries. The exemption is based on several medical studies which have shown that the causative of byssinosis can be extracted with water. In those studies, workers processing scoured cotton for medical use and milder washed cotton showed no symptoms of byssinosis. Merchant and co-workers noted:

> "Unfortunately, manufacturing trials found that washed cotton did not process well. Because washing cotton appears to eliminate completely biological activity, further efforts should be made to wash cotton in a manner compatible with subsequent processing."[1]

Achievement of this objective could produce a complete solution to the byssinosis problem instead of the partial solution that engineering controls are expected to achieve. (OSHA stated in the cotton dust standard that even after the 200 ug level is reached, potentially 13% of the workers would still get byssinosis.) In essence, the problem could be removed at the source, rather than being suppressed in complex, controversial, and difficult-to-monitor ways. If a suitable washing procedure were established, OSHA could set standards under which a relatively small number of large washing plants — perhaps about twenty — would operate, supplying washed cotton to all users. This would be a sharp contrast to the current situation in which many small and medium-sized processors of cotton are bewildered by the multitude of measuring, medical testing, and engineering problems which face them.

Some mills have tried to duplicate the washing conditions indicated by Merchant *et al* — i.e., 30 minutes at 100° C, with either 0.6% sodium hydroxide or with a wetting agent. The resulting cotton was unprocessable in plant opening and carding equipment.

Is it possible that milder conditions of temperature — which are expected to interfere less with the practical processing of cotton — might be equally effective in removing the byssinotic factor(s)? Work by Dr. Arend Bouhuys and others gives strong positive support in this direction. They have shown that the substance from the bract which produces symptoms of byssinosis in human

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[1] Merchant, Lumsden, Kilburn, Germino, Hamilton, Lynn, Byrd, Rancau, Brit. J. Ind. Med., 1973, 30, 237-247.

reactors is readily removed with water at room temperature. (The bract is the cotton plant part thought to contain most of the causative agent or agents[2, 3].) Thus, elevated temperature may be important only to promote wetting and penetration of all the fibers in the cotton by water.

Following Merchant's exhortation, and encouraged by the great solubility of the byssinotic factor in water, a joint USDA/industry research program has been set up to find a practical washing process. (Attached is a copy of a memorandum by Nelson K. Getchell of the USDA which outlines the current program and summarizes a September 14 meeting regarding the project.) In Stage 1 of the program, the objective is to explore a range of washing conditions and processability of the resultant cotton on commercial opening, carding, and spinning equipment.

In Stage 2, cotton washed under conditions which do not adversely affect its further use in textile processing will be evaluated for byssinosis potential with a human test panel. NIOSH will cooperate in the medical evaluation.

A textile mill has carried out an experiment with cotton on a pilot line designed for studying the continuous washing, drying and spinning of rayon. Cotton was washed in three stages — at 95° F, 150° F, and 122° F, using water, a solution of wetting agent, and a solution of the fiber finish, respectively. Total residence time was about 7 minutes. The cotton was subsequently dried at a maximum temperature of 160° F. With application of a finish, it was possible to process the dried stock at commercial operating speeds on production carding equipment and spin it into yarn whose quality was only slightly inferior to yarn produced from the same (unwashed) grade of cotton. Other mills also are actively investigating the use of washed cotton.

The research program and practical evaluation of washing will require possibly two years, although by January the main questions about its feasibility should be answered. Until that time, it would be foolish and wasteful for the textile industry to continue its heavy investment in air-handling and other energy-intensive engineering controls. However, after the two-year washing research program, the two years remaining in the implementation schedule prescribed in the cotton dust standard will not be sufficient to order, procure, and install either all the washing capacity required or — should washing not prove to be a viable solution — the engineering controls.

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[2] Buck and Bouhuys, Federation Proceedings, March 1978, 37(3), 579.

[3] Bouhuys, Private communication.

The U. S. cotton industry must invest its limited capital wisely in order to stay competitive in the world market. It cannot afford to make a mistake on the question of how best to protect employees. Unfortunately, sufficient time is not presently allowed the cotton textile industry to determine where best to spend capital dollars. We earnestly and sincerely request your help and guidance in resolving our dilemma.

FOREIGN STANDARDS

The U. S. has taken more stringent action on cotton dust than any other country. In most countries, the standards are guidelines which government and industry are working toward.

ENGLAND	Government *and industry* — with the cooperation of labor unions — are working toward a guideline standard with a permissible exposure limit (PEL) of 0.5 mg/m3 of total cotton dust less fly (fly means dust particles of 2 mm or more in length). Copy is attached.
FINLAND	There is no law relating to cotton dust but the health department advises 1 mg/m3 of total dust. A law has been proposed to enforce compliance with the advised exposure limit which will probably remain at 1 mg for cotton dust or 5 mg for other textile dusts.
JAPAN	This country has no regulations and, after a detailed investigation, claims to have no byssinosis problem.
SWITZERLAND	The PEL in this country is 1.5 mg/m3 total dust. A recent investigation was made here to see if a review was necessary. The researchers found that byssinosis is not a serious problem and a new lower PEL is not justified.
GERMANY	A PEL of 1.5 mg/m3 total dust is recommended, and the government is considering whether to make this recommendation -- or a revised figure mandatory.
ITALY	There is no regulation but a government commission has been appointed to study the situation beginning next year. For the time being, an unofficial guideline of 1 mg/m3 total dust has been suggested.
FRANCE	There is no regulation and none is planned.

APPENDIX 2

UNITED STATES DEPARTMENT OF AGRICULTURE
SCIENCE AND EDUCATION ADMINISTRATION

Agricultural Research
National Program Staff
Beltsville Agricultural Research Center
Beltsville, Maryland 20705

September 20, 1978

Subject: September 14 Meeting of Technical Level Work Group on Washed Cotton

To: M. J. Pallansch, Assistant Administrator

Summary

A second meeting of the technical level working group on washed cotton was held September 14 at the Washington office of the National Cotton Council. This was the follow-up to the August 25 meeting, as planned, for the purpose of developing further details of an experimental program to explore the feasibility of washing cotton prior to yarn manufacturing as outlined at the meeting of cotton industry representatives and Secretary Bergland on August 16.

With the exception of Dr. Hays, all USDA and industry members appointed to the technical working group were present, together with a number of research leaders from the textile industry. The list of those attending the September 14 meeting and the agenda are enclosed.

The meeting was highly successful in reaching a concensus on conducting a series of experiments to determine whether washing is a feasible approach to meeting OSHA requirements for protecting the health of textile workers while maintaining adequate spinning performance. An intensive experimental program designed to provide a basis for judgement by the end of this calendar year is being implemented. The cooperative program with USDA has the full support of cotton and textile industry organizations.

Industry members voiced urgent need for an extension of the time period over which the OSHA Cotton Dust Standard would have to be implemented so that critical decisions about purchase of fiber washing equipment versus engineering dust controls could be reached before millions of dollars in equipment contracts are placed by the industry. They stated the impossibility of pursuing simultaneously two completely different approaches to the problem in the short time remaining, and pointed out that once firm contracts are placed for engineering dust control equipment to meet the standard, it would be economically impossible to consider the alternative approach of washing even though it might prove to have advantages for worker comfort and protection. It was mentioned that, unlike the partial solution provided by engineering dust controls, washing has the potential for complete elimination of the health hazard for textile workers.

Longer range USDA programs, which would also eliminate the health hazard, were briefly discussed. These involve modification of cotton production/harvesting practices, such as by closed boll harvesting, and development of methods to de-toxify cotton by gaseous or other chemical means. However, until suitable animal models are developed, it was agreed these promising alternative approaches must depend on use of human volunteer test panels assembled in cooperation with the textile mills to detect the presence or absence of byssinotic factors.

Experimental Program

The question of feasibility of batch versus continuous washing was thoroughly discussed by the group. The original batch washing procedure used in Dr. Merchant's research was described in detail. Because batch procedures in general were considered so completely outside the range of economic feasibility, it was agreed not to include such methods in the initial series of experiments, and to concentrate on exploring the potentials of continuous washing.

The limited work done to date by industry and USDA to determine spinability of washed cottons was reviewed, and availability and suitability of equipment and methods for continuous washing were discussed. One textile mill representative shared the experience of his organization with the group, describing limited experiments with continuous washing which held promise of an economically feasible process. Hand samples of cotton washed and washed and bleached on the Cotton Inc. range looked promising although neither fiber property nor spinning test data were available. It was agreed that the continuous washing equipment developed by Cotton Inc. for processing cotton for nonwovens use was the only system presently available on which exploratory experiments could be conducted in the limited time remaining.

Cotton Inc. offered to provide as much time on their machine as needed to resolve the question. Mill and industry members pledged their full support of the program, and USDA committed use of the Clemson pilot spinning plant to evaluate processing and spinning performance. The cooperation of NIOSH will be available for evaluating medical effects of washing. Plans for a three-stage series of experiments were developed, as follows:

Stage 1 will consist of an initial series of experiments to explore the effect of a range of washing variables on fiber properties and spinning performance. Each experiment will involve washing bale quantities of cotton. Washed cotton and controls will then be processed into yarns, and fiber properties, dust generation, and spinning performance evaluated. Parallel experiments will be carried out by Cotton Inc. using their small scale spinning facility, and by USDA using the Cotton Pilot Spinning Laboratory at Clemson.

Details of Stage 1 experiments are now available. Washing of cotton will start during the week of September 18, and spinning trials the following week.

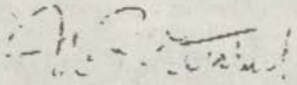
Results of initial tests in terms of spinning performance of cottons washed under different conditions should be available (for USDA Clemson Pilot Plant at least) by early November. If results indicate promise, Stage 2 experiments will follow immediately.

Stage 2 is designed to explore the effect on human subjects of exposure to processing of washed cottons. Based on results from Step 1, washing conditions showing the greatest promise for spinability will be repeated, and a volunteer panel of human test subjects will be exposed during processing in the model card rooms at Clemson. The textile mills have agreed to cooperate in establishing a test panel made up of suitable volunteers from among their employees. NIOSH will cooperate on medical aspects of human exposure studies which will be carried out under their direct supervision. Protocols for the human exposure studies of Stage 2 and subsequent experiments will be developed immediately in cooperation with NIOSH.

The goal of Stage 2 is to have sufficient results from human exposure and spinning performance studies with washed cotton available before the end of December 1978 so that firm decisions can be made about the feasibility of washing cotton as a means of meeting OSHA requirements for protecting worker health. Estimates of equipment and processing costs will be calculated from best available information.

Stage 3 will significantly expand the scope of the study on washed cotton, assuming results of stages 1 & 2 experiments show sufficient promise. Studies would be expanded to explore a range of different cottons and yarn sizes. Other studies would be directed toward further improvement in spinning performance and yarn quality through adjustments in machine settings and use of spinning lubricants if needed. Individual mills will become directly involved at an early stage in evaluating cost factors and spinning performance of commercial scale quantities of washed cotton, and eventually with mill scale confirmation of beneficial effects on worker's health.

Another meeting of the technical committee will be called around November 1 to discuss Stage 1 results.



Nelson F. Getchell
Staff Scientist

Enclosures

cc:
Attendees
Dr. Hays
Dr. Kirk

ENGLAND
"Towards a Healthy Working Environment"
Department of Employment
Her Majesty's Stationary Office 1974

4 Summary of recommendations

The achievement and maintenance of a healthy and comfortable working environment in the cotton and allied fibres industry requires the co-operative effort of all, whether directly or indirectly concerned, and whether involved with present methods of production or proposed developments. The recommendations which have been made in this report and which it is believed will lead towards this goal are summarised.

Dust

Hygiene standard

An acceptable airborne dust concentration for workrooms where cotton is processed shall be up to 0·5 mg/m³ of total cotton dust less fly; the term fly meaning dust particles of 2 mm or more length.

Atmospheric monitoring

The airborne dust concentration of workrooms where cotton is processed shall be determined at least once every year.

The results of airborne dust concentration determinations shall be recorded together with details of action taken to reduce high concentrations to an acceptable level.

Dust control

Opening and blowing machinery processing cotton shall be enclosed so far as is practicable and exhaust ventilation shall be provided so that the airborne dust concentration does not exceed an acceptable level.

Local exhaust ventilation shall be provided at carding machines processing cotton so that during carding the airborne dust concentration does not exceed an acceptable level.

Where practicable pneumatic systems shall be provided for the removal of undercard waste.

The operation of stripping a card cylinder or doffer shall not be carried on unless an efficient exhaust is provided to remove the dust at, or as near as practicable to where it is given off.

Where practicable, dust resulting from the processing of cotton at stages subsequent to carding shall be controlled so that the airborne concentration does not exceed an acceptable level.

Where practicable methods do not exist for the effective control of dust resulting from the processing of cotton at stages subsequent to carding, research shall be undertaken to develop effective methods.

Exhaust ventilation equipment shall be efficiently maintained.

Adequate and suitable test points shall be provided on exhaust ventilation equipment.

Exhaust ventilation equipment shall be tested and examined at least once in every period of six months.

The results of the tests and examinations of exhaust ventilation equipment shall be recorded together with details of action taken to remedy any defects in the equipment.

Workrooms and the machinery shall be kept clean.

Where cotton is processed suitable vacuum equipment shall be used for cleaning.

Respiratory protection

Whenever dust collection or filtration systems have to be manually cleaned or whenever other dusty work is carried out for which the provision of local exhaust ventilation is not practicable, efficient respiratory protective equipment shall be provided and used.

Recirculatory air systems

When air extracted from machinery processing cotton is returned to the atmosphere of a workroom, efficient de-dusting equipment shall be provided and maintained so that at the point where the air re-enters the room the total residual dust does not exceed 0·1 mg/m³.

Where practicable, automatic monitoring which will give warning of filter malfunction, shall be provided at equipment which extracts air from machinery processing cotton and returns it to the air of a workroom.

Environmental conditions

Limit of comfort

An acceptable upper comfort limit for all workrooms shall be a Corrected Effective Temperature of 71 °F (22 °C).

TO
THE LABOR SUBCOMMITTEE OF
THE SENATE HUMAN RESOURCES COMMITTEE
OSHA OVERSIGHT HEARINGS
OCTOBER 3, 4, AND 5, 1978

STATEMENT OF
AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC.
1101 CONNECTICUT AVENUE, N.W., WASHINGTON, D.C.
400 SOUTH TRYON STREET, CHARLOTTE, N.C.

On October 3, 1978, Mr. Joseph L. Lanier, Jr., chairman of the Safety and Health Committee of American Textile Manufacturers Institute and President of WestPoint Pepperell, Inc., presented to the Labor Subcommittee of the Human Resources Committee an abbreviated, oral statement covering one phase of OSHA operations, namely, the cotton dust situation, but there are other questions within the safety and health field which we wish to raise for the committee's consideration. Since it was not practical for the committee to grant time for us to express these broader views, we wish to file this supplementary statement for the record to express our concern for the impact of OSHA on the textile industry and the difficulties experienced by this industry in trying to assist the agency in its legal responsibility to develop regulations which will be feasible and which will help to bring about a safer and healthier working environment for American employees.

The American Textile Manufacturers Institute is the national trade association serving spinners, weavers, knitters, and finishers of man-made fibers, cotton, silk, and wool. It represents approximately eighty percent of the textile spinning, weaving, knitting and finishing production capacity in the nation and provides governmental, economic, international trade, statistical, and public relations services to member companies.

The American textile industry represents a major industrial segment of the nation's economy, employing approximately one million employees. There are about six thousand textile companies and over seven thousand plants located throughout the United States.

About forty-six percent of the textile workforce is made up of women, as compared to twenty-nine percent for all manufacturing. Also, seventeen percent of all textile employees comes from minority groups.

The textile industry, like many other American industries today, is facing ever-increasing economic challenges at home and from overseas. The industry's very low profit after taxes of 2.4 percent in 1977, as compared to 5.3 percent for all manufacturing, places it in a vulnerable position concerning capital expenditures and loss of sales.

GOVERNMENT REGULATIONS

Although the textile industry has maintained a safe and healthful working environment for employees, it has been deluged by a flood of safety and health regulations since 1970.

Nevertheless, the textile industry takes a positive approach toward occupational injury and illness prevention. This approach is evident by the relatively low occupational injury and illness rates as reported by the Bureau of Labor Statistics. Although the textile industry is one of the top eight safest industries in the nation, it has been singled out by the Occupational Safety and Health Administration to spend large sums of money for compliance with many regulations which have had little or no influence on reducing injuries and illnesses. The industry is vitally concerned for the welfare of its employees, but the resulting drain on its limited financial resources has, to put it mildly, done nothing to help employees, management, or the agency.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

The OSHA Act was passed by Congress in late 1970 and became effective in early 1971. The Act was to assure safe andhealthful working conditions for working men and women throughout the nation, and this goal was supported by both management and employees.

I wish we could say, eight years later, that the purpose of this Act had been achieved by the Occupational Safety and Health Administration. However, that is not the case. Generally, most improvements that have been made are not the result of OSHA activities, but action taken by responsible companies moving effectively to protect employees. OSHA's main achievements have resulted from the OSHAct itself motivating companies to establish more adequate safety and health programs.

Most of OSHA's activities have been misdirected toward insignificant problems or toward areas where no problems existed. OSHA failed from the very beginning to evaluate potential problem areas effectively and to focus its resources on solving the identified problems. This situation still exists today and is the result of failure to communicate properly with all groups involved with a particular problem.

Recently announced changes in OSHA emphasis by Labor Secretary Ray Marshall and Assistant Secretary Eula Bingham have not materialized. The emphasis on major hazards and de-emphasis on "nit picking" items have not taken place. The removal of over 1,000 standards from OSHA enforcement has not occurred as planned. On the contrary, recently issued OSHA standards reveal that in fact OSHA has not changed its approach, but may even have increased its "nit picking."

The textile industry has had a most difficult time trying to communicate with the OSHA Administration, and this lack of communication has resulted in OSHA's receiving a distorted view of textile industry safety and health situations. Generally, the only view that OSHA has had of the industry has been from special interest groups or through administrative rule-making hearings. Effective, meaningful relationships cannot be achieved without proper face-to-face, two-way communications.

As we see it, the problems and failures outlined above have meant that OSHA's attempt to issue and enforce regulations has actually been detrimental to the improvement of safety and health in American industry. In short, the textile industry and other affected industries have been forced to spend millions and millions of dollars and untold hours of time of safety professionals in endeavors which have had little or no effect on safety and health.

Failure to properly identify problems needing attention has resulted in costly regulations and proposals being issued by OSHA. Those that most seriously affect the textile industry are:

OSHA'S COTTON DUST STANDARD

The Cotton Dust Standard is an excellent example of OSHA's lack of communication and improper identification of problem areas needing attention. Because of the communication "blackout," OSHA has identified byssinosis and cotton dust control as a major concern, while, in fact, the byssinosis problem was blown out of proportion to the actual situation due to a total misunderstanding of the disease, its cause, and effective prevention. In actuality, the textile industry was well on the way toward completely eliminating disabling byssinosis before OSHA proposed its Cotton Dust Standard.

Thus, OSHA's failure to communicate effectively with the industry resulted in issuance of an unnecessary, technically infeasible and highly inflationary standart on June 23, 1978. This is one of the most comprehensive standards issued by OSHA or any governmental regulatory agency. It covers virtually every aspect of the work environment in the cotton textile industry. It appears that OSHA included in this standard all the things it has been considering, but has not put in other standards, such as detailed medical examinations with written physician's opinions, signs, rate retention, and mandatory use of OSHA-prepared employee training material.

This standard will cost the cotton textile industry about $2 billion in capital costs. This serious economic impact will result in many cotton textile companies going out of business and many others ceasing to use cotton. The forecasted impact on the cotton agricultural industry is substantial.

This is a high price to pay for improper identification of a significant occupational hazard. Careful review of the byssinosis situation by OSHA in an objective manner would have revealed many alternative, less costly measures that could have been taken with equal effectiveness. However, such proposals submitted to OSHA by the textile industry went unheeded.

Using the Cotton Dust Standard as a critical example, the American Textile Manufacturers Institute urges the subcommittee to consider legislation that will mandate more effective communications between OSHA and the industries regulated by OSHA. Where possible, joint committees made up of governmental, management, and labor representatives should be established to insure that accurate facts are gathered and utilized by OSHA in developing standards.

We urge that Congress more frequently exercise its right to review regulations issued by agencies such as OSHA. The OSHAct, as passed by Congress, gives rule-setting power to the Secretary of Labor. However, OSHA has apparently far exceeded the authority granted by Congress. These rules, which have the force and effect of law, are being forced on industry in such increasing numbers that affected companies and individuals cannot find time to read them, much less comply with every detail.

At this point we wish to note that the founders of this nation knew something about the great impact of regulations. James Madison once said:

> "It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be like tomorrow."

The OSHA Cotton Dust Standard issued in the June 23, 1978, Federal Register, contains 113 pages of preamble and regulations. These extensive rules were not issued by elected officials, but by an agency with little responsibility to the citizens. ATMI urges the Labor Subcommittee to help stem the tide of ever-increasing regulations.

OSHA'S PROPOSED NOISE STANDARD

Extensive administration rule-making hearings have been held twice by OSHA to promulgate an OSHA Noise Standard. Like cotton dust, OSHA had a meager understanding of the industrial noise problem and of effective control measures. This lack of knowledge has resulted in lengthy, costly hearings, which possibly could have been avoided if OSHA were more willing to cooperate with involved groups.

The textile industry would be required to spend about $3 billion to meet OSHA's proposed Noise Standard, even if the technology were available, and this expenditure would be on top of the $2 billion for complying with the Cotton Dust Standard.

The American Textile Manufacturers Institute believes that employees can be and are being effectively protected against hearing loss by hearing conservation programs until machinery can be designed and installed on a normal replacement basis to prevent occupational hearing loss. OSHA continues to cite textile companies for violations, although it must be aware from the record of the hearing that for most textile machines no technology exists for meeting the proposed standard.

OSHA'S CANCER POLICY

In October 1977, OSHA published its proposed Cancer Policy in the Federal Register. This proposal, as the others previously reviewed, is another example of OSHA misdirection. Occupational cancer has not been demonstrated to be a major problem in the United States since relatively few chemicals have been demonstrated to be human carcinogens. Therefore, there is no justification to begin widespread regulation of chemicals in general because there are too many unknown factors concerning the effects of chemicals on man. Trying to extrapolate results from microbe and animal tests will result in too many chemicals being regulated unnecessarily. The cost of such regulations would be staggering and generally unjustified. Despite these excessive costs, OSHA did not initiate an economic assessment of the proposal until it became apparent during the public hearings that such assessment was necessary.

We urge Congress to consider legislation to establish designated agencies for regulating chemical safety. Currently, numerous federal agencies have become involved in the chemical regulations area, such as the Consumer Product Safety Commission, Toxic Substances Control, Food and Drug Administration, and OSHA. It appears that each is trying to out-do the other and take the lead. This is obviously a nonproductive approach and contrary to the public interest.

RECOMMENDATIONS

ATMI would like to make the following recommendations to the Senate Human Resources Committee concerning improved OSHA administration:

1. PRIORITIES: The Department of Labor's Bureau of Labor Statistics maintains current occupational injury and illness statistics for all American industries. OSHA should use these statistics to focus its attention on those industries and segments of industries which have injury and illness rates above the national average. Routine inspections should not be conducted in those industries which have established low injury and illness rates. This approach will produce positive results and keep OSHA costs to a minimum.

2. PROGRAMS: OSHA's concern with trying to specify every detail in its regulations has diluted its efforts and diverted its resources from its overall objective. OSHA must strive to develop more performance-oriented standards that establish objectives without specifying the details on how to achieve them. By providing motivation and incentive for companies to establish and maintain effective safety and health programs, OSHA can come much closer to achieving more injury and illness reduction than all the existing OSHA specification standards.

3. PROMULGATION OF REGULATIONS: Past promulgation efforts by OSHA have proven that generally the approach being followed has been unsuccessful. This situation has developed because Federal OSHA has lost touch with the industries it is trying to regulate. Information received and used by OSHA in Washington often does not reflect the actual situation. Because of this, most of OSHA's proposed standards are not relevant and routinely are challenged in the courts.

   Congress should direct OSHA to develop a more realistic promulgation procedure that insures maximum input by all groups involved to achieve maximum satisfaction of all groups before the proposed standard is issued and hearings begin. By following this procedure the promulgation of regulations could be accomplished much more effectively. Standard public hearings are not condusive to effective communications due to the legal atmosphere that prevails, causing an adversary relationship.

In summary, we believe that Congress should insure that OSHA does not exceed the authority granted to them by Congress in the OSHAct. It now appears that OSHA is reaching far beyond its authority by requiring industry to comply with rules and regulations not intended by Congress. Also, we urge that OSHA's administration of the Act be reoriented so that they solicit more cooperation in establishing regulations. This approach should lead to more practical and reasonable regulation that would achieve the mandate of the Act -- to reduce injuries and illnesses.

ATMI appreciates the opportunity provided by the Senate Human Resources Committee to comment on OSHA administration and make suggestions for improvement. It is our sincere hope that government and industry can work together effectively to achieve and maintain a safe and healthful working environment for all employees. ATMI and the textile industry pledge their full cooperation and assistance in working toward this goal.

Respectfully submitted,

American Textile Manufacturers Institute, Inc.

AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION
ACTWU
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PLEASE REPLY TO TEXTILE DIVISION ADDRESS

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Ocrober 18, 1978

1978 OCT 23 AM 12 40
COMMITTEE ON
HUMAN RESOURCES

Hon. Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
Senate Committee on Human Resources
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Williams:

I am submitting herewith a statement on behalf of the Amalgamated Clothing and Textile Workers Union, AFL-CIO, for inclusion in the record of the Subcommittee's hearings on oversight of OSHA held earlier this month.

I regret that the Subcommittee chose to hear testimony from representatives of the National Cotton Council of America who attacked the new cotton dust standard without providing an opportunity to the Amalgamated Clothing and Textile Workers Union to present our views of this subject. I trust that the enclosed statement will be considered by the Subcommittee in evaluating the criticisms which have been made of the Occupational Safety and Health Administration, particularly with respect to the cotton dust standard.

Sincerely,

George Perkel

George Perkel, Director
Occupational Safety and Health

GP:ls

cc: Secretary Marshall
Asst. Sec. Bingham

35-644 665

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STATEMENT GEORGE PERKEL, DIRECTOR
OCCUPATIONAL SAFETY AND HEALTH
AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO
TO THE LABOR SUBCOMMITTEE
OF THE
SENATE COMMITTEE ON HUMAN RESOURCES

The Amalgamated Clothing and Textile Workers union is concerned about the continuing attacks on the Occupational Safety and Health Act by giant corporate employers and their allies on the "New Right." OSHA has become a favorite scapegoat for extremist groups who oppose government regulation of any kind. It is time these unwarranted attacks were exposed for the fraud that they are.

In Secretary Marshall's statement to the Subcommittee on October 3, 1978 he cited as an example of the attack on "the very heart of the Act itself," the Senate's action in attempting to delay OSHA enforcement of the cotton dust standard. Fortunately this action was reversed in the conference committee, which eliminated a Senate-adopted amendment that would have prevented OSHA from enforcing the new cotton dust standard until May 1, 1979. However, the campaign of misrepresentation which the industry has conducted in its effort to prevent achievement of an effective cotton dust standard is symptomatic of the vicious character of the assault on OSHA.

Mr. Joseph L. Lanier, Jr., a spokesman from the American Textile Manufacturers Institute, Inc. (ATMI) testified before this subcommittee on October 3, 1978. He claimed that "the industry has a deep concern for the health and safety of its employees." This "deep concern"

is reflected in the industry's record of attempted suppression of the facts and refusal to accept the findings of disinterested scientists that many thousands of textile workers have been victimized by byssinosis (commonly known as "brown lung disease".)

As long ago as 1961 the industry was put on notice that byssinosis was present among the employees of American cotton mills. Two British scientists published a report that year based on an investigation conducted "to find out why byssinosis is a serious problem in England and not in the United States." They found that byssinosis was present among both American mills they studied. (McKerrow and Schilling, "A Pilot Enquiry into Byssinosis in Two Cotton Mills in the United States," Journal of the American Medical Association, September 23, 1961.)

The industry's response to these findings was to deny the existence of the disease and to block further attempts to study it. Dr. Arend Bouhuys, a scientist from Emory University who had a grant from the U.S. Public Health Service to study cotton mill workers, was refused access to the mills in a deliberate campaign by the industry trade association to suppress such research. When Dr. Bouhuys succeeded in circumventing the industry's efforts by studying the workers in a cotton mill at the U.S. penitentiary in Atlanta (from which he could not be barred by the industry) his findings were ignored by the industry.

An indication of the industry's attitude is provided by an editorial

in the trade publication, America's Textile Reporter, in 1969 which makes this statement:

> "We are particularly intrigued by the term 'byssinosis,' a thing thought up by venal doctors who attended last year's (International Labor Organization) meeting in Africa, where inferior races are bound to be affected by new diseases (which) more superior people defeated years ago." (America's Textile Reporter, July 10, 1969.)

The industry attempt to deflect the rising public concern over byssinosis by authorizing a study of mill workers by the Industrial Health Foundation, an industry-oriented group which had studied "black lung disease" among miners in the 1960's and had concluded that it was a "red herring". However, even this group found it impossible to ignore the existence of byssinosis among cotton mill workers and reported in 1973 that some 22 percent of the employees in the preparation departments were suffering from "brown lung disease."

It is noteworthy that the textile industry has made no reference to this industry-financed study in its presentations to OSHA last year or in its public statements since then. Instead the ATMI has relied on the results of medical surveillance conducted by company doctors in a group of companies with medical examination programs. Such programs are notoriously inaccurate as an indicator of the prevalence of disease since there are two inherent biases working to prevent reliable assessments. First, the company doctor seeks to minimize the number of cases reported since each case represents a potential claim for Worker's Compensation. Second, the workers

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fear to disclose symptoms of disease because of the risk such symptoms may pose to continued employment.

It is therefore not surprising that this ATMI "study" found less than one percent of the workers with "both subjective and objective symptoms," as reported by Mr. Lanier. What he failed to report was that no less than 9 percent of the employees covered by this "study" were found to have a significant reduction in their breathing capacity during the first day of work after the week-end. (Exhibit 44, OSHA Cotton Dust Standard Hearings) This is characteristic of the byssinosis syndrome and it clearly establishes the fact that "brown lung disease" is a serious problem even as measured by the biased results of company medical examinations. Studies conducted by independent scientists have consistently shown that 20 - 30 percent of the workers in the preparation departments of cotton mills have byssinosis. The latest study, published in 1977 by Dr. Bouhuys, director of the Yale Medical School Lung Research Center, placed the number of workers totally disabled by byssinosis at 35,000. Surely this refutes Mr. Lanier's claim that "the industry is well on the way to eliminating byssinosis in textile manufacturing."

The industry has attempted to deal with the byssinosis problem first by denying its existence and second by placing the burden of protection on the workers. Employees who show signs of adverse effects from exposure to cotton dust are told to wear masks. In order to be effective in a highly

dusty environment a mask must impose substantial resistance to normal breathing. Consequently the very workers who are suffering from breathing deficiencies are required to shoulder the additional burden of breathing through a filter. When these workers find it impossible to do so they quit. This is one reason why company doctors report few employees are suffering from byssinosis.

Another tactic used by the industry to "deal" with the "brown lung" problem is to require employees to take medical exams conducted by company doctors. Theoretically, if the doctor finds workers adversely affected by exposure to cotton dust he is supposed to advise them to transfer to dust-free jobs so their health will not be impaired. In reality such transfers are extremely rare since they are not perceived as being in the interest of the worker or the company. The worker has no assurance that his wages or status will be maintained if he is transferred so he will deny symptoms of disease. The company has difficulty finding dust-free jobs for transferees and, besides, transfers tend to disrupt normal operations. Moreover, an employee transferred for medical reasons represents a potential Workers' Compensation claim. The fact is that company medical exam programs are directed at minimizing potential Workers' Compensation liability rather than solving the byssinosis problem.

The textile industry spokesman at the subcommittee's October 3rd hearing culminated his attack on OSHA with the claim that "OSHA has issued a (cotton dust) standard which is technologically and economically infeasible

. . ." However, in response to the Chairman's questioning Mr. Lanier detailed some of the extensive new technology currently available to the industry for reducing dust levels, including automatic bale handling equipment; enclosed chutes from bale-opening to the carding operation, eliminating the picking process (which emits considerable dust into the workers' environment); enclosed carding machines; automatic waste-baling equipment.

The performance of these and other new machines belies industry's claim that the new standard is infeasible. Surveys conducted under the direction of the National Institute of Occupational Safety and Health show that the permissible exposure limit of 200 micrograms per cubic meter in yarn manufacturing is capable of being met by the use of existing technology. The limit of 750 micrograms/m^3 in slashing and weaving operations is already being met in the large majority of mills (accounting for 72% of the looms, according to testimony of Mr. Hoven Hocutt, ATMI's expert witness at the OSHA standard hearings.)

The industry has attempted to confuse the issue of economic feasibility by introducing grossly inflated estimates of the cost of installing engineering controls. These estimates are at variance not only with the Labor Department's assessments but with those which the industry iteself has made in another forum. In 1974 the ATMI submitted its estimate of the cost of complying with a 200-microgram cotton dust standard in all operations (not just yarn manufacturing) to the Treasury Department in connection with an

application for liberalization of depreciation rules under the Internal Revenue Code. This estimate came to $447 million. Now the ATMI has boosted its estimate to $2.6 billion.

This kind of self-serving exaggeration does not merit serious consideration. It is the same irresponsible numbers game that every industry confronted by new OSHA standards has played. We are too familiar with the vinyl chloride story to give credence to these industry cries of "Wolf!" The fact is that the vinyl chloride industry, the asbestos industry and every other industry compelled to meet more stringent occupational health standards has responded by developing technological improvements wherever necessary to fulfill their obligations. In the case of cotton textiles there is no need to develop new technology. The technology exists today and is in use in many mills producing cotton products at a profit. Indeed, investment in the necessary new machinery has paid for itself since the new technology generally operates at a faster rate and in a more efficient manner than the old.

The industry's claim that the result of the new standard "may be 'protecting' workers right out of their jobs," is the cruelest hoax of all. It is an attempt to play on the pervasive fear of unemployment. Surely this hoary threat needs no extended rebuttal to lay it to rest. The fact is that the so-called non-productive investment required by the cotton dust standard is bound to benefit the industry through higher productivity and lower unit

costs of production. Far from leading to the loss of jobs, the new cotton dust standard will contribute to an invigorating modernization of the industry at the same time as it protects the health of textile workers.

The Amalgamated Clothing and Textile Workers Union, AFL-CIO commends OSHA for withstanding industry pressures and issuing a cotton dust standard which places the responsibility for safeguarding the health of workers where it belongs: on the employers to institute engineering controls to reduce the exposure of workers to safe levels. We are not satisfied with the levels set by OSHA; nor can we condone the 4-year delay the agency has allowed for implementing control programs. We intend to pursue these objections through the judicial review procedures established by the Act. The industry's efforts to prevent the standard from being effectuated through Congressional amendments to appropriations bills, banning enforcement of the standard, are contrary to the intent of Congress in enacting the law and can only lead to the subversion of the Occupational Safety and Health Act.

Respectfully submitted,

Amalgamated Clothing and Textile Workers Union,
AFL-CIO

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George Perkel, Director
Occupational Safety and Health

October 18, 1978

The CHAIRMAN. Thank you very much. We will certainly follow through on that.

[Whereupon, at 1:25 p.m., the subcommittee was recessed to reconvene at 9 a.m., Wednesday, October 4, 1978.]

OVERSIGHT ON THE ADMINISTRATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT, 1978

WEDNESDAY, OCTOBER 4, 1978

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:38 a.m., in room 4232, Dirksen Senate Office Building, Hon. Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Randolph, and Hayakawa.

OPENING STATEMENT OF SENATOR WILLIAMS

The CHAIRMAN. We will come to order.

Good morning, everybody.

We welcome you to our second day of hearings on the Occupational Safety and Health Act and its implementation.

This law, intended to insure safe and healthful workplaces for America's citizens, has been in effect for nearly 8 years. And although the Occupational Safety and Health Administration has had some successes in carrying out the congressional intent, it remains clear that there have been far too many failures.

When the OSHA program makes unnecessary demands on employers, that is a failure. When the OSHA program is inefficient, and requires actions by employers which are not really calculated to improve the conditions of workers, that is a failure. But the most tragic failure of the OSHA program occurs when the program is unable to protect workers. When workers are killed, or when they become injured or ill because of the inability of our Government and our employers to provide adequate safeguards for them, the true tragedy of OSHA's failures are spread before us.

If these hearings are to have any meaning, we must be able to understand these failures and understand what must be done to fulfill the promise of OSHA.

We welcome our witnesses to this hearing because they bring to us their experience and their knowledge of our successes and our failures.

Today's witnesses have experienced OSHA's successes and, tragically, they have known OSHA's failures. From their experiences and these hearings, we can forge a new national commitment to both our workers and their employers.

This is the second day of three hearings this week. I am very pleased that Senator Randolph, despite a very crowded schedule, can join us this morning. His deep interest in the welfare of our workers of this

country has been manifested in every possible way, and his fairness in insuring that the Federal effort is efficient and effective are known.

We have worked together for a long, long time in so many ways, and so much of the legislation that is on the books of this country is a result of the dedication and ability, wisdom, strength, and effectiveness of Senator Randolph.

Senator RANDOLPH. When did you become chairman?

The CHAIRMAN. Well, that happened in our system here in 1970. I was not senior person on this committee, I was No. 2. No. 1 was Senator Randolph, who was already chairman of one of our most important committees, and you can only be chairman of one committee, so it was 1970 that I became chairman.

Senator RANDOLPH. The reason I asked you to give that date, Mr. Chairman, is because both you and I and members of the committee know that during this particular period, including the prior year 1969, when we passed the black lung law——

The CHAIRMAN. Can I interrupt you a minute?

I was chairman of the subcommittee before that. I was thinking of the full committee.

Senator RANDOLPH. You were the chairman of the subcommittee and you will recall that this subject was a very important one. It had been programed for consideration and we hoped for passage in 1969, but it was delayed for a year while we gave attention to the problems of pneumoconiosis. That measure was taken up, in a sense, out of turn because of the immediate hazard to the health and safety of those afflicted with black lung disease from the mining of coal.

During this considerable period of time, you have been eminently acquainted and a leader in the effort to have such legislation bear fruit for not just a few people, but for the men and women who work in the industries, businesses, where a special need exists for legislation as Occupational Safety and Health Act.

I recall the stated purpose of the act. It is, and I quote, "to assure so far as possible every working man and women in the Nation safe and healthful working conditions."

I remember that an earlier period, Mr. Chairman, the work force of this country was, in a sense, crucified on a cross of too long hours of work, and often too short pay, which was often hazardous and in unhealthful working conditions. That goes back, of course, to the period when we were considering a proposal to pay 25 cents an hour to the workers of this country. We did not even have a minimum wage. That was in 1938.

As we attempted to pass that bill, we had, as you know, Mr. Chairman, confined it to work forces that were engaged in products manufactured for interstate commerce. We could not go into the field of intrastate employment. We have come a long way.

The necessary road has been traveled, but certainly no piece of legislation in itself is the answer.

I have often felt that less than perfect legislation can be applied constructively to a problem through good administration of that law. If there is not expertise and determination to do a good job in an agency however, the intent or wordage of the law may be violated.

Today, we are reviewing legislation that reflected the input of citizens and groups which represented them, as well as all sectors of industry and the work force. That legislation reaffirmed months of effort by the Labor Subcommittee which you chaired, Mr. Chairman, and the Labor and Public Welfare Committee, as we were called at that time.

In the 8 years preceding this hearing today, OSHA has been the subject of widespread criticism. You have mentioned that, Mr. Chairman. In many publications there has even been blatant ridicule of OSHA.

I think it has been often misplaced criticism, advanced by those persons who are uninformed. I feel that although the opposition has been well intended, it has not been as perceptive as one might expect. Because the public at large, as well as industry and labor, is a very definite partner in whatever we do, it is not surprising that criticism has come. We should not become angry. We should look at it, dissect it, and attempt to improve the administration of OSHA.

Criticism is not unexpected in a law of this nature or in the Black Lung Act, which first passed in 1969. In subsequent oversight hearings we found that the Social Security Administration was not giving consideration to what we believed to be black lung cases worthy of attention and affirmative action.

Therefore in 1972, we authored a new act to include not only the use of the X-rays as evidence of that disease, but also pulmonary and respiratory ailments.

No law is a static law if you are dealing with human beings and problems. Finally, we came back a third time in 1977 to enact a reform act for the black lung program.

There were three legislative steps over a period of 8 or 9 years. It was necessary to do that.

We are now reviewing all pending cases and cases that were denied, giving to workers, widows, and orphaned children the fullest opportunity to have each case considered.

Now, Mr. Chairman, I feel that this legislation, although the subject of criticism and misunderstanding, is well-intended legislation which will work and work fairly, to assure a safe workplace for all Americans. Workplaces must be, insofar as possible, free from recognized hazards of serious injury or death.

Secretary of Labor Marshall and Assistant Secretary Bingham have been in office for 21 months. They have been diligently trying to implement significant and positive improvements in the administration of OSHA. I recognize their efforts for the record. The effort to improve OSHA, however, must not cease.

I have indicated that in the Black Lung Act it was necessary that we had to act three times to make the legislation as it is now. The same has been necessary, Mr. Chairman, with occupational programs and technical programs under our Subcommittee on the Handicapped, the Vocational Rehabilitation Act.

Many times, we have moved it through the Senate only to have it vetoed by the President. Some said—let us quit, we cannot pass this bill.

We did not do that. We brought the bill back to this committee. We have even had it stopped even a second time, and finally, the third time we were able to bring the bill into being.

In the final analysis, perhaps I am taking too long this morning, but you know that the Federal Government, the State government and the local government do not pay the bills. The bills, all of them, at all levels of government are paid by people.

So when some say we have so much from the Federal Government, so much from the State government, so much from the local government, and try to point to it as something Federal, State, or local—it is not. it is all the taxpayers' money.

It only comes through channelization by committees with jurisdiction over the subject matter.

This morning, Mr. Chairman, there are two West Virginians who sit at the witness table. Peggy Coffman from St. Marys and David Copen from Parkersburg. They represent the Willow Island Disaster Organization.

There is no need to go over the tragedy at Willow Island. Fifty-one Americans lost their lives, when the scaffolding on which they were working collapsed. It fell 170 feet to the ground below. OSHA has had an ongoing investigation. The investigation has revealed numerous violations of OSHA standards and the general duty clause.

Sometimes accidents happen that we cannot put our finger on. It will be difficult to put the finger on the recent accident over San Diego—very difficult. Whether it was two planes involved or three planes involved, to determine what happened. These matters are not easily determined.

As I have said, we have here today Peggy and David. They would not be here if something had been done in compliance with not only the word but the spirit of the OSHA law.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I am very glad that you took this time to put us all in perspective. Nobody can do that better than you, Senator Randolph. The historical view is useful, always. I think it would not be out of way to say that you are, I think, the only Senator who was a Member of Congress during the developing years after the depression, the New Deal days, am I right?

Senator RANDOLPH. I am the only one left on the Hill, from either body, of those first 100 days. I do not want to live in memory, however. I want to live working with you now and tomorrow.

The CHAIRMAN. I appreciate your introducing your friends and we welcome the witnesses representing the Willow Island Disaster Organization.

Mr. Copen and Ms. Coffman, welcome.

STATEMENT OF DAVID ALLEN COPEN, WILLOW ISLAND DISASTER ORGANIZATION, PARKERSBURG, W. VA., ACCOMPANIED BY PEGGY COFFMAN

Mr. COPEN. Thank you, Mr. Chairman. It is kind of awkward for me to testify in front of a subcommittee like this. After all, I am just a layman, but we are going to give this a good try.

First of all, we would like to thank you for the opportunity to take part in this hearing. We were asked to give our ideas on how you could improve the capability of OSHA to more efficiently do their job.

There are several things that can be done to improve OSHA, such as more advanced schooling pertaining to the different trades they might come into contact with. I have been told by workmen at the Willow Island site that OSHA did not seem to know what they were looking for. Some of the men pointed out the fact that some of the supporting structure was anchored into green concrete. This proves to me that more advanced schooling is necessary in order for them to be more aware of certain aspects of the construction trade.

Mrs. Bingham stated in her report that there are only 17 compliance officers in our State to take care of 31,000 worksites. She also said that on her desk there is a huge number of safety complaints from all around the country backlogged that she cannot get to. I do not know if all the States are having the same problems, but it is quite evident to me and should be to you that it is impossible for OSHA to achieve the impossible. There is absolutely no way that OSHA can carry out their objectives as it stands now.

I am aware that the law provides that each State has their choice as to how they want their safety programs handled. However, it seems to me the State has an easy scapegoat by simply saying, "Let the federally funded OSHA take care of it."

My recommendation would be that instead of a Federal organization carrying the brunt of the safety responsibility of the Nation, they should let this organization take the position of overseer. That is to say, let the State enforce "some" of OSHA's standards and the State be accountable to OSHA.

Let a safety program be set up in each State with three different areas of responsibility and they are as follows: Let it be required that on any construction site involving more than 25 men, the company will hire at a rate equal to union scale a man from each craft involved for the purpose of safety only. This man would answer to the company and the union for any hazard or violation he fails to report.

Second, the company and the union would then be responsible to see that these conditions were corrected and, if not, they would in turn have to answer to OSHA.

Third, after OSHA has been informed of the violation and fails to fulfill their responsibilities, they, in turn, will answer to the Senate of the United States.

Not long ago, the U.S. Supreme Court passed a resolution that OSHA cannot have access to any jobsite without a court order. As far as I know, the State is not bound to comply with this resolution and, for these reasons, I feel the State should handle their own responsibilities. We, the people, cannot rely on the Federal Government to take care of everything. Some things we have to handle ourselves.

In order not to take up too much of this committee's precious time, we will submit a letter to this committee stating our ideas pertaining to stiffer penalties and fines for serious and willful violations.

That is my statement. Thank you.

The CHAIRMAN. Thank you very much, Mr. Copen.

Ms. Coffman, did you have a statement?

Ms. COFFMAN. No. I am going to submit a statement. I will be submitting a statement for the record.

The CHAIRMAN. Mr. Copen, you speak for an organization, an association of people that I am assuming came together because of the Willow Island disaster, is that right?

Mr. COPEN. That is correct, sir.

The CHAIRMAN. That is the name of your organization?

Mr. COPEN. Yes, sir.

The CHAIRMAN. I wonder if you could describe the organization and how you operate. How many members their are?

Mr. COPEN. Well, the members that are in the organization at the first meeting at the original offset of this organization was 31, if I remember correctly, 31 families represented. It is made up of friends and relatives of those that had lost loved ones in this tragedy at Willow Island.

I, for one, lost a father-in-law in this—I keep wanting to call it a thing, and that is the only thing I can call it, a thing—it is a disaster.

We organized for the main purpose of digging into this thing and seeing what we could do to help one another in times of crisis. I know that there were a lot of families that dad did not come home, husbands did not come home on April 27. And at a time like this, when people are lost, they have lost a loved one, they are sick, they are heartbroken, they are troubled at this time, and what we tried to do was organize ourselves and let everyone know that we were friends, and we have worked together to benefit each other the best that we could.

Since then, we have been to several—there was a committee appointed the night we had our first meeting, and Ms. Coffman and myself were among the original committee members that volunteered their services at that time. Since then we have been to Charleston, to the different offices there, including the Governor, secretary of the State, just to name a couple of places we have been, to try to get this thing ironed out. Quite frankly, we are kind of butting our heads up against a stone wall. That was one of the reasons we wanted to be here this morning, that we might be able to submit maybe just an idea or two, that might help in preventing a thing like this happening again.

The CHAIRMAN. Your organization has many recommendations, and I have a copy of all of them here, and we will include this in our record.

You suggest more trained and experienced compliance officers be hired and that they have knowledge in their respective fields. This field of activity was construction.

Let me ask you this: What do you know about the situation there at Willow Island? Do you know what the record of the inspections by OSHA officials had been? Are you familiar with this?

Mr. COPEN. I do not have the exact data on just how much OSHA was on the worksite. I do not know for sure. But I believe there was only one inspection at the Willow Island site since it began, and that was on cooling tower No. 1. As of the date of the accident, I know of no inspections by OSHA of No. 2 cooling tower whatsoever. It is quite evident that something was wrong there someplace, or these men would not have fallen to their death, No. 1, and there would not have been any more deaths afterwards.

A short time after this fall, there was another young fellow that lost his life, from what I can understand, and I can only say this is hearsay. I have no documented evidence on this. From what I understand this company was fined a total of $21,000 in the offense. Like I say, this is just hearsay information. I have not got documented proof on this.

The CHAIRMAN. I do not want to get into discussing other than what

you felt you were competent to talk to from your own knowledge.

You mentioned that there are 17 inspectors with 31,000 jobsites in West Virginia. Now, obviously, 31,000 jobs sites cannot be inspected by those 17 inspectors. One of the ways that OSHA tries to make its presence more effective, is for OSHA to receive complaints where there are safety questions. Generally, these complaints would come from people who work the site, recognize that conditions they are working under are questionable and unsafe, and report it. And OSHA has a procedure to respond to any such complaint and make an impsection.

Do you know personally whether any complaints were made by any employees of unsafe working conditions on this site?

Mr. COPEN. No, sir. But may I elaborate just a couple of minutes on this.

I worked construction work before I went to the plant where I now work. I worked I–77 when it was being built, and also at the Belleville Dam project. In these instances, a company would find a troublemaker, and they were pretty easy with pink slips.

Now, I feel—I know that I felt when I worked with these companies on construction sites, that you did your job, you kept your mouth shut, and that way you got along a lot better.

Now, for an individual, I was aware, but I have not got the paper here in front of me, the procedure, but it seems to me it is a written document signed by the individual making the complaint. Is that not true in the order that OSHA on the safety complaint that supported OSHA, submitted to OSHA—does the man have to write the complaint and then sign his signature to it? Am I correct in that procedure?

The CHAIRMAN. That is basically true. There are other provisions of the law, though to insure that the filing of such a complaint cannot be used in any way to adversely affect your employment situation. The employee has a right, a protected right to make these complaints. You said you found it was better to do your job——

Mr. COPEN. And keep my mouth shut. That way I have got a job.

To elaborate on this just a short bit further.

When you are on a construction site, working on construction, you do your job, you work. I do not loaf around. You work. The company, they find a man that they want to get rid of, regardless of what the reason is, whether it be complaints about safety, whether it be complaints about the individual's work, or whatever it might be, simply at the end of the day, all they have to do is hand you a pink slip, and before you are off the ground, and this does happen, before you are off the ground, they are on the phone, picking up the phone and calling the business agent of that union, and saying I need a man to replace this one.

However, what I understand in the Ironworkers, they have a setup where if you are given a pink slip at the end of the day, and say it is for reduction of force, they say it is reduction of force, and then before you get to the union office, or down back to your union hall, and the company calls, even if it calls the next morning, then the business agent has the power to either say, like the company needs another man to replace this one, well, the business agent then, in turn, could send the same individual back, and then the company would have to give written reasons for his discharge.

But this is not the case in all construction, other construction crafts.

So if a man would say there is a serious safety violation, or there is a hazard, and he would go to his foreman, or go to his shop steward, or something of this nature, and they would go to the company to try to get this worked out, and there is a rumble about it, and so on, and so forth, the simplest thing for the company to do then is to hand that man a pink slip and get another man that will do the job.

Under this particular contract the men were working under at the Willow Island site, they have a no-strike clause in their contract. The way it was worded, and somehow or other my copy of the contract came up missing in the secretary of state's office—some mysterious way it was missing, it must have been thrown in the trash, or accidentally misplaced, but in that contract, it had in there they could not strike other than for economical—I think that is right—well, otherwise, for a raise in pay, something of this nature, at the lapse of the contract.

The company then had the right also to shut the job down.

I had a copy of this and it came up missing so I cannot read it right off the paper. I am simply saying the reason a lot of people will not testify, will not come into a place like we are sitting here today, would not testify, would be in fear of their jobs.

The CHAIRMAN. Suppose a person is working a job and feels unsafe, or feels there is something wrong with procedures; with the construction procedures. I would think in a case like this that such a person would have to know what he is talking about if his right to file a complaint is to have any real meaning. Perhaps that person should have some basic training in whatever construction activity was going on to know what could be unsafe. This, of course, was a high tower, and it was newly poured concrete that the scaffolding was tied into it. I would imagine that if a person was to recognize a problem, he would have to know about setting up concrete and how long it took to set it up so that it could bear weight.

Do you people know whether the workers on that job had any training in the safety factors of the process they were working with, which was concrete?

Do you, Ms. Coffman?

It was your father-in-law?

Ms. COFFMAN. No. It was my brother-in-law that was killed.

The CHAIRMAN. Do you know of any particular training provided to the people who worked that site so that they could know the nature of concrete, and how long it took to set up, for example?

Ms. COFFMAN. Well, I would say the biggest majority of them did, because they had worked this type of work for years.

The CHAIRMAN. So, out of experience, you felt they knew the nature of the product they were working with, which was concrete?

Ms. COFFMAN. Yes.

The CHAIRMAN. Do you know anything about this, Mr. Copen?

Mr. COPEN. Well, I do not think that even though I have worked with concrete myself—my father-in-law, I do not believe, would have that much knowledge. In order to know how safe that concrete would have been to get on it, they would have almost had to know the setting standard that they have set up for the concrete, how long it was sup-

posed to take for it to dry properly, and several considerations would have to be taken into consideration at that time. I truthfully cannot answer for them.

The CHAIRMAN. I do not want you to speculate. I just wondered if you did know. We would have to ask that question of people that were actually working that site.

Mr. COPEN. There would almost have to be tests run on concrete in order to know this. They claim tests were not run on the concrete that morning to see whether it was strong enough to stand the weight.

The CHAIRMAN. I think it would probably be best that we not speculate too much on this. I think the point here is that for our puposes in this industry, which is high-risk industry, heavy construction, the fact that there were not adequate inspectors available is one thing that should impress itself upon us. We will receive your ideas about the State becoming more involved.

The Occupational Safety and Health Act, as you know, provides opportunity for the States to administer State OSHA programs. I do not know what the history is in West Virginia, whether they have considered it or not. We know that they are not a State-plan State. It was not a State-plan jurisdiction, but I do not know whether they considered it or not. I think the bottom line for now for us is that the force available was not adequate for inspecting those sites that we might feel as laymen should receive inspection.

Mr. COPEN. Mr. Chairman, there are a lot of inspections that OSHA conducts, and I just state one instance that was just mentioned to me the other day.

I called around and talked to different people before I came up here, and things that they thought that might be of interest to the committee. I talked to one individual, which is a close friend of mine, we have worked together for several years, and he went to a job in another place—this is in a small warehouse, and it has got six employees. OSHA came into this small warehouse to inspect it. They asked that hard hats be worn in the building, which is understandable. Anything that is over your head, you ought to have hard hats on to protect you. They had a door that went from the outside to the office that had a doorknob on it, and you could tell which way it opened by getting ahold of it, and it opened. And they required them to put a push or pull sign on that door even with the doorknob. They had a hot water tank. The only reason in the world that they used that hot water tank was just to wash their hands. When they looked at the hot water tank, they said it had improper popoff valve on it.

Now, it seems to me that if OSHA can spend their time in these small places and looking at these—what I would call nitpicking areas—it looks to me they should be spending more time on the construction sites where there are high hazards, and where there is evidently a very high rate of negligence, as far as safety is concerned.

The CHAIRMAN. Well, that was a most helpful account. That has been one of the problems. You call it nitpicking, and Secretary Marshall calls it nitpicking. He knows that wasting a lot of limited inspector resource on that sort of thing and missing the high risk worksites is a failure. That has got to be corrected. That is an invaluable account of one situation that I would describe as a wasteful use of very limited enforcement resources available in West Virginia.

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Have you got any more such examples?

Mr. COPEN. No, I have not. Not just to name it. I work in a warehouse at Davisville. To my knowledge, I do not think OSHA has ever been in it. Right now I am on disability because of my back, and there are a lot of things that I think ought to be done there. However, it is not being done.

Now, whether there has been any complaints filed other than just the union to the company, I do not know. But I think it is very invaluable and very crucial that on these job sites, in order to be able to stop these companies from doing what they are doing, I think that if we used, say, semiretired, or retired personnel, or disabled personnel, and you take in my instance, if I am not able to get back to my job and work my job the way that I am supposed to work it, my company can retire me, and I am 40 years old, and they can retire me at $170 a month. And it is going to be up to me to make a living for me and mine. We are going to have to have fines that are more in line with the times.

Now, West Virginia has a State law that said that for each violation there was a fine of not less than $10, not more than $50 for each offense and/or 6 months in jail. This is a 1940 law of West Virginia I am talking about. At that time it was adequate, and at the outset it does not look like it is too much—what is $10 or $50? When you go to adding up 6 months in jail, and every day that this safety hazard is not corrected on a day-to-day basis, it is deemed as a separate offense. At the end of 5 days, it would only be $250 at the maximum, but it would also count up to 30 months in jail for somebody. So I think we are going to have to make these kinds of changes in OSHA to make it unprofitable to the company to take these shortcuts and deliberately put a man's life or his body in jeopardy.

Thinks can be done, and OSHA can be more effective that way.

What is $10,000 to some companies, Research Cottrell, United Engineers, Edison Power? What is $10,000 to them? It is nothing. But if that fine on willful violation was $100,000 or $500,000, then what is it going to be to them? It will start digging into their pockets. Of course, they are bonded, I realize that, they are bonded and the insurance company takes care of these things for them.

But if, in a case like Willow Island disaster, they had 10 willful violations they had on them, 10, I believe it was, or more—it was more maybe—but anyway even at 10, at $500,000 for 10 willful violations, it amounts up to a heck of a lot of money.

When this company then, in turn, goes back to their bonding company and says to the bonding company, I want a bond, and they find out they dropped 51 men to their deaths and there were fines for purposely neglecting their responsibilities, the bonding company is going to think twice before they bond them, one, and second, the price will be so high, if they do bond them, it is going to make it unprofitable.

I think it is one of the areas that must be corrected.

Another thing, if you had 200 inspectors in the State of West Virginia—and I think if somebody said something, they were recommending maybe 35—but even if there were 200 inspectors in the State of West Virginia, there is no way—no way, with the laws the way that OSHA has got them set up today, with the penalties that OSHA has got—there is no way that even 200 inspectors can protect the men on the jobsite like they ought to be protected, no way.

The CHAIRMAN. Senator Randolph?

Senator RANDOLPH. Mr. Chairman, thank you.

I ask you, Mr. Copen, to your knowledge, since the tragedy at Willow Island—it was not just an accident, I call it a tragedy—and OSHA's commencement of its investigation, has that agency had difficulty in obtaining access to the site of the disaster?

Mr. COPEN. Most certainly they have. At first, I do not think they had much difficulty, but since the Supreme Court stepped in and said you are going to have to have a court order, OSHA went to the judge in Elkins—I believe it was Elkins, I believe that was it—and asked for permission back on the jobsite after this law was passed. They were kicked off the area. They went back to the judge, and the judge granted them 5 more days. This is common knowledge, published in the paper. They granted them 5 more days in order to fulfill or to complete their investigation.

At the end of the 5 days, they left the job again. However, the company then started to clean up, wanted to clean up the debris, and we fought long and hard on this to keep the place, the worksite intact, because we thought, and even OSHA evidently thought, because from my understanding there were some things that they wanted to gather up after some of it was uncovered, the company denied access to them to be there when it was cleaned up, for them to be at the gate and look at a distance, and they were not allowed at the actual jobsite at all.

The judge denied that request. So they have not been on the jobsite, to my knowledge, other than at a distance.

Senator RANDOLPH. Mr. Copen, do you feel that OSHA, in a disaster of the kind of Willow Island, should have the power to seal off a site until the investigation is completed, whatever the necessary time?

Mr. COPEN. Most definitely. Most definitely.

In an instance like this, even though some of the debris was moved in the actual recovery operations of the bodies at that time, even though it was moved, it could still be reconstructed. I just do not know how in the world—now, as this judge stated, I am not going to try to quote him, but as best as I can remember, the account I read of it in the newspaper, he said they were to hold all of this debris and move into a warehouse in Pennsylvania.

Now, what if one or two pieces would happen to fall off the back car or accidentally be misplaced or something of this nature in the transportation between the area such as St. Marys or whatever the transportation they would need—it is not feasible to me. I know if I have committed a crime and the evidence was lying there, and I had an opportunity to get rid of that evidence, naturally the first human instinct would be to get rid of that evidence. So, if you have it sealed off and cannot move it, then they have not got that opportunity.

Senator RANDOLPH. In our Mine Health and Safety Act, we do have provisions to seal off a site. You are saying that you feel OSHA should have the same right under the law, is that correct?

Mr. COPEN. I am saying they should have the right, yes. If anybody is going to move it, let OSHA move it and let OSHA work on it, and then they are not going to lose it. This stuff of letting the company take care of their own evidence is quite stupid to me.

On the other hand, also, our tax dollars are going to pay, for the funding of OSHA inspectors or their compliance officers, whatever, it seems to me that OSHA should not only investigate the possibility of their standard being broken, but also the civil side of it along with it, simply because we spend a lot of time down there and they spend a lot of time, and a lot of taxpayers' money, and all they did was they went in and looked for OSHA violations. Well, my tax dollars went into that thing and I would kind of like to know what exactly happened, who was at fault. I want to see the people that is at fault pay for it, and not only by monetary compensation, but I would like to see somebody thrown in jail if there is, which I am sure there is, in my own mind, criminal intent.

Senator RANDOLPH. Mr. Copen, I feel you made a constructive point to Senator Williams and myself.

It is difficult to understand why, after a certain number of days on that, one would say—well, enough time has elapsed—and then allow the company in question to go ahead and proceed with its manufacturing or whatever work it was doing.

The timeframe should not be allowed to run on for months, but OSHA, upon presentation of a need for a specific amount of time, should have the right to complete its investigation—to complete delving into the accident.

Is that your position?

Mr. COPEN. I do not think there should be any time limit put on it.

That is why I'm saying OSHA should be better trained in hazards that might come up and different aspects that they would be looking for, such as construction parts of it, and also in your production outfit.

There are two different categories. You have got your producers, manufacturers, and then you have got contractors.

It just stands to reason if a man is trained in the protection end of it, he does not know very much about the construction end of it.

The hiring of more compliance officers, experienced compliance officers, I think the person should be expert if possible.

That is why I say that there is no way—I do not see how in the world we could appropriate enough money to pay experts in construction production aspects of the industry.

I do not see how there would be any way of funding that amount of money to take care of, say, 35 or 40 men that would be expert in either end of it in the State of West Virginia alone.

That is why I am saying it would be better for OSHA to take an overseer's position and let the States take care of themselves.

West Virginia can take care of West Virginians. The reason that I mention three different aspects of this is the idea of somebody having to answer to the next person because they did not do their job.

In this respect I think each man when he is responsible to someone else is going to look out. He is going to perform his job more efficiently because he knows he can get in hot water if he does not.

Senator RANDOLPH. Thank you, Mr. Copen.

You have studied this problem. I can see that. I feel it is very important that we note that you have testified from personal knowledge.

It is from personal knowledge. I acknowledge your expertise developed over a lifetime of construction. You have familiarity with not only this type of work, but other work associated with the hazards of employment.

Ms. Coffman, could I ask you to testify further in connection with the problems we have been discussing this morning?

In discussions with our staff you indicated that the building trades unions had promised to provide experienced workers for the cooling tower job.

To your knowledge, was this promise complied with by the unions?

Ms. COFFMAN. Would you repeat that again.

Senator RANDOLPH. I believe you spoke to the staff on this subject, and I am told you indicated that the building trades unions had promised to provide experienced workers for the work on the cooling tower.

Do you have any knowledge as to whether that promise by the building trade unions was complied with in reference to Willow Island?

Ms. COFFMAN. I was told by several people that one man had to look out after the safety of one or two other men on certain jobs because they were not trained in their field.

In other words, a lot of them would just go to the union hall, and the union would sell them a book and they would go to work.

Senator RANDOLPH. With no proof of experience.

Ms. COFFMAN. Right.

Too, on this cooling tower they were supposed to be adapted to height, different requirements, good safety requirements.

There was one particular boy, that was his very first day on the job and, of course, with a job like this, I think they should have been well-trained and skilled for this type of work.

Senator RANDOLPH. You are saying that to your knowledge, and based on discussions with those workers, many did not have the credentials to do the job, is that correct?

Ms. COFFMAN. I would say so, yes, especially the laborers.

Senator RANDOLPH. Ms. Coffman, during OSHA's investigation it was brought out that OSHA itself had never conducted an inspection at cooling tower No. 2, the tower on which the accident occurred.

Do you know, Ms. Coffman, why OSHA had not inspected that tower and how long the tower had been under construction?

Ms. COFFMAN. I think they started the tower in the fall of 1977. OSHA was supposed to have been at the tower, at tower No. 1 a year prior to this.

They said then that scaffolding was in need of repair. I do not think OSHA ever did come back to make sure the scaffolding was repaired like it should have been before cooling tower No. 2 was started.

Senator RANDOLPH. We think you are accurate in this from our own study.

Did OSHA ever explain why they did not come back?

Ms. COFFMAN. The only explanation I heard was they never got any complaints.

Senator RANDOLPH. We think that is also true from our checking.

I understand there are 31,000 jobsites.

Mr. COPEN. 31,000 jobsites in West Virginia.

Senator RANDOLPH. At the time of the tragedy OSHA had 14——

Mr. COPEN. It was supposed to have been 17, but actually there was 14.

Senator RANDOLPH. Fourteen compliance officers or inspectors.

So, 1.8 percent of jobsites could be inspected each year. Both of you are saying that is not sufficient, is that correct?

Mr. COPEN. No, it is not sufficient.

My goodness, no, it is not sufficient.

Senator RANDOLPH. I agree.

Ms. COFFMAN. This would be an impossible task for OSHA to inspect all of these with no more officers than what they had.

Senator RANDOLPH. Mr. Copen, are you saying that because of the failure to have sufficient personnel, that often the Federal Government cannot do all that is expected, and that it ought to be left at the local or State level?

Mr. COPEN. Yes, sir.

Senator RANDOLPH. To check these people out who can qualify to do this work?

Mr. COPEN. Yes, sir.

We are already paying the compliance officers in the State.

We can take some of the federally funded money for these compliance officers, let it go back to the States to help us finance our own inspectors. And I think that once we have someone, a State inspector, or laws put back into effect, their laws along with some of OSHA's laws, with West Virginians to take care of it, for OSHA to oversee them, and for the Senate of the United States to oversee OSHA to make sure OSHA complies with all the rules and regulations, and then I think we will get someplace in this country, so far as safety on the job is concerned.

But until then no amount of compliance officers that OSHA could establish in the State could do the job unless it would be in the area of what I have already discussed in my statement as craftsmen, men that know their jobs.

You take disabled men, semidisabled, and maybe there are 30, or 40, or 50 percent disabled, and these individuals know their trade. They know it. They were on a job being paid. They do not have to worry about that pink slip at the end of the day. They can enforce it and would enforce it to see that one of the younger men that is coming up in the trade would not have the same thing happen to him that had happened to this certain individual.

He has got knowledge of the trade. He has been in it a long while. He knows exactly what to look for. He knows what is or is not hazardous. That is the only way.

Senator RANDOLPH. There used to be a saying in West Virginia—try to have a man doing whatever job he is doing who has already borne the heat and burden of the day.

That is an old saying, but it is true.

A person who is knowledgeable—knowledgeable because he himself or herself has been employed in doing that work and doing it satisfactorily and with dedication.

Off the record.

[Discussion off the record.]

Senator RANDOLPH. Mr. Chairman, I would join with you in recommending that perhaps we have hearings—not another hearing that is just cranked out so we can have more witnesses—to go into some of these matters. I think the evidence is rather clear that in many areas where Federal inspectors and compliance officers are employed,

they are too often individuals who have not had adequate training or do not have knowledge of the job they are paid to do.

The CHAIRMAN. I appreciate that, Senator Randolph.

Yesterday, we did get some encouraging statements from Secretary Marshall on the agency's plans for training enforcement personnel.

He agrees with you and they are pointed clearly in that direction. It is our responsibility to make sure that it is happening.

Ms. COFFMAN. This is the thing. OSHA has a good set of rules and regulations, but they do not have anybody to enforce them. What good are they?

The CHAIRMAN. In the past the inspectors did not always have the knowledge and training that was needed to do the job right. This is improving. It is our responsibility to stay with it and to make sure it improves.

Senator Randolph, I am setting up in my mind some hearings early next year and I want to count you in on that, Senator Randolph.

Senator RANDOLPH. I hope to be with you.

The CHAIRMAN. We are most grateful for your appearance today.

Senator RANDOLPH. I would like to make a closing.

I would like to thank Ms. Coffman and Mr. Copen, because they come here as not just interested citizens, but as concerned citizens.

This is always evident in a hearing when we listen to people like these two individuals who have come to Washington.

I think you have an insight, a perception to this problem, that goes beyond Willow Island.

In other words, I think sometimes there is a practicality that comes from people as yourselves.

Ms. COFFMAN. There are some things you cannot learn out of a book.

Senator RANDOLPH. That is true.

Someone said an expert is a person who is seldom right but never in doubt.

I do not want to call you any more than just people who are studying this problem. You do have firsthand knowledge, and we need you, as the chairman said, we need your help.

We learn from listening. I know you want a workplace, wherever it may be—underground, above ground, or on the ground, that is a safe, workplace, insofar as possible.

Mr. COPEN. I have got three boys coming up, and one boy going on the job market next year.

The CHAIRMAN. Thank you.

You are good citizens to come here and help us with our deliberations.

We appreciate it.

Mr. COPEN. Thank you.

[The following was received for the record:]

THERE ARE MANY AREA'S IN WHICH OSHA CAN IMPROVE THEIR AGENCY IN ORDER TO PROVIDE BETTER PROTECTION FOR THE EMPLOYEES IN THE CONSTRUCTION TRADE. THEY ARE

1. Hire more trained and experience compliance officers, that have the knowledge in their respective fields, such as, one's that know the construction industry.
2. Require that any hazards found by OSHA on any construction site be posted in such a place where not only the company can see it, but the employees can see it also.
3. Change the requirement to immediatly reporting any accident even if there were no injuries.
4. Require the company to select a member of each craft on the job site to report to the company any safty hazard they might find, and be responsible to see that it is corrected, and report hazards to the union if union job.
5. In event of injury on the job, which involves a parcal disability, and a man can not work his regular job, the company would have to provide the man with a job at his regular pay , if proven the company is at fault.
6. OSHA'Srules and regulations be posted on every job site, so the employee's will know when there is a violation.
7. More severe penalties for safty violations, such as not less than $10,000 nor more than $100.000 for serious violations, and not less than $100,000 nor more than $500,000 and 5 years in prision, or both for a willfull violation when there is a death envolved.

OSHA has a good standard of rules and regulations, but they need more competent personal to enforce these rules and regulations.

October 3, 1978

Mr. Chairman,

It appears that OSHA'S rules and regulation can be very easy ignored by contractors, because they know OSHA does not have enough man power to cover all of the work sites in the construction industry. When the inspectors do visit the job site they are unable to reconize any serious hazard that might be costly to correct.

Increased penalties and a prison sentence for any willfull violations, in case of death or injury will incourage contractors to provide a safer working conditions for their employee's.

The CHAIRMAN. We will now call Mr. Frank H. Wheaton, Jr., president of Wheaton Industries, Millville, N.J.

Senator Randolph, we have a vote at 11 o'clock.

We might have an interruption, and if the bell rings and the vote is called on another matter over in the Senate, I will have to leave temporarily to answer the call of the roll.

STATEMENT BY FRANK WHEATON, JR., PRESIDENT, WHEATON INDUSTRIES, MILLVILLE, N.J.

Mr. WHEATON. I am somewhat of a neophyte in this operation. I am curious, I have been trying for 1½ years to get an audience before this special group.

I am looking around at the group. How many members do you have on your committee?

The CHAIRMAN. There are 16 members, and every one of them has multiple duties. That is one of the situations that we must confront and there is nothing we can do about it.

Mr. WHEATON. There is really not much reason for me to go over what I have been going over with you for the last 1½ years, and just tell you all over again.

You have my written statement. I think it is a waste of my time and your time, if nobody has any interest in listening to me, it seems foolish for me to even be here.

The CHAIRMAN. Well, we do not think it is foolish for you to be here.

What you say here is useful to all members. Even though they may not be able to be here, there will be a record of this hearing provided to all the members. That is how what transpires here will come to the attention of all members of the committee and of the Senate. Senator Randolph for example, is chairman—well, as a matter of fact, as we go down the table here to my left, that is the Democratic side—nearly everybody has at least one other responsibility that he is the chairman of, they are just very busy.

Because of the seniority that is represented on this side of the aisle, they are all the ranking members of other committees. In addition, there is a major debate on the floor of the Senate right now.

This is the system.

Mr. WHEATON. Then the system is wrong, so far as I am concerned.

The CHAIRMAN. We would like to have the luxury of having everybody only to be assigned to one place at one time, but that is not possible.

Mr. WHEATON. Mr. Chairman, so far as I am concerned, OSHA to my mind, is a very important subject to industrialists, as well as to people themselves.

If this is representative of how our laws are made, as I said, I'm a complete neophyte as far as Washington is concerned, but it is interesting to see what I call lack of interest.

The CHAIRMAN. I can appreciate how that appears to you.

Mr. WHEATON. It is obvious.

The CHAIRMAN. I can tell you everyone——

Mr. WHEATON. Would you rather wait until somebody has time to listen to me?

I see no sense in wasting your time or anybody telling you what I've told you so many times in the last 1½ years.

The CHAIRMAN. I want to get your views on our record.

Mr. WHEATON. I have already submitted my report on what I am about to say.

There is no need to take up your time. Where is the efficiency of this Government? That is what I do not understand. I can say in a nutshell you know exactly what I am talking about——

The CHAIRMAN. Senator Randolph, Mr. Wheaton has suggested that we have an inefficient operation here. He has come to testify and only you and I are present.

I explained every one of our members is chairman of something else that is in action right now or has additional responsibilities. We do not have the luxury of being exclusively assigned at any time.

Now, that bell just indicated that there is a vote going on in the Senate. We will have to recess to go over and vote.

Mr. WHEATON. I do not propose to be in the middle of something that people are coming and going on. If this committee wants to hear my statement and testimony, I would be happy to give it, but otherwise I think it is a waste of time.

Senator RANDOLPH. We have no control over rollcalls in the Senate.

The CHAIRMAN. That is not the point.

Even before the rollcall Mr. Wheaton observed you and I had no colleagues here with us this morning at this hearing.

Mr. WHEATON. I have explained this so many times to Mr. Williams that he must be tired of it.

Why should I explain it to him again?

I thought I came here to talk before a committee, and at least I had two a few minutes ago, and then I had one. I do not consider that a committee.

Senator RANDOLPH. You have two. I necessarily had to shake hands with these constituents of mine.

Mr. WHEATON. That is perfectly all right.

When I came down here, I thought I would have the attention of lawmakers who are responsible for OSHA.

Senator RANDOLPH. I do not think it is a matter I could argue with you about. I know where the members are this morning, in conference with the House on pending legislation.

Mr. WHEATON. They picked the wrong day with me.

Senator RANDOLPH. I think your friend better come back again, Mr. Chairman.

I will try to corral three or four members to come in. You are chairman and you make the decisions.

The CHAIRMAN. I will say, Frank—I will call you Frank now because we have known each other for many years—I have been here for 20 years and this is the first time anyone has ever raised that. You are unique and it is refreshing.

I will tell my colleagues that we were all in a way chastised by a man of knowledge and importance because of the knowledge he has of the subject before us. It is OSHA. There are not many employers who understand the law and its administration better than you, Frank. It is a day-to-day matter with you.

Now, you have a statement. We are going to put it in the record. I would still like to hear beyond your statement some of your reactions

to some of the problems that have come up.

Mr. WHEATON. Senator, I will be happy to forget my prepared speech that you asked for, and it is not normal for me to have a prepared speech.

The CHAIRMAN. We have several minutes before we must recess for this rollcall vote, and if you would start off by summarizing the principal problems that you have come to know with the OSHA legislation, its regulations, and its administration, it would be helpful.

Mr. WHEATON. I can do that very easily.

In the first place, I happen to be the head of a family owned corporation that is 91 years of age. Consequently, I can be a little bit freer in my statements because I have no board of directors or stockholders in back of me to fire me if I do not make the right statement.

It is rather unusual for the witness, I will say, to be in that position.

In the first place, again, I would like to go on the record that I do not know of any manufacturers—and I know a lot of them—who willfully go out and do something that will cause injury to a person. In the first place, most manufacturers are motivated by making a profit to begin with.

Every injury that takes place takes money away from the profitability of a company. I have no objection whatsoever, in fact I welcome the Government to have qualified individuals to come in and sit with us.

You do not need to have it rigged up so you have to surprise us. You can make an appointment with us, and we will take you through the plant. We will do anything that you want. After you turn around and tell us, I say you, I am talking about OSHA individuals, tell us what they think is wrong, we will be most happy to sit down with them and see how it can be fixed.

If we fix it in the course of time which both parties would agree upon, do not slap us on the wrist and fine us because every time an OSHA man comes in at the present time, you get on your defensive.

That is not the way it should be. The Government and industry should work closer together. I think the main thing to stress on the subject is the fact that we should welcome OSHA visitors. They should come through with the thought that they should turn around and work with the manufacturer to create a better environment, to minimize injury, and go away from that meeting thinking that the industry is going to correct the situation.

If they come back 1 month later and I have not corrected it, you can fine me all you want. You can fine me any time they do it. I have taken the stance that every citation I get with a fine to it I send right back to them automatically. Normally I get it right back again, certified mail. I send it right back again. Then I get before a Federal judge.

Three times I have been before a Federal judge for three of my companies. Each time after the hearing is over, I have talked with the Federal judge, and he tells me that the greatest problem he has in most of his hearings is this fine that you get.

In one instance, for example, there was a $600 fine in a small pottery which I own, and we fixed that item before the inspector left.

But he had to fine us $600 to justify his being there.

The CHAIRMAN. What was the citation for?

Mr. WHEATON. It was a railing around a lift that came up and brought bags up, about that large [indicating]. It had three sides and

the wall next to it. One side had been left open after it had been used——

The CHAIRMAN. Like a dumbwaiter?

Mr. WHEATON. Yes.

While the man was going through the rest of the plant it was fixed. He went back and said that is fine. Now where that hearing was held was in Trenton, and the Federal judge came up all the way from the city of Washington, and a gal came from New York, from the New York OSHA department, and after it was over she said, Mr. Wheaton, I can understand your feeling on the subject.

I tried to be lenient myself. When I go back home to the office and tell them what I have done, these are actual words: You should have socked it to him.

If President Carter wants the industry to employ more people and build up our economy here, the Government has to work closer with industry. There is no question in my mind about that.

I travel hundreds of thousands of miles all around the world—I was in Europe last week. And when I get back home, I see these things, and it would be so easy for a person to come in and say: I would like to come in and inspect a plant with you, and see if we can be of assistance to you.

But that is not the way it is done.

I am tired of the Gestapo methods. I am tired of somebody getting up early in the morning and not feeling right, and having an argument with his wife, and coming into a plant and——

The CHAIRMAN. Take it out on you.

Mr. WHEATON. He is just mad to begin with. Or I am tired of having an individual come into the plant who means well and have one of my men who is so busy as the dickens, and the man comes in unannounced, and my man is busy, and he has to take the time to take this man through the plant, and he is thinking about how can he get back to get the job done that I am supposed to do.

The CHAIRMAN. I am going to have to go and vote.

Finish the thought you just had.

Mr. WHEATON. Two years ago, January 3, after our glass plant—we are talking about high temperatures—had been shutdown for 2 weeks, 8 o'clock in the morning, and we reconvened and started our plant, all of our top people were busy trying to get that plant started, and three OSHA men came into the scene, and said we are going to be here 2 weeks, and we would like all your top union officials here immediately.

There were the boys who were trying to put our plant back in shape. It was all announced, and we got nothing for us—there was nothing for us to do but bring the people in, and we brought them in.

That cost us thousands of dollars because our plant was delayed in getting started. This is not the intent of the law.

The CHAIRMAN. Now we will recess.

[Short recess.]

The CHAIRMAN. We will reconvene. I will say, Mr. Wheaton, during this recess for two votes on the floor, I talked to a couple members of this committee, and they hope they will be able to drop in. One particularly is involved in the Rhodesian question, and he said if he can break from that, he will come over. I can tell you everybody is occupied today.

Mr. WHEATON. Senator, I appreciate the opportunity to visit with you folks—with you again here—I do not want to make it plural.

The CHAIRMAN. Now you can see the importance that we must attach to highly qualified staff, because even though members are not here, the staff reports to the members. You see that is another factor.

Mr. WHEATON. How many members did you say are on the committee, 16?

The CHAIRMAN. We have staff directors, and it is a communication system that works out pretty well.

Mr. WHEATON. That is something wrong with our Government somewhere that takes an important issue like this and does not pay much attention to it. That is what I am trying to say. I do not see any reason, really, to go over my report and bore you with that which you already have written in front of you. But I think maybe I ought to pick out a couple things that might be of interest.

For example, the things that I am worrying most about with OSHA, I think, would be the Gestapo method of coming into a plant unannounced, and after going through the plant, fining the company for that which they felt was wrong. I think this is the wrong approach for Government to take. I see no reason why Government ought not work very closely with manufacturers. The President stated in his preelection speeches that he was going to put everybody back to work. It is impossible for him to put everybody back to work without the cooperation of manufacturers. Consequently, he should get Government to help and assist him.

I have been working for 46 years myself, and as I said before, I happen to head up a company that is worldwide. We do over $200 million worth of business a year, and we employ in this country some 5,000 or 6,000 people, with a payroll of some $80 million, $85 million a year. I have a very distinct advantage in being an owner and being able to say what I want to say, and not fearful that my job is in jeopardy. So consequently, I may say some things that the ordinary person would not say.

I have taken the stance myself that I have to assume when the OSHA man comes into our operation, or any one of our operations, that he is there to do a job, to assist us, to really do a better job in our operation, to minimize any health problems or accident problems. I take it at face value. I just have to assume that man is really there to do a job with us. Consequently, I tell my people to give him all the attention he can ask for, show him anything he wants to see; after the courtesy that we attempt to give these folks, then to have them turn around and levy a fine on us, we just do not think is the right thing to do.

If you look over all the correspondence I have had with OSHA and the legal departments and all, you will find that has been the main thrust of my objection to the way OSHA is handling the situation today.

I do not know whether the folks in the room here realize that if they have a competitor in a business that they want to harass, all they have to do is pickup the telephone and call the Department of Labor and say, I work for Joe Blow, even though they do not work for Joe Blow, and there is a terrible situation that exists over here—there are

fumes in the plating department or some other department, and it is not necessary for them to give their name, but it is necessary for OSHA to make an inspection on that subject. If you really wanted to harass a competitor every day, you would call up on a different subject. We have had two or three in the last month, two or three inspections that resulted from somebody calling. We do not know whether they worked for us or not, each inspection we have got even a clean bill of health. But it does take time.

When you have inspectors going through, it upsets your people that are around there, because they are wondering if there is a problem here or not. It is like in a crowd of men being asked, when did you beat your wife last? He may never have done it, but people start to wonder, does he beat his wife?

The inspections where we receive fines are automatically sent to me. I automatically send the citation right back to the individual who issued it, telling him that in cooperation with the Government we are happy to have you go through our plant, we will not accept any fines.

In most of my letters I end up by saying, you can put me in jail first—I feel so strongly about this. You can put me in jail before I will pay such a fine.

I usually end up with a letter back, and they have been all very courteous letters, telling me that maybe the fine was a little bit exorbitant and we will cut it down from $600 to $300, if it is a small item. I end up by sending it right back to them again and telling them you did not understand what I was talking about. I do not accept any fines. Then I end up with a Federal judge.

In all three instances where I have met with Federal judges, I have met with them after the hearing was over. One was in reference to a small shipyard, and the judge said to me afterwards, when we were alone, he said, I know how to sympathize with you. I just used to run a small shiypard up in Rhode Island before I became a judge, but unfortunately, I have a law that I have to uphold, and I have no way to fluctuate away from that.

The last judge that I spent a couple hours with was in Trenton, N.J. We were in the annex building to the capitol on the fourth floor in a U-shaped building, and after it was all over, he said, Mr. Wheaton, what do you think would happen—we were at the end of the wing—if there was a fire toward the center of the building? He said, we would have to jump out of the building, no fire escape, no way to get out of that place. It was not subject to inspection by OSHA. I cannot see the difference between a Government employee and a manufacturing employee.

A typical example again, right in our own group, right here. I had the privilege of attending Senator Williams' swearing-in reception, I guess you would call it; possibly it was in this building. There were a number of Senators that were not quite as successful as Senator Williams. They were not elected. As the Senator was being sworn in, they were leaving. The aisles, main aisles, were filled with files and things that people were moving out. I do not know how many people attended your reception, Senator, but it must have been 600 or 800 [illegible] had been a bombing, or a fire in there, I am sure

if it had been in an industrial plant, OSHA would say that your aisles are all cluttered, and for an accident prevention, you will have to clean the aisles out, and you would have been fined for it.

I do not see how you can make fish of one and fowl of another, is what I am really trying to say.

I think we really have—this is a very broad subject I am talking about today—I think we just have too much interference by Government today in running our businesses. As I said, I have been in business myself for 48 years. My father, who is chairman of the board, has been working in the plant now for 78 years. He is 97 years of age, and he is in the office every day. We have never spent so much time away from our general business as we have in the last few years where we are working on problems that OSHA, environmental protection, many other things—in other words, in summary here, basically I can say that business people, or businessmen, are being penalized by growing regulations. That includes all sorts of regulations by the Government. We are near the breaking point. We cannot absorb any more time-consuming rules. If you business people are in a position to speak out concerning regulatory growth. As an owner and president, I may have an advantage and a better perspective.

If there were any reason why OSHA itself could be removed from the regulatory system, I would support that action. If OSHA is here to stay, then I object to unscheduled visits by inspectors, as this has caused us serious business interruptions. If OSHA is here to stay, simplify the regulations. We cannot be expected to follow such complex and nitpicking laws. Much of it is overreaction. State what action is needed and let business provide the solutions.

The penalty system must be changed to a second offense system; to fine the first offense is not a reasonable cooperation. I will continue to take a strong stand on fines of first offenses, and under no condition will I pay such a fine. Nobody wants to be any more cooperative with the Government than I do personally. In fact, I do not know what drives a person like myself to continue to expand a business, which is already a sizeable business. I have no need personally to be pushed into expanding the business.

I was stating in the other room here while we were waiting a few minutes ago, that I have friends abroad, especially in Europe, business people who are encountering all kinds of problems today, overexpansion, lack of business, and all sorts of things, asking me where would you recommend we place some of our money to be safeguarded for the future in business? I suppose I travel 100,000 or 200,000 miles every year all around the world, as we have 16 different operations in other parts of the world, and I started off with—well, Brazil is a good place, Japan is a good spot, Singapore has good prospects in the future. But I always come back to the United States. The United States is a free country. Fortunately, even though I am complaining about some of the regulations today, it would be smart enough to see what is happening in the rest of the world, and not get ourselves complicated as badly as they do. This is still a wonderful spot for a business.

I have deviated a little bit from OSHA here, but it might be interesting. We are faced with competition, Mr. Chairman, today from Europeans who have overexpanded their business, have more plants

than they need, basically, because they took the export market away from us due to lower wages. Now, these countries like Pakistan, and India, Brazil, the undeveloped countries are putting their own plants in, so Europe is overexpanded. Believe it or not, they would rather cut the price and take a loss in running their business in a year than they would to turn around and shut a plant down because of the crazy laws they have which you cannot layoff anybody. Severance pay would be greater than the losses that you take every day. It does not make sense, but that is what we are competing with today. In other words, a company would rather lose $500,000 than pay $4 or $5 million in severance pay if they shut the plant down.

We have so many things facing us in this country—I am philosophizing, I guess now—that are so much more important than having an OSHA man come in and nitpick, as we might call it, that we ought to be spending our time on. We have the greatest opportunity in front of us today that I have ever seen for expanding our businesses.

I took five Japanese up last week, or 2 weeks ago to Kennedy Field. I was on my way to Europe, and five Japanese were in our plant, and they were over here, and had been here for 5 years—they were going to start, they did start a subsidiary Shibudo, which is a Japanese cosmetic plant, with roughly 1 billion dollars' worth of sales. They were over here now trying to purchase items that they could send back to Japan because the cost of manufacturing in Japan today has gotten so high that they could buy manufactured items, folding cartons, glass bottles, labels. They can buy them here cheaper than they can in Japan.

The same thing applies in Europe. I was in Europe——

The CHAIRMAN. I do not understand why the Japanese——

Mr. WHEATON. Two reasons. Japanese labor costs have gone considerably higher. The yen to the U.S. dollar—the dollar has gone down. We have the same thing in Europe at the present time. I have never seen, in fact I did not enjoy most of my meals because of the high cost of them. You could not get a meal in Scandinavia, for instance, for less than $25 or $30.

A glass of orange juice in Belgium can be $3 or $4 today. And that makes costs go up higher over there, which means we are now more competitive.

The CHAIRMAN. Could you pause there. I want to introduce Senator Hayakawa. Senator Hayakawa, Mr. Wheaton has stated that anonymous phone calls were made to OSHA, stating something was wrong with safety protection in his plants, which were followed by an inspection constituting a harassment. Mr. Wheaton objects to that. He also made his observation on being cited and penalized with fines even though the problem that led to the citation and penalty was corrected while the inspector was still on the site. These are some of his observations. He was disappointed that all our members were not here, Senator Hayakawa. I said they will know what he said. Senator Hayakawa is, I know, particularly assiduous in understanding the record that is made at these hearings. I am glad you are able to be here, Senator Hayakawa, for part of this hearing.

If you wanted to recap for Senator Hayakawa, I am sure he would be interested.

Mr. WHEATON. I would not want to take the Senator's time.

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Senator HAYAKAWA. How large a company do you have, how many employees, what kind of employees?

Mr. WHEATON. We are a glass container business basically. We are a family-owned company, dating back to 1888. We have had three presidents: My father is chairman of the board at the present time; after having worked 78 years in the plant, he is there every day. I have worked there 46 years myself. I am currently president of the company. We have between 5,000 and 6,000 employees.

Senator HAYAKAWA. Between 5,000 and 6,000?

Mr. WHEATON. Five and six thousand employees in the United States. We are in 16 countries, of which Brazil is the largest, with employment of 3,500 employees there.

Our payroll is somewhere in the neighborhood of $82 million a year, sales over $200 million. I only tell you this to explain to you that we think it is a serious problem, what I was telling Senator Williams was in my 46 years, and my father's 78 years, the last 4 or 5 years have been the hardest years we have ever put in there, mainly because 30 to 40 percent of our time is spent in what we consider nonproductive, in things that do not really relate to our business, in deciding what do we do after this OSHA inspection. What do we do after the Environmental Protection people. The Environmental Protection people came in about 4 years ago, and they fined us $27,500 a day.

Senator HAYAKAWA. How much?

Mr. WHEATON. It was $27,500 a day.

Senator HAYAKAWA. What were you doing?

Mr. WHEATON. We were putting smoke up like everybody else does in a glass plant. There is no other way to make glass, unless you use fuel oil. And it went for 1½ years. I think our fine got up to something like $11 or $12 million. The judge threw it out of court.

But these are the sorts of things that we are continually harassed by which take our time away from business. In the first place today, especially today, I think I am more impressed today of the necessity of people—trying to get the right person to do the right job—it is becoming more and more important every day. There are just not enough people to go around in organizations our size, and to take those people, take the time of those people to discuss some of these minor problems. Well, a typical example—I am also personal owner of three or four smaller organizations—our pottery plant in Trenton, N.J., the oldest pottery still in existence in the United States—employs 120 people or so. We have had an OSHA inspection there. We normally have three legs to a gate, and there is a lift that brings up bags of material, and one side of the gate was missing. The inspector showed us this, and we said yes, we realized it and then he went down through the rest of the place. In the meantime we fixed it. He said that is fine. But he charged us $600——

The CHAIRMAN. I wonder if we could zero in on that. When the lift was at the bottom and you were on the second floor, was that hole open or was it enclosed?

Mr. WHEATON. It was against the wall on one side, and it had three [illegible] that big square [indicating].

Mr. WHEATON. One did not have it, because that is where we bring it up this high and pull it in that side. They had not put that guardrail back. It is normally there, but when the inspector went through, there did not seem to be anybody working there. I do not think there was. They had not put that guardrail back. It normally is there.

The CHAIRMAN. It would seem to be essential for safety? Without the guardrail, somebody could fall to injury?

Mr. WHEATON. That is true.

The CHAIRMAN. Here is the point I want to ask. Let us get to the nub of this. What you object to is this first instance penalty?

Mr. WHEATON. That is correct.

The CHAIRMAN. It was pointed out to you, you corrected it, therefore you feel that everything should be recognized as all right?

Mr. WHEATON. Actually the company had provided the rail there. The union member who works for us had taken the rail down, because he had been bringing the material in, and he forgot to put it back up. It was not that the company was lax. We knew it had to be there.

The CHAIRMAN. He was not in a supervisory capacity?

Mr. WHEATON. A worker.

The CHAIRMAN. His foreman, or whoever was supervising, overlooked the fact that one of his workers had been negligent?

Mr. WHEATON. I do not know if it was 5 minutes or 10 minutes, for example, after he had finished his job there.

The CHAIRMAN. This also leads to what is part of the same problem, as you see it, the inspector that comes without notice? Am I right? This is a problem, as you see it? But this example you just mentioned seems to me to underscore one of the distinct advantages of unscheduled inspections. They often serve to keep management continuously conscious of safety hazards. I just wanted to ask you whether you think that given the nature of some people, that some employers would be very lax about safety matters, knowing that the likelihood of being inspected is minimal. We know that there are not enough inspectors. We heard this morning that there were 17 inspectors in West Virginia for 31,000 covered workplaces. The inspectors never got to the towers of the nuclear plant going up in West Virginia, and the great disaster——

Mr. WHEATON. If you want my personal opinion on that particular subject, OSHA should not have to get in on that, because the tremendous liability—there is no manufacturer that I know of who would willfully subject himself to such a liability. It would ruin a company. You not only have the desire of the owners of the company to try to run a safe plant, but you have the financial obligation. Bear in mind you are just duplicating what our insurance people do. We have insurance people go through our plant and make an inspection every 3 months or so. We have got a whole list of things. They would drop us if we did not——

The CHAIRMAN. I would tell you this. Yesterday we had testimony from a representative of 30 percent of the insurance industry that covers workers compensation, and they approve, not only approve, but applaud and say it is necessary to have OSHA.

Mr. WHEATON. It does their job.

The CHAIRMAN. They say it is supplementary. They say they cannot do it all and this is supplementary to what many insurance carriers do.

Mr. WHEATON. Do not forget, also you have many people, I do not know how to change it, you have many people that are not qualified as came out this morning. There are people, you ask them what they did, they say I was a worker on the road or something. You cannot blame them. There are not enough of what I would call really qualified people that OSHA can hire. It goes back to people again that I just talked about.

The CHAIRMAN. We would certainly agree. This is one of the problems that we know has existed, and our attention must be directed to putting the right people on this very important job, those who are sensitive to all of its aspects, and knowledgeable about the substance of their work, and that is the safety factor in the workplace.

Mr. WHEATON. I would like to reiterate just once more that we do not object to OSHA. It is the way it is done that we object to. As a matter of fact, if any of you folks feel you are experts in safety and would want to spend a day in our plant, come and help us. We welcome any help we can get along that line. Do not slap us on the wrist with a fine. I do not think that any private citizen should have the power to come into our plant, depending on how he feels in the morning, how he got up, whether his wife harassed him or not, say, I am going to fine you $1,000 for this, $50 for it. He has discretion from 0 to $1,000, as I understand it, on each unit. All I ask is the Government realize that industry in the main, industry in the main is trying to do a job. Industry in the main is desirous of the cutting down of accidents. I do not need OSHA to tell me that we want to cut down accidents, when I see the amount of money it costs per year, where accidents are inexcusable, where somebody trips over his own foot almost. You would be amazed at the amount of back accidents and things we have in the plant. Somebody picks up something heavy and says their back hurts. They get on compensation. Any way we can close these things down would be very beneficial to the company.

All I ask is that the Government realize that we want to be cooperative. Come in the plant and give us a helping hand, and we will be glad to work with you. Not slap us on the wrist like the Gestapo do.

The CHAIRMAN. Senator Hayakawa.

Senator HAYAKAWA. If I may make a comment, I would like your observations on this, Mr. Wheaton.

I sometimes get the feeling that OSHA officials who go to visit your plant or others sort of succumb to the temptation of the power they have, that they become sort of petty tyrants. They see their task as punitive rather than advisory. And if it were more clearly spelled out that their task is advisory, especially on the first visit, the first 60 days after their first visit, this business of apparently arbitrary fines which employers complain so often about in California, might be very, very much diminished, would it not? Should their functions be punitive from the very first, after a visit or two?

Do you believe that other companies besides yourself—I guess it is true—do really want safe plants for employees? And if there are shortcomings in the safety program, they would welcome advice, if given in a helpful spirit, rather than being punished for what are minor infractions that can be corrected, as you said you have done immediately.

Is it a misconception of the basic function of OSHA or is that writ-

ten into the law, Mr. Chairman, that they should be out there punishing people right and left?

The CHAIRMAN. The law does provide for a penalty in the first instance, except in situations where, through appropriation limitation we have provided there will be no penalties for a limited number of "nonserious" violations by smaller companies. It is on the principle, basically, as I would understand it, that because so few will be inspected, we cannot expect all employers to have the same basic drive and concern that Mr. Wheaton has. There are unfortunately those in society who will cut corners, knowing the chances of getting caught are minimal. We know that.

Senator HAYAKAWA. That is true.

The CHAIRMAN. Did you ever make a U-turn when you know perhaps this was not a U-turn area? You sort of look around, it is all clear, you do something you know you shouldn't

But this is the problem we have. It is basically the problem of the nature of some people. I am not saying it is human nature, but the problem we have in the nature of some people.

Mr. WHEATON. Senator, in answer to your question, in the first place in my dealing with what I call petty officers, people that do not have too much authority, most of them never had any authority before. And you hand them a book—I remember an air raid warden in my hometown during World War II, who was a United Biscuit Co. salesman in normal life, and he was made an air raid warden and put a tin hat on. There was never a more officious gentleman with that tin hat on. Before, if you said boo, he would jump. He was just like this with that tin hat [indicating].

I cannot help but think there is a certain amount of that influence there. I would have to agree with Senator Williams that you take 10 people. They do not all have the same honor. One is more honorable than the other one.

I do not think that it should be the intent of the U.S. Government to hunt out the bad boys, and make all the rest—if there are 10 bad boys and 1,000 good ones, that there ought to be some way to make a law that you could take care of bad ones over here but not penalize others. And as far as the time element is concerned, if a man would come into our plant—and I believe this is general with most plants—today an OSHA man comes in, and, boy, everybody right off the bat, everybody is on the defensive. That is not the way it should be. An OSHA man, in my opinion, should call up on the telephone and say I would like to make an inspection of your plant on September 13 or so, and I will be there at 10 o'clock, is that all right with you? You say yes.

I know there will be some companies on September 12 who go out and check everything all the way through. But if they can fix those things that fast, they must be minor to begin with. What you really should be interested in are the major things, not whether the sign is on the top of the door there or whether it is on the side of the door, or whether it is——

The CHAIRMAN. Whether the door says push or pull.

Mr. WHEATON. That is right. When that inspector comes in, and he would find some things—I admit we stumble over things, we live with

them all the time—an outsider can come in and see something we overlooked. If he would say, Mr. Wheaton, this ought to be turned around the other way, and we say, all right, it will take us 3 days to do that, if he comes back the fourth day and we have not done that, he can fine the daylights out of us. I am not objecting to the fine, if we have something in our plant that could cause an accident and we know about it, and we do not do something about it. You can fine the daylights out of it, you would not hear any complaints from me. I can tell you my foreman would not be there long that has charge of that department.

Again, I reiterate that I welcome the Government to help us on this subject.

That is basically the only thing—I do not know, Senator, whether you were here when I mentioned that it is possible for anybody to call up and talk about any company and say, I work for Joe Blow Co., and there is a bad fume situation in their plating department. OSHA does not ask the man's name. They just assume he does work for that company. But they must send an OSHA inspector out to inspect that company. That takes time away from the company's people to take this man through. We have had three such visits in the last 10 days at one of my plants.

Senator HAYAKAWA. These are anonymous reports?

Mr. WHEATON. That is right. It is not necessary under the present law for anybody to state, I am Frank Wheaton, I think there is something wrong in the Wheaton Glass Co. If you wanted to harass a competitor, this would be an ideal way to do it.

Senator HAYAKAWA. It is this punitive aspect of OSHA behavior that bothers me. I do not know if it requires a rewriting of the law or not. But if the OSHA inspector were to understand clearly that his function is to help all the plants, factories, and stores that he visits, and presumably he is an expert on safety issues and can help you out and your neighbor down the street and the storekeeper and the warehouse, then if you knew that was his intention, he would be welcome with open arms all around the place, would he not? And perhaps it is necessary to give him punitive powers, authority, and so on, to use in the case of the individual who simply resists all attempts?

Mr. WHEATON. I agree.

Senator HAYAKAWA. This is not the way it is working now?

Mr. WHEATON. Definitely not. They come in on the first offense, and again it depends on how the man feels, or it depends on the man taking him through. Let us say a man came to work at 8 o'clock in the morning, one of our foremen, and he had a full day's work outlined for himself. At 9 o'clock in comes an OSHA man. In the first place, our foreman sort of backs away from him immediately when he hears an OSHA man is coming in, but then he starts to think, by golly, he is going to take up my time. Here is what I have to do this morning. How can I get rid of him fast?

He rushes him through. That has a tendency to make the inspector feels he is not getting the cooperation he wants, so, instead of fining him $50, he fines him $500.

Again you were not here when I—I have been before a Federal judge three times on different companies of mine, one of them in Trenton, N.J. We had even gone so far as to write to the OSHA people

and tell them that we were not contesting that the contents of the citation were wrong. We agreed with it. But we had corrected these. The only thing we were contesting was the fact that they should not fine us on a first offense.

Now that costs the U.S. Government a whole day of the judge's time to come up out of Washington to Trenton—a $600 fine, by the way. The person in charge of the legal department of OSHA in the Department of Labor in New Jersey sent one of his gals down, who was a lawyer. They spent a half hour in Trenton, going over this with me. I told them what the story was. When it was all over, the young lady said, Mr. Wheaton, I can understand your feeling on this subject, but said you must understand my situation.

This is typical, word for word I am talking about here now. "When I get back to New Jersey, if I told them I let you off the hook, as you might call it, I would get reprimanded and told, 'You should have socked it to them.' "

Those are the exact words the young lady said. "I am in jeopardy of my job if I do not try to get you fined, somewheres along the line."

I do not need any of this. In the first place, I admit I am a maverick, but I do not need all this harassment.

I would like to feel that the Government feels they need people like Frank Wheaton out there who are entrepreneurs and have built businesses, because all they have to do is turn around and keep harassing me, my father and myself—we just say the heck with it. It is just not worth the effort. I have lots of things I like to do. But I spend most of my time in business.

The CHAIRMAN. You know, Frank, I will say, you are a most credible man, but superficially there would be those who would question your credibility. You are very disturbed about harassment and all of this. You are one of the most healthy, most vigorous men I have seen at this table. Your father is 97 and goes to work every day. So harassment must be good for the system or something. [Laughter.]

Mr. WHEATON. I sit here with a broken collarbone and two broken ribs.

The CHAIRMAN. You have been an excellent witness and very helpful. I know you approach this from the point of view of the citizen. You want to have a safe place for your workers. You are a great employer, we know that. Of the administrative situations you have addressed yourself to, many not only can be defended, but I think are necessary; some cannot be defended, are unnecessary, and should be dealt with. Harassment is one, and nitpicking is another.

Secretary Marshall was very persuasive here yesterday when he addressed himself to some of this. The harassment was one he had not heard. He will hear about this directly from me quoting you.

There is a way to reach this. Nobody should be harassed by a competitor or anonymous harasser, right?

Mr. WHEATON. Right.

The CHAIRMAN. There should be a way to meet that. I do not have anything further, by the way, Senator Hayakawa, do you?

Senator HAYAKAWA. No, I think I said what I wanted to say. I just want to add that far too many businessmen are made to feel that the Government is their enemy, and I would like the Government to see to it that Mr. Wheaton and other people with perfectly respectable businesses should prosper. If the Government has a role, it is to help you

to have successful businesses. So long as we, the Government, seem as the enemy, it creates a division in our society that is not at all healthy for the country.

The CHAIRMAN. I will say we learn and we respond after learning. We have responded to the concern that there are a lot of business people, generally smaller businesses, that really do not have the personnel and the time to understand all that the law demands. Therefore, we have applied resources—$15 million has just been appropriated—to provide for consultants to go to businesses upon their request to advise them, no penalty—advice and consultation. We are learning. We learned a lot today.

Mr. WHEATON. Just as a matter of interest, in conclusion, I have three Federal judge decisions against me at the present time, three different plants. When the decision was rendered, I sent it right back to Judge Gann. I do not know where I end up with all of this. But I have not heard from—it has been 2 or 3 months in most of them.

The CHAIRMAN. You might hear about this. If President Carter should find you worthy to represent our country abroad as an Ambassador, this would all come up, you know, Frank, all of these things. Then that kind of record would be a problem for you. I think you would be a good Ambassador.

Mr. WHEATON. I do not want to be an Ambassador. I would be happy to help, because I think I know what is going on around the world.

Senator HAYAKAWA. I am very grateful to Mr. Wheaton for his testimony.

The CHAIRMAN. Thank you very much.

We are going to have the American Pulpwood Association as our next witness.

Mr. Rolston?

Senator HAYAKAWA. Before Mr. Rolston starts, I want to apologize for having to leave, because I want to tell you, Senator Williams, that the State Department has issued those visas for visits from Rhodesia, and this results in all kinds of uproar in my office, in meeting the press and so on. If you will excuse me, Mr. Chairman, I will go back to my other concerns.

The CHAIRMAN. I understand and appreciate that, Senator Hayakawa.

Mr. Rolston, I know perhaps you did not expect to come on this late in the day.

I appreciate your patience.

STATEMENT OF K. S. ROLSTON, EXECUTIVE VICE PRESIDENT, AMERICAN PULPWOOD ASSOCIATION

Mr. ROLSTON. It is my pleasure.

I appreciate the opportunity.

I am the executive vice president of the American Pulpwood Association, an organization supported by producers and consumers of pulpwood, the basic raw material for the Nation's paper industry. APA has a record of support for OSHA and we have a record of cooperation with the Agency dating back to the passage of the act.

We are supportive of those "first recommendations" of the Interagency Task Force on Workplace Safety and Health which would apply to pulpwood logging injury prevention and control. We oppose any attempt to remove or limit the application of the Occupational Safety and Health Act to logging operations, virtually all of which are very small businesses.

To set the stage for my remarks, I'd like to first make it clear that I am here to speak for logging injury prevention. Logging work, if it is not the most hazardous occupation in the world, is certainly a close runner-up. The high cost of logging injuries in terms of human suffering, lost production, and high worker's compensation premiums has been a major focus point for our association and our membership since World War II.

We heartily endorse a redirection of OSHA's enforcement thrust toward the most serious workplace hazards.

In our industry the necessity to cut a tree loose from its stump produces the most fatalities and serious injuries. Our efforts, and we hope OSHA's efforts to assist our industry, should concentrate on the activities where the most damage is going to be done. We have identified the three areas that most need improvement:

One: Safe action—correct felling practices must be used.

Two: Protective equipment—hard hats must be worn.

Three: Safe condition—overhead steel canopies must be on all logging equipment.

If these three goals could be met, it is quite possible that the cost of logging injuries could be reducer by one-third and serious injuries and fatalities could be reduced by one-third and serious injuries and fatalities could be even more dramatically reduced. It makes good sense for a safety regulatory agency, organizations promotion for logging safety, and first and foremost, the owners and operators of logging jobs to concentrate on the most serious problems first.

Standards are the first step.

The pulpwood logging safety standards, which are a part of the OSHA standards package, were developed under the auspices of the American Pulpwood Association. The consensus process took 5 years and we continue to be proud of the results. I would recommend a closer look at these standards because I feel they may have some unique features:

One: The pulpwood logging safety standards address unsafe action as well as unsafe conditions.

Two: Our standards are complete. An exhaustive NIOSH study of them failed to come up with any substantive recommendations for addition or change.

Three: To our knowledge no one has ever requested a variance from the pulpwood logging safey standards.

The most important work that OSHA has done for us is to legitimize and give force of law to what we feel is an excellent package of fully comprehensive safety standards. OSHA has raised these standards from the level of recommendations to mandatory logging practices.

Inspections have been fair.

Because of the scattered nature of logging operations, their location off the paved road, and their size in terms of numbers of employees there haven't been too many inspections of logging operations. How-

ever, with one exception, we consider inspections of logging jobs with which we are familiar to have been conducted in fair and impartial manner. The exception I referred to was contested and the citation overturned, proof to us that the appeal process can function as it should. We have received a number of reports of instances where the employer felt that his visit from an OSHA compliance officer had been quite beneficial. One logging contractor said that, although he had to pay a penalty, he learned a lot of other things that needed doing to improve safety and he felt that the penalty had been cheap in comparison to the free safety consulting service he received.

I think the intent of my comments about inspections should be viewed with the knowledge that logging is a part of the former OSHA target industry category "lumber and wood products", and therefore during those years, received much more attention than many other business categories.

Cost has not been a problem.

With the cost of worker's compensation insurance for logging currently in some States more than $20 per $100 per payroll, the cost of meeting OSHA pulpwood logging safety standards safety requirements has been insignificant by comparison.

Employees on small logging operations still need OSHA.

The exemption of small employers from certain OSHA recordkeeping requirements was a fair and welcome move, but we feel that any attempt to exempt small employers from inspections or compliance with standards would deny the employees of small logging contractors an essential component for future reduction in logging injury frequency and severity.

First recommendations of the interagency task force:

We endorse these following recommendations listed by short title:

One: Increased accident investigation as a means to identify most serious standards violations.

Two: Expansion of telephone reporting of serious injuries.

Three: "Substantial equivalent to cited standards" relief.

These three areas either have direct application to the logging business or we believe might be of future benefit. We are not qualified to comment on the other recommendations since we don't see any application to our industry.

I'm not a safety professional and there are relatively few employed in the logging industry. I found section two entitled, "Likely Causes and Cures" and section three, "The Larger Picture" very interesting and enlightening. I suggest that this type of information, written for the layman, might be incorporated into a publication for wider distribution.

Expectations must be realistic.

Those who may have expected that OSHA would, by itself, make substantial improvement in injury prevention have been laboring under unrealistic expectations. Safety is first and foremost a management responsibility and opportunity.

We feel that the vision of OSHA partnership, government, industry, and labor is unrealistic. We've got natural adversaries involved—but why be concerned? Progress is often achieved at the expense of conflict.

We feel that logging injury prevention must focus on unsafe action as well as unsafe conditions, since unsafe actions probably account for 80 percent of the problem. Safety standards, enforcement activity, and safety training aimed only at the correction of unsafe conditions cannot be expected to make significant progress toward injury reduction in our industry.

We feel that the path to improvement lies in making safety the business of management—and by management, I mean the owner through to the line supervisor in larger organizations and with respect to logging—the owner/line supervisor, since in the majority of cases in our business these functions reside in the same man. We feel it is not realistic to say that "safety is everybody's business" because "What everybody's business is nobody's business." You tend to get a "Let George do it" attitude and George is always out to lunch.

In Maine and Michigan two organizations of small logging operators are showing what can be done by management. These are self-insurance groups which pool their worker's compensation premium, set injury reduction goals, and employ their own safety field man to police the program. It's working because the cost of coverage has been reduced to 60 percent of the State worker's compensation rate. Management has the responsibility and management can do the job!

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Rolston.

It is refreshing to have your attitudes here and to have your view of the obvious benefit that you see the law and the regulations of occupational safety and health, and its administration bringing to your industry.

Your philosophy is somewhat different than Mr. Wheaton's who preceded you. He does not subscribe to this necessary tension between Government and management.

It is interesting.

But I would say that the law recognizes that that happy millenium of total management dedication to safety in the workplace is not yet here and therefore there cannot be and you cannot expect there to be this happy day of consultation and cooperation, and everybody doing their business without some apprehension of threat of penalty if they do not.

Mr. ROLSTON. Russia is the only place I've seen where you do not have a conflict between government and industry and labor, because there is not any difference. It is all one big company.

The CHAIRMAN. This has been very, very helpful.

In this case, the consensus standards seem to be working well. In other areas where consensus standards are too broad——

Mr. ROLSTON. Or too cosmetic.

The CHAIRMAN. They do not work as well and therefore they have to be streamlined down to focus on the particular activity.

In your industry, they were prepared just prior to OSHA, and were directed specifically to logging.

Mr. ROLSTON. Thank you very much.

The CHAIRMAN. Thank you. Excellent.

We will have to recess for 10 minutes. I hate to do this to our friends from the American Cast Metals Federation.

There is a vote on and I will be right back.

[Short recess.]

The CHAIRMAN. We will turn to the American Cast Metals Federation.

STATEMENT OF CHARLES T. SHEEHAN, VICE PRESIDENT, GOVERNMENT AFFAIRS, CAST METALS FEDERATION, WESTCHESTER, ILL., AND ARTHUR K. MANN, VICE PRESIDENT AND GENERAL MANAGER, RIVERSIDE FOUNDRY DIVISION, DONSCO, INC., WRIGHTSVILLE, PA.

Mr. SHEEHAN. My name is Charles T. Sheehan.

I am vice president of the Cast Metals Federation, which is an organization comprised of five trade associations representing segments of the foundry industry.

Accompanying me is Arthur Mann, vice president-general manager, Riverside Foundry Division of Donsco, Inc., in Wrightsville, Pa.

Mr. Mann is a member of the federation's OSHA Committee.

We welcome and appreciate this opportunity to appear before the subcommittee this morning to express our concerns about present OSHA programs and to offer recommendations for improving these programs to give the American worker more efficient and effective safety and health programs.

We have submitted a detailed statement representing the federation's position.

I will give you a summary of that statement now. The summary is a little longer than I would like it because I do not want to cut into the time that Mr. Mann would have to give his remarks or comments, so possibly I will capsulize the summary.

A profile of the foundry industry appears in our formal statement. To capsulize, the industry includes 4,400 units. I'm a little different than Mr. Wheaton, I have many bosses, so I have to be careful about what I have to say.

But like Mr. Wheaton, we will discuss the problem of what we consider harassment, but on an industry basis rather than individual company basis.

The industry produces 18 million tons of castings annually with a value of more than $20 billion and employs 400,000 workers.

Basically, it is a business of small industry with 80 percent of American foundries employing less than 100 persons.

We feel that no responsible person can take issue with, or object to, the objectives of regulatory safety and health programs. The concern of many employers and employees with OSHA is that it is ineffective based on its own record, very costly, without results, and therefore inflationary.

I have seen figures which indicate that it has cost $1½ billion to administer OSHA, and industry has spent to date $25 billion to comply with OSHA standards.

Yet without proven results. OSHA's adversary enforcement policies have widened the division between citizens and their Government.

At a meeting of the Cast Metals Federation early this year where

approximately 200 foundrymen were represented, Mr. Basil Whiting of OSHA asked how many foundrymen had been inspected by OSHA once.

Everybody in the room raised their hand. About 60 percent had been inspected twice and 40 percent three times. Some foundrymen volunteered that they had been inspected four or five times.

The foundry industry has felt the impact of OSHA through inspections, penalties, fines, and extensive expenditures for abatement or compliance. At the same time there has been little reduction in the injury or severity frequency rate for this industry which could be directly attributable to the efforts of OSHA. Results from the health or hygiene area are more difficult to assess at this early stage. Generally, however, it is the industry view that OSHA ignores cost and energy effectiveness in establishing health standards, some of which are based on questionable data.

OSHA also insists an engineering approach to meeting these standards to the point of requiring expensive and extensive litigation before giving way to the argument of economic infeasibility. If there is one common attitude within our industry, it is that of scrubbing the present OSHA and all of its programs and starting over. This will be said to be impractical and a waste of money and time, but when one considers the money and time being spent now in an attempt to make an unworkable concept viable, this idea of starting from the beginning merits consideration.

In starting over we suggest that OSHA's timetable to establish regulations and standards be restated in the form of goals and objectives. That is, the directive to OSHA would be one of achieving a gradual reduction in accident and injury rates over a period of years along with similar incremental improvements in hygiene or health levels; that such be accomplished with the primary emphasis on consultation and education with the major motivating factors in the form of incentives for both employers and employees.

Of necessity, there would have to be standards and regulations, but such would be adopted after thorough study and analysis, including energy and economic cost-effective studies. Fines and penalties would be assessed only for willful violation of standards and not for technical violations, which is the policy prevalent today.

Examples of such incentive programs are included with our formal statement. They require dedication. They illustrate what can be accomplished when companies stop spending time, money, and effort in preparing plants for an OSHA inspection and concentrate on working with and through their employees to improve their safety records and workplace conditions.

In November 1975, foundries were named as the object of OSHA's first national emphasis program [NEP].

Our formal statement contains a blow-by-blow description of this ill-conceived program.

According to reports from OSHA the national emphasis program has been dropped, although OSHA will continue to inspect about 30 foundries per month. OSHA also says the nature of its inspections will be modified, but from what we have been hearing, foundry inspections are still of the "wall-to-wall" variety.

A critical objection of the foundry industry regarding OSHA inspections, whether of the NEP variety or not, has been the inconsistency or uneveness of the inspections. Some are conducted in a professional manner, with a commonsense approach. Others are conducted in a punitive "nitpicking" mode with as many violations as possible found—and with as many of these rated as "serious" violations as the book allows.

The degree of overzealousness will vary depending on the attitude of the particular area director and, in some cases, on the attitude of individual inspectors. The decision to eliminate 1,100 nonrelevant OSHA standards does not deal with the basically unworkable problem of attempting to base a safety and health program primarily on enforcement of standards.

Effective workplace safety and health is good business. But the businessman must consider cost aspects of all phases of his business. Foundries have been spending 20 percent of total capital expenditures for OSHA required equipment. With OSHA's recent emphasis on health standards, substantial additional expenditures will be required.

We are not equating human life with costs. We are simply recognizing economic facts of life hoping to better utilize funds expended to attain safer workplace environments.

Our industry's alternative suggestion to the current OSHA approach would be to place responsibility for employee safety and health on the employer with the Federal Government providing positive incentives and assuming a supportive, educational, and research role rather than an adversary role. Here is how such an approach might work:

First: Require each employer within a reasonable period to establish a current and specific risk analysis of his workplace and all jobs involved by investigations designed to determine specific causes of each illness and injury.

Second: Each employer could then develop a tailored occupational safety and health program expressed in terms of objective criteria such as specific injury or illness reductions to be achieved in a stated time period and with specific programs to be implemented subject to regional OSHA office review, comment and approval.

Third: The employer would also submit the program to OSHA for acceptance. A review board composed of safety and health professionals and industry and labor representatives would be empowered to adjudicate any conflicts. Once accepted, the program would be reviewed periodically for its effectiveness in reducing incidence rates.

Fourth: The program would essentially contain comprehensive training for hourly and supervisory personnel involving job safety analyses, stipulating standard job procedures, and specifying potential hazards to be avoided. Investigations to determine specific causes, reporting, and recordkeeping, and implementation procedures—all internal—for corrective measures would be required.

Fifth: Upon acceptance of an employer's program—and if semiannual or annual reports to OSHA demonstrated satistifactory performance—the continued acceptance of the plan would follow without need for compliance inspections so long as an annually

improving trend was demonstrated or the employer remained in the upper quarter with respect to incidence rates for his industry and size of business.

Sixth: Employers with poor safety and health records—in the lowest—worst—quarter or bottom half compared with similar organizations—would receive OSHA inspections and consultation—not citations or fines—and would be required to amend their program where analysis of specific causes or poor implementation showed such a need. Fatalities, hospitalization of five or more employees, or employee complaints would require a visit by an OSHA compliance official. Willful failure to perform in accordance with the accepted program would result in fines or appropriate legal action to cause compliance.

This procedure would eliminate the manpower, time, and cost of compliance investigations except for those establishments specifically identified as substandard.

Costs to public and private sectors would be tremendously reduced because useless and wasteful activities and expenditures now addressed to meeting often meaningless standards would not be required.

For industry, a results-oriented program with cooperation and help, not a grim adversary enforcement program sterile of useful results, would be achieved.

For labor, an effective, dynamic, progressive results-oriented program that improves with time would result.

For Government, it would provide a manageable program harnessing the best voluntary effort and expertise of industry directed toward improved safety and health performance.

That completes this suggested program and recommendations of the Cast Metals Federation.

Our one concern over this approach, is that it might get into the bureaucratic area with forms being required for different types of programs introduced, but a commonsense approach, we feel, is a much superior alternative to what we now have.

With that, Mr. Chairman, I would turn to Mr. Mann for his comments before we get to questions.

The CHAIRMAN. We appreciate your statement very much, Mr. Sheehan. It shows a lot of thought. It is very constructive and very creative.

We will discuss it a little bit further if time permits.

Mr. MANN. Mr. Chairman and members of the subcommittee, my name is Art Mann.

I thank you for the opportunity to speak. Some of my comments may overlap Mr. Sheehan's.

I am vice president and general manager of the Foundry Division of Donsco, Inc., of Wrightsville, Pa. We employ 450 people in four separate plants. We are in the business of casting and machining iron and aluminum parts for valves, engines, pumps, outdoor lights, electrical fittings, machine tools, hardware, electrical motors, gears, and gear boxes.

You and I agree on the aim of OSHA, that the American worker should have a safe and healthy place in which to work. We disagree on how to accomplish it. After 7 years OSHA has created confusion, resentment, and resistance while producing mediocre results at best.

The most positive result from the OSHA Act has been to heighten the Nation's consciousness of the need for safer workplaces. But by its adversary policy of surprise inspections and fines for standards violations, OSHA has discouraged cooperation and encouraged resistance. U.S. district courts in the Barlow and Weyerhauser decisions have declared it unconstitutional. The interagency task force has concluded that it is ineffective in reducing accidents.

The task force has found that the present Government regulations can impact 25 percent of injuries at most. Also only 11 percent of American industrial workers are covered by inspections annually. Therefore OSHA's final impact on injuries can be only 3 percent. Statistically speaking, as well as psychologically, the present policy can't work.

Senator Williams has claimed the OSHA approach would work if people were committed to make it work. But the foundry industry did try to cooperate. It offered its technical society services and those of its four major trade associations to train OSHA inspectors to increase their expertise in recognizing hazards peculiar to the foundry industry. This training would have involved using operating foundries as the training ground. OSHA officials refused to waive the penalty system for violations seen while conducting practice inspections.

Not only does the private sector resent OSHA. According to the task force report, Federal agencies have resisted enforcement efforts of section 19—part of the OSHA Act pertaining to Federal workers—as vehemently as the private sector. Federal agencies, too, refuse to admit inspectors, resist OSHA inspectors, and complain that OSHA inspectors are inadequately trained to recognize real hazards.

The interagency task force's initial report is thorough and factual. If the study and its findings had been available in 1970 the OSHA law would not have been written and passed in its present form.

The report continues saying that:

> These findings lead inexorably to the conclusion that dramatic improvements in workplace safety and health are most likely to be secured through the shared efforts of government, employers, and employees and that such improvements must be these groups' mutual responsibility.

My own experience with OSHA has been the same as others. We have had three inspections. My attitude toward the inspector was one of anger and outrage. Here was a man whom Congress had given the power to enter my plants and apply 4,500 standards and fine us for each and every violation of each and every rule.

I was at his mercy with no appeal. There is no way that we could even understand those rules much less comply with them. That man had the power to essentially write a check for whatever amount he so desired as he walked through the plant. Until that provision of the law is revoked OSHA will never get the support and commitment you want, at least not from me.

The inspections pointed out problems of which we were already aware, but permanent solutions required a major revamping of the foundry process equipment. To meet the OSHA and EPA standards we borrowed nearly $1 million for a 5-year plant improvement program that will end next year. In the meantime, OSHA offered little

help but much petty harassment in terms of fines and lawyers' briefs. At no point did they show any interest in our accident rates or our programs to control injuries.

We found they emphasized areas that were not major injury areas. A good example deals with our iron pourers. Iron bounces off moist skin without burning. The incidence of burning in the job is low. But OSHA inspectors insisted our iron pourers wear protective suits at all times. Nothing we could find or fabricate worked. It made the task more difficult and dangerous. Finally, one iron pourer refused to wear the protective coveralls and quit. All others threatened to follow. Now the rule dangles. The men do not wear protective clothing but we remain vulnerable to fines if an inspector should so choose. The only way we can quarantee no burns in this job is to eliminate the job with automated pouring, a costly alternative.

Perhaps the future lies in what foundries have done in Pennsylvania. In 1976 the Pennsylvania Manufacturers Insurance Co. dropped all Pennsylvania foundries' workmen's compensation policies because of a drastic change in the State law concerning eligibility of workers for silicosis benefits. Insurance was unavailable from any private source and we, like the others, were forced into the State workman's insurance fund.

Insurance rate increases were granted at over 30 percent per year and the cost became significant.

In response to these problems Pennsylvania foundries formed a Pennsylvania Foundrymen's Association. The Association has, as of today, started up its own Bermuda insurance company with a capitalization of $250,000 to provide insurance for foundries in Pennsylvania.

We will have the Fred S. James Co. contracted to provide accident-disease prevention programs to all foundries insured with the group. The programs will be specifically tailored to the unique problems of foundries. Within this framework the aims and goals of OSHA will be accomplished.

The CHAIRMAN. I missed that last point.

Would you repeat it?

Mr. MANN. Within this framework, I am saying the framework where you tie the cost of accidents to workmen's compensation, it is a cost that we have a handle on.

Accidents in plants are very expensive. When a worker is injured, he is out. He must be replaced. We are in an area where there is 2½ percent unemployment. Workers are literally unavailable. We cannot replace them. The last thing we want is an injury.

So the cost of those injuries and the program to overcome them is not just based on OSHA rules.

Good housekeeping is a rule and we have our own safety program, beyond good housekeeping, and keeping the obstacles off the floor where the worker puts them.

We have to be able to train the worker to pick up obstacles immediately after he does the job. Training and maintenance men should put machine guards back on, not walk away and take a lunch break.

It is the little problems that cause accidents. To try to regulate them would be an impossible task.

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Within the framework of having your own insurance or tailored programs you can weigh cost and benefit, and create an impetus. Foundrymen can solve these problems themselves—we can do it.

We want to do it. The question is how.

The last thing I want is for my workers to be injured. I know them very well, and that is the last thing.

The CHAIRMAN. How does the foundry industry rank in terms of hazards in industry?

Mr. MANN. It ranks as one of the higher hazard industries.

The materials we work with are by their very nature very hazardous.

You have hot metal, 3,028 degrees, and you have to melt it, carry it, transport it, move it around. Sometimes I feel we are fighting atrophy, a tendency for things to get destroyed. That heat causes a great deal of wear and tear on equipment. We are a high hazard industry.

It takes a lot of attention, concentration to keep from hurting yourself.

The opportunities are there.

The CHAIRMAN. The safety problem is pretty well understood.

How about the health problem, working with sand and molten metal?

What is your atmospheric problem in terms of health hazards?

Mr. SHEEHAN. Basically, the industry discovered silicosis problems back in the early 1930's, and through the 1930's the foundries with exceptions, and there are always exceptions, did work with their insurance companies to check and recheck on the atmosphere of silica dust level within the plant.

It has been a continuing, ongoing program. We have a technical society called the American Foundrymen's Society, which did a lot of research and study on this. The early reports went out to individual foundries. Of course, it was still up to the individual foundry to adopt and follow through on this program.

But all in all, the incidents of silicosis dropped dramatically and in some States—Indiana for one—there have been no cases of silicosis found. There are other States where worker's compensation law is such and the drive of the labor unions is such that whenever a foundry employee retires, a silicosis claim is automatically filed. Somewhere along the line a doctor is found who says this man has silicosis even though the company could find 10, 12, or 100 doctors who would say he did not.

The CHAIRMAN. How is the standard to control the atmosphere? Is it a dust standard basically?

Mr. SHEEHAN. Silica dust standards are based on the concentration of it in the atmosphere. OSHA has such standards.

The CHAIRMAN. When was that standard developed? Is that drawn from a prior consensus standard?

Mr. SHEEHAN. It was drawn up, then further updated, and tightened a little bit by OSHA.

The CHAIRMAN. What is the attitude about that standard?

Mr. SHEEHAN. The attitude toward the standard is not one of opposition on the part of the industry. The attitude of OSHA in administering the standard is one to which we do have objection. There

are some areas in some types of foundries where it is extremely difficult, if not impossible, to meet the standard. It is not technically possible to meet. In these areas the companies will petition OSHA for permission to have employees within the warehouse wear hoods which have a complete individual ventilation system, so the man will not be exposed to the atmosphere existing in that particular section.

OSHA's insistence has been on engineering controls and against the use of the protective equipment. These cases, and there are a good many of them, are going into the courts. We do and have introduced an exhibit along with our prepared statement which cites the example of one department in a particular company which had 21 employees on a three-shift operation: Total employment in the plant is over 500.

But for that one area of the plant to meet OSHA's standards, engineering studies showed the company would have to spend over $1 million approximately $200,000 or $250,000 per year in maintaining the equipment.

The cost per employee to meet the OSHA standard would be approximately $40,000, while personal protective equipment which would assure the employee's protection would cost approximately $500 per employee.

OSHA has turned down this company's request for utilization of the protective equipment, so this case, too, will go on through the Occupational Safety and Health Review Commission and on to the courts.

The CHAIRMAN. How about the employee acceptance of that personal protective equipment?

Mr. SHEEHAN. They will accept it in those areas because we have extremely well-ventilated hoods. It is almost like an air-conditioning system for the employee. They are more comfortable than they would be otherwise in that section of the shop.

The CHAIRMAN. What is the basic engineering?

Mr. SHEEHAN. This is a dust collection system that would bring air in and remove it from the plant. There would be many fans, blowers, and motors.

The CHAIRMAN. Is that the common system to the industry?

Mr. SHEEHAN. No. You will find this to an extent through every plant, but to put it in this one area, to the extent necessary because of the amount and volume of dust in the area—in a cleaning operation, a specific type of operation—is definitely impractical.

The CHAIRMAN. Does every foundry have an area that——

Mr. SHEEHAN. Not every foundry.

There are many types of foundries. There are brass, bronze, iron, and steel foundries and different types of processes within foundries.

You would find this in what would be called sand-casting foundries and foundries making relatively large castings.

The CHAIRMAN. Mr. Mann?

Mr. MANN. One of the things you are looking at, especially in a company like ours, is the particular type of work when you are making casting half the size of this room. The casting sits there for a week and when you pull it out, the sand is still clearly red. There is nothing you can get big enough to collect that dirt. Maybe it will be 3 hours a week when you have to use it. Many in our industry make

small castings and I can engineer or build a plant that would be almost like a hospital, but I need $15 million to $20 million to do it.

I am taxed 60 percent of my own earnings—48 or 50 percent Federal and 11 percent State income tax and corporation taxes. I'm allowed 10 percent tax credit with an 8-year writeoff on equipment or a 5-year accelerated writeoff, say, on pollution equipment.

In Switzerland, for instance, reinvested earnings are not taxed at all so long as they are reinvested in equipment.

In Japan you are allowed to write off steel mills in 3 years. If you really want the plants cleaned up like ours, we should have the same kind of tax relief and tax policy that foreign countries make.

The CHAIRMAN. This relates to what you ended with in your opening statement, the cost factor.

Mr. MANN. Yes. We would have to earn the money. American industry is not all that particularly profitable.

The CHAIRMAN. The tax consideration would provide an incentive for employers to make the capital expenditures necessary to improve health and safety of your plant, and is that what your final point was earlier?

Mr. MANN. If we had the same tax policy as, say, Switzerland, I would have 60 percent more funds to improve my operation than I presently have.

The CHAIRMAN. Making more of a tax expenditure than you have now. In other words, people would be generally helping to clean up that plant by way of a much reduced tax on your income.

Mr. MANN. To collect the dust, I cannot pick it out of the air, I have to collect it through tubes and systems and I have to dispose of it.

The CHAIRMAN. The tax policy would support the demand of the law. The law puts the demand upon you to protect your environment through capital expenditure, the 3- or 5-year writeoff——

Mr. MANN. Certain ones 5. But even that really is not accurate. With inflation to replace my present plant, equipment might be on the books for $3 million or $4 million, but the cost would be anywhere from $15 million to $18 million to replace it, and I have old equipment.

I have old designs. I cannot take advantage of new technology, so I have to basically make do with what I have. Many things I cannot control unless I start from scratch, which I cannot do now because of EPA dictates passed last year under the Clean Air Act. I cannot plan on building a plant in Pennsylvania until these rules are straightened out.

Are you aware of that?

That is what my lawyer tells me. He tried to get it for a company in Lancaster where I live, and it is at a standstill. Plants cannot emit anything. Nobody can build a plant right now.

Mr. SHEEHAN. With the Clean Air Act amendments and OSHA we are between a rock and a hard place.

The CHAIRMAN. Where is Wrightsville?

Mr. MANN. Between Lancaster and York, Pa. Right along the Susquehanna.

The CHAIRMAN. Are you familiar with the California experiment—you mentioned it.

Mr. SHEEHAN. Yes. My understanding is that Cal-OSHA will not inspect a company which has a detailed safety and health program and a good safety record as proven through statistics developed by Cal-OSHA or through the worker's compensation figure. But if incidence rates start rising, Cal-OSHA will conduct inspections.

From that standpoint, a part of our own recommended program is measured.

The CHAIRMAN. Part of your membership, I imagine, operates in States where they operate under a State safety plan, and others of your members are under the Federal OSHA plan. How do you compare the two, State enforcement and the Federal enforcement?

Is there a way to state any comparison?

Mr. SHEEHAN. I think overall you will find a little more reasonableness on the part of the States than you find within the Federal OSHA.

That is qualified by saying that there is unevenness on the part of Federal OSHA based on area and area directors. It is hard to make one general statement.

The CHAIRMAN. There is nothing about the system, State or Federal, that makes one stand out as superior or inferior? It really comes down to who was running the show?

Mr. SHEEHAN. That is it.

The CHAIRMAN. We will be examining this very closely. We might want to communicate with you on what is a very constructive and creative idea, the plan to develop a company-by-company plan for safety and health.

This we will be examining.

[The prepared statements of Mr. Sheehan and Mr. Mann follow:]

STATEMENT OF THE
CAST METALS FEDERATION
ON
OCCUPATIONAL SAFETY AND HEALTH PROGRAMS
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
SENATE HUMAN RESOURCES COMMITTEE
BY
CHARLES T. SHEEHAN AND ARTHUR K. MANN
OCTOBER 4, 1978

Mr. Chairman and members of the Subcommittee, my name is Charles T. Sheehan. I represent the Cast Metals Federation.

The following trade associations in the foundry industry participate in the Cast Metals Federation: Iron Castings Society, National Foundry Association, Steel Founders' Society of America, Non-Ferrous Founders' Society and the Investment Casting Institute.

Joining in this testimony is Arthur K. Mann, General Manager - Vice President, Riverside Foundry Division, Donsco, Inc., Wrightsville, Pennsylvania.

Our industry is comprised of approximately 4,400 individual units, which in 1976 produced over 18 million tons of castings having a value in excess of $20 billion. Employment in the industry exceeds 400,000. Eighty (80) percent of the firms employ less than one hundred (100) persons.

Foundry products become components of such diverse facilities and equipment as military tanks and ships; oil and natural gas exploratory, production, processing, and distribution facilities and equipment; electrical power generation and distribution facilities and equipment; coal mining equipment; construction and mining machinery; railway equipment; auto and truck engines, transmission and drive train components; farm equipment; and nearly all large industrial machinery, valves, blowers, etc.

At the outset, we wish to express our appreciation of the difficult assignment the Subcommittee has undertaken in reviewing and recommending policies which seek to improve existing federal workplace safety and health programs. It is our belief that workplace health and safety should be a prime objective for both private industry and government. In addition to basic humanitarian reasons, job safety and health is good citizenship and good business.

No responsible person can take issue with the objectives of regulatory safety and health programs. Responsible employers do not object to them. In fact, numerous businesses have had successful, ongoing voluntary programs in these areas for many years. The concern of many employers and employees with the principal regulatory safety and health program, namely OSHA, is that it is ineffective based on its own record, very costly without results and therefore inflationary, and by its legalistic and adversary enforcement, has widened the division between citizens and their government.

At a Cast Metals Federation conference earlier this year in Washington, D.C., at which Basil Whiting, Deputy Administrator of OSHA was a speaker, more than 200 foundries were represented. The audience was asked "How many of you have had inspections by OSHA once?" About 100 percent raised their hands. About sixty percent had been inspected twice and about forty percent three times. Even though not asked, some volunteered that they have been inspected four or five times.

We mention the above by way of pointing out that our industry has felt the impact of OSHA through inspections, penalties, fines and extensive expenditures for abatement or compliance. At the same time, it might be said that there has been little in the way of a reduction in the injury or severity frequency rate for the industry which could be directly attributable to the efforts of OSHA. Results from the health or hygiene area are more difficult to assess at this early stage. Generally, however, it is the industry view that OSHA ignores cost and energy effectiveness in establishing health standards, some of which are based on questionable data. OSHA also insists upon an engineering approach to meeting these standards to the point of requiring expensive litigation before giving way to the argument of economic feasibility. (See Exhibit A -- Letter of Dalton Foundries, Inc., Warsaw, Indiana, to OSHA as a common example of this arbitrary approach, and which federal courts have taken exception to in the Continental Can Company and Weyerhaeuser Cases.)

If there is one common attitude within our industry, it is that of scrubbing the present OSHA and all of its programs and starting over.

This will be said to be impractical and a waste of money and time, but when one considers the money and time being spent now in an attempt to make an unworkable concept viable, this idea of starting from the beginning appears to be a superior alternative.

Undoubtedly, the major change could not be done administratively and would require legislative changes as well.

In starting over, we suggest that the admonition to employers to provide a safe and healthful workplace for their employees be limited by a statement that a "safe and healthful workplace" is not intended to mean a "zero-risk" workplace.

We further suggest that the timetable which was spelled out for OSHA to establish regulations and standards be restated in the form of goals and objectives. That is,

the directive to OSHA would be one of achieving a gradual reduction in accident and injury rates over a period of years along with similar incremental improvements in hygiene or health levels; that such be accomplished with the primary emphasis on consultation and education with the major motivating factors in the form of incentives for both employers and employees. Of necessity, there would have to be standards and regulations, but such would be adopted after thorough study and analysis, including energy and economic cost-effectiveness studies. Fines and penalties would be assessed only for willful violation of standards and not for technical violations, which is the policy prevalent today.

We attach two specific examples which clearly show the manner in which incentives for employers and employees can result in a dramatic reduction in accident and injury rates. Both examples were submitted in the Idea of the Year contest of the National Foundry Association in 1977, have been given widespread distribution in our industry and have been adopted by a substantial number of foundries who achieved similar improvements. (See Exhibits B and C)

In both cases the incentive for employers were improved worker's compensation rates; and for employees, modest non-cash bonuses. Both were accomplished through motivating employees by means of improved communications, training and education, and peer pressure - all buttressed by an intense management commitment.

The programs may appear simple but require dedication and hard work. They are also examples of what has been and can be accomplished when companies stop spending their time, money and efforts in getting their plants in condition to pass an OSHA inspection and concentrate on working with and through their employees to improve their safety records and workplace conditions.

Skepticism characterizes this industry's attitude toward OSHA. The industry's concern is well-founded. In November, 1975, foundries were named as the object of the OSHA's first National Emphasis Program (NEP).

Initially, the foundry industry looked upon the NEP as a constructive step toward increasing overall plant safety and entered wholeheartedly into its planning at

OSHA's invitation. Countless meetings were held in Washington and other cities with OSHA staff, industry personnel, labor and public representatives on the various committees established by OSHA.

The foundry industry's objective during NEP planning was thorough education of OSHA personnel in foundry operations and in hazards identification.

A key element was the analysis of the number and type of the recordable injuries in individual foundries. Special attention was then to be given these particular workplace sections with strategies to minimize causes.

These and other industry suggestions, such as in-plant training of OSHA personnel and inspecting on a "worst-first" basis were either discarded or totally ignored. There was no emphasis on inspecting first those foundries with the poorest injury frequency rates. There was no emphasis on the type of injuries occurring and what could be done regarding those injuries.

Foundries with outstanding safety records were inspected right along with those having poor records and were cited and fined for violations of the myriad of OSHA regulations despite their splendid records and despite the fact that

the regulations had no direct bearing on safety.

When NEP was announced, OSHA said that within one year every foundry in the country would be inspected at least once. OSHA made the gross error of believing that there were only 1500 foundries in the country. When we advised them that there were 4,400, OSHA stubbornly maintained that the original timetable would be met. As it turned out, organizational and training efforts took fifteen months.

The National Emphasis Program inspection phase was inaugurated with much fanfare finally on March 15, 1977.

During the period March 15, 1977, through January, 1978, OSHA reports that 165 foundries were inspected by federal OSHA personnel. No figures are available relative to NEP inspections made by the various states authorized to make such inspections.

All in all, the program was a disaster and, according to reports from OSHA the National Emphasis Program has been dropped, although OSHA will continue to inspect about 30 foundries per month.OSHA also says the nature of its inspections will be modified, but from what we have

heard in February and March, foundry inspections are still of the "wall-to-wall" variety.

One of the critical objections of the foundry industry regarding OSHA inspections, whether of the NEP variety or not, has been the inconsistency or uneveness of the inspections. Some are conducted in a professional manner, with a common sense approach. Others are conducted in a punitive "nitpicking" mode with as many violations as possible found - and with as many of these rated as "serious" violations as the book allows. The increase in the number of violations rated "serious" increased substantially in some jurisdictions immediately following the directive to the field that there would be no fines for "non-serious" violations.

The degree of over-zealousness will vary depending on the attitude of the particular area director and, in some cases on the attitude of individual inspectors. While the decision to eliminate 1,100 non-relevant OSHA standards is a highly desirable one, this action is only cosmetic and does not deal with the basically unworkable problem of attempting to base a safety and health program primarily on enforcement of standards. In fact we have not seen notice as of this date that a single one of the 1,100 has been officially revoked.

More recently, OSHA has seemed to shift its emphasis to the development and promulgation of standards in the health area. These new regulatory ventures are expected to impose costs on business equal to, if not exceeding, safety standard expenses.

Even prior to the onset of these new health standards we find foundries allocating 20% of their total capital expenditures to OSHA required equipment. Added to this are significant costs for operation and maintenance of this non-productive equipment.

Our industry's alternative suggestion to the current approach which establishes government as the prime factor in improving occupational safety and health would be to place the responsibility for employee safety and health on the employer where it really belongs, with the federal government providing positive incentives and assuming a supportive, educational, and research role rather than an adversary and enforcement role. Here is how such an approach might work:

(1) Each employer would be required within a reasonable period to establish a current and specific risk analysis of his workplace and all jobs involved in his operation. He would accomplish this by means of injury and illness investigations and analyses designed to show the specific causes of each incident. The employer's knowledge then would enable him to set up specific countermeasures to eliminate or reduce these risks. He would define needed safeguards and inform his employees of the hazards involved for each job and train each employee to avoid unsafe actions and thus work safely within the risk.

(2) Each employer would then develop an occupational safety and health program tailored to the specific needs of his operation. This would be expressed in terms of objective criteria such as specific injury or illness reductions to be achieved in a stated time period and with specific programs to be implemented. The safety and health program would be submitted to a regional OSHA office for review, comment and approval.

The employer's program might or might not reference standards which, if used, could be selected from consensus, professional society or trade associations, or requirements

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such as threshold limit values of toxic substances where health-related environments were involved. Essentially, each program submitted would be the best possible program each employer could prepare, related to the risks of his specific workplace. Professional safety and health consultation would be available to any employer who desired such assistance and would be provided by OSHA or if a private consultant were retained, through tax credit. Participation of employers and employee representatives in preparation of the program would follow along agreed contractual labor relations practices.

(3) The employer would submit the occupational safety and health program to OSHA for acceptance. A Review Board composed of safety and health professionals, industry and labor representatives would be empowered to adjudicate any conflicts. Once accepted, the program would be reviewed on a biennial, triennial or other reasonable period for updating and determination of effectiveness as evidenced by bottom-line results; that is, the trend or level of occupational safety and health incidence rates reported annually or semi-annually.

(4) The occupational safety and health program, as an essential part, would contain a comprehensive training program for hourly and supervisory personnel involving job safety analyses, stipulating standard job procedures, and specifying potential health and safety hazards to be avoided. The program would also be required to provide for investigations to determine specific causes of injuries and illnesses, reporting and record keeping, and implementation procedures (all internal) to assure that corrective measures are instituted.

(5) Once an employer's occupational safety and health plan was accepted, and if semi-annual or annual reports to OSHA demonstrated satisfactory performance, the continued acceptance of the plan would follow without need for compliance inspections. This situation would prevail so long as the employer showed an annually improving trend, or remained in the upper one-fourth with respect to incidence rates for his industry and size of business.

Failure to improve within a reasonable period would require a review of the plan to determine what was lacking and revision to implement corrective actions. This means of achievement would permit the most flexibility and the most cost-effective solution that an employer and his

employees could devise. It would put a strong element of cost competition and profit incentive into compliance. It would not require application of standards which were not relevant, nor expenditures lacking merit to improve safety and health.

(6) Employers whose safety and health records were poor -- in the lowest (worst) quarter or bottom half compared with similar organizations in their industry -- would receive OSHA inspections and consultation (not citations or fines) and would be required to amend their occupational safety and health program where analysis of specific causes or poor implementation showed a need for improvement. Fatalities, hospitalization of five or more employees, or employee complaints would require a visit by an OSHA compliance official as is now the case. Willful failure to perform in accordance with the accepted occupational safety and health program would result in fines or appropriate legal action to cause compliance.

The procedure described above would eliminate the manpower, time and cost of compliance investigations except for those establishments specifically identified

as being substandard or in the bottom quarter of their grouping. This would shrink the base of establishments to be inspected and provide an outstanding opportunity for OSHA to reduce personnel. Funds no longer needed for enforcement could be spent on education, research and support, or budgets reduced to cut the costs of government. Inspections would be self-performed by each employer so long as safety and health rates achieved were at an acceptable level as stipulated in the approved occupational safety plan submitted. A limited staff of highly competent, professional compliance officers could be balanced at a staffing level required to achieve attainable levels or rates of improvement and this could be set on a time schedule so that annually, U.S. occupational safety and health could be improved at a sustainable and feasible rate.

The costs to the public and private sectors would be tremendously reduced because useless and wasteful activities and expenditures now addressed to meeting often meaningless standards would not be required. The motivation for industry, labor and government to adopt

such a plan should be great. The motivation of the present OSHA approach is negative since employers having excellent safety and health performance still receive OSHA citations, fines and abatement programs. Nor, on the other hand, does a "clean bill" from an OSHA compliance inspection correlate with good occupational safety and health performance. For industry, a results-oriented program with cooperation and help, not a grim adversary enforcement program sterile of useful results, would be achieved. For labor, an effective, dynamic, progressive results-oriented program that improves with time would result. For government, it would provide a manageable program which harnesses the best voluntary effort and expertise of industry, is efficient in use of manpower and capital, makes manageable the task of standards development, reduces personnel and budget requirements, and most of all generates improved safety and health performance.

An additional incentive for companies to improve their occupational safety and health performance would be to allow them to deduct for tax purposes all OSHA compliance expenditures. These expenditures do not normally increase

the productivity or the life of the equipment or machines nor their value, and thus represent a direct burden. Small businesses especially would benefit from this provision, but it would be helpful to all businesses.

Federal Reserve Board Chairman G. William Miller advocates a one year writeoff for federally mandated equipment. Mr. Miller also believes that such instant expensing for OSHA-required equipment, and other accelerated depreciation measures, to be "the most important economic policy initiative we could possible take at this time." The foundry industry agrees completely with Mr. Miller.

CONCLUSION

We would respectfully call the Subcommittee's attention to a report issued by the House Committee on Government Operations (House Report 95-710) entitled "Failure to Meet Commitments Made in the Occupational Safety and Health Act." This report echoes many of the recommendations

on injury analysis and priority determinations made in this statement.

Thank you for this opportunity of testifying. We hope that the efforts of the Subcommittee will be successful in redirecting existing wasteful and ineffective federal safety and health programs so that, in fact, occupational injury and illnesses are reduced in our country.

PREPARED STATEMENT OF ARTHUR MANN

Mr. Chairman and Members of the Subcommittee, my name is Art Mann. I want to thank you for the opportunity to speak today. I am the Vice-President and General Manager of the Foundry Division of Donsco, Inc., of Wrightsville, Pa. We employ 450 people in four separate plants. We are in the business of casting and machining iron and aluminum parts for valves, engines, pumps, outdoor lights, electrical fittings, machine tools, hardware, electric motors, gears and gear boxes.

You and I agree on the aim of OSHA, that the American worker should have a safe and healthy place in which to work. We disagree on how to accomplish it. After seven years OSHA has created confusion, resentment and resistance while producing mediocre results at best.

The most positive result from the OSH Act has been to heighten the nation's consciousness of the need for safer work places. But by its adversary policy of surprise inspections and fines for standard violations, OSHA has discouraged cooperation and encouraged resistance. U.S. District courts in the Barlow and Weyerhauser decisions have declared it unconstitutional. The Inter-Agency Task Force has concluded that it is ineffective in reducing accidents.

The Task Force has found that the present government regulations can impact 25 percent of injuries at most. Also only 11 percent of American industrial workers are covered by inspections annually. Therefore OSHA's final impact on injuries can be only 3 percent. Statistically speaking, as well as psychologically, the present policy can't work.

Senator Williams has claimed the OSHA approach would work if people were committed to make it work. But the Foundry Industry did try to cooperate. It offered its technical society services and those of its four major trade associations to train OSHA inspectors to increase their expertise in recognizing hazards peculiar to the foundry industry. This training would have involved using operating foundries as the training ground. OSHA officials refused to waive the penalty system for violations seen while conducting practice inspections.

Not only does the private sector resent OSHA. According to the Task Force report, Federal agencies have resisted enforcement efforts of Section 19 (part of the OSH Act pertaining to federal workers) as vehemently as the private sector. Federal agencies too, refuse to admit inspectors, resist OSHA inspectors and complain that OSHA inspectors are inadequately trained to recognize real hazards.

The Inter-Agency Task Force's initial report is thorough and factual. If the study and its findings had been available in 1970 the OSHA law would not have been written and passed in its present form.

The Task Force's findings confirm our own conclusions:

1. Regardless of type of industry, similar-sized firms exhibit wide variations in incidence rates for the same activities. Many factors are likely at work, but this finding suggests that improvement in controlling injuries is possible, even in industries traditionally considered hazardous.

2. Programs which most successfully reduce job-related accidents and illnesses incorporate numerous factors—such as an effective organizational structure for systematizing safety and health—which go beyond compliance with physical standards and are difficult to obtain solely through direct regulation.

3. No matter how well designed it is, a strategy of government inspections to enforce physical standards will have a significant but limited impact by itself.

The report continues saying that "These findings lead inexorably to the conclusion that dramatic improvements in workplace safety and health are most likely to be secured through the shared efforts of government, employers and employees and that such improvements must be these groups' mutual responsibility."

My own experience with OSHA has been the same as others. We have had three inspections. My attitude toward the inspector was one of anger and outrage. Here was a man whom Congress had given the power to enter my plants and apply 4500 standards and fine us for each and every violation of each and every rule.

I was at his mercy with no appeal. There is no way that we could even understand those rules much less comply with them. That man had the power to essentially write a check for whatever amount he so desired as he walked through the plant. Until that provision of the OSHA law is revoked will never get the support and commitment you want, at least from me.

The inspections pointed out problems which we were already aware of, but permanent solutions required a major revamping of the foundry process equipment. To meet the OSHA and EPA standards we borrowed nearly $1,000,000 for a five year plant improvement program that will end next year. In the meantime, OSHA offered little help but much petty harassment in terms of fines and lawyers briefs. At no point did they show any interest in our accident rates or our programs to control injuries.

We found they emphasized areas that were not major injury areas. A good example deals with our iron pourers. Iron bounces off moist skin without burning. The incidence of burning in the job is low. But OSHA inspectors insisted our iron pourers wear protective suits at all times. Nothing we could find or fabricate worked. It made the task more difficult and dangerous. Finally, one iron pourer refused to wear the protective coveralls and quit. All others threatened to follow. Now the rule dangles. The men do not wear protective clothing but we remain vulnerable to fines if an inspector should so choose. The only way we can guarantee no burns in this job is to eliminate the job with automated pouring, a costly alternative.

Perhaps the future lies in what foundries have done in Pennsylvania. In 1976 the Pennsylvania Manufacturers Insurance Company dropped all Pennsylvania foundries' workmen's compensation policies because of a drastic change in the state law concerning eligibility of workers for silicosis benefits. Insurance was unavailable from any private source and we, like the others, were forced into the State workmen's insurance fund.

Insurance rate increases were granted at over 30% per year and the cost became significant.

In response to these problems Pennsylvania foundries formed a Pennsylvania Foundrymen's Association. The association has, as of today started up its own Bermuda insurance company with a capitalization of $250,000 to provide insurance for foundries in Pennsylvania.

We will have the Fred S. James Co. contracted to provide accident/disease prevention programs to all foundries insured with the group. The programs will be specifically tailored to the unique problems of foundries. Within this framework the aims and goals of OSHA will be accomplished.

EXHIBIT A

The Dalton Foundries, Inc.
Warsaw, Indiana 46580

July 20, 1978

TELEPHONE (219) 267-8111

Mr. Thomas E. Levenhagen
Area Director, U. S. Department of Labor
Occupational Safety and Health Administration
46 East Ohio Street, Room 423
Indianapolis, Indiana 46204

Re: OSHA Citation J7377-20

Dear Mr. Levenhagen:

As indicated in my letter of June 27, 1978, The Dalton Foundries, Inc. wishes to take issue with the ruling by Mr. Barry J. White, Region V Administrator, that the use of airline hoods is an unacceptable method of gaining compliance with individual exposure standards as set forth in table G-3F029CFR1910.1000. It is our position that the arbitrary ruling by Mr. White and the Occupational Safety and Health Administration does not employ the concept of "economic feasibility" as suggested in the Eighth Circuit Court ruling re: Continental Can Company.

The often stated goal of the Occupational Safety and Health Act is to provide a safe place of employment for each American worker. As the record will demonstrate, The Dalton Foundries, Inc. has consistently been able to achieve that objective. This has always been done while maintaining our responsibility to employees, stockholders, and the community. The commitment has been fulfilled with the realistic application of economic logic and common sense.

Since 1974 our company has spent over one million, six hundred fifty thousand dollars ($1,650,000.) on environmental controls. Using conventional engineering methods versus airline supplied hoods will require a first year expenditure in excess of one million dollars ($1,000,000.) (attachment # 1) and accompanying subsequent annual maintenance and operating costs of approximately two hundred fifty thousand dollars ($250,000.) (attachment # 2) to bring the cited area into compliance. This is an area of approximately seven hundred (700) square feet in which twenty-one (21) people are employed over three shifts.

The Dalton Foundries, Inc. respectfully submits that such a monetary outlay as necessitated by the installation of conventional environmental control methods in this area is "economically infeasible" and further, a poor use of capital. We believe that workers in this area can be afforded greater protection at a much lower cost through the use of airline supplied hoods to which your Mr. Barry White objects.

The Dalton Foundries, Inc.
Warsaw, Indiana 46580

Engineering evaluations conducted jointly by The Dalton Foundries, Inc. and Kirk and Blum of Indianapolis, an independent ventilation consulting firm, confirmed that at a minimum, a suitable conventional ventilation system in the cited area would have an installation cost of approximately eight hundred thousand dollars ($800,000.) (attachment # 3). Additionally, the high energy inefficient system would have an annual operating cost of approximately two hundred fifty thousand dollars ($250,000.) at current energy rates.

In other words, the Occupational Safety and Health Administration is proposing that a system be installed which will cost in excess of forty thousand dollars ($40,000.) per affected employee, even though a more efficient system can be provided for less than five hundred dollars ($500.) per employee.

If equal or greater protection than required by OSHA can be afforded at less cost, then it is our position that this is clearly the path that should be followed.

The use of the airline supplied hoods such as the white cap system manufactured and distributed by the 3M Company affords complete protection against dust inhalation, while at the same time, offers excellent eye and face protection, and will no doubt effect a modest reduction in noise levels. To invest the first year cost of one million, thirty-two thousand dollars ($1,032,000.) to bring the cited area into compliance is the equivalent of adding in excess of seventy-five (75) full time employees to the payroll and requiring them to do absolutely nothing. Each subsequent year of operating costs of approximately two hundred fifty thousand dollars ($250,000.) is the equivalent of maintaining approximately twenty (20) of those employees on the payroll and requiring them to do absolutely nothing. We believe that demonstrates "economic infeasibility".

We respectfully request that your office review the facts presented here supporting our contention that airline hoods are the most economic and efficient method presently known. We would welcome the opportunity to meet with members of the OSHA staff to review the question in greater detail.

Sincerely,
THE DALTON FOUNDRIES, INC.

Kenneth L. Davidson

Kenneth L. Davidson
Vice President Industrial Relations

KLD/lt

Attachments

bcc: Clarence Hodges
46 East Ohio Street, Room 447
Indianapolis, Indiana 46244

1st PLACE WINNER

EXHIBIT B

NATIONAL FOUNDRY ASSOCIATION

P. O. Box 128 • Westchester, Illinois 60153

1977 IDEA OF THE YEAR CONTEST

Entry Blank

Name of Company PACIFIC STEEL FOUNDRY CO.

Address of Company 1979 N.W. Vaughn, PO Box2827 Portland, OR 97208

Number of Plants in Company ~~ONE~~

Number of Employees High - 101 , Low 74, Current 74

Union Representation, if any International Molders and Allied Workers Local 139

Ideas are limited to the Employee Relations function in reducing accidents caused by unsafe acts of employees. How to make the employees "safety minded". May include the changing of attitudes and the motivating of employees to work safely.

Name of Individual Submitting Entry Robert J. Warren Robert J Warren

Title of Individual Submitting Entry Plant Engineer and Safety Director

Date Entry is Submitted 8-10-77

ENTRY DESCRIPTION

(Space below and on reverse side is provided for your use in explaining briefly the *IDEA* being submitted for consideration. Attach supporting documents explaining the policy and procedures used in implimenting the *IDEA* and its success.)

THE PROBLEM: TOO MANY CARELESS ACCIDENTS

1976 was a bad year for injury accidents in our shop. The number of accidents increased by 40% over 1975, from 42 to 59. 23 of those 59 accidents involved in lost time, resulting in over 500 lost work days.

THE IDEA: DEVELOP A SAFETY AWARENESS THROUGHOUT THE PLANT BY OFFERING AN INCENTIVE FOR WORKING SAFELY

Safety '77 has been the program developed at P.S.F. which has reaped enormous benefits in terms of both profit and especially inproved employee morale.

STEP 1: Goals set by top Management and Safety Director.

1. Reduce number of injury accidents to a maximum of 25 for 1977.
2. To have no individual with more than 2 injuriesduring the year.
3. To have everyone committed to the safe work effort.

STEP 2: The heart of the program - The Incentive.

The Incentive is the thing that really has everyone pulling together. The Plant was divided into three areas: 1. Foundry Dept, 2. Finishing Dept: 3, Maintenance Dept.

Every month one of these departments works without an injury, each employee in that department earns a scrumptious lunch prepared by a local delicatessan. The lunches are passed out by the Safety director and the supervisors.

(use other side if neccessary)

The pride in working safe which this incentive has generated has been intense: Each employee is keeping an eye out for his fellow worker and helping each other out in order that as one employee put it: "So that they don't mess up our free lunch:"

As an added incentive, if any department can go three months in a row without an accident, a special bonus is awarded each man in that department.

STEP 3: Employee Involvement

1. Bi-weekly "one-on-one" 10 minute safety meetings between individual supervisors and an employee representative from a specific area of the shop. Three or four key ideas are generated at these meetings, and they are posted on the safety bulletin board for everyone to read and discuss.

2. Monthly safety meetings (30 minutes long) are held involving the company president, general manager, two supervisors, two employees, the maintenance supervisor and safety director. This forum allows for a direct exchange of ideas between the employee and top management and has the key people involved to quickly respond to any safety problems which are brought up at the meeting.

THE RESULTS: SUCCESS!!!!

1976 Totals For seven months of 1977 through July 31:

Accidents 28
Lost Time Accts. 13
Lost Work Days 266

1. The Foundry dept. worked the first three months of the year with NO accidents and has a total of 3 for the year. NO LOST WORK DAYS!.

Accidents 27
Lost Time Accts 6
Lost Work Days 250 +

2. The Finishing Dept. worked May, June and July with NO Accidents and has a total of 5 for the year ONLY 1 LOST WORK DAY!

Accidents 4
Lost Time Accts 1
Lost Work Days 13

3. The Maintenance Dept. has worked ALL OF 1977 WITH NO ACCIDENTS - NO LOST WORK DAYS !!!

Workers Compensation paid over $42,000 for medical and compensation for injury accidents incurred in 1976. Thus far in 1977, only $1,350 has been paid including reserves which may be reduced later.

The special bonus given out to all of our employees was intended to get the workers' family involved: 14-16# turkeys were given out.

The total cost for lunches and special bonuses through seven months has been $2,200, a small price for the benefits we received.

Our goal at the beginning of the year was to more than halve the number of accidents - down to 25. After seven months and only 8 accidents and 1 lost work day we are confident that we will do much better than that. By simply showing that top management cares enough to offer an incentive and by taking production time to solicit their safety ideas, we have achieved remarkable results.

The ultimate goal of "0 accidents" doesn't seem like such a pipe dream any more.- Perhaps in 1978?

EXHIBIT C

NATIONAL FOUNDRY ASSOCIATION
P. O. Box 128 • Westchester, Illinois 60153

1977 IDEA OF THE YEAR CONTEST

Entry Blank

Name of Company H. C. Macaulay Foundry Company

Address of Company 811 Carleton Street. Berkeley, Ca. 94710

Number of Plants in Company 1

Number of Employees 138

Union Representation, if any International Molders and Allied Workers Union

Ideas are limited to the Employee Relations function in reducing accidents caused by unsafe acts of employees. How to make the employees "safety minded". May include the changing of attitudes and the motivating of employees to work safely.
IDEA: Communication between Management and Workmen and expand workmen responsibility in safety, health, and housekeeping matters.

Name of Individual Submitting Entry Bruce Paltenghi Bruce Paltenghi

Title of Individual Submitting Entry Safety Director

Date Entry is Submitted 9-26-77

ENTRY DESCRIPTION

(Space below and on reverse side is provided for your use in explaining briefly the *IDEA* being submitted for consideration. Attach supporting documents explaining the policy and procedures used in implimenting the *IDEA* and its success.)

The following Acts have been undertaken or expanded upon by H. C. Macaulay Foundry during 1977.

1. General Safety Committee consists of Management and Supervisory personnel. The committee meets at least once per month.

2. Workmen's Safety Committee was expanded and now includes four representatives from management and seven workmen representatives (this group includes at least one representative from each foundry department including the shop committeeman chairman).

A. The President and General Manager of Macaulay Foundry serves on the Workmen's Committee (he also serves on the General Committee)

B. Workmen's Committee meets at least once per month, however for special events (ie. discuss Cal-OSHA inspection etc.) this frequency may increase.

C. Workmen meetings place top management in direct communication with workmen on matters of safety, health, maintenance, and production.

D. At the meetings stress is placed upon individual's personal responsibility toward achieving a safe and healthy workplace. This personal responsibility is coupled with a plant wide concept of a "team" effort.

E. Recommedations from the workmen representatives are acted upon by maintenance and engineering as soon as possible.

3. Efforts have been undertaken during the year to improve workmen training and education in safety and health areas.

A. This is achieved by offering information to all workmen through the workmen's committee, personal discussions, training classes, and safety brochures attached to paychecks.

4. A further effort to improve plant communication, involves a personal discussion held with all employee's returning to work from an occupational injury. When the injured has returned, a discussion is held with the injured, the Safety Director, and the Workmen's committee member from the injured's department. This meeting discusses the cause of the injury and training in preventing another injury. Additionally, the injured becomes informed of his workmen's committee representative.

5. In recognition of reduced injury rates, improved housekeeping, and higher morale a "Spirit of Teamwork Program" was initiated. Season tickets were purchased for all Oakland Raider and San Francisco 49ers home football games. Each week a drawing is held in the shop with two winners-each receiving two tickets to that week's home game. All workmen are eligibile provided they work the day of the drawing. Winner's names are posted, along with schedules of the games, in the shop.

RESULTS:

1. The number of injuries (in both frequency and severity) is reduced in 1977 from 1976. The following rates are decreased in 1977 from 1976: all injury incidence rate, lost workday incidence rate and severity incidence rate.

The following chart compares the first 8 months of 1976 with 1977. All rates are calculated on a factor of 200,00.

	January 1,1976-August 31,1976	January 1,1977-August 31,1977
# Recordable injuries	61	33
# Lost workday cases	28	6
Total # lost workdays	986	17
All injury incidence rate	85.7	43.9
Lost workday incidence rate	39.3	8.0
Severity incidence rate	1385.2	22.6

2. Our Workmen's Compensation loss ratio calculated through July, 1977 equals 4.6%. This figure represents benefits paid for indemenity and medical expenses as a percent of our premium paid over the same period. Total benefits paid includes reserve funds set on open accounts and amounts paid on closed accounts.

The CHAIRMAN. We might want to communicate with you on this. Thank you.

[The hearing was recessed at 1:45 p.m., to reconvene Thursday, October 5, 1978, at 9:30 a.m.]

35-644 O - 79 - 14

OVERSIGHT ON THE ADMINISTRATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT, 1978

THURSDAY, OCTOBER 5, 1978

U.S. SENATE,
SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams and Javits.

The CHAIRMAN. We will come to order. We welcome Mr. Biemiller and his able associates.

I would like to say this is our final day of our hearings on the implementation and enforcement of the Occupational Safety and Health Act of 1970. We have endeavored, through these hearings, to understand our occupational safety and health program and to examine the root causes for its successes and failures. It is our opinion as we must gain a thorough understanding of these problems if OSHA is to reach its full potential and if America's working men and women are to have the safest, most healthful working conditions which we can provide.

Although the Government can assist and encourage employers in their efforts, one fact is clear: The responsibility for providing safe workplaces belongs to the employers. While the Government can assist employers in achieving this objective and can encourage employers to provide safe workplaces, the Government cannot unduly complicate this task through bureaucratic nitpicking and through regulations which are impractical, impossible to understand and which are economically infeasible.

In the end, we all share the same goal—assuring the safety and health of our workers. This goal can and must be achieved. Throughout these hearings, nothing has been said which would make me believe that our Nation has lost sight of this objective.

The CHAIRMAN. We are very pleased to begin our final day of hearings with the statements from the American Federation of Labor and Congress of Industrial Organizations. Mr. Andrew Biemiller, director, department of legislation, appropriately is front and center, center stage. Mr. Biemiller, we welcome you again.

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY GEORGE H. R. TAYLOR, DIRECTOR OF AFL–CIO DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH, AND F. HOWARD McGUIGAN, LEGISLATIVE REPRESENTATIVE

Mr. BIEMILLER. Thank you, Mr. Chairman. My name is Andrew J. Biemiller. I am the director of the department of legislation of the AFL–CIO. I am accompanied by Mr. George H. R. Taylor, director of the AFL–CIO department of occupational safety and health, and Mr. F. Howard McGuigan, legislative representative.

Our comments on the implementation of the OSHA Act will, I hope, be constructive. I shall, however, take this opportunity to defend this act against the diverse and mounting efforts to weaken it to the point where it ceases to be an effective instrument to protect 60 million American working men and women against the safety and health hazards of their jobs.

Nearly 7½ years have passed since the Occupational Safety and Health Act became effective. Its history from that time to the present can be accurately summed up by concluding that this is a law that was never given a real chance to succeed in its aims until the advent of this administration under Secretary Ray Marshall and Assistant Secretary Eula Bingham.

The basic reason is not difficult to find, although the means of preventing OSHA from effectively carrying out its congressional mandate have been many and diverse. They have ranged from a weak and politicized implementation during previous administrations, to the all-out attacks on the act in the Congress, the delaying litigation following almost every OSHA health standard thus far promulgated, the intervention into the standards-making process by the economic agencies of the President, and the lack of adequate budgets to make this act felt among the 4.5 million workplaces under its jurisdiction. Business simply does not want OSHA.

Every Labor-HEW appropriations bill since 1972, has been forced to run the gauntlet of riders introduced at one time or another in both Houses of the Congress to place numerical restrictions on OSHA's capability to enforce the act by denying funds to inspect small businesses. For fiscal years 1978 and 1979, Congress has language in the Labor-HEW appropriations bills which deny OSHA authorization to expend funds to inspect agricultural workplaces with 10 or fewer employees.

These incursions into the substance of the act by another committee of Congress, without hearings before this committee which has jurisdiction of OSHA, have not only resulted in an instant threat to the effective enforcement of the act, but have resulted in inordinate demands on the time and manpower of the Occupational Safety and Health Administration to adjust each year to a new congressional imperative—time that should be spent carrying out the purposes of the act.

In addition, other congressional committees, such as the Small Business Committee of both Houses, have moved into the scene, not

only by holding oversight hearings on the impact of OSHA on the small business community, and attempted most recently to exempt small employers with allegedly safe workplaces from coverage of the act by means of a rider to a small business bill.

We think it is time that the myth that there are accident and illness-proof workplaces under coverage of the OSHA Act should be laid to rest. We have received from the Occupational Safety and Health Administration a list by name and by State of each worker in 33 States who has met death at his job thus far in fiscal year 1978 in plants where there are 10 or fewer employees.

Mr. Chairman, 340 workers met death in these workplaces. If the 17 section 18 States which operate their own OSHA programs were included, the total would be much higher. It should be stated that these data do not report either the total lost-time injuries in these States included in the OSHA breakdown, nor occupational illnesses.

There are few, if any, inherently safe workplaces; some are less hazardous than others. And there is no reason why the Congress should seriously consider any proposals to limit coverage of the act to employers of any size or description. Every worker is entitled to the protection of this act.

While there are legitimate concerns expressed by the Congress regarding the impact of OSHA on small employers, we urge this committee to keep in mind that the first and foremost aim of this act is to secure a safe and healthful workplace for American workers, and that every effort should be made to assist in achievement of this policy goal.

We should like to have the record show that organized labor is not unconcerned about the special problems of small business under OSHA. When this act was still before the Congress, it was organized labor who helped secure the economic assistance provision for small employers, when their trade associations were not in evidence. It is to the credit of the Assistant Secretary for OSHA that the agency has responded to the need of both workers and management for such training and education, by the undertaking of the new directions program which was funded for the first time in fiscal year 1978.

We believe that OSHA has, in effect, gone to the well for small business.

One: In its common sense program, adopted last year, OSHA is regularly inspecting only the more hazardous industries, leaving most small businesses with an 80-percent chance of not being inspected at all, or unless there is a worker complaint and/or death or multiple hospitalization.

Two: It exempts employers with 10 or fewer employees from recording occupational deaths, injuries, and illnesses, on the log. This means that only about 1 in 10 employers are required to fill out this form.

Three: It has reduced, or eliminated, civil assessments for nonserious violations.

Four: It does not cite small employers—or large ones, for that matter—for failure to prepare or for misrepresentation of injury

data on OSHA form 100, even though section 17(g) of the act requires either a civil penalty and/or a prison term for the latter infraction.

Five: It has reduced the BLS sample of workplaces upon which the annual statistical summary of occupational injuries and illnesses is based. The present sample only covers 90,000 workplaces, and is likely to be reduced to 60,000, regardless of the large probable error inherent in such small samples.

Six: It is completing a revision of the section 6(a) consensus standards, during which time none of the standards contemplated for removal are subject to enforcement in the field.

Seven: It has provided onsite consultation programs with emphasis on small business in all the States, including those still under Federal pre-emption, as well as the section 18 States.

Now, all of these actions were initiated by the Assistant Secretary in response to the demands of the smal business community, as transmitted to the Congress, for more sensitivity to their special problems.

It is our opinion that both OSHA and the Congress have gone quite far enough, and that small employers who are recipients of these special considerations, show their own good faith and make a concerted effort to comply with the act and not deem these concessions as mere milestones leading to the ultimate goal of doing away with Public Law 91–596, itself.

The AFL–CIO also wishes to comment on the amendment adopted by the Senate to the fiscal year 1979 Labor-HEW appropriations bill which would delay implementation of the recently promulgated standard governing the exposure of workers to cotton dust. Without hearings, and with little familiarity with the long history of, and need for the standard, the Senate voted to prohibit any appropriated funds for OSHA to enforce its cotton dust standard prior to May 1, 1979.

This amendment followed passage earlier this past summer of an amendment to the agriculture appropriations bill for fiscal year 1979, providing $200,000 for a further study of the OSHA cotton dust standard, with special emphasis on its technical and economic feasibility.

Mr. Chairman, the cotton dust standard has had a remarkably sordid history. Its abandonment by a previous Assistant Secretary was used as trading stock for increasing business contributions from industry to help reelect Richard Nixon in 1972. It was 4 years following the enactment of Public Law 91–596 that a health effects criteria document was submitted to OSHA by the National Institute for Occupational Safety and Health. Another 2 years of delay followed before OSHA proposed a standard in December 1976.

Under pressure from members of the Congress from the cotton States, field hearings were held in Greenville, Miss. and Amarillo, Tex. in the spring of 1977; lengthy administrative hearings at which all interested parties, including the textile, ginning, and other segments of the cotton industry, as well as organized labor and other organizations, participated at length. A record of 105,000 pages was the result of these proceedings.

Before the standard was issued, its rationale was painstakingly studied from this massive hearing record, not only by OSHA and the Secretary of Labor, but the highest economic officials of the administra-

tion, even involving the President himself, who only a few days ago strongly supported the OSHA cotton standard as both feasible and reasonable.

We cannot overemphasize the damage to the OSHA program of developing and promulgating standards that could be done if the cotton dust study amendment, which has not been before this committee, and which received only emotional consideration on the floor of the Senate, were to be adopted by the Labor-HEW conference on fiscal year 1979 appropriations. Certainly, this kind of proposal, in our mind, should have been rejected as improperly attached to appropriations legislation.

In Public Law 91–596, the Congress has given a legislative mandate to OSHA to develop and promulgate safety and health standards. Can you imagine what would happen if the Congress were to review and hold hearings on the multitude of rulemakings that OSHA will be producing? Think of the carcinogens policy, the 450 threshold limit valuations on airborne contaminants in the standards completion project of OSHA. The Congress would be forced to turn itself into a legislative OSHA, and be involved in doing nothing else.

While this sounds somewhat farfetched, the precedent that would be set by the adoption of the cotton dust study amendment by the House-Senate conference could be used by any industry group opposing an OSHA standard and, with enough political influence, to have an amendment introduced as a rider to future appropriations bills, forcing delay and restudy. Decisions affecting the lives and health of workers would be subjected to kangaroo court procedures, where objective scientific data would be subordinated to the pressures of business groups with enough political muscle to force their viewpoints on the Congress, regardless of their scientific merit.

Without attempting to toss numbers around, it should be emphasized that the cotton dust record shows that the estimated cost of compliance with the new standard is not $2.6 billion, but $656 million, with a 4-year period for industry to come into compliance. In spite of statements made on the floor of the Senate, the final standard was announced jointly by the Council of Economic Advisers to the President and Secretary Marshall. It is so much moonshine to claim that this estimated cost of compliance will have any noticeable upward effect on the inflationary cycle.

OSHA has made every effort to achieve a reasonable standard, and has given the industry ample time over the past several years to state its case in field hearings by means of written comments, testimony at administration hearings, and other methods of communicating its position on the proposed rulemaking. Moreover, OSHA has temporarily stayed application of the standard pending additional comments, as it applies to the cotton batting industry. The industry has been given every reasonable due process consideration, and is not entitled to any more than it has already received.

It is interesting that this industry group is reechoing the dire warning of the imminent closedown of plants, loss of export trade, reduction of employment, on the same apocalyptic scale as we hae heard in the past reactions by industry to proposed rulemaking on toxic substances by OSHA.

We have heard this a number of years ago from the chemical industry on OSHA's proposed polyvinyl chloride standard. It was alleged that 2 million jobs would be lost if it went into effect, and that its compliance costs would be in the billions of dollars. It all turned out disappointingly. Not a job has been lost by virtue of this standard, which is being met by the industry. The cost of compliance has been far under the alarmists' estimates. We have no reason to believe that the cotton dust standard will impose more than minor hardships on some small, ancient mills, but the rest of the industry is able to meet it without trouble and job loss.

Finally, we wish to express our concern about the lack of adequate resources for OSHA to do its job properly. With 1,500 compliance personnel and a handful of scientific and health professionals, working against 4.5 million workplaces, Dr. Bingham's commonsense program will largely be a paper accomplishment, and the 60 million workers in workplaces covered by this act will have only pie in the sky, unless OSHA is given the resources to accomplish the act's objectives.

We have received data from the President's Interagency Task Force on Workplace Safety and Health, showing that OSHA is able to spend in fiscal year 1978, only $2.62 to protect each worker. In contrast, the Federal Mine Safety and Health Act has $247 for each worker; the U.S. Coast Guard, $128.72 per worker; the National Transportation Safety Board, $3.80 per worker. Even the Bureau of Indian Affairs has $250.52 to provide for the safety and health of Indian employees.

I realize that this committee is not responsible for making appropriations, but we believe that you should be working closely with OSHA to develop a forecast of manpower needs over the next 5 years, in achieving program objectives.

Thank you very much for the opportunity to appear.

The CHAIRMAN. It was an excellent statement, Mr. Biemiller. We thank you. You have given us a full recital of what has been done in legislative action, other than legislation generated by this committee. We have become familiar with amendments to the appropriations bills, and the reaction of the Congress to the apprehension, the fears, both real or imagined, of small business particularly. Certainly, there has been a long history of amendments dealing with their supposed problems.

A great deal of attention over the years has been given to the concept of consultation. You know that is a word that has a ring of approval about it—"consultation." After coming to a collective judgment around here that consultation was beneficial in the whole effort to bring effectiveness to the law and regulations for safety and health—the next jump the problem we ran into—was that people started to suggest that consultation should really be a substitute for enforcement. This has been the most recent approach, which has not impressed this committee, but it still has impressed many in the Senate.

How do you feel about this business of consultation, and particularly with respect to its effect of eroding enforcement?

Mr. BIEMILLER. I am going to call on Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, there have been a number of efforts in past and present Congresses to enact amendments to the OSHA Act which would provide onsite consultative services as a substitute for

the first instance penalty. In other words, a consultation service is rendered by a consultant to an employer and some general recommendations are made on how he can best comply with the act. That employer, at least allegedly, following these recommendations when he is subsequently inspected by a compliance officer under section 8. But the compliance officer finds infractions of the regulations found and the employer is cited and given civil assessments. This bothers the small business community very much, because it feels that there should be sort of a binding contract which prohibits the inspector from issuing citations where a previous onsite consultation service has been provided to that plant.

The effort, therefore, has been made, and reappeared in the fiscal year 1979 appropriations, to put this into the appropriations act itself—the Dole amendment—to save an employer from the consequences of being cited for violations from a section 8 inspection after he has engaged himself with a consultant prior to that.

As far as we are concerned, we feel that this is just another way of going around the first instance penalty provision of the act, and such a type of legislation would work a hardship on employers who are already trying to comply and do not use consultative services, with a special dispensation being given to those who allegedly are trying to comply with the consultant's advice, but, yet, when inspected, still are found to be in a number of violations of the act in one or more instances.

We do not believe that this is the right way of approaching the matter at all. We think that the first instance penalty should be kept in its present form. On-site consultation is one means of achieving voluntary compliance, but it is no substitute for an enforcement inspection.

The CHAIRMAN. Now, how do you describe the importance of first instance violation penalties?

Mr. TAYLOR. Well, you were here when this bill was going through the Congress, and one of the things that the record showed was that the effectiveness of enforcement was on two principles: one, the unannounced inspection, and the second one was the civil penalty on the first inspection, regardless of whether or not an employer had any particular or special reason, alleged or real, for having some kind of forgiveness of that first instance penalty because of previous consultation or loss control services by an insurance company which comes from the first visitation by the inspector.

You will recall that in order to make this so that it was not too Draconian as far as employers were concerned, the act that the abatement period may be extended if the employer is prevented from meeting it because of circumstances out of his control.

If the first instance penalty is not required in situations where the employer has received on-site consultative services, it means that the compliance force of OSHA will be required to make separate interpretations and rules on almost every kind of situation. No directive can cover all the situations, such as employer saying, "Well, I had a loss control man from Liberty Mutual come in, and he said I was OK. How do you say that I am not OK? I should not be penalized, because I did something in good faith that Liberty Mutual suggested in order to meet the standard, and the OSHA inspector comes out and says that still we are out of compliance."

So, summing it up, it seems to me that the best instrument for enforcement still remains in those two areas: the unannounced inspection and the first instance penalty.

The CHAIRMAN. The most recent approach where there is consultation, is to relieve the employer from first instance penalties where the violation is of a nonserious nature. Now, how do you approach that, and is there any logic to support the differentiation in terms of penalty between serious violation, and the nonserious?

Mr. TAYLOR. Mr. Chairman, as you undoubtedly know, this practice is already a part of the ongoing enforcement program of OSHA. They are not invoking penalties for nonserious.

The Dole amendment, as amended by Senator Magnuson—which I gather passed in the form of the Magnuson amendment—merely ratifies, by the fiscal year 1979 appropriations bill, the practice that OSHA is engaging in right now, in not invoking civil citations on nonserious violations.

The categorization of serious and nonserious has always been a great problem in this act. I think when the bill was going through the Congress that there was some talk of defining violations as serious, imminent danger and willful, but it was further divided into nonserious and de minimis. Now, in some little time, there has been no real action by OSHA in attempting to enforce de minimis violations, but up until about a year or so ago, they had been assessing minor civil penalties, on the nonserious ones.

Well, after a long session before the National Advisory Committee on Occupational Safety and Health, at which numerous people testified, both from unions and from business, particularly from the construction industry, the administrative change was made so that no longer is the nonserious violation being assessed.

Now, our own opinion is that a nonserious violation, as defined in the act, is still cloudy. It can result in misinterpretations as to what is serious and nonserious. I think that this committee probably should look into the categorization of violations as now are contained in the act and see if they could not be more clearly demarked so that this type of problem can be eliminated.

The CHAIRMAN. You know, when these amendments come up in the Senate, we get the impression that the attitude about OSHA over there reflects the administration and enforcement of this program as it was years ago, not as it is today. The improved, more reasonable, to use the Secretary's phrase, the commonsense approaches of today are not always reflected in the debate when these amendments come up.

Can you explain this apparent lag in understanding of what is happening under this OSHA program?

Mr. TAYLOR. Well, unfortunately, the number of Congressmen and Senators who are real students of the act are small in number. In addition to that, there is a constant barrage of communications from the business community to the Congress, individually and to the committees. These are to a very large extent self-serving communications which reflect more what is feared than what they have actually experienced. This type of approach is made more easy by the pressures on individual Senators and Congressmen from their districts and from their States, by letterwriting campaigns. Congressmen are busy.

and this is a very complex bill. They do not have a chance to really go into it, unless they happen to be on a committee which has oversight. Consequently, they become more easy targets for anything that comes along that sounds as though somebody in an immense Federal bureaucracy is trampling on the individual and constitutional rights of an employer. And it has taken hold in the Congress, unfortunately. In the post OSHA has done little to help Congress understand the act, just as it had done little to help employers to do so.

The CHAIRMAN. I wonder if one way that we can get better overall appreciation of the reality of today's OSHA program is through your organizations, your unions and through the joint labor-management safety committees which are the product of the bargaining process. These are, I hope, common now in bargaining of contracts. Am I right on this?

Mr. TAYLOR. Mr. Chairman, it is sort of a mixed bag. There are large unions that do have effective safety committee arrangements with management. There are other unions where there is a problem that exists between management either in this or some other issue. A safety committee can either operate in a confrontation type of situation between the plant safety director and the union representative who is the chairman of the safety committee or it can be either a rubber stamp for management, or merely a paper operation.

In some areas, there has been long and fruitful coordination and cooperation between management, business in making the shop a safer place. In others, it is a useless thing, because the union and the management are either at each other's throats on this and other areas or neither party cares.

So you cannot say, either one way or the other, it depends on the union, depends on the local, and so forth and so on. The aim of the act, however, is to promote that, and it is a laudable aim. We certainly would do our best to try to facilitate it to the extent it produces a meaningful reaction on the part of management.

The CHAIRMAN. It seems to me that there should be a common interest here in complying with the safety and health laws. There should be a common interest as a matter of humanity in safety; and even the businessman who is only looking at his balance sheet should recognize that a safer place is a more profitable place. Certainly from the workers' standpoint, a safer place relieves the worker of a lot of anxiety about injury or poor health.

We just repeatedly get this suggestion that good will and cooperation can make this law work. We feel that more of that can be beneficial, but it is not the end of the line in making this law work.

We could easily generate our 105,000 pages of record that 75 percent of the accidents come right down to the individuals and, basically, the lack of attention by individuals to safety practices and negligence on the part of those who are working in the shop. Even if a lot of it is negligence, does that not reflect upon those who are responsible for running a shop—and that is the employer. Is it not the employer, through careful and caring supervision, who should be responsible for correcting the bad practices of his employees, if there are bad practices? Does it not boil down to management's supervision?

Mr. TAYLOR. Well, to a very large extent, this 75-, 85-percent figure has been tossed around since the early 1900's, Senator Williams. It is

sort of like that study that was made of the smoke damage in Pittsburgh by EPA, and translated into damage for the United States by a series of interpolations, so that for years we went on the basis that there is $11 billion worth of damage from air pollution in this country based on a smoke pollution study in Pittsburgh made in the 1920's.

Now, this is the same sort of principle. This 85-percent worker contribution to total injuries goes back to a study that was made in Wisconsin many, many years ago by a management person.

Of course, we would be the last to deny that there are not instances where workers work unsafely, but the management of the plant and the environment of the plant is not under the control of the workers; it is under control of the management. If the management finds that a worker is consistently refusing to comply with work practices, it has its outs, which is to discipline or remove that worker from the job. Now, if it is a unionized job and the worker who is thus dealt with goes to the union, there may be a grievance filed. But, at the same time, the final decision as to how that plant goes, under a contract or without a contract, remains with management, and also the circumstances under which people work; it is their decision.

The CHAIRMAN. Thank you. Jack?

Senator JAVITS. It strikes me—and I have noticed this right along—that there is not an adequate amount of militancy in labor on this issue. I mean, of all the issues which should really outrage labor, it is the safety of the workplace. And whether labor has been diverted by the Labor Law Reform Act—which, God knows, has been enough of a tragedy on its own—or for whatever reason, I, speaking strictly personally, do not get the feeling of the militancy on OSHA, which is an unbelievably sympathetic subject where labor is absolutely right. And when we argue on the floor that the bodies and minds of American workers are broken wantonly, because you see so much of organized business opposing, and it is latched onto the same fictitious arguments that were so ruinous in the Labor Law Reform Act—that is, paperwork; vexing regulations about ladders and so on—to confuse the public and the Congress about life and death, and broken bodies and broken minds.

So I take very much to heart what Chairman Williams has said about cranking this subject very importantly into collective bargaining, and I believe, too, it is a very sympathetic subject for organized labor respecting unorganized labor. I mean, what could be more appealing to working people who are unorganized than that the great labor federation is storming the barricades for their health and safety? And so I would plead for a greater allocation of effort, especially on the organization and local front, where OSHA would be a major consideration, because it is very seriously threatened. Just look at the history: Almost any amendment that is tossed up respecting restricting the scope of OSHA seems to be able to get the support which we cannot get for the other side of the coin. And Senator Williams and I, and others like us, have been fighting, unfortunately, a rearguard battle.

I am sure there is an answer, and Andy is getting ready to give it to me, but I still make the plea.

Mr. BIEMILLER. Well, I think, Senator, that there is no question that more and more attention has to be paid. By some internal structures

which we have just gone through, we are going to be paying more attention to this matter.

Now, there have been many, many unions, as you know, that have paid a good deal of attention to this. And what we are trying to do is to stimulate everybody into it. We just last month concluded the first nationwide conference we have had on this matter, and I can assure you that those nationwide conferences are going to continue, with all kinds of impetus being given from our newly created section on occupational safety and health, which is headed by Mr. Taylor. And all I can do is to assure you that we are going to do everything we can to try to inspire workers' interest in this matter.

Senator JAVITS. May I ask this question, which is prompted by my staff. Labor unions have been active in many industries in setting up safety committees. So, question No. 1, have these been successful, and could we have a list of the safety committees set up by various unions, Mr. Taylor, so far as they can be rounded up, and some indication as to their effectiveness? Would that be feasible?

Mr. TAYLOR. Senator, at our first national conference on occupational safety and health, which Mr. Biemiller mentioned a few moments ago, we had a special workshop on safety committees and collective bargaining with respect to occupational safety and health. And we had a number of individuals from various unions come in and participate in that workshop and tell us of their experience of their union in terms of (a) the existence of safety committees and (b), the degree of effectiveness of their operations.

As I responded to a previous question by the chairman, it revealed a mixed bag. Some unions are doing very well with it; some unions have certain of their locals that do have effective safety committees, well operating, producing constructive work. Others would just meet, and in other unions where there has been a great deal of confrontation between management and the local, there has been very little done, because they have not been able to get together on anything else.

Senator JAVITS. Do you think that there is something to be said for trying to really beef up that safety committee movement?

Mr. TAYLOR. I certainly think that a well-operating safety committee, with a strong effort on both sides of the table, is a very useful thing, and if it was operating effectively, it would certainly relieve OSHA of a lot of work out in the field, because most of those problems could be taken care of in the shop itself, without having sent in a complaint to OSHA or use other means of getting the inspector on that place.

Senator JAVITS. Do you think any Government assistance or stimulus is needed? Let me give you a practical example. We are going to conference today on the CETA bill, more popularly known as public service employment. In order to encourage greater utilization of the bill in training workers, retraining or giving them training when they are new entrants into the field, and in order to get business to move into the field of training and employment after the public service job period is over, we have worked out a committee structure for labor and management.

Now, we could do the same in respect of OSHA, if it was thought that any governmental stimulus or encouragement was desirable or necessary in the OSHA field. It would be kind of a counterattack against our detractors and critics.

I just wonder what you gentlemen think of that.

Mr. BIEMILLER. Well, I think, Senator, there is no question that we do want to see the safety committees established wherever it is possible to get the things running. Now, whether you are going to get this done through a question of a Government interference in the matter, I cannot give you an answer on that, because I do not think anybody can give you an answer. I lived through the war production drive back in the 1940's; I was the representative of the labor division of the WPB on that matter. Where there is a will, you get it done; you get it done effectively. Where there is not a will, you do not get it done, I do not care what kind of papers you put out.

But anything that will help in getting this kind of thing going, we are not going to turn down. I think that is pretty plain to you by now.

Senator JAVITS. Mr. Chairman, I do not wish to protract the hearing any further, except to say this: Andy, because you are here before us, I know how important you are to the movement. To one friend of labor, I would hope that in the coming year you would add to your ongoing campaign for labor law reform—which, as you know, you do not have to convince us of; we were your principal protagonists—three, a trilogy of things you have, but which need to be protected and fortified. One we are discussing is OSHA; the other is ERISA, which is again threatened. Who, after all, gets the benefit of it? The 35 million workers. Let us hear from them; let us hear it.

The third is worker's compensation, where we are trying—and where we know how deficient so many State laws are, admittedly abysmal. And it seems to me that this would be a marvelous thing for the vitality of the labor movement, because we can tell you—we fought and bled and died for these things—that they are constantly under threat.

Mr. BIEMILLER. If you remember, Senator Javits, we were here not too many weeks ago talking about the very effective work that has been initiated by you and the chairman in the whole field of worker's compensation, which certainly bears a very definite relationship to OSHA; the two things, I do not think, can ever be completely divorced. And certainly on the question of pensions, our people are not taking a back seat to anybody; we are fighting on the thing.

Senator JAVITS. I just commend that to you, because we have so much attack and we really need the friends and the beneficiaries to be very militant on the other side.

The CHAIRMAN. Thank you very much.

Mr. BIEMILLER. Thank you.

Mr. TAYLOR. Mr. Chairman, just a formality. There are two inserts, if it meets with your approval.

The CHAIRMAN. What are they?

Mr. TAYLOR. One is a report by the Gaines Textile Co. on how they are faring under Government regulations, and the other is a report by the Springs—this has to do with the cotton dust standards—by the Springs Textile Co. in relationship to the cotton dust standards.

The reason why I would like to have that put in there is that a news story was put into the debate on the Johnson amendment which is gainsaid by the corporation's own statement, financial statement. If it would be permissible to put it in, I would like to put it in.

The CHAIRMAN. They will be included

Senator JAVITS. Mr. Taylor, I did not hear a word you said. Could you say it loud and clear? It may be important to us.

Mr. TAYLOR. I am sorry; I guess I was not into the microphone.

These two documents, Senator Javits, I ask the indulgence of you and the chairman to have inserted in addition to our record. During the course of the debate on the Johnson amendment on cotton dust, some statements were made about a plant which is closing in South Carolina because of the imposition of the cotton dust standard. These are two reports, one from the company involved and the other from the Springs Textile Co., indicating that they are doing very well at the present time and do not expect to have any trouble with the standard at all. And I would just like to have that put in the record.

Senator JAVITS. That is quite important, because it is that kind of argument that we cannot negate, because nobody gave us advance notice, and this is going to come up again, because it is in the HEW conference, and it is a hotly debated subject.

So what I would like to suggest, Mr. Chairman, is that we join in a letter to the conferees.

The CHAIRMAN. Exactly, these are still timely, because the conferees have not come to an agreement on this.

Senator JAVITS. And that is one of the big subjects.

Now, one other thing: Why do you not give us a digest of what took place at that safety conference you were talking about for the record?

Mr. TAYLOR. We would be glad to do that, Senator.

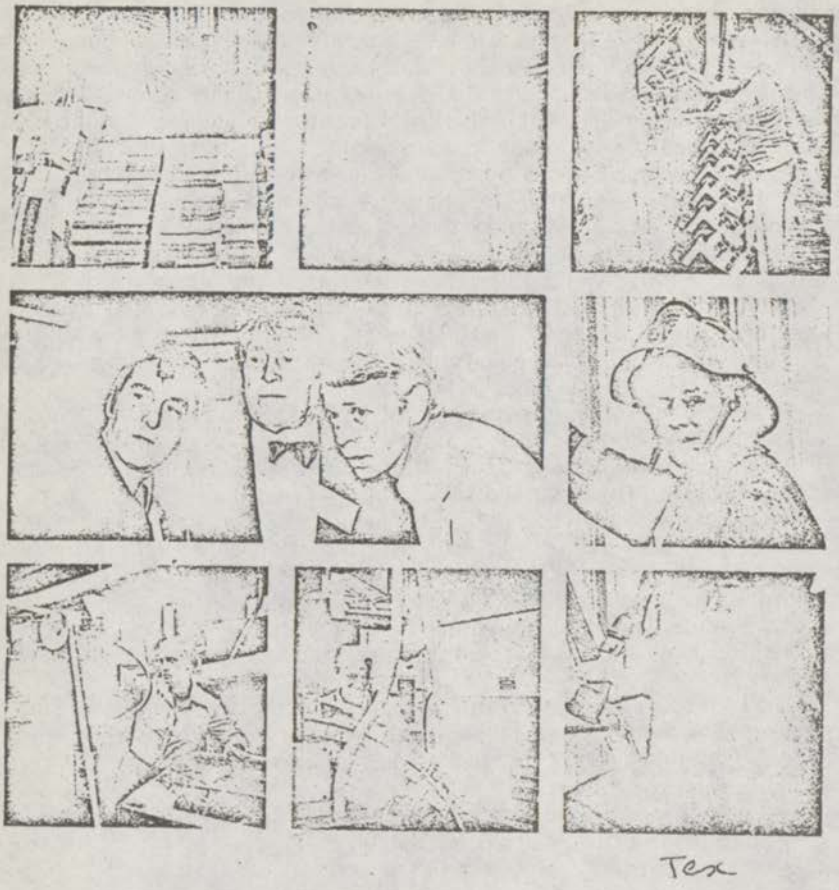
Senator JAVITS. Could you do that, say, within—how long—a week, 10 days?

Mr. TAYLOR. Yes. We are in the process of getting the proceedings put together, and we will be very happy to provide you with a copy.

Senator JAVITS. Mr. Chairman, I ask unanimous consent that that be made a part of the record.

The CHAIRMAN. That will be, and this certainly will be included.

[The following was received for the record:]



Springs

$ 700,000,000 annual sales
6th largest in industry

Interim Report

For the Three Months
and Six Months Ended
July 1, 1978

To The Shareholders:

Springs had higher sales and income for the second quarter of 1978 and the highest sales and income from continuing operations for any first half in the 90-year history of the company.

Net sales for the second quarter of 1978 were 14 per cent higher than sales in the second quarter of 1977. Net income in the second quarter rose to 87 cents per share, an increase of 60 per cent from the comparable quarter of 1977.

Net sales for the first half of 1978 were up 12 per cent over the first half of 1977. Net income of 62 cents per share in the first half was down 37 per cent from 1977, due to the one-time cost of liquidating our Knit Division in the first quarter of 1978. Income from continuing operations of $1.60 per share in the first half, however, was up 54 per cent from the comparable period of 1977. Details of the effect of the Knit Division action are described in the Notes to the Financial Statements.

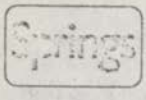
Our operating results have been strengthened since we discontinued the unprofitable doubleknit operations. Our textile operations have enjoyed generally strong demand for their products in the first half while demand for frozen food products has remained relatively steady. We are optimistic about prospects for the near term.

H. W. Close
Chairman of the Board

Peter G. Scotese
President, Vice Chairman
and Chief Executive Officer

Fort Mill, S. C.
August 4, 1978

35-644 O - 79 - 16



Springs Mills, Inc.

Interim Report

For the Three Months
and Six Months Ended
July 1, 1978

Corporate Headquarters
P. O. Box 70
Fort Mill, S. C. 29715
(803) 547-2901

Marketing Headquarters
104 West 40th St.
New York, N. Y. 10018
(212) 556-6000

Customer Service Center
P. O. Box 111
Lancaster, S. C. 29720
(803) 285-4343

Research and Development Center
P. O. Box 70
Fort Mill, S. C. 29715
(803) 547-2901

Seabrook Foods, Inc.
P. O. Box 306
Montezuma, Ga. 31063
(912) 472-8101

Seabrook International Foods, Inc.
175 Great Neck Road
Great Neck, N. Y. 11021
(516) 482-3100

Board of Directors

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Executive Vice President
The Springs Company
Lancaster, S. C.

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Hartsville, S. C.

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Chicago, Illinois

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Earth Resources Company
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Chairman of the Board
The Chicago Bank of Commerce
Chicago, Illinois

Peter G. Scotese
President, Vice Chairman
and Chief Executive Officer

Malcolm W. West, Jr.
Executive Vice President

Government Keeps Springs Busy

Government action played an unusually heavy role in Springs' life during May, June and July of 1978.

On July 17, Springs and the Federal government settled the long-standing TRIS case. Under the agreement, Springs cannot be sued by any government agency on any TRIS-related matter, and cannot be forced to repurchase fabrics treated with the flame-retardant chemical.

The Consumer Product Safety Commission had banned the sale of TRIS-treated fabrics in 1977 and ordered suppliers to repurchase such items. This led to a suit by Springs. In June 1977 a Federal judge ruled in Springs' favor. The government appealed but has dropped its appeal as part of the settlement.

In another regulatory area, the Occupational Safety and Health Administration (OSHA) announced in June its long-awaited cotton dust control standards. They were as stringent and potentially expensive as the industry expected. The required standard for yarn production areas is about the same as the dust level in the average home.

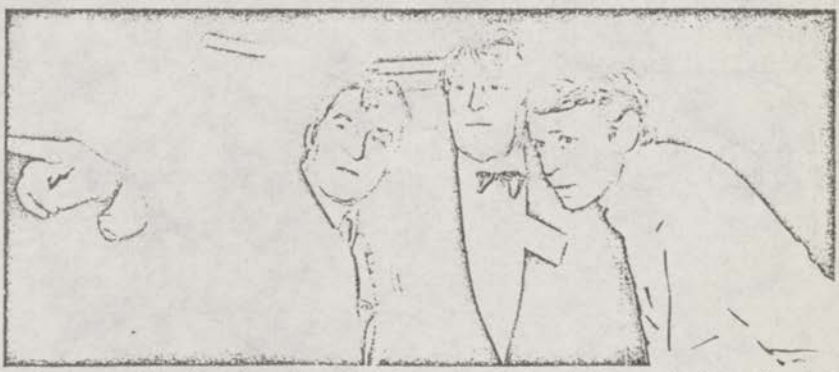
Springs has improved air quality in its plants as technology has advanced. It also has a comprehensive, professionally staffed screening program to monitor employees' lung function.

The new standards will require additional, costly testing and air monitoring as well as some investment in equipment. Added costs will be reflected in consumer prices.

Although company officials feel the standards are stricter than needed, they said Springs would make every effort to meet or exceed the OSHA requirements. They said the company would continue its efforts to give employees the best possible working conditions. They pointed out that many Springs plant areas already meet the new standards.

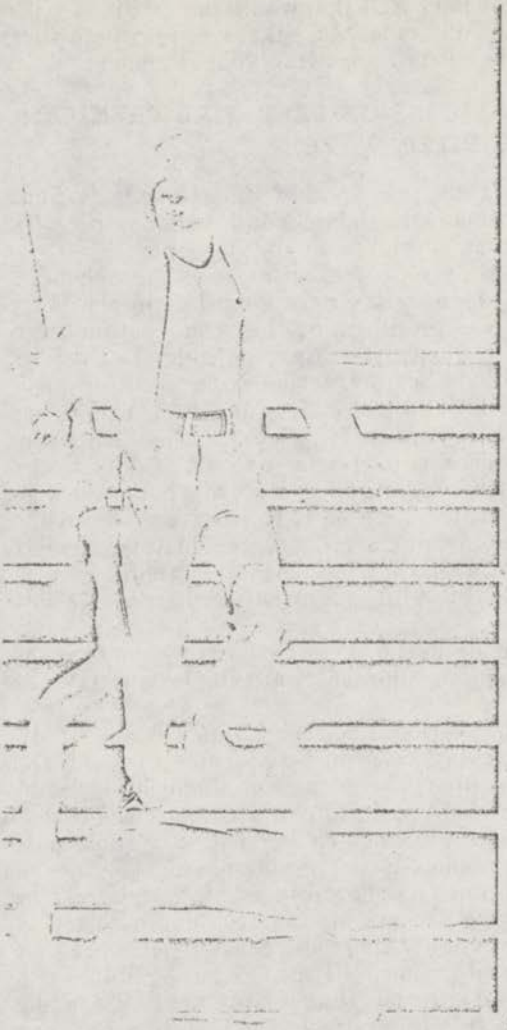
In May, a trade subcommittee of the House Ways and Means Committee held a field hearing in Lancaster, S. C. Board Chairman H. W. Close was among textile leaders who testified in favor of stricter control of foreign imports.

Participants supported the Holland-Broyhill bill to remove textiles and apparel from tariff reduction negotiations.



Touring Grace Finishing Plant during House Trade Subcommittee hearings in Lancaster, S. C., are (from left) U.S. Rep. Ken Holland (D-SC), U.S. Rep. Charles A. Vanik (D-Ohio), the subcommittee chairman, and Thomas B. Hollingsworth, vice president-finishing of Springs' Apparel Fabrics Division.

REVES



A lack of direction in the market coupled with increasing cost factors in many areas of the Group's operation have contributed to a less satisfactory than anticipated performance in the Company's apparel fabrics operations. Some turnaround in market direction became apparent in the second calendar quarter and the outlook for the year ahead would appear to be more encouraging.

The Group's merchandising philosophy is to operate on a highly diversified manufacturing basis. No large commitments to commodity-type merchandise are made. Rather, the Group is noted for its new fabric development and rapid manufacturing turnaround capabilities. From this posture, it is able to support the changing market trends and demand, offering a wide variety of fabric styles.

The Group's fashion-oriented Greige Goods Division is a center for fashion merchandise which finds its way into the top-style apparel lines in the country. A close relationship between Greige Goods personnel and major converting operations throughout the industry has in many cases led to the development of exclusive fabrics, whose early market presence is of distinct advantage to the Company. A new look in polyester and natural fiber blends, pioneered by the Division, is showing considerable market promise.

A re-evaluation of the Finished Goods Division's marketing role has seen programs directed to: maintaining tighter inventory controls, a commitment to specialty fabrics, the expansion of activity in the women's sportswear/outerwear field, and into the men's slack market.

Style changes favor this Division's activities in the development of the softer, more casual draped-fabric look. Reeves fabric entries in this area are anticipated to replace the less formal look, as American consumers move in the direction of a more conservative fashion attitude.

During the year, the update of plant and equipment continued. The move to wider, more efficient looms of the 68 inch variety has been an important investment. The Company recently purchased 87 model X-3 looms for production at the Company's Chesnee, S.C. plant. Other capital improvements include the completion of a dust control system at the Eastman plant as part of the Group's major commitment to OSHA guidelines. A reduction in demand for carded cotton goods has necessitated the complete phase-out of the Greenville plant that late last year was converted to an all spinning operation. Machinery and equipment not needed at some of our other facilities will be sold.

The Company entered discussions with Fieldcrest Mills, Inc., pertaining to buying and selling certain assets of its Eagle & Phenix Division at Columbus, Georgia. Subject to the outcome of negotiations which are still in progress, a further announcement will be made should a definitive agreement be reached.

Finally, the Group's extensive dyeing and finishing operations have been consolidated at the Bishopville plant, and the efficiencies are working themselves through the Group's operations.

The streamlining of the Apparel Textile operation is an action of the Company calculated to maximize opportunities for return to our long-standing position in this market. Though imports and cost escalation may have a negative impact, the market's demand seems to have found some firm style and fashion footing. The Group's present sold ahead position appears to be promising for 1979.

Reeves *sportswear, rainwear and*

The CHAIRMAN. Now, Mr. Elmer A. Fike, who is president of Fike Chemical Co. of Nitro, W. Va. Welcome, Mr. Fike; we appreciate your being with us this morning. We look forward to your statement.

STATEMENT OF ELMER A. FIKE, PRESIDENT, FIKE CHEMICALS, INC., NITRO, W. VA.

Mr. FIKE. I am Elmer A. Fike, president of Fike Chemicals, Inc., Nitro, W. Va., a company manufacturing small volume specialty chemicals. We have an average employment of 65 people.

As to my credentials outside my profession as a research chemist, engineer, and manufacturer, I am active as a volunteer in the West Virginia Safety Council. I was president of this organization from 1970 to 1971. I take part in a monthly seminar on industrial safety. Partly due to the influence of the seminars, the largest coal producer in West Virginia instituted an effective safety program which has reduced their accident frequency rate by 70 percent. Other companies have experienced similar reductions partly as a result of our efforts.

I have actively lobbied for a compulsory motorcycle helmet law in West Virginia, which clearly saves 20 to 30 lives per year—about the same number that are killed in mine accidents, incidentally. And I have each year fought to retain that law, sometimes virtually by myself, and we have been successful while many other States have lost the battle.

In 1972, I submitted testimony in the oversight hearings on OSHA, and was active in the attempt to adopt a State implementation of OSHA in West Virginia.

I am also a member of the National Safety Council board of directors and the traffic conference. I took an active role in getting the National Safety Council to support the 55-mile-an-hour speed limit, and I lobbied for the airbag concept in autos. I support these concepts for safety, because I believe they have and will save thousands of lives in a socially and economically acceptable manner.

I have spoken and written much on the subject of industrial safety and the effect of Government regulations. My weekly column is carried regularly in two West Virginia newspapers and occassionally in other publications under the name of "Elmer's Tune." I have published a collection of these columns and speeches that relate to safety. I make this compilation available to this committee to use in any way you see fit.

The CHAIRMAN. Fine.

[The following was received for the record:]

ELMER'S TUNE

VOLUME V JUNE 1977

INDUSTRIAL SAFETY

by

ELMER A. FIKE

"Elmer's Tune" is a weekly column published in the "Kanawha Valley Leader", and the "West Virginia Hillbilly" in Richwood, WV. In addition, columns are published occasionally in other national publications such as "Human Events" and "The Freeman".

The columns cover the wide range of interests with which the author is concerned. Occasionally a collection of columns about one subject is published together. This particular collection, Volume V, is concerned with safety. In addition to the columns, this volume contains various items used by the author in his presentation "Management's Role in Safety". This talk has been given over 100 times in West Virginia and surrounding states.

Because the columns must each stand by themselves, there is some repetition of material; but they are published here to further elaborate on the principles given in the talk.

Previous Volumes I–III were collections of general interest. Volume IV was titled "Industry and the Environment.

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GOVERNMENT and SAFETY

From the turn of the century until the late sixties improvement in safety was primarily the responsibility of the volunteer safety movement. This effort resulted in dramatic improvement especially in the early years, but in recent years the improvement has been less spectacular. Certain people who did not understand the history of the safety movement and what had happened began to sound alarms in the late sixties and demand a greater rate of improvement than was being achieved at that time. The result of this hysteria was to turn the responsibility for safety over to the federal government, and with this transfer of responsibility has come more and more interference and control.

As a result safety, like many other areas of our lives, has become bogged down by a multitude of rules and regulations. The laws not only fail to achieve the admirable ends they were supposed to accomplish but are actually counterproductive. The proliferation of laws is even getting to the bureaucrats. In a recent directive President Carter required all cabinet officers to read personally all regulations issued by their departments. This, however, did not last long. The cabinet members soon found that if they did this they would not have time to do anything else. If this is so, how is it possible for the manager of a business to read not only what comes out of one department but from several with which compliance is required.

There is a parallel between what is happening and the message of the Bible. The Old Testament was an attempt to regulate human conduct by laying down laws which were extremely explicit in every respect. The fourth commandment, "Remember the sabbath and keep it holy", seems simple enough, but nine hundred laws were written to give specific instructions. Some of the descendants (ideological descendants, at least) of those Levitical priests must have written the OSHA standards of today. Even the later prophets of the Old Testament recognized that endless laws and regulations were an unnecessary burden and failed to accomplish the desired goal of righteousness.

The New Testament tried a new approach. It gave a new freedom to each individual to work out his own salvation in his own best way. It did not prescribe exactly how it was to be done, but the imperative to achieve righteousness was even more demanding than under the Old Testament regime. Once you had complied with the regulations, you satisfied the old system. Under the new, you are never done until you have achieved perfection or at least your very best.

The New Testament prescribes the goal but leaves the method of achieving that goal to the individual. The Old Testament tried to spell out each step of the way, and the method becomes far more important than the objective.

Hammurabi, in 1800 B.C., used the simpler method which concentrated on the objective. His building code specified that the builder would be put to death in the event one of his buildings collapsed and killed an occupant. This approach might be a simple and effective (although perhaps harsh) replacement for OSHA.

OSHA puts two seemingly very simple obligations on an employer: (1) He shall

furnish a safe place of employment free from recognized (as well as unrecognized) hazards, and (2) he shall comply with OSHA's standards. Complying with the standards is far from simple. There are thousands of regulations, and trying to comply with all of them is extremely time-consuming, if not impossible. The basic idea is that if an employer would comply with the standards he would, in effect, furnish a safe and healthful place of employment. Employees, too, are supposed to comply with certain OSHA standards. The difference is that there are no penalties involved for the employee while there are severe penalties for the employer.

The history of the Act hasn't been quite as bad as first anticipated. The fines have been more than industry would like, but in spite of early threats no one has been thrown in jail. The mass of regulations has, however, been the final straw that has put many companies out of business. The number of foundries in this country has dropped from over 4,000 to about 1,500 because of the difficulties in complying with OSHA and EPA standards. Consequently, we are facing unemployment and shortages of many specialty products at the same time. This anomaly is not confined to foundries. Unreasonable OSHA and EPA regulations together have caused a drop in milk processing plants from 4200 to 1750, and another 550 are expected to go out of operation. In many cases the regulations actually conflict. EPA regulations say there must be tile walls which can be cleaned easily; OSHA regulations require sound absorbing walls to cut down the noise.

The intention was that compliance with the standards would create a workplace free of accidents, but this has failed to happen. Statistics indicate that in some industries there is an increase in work-related injuries. OSHA says there is a slight increase because of better reporting. It is more likely that we are going downhill in our safety program because of reliance on law instead of on our own effort.

In 1976 Paul McAvoy a member of the President's Council of Economic Advisors speaking before the American Bar Association stated that OSHA has "little or no effect" in the workplace.

A similar situation exists as a result of the Coal Mine Safety and Health Act which was passed two years before the Occupational Safety and Health Act. The effect of the Act has been negative. Data in West Virginia underground mines shows that the accident frequency which had been declining prior to the Act from about 40 to 30, has increased to 52 lost time injuries per million tons of coal mined. the fatality rate, which had been dropping, has pretty much leveled off and in some states there has been an increase. Meanwhile, productivity has dropped from 14 tons per man per day to 8 tons which means that we have more than doubled the price of coal. Even the UMW is beginning to recognize that the law has not been effective and more effort must be placed on motivation and training.

The distressing thing is that during the same period the largest mine operator in West Virginia has reduced their accident frequency by 75 percent in two years by following sound safety practice observed in other industries. This is an example of what an appropriate effort could have accomplished.

It is hard to believe that the Act could increase accidents, but there are perfectly good reasons why it does. The main reason is that the Act has increased exposure. If it takes nearly twice the manpower due to reduced productivity to mine the required coal, the accidents will be increased substantially. However, there are other reasons. It reduces the responsibility of the individual. A man taking responsibility for doing what he determines is best is the only thing that really makes him safe. Now he is led to depend on the law to be safe.

In addition, the Coal Mine Health and Safety Act of 1969 has put an additional burden on management. Mine safety people are spending too much time escorting inspectors through the mines, filling out forms, and making reports to comply with the Act and neglecting effective safety programs. The safety director of a major corporation relates that after OSHA was passed he found that his safety record was deteriorating. His people were spending so much time on complying with the nonessentials prescribed in the Act that they were neglecting important activities. He put out a directive to minimize efforts to implement the Act and get back to working on safety. As a result his accident rate is improving again.

This misplaced priority is a serious result of the Act. The manager who operates an establishment should be the best qualified to determine priorities for achieving safety. Unfortunately, the government inspector is usually not technically qualified to contribute significantly to a specific problem. Furthermore, a plant supervisor is reluctant to discuss the details of a problem with an inspector because he doubts that he will get any help and is likely to get further citations as a result of calling the attention of the inspector to a specific problem. As a result, the inspector oftentimes forces the manufacturer to spend his resources to correct items that have minimum risk, and at the same time items with a high degree of risk are slighted or ignored. To solve problems requires a maximum degree of cooperation, but the result of OSHA and other federal laws is generally to reduce. cooperation to a minimum. To state it another way, cooperation is essential to achieve safety, but confrontation between all parties involved is the result of most federal regulations.

Even though the Act is not effective in promoting safety, it cannot be ignored since failure to comply with the provisions of the act could result in serious penalties. On the other hand, the employer cannot afford to neglect an effective safety program. The principles involved in carrying out such a program are discussed elsewhere. While there are many problems today, it is probably going to be worse in the future.

In recent years the tendency in product liability suits has been to increase dramatically the settlement paid as well as to absolve the injured of any responsibility for his injuries. The limits of Workmen's Compensation have kept these claims at a more reasonable level, but these limits are being increased rapidly. In one state the injured has the option to sue the employer outside the framework of Workmen's Compensation. With settlements reaching astronomical proportions, the concern and responsibility of the worker in accident prevention is bound to diminish, and the thought of self-inflicated injuires may not be unthinkable in the future. While the use of cigarettes may be an essential ingredient in the development of various forms of pneumoconiosis, the injured is absolved from any responsibility for this self-inflicted factor contributing to his illness.

In spite of (or perhaps because of) recent laws, industrial accidents still take an unacceptable toll. It is likely, then, that more legislation will be proposed and passed unless industry begins to take positive and effective action. Senator Harrison Williams of New Jersey, one of the major sponsors of safety legislation, may be a harbinger. He has submitted the Federal Mine Safety and Health Amendment Act of 1977 (S-717). His justification is statistics from the Mining Safety and Enforcement Division which shows that the number of serious injuries is increasing. It is Williams' intention "to give mine safety and health legislation a high priority". The strong features of the Coal Mine Health and Safety Act would be applied to all mining. The administration would be transferred to the

Department of Labor to avoid conflict of priorities within the Interior Department. This is an indication that Congress is not yet willing to do anything constructive in the field of safety. Bad legislation compounds problems and begets further bad legislation.

While there is serious disenchantment with OSHA, it is unlikely that the bill will be modified in a constructive way. It is more likely that Congress, responding to the many complaints, will continue to fund OSHA at a relatively low level. This is an effective and unobtrusive way to prevent the agency from becoming too much of an irritant to large numbers of businessmen who incidentally are also constituents.

In a recent news story, Eula Bingham, the director of OSHA, is quoted as saying that "nit-picking" type of inspections and regulations has resulted in a bad image for the agency. To counteract this she plans to "go after those areas that we know cause irreversible disease and death". Most safety people would agree that the area of hygiene needs greater emphasis, but one suspects the motivation behind this change in emphasis. Almost anyone could see that the demand for a split toilet seat or coat hooks in the toilet stall is "nit-picking". How many are in a position to evaluate the recent standard mandating reducing exposure to benzene from 10 ppm to 1 ppm. No one can afford to call this "nit-picking", and yet it may be even more unnecessary than the obvious mechanical things and far more expensive to correct.

It is unlikely that industry can do enough in reducing accidents to forestall new laws. Those employers that are concerned have already done an excellent job. The improvement must come from those employers who have done a poor job. New laws worked out by an enlightened management, labor and legislative group, directed specifically toward the poor performers with adequate incentive for good performance, may be a partial answer.

Furthermore, doing a good job in itself is not sufficient to prevent further oppressive and unproductive legislation. There are many examples of legislation that have been passed, motivated by false or misleading statistics. Once the media and advocacy groups decide there is a need for legislation, they will manufacture the data, if necessary, to justify the legislation and build support for its passage. The end result will likely be still more counterproductive and oppressive legislation, increasing costs, and deteriorating competitive position in world markets.

To stop this trend industry must do several things:

1. Find ways, either through voluntary effort or selective legislation, to obtain better performance of those employers with poor records.
2. Get their story in the media so as to give the public a more accurate picture.
3. Influence legislation and oppose bad legislation with all their combined resources even though the legislation has a favorable public image.
4. Establish or improve cooperation between labor and management to solve the problems of accident prevention and encourage increased responsibility by all parties.

VOLUNTARISM

Nelson Rockefeller is quoted in NAM Reports as saying, "the United States has drifted away from freedom of private initiative toward a society in which the complexity of the laws requires delegation of authority to regulatory bodies whose power over economic conditions has increased geometrically." In his speech Rockefeller called for an overhaul of government regulatory authority "to release the full dynamism and productivity of American industry while providing adequate protection for our people and our environment."

This could be nothing more than double talk (an attempt to please everyone), but hopefully it is a call for a return to voluntarism. Voluntarism, a system of voluntary action rather than coercion, was the American way prior to the growth of the Washington bureaucracy. Voluntarism is at least as old as Christianity and even may have its roots in that religion.

In recent years there has been an attempt to discredit this system and to accomplish the desired goal by strict laws. This is an obvious method, just pass a law that lays out exactly what we want and by legal means force compliance.

However, it doesn't always work as we would like. Those who write the laws frequently do not understand the problems, and by-products from compliance arise that were not anticipated. Furthermore, laws often prevent, or at least inhibit, voluntary action to solve a problem.

The detrimental effect of the coercive approach in auto safety is an example. It has been suggested that gas tanks on cars be moved forward so that they would be more resistant to damage in a rear end collison and lessen the chance of fire. A safety engineer for one of the major auto companies agreed the change would improve safety but that it would cost a few dollars. This extra cost in today's highly competitive market is enough to hurt sales. When asked why all the companies didn't go together, make the change, and raise prices uniformly, he pointed out the restrictions of antitrust laws and the fear of penalties. Here is one case, and there are no doubt many others, where the antitrust laws prevents cooperation among manufacturers that could result in real improvements.

The obvious answer is to require compliance by law or regulation, but this has other limitations. The government has established a standard requiring bumpers which can withstand a five mile crash against a barrier (wall) without damage. The hope would be that many "fenderbenders" could be eliminated. The problem is that most low speed crashes are not against a barrier but are against another car or a pole or other obstacle. A bumper that works against a barrier might not give any protection against other hazards. For instance, two blocks of rubber for a bumper might pass the test but not give any protection against a pole. A narrow bumper might also work against the barrier but fail to prevent a bumper on another car from sliding over or under and causing severe damage. There is also the problem that an approved five mile bumper might be strong enough to distort the frame in the event of a crash at higher speeds and result in more damage than a lighter bumper that could not pass the test.

The moral is that it is virtually impossible to write a law that accomplishes all that is desired and rigid restrictions are often counter productive.

The answer is probably fewer regulations with an enlightened voluntarism which seeks to serve consumer needs. Some relaxation of the antitrust laws allowing cooperation in order to achieve safety is necessary. These changes must be matched by more responsive managers in the auto industry who up to now have not shown sufficient concern about safety.

PURITANS - RIGHTEOUS BUT RESTRICTIVE

Through history there has been a cycle between overthrowing a highly regulated society and a return to oppression. When society becomes very regulated, the desire for freedom grows until the people are aroused to action. Then, as they become apathetic and take the hard won freedom for granted, the natural tendency of any government to regulate expresses itself again.

The Old Testament period is an example of regulation of every aspect of human conduct. The New Testament period was a change from regulation to freedom. It was not a freedom to sin or to violate essential principles but rather a freedom to work out one's own salvation in methods best suited to one's own talents. In a sense it was far more demanding. It required the best and most productive effort not just the required or minimum effort.

While the new found freedom with the change in emphasis changed the course of the world, it did not last long. The churches soon began to impose the many regulations common to the Old Testament. Martin Luther and others in the reformation period again reestablished the concepts of freedom, but almost immediately a reaction set in.

The Puritans (Pilgrims) who came to Massachusetts in 1620 are an example of this reaction. The Puritan is characterized as "one who followed a strict and closely regulated habit of life. The Puritan was a spiritual athlete characterized by an intense zeal for reform -- a zeal to order everything -- personal life, family life, worship, church, business affairs, political view, and even recreation in the light of God's demand upon him."

In purely civil affairs there have been similar cycles. Free systems are established as a reaction to oppression, but they soon lose their character of freedom as the perverse tendency to regulate in the attempt to solve problems curtails and surmounts freedom.

The writers of the Constitution apparently recognized the threat to freedom by bureaucratic busybodies and set up the most effective instrument in history to preserve freedom. It did preserve that freedom for one hundred and fifty years. Then the desire to solve the problems of the depression resulted in pressures to regulate, and the meaning of the Constitution was changed by the Supreme Court. The phrase in the Preamble, "promote the general welfare," was broadened to cover everything from providing hot lunches for school children to restricting the acreage of tobacco a farmer can grow. The Tenth Amendment which said, "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people," was completely forgotten in the rush to regulation by the 'New Puritans'.

Today we see further growth of a secular Puritanism to "order everything" in all phases of our lives other than the sacred. (The Constitutional prohibitions still hold there.) Ralph Nader, one of the leading proponents of the New Puritanism, exhibits many of the characteristics of the early Puritan. His asceticism is typical. One need not stretch his imagination too far to see Ralph Nader presiding over an early Puritan meeting and ordering a guilty Pilgrim to the stocks for wasting resources by eating a second helping of corn pudding.

The Puritans (just as Nader) were undoubtedly righteous people with the very best intentions, but they would have restricted our freedom and consequently our potential for innovation and growth. How much longer will it be before the liberals in this country wake up to the threat of the New Puritans who would regulate every aspect of our lives and reduce us to slaves of the state?

INCENTIVES for PERFORMANCE

In another column I have explained that comprehensive safety laws have not reduced accidents and why this is so. If the safety laws are not working, it would seem that Congress would repeal ineffective laws and try a different plan. However, as Congress seldom acts in a logical fashion, it is more likely that some incident will trigger further repressive and counterproductive legislation.

To avoid more legislation one would think that industry should do all it can to put its own house in order Unfortunately, the same difficulty plagues this approach that causes the legislation to be ineffective in the first place, i.e., the assumption that all industry performs equally well with regard to safety. Nothing could be further from the truth. While some do a poor job, others work several million man hours without a lost time (serious) injury.

A newspaper story recently told of a man who had worked forty five years in the mines without a lost time injury as though this were a remarkable record. Actually, forty-five years represents only 90,000 man hours. Many plants and even some mines routinely go ten times this long without a lost time injury.

It is unlikely that these records can be improved very much. In safety we set as a goal the complete elimination of accidents, but to be realistic a record of a million man hours without a lost time injury must be recognized as really remarkable. If five hundred people were to report to a building every day for a year (one million man hours) and do nothing but sit on chairs, there is a good possibility that one of that number would go to sleep and fall off his chair or that one would slip on the steps on the way in or out and injure himself, yet many industrial plants performing hazardous operations with dangerous materials do far better than this. On the other hand many do not

THE MINING INDUSTRY is a good case study. It has many individual enterprises all doing essentially the same things, and their performance is well documented. A study shows there is an average accident frequency rate of 35 to 45 lost time injuries per million man hours, the poorest of any major industry and six times the average for all industry. However, there are many mines operating with a frequency of less than ten, and a few even operate at the level of one or two. At the other end of the scale there are mines with accident frequencies above 200.

An overall improvement in industry performance must come from improving the poor performers rather than any substantial change in the better companies.

In the past industry has opposed legislation even though they surely recognized there were "bad boys" within industry that sorely need some form of correction. On the other hand legislation has not provided exemption or incentive for those establishments that do a good job.

The best course for those mem-

bers of industry that are doing a good job may be to cooperate with reasonable legislators and develop effective legislation specifically directed toward those who have failed to do a good job voluntarily and also provide incentives for those who have. The progressive mine operators in West Virginia are contemplating just such a program.

MEDIA MANAGEMENT

There is a belief even accepted by some industry leaders themselves that if they put their house in order their image will improve accordingly, a belief about as valid as the tooth fairy legend. As long as three fourths of the public depends upon TV for its news the image of industry will be just what the moguls of the media want it to be. Schumpter explained in his book (reviewed in my column, "Man the Pumps") why the media have an ingrained bias against business. As long as this bias exists industry will not get a fair shake.

There are clear examples of legislation passed by Congress responding to distorted facts. In 1972 I spent considerable effort trying to convince congressional staff people that the Water Pollution Act had some serious faults. The Bill was based on the belief that pollution was increasing greatly and was approaching a crisis. I suggested that we had made grest progress in West Virginia and had reduced the waste load going into the Kanawha River, one of the worst, by more than 75 percent in the preceding ten years. I tried to convince the staff people that the crisis was past and that federal legislation was likely to hamper effective state programs. The answer invariably was, "Well, West Virginia may have improved their situation, but that is not typical. The rest of the country is in bad shape." I checked and found that, while the Kanawha River progress might have been better than average, most places in the country had made real progress, and the crisis was definitely past. However, Congress is far more sensitive to media propaganda than to facts and passed the bill anyway. Now after five years the law appears of doubtful value, but it saddled industry with greatly increased costs and bureaucracy.

The passage of OSHA was similarly based on the false propaganda of soaring injury rates. Actually the volunteer safety movement has an enviable record in the United States. Again the distoritions and propaganda were sufficient to justify the passage of a bill which again has been highly expensive, unproductive at best and possibly counterproductive.

AFTER TALKING to others who have their own horror stories, I am sure my experience in the "Politics of Cancer", a CBS documentary with Leslie Stahl was typical. In one instance Leslie Stahl pointed to a discharging steam trap indicating it was spewing chemicals, but my comment that it was just steam and water being released similar to a home pressure cooker was lost on

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the cutting room floor. Even more damning was the use of infra red film sensitive to heat and moisture to exaggerate greatly the appearance of fumes coming from the plant. These are just easily perceived examples of the total distortion that was not as clear but far more damaging.

Other companies unfairly pictured in that documentary had sufficient clout through their advertising to demand correction but hesitated to do so for fear, I suppose, that they would be accused of censorship. We now have the unbelievable spectacle of industry's paying the bill through advertising for its own destruction yet being impotent to retaliate.

The answer may be the establishment of a fairness board financed by industry but independently controlled by scholars of impeccable reputation to review TV shows and screen complaints. When an unfair or inaccurate presentation has been made, this board could investigate and put on a rebutal financed by industry, if necessary. At least, then the public would have the opportunity to hear both sides without fear that they were being brainwashed by biased industry advertisements.

FOUR YEARS LATER

Shortly after the passage of the Coal Mine Safety Act I predicted in a column that the Act would do little to reduce mine injuries or fatalities. The Act depends on inspection and correction of conditions, but, as I pointed out, most accidents are caused by unsafe acts of the workers. As this is a generally accepted view of most trained safety people, the Safety Council circulated my column throughout West Virginia, and a few papers carried the story.

The reaction was immediate and violent. David McAteer, who had become a safety expert by virtue of a law degree and association with Ralph Nader's task force on mine safety, issued a blast in which he accused the West Virginia Safety Council of domination by industry. He claimed that my editorial was an attempt to absolve industry of any responsibility and to place the blame on the worker. As usual his charges received much wider coverage than my original editorial.

Now four years later I am being vindicated to some slight extent. First, the rate of disabling injuries has changed little, if at all, and the slight reduction in fatalities appears no more that a continuation of a trend that had been going on even before the bill was passed.

Most of all, however, was a recent Associated Press news item from Lexington, Kentucky, quoting representatives of the United Mine Workers appearing before a United States Department of the Interior committee. These union members called for adequate training of the miners themselves. The release quoted them as follows: "We must remember that we deal with the human element, and we must devise some method to motivate men working in the mine. "We've got to start working on a program to get the man in the mine involved. You must instill a sense of responsibility in the employee as well as in the employer."

This is exactly the point I was trying to make in my editorial, that training and motivation are very important parts of any safety program, yet these very important elements were ignored in the law.

After our encounter in the media I talked to McAtteer. I tried to explain that my comments were not an attempt to excuse management but rather to recognize that training and motivation are important parts of any safety program and that management must undertake to see that these parts of the program are carried out as well as simply correcting conditions.

I hope this testimony by the United Mine Workers members will help usher in a new era of safety in which labor and management can sit down and pool their knowledge and resources to set up safety programs that really work. After all some mines have been able to mine coal with accident frequency lower than the average for all industry. There is no reason why all mines can't do the same if they understand what needs to be done and organize properly to carry out the whole program.

COST OF COAL

If coal is to be the key to the energy problem, then safety and laws relating to safety will be important factors. How the question of safety is resolved will determine the price we pay for this important source of energy.

Since the Coal Mine Safety and Health Act was passed in 1969, productivity in underground mining in West Virginia has steadily dropped from fourteen tons per man per day to eight, and injury rates per million man hours have stayed constant. Because it is necessary to employ more men to mine the same amount of coal, injury rates per million tons of coal have risen from 30 to 52 since the law went into effect. The loss of productivity has been the major reason for coal's increasing from $7 to $20 per ton in the same period.

A causal relationship of productivity and the 1969 law are not proven just because they happened simultaneously. However, there are logical reasons to explain why the law could have such an adverse effect. (An earlier column explained why safety has not been improved.)

Probably the most important factor is the effect on the attitude of the miners. The law has created a more nearly adversary relationship between the men and the supervisory force. Instead of a cooperative spirit to solve common problems the law gives added support to the dissident employee who just wants to cause trouble or delay getting the job done. The law has resulted in the miners taking less pride in their work. The outside inspector's continually finding fault gives support to the employee who also wants to find fault.

In one better than average mine during 24 months there were 368 inspection days carried out by one agency or another. This means that much production was lost as inspectors shut down operations to carry out their duties and also time lost by employees to escort inspectors through the mine.

On each inspection the inspector finds violations to fulfill what appears to be a quota. Many of these violations are highly subjective and of a very minor nature. It is not uncommon for one inspector to approve an installation and the next inspector to find a violation. However, it would take longer to protest than to correct, so usually the mine operator takes the time from production to correct the alleged violation.

In order to fulfill their quotas the inspectors have become more and more critical. The philosophy concerning guards on machinery has changed from "preventing a man from getting hurt accidently" to "preventing man from

getting hurt deliberately." One inspector got down on his hands and knees and reached under a guarded drive to show that it was "possible" a man could get caught and, therefore, a violation.

Since 1969 one major mining company has had a 96 per cent turnover in supervisory personnel thereby losing a wealth of talent. Many took early retirement or left for other jobs because of the harassment and frustration resulting from the Act. One easy out was to take a job as a government inspector at higher salaries.

Because the legislation has failed to accomplish its goals, more legislation is being considered at both the state and federal level. If productivity has gone down under present laws, it would virtually come to a standstill under the following provisions in proposed laws: A state law would give any employee the authority to declare an operation unsafe. It would then have to be shut down until an outside inspector declared the condition safe or corrected.

A state law would put total responsibility on the foreman for violation of safety rules by an employee. If a miner goes beyond roof supports and works under an unsupported roof, his foreman is decertified for one year. If the miner is a "red hat" (less than one year's experience) and is injured, the foreman is decertified for life. The miner's testimony is evidence enough for the action. If this provision passes, it is hard to imagine any foremen surviving.

A federal law would rule that 15 years service in the mines would constitute a presumption of black lung and entitle an employee to a pension (paid for by an increase in the price of coal).

Most people have felt that coal mine legislation does not affect them and have not concerned themselves. If, however, they are concerned about the price of electricity and virtually everything else they buy, they had better wake up and see that these proposed bills do not pass.

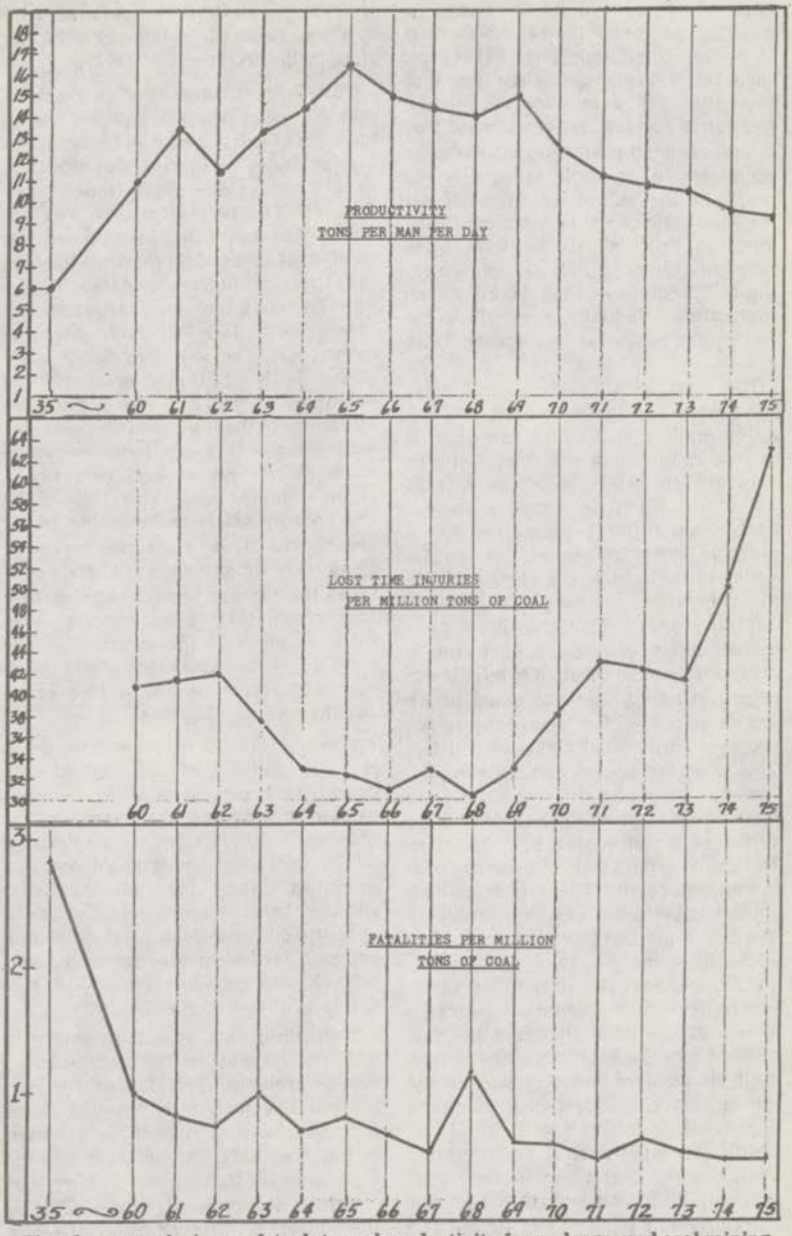
ALL THE SAME

West Virginia Safety Council has been promoting the philosophy that occupational safety in all industries is best served by the same approach. This philosophy became apparent when the Council investigated coal mining to find out why that particular industry had such a high frequency rate. The Council discovered that while coal mining averaged 40 lost time accidents per million man hours and some mines had rates as high as 200, many mines had rates well below the overall industry average of 8 - 12. Further investigation revealed that those mines with the excellent records were invariably captive mines of either the steel or chemical industry. Exactly the same safety program was used in those mines that was used in the steel mills or the chemical plants. These programs emphasized employee training and motivation, job hazard analysis, accident reporting, investigation and follow up.

By way of contrast the average mine safety program depended largely upon inspection of conditions which might cause accidents. This preoccupation with inspection for unsafe conditions as the primary safety activity may have been the natural reaction to laws which over-emphasized this factor. The federal Coal Mine Safety Act further accentuated this emphasis and consequently has failed to a large extent to accomplish its objective.

Many independent mine operators have insisted that mine safety is completely different from other occu-

cont. on page 13



The above graph gives safety data and productivity for underground coal mining in West Virginia. The high fatality rate for 1968 included the deaths incurred at the Mountaineer Number 9 disaster a major factor in passage of the coal mine Health & Safety Act in 1969.

pational safety and have refused to avail themselves of the valuable experience of other industries. However, there is a growing recognition that inspection for conditions is not the answer to accident prevention but that a well rounded program that has been so successful in some industries will work in the mines as in all other occupations: Even the United Mine Workers testified at the Coal Mine Safety Act oversight hearings at Lexington, Kentucky, that training and motivation (virtually ignored in the Act) were essential to improve mine safety.

The West Virginia Fortieth Annual Governor's Safety Conference in Charleston made a significant contribution to the philosophy of the uniform approach to safety. A speaker from Bethlehem Steel described a formal twelve hour safety presentation that is given to every employee whether he works in the mines, the steel mills or the shipyards. The keynote speaker, Captain Woods of United Airlines, gave the elements of the airline's safety program that has resulted in a fantastic record of safety in what could be an unsafe activity if the hazards were not properly anticipated and provided for. This program shows striking similarities to programs in wide use in industry. His talk was reminiscent of an earlier conference when astronaut Ken Mattingly, after a tour of a nearby coal mine, remarked, "There is a striking similarity between the safety problems in a coal mine and those we encountered in the space program."

At the final combined meeting which had representatives from all segments of industry, a dramatic example was given of how the adoption of the proven methods of other industry has helped the largest and oldest coal company improve their safety record. Mr. Ralph Hatch, vice president of Consolidation Coal, described changes in their program which have resulted in accident rates dropping from 23.5 in 1972 to 11.3 in 1973. An all-time company record of 6.0 was reached in January 1974, one fourth the frequency in 1972.

This dramatic reduction in eighteen months was largely attributed to an increase of safety personnel from 103 to 222 for 16,000 employees and the time spent on training was more than doubled. The success of this program which was based on the conventional wisdom of successful programs in other industries is further evidence of the validity of a common approach to safety. In his talk Mr. Hatch gave the results of a survey they have completed. It showed that 87 percent of the accidents were not the result of violations of the law, and this coincides with the Safety Council studies which show 85 percent of accidents are a result of human error. This, then, is the reason why safety is the same in all industries. It is a people problem. People are the same everywhere and it takes the same programs to get people to perform their jobs properly. This includes not only the member of the work force but supervisory and management people who must also carry out their responsibilities.

While Mr. Hatch did not say so, there is little doubt that the key to this remarkable success was the decision by top management to assume full responsibility for safety. They decided on the goal of reducing accidents to a minimum. Then they allocated the resources and assigned the priorities to accomplish this goal. Certainly this proper exercise of management functions is the esential element in any safety program in any industry.

This uniform approach to safety is well on the way to solving the mine safety problem. This leaves the important question, how can this same approach be used to solve the problem of highway safety which accounts for four times the number of fatalities that occur in occupational safety? This is the subject of a future editorial.

OUTLINE OF RISK EVALUATION
METHOD OF BILL FINE
US NAVAL RESEARCH LABORATORIES
WHITE OAK, MD.

Risk Evaluation

R = CEP

C - Consequence	**catastrophe**	**100**
	fatality	**25**
	minor injury	**1**
E - Exposure	**continious**	**10**
	rare	**1**
P - Probability	**likely**	**10**
	unlikely	**1**
	very remote	**0.1**

Justification for Corrective Action

$$J = \frac{CEP}{(CF)(DC)}$$

(CF) COST FACTOR	Over $50,000 - 10 Under $25 - .5
(DC) DEGREE OF CORRECTION	Hazard Eliminated - 1 Little Effect - 6

See Priorities for Safety Page 15 for explanation

PRIORITIES FOR SAFETY

In my early days at Monsanto I learned an important safety lesson. At that time the Monsanto plant had been taken over from a small company who had not had the resources or the expertise to install equipment according to good safety practice. The local management was under heavy pressure from headquarters to improve the safety record, and in turn they put pressure on the supervisors. At that time I thought that an improvement in conditions was the major need to improve safety, so I responded to pressure by complaining about the large number of substandard conditions.

Tired of my grumbling, the manager finally authorized me to make a list of every unsafe condition in the plant. I am sure he was surprised a few days later when I presented him with a list of thousands of items that needed correction.

In compiling the list I vented considerable frustration but accomplished little else. The list was so voluminous that it was impossible to correct all of the errors in any reasonable time, and there was no priority assigned. Many items on the list were nothing but nit-picking and wouldn't have contributed to an accident in a thousand years.

Had I assigned some sort of a risk factor to each item and listed them in order of risk, it is possible that the worst hazards could have been corrected and others corrected in a reasonable order.

Mr. Bill Fine of the naval Research Laboratories, White Oak, Mayland, has developed a very practical method of doing just this. His risk factor is the product of three values: consequence, exposure, and probablility.

The value for consequence varies from 100 for a major catastrophe (several fatalities and-or major destruction of the plant) to 25 for a single fatality down to 1 for a minor injury.

The value for exposure varies from 10 where the hazard is continuous, such as slippery steps in front of an office to 1 for a rare exposure, such as an unguarded belt on an isolated fan that is lubricated and inspected at infrequent intervals.

Probability is rated at 10 for a hazard that is very likely to result in an accident, such as a workman's falling from an unguarded catwalk, down to 1 or even .1 for hazards that are very unlikely to result in an accident, such as an unguarded gear drive eight feet above a working platform.

Once risks have been calculated they can be arranged in numerical order to give a priority rating. These risks can vary from 100 x 10 x 10, or 10,000, down to 1. The order of correction would become obvious once this list is compiled except for the cost factor.

Bill Fine, unlike most government employees, is sensitive to this problem just as most business people must be. To take this into account he has developed a justification value. To obtain this value the risk factor obtained by the above method is divided by a cost factor and a degree of correction factor. The cost factor varies from 10 for a cost over $50,000 to .5 for a cost under $25. The degree of correction factors varies from 1, for elimination of hazard, to 6, for little effect on the hazard. Obviously, the smaller values for these factors, appearing in the denominator, result in a higher justification. To say the same thing another way resources which are always limited are better used where the risk is high and the cost of complete correction is low.

This is a very brief summary of an elegant procedure that has been developed by Mr. Fine and available from him. It does, however, suggest a rational method of approaching hazards in the work place and a method of establishing priorities. It also provides a rational justification for presentation to those responsible for authorizing expenditures. Finally, it demonstrates a "good faith" effort toward solving safety problems and may be of considerable value in minimizing penalities resulting from an OSHA inspection.

RESPONSIBILITY FOR SAFETY

It is a standard axiom among well managed industrial plants that management must take full responsibility for safety. Jack Redline, who was president of Weirton Steel, the largest employer in West Virginia, stated this idea unequivocally, "No plant can have a good safety record until management takes full responsibility for every accident, major or minor."

Management does not say, "Why did that employee hurt himself?" Instead, management examines its practices or procedures to determine what weakness or malfunction allowed the accident to happen.

There are reasons why this must be so. Management controls the resources and determines the priorities, so it must also take the responsibility. From a practical standpoint some risk is involved in nearly every operation, and it is impractical or at least prohibitively expensive to design a process so that an accident cannot happen under any condition. Therefore, management must determine just how far to go and how much money to spend to eliminate the source of accidents or just how much training of employees to finance to be sure they understand their jobs and perform them safely. The larger the operation the more safety can be engineered into a job, but even in the largest there is still some risk. Because management makes the decision of just how far to go, it must also take the full responsibility for any failure.

All of this, however, is based on what has been considered a reasonable assumption that the employee is interested in his own welfare and would exercise some reasonable judgment in the performance of his duties. It is obvious that if a man deliberately sets out to injure himself he can probably do so (barring the use of a straight-jacket) regardless of the efforts of management. If the employee is a carpenter, he can hit his finger with a hammer. The secretary can trip over a chair. There is no way that management can stop accidents if they do not have the willing cooperation of the employees.

It would not seem reasonable that an employee would deliberately injure himself, but at some point, if the payments become high enough, the possibility becomes very real. In the field of product liability claims are reaching fantastic limits, and the manufacturer must take total responsibility. According to recent court decisions the injured need not show how the machine malfunctioned or where it failed. Injury alone is proof of failure. The classic example is the case of two men holding a running rotary mower waist high and carrying it along to mow a hedge. When their fingers were amputated, they sued the lawn mower manufacturer and collected. The court ruled that there should have been adequate guards.

No doubt there have been industrial injuries and settlements based on just such absurd activities. Of course, management always pays in that situation. The difference is that under Workmen's Compensation there is a limit on the financial settlement. This limit is rapidly being raised, and at least in one state the employee is free to choose between a Workmen's Compensation settlement or a civil suit. With the monetary settlements that are becoming commonplace in product liability cases, the time may not be far off when an employee will deliberately (although surreptitiously) injure himself in order to reap a monetary settlement.

There is substantial evidence that cigarette smoking is a major, if not essential, factor in contracting "black lung". It is also a significant factor in lung cancer from uranium mining and use of asbestos. Whether the claimant of black lung benefits is a user of cigarettes is not taken into account in determining the eligibility for benefits. This may be an example of an employee's injuring himself, and yet the employer pays the benefits. With the continual lessening of the responsibility of the worker for any injury that takes place and the steadily increasing limits on benefits paid, the small employer may find it impossible to

survive.

The large employer, because of a broader base, may survive, but the greatly increased cost will be passed on to the consumer.

Some way must be found to assure that the employee begins to take some responsibility for his actions if a viable free enterprise system is to survive.

LAWS FROM GUIDELINES

One of the main problems that has resulted in the dissatisfaction with OSHA has been the preoccupation with very minor conditions which have, at best, a very minimum effect on accident prevention.

Early in the administration of the Act horror stories of ridiculous enforcement activities were common. One justification of the split toilet seat was facetiously related to be the fear that an OSHA inspector might get a broken neck when he got a drink of water. The cartoon of the "Cowboy According to OSHA Regulations" was widely circulated. This cartoon showed, among many other safety devices, a net to prevent the rider from falling to the ground. This was, of course, commical but not particularly out of line considering other rulings.

One recent ruling requiring toilet facilities within a specified distance of farm workers may have been a significant factor in the election of Senator Wallop of Wyoming. In his campaign he ran a short commercial on TV in which a cowboy on a horse was shown complaining about bureaucrats in Washington trying to tell him how to conduct his activities. Then, as he rides into the sunset, the viewer sees a portable toilet being pulled behind his horse. This humorous, but probably realistic, parody created a great deal of interest among voters.

In the early period of euphoria resulting from OSHA I pointed out some of these problems to the Board of Directors of the National Safety Council. They seemed to be elated over the passage of a law that promised to eliminate accidents -- something the volunteer movement had not been able to do.

At that meeting, my first as a Director, I began to establish my position as the "burr under the saddle". I sensed that while many thought OSHA was the greatest thing since sliced bread there were also many (usually operating level personnel) who were concerned. I pointed out that one plant here in the valley had several miles of toe rail around working platforms that were a fraction of an inch under the four inches required by the OSHA standards. The smaller toe rail had been installed according to plant standards. It would be hard justify changing on the basis of improved safety, but theoretically OSHA would require correction. I cited several other similar situations.

George Guenther, who was administrator of the Act, was present and answered my criticism. He pointed out that these were deminimis violations and would not be considered important to the enforcement of the Act. As he predicted, this type of violation has generally been ignored but not universally. One company in Ohio was required to lower six inches several hundred fire extinguishers mounted on the wall in order to comply with the published standards. It would be difficult to characterize this as anything but "nit-picking".

Industry is largely to blame for all of these standards. They were adopted with industry's approval from guidelines that had been established by industry committees. However, there is a great difference between a guideline

and a law. The guideline provides a recommendation of good practice, and the ideal conditions specified in the guidelines are intended to be modified to fit the individual situation. Sensible modification can often result in improved safety over what might be obtained by strictly or blindly following the guideline.

When guidelines which are meant to be flexible become rigid law, the type of problem that has discredited OSHA is bound to arise. The solution lies in a complete overhaul of the standards recognizing the difference between guidelines and laws and making sure that the law is practical and flexible enough to promote safety without diluting the safety effort by requiring the correction of trivia.

WHY THEY HATE YOUR SAFETY PROGRAM

Donald S. Buck, top safety man for the U.S. Army in Europe, suggests eight reasons for failure of a safety program. These reasons with a brief summary of each are given below. The original article was published in Commercial Car Journal, November 1972. Reprints may be obtained by writing to the publisher at Chesnut and 56th Street, Philadelphia, Pa. 19139.

1. HYPOCRISY
Does Management practice what it preaches?

2. DECEIT

Do the records and reports reflect accurately what is happening or do they attempt to cover up?

3. INFIDELITY
Does Management keep its promises and commitments?

4. FOG
Are Company policies, rules and regulations clear and straight-forward or are they obscured by use of double talk?

5.INEQUITY
Does Management treat everyone and every situation alike? Does it play favorites? Does it strain at a gnat and swallow a camel?

6. IRRESPONSIBILITY
Does Management take responsibility for the program or does it take credit when the record is good and hand out the blame when things go wrong?

7. IGNORANCE
Does Management know what is really going on or does it hear what it wants to from a bunch of "yes men"?

8. INACTION
Does Management really follow up on hazard leads or does it try to ignore and hope they'll go away?

TWELVE CONCEPTS OF SAFETY

1. SAFETY IS THE SAME IN ALL INDUSTRY.
Where coal mines have the best record, they use the identical safety program that is effective in steel or other industry.

2. SAFETY IS PRIMARILY A PEOPLE PROBLEM
Most accidents are caused by faulty acts of people rather than unsafe conditions. The problem is to get people to do the right thing and keep them doing it. This also includes people at the supervisory and management level.

3. SAFETY IS NO ACCIDENT.
Not just luck. A good program will get results.

3. SAFETY PAYS.
Good safety practice is not just an added cost but an investment for profit.

5. A WELL ESTABLISHED COMPANY POLICY IS IMPORTANT.
Let the employees know that safety is of primary concern, that it is not in the company interest to cut corners.

6. COMPANY MUST ASSUME RESPONSIBILITY.
A. Not - why did the idiot hurt himself, but - what have we done wrong to allow this to happen.
B. Management must assume responsibility because it controls the resources and sets the priorities.

7. DETERMINE THE CAUSE OF ACCIDENTS RATHER THAN PLACE THE BLAME.
A. Everyone will help find the cause.
B. No one wants to accept the blame.
C. If blame is the object then the real cause becomes obscured.

8. INVESTIGATE ALL ACCIDENTS THOROUGHLY AND PROPERLY.
A. Determine the cause.
C. Develop a defense.
C. Follow through.
Where this procedure is used, accident rates drop - compare airline fatality rates with highway fatality rates. Also, an investigation is a teaching process.

9. DON'T BLAME THE CARELESS WORKER.
This excuse leads nowhere. Find the other reasons. There will always be careless workers. Prevent accidents in spite of carelessness.

10. MOTIVATE RATHER THAN PENALIZE.
Motivation is almost always more effective. Sell the men on the program, get them on the safety bandwagon.

11. EVERY MAN A SAFETY MAN.
Don't depend on the staff safety man. Every one must be watching and practicing safety.

12. KNOWING IS NOT ENOUGH.
The concepts of safety must be put into practice.

Supplement to

VOLUME V

INDUSTRIAL SAFETY

TESTIMONY AND

OTHER RELATED COLUMNS

SMALL BUSINESS AND THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Hearings before the Select Committee on Small Business
HOUSE OF REPRESENTATIVES
Pursuant to H. Res. 5 and 19
Washington D.C., June 20, 21, 22, 27 and 28, 1972

STATEMENT OF ELMER A. FIKE

The Occupational Safety and Health Act of 1970 has now been in effect a little over a year. There has been no dramatic reduction in accidents as a result of this Act. While there has not been enough time to assess the true effect of the Act, many safety experts question if the Act as now constituted will have the desired effect of reducing injuries to the minimum. This is true for several reasons:

A. Safety by Inspection

The Act relies mainly on inspection and correction of unsafe conditions as a means of eliminating accidents. Most safety people believe that the major cause of accidents is the unsafe acts of people. A National Safety Council survey found that 85% of accidents were caused by unsafe acts rather than unsafe conditions. Admittedly, it is sometimes difficult to draw a distinction between accidents caused by unsafe acts as opposed to unsafe conditions because many times both causes are a factor to some extent. However, it is a major fault in the Act that it is concerned only with the conditions that cause accidents. An effective safety program must be more concerned with organization, training and motivation to get the desired results but the Act does not consider these aspects of the problem.

B. Target industries

The Act provides for certain industries that show high accident frequencies to be the first target of inspections and enforcement. This provision is based on the concept that some industries are inherently more dangerous than others and that special emphasis should be placed on those industries. Many authorities believe that an effective approach to safety is the same for all segments of industry. Whether any particular work place has a good or poor record depends primarily upon the extent that a sound program is administered, not the inherent hazard of the operations. If a good program is carried out, even the most potentially dangerous operation can be carried out safely. Conversely, a potentially safe operation can have high accident rates without a sound safety program. It would be more appropriate to base inspections on the performance of the individual operation. If a particular work place has a good record as evidenced by a low accident frequency rate then that work place should be given a minimum of attention. On the other hand, the maximum attention should be given to the work place showing a poor record. This approach gives the management additional incentive to improve its program and allows the enforcement branch to spend its time where it is needed most.

C. Type of enforcement

Rather then concentrate on inspection of conditions, the enforcement officer should concentrate on the overall safety program. He should determine if there is:

1. Adequate organization.
2. Training and motivational programs.
3. Investigation and follow-up on accidents and incidents that could cause accidents.
4. A spirit of cooperation between management and labor. The enforcement officer should take on the role of a trainer or consultant rather than just an inspector for unsafe conditions. This approach would be particularly valuable for the small employer who does not have adequate or trained personnel in the field of safety.

D. The effect of the act on the small employer

There has been considerable criticism of the Act because it places a serious burden on the small employer. He cannot hope to keep up with the Act or even all the standards. Some relief is needed. On the other hand, the small operation generally has much higher frequency rates than does the large operation. A study made in the chemical industry by Gorbell (copy of abstract enclosed) showed that small plants with less than 200 employees have accident frequency rates ten times higher than operations having 5000 employees. There are many reasons some of which are given. The small operation does not have adequate financial or personnel resources. The nature of the small business often requires short

runs and frequent changes which make job hazard analysis and correction difficult if not impossible.

In spite of the difficulties that the small business is experiencing, we think it would be a mistake to exclude them from coverage. The Statistical Abstract of the United States for 1971, p. 463, gives the following data:

[As percent of total]

Employment size	Number of employers	Number of employees
Less than 3	50.9	5.5
Less than 7	71.3	12.1
Less than 19	87.9	24.5
Less than 49	95.4	38.8
Less than 99	97.9	49.4

From this, it can be seen that if all employers having less than 19 employees were excluded, 24.5% of the employees would be excluded. While no overall data is available on frequency rates for small as compared to large companies, the data presented for the chemical industry indicates that the rates are much higher for the small companies so that these 24.5% of the employees might account for well over half of the accidents. It would be unreasonable that this large source of accidents be excluded.

E. Appropriations for the bill

If Congress is serious about enforcing this Act, it must think in terms of very much larger appropriations. The Statistical Handbook shows 3,536,000 reporting employment units. Even at $100 per unit, and this would probably cover the expense of only the smallest unit of employment, a budget of $353 million would be required. To do an adequate job for all employers could easily cost over one billion dollars.

SUMMARY AND RECOMMENDATIONS

It is believed that if the Act is to become effective there must be a shift in the emphasis. Instead of concentrating on inspection to get compliance with the four thousand standards, there should be a major emphasis on determining that each place of employment has an effective safety program. It is essential that the management take full responsibility for the safety program if it is to be effective. Therefore, management should be responsible for establishing the program to be used in a particular place of employment. This is only reasonable as each management is most knowledgeable of the hazards, conditions and employees in its operation.

The role of the enforcement officer should be to see that the program is developed and put into effect.

An adequate safety program should provide or contain the following:

1. A basic company safety policy.
2. Sound and adequate safety rules and safe work procedures.
3. Accident investigation procedures and follow-up.
4. Indoctrination program for new employees.
5. Continuing training, safety instruction and motivational programs.
6. Internal inspection programs to insure compliance with Federal as well as plant standards.
7. Cooperative labor-management participation in safety.
8. Other items as required to fit any particular operation.

The role of the enforcement officer would be to review this program with management and labor representatives to see that it was adequately carried out. He could act in a consulting capacity to assist where needed and to make resources of the government available. The enforcement officer could require plans for improvement and progress reports where deficiencies occur and could set a timetable for compliance.

The effectiveness of the program can be easily measured by the accident frequency rate. A declining rate will show that the program is sound. Conversely, a continuing high accident rate will indicate an improvement is necessary.

If the Act is to accomplish its very worthwhile objective, it must promote a spirit of cooperation between management, labor and government. These recommendations should do that.

OSHA AND TRIVIA

7 - 19 - 78

This past week I testified before an administrative law judge in Washington in opposition to the new cancer policy proposed by OSHA. This policy would require that any chemical that causes any tumor growth in test animals even under the most extreme conditions would have to be handled as though it were as dangerous as the most potent carcinogen.

My opposition is based on four points. First, this policy leads people to believe industrial chemicals are the major cause of cancer instead of actually causing well under five percent. This emphasis then diverts attention from the effect of diet, smoking, and other factors causing 50 to 70 per cent of cancer factors that could be controlled if they were properly publicized and understood.

Second, OSHA now admits that they can't handle their present assignment. How can they take on a massive new program?

Third, the burden of unreasonable regulation usually falls more heavily on the samll corporation because enforcement is generally based on the ease of enforcement rather than severity of the violation. Products of the large companies often have too great an impact on the general public. (Cigarettes, for example.) Furthermore, the small companies seldom have the resources to resist regulation effectively.

Fourth, if the regulations are enforced uniformly, they will result in these ridiculous situations and many more. Roads cannot be paved with asphalt — a carcinogen. Bartenders will not be allowed to mix drinks since alcohol is a carcinogen. Exposure to mineral oil, the base of lubricants and a carcinogen, must be eliminated.

These situations and many more just like them will make the uproar over the saccharin ban or the snail darter, Tellico Dam controversy seem minor by comparison.

I tried to explain that this new cancer policy, like much of the rest of the OSHA program, would be aimed at trivialities rather than the real problem. Unfortunately, I overlooked a glaring example.

As I left the hearing room, I tried three doors before I found an exit door into the hall. The first door led into a storage room, and the second into a janitor room. The true exit was not marked.

Failure to mark exit doors is one of the commonest violations of OSHA regulations and has resulted in thousands of fines even in situations far less confusing than in that hearing room.

It was obvious that the Labor Department, which was responsible for that building, recognizes that exit signs have little or nothing to do with safety, yet the enforcement branch of the Labor Department (OSHA) continues to harass those who do not live up to the letter of the law.

One wonders if the new cancer policy won't result in a similar trivial approach to what is really a serious problem.

FOUR ESSAYS ON INDUSTRIAL SAFETY

By ELMER A. FIKE

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1. PROGRESS IN SAFETY : 10-6-77

"You've come a long way, Baby," applies to a lot more than cigarettes and women's clothes. And not all the change has been downhill.

At the turn of the century a coal operator in West Virginia was quoted as saying, "I don't care how many people you kill. We can always hire more, but don't kill any mules. We have to buy them."

The same attitude prevailed in England. A factory that used carbon bisulfide to cement rubber was poorly ventilated. Long term exposure to this chemical resulted in mental problems with suicidal tendencies causing some people to jump out of windows to their death. The solution to the problem was to put bars on the windows rather than improve ventilation or eliminate the fumes.

In Allegheny County, Pittsburgh, Pennsylvania, a record of industrial fatalities during the year 1906 was kept, and the results were startling. Few days passed without a fatality, and multiple deaths in one day were common. A total of 530 deaths occurred in one year. In addition hundreds were injured and spent the rest of their lives as cripples.

In contrast to this, the annual fatality rate in Allegheny County for the first few months of 1977 had been reduced to 70 or 6.6 per 100,000 workers. An accurate comparison of the number employed is not readily available, but it is safe to assume the work force increased about the same rate as the urban population of Pennsylvania which showed an increase of over 200 percent during those same years. While no one can be satisfied with 70 deaths per year, an 87 percent reduction with an increase in exposure of 200 percent is a substantial improvement.

The National Safety Council statistics show similar improvements nationwide. During the years of 1933 to 1970 deaths in nonmanufacturing industry were reduced from 45 to 20 per 100,000 workers. Manufacturing industry rates dropped from 25 to 10 during the dame years. It is interesting to note that virtually all of this drop in accident rates took place before there was any significant federal legislation in the field of safety.

What then brought about this dramatic change in a situation that had existed since the industrial revolution? The 1906 study in Allegheny County resulted in an association of industrial leaders who were determined to do something about the terrible scourge of work related injuries. As a result the voluntary safety movement was started, and it has flourished ever since. It soon became evident that a safe work place resulted in substantial savings as well as the far more important consideration, reduced human suffering. It was clearly a situation where everyone could win: less suffering and better wages for the employees, more profit for the owners, and lower prices for the consumers.

It is unfortunate that Congress doesn't recognize what has been done voluntarily, the truly American and democratic way. Instead it rushes in with more poorly conceived and punative legislation which generally has been counterproductive but terribly expensive in both dollars and loss of human freedom.

35-644 O - 79 - 18

2. PROFIT FROM SAFETY : 12-8-77

There is a pervasive belief that most business men cut corners on safety practice in order to save money. Much of the federal safety legislation was justified on the basis that employers would not do what is necessary to protect the health of workers because the costs would be too high and profits would suffer.

Before Workmen's Compensation and employer paid hospital insurance there might have been some basis for this belief. Back then an employer could cast aside a disabled or dead worker just as he would an animal or a piece of machinery without any further liability. Even in those days, however, there was enlightened management who thought safety would yield economic benefits (not to mention humanitarian benefits). Accordingly, they founded the voluntary safety movement long before government became active in demanding safety programs.

Today with Workmen's Compensation costs and hospital costs paid by most employers the prevention of accidents and the maintenance of the employee's good health is of vital concern to the enlightened profit motivated businessman. Many large companies have made extensive studies of the costs and benefits of a good safety program. They have found that low accident frequencies are accompanied by substantial overall savings and improved profits.

Since 1969 there have been two major federal laws in the field of safety, but very little improvement has resulted. Now the debate rages in safety circles as to what must be done to reduce accidents in the work place. Most observers would now agree that laws alone will not achieve the desired goal and some incentive, particularly for the less safe operations, is necessary.

We in the voluntary safety movement believe that the profit motive alone would provide part of that incentive if it were properly understood. The West Virginia Safety Council stresses this point over and over in its safety training seminars.

Unfortunately we are not able to get our message to those who need it most, the small companies, and some large ones, who do not have either good safety programs or good records.

Meanwhile, the critics of industry, who usually get much better press coverage, continue to contend, by inference at least, that a safety program costs money and will reduce opportunity for improved wages and profits. Typical is a statement by Nicholas A. Ashford in "Crisis in the Work Place." "The worker was traditionally aware that (safety) improvements could be attained only by trading off some portion of his wage and benefit demands for them."

A more productive statement would be, "The workers should insist on better safety programs to improve earnings and the chance of greater wages."

Admittedly, this opens the debate as to just what constitutes good safety programs, and this is not easy to solve. Compliance with OSHA is not necessarily the answer. There are many reasons why some companies, particularly the smaller ones, have difficulty attaining acceptable safety performance, but let us find the true causes rather than attribute poor safety to greed. The profit motive, if properly encouraged and exploited, should be an excellent incentive for safety.

3. WIN OR LOSE

9-22-77

Sports have become a widely accepted part of education. Participation may improve the human body, and both participation and observance may teach sportsmanship and develop the competitive spirit. At the same time sports may also give rise to a misconception; that is, every encounter must have a winner and a loser.

In real life situations more often than not associations between people or groups of people can result in benefits to all. This, however, is hard for a person who has been brought up in the competitive ethic of sports to understand. As a result many are suspicious of every situation and, therefore, fail in many instances to cooperate in activities that could be of benefit to everyone.

Increased productivity in the work place is an example. Finding ways to get more product with the same manpower (or effort) permits one of three things: greater profit, higher wages, or lower price to the consumer. Usually it is a combination of the three. When the "Pie" resulting from increased productivity is "cut" three ways, everyone benefits. There are no losers as there must be in a sports event.

Competition usually prevents all of the benefits from being split between labor and management. If part of the savings is not passed on to the consumer, the chances are that a competitor will give the consumer the benefit and the business will be lost. In recent years inflation and higher prices have consumed potential price reductions, but, had there not been some increase in productivitiy price increases would have been even greater.

THE CURRENT CRISIS in the coal mines is largely a result of the failure to understand the possibility of everyone's winning. The miners have taken advantage of every possible situation presented by the Coal Mine Health and Safety Act to reduce productivity thinking that by doing so they are hurting what their president, Arnold Miller, referred to as the "real enemy". Well, they did hurt management, but this was clearly an encounter where everyone lost. The price of coal doubled, raising the cost of many products to the consumer. The mine operators lost profit, and now the welfare fund is in trouble because it is partly funded by a fixed amount per ton of coal. When more men are required to mine the same amount of coal, then more benefits are required, and the fund goes broke.

Improved safety is certainly one situation where everyone can win. The worker certainly has an interest in avoiding injuries and accidents. He is the one who suffers when accidents happen. Management is also hurt Accidents usually involve substantial financial loss, and production is slowed. In spite of this common interest there is often a controversy about carrying out a safety program.

Has our emphasis on sports convinced us that every situation must be a confrontation with opposite goals when in reality cooperation could take us to a common goal?

4. THE PLAGUE OF OSHA : 12-1-77

The Occupational Safety and Health Act is rapidly becoming the most pervasive plague of all the government bureaucracies.

OSHAhas two main provisions. First, it requires the employer to maintain a work place free of recognized hazards likely to injure the employees, and second, it requires compliance with the standards published by OSHA. These standards (often contradictory with themselves and with standards of other agencies.) run to hundreds of pages and are extremely complex. Substancial fines can be assesssed even on first offense, and repeated violations can result in criminal penalties.

Compliance with the standards is no guarantee that penalities will be avoided. The inspectors can arbitrarily rule that conditions, even though not prohibited in the standards, are likely to cause to injury and, therefore, are a violation of the first provisions of the Act. This appears to violate the Fourteenth Amendment rights of due process.

The Supreme Court has upheld the principal that an offender is not entitled to a trial by jury, and apparently this would apply even when criminal penalities (imprisonment) is involved. This would appear to be a violation of the Sixth Amendment.

The employer is also denied Fifth Amendment rights and required to provide information even though it might be self incriminating.

The OSHA agency contends it doesn't need warrants for searches (an apparent violation of the Fourth Amendment), but his is being contested before the Supreme Court.

In spite of noble objections and unprecedented powers granted OSHA, accident rates per million man hours have not been reduced according to several studies published recently. When the loss in productivity that has come about because of the Act is taken into account, it is almost certain that the accidents per unit of productivity have increased.

This failure to achieve improvement is largely credited to emphasis of OSHA inspectors on rather superficial conditions, a practice commonly referred to as nit-picking. OSHA is now changing its emphasis to health matters. While this should be an area of major concern, the shift may be motivated more from a desire to avoid criticism. No immediate improvement is necessary to justify the action as results, if any, will only appear many years in the future.

In line with this program a new rule has been published for comment which would classify as a carcinogen any chemical that causes cancer in two test animals even under extreme conditions. Then this chemical would be restricted to the lowest level of exposure feasible or, if a substitute is available, to zero exposure. In order to invoke this restriction it will not be necessary, as it has been in the past, to show that the chemical actually poses any hazard to man or to hold hearings on setting standards for that particular compound.

This doesn't sound too bad until it is realized that many compounds that are widely used and accepted as safe fall in this class such as many sugars, mineral oil, benzene, most chlorinated solvents, formaldehyde, and hundreds of others.

Reducing exposure to the lowest feasible level also sounds reasonable until what is feasible is decided. In the light of past experience it is likely to be so low that many products will have to be discontinued, and the cost of others will be increased greatly.

Is the American public prepared to forego such products as gasoline, lubricants and tires for their autos, drip dry chemicals and synthetic fabrics, many drugs, synthetic detergents, and a host of other products to satisfy some zealot's crusade for zero risk even when the risk is nebulous?

DON'T BLAME OSHA

7 - 12 - 78

The criticism of OSHA for failing to prevent the cooling tower disaster at Willow Island, West Virginia, in which fifty one people died reminds me of a story.

The home team was behind by one run, and the winning run was on second. It was the ninth inning with two outs. A rookie who had been begging the coach to give him a chance, again went to the coach to put him in. "I know I can bring in the winning run," he said. The coach said, "If you strike out, the crowd will boo you something awful," but the rookie kept pleading, and the coach relented and sent him in.

Sure enough, the rookie struck out on three pitched balls. The crowd booed and threw bottles. The coach said to the rookie as he came from the field, "See I told you; the crowd wants your scalp." to which the rookie replied, "Coach, they're not booing me. They're booing you for sending me in."

Of course, the rookie was wrong, but the crowd should have been booing the coach. Today many people are criticizing OSHA when really they should be criticizing Congress for passing a law that cannot be expected to work.

The thrust of the criticism is that OSHA should have inspected the job and found violations, correction of which would have prevented the accident. This is an unrealistic expectation. OSHA has thousands of standards, but by no means do they cover every situation nor could they be expected to. There is no standard on the construction of scaffolds or forms for cooling tower construction, nor should there be.

The general duty clause which requires the employer to "maintain a workplace free of recognized hazards likely to cause injury or death" is not much help. It is so broad that it could cover a stairway down which an employee could fall and injure himself. Furthermore, it anticipates a degree of expertise on the part of the inspector that is totally unreasonable. How could anyone expect an inspector to be an expert on cooling tower construction and understand all the possible hazards involved? No, the responsibility has to rest with the engineers who designed the unit, analyzed the hazards, and planned the job procedures.

Even assuming an OSHA inspector understood the intricacies of the job and could have anticipated the problem, he cannot stay on the job full time. The problems come about not so much from faulty procedures as from failure to follow the procedures. If the responsibility for this is to be vested in OSHA, there would have to be an inspector for every workman. What must be done to avoid accidents is for each man and each supervisor to cooperate together and take the responsibility to see the job is done safely.

Recently the Federal Trade Commission fined a toy company because the TV commercials led the public to expect that the toy could perform in a way it really couldn't. This situation is not much different than the action of Congress in passing OSHA. It should be obvious by now that OSHA cannot perform as Congress led the general public to believe.

I'LL TAKE THE BLAME

8 - 9 - 78

The search for a scapegoat in the Willow Island disaster that claimed 51 lives still goes on unabated. The ball bounces from the Naderites to OSHA and then to Congress, "generating far more heat than light."

This is generally the case and that is why those who have dedicated their lives to the safety movement search for the cause of the accident with the hope of learning how that and similar accidents can be prevented. In this case, the main effort seems to be directed towards placing the blame and assessing a penalty. Unfortunately, when this approach is used, the real cause is difficult to find. Everyone runs for cover and refuses to admit any responsibility. It would be better to say, "This has been a terrible disaster and our main goal now is to prevent a recurrance. Obviously someone was at fault but in this day of no-fault, let us not try to assess the blame but rather seek the true cause in a cooperative spirit."

In less serious accidents, this approach has been very successful but I suppose it is too much to ask for in a case of this magnitude. After all there will be millions of dollars involved in the outcome of the fault assessment.

If I am to get involved in the fault assessment game then I must admit I am also partly to blame. As a member of the West Virginia Safety Council, I have frequently participated in safety seminars in the area of the tragedy. Apparently, we were not effective enough. Either we didn't reach the right people or we weren't convincing enough.

At the risk of being wrong I will suggest what happened based on my discussion with observers who have visited the site.

While there is always a temptation to cut corners, the motivation was particularly strong here because the workers were free to go home as soon as the day's pour was made. The forms were supported by two levels of bolt supports, one in the previous day's pour and one row in the pour of two days before. In order to save time, the bolt support in the older concrete was omitted. On the night before the accident, the temperature reached much lower than normal temperatures and the concrete failed to set even the usual amount. Without the added support of the older concrete, there was not enough strength and the scaffold collapsed.

If this hypothesis (admittedly it is little more) is accurate, it could be verified in a few hours, but it would not be a popular solution. The blame would fall directly on those who paid the price. It is always more popular to blame someone else.

Had those working on the scaffold followed the twelve essentials I give in my presentation, the accident would not have happened. Some of the appropriate points are:

1. A good safety program is more profitable for everyone than a poor one.
2. A company policy emphasizing that the company doesn't want the employees to cut corners is important.
3. Every man must be a safety man looking for hazards. And,
4. Knowing is not enough. Knowledge must be put into action.

However, the accident did happen, so I guess I wasn't convincing.

But while I admit some blame (no one else seems willing) at least our safety council does offer some sound programs that have been effective and we are using our own money to promote them. That's a lot more than you can say for the Naderites, OSHA or the Congressmen who are so vocal on the subject.

DON'T BE A WHISTLE BLOWER

8 - 16 - 78

President Carter has called for protection and preservation of the "whistle blower", a government employee who calls public attention to some abuse or extravagance.

A prime example was A. Ernest Fitzgerald. His expose of the cost overruns on the Lockheed C5A resulted in his being hounded from office by those in government who resented the criticism.

Concern for the fate of whistle blowers within government is legitimate, but those outside government are even more endangered. Government has grown so that virtually everyone becomes threatened by some regulatory or taxing agency which can make his life miserable. Even those who are completely sincere and honest can be severely hurt by the great maze of regulations administered by a malicious inspector. Unwarranted harassment alone can destroy.

A friend told me about his associate who decided to enter a Senate race. The President at the time let him know that he would prefer that he not run, but the man decided to run anyway. It wasn't long until the aspiring Senate candidate was visited by an IRS agent intent on conducting an audit. The message was clear. The Senate candidacy was dropped as was the IRS audit.

Dirty tricks to promote political ends started long before Nixon and have prospered under growing bureaucracy. The more power government has over individuals the more chance that power will be used to promote political and/or corrupt ends. This coercive power is a real threat to anyone who takes action contrary to the wishes of those who control that power.

H. L. Mencken once said, "The only bureaucrat you can trust is one with a gun to his head. Give him that gun and civil liberties fly out the window."

Two years ago I criticized OSHA and EPA on a national TV show. Inspections by both agencies promptly followed. Newspaper clippings quoting my criticism are part of the file OSHA has on my company.

Frequent inspection by government agencies may not necessarily be deliberate retaliation for criticism. It could simply be the natural result of high visibility. It is only natural, then that businessmen, subject to dozens of government regulatory agencies, try to keep as low a profile as possible.

But consider the threat to freedom. As government intrusion into our lives grows the criticism that is needed to keep this growth in check is increasingly restrained. The businessman of today, more than any other, is aware of the cost and adverse effect of the rapidly expanding bureaucracy, yet he is most vulnerable to bureaucratic retaliation if he attempts to arouse public opinion. I once thought that the only man who had freedom of speech was the one who signed his own pay check. It is more likely that only the retired can enjoy that luxury.

INSURANCE LOST

7 - 5 - 78

How would the average car owner feel if his auto insurance failed to cover loss if the accident resulted from his violation of any law? Suppose he could not count on being insured if he exceeded the speed limit, failed to keep his car under control, inadvertently crossed the center line, or allowed his car to become defective in any way. Most auto owners would wonder if they should risk driving.

The purpose of insurance is to protect the insured in the event he makes an error. If he could be sure he would never make an error, he wouldn't need insurance.

For all practical purposes employers have had their insurance cancelled by a State Supreme Court ruling which allows an employee to sue them for damage from injury if there is any reason to believe that the employer is in violation of any safety statute.

Prior to this decision the employee could not sue the employer but Workmen's Compensation Fund paid damages for injury as well as costs and compensation for any loss of time. This cost was then passed on to the employer. In exchange for not having the right to sue, the employee was compensated even when he himself was at fault. Now, if the employer is blameless, he pays all costs. If he is to blame, he pays the costs and gets sued besides. It's "heads I win; tails you lose."

Before this decision the employee had to show "deliberate intent" before he could sue the employer. A personal attack by the employer in which the employee was injured would be an example.

Now in order to sue, the employee need only show the violation of a safety regulation, and this is then considered the "deliberate intent". Showing a violation is not hard to do. The law is so broad that an accident, according to OSHA, is virtually proof that a violation (or as the law says, "a condition likely to cause an accident") exists.

To collect the employee must prove flagrant violation of a safety regulation. However, it is not so much the fear of excessive damages that would be awarded as it is the fear of many frivolous suits that are expensive to defend. With more and more lawyers seeking employment the possibility of endless litigation appears imminent. There is little doubt that the decision will enrich the legal profession.

Employers, in seeking to redress this judgement, will try to modify the law to restore the original intent, or they may attempt to put some responsibility for safe performance on the worker perhaps with no payment when he violates safety regulations.

In any event it is certain that few employers will choose to invest in West Virginia instead of in one of the more reasonable forty eight states until this has been changed.



ABOUT THE AUTHOR

Elmer Fike, author of Elmer's Tune, is president of Fike Chemicals, Inc., of Nitro, West Virginia. This company, which he founded as Roberts Chemicals in 1953 manufactures a wide variety of specialty organic chemicals. Mr. Fike is a vice president of the West Virginia Safety Council, member of the Board of Directors of the National Safety Council, and of the United States Industrial Council. He lectures widely on Industrial and Traffic Safety, Chemical Manufacturing, and the Free Enterprise System. In 1974 he was awarded the Valley Forge Honor Certificate by the Freedom's Foundation for his public address "The Legislative Crisis." He is married and the father of five children.

Mr. FIKE. I believe that I can safely say that the performance of OSHA has not lived up to expectations. Few, if any, who have studied the history of the act find that it has significantly reduced accidents. I offer this testimony today with the hope that all of us working together for a common goal of fewer injuries in the workplace can find ways to improve our programs.

I have stated these views I present here today many times, and I believe that these views represent a consensus of professional safety people, people who have dedicated their lives to the study and prevention of accidents.

UNSAFE CONDITIONS VERSUS HUMAN ERROR

Probably the most significant fallacy in the OSHA philosophy is that faulty conditions that can be observed by an inspector is the major cause of accidents. Most surveys by safety professionals have shown that probably less than 15 percent of accidents are caused by conditions that could have been anticipated by an inspector, and the balance are caused by human error.

As soon as these statistics are quoted, the rebuttal is made that management is trying to put the blame for accidents on the union or hourly worker, but this is not correct. When we speak of human error, we are also considering human error on the part of the foreman, supervisor, and on up the management chain. In fact, the higher position in the management chain that a person occupies, the more important it is that he performs his job properly. The failure of a manager to see that a proper accident investigation is carried out may have a more adverse effect on safety than a beltguard out of place.

It is true that both human error and faulty conditions are often involved in accidents. However, those programs which have put major emphasis on training and motivation have been far more effective in reducing accidents than those programs which rely on inspection to anticipate hazardous conditions.

I might mention that that was the change that this major mining company made in West Virginia. They went from a program that concentrated strictly on conditions to a program that worked on training and motivation, and they got a 70 percent reduction in 18 months' time.

MISPLACED PRIORITIES

There are other reasons that the reliance on Government inspectors has failed to improve safety. The findings of the inspector necessarily take precedence over those of management. This often results in misplaced priorities. As an example, one inspector assessed penalties against my company for failure to have guard posts in front of a gasoline pump, even though the pump was 10 feet from the road and the tank was underground. However, less than 50 feet away was an above-ground storage for diketene, right on the corner of two roadways. By any measure, diketene is far more hazardous than gasoline and considering the installation, the hazard of the diketene storage was at least 100 times as great as the gasoline storage, yet it was overlooked.

Naturally, I did not bring up this incongruity to the inspector, but I was required to spend my limited resources to correct the less hazardous situation of the two.

It is, of course, possible that an inspector could uncover some condition that management is not aware of, but it is unlikely. Management should be far more familiar with any hazards than any outside general inspector could hope to be. And the threat of a citation effectively prevents discussion or exploration of potential hazards with the inspector. Any discussion would probably result in more fines with virtually no likelihood of any real help.

CONFRONTATION VERSUS COOPERATION

Another undesirable aspect of the outside Government inspector is the promotion of an adversary relationship between labor and management, whereas a cooperative spirit is one of the keys to good safety performance, according to a recent study. Labor has the authority to call in the OSHA inspector as the final arbitrator. Yet, there are no penalties for labor if they fail to observe safety regulations. This inequitable relationship tends to destroy a cooperative spirit.

I might mention that at the time I wrote this, I could not find my resource material showing the importance of a labor-management cooperative spirit. It was the article "Successful Safety Programs" by Smith, Cohen, Cohen and Cleveland in the Journal of Safety Research, spring of 1978, a National Safety Council publication. Incidentally, Mr. Cohen, who wrote the article, is a member of NIOSH, the National Institute for Occupational Safety and Health, and not an industry spokesman, by the way.

TARGET INDUSTRIES

Mr. FIKE. The target industry concept results in inefficient application of the law. This philosophy is based on the belief that some industries are inherently more dangerous and, therefore, have higher accident frequencies. There is some truth in this, of course. It is obviously more dangerous to perform deep excavations than it is to work at a desk, yet experience has shown that even the most hazardous operations can be performed safely if effective safety procedures are developed and followed.

While coal mines are not covered by OSHA, they demonstrate the point very well. This industry has one of the worst records, yet there are some mines that operate with safety records comparable to the best workplaces of other industries. On the other hand, there are mines which have accident frequency rates of 50 to 100 times that of the better mines.

Rather than use a target industry approach as a basis for establishing inspection priorities, it would be more productive to base inspection on performance of the individual establishment. This would also give the management with a bad record the incentives to do a better job. It is certainly discouraging to a skillful manager to have an inordinate number of inspections simply because other companies in the same industry do a poor job.

PROFITS AND SAFETY

Far too much emphasis has been given to the high cost of safety and the adverse effect of a good safety program on profits. Actually, enlightened management realizes that a good safety program increases

profit, and studies have borne this out. The profit should be used as one incentive for a good safety program.

I would like to insert one other comment here that I do not think I want to confuse compliance with OSHA with a good safety program. Compliance with OSHA can be tremendously expensive, but does not necessarily improve safety or profits.

Safety should also be one area where management and labor have a common interest. Aside from the humanitarian concern for one's fellow man, which is not a minor consideration, management has an interest in improved profits from safety. Labor also has an interest in sharing in these profits by way of increased real wages, as well as their own safety.

SMALL COMPANY EXEMPTIONS

I operate a small company, and I can sympathize with the desire to avoid OSHA inspections. But as I pointed out in my testimony in 1972, 25 percent of the total work force is employed in businesses with less than 20 employees, and nearly 50 percent are employed in businesses with less than 100 employees. Also, it appears that the accident rate is considerably higher in small businesses than it is in larger companies. Therefore, if OSHA has a place at all—and this is questionable, as it is presently constituted—it would be a mistake to exclude the small businesses. It is better that all parties should seek ways to improve OSHA so that it can become an effective tool in the battle against accidents.

What can be done? I believe that OSHA will do little to improve safety until more emphasis is placed on an employer's overall safety program, rather than inspection for compliance with standards. This was discussed in my testimony in 1972.

A sound safety program should include the following: A basic company safety policy; job hazard analysis; sound and adequate safety rules and safe work procedures; accident investigation procedures and followup; indoctrination programs for new employees; continuing training, safety instruction, and motivational programs; internal inspection programs to insure compliance with Government as well as plant standards; cooperative labor-management participation in safety; periodic evaluation of program; and items as required to fit the particular operation.

Admittedly, these are merely a guideline, and it would be difficult to promulgate definite standards with specific fines for deviation. In fact, any effort to do so would defeat the whole purpose and destroy the cooperative approach that is so essential to safety.

There are other ideas, but I hesitate to even suggest them. What could be effective as a cooperative, voluntary program could become a counterproductive monster as a rigid, compulsory, adversary program.

If we can begin to develop some cooperative approaches, other effective programs will come forward, but first there must be a greater demonstration of the necessary cooperative spirit. There are, I am pleased to say, areas where the cooperative approach is being used. I just recently learned that NIOSH has a consulting service that is available to help the employer investigate health hazards.

I would welcome a survey by a professional group that was trying to determine, objectively, potential hazards. Few small companies

have the resources to do an adequate job. What the small company does not need is a horde of inspectors intent on enforcing the law and assessing penalties rather than solving problems. Hopefully, this same consultation service can be extended to all areas covered by OSHA.

There need not be the present adversary relationship between labor, management, and government. A few years ago in West Virginia, the Governor established a task force of government, education, labor, and management to establish programs for improved safety in the workplace. In spite of the diverse backgrounds of those involved, there was essentially unanimous agreement on what was needed to improve safety.

While the effort broke down because there was no paid staff or legislative support, it did prove that there is a consensus and a common interest in promoting safety. I hope we can begin to find that common interest and begin to promote safety more effectively for the common good.

The CHAIRMAN. Thank you very much, Mr. Fike. Your basic theme is that a voluntary environment will be more conducive to the results we are seeking than the enforcement approach that we now have under OSHA.

Mr. FIKE. That is part of it, yes, sir. And I think that the industry has made a tremendous improvement in safety under a strictly voluntary program prior to OSHA, and I question whether there has been any further improvement in safety because of OSHA. If you look at the records, the reduction—it is in one of my columns in the booklet that I submitted—the reduction in workplace deaths—in the years 1930 to 1970, when OSHA was passed, there was about a 50 to 75 percent reduction by voluntary efforts alone. And there certainly has not been a corresponding decrease in deaths since OSHA has been passed.

Also, I would like to mention that in this survey made by Cohen in the Journal of Safety Research—and Cohen is a member of NIOSH—he points out: "This supports the Cohen, et al.—1975—findings that low accident rate plants were more moderate in disciplining safety rule violators and perceived harsh discipline—termination—as less effective than other courses of punitive action—verbal reprimand—" In other words, they are saying that for a management to take a strong punitive action against the employee is counterproductive. What I am saying is that if Government takes that same punitive action against the employers, it also will be counterproductive.

The CHAIRMAN. Now, we have supplemented OSHA enforcement in a number of ways; consultation and health hazards evaluation, to name a few things which are now available. And you would welcome that, you say?

Mr. FIKE. I am working with NIOSH on that program.

The CHAIRMAN. Oh, you have. You have made your desire known to them that you would like to have a health hazard evaluation?

Mr. FIKE. Yes. This is the way it came about: I had an investigation by OSHA, who put a large number of citators against me for materials for which there were no standards and for which there were no health hazards known, but OSHA arbitrarily decided these were hazardous materials, and we were cited and required—the tentative requirement is to meet a standard of 0.05 milligrams per cubic meter,

which is probably as low as even the most toxic and hazardous materials in this country, and this is in spite of the fact that no health hazard has been observed as a result of these.

So I went to NIOSH to see if they could give me some help. They told me of their program; and we added to our regular medical surveillance program those parameters that they suggested. We have the results back. We submitted them to NIOSH, and they are reviewing it. Interestingly enough, there is no evidence that there is any hazard, even though OSHA has set these standards, which, I can guarantee you, would have surely put me out of business in this case; there is no question but what it would.

The CHAIRMAN. This is an interesting case. You were cited?

Mr. FIKE. We were cited. They made a survey of all the materials covered in our plant, and while we have 20 materials that were covered by standards, not a single citation was made where a chemical was covered by a standard. But we got $8,000 worth of fines and 18 pages of citations for materials that were not covered by the standards, materials that are not even on the new class I carcinogen list put out by OSHA.

The CHAIRMAN. Cited and penalized?

Mr. FIKE. Yes, sir; $8,000, which is a pretty sizeable penalty when you stop and think about it. I think the Willow Island disaster resulted in—for 54 deaths, I think they had something like a $100,000 penalty, and I received $8,000 of penalties when there is no sign of any difficulty whatsoever.

The CHAIRMAN. Now, what did you do on appeal and review of that penalty?

Mr. FIKE. Well, I am appealing right now, but a small company does not have the resources, and it has been almost a year now and we cannot even get a ruling from them; we cannot even get a hearing. It just bogs you down. It is like fighting a battle with a featherbed. There is no resistance, but there is no response.

The CHAIRMAN. It sounds as though you had good response, though, when you asked for a health hazard evaluation from NIOSH.

Mr. FIKE. From NIOSH, right, I did; there is no question about that. I had very good cooperation. I would like to see more of that.

The CHAIRMAN. I notice that you have been honored in many ways, and one such honor is by the Freedom Foundation for your public address "The Legislative Crisis." What were the legislative crisis that you addressed yourself to, Mr. Fike?

Mr. FIKE. There is more and more legislation being written, and it is being written by people who really do not understand the problems, and it is becoming more and more a burden on the small business, as well as large business. And we see it in the declining value of the dollar, the adverse trade effect.

The people here before testified that not a single job had been lost because of these regulations but why do they think that the dollar is going down; why is the trade balance becoming more adverse all the time. We are having more and more trouble meeting competition from foreign countries.

The product that I made that brought about the OSHA citations is a class of substituted thioureas. There were three producers of that

product a year ago: Penwalt, du Pont, and myself. The two major companies have already contracted to have their production made overseas, and I am virtually out of business.

Now, they can say there are no jobs being lost, but they are just not keeping track of the jobs that are being lost.

The CHAIRMAN. Senator Javits?

Senator JAVITS. I think we should check into your case, because that is what this is; this is a hearing——

Mr. FIKE. Unfortunately, when I have made public statements in the past, I end up by having another OSHA inspection. I hope that will not happen this time. I have a column written on that, "Do Not Be a Whistle-Blower," in my little booklet. I hope you will read that, because the threat of the bureaucracy to the small businessman who speaks out is a very real threat, and it is going to destroy our freedom of speech if it continues. And I think you ought to take this into consideration.

Senator JAVITS. We certainly will, and I will certainly do everything I can to look into your case. That does not mean you are right.

Mr. FIKE. I understand that.

Senator JAVITS. They may be right. But, nonetheless——

Mr. FIKE. Well, I did not come here to talk about my case. Do not get me wrong.

Senator JAVITS. Well, I think it is important, because this is an oversight hearing. So I take it very seriously.

The other question I would like to ask you—I was interested in your suggestion that workers ought to be penalized for violating safety rules.

Mr. FIKE. No, no, I did not mean to say that. If I said that, that was not what I meant. What I meant to say is that a motivation and encouragement and a cooperative spirit is far more satisfactory in getting compliance with the law. What I am saying is that because the worker does not suffer from the threat of a citation, he is completely free to say and do whatever he likes. Management does not have that luxury.

For instance, he can call in OSHA—nothing more than a harassment, if he likes—without fear that OSHA will lower the boom on him. In the case of an employer, we have to be concerned what OSHA might do to us.

Senator JAVITS. Labor has the authority to call in the OSHA inspector as the final arbitrator. Yet, there are no penalties for labor if they fail to observe safety regulations. This inequitable relationship tends to destroy a cooperative spirit.

Mr. FIKE. The inequitable relationship is that employers are fined. I would put it the other way around, you see.

Senator JAVITS. In other words, you are not advocating a fine for workers who violate safety rules?

Mr. FIKE. No, sir, I certainly would not do that at all.

Senator JAVITS. You do not think that is wise?

Mr. FIKE. I do not think it is wise. I think it is management's responsibility to see that the workers comply with good, sound regulations. But, on the other hand, we need some cooperation to get that done, and we do not often get it from the labor unions.

For instance, I have many employees in my plant who refuse to wear the safety equipment that they should. The union does not encourage them to do it. I tried, 2 years ago, to get a medical surveillance program going. We sent them to outside doctors and outside testing laboratories. I could only get about 50 percent of my employees to go, and the union gave us no help whatsoever in requiring those men to go, so I changed the program. I bring the laboratory to the employees now.

Senator JAVITS. What is your union?

Mr. FIKE. The steel workers union.

Senator JAVITS. Thank you very, very much.

The CHAIRMAN. You have been very, very helpful, Mr. Fike.

Mr. FIKE. Thank you.

[The following information was subsequently supplied for the record:]

FIKE CHEMICALS, INC.
P. O. BOX 546 NITRO, WEST VIRGINIA 25143
PHONE 755-3336
(AREA CODE 304)

October 7, 1978

COMMITTEE ON
HUMAN RESOURCES
1978 OCT 11 AM 11:25

Senator Harrison A. Williams, Jr.
Committee on Human Resources
Senate Office Building
Washington, D. C. 20510

Dear Senator Williams:

In accordance with our conversation after the Senate hearings on October 6th I am enclosing a description of my difficulties with OSHA.

SENATOR
WILLIAMS, N.J.
1978 OCT 11

Since this was written, the following events have taken place:

1. We have filed an appeal from the OSHA citations and a pretrial meeting was held with an OSHA representative to try to compromise the issue. At this meeting the OSHA representative informed us that a level of 0.05 milligrams per cubic meter would be considered to be the "lowest feasible level" and we would be required to meet this level. We immediately decided that this level was totally unrealistic for a low volume product. A local major company has difficulty meeting a proposed standard of one milligram per cubic meter on a similar product and operation. At that time we offered to discontinue production of these products if all penalties were dropped. Subsequently the OSHA representative informed us that they were not willing to drop all the charges.

2. We have completed our annual medical surveillance program. This year at the suggestion of NIOSH we included the blood test that would indicate any difficulty resulting from exposure to these compounds. The results seem to indicate that there is no problem, and we are awaiting a final opinion of this.

3. A new list of suspect carcinogens has been published, and neither ethylene thiourea or dibutyl thiourea (products we were cited for) are on that list.

4. The economic impact of ceasing production of these two products has been so great that we do not think we can continue in business without resuming production of these two items.

As I stated at the hearing, the delay in getting a definitive decision or rulings on such vague and arbitrary standards is one of the major problems the small company faces when dealing with the OSHA organization. Any help you can give will be appreciated.

I enjoyed testifying before your committee, and I hope some of the ideas I presented will be of value in reaching the common goal of reduced accidents and sickness in the work place.

Sincerely Yours,

Elmer A. Fike

cc: Senator Randolph
Senator Javits

FIKE CHEMICALS, INC.
P. O. BOX 546 NITRO, WEST VIRGINIA 25143
PHONE 755-3336
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June 5, 1978

To: Friends in the Chemical Industry

At the time of our last OSHA inspection in November, 1977, I was apprehensive that there would be an attempt to impose the generic classification of carcinogens. My fears were justified, as we have recently received our citation resulting from this inspection. We handle between 20 and 30 chemicals that are covered by OSHA standards, but we did not receive a single citation under these standards. However, we did receive 16 pages of citations under the General Duty Clause and fines under these citations total $8,640.00. The General Duty Clause reads as follows:

> "The employer did not furnish his employees employment and a place of employment which was free from recognized hazards that were causing or were likely to cause death or serious physical harm to his employees..."

The citations covered exposure to thiourea, ethylene thiourea, dibutyl thiourea and thiacetamide. In order to comply with the General Duty Clause, according to the OSHA inspectors, we would have to follow all of the same procedures that are now used in handling the most potent carcinogens and the requirements would not be much different than those used in handling plutonium. While these compounds have been widely used for many years and though they all cause thyroid tumors in animals at high-dose levels, there is no indication that there are any adverse affects at normal exposure levels. The inspectors made wipe tests throughout the plant and found traces of these compounds in such unlikely areas as the receptionist desk, a place that is cleaned daily by an efficient janitor. If the reception area could not be maintained in a satisfactory condition, it is unlikely that any part of our plant could be.

Citations were also given for failure to notify employees of the signs or symptoms of exposure to these chemicals. However, as far as we knew, there are no signs or symptoms of exposure to these compounds. A recent publication by Niosh "Current Intelligence Bulletin 22" covering ethylene thiourea failed to give any signs or symptoms even though 3,500 people are presently exposed to this compound. A telephone inquiry to Niosh in Rockville, Maryland failed to uncover any signs or symptoms. Later, however, we did receive a call from Niosh. We were informed that while there had been no observed symptoms from actual exposure, there had been symptoms observed when ethylene thiourea was administered as a medication for reduction of hyperthyroidism. These symptoms, however, would have been readily observed in our annual medical surveillance program.

It appears that this action against Fike Chemicals is an attempt to establish precedents in the area of generic classification of carcinogens without going through the rule-making processes. If OSHA can succeed in this effort, the chemical industry may not be able to stop the generic classification of carcinogenics even though we are able to prevail in the hearings that are now under way.

If anyone is interested in the specific types of requirements it would be necessary to gain compliance, I would be glad to summarize them for you in detail.

Elmer A. Fike
President

EAF/adm

AGREEMENTS CONTINGENT UPON STRIKES AND OTHER DELAYS UNAVOIDABLE OR BEYOND OUR CONTROL. QUOTATIONS SUBJECT TO CHANGE WITHOUT NOTICE.

The CHAIRMAN. We have a vote on in the Senate, and when we return, we will call the Mechanical Contractors Association, Mr. Robert J. Durr.

[Whereupon, a brief recess was taken.]

The CHAIRMAN. We will come to order again, and Mr. Robert Durr, the chairman of the Mechanical Contractors Association Safety Committee and vice president of Courter & Co., of New York, will present the statement of the Mechanical Contractors Association of America.

STATEMENT OF ROBERT J. DURR, CHAIRMAN, MECHANICAL CONTRACTORS SAFETY COMMITTEE, MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA, INC., AND VICE PRESIDENT, COURTER & CO., NEW YORK

Mr. DURR. Mr. Chairman and members of the subcommittee, my name is Robert Durr. I am an officer of Courter & Co., Inc., a mechanical contracting firm located in New York City, N.Y. I am also the chairman of the safety committee of the Mechanical Contractors Association of America, a national construction trade association of about 1,500 members, employing approximately 125,000 persons. More than 80 percent of our member firms are in the small business category.

The MCAA Safety Committee has been active in promoting safety in our industry for many years. We support the Occupational Safety and Health Act of 1970. We do so because it has demonstrated that it is directed toward safety and accident prevention to the working man.

We appreciate the opportunity to speak before you to identify some points within the act that we feel warrant consideration. We have prepared and provided for distribution a formal statement covering our position on certain portions of the OSHA Act. Instead of reading this statement verbatim, I would like to summarize the points as briefly as possible.

One, the MCAA recommends that multiemployer regulations be eliminated from the current act. We feel that a contractor on a multiemployer site should not be held responsible for the oversights of another. Each employer should be held responsible for his own actions, not those of the others.

Two, we feel that fines will not and do not increase safety on the job. We suggest that if a violation is discovered and immediate corrective action is taken by the contractor, the fine aspect of the current act should be waived.

Three, although consultation services are now available through OSHA, most contractors are reluctant to utilize this service, as it places them in a potentially defensive position. Too often an inspector visiting a job on a consultation request will note violations in other areas and find it necessary to implement the citation and fine aspects. As a result, instead of helping to eliminate the possible cause of accident, the service is overlooked because of fear on the contractor's part.

Four, the appeals procedures contained in the OSHA Act are most involved and cannot be handled without legal counsel. Most contractors look at the imposed fine and evaluate it against the cost of counsel. Although the contractor might feel that he would be justified in appealing a citation, the counsel cost forces the decision to pay the fine and not fight the system. We urge that a more simplified appeals procedure be established.

Five, the regulations as presently established are much too complicated. Representatives of OSHA are currently working with leaders of the construction industry to combine parts 1926 and 1910 of the act into one single regulation. This is commonly called "The Vertical Standards for the Construction Industry." When accomplished, this will be a positive step in the right direction, but should be supplemented with a clearer definition of the regulations themselves as they apply to our industry.

Six, although never intended, too often an OSHA citation is used against contractors in civil suits. It has gotten so that contractors cringe at the possibility of paying fines for even minor violations because of legal ramifications at a later date, including third-party liability suits. Even lawsuits that have nothing to do with the OSHA inspection and citation are tainted by the simple admission that at one time or another, the contractor was found in violation of the OSHA Act. Definite steps must be implemented in order to overcome this unfair situation.

Seven, OSHA regulations require that individuals on a jobsite have first aid training. These people are usually management- or company-trained individuals. Too often, after an incident wherein first aid is provided, legal action is taken, claiming the aid was improper or detrimental. Legal consequences and financial responsibility always fall on the employing firm. This is a "Catch-22" condition, wherein the employer attempts to help the employee, but in turn hurts himself.

Eight, regulations are constantly being proposed by OSHA. Our industry has no objection to regulations that help prevent accidents. However, we note that sometimes it can go too far. We feel that regulations should be evaluated, comparing the effect on the operations and cost to the industry versus the safety potential gained from them.

Nine, there is a school of thought that small business should be exempted from the regulations of the OSHA Act. As a representative of a good number of small mechanical contracting business firms, we disagree with this thinking. We wish to go on record that all business, large and small, should live under the same conditions as long as they are realistic and just.

Last, but not least, we feel that Congress should correct any deficiencies that currently exist within the OSHA Act. It is most difficult to expect the Department of Labor, OSHA Division, to visualize both labor and management's problems. Congress, on the other hand, has the proper and advantageous position of overviewing both areas and making judgments that are just. The work of this committee has got to be an advantage to the proper implementation of our democratic system.

Thank you for the opportunity to express the views of the mechanical contracting industry.

The CHAIRMAN. Thank you very much, Mr. Durr. I wonder if you could be a little more specific on how this multiemployer citation works?

Mr. DURR. What generally happens on a construction job—there is a multiplicity of contractors working on one job; general construction, electrical work, plumbing work, pipefitting work, and so on. If there is a contractor that builds a scaffold that people have a tendency to use in order to get to their place of work, all contractors on that site will be in violation because the scaffold was built improperly.

The contractors that are penalized are all of them, and the reason they are is because their men chose that method of getting to their workplace. That is just an example.

The CHAIRMAN. Well, now, what about a subcontractor that has no relationship to the scaffolding? In other words, his workers work on a part of the job that does not use the scaffolding. Would that subcontractor be cited, too?

Mr. DURR. That subcontractor usually would not be affected by the multiemployer citation.

The CHAIRMAN. In other words, they do look to those who are involved with whatever it is that was in violation, is that right?

Mr. DURR. That is correct.

The CHAIRMAN. So they narrow it down?

Mr. DURR. I would like to elaborate a little bit further, because maybe you have used a very poor example. We will use another one. Water being on the floor in a work area; almost every contractor will walk on the floor, and there will be water on the floor. That is a hazard.

All contractors would then be given a citation for allowing that condition to exist. Another one would be a crane not having a protective barrier around it while it is working on a jobsite. Generally, every contractor would have an employee walking past this particular hazard in order to get to their workplace, so the multitude of contractors on the job would receive a citation for that type of violation.

So there are specifics and then there are generalities. The generalities are common to everybody. The specifics—a contractor does not particularly care for his men to utilize the access I described in the first example. However, the men choose to use that method, and as a result, the contractor is penalized for it.

The obligation of the contractor under that condition if he happens to walk by and see that, is to tell the contractor that has created the condition to remove it or remove the men from the jobsite; the contractor would remove his men from the jobsite. And in the real world, that does not work; that is our only source of protection from a multiemployer citation.

The CHAIRMAN. There seems to be some logic in this multiemployer citation, though. Do you see any logic at all in it?

Mr. DURR. No. We truly believe that the contractor who creates the condition is the contractor who should correct the condition. We do not feel that every contractor on a job should be responsible for his——

The CHAIRMAN. Well, now, you have already said that it is not every contractor on the job who is cited; it is only those contractors who bear some relationship to the area where the violation is found.

Mr. DURR. Yes.

The CHAIRMAN. Now, there is a logic there. Take the scaffolding hung on concrete.

Mr. DURR. Yes.

The CHAIRMAN. Several contractors depend on that scaffolding. One should be checking on the other; they depend upon each other to do the right thing.

Mr. DURR. Yes, sir.

The CHAIRMAN. It would seem to me that if those who are in charge of concrete, their workers, or the pourers of the concrete, have to get on the scaffolding to pour the concrete, it is in the interest of the concrete contractor to see whether that scaffolding is right.

Mr. DURR. That is correct; we agree with that. Generally, the concrete contractor will build his own scaffold, and it would be his scaffold.

The CHAIRMAN. Then, again, that is not always the case. Let us assume two contractors here; there are those who erect the scaffolding, and then there are those who use the scaffolding to do their jobs for work on the concrete.

Mr. DURR. In that example, sir, I agree with you. If that is the case, if a scaffold is built by somebody to be utilized by another, I think that in that case both contractors would definitely be responsible for that scaffold.

The point that becomes the problem is not that particular incident. The problem is that the scaffold is built for the concrete to be poured; however, an electrician or a pipefitter, or whatever other trade, will use that as a shorter way to get to his workplace, never intended by the electrical or mechanical contractor. Yet, the electrical contractor and the mechanical contractor will be cited, because his mechanic chose that course of action.

So what our point is, is that the erector of that scaffold should be cited for it; that is where the responsibility lies, with the erector of the scaffold, as opposed to another contractor who is on the job and innocently is involved in it.

The CHAIRMAN. That contractor is only casually exposed.

Mr. DURR. Exactly.

The CHAIRMAN. I would like to see the regulation that describes this responsibility. Are you familiar with it; have you read it?

Mr. DURR. Certainly, I have read it. I do not have it before me.

The CHAIRMAN. I think we had better look at that. We are trying to find out through these hearings how regulations, particularly, and the law itself thwart the effectiveness of the objective of this law. When things do not make sense, that is one of the ways to thwart the objective.

You raise this, and it is an important part of your statement, is it not?

Mr. DURR. It is our No. 1 issue; we made it our No. 1 item in our statement.

The CHAIRMAN. No. 1.

Mr. DURR. Yes, sir.

The CHAIRMAN. Well, then it is very important, because if there is anybody who is important to the construction site, it is the mechanical contractors.

Now, I wonder about the vertical standards. Again, we are laymen in this, so we have to struggle to know; we are trying to know what the situation is.

Mr. DURR. Yes, sir.

The CHAIRMAN. I wonder if the vertical standards for the construction industry will assist employers in understanding their responsibilities.

Mr. DURR. We feel that it will be a tremendous asset when and if it finally does become a fact, because right now, part 1910 and part 1926 cover all industries, and it is very difficult. It can be interpreted in many, many ways as to what affects the construction industry and what does not affect the construction industry, and if it goes up for interpretation, it becomes mind boggling.

So, as a result, what has been agreed to and what is working right now—in other words, committees are working on it at this time—is to weed out the items in 1910 and 1926 that do not affect the construction industry, and then just leave one common vertical standard.

After that, looking beyond that, because I really believe that that will take place—we will have a vertical standard, hopefully before the end of this year—the next thing is to take the wording that was determined to apply to construction and word it so that it does apply to construction, and not to a plant or a factory or a mine, or whatever the case may be; in other words, something that applies to the building of a structure, as opposed to the running of a plant.

The CHAIRMAN. Are you involved in the process of rationalizing these regulations for the construction industry? You say committees are at work. You did say that?

Mr. DURR. Yes, that is correct.

The CHAIRMAN. How is this put together? How did the industry work to bring about these vertical standards to construction?

Mr. DURR. What has happened is that the safety committees of most national construction associations have gotten together and formulated one committee, and OSHA has delegated representatives, and they have met. They have had two meetings, and possibly three—I am not sure of the third one—in which how this would come about, or what was desired and what would be good for the industry, was discussed.

Right now, this summary is being prepared by OSHA to show what they consider to be the single standard, the vertical standard. It will then be reviewed again by the two committees and there will be further discussion on the points I raised of carrying it beyond to try and get clear some of the rules themselves within what is considered one standard for the industry.

So this is a joint committee of all construction on one side, and OSHA representatives on the other side, meeting and discussing. It is a very good operation and we look forward to it.

The CHAIRMAN. Is there any labor input at this time in this process?

Mr. DURR. Yes, labor is in it. Joint safety committees are involved in this, so that labor is also an integral part in this operation. As a matter of fact, that is what is necessary.

The CHAIRMAN. These meetings are working meetings; they are not formal meetings. It is not a matter of a formal record being made, am I right or wrong on that, at this point?

Mr. DURR. The first two meetings were meetings to determine what is required and how it could be accomplished. The next meeting should be a working meeting, because we will be reviewing what has been generated.

The CHAIRMAN. And then, after all of this, there will be a proposal for a standard, and then it will go through the regular process for comments and for a possible hearing and then for effective promulgation?

Mr. DURR. That is correct, yes.

The CHAIRMAN. Now, this seems to make a lot of sense to me, as you describe it.

Mr. DURR. It does; we are very happy to have this happen, because it is something we have been asking for since the act was enacted, and we think it will be a good thing for our industry.

The CHAIRMAN. Well, now, that is interesting, too. The initiative that brought the government to where there are was an initiative undertaken by the industry, is that right?

Mr. DURR. That is correct.

The CHAIRMAN. And there was a response——

Mr. DURR. There was a response, exactly.

The CHAIRMAN. So we had understanding, acceptance, and a partnership in the process of verticalizing?

Mr. DURR. It was a union to try and clear it up, exactly.

The CHAIRMAN. It is very encouraging to learn how this works, and enlightening, too, to get your viewpoint on the multiemployer citation situation. That is one that I think we should understand even more, to see whether we have any judgment or observations on that.

It was very helpful testimony. Thank you very much.

Mr. DURR. Thank you.

The CHAIRMAN. Are you headquartered here?

Mr. DURR. No, I am not; I am in New York City.

The CHAIRMAN. You are in New York, of course. If we need you, we know where to reach you.

Mr. DURR. Yes, sir.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Durr follows:]

MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA, INC.

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2 October 1978

STATEMENT BY
MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA, INC.
TO THE
SENATE COMMITTEE ON HUMAN RESOURCES
OSHA OVERSIGHT HEARINGS

Mr. Chairman and Members of the Subcommittee:

I am Robert J. Durr of Courter and Company, New York City, a mechancial contracting firm. I am also Chairman of the MCAA Safety Committee.

The Mechanical Contractors Association of America (MCAA) is a national construction trade association with approximately 1,500 member firms employing approximately 125,000 persons. More than eighty percent of these firms are in the small business category.

MCAA appreciates this opportunity to present our views because of the great interest and concern of our membership regarding the Occupational Safety and Health Act of 1970.

MCAA, as an association, and our member firm individually have been actively involved in promoting safety in the industry for many years. We were emphasizing safety well before OSHA came into existence. MCAA is a long-time member and active participant in many of the activities of national safety-related organizations, such as the National Safety Council, American National Standards Institute, National Fire Protection Association and the American Society of Mechanical Engineers. At the time OSHA was enacted, MCAA augmented its national staff in order to place even greater emphasis on safety information and guidance to our members. Further, our Safety Committee, in conjunction with the national staff, has a vigorous program to inform MCAA members concerning OSHA and to

promote safety throughout the industry. Some examples of our work include a MCAA Safety Manual for the Mechanical Trades, and our on-going series of 52 Tool Box Safety Talks, designed particularly for our industry. We have also developed safety posters and are presently working on a model safety program for management.

Our member firms are concerned about many aspects of the Occupational Safety and Health Act of 1970 and its administration. We wish to make the following recommendations, some of which may require changes in the law, while others could be accomplished through revised administrative regulations or procedures.

1. CITATIONS ON MULTI-CONTRACTOR PROJECTS

One of the most frequent and major problems MCAA members have had with OSHA is that Compliance Officers often cite all contractors on a particular job for the same alleged violation. In many instances the violation cited has been the primary responsibility of and caused by a single contractor. OSHA reasons that other contractors should refuse to let their men work in an area where a violation of OSHA regulations exist, even though the responsibility for creating the condition rest with another contractor. That attitude is unrealistic. A construction project often is a multi-employer enterprise, a loose affiliation of different companies working under separate contracts. A subcontractor, who refused to let his men work where certain less than serious OSHA violations may exist, probably will find his firm missing out on subsequent work from the prime contractor. Or he could face possible litigation for delaying the project. So the subcontractor is placed in an untenable business position on these multi-contractor projects.

We believe that in cases where employees of several firms are exposed to an OSHA violation created by only one, the OSHA Compliance Officer should cite only the firm responsible for the existing condition.

In that regard, we call attention to the decision of the Seventh U. S. Circuit Court of Appeals, May 27, 1975, in the case of Anning-Johnson and Workinger Electric Inc. vs. OSHA (Nos. 74-1381; 74-1382), which supports and underscores that principle. A summary of that decision is attached. (Enclosure 1)

2. ABATEMENT OF CITED CONDITIONS

Also related to the matter of regulations, we strongly urge that a citation and proposed penalty be eliminated if the condition is properly abated by an employer within a reasonable given time. This action, we believe, would encourage prompt elimination of cited conditions and add incentive to the voluntary compliance program.

3. JOBSITE CONSULTATIVE SERVICES

OSHA is now making available consultative services at an employer's jobsite. MCAA has supported that concept and certainly believes that the service can be helpful. However, we believe that practical improvements in this system will prove more realistic in the business environment are still needed and suggest the following:

a. The first is to assure that consultative services are made available in all states regardless of whether they have an approved OSHA plan or not.

b. More importantly is the matter of making consultation available without triggering compliance inspections or having the consultation used against the employer in some manner. Based on

past experiences with OSHA regulations and inspections, it will be difficult to overcome apprehensions that an OSHA consultative visit will not work to the employer's detriment. Any regulative and legislation related to consultation and implementing actions must provide convincing assurances in that regard, if the service is to be used effectively.

4. APPEALS OF CITATIONS

Under the present citation and penalty ground rules the procedures of appealing an OSHA citation are lengthy, involved and costly. This discourages the employer from appealing citations that he considers unwarranted or unjust. In many cases, only those citations involving large amounts of money are considered worth the time and effort. Yet, acceptance of a penalty without an appeal (even a minor one) becomes a matter of record that reflects adversely upon the employer and certainly could be used to his disadvantage in subsequent OSHA citations.

Another factor that complicates appeals and places a burden on the contractor is the multitude and intricacy of OSHA regulations. Decisions by the OSHA Review Commission (OSHRC) should help clarify regulations and be valuable precedents for appeals cases. However, the complexity of OSHA regulations result in many shades of interpretation in appeals that lead to the apparently inconsistent and conflicting decisions. If an employer, then, is to make a strong case for appeal, legal counsel becomes almost a must. This, in turn, leaves the employer in a dilemma of deciding whether the amount of and nature of the fine warrants the legal fees involved, even when he believes he has strong justification for appeal.

MCAA is aware of the recent proposal to streamline the existing appeals procedures. Our review of the comments on the draft are not complete. We appreciate the OSHA Review Commission's recognition of the need for improving the existing procedures. However, pending outcome of our review and the final version of the proposal, MCAA continues to emphasize the need to simplify the OSHA citation contest process.

MCAA also recommends that Section 10(a) of the Act be amended to allow an employer 30 days (instead of the present 15 days) within which to file a notice of intent to contest a citation.

5. OSHA REGULATIONS

The simple fact of trying to understand the written OSHA standards, including the General Industry and the Construction Regulations, have presented major problems in our industry from the outset. Despite some limited rewriting and updating of these requirements, they still are a source of confusion and difficulty.

We acknowledge OSHA's efforts to reduce the Part 1910 General Industry Series by eliminating some of the unnecessary and duplicative requirements. We hope that a similar action will follow immediately for the Series 1926 Construction Series. We certainly support OSHA's efforts in working with leaders in the construction industry to develop what is commonly called "vertical standards" for construction. However, fundamental problems still remain.

First, the regulations are lengthy, involved and often ambiguous. There are just too many requirements and details for reasonable understanding and compliance, especially for small businesses that cannot afford

a full-time safety director. I am certain that the difficulty in understanding and complying with the Part 1910 and Part 1926 Series has been brought to your attention by others. These standards, in two separate volumes, are not only long and involved in themselves, but they also adopt by reference many other standards, such as those of the American National Standards Institute (ANSI) and the National Fire Protection Association (NFPA). This means that an employer must be concerned with published OSHA Standards, and, in addition, must possess, know and comply with all other standards that OSHA has adopted by reference. More than 120 ANSI standards are in this category.

It is not surprising that with this myriad of regulations, compliance has been difficult, not only because of the need to know what the requirements are, but, also how to interpret them properly. The fact that several interpretations are possible leads to confusion by employers trying to abide by OSHA regulations and enforcement procedures.

MCAA strongly recommends that the present series of OSHA standards, particularly Part 1926 and Part 1910, be completely rewritten in a succinct, understandable manner, aimed at areas of safety where experience and judgment show that regulation is most urgently needed. In other words, we suggest that OSHA set priorities in carefully selected areas for emphasis, rather than the present intricate, all-encompassing regulations that have resulted in confusion, misunderstanding and difficulty in compliance.

On the other hand, however, a review of pending and implemented OSHA regulations for such areas as lead, asbestos, noise, benzene and employee access to records offer little hope that concise regulations will become a

reality, or that the paperwork required of employers is likely to decrease.

MCAA recognizes and supports the efforts of national consensus organizations. ANSI, for example, has pioneered in providing uniformity and high quality standards for design and other facets of engineering and industry. However, in many cases OSHA adopts only a part of a consensus standard by reference; an employer then must have the entire standard in order to refer to only part of it. This proliferates the number and costs of standards documents the employer must possess, but more importantly, adds to the overall complexity and confusion of OSHA regulations.

MCAA recommends that rather than adoption by reference, OSHA extract the applicable portions of the national standards and incorporate them completely into their standards.

6. PRECLUDE CIVIL ACTIONS BASED ON OSHA CITATIONS

We do not believe that OSHA citations or penalties should be used as prima facie evidence of negligence in civil suits against an employer. Otherwise a citation essentially can place an employer in double jeopardy. Appropriate steps should be taken by Congress to assure that this jeopardy is precluded.

H. R. 6834, introduced into the present session of Congress, would preclude OSHA finding being used in certain civil actions.

The failure to provide civil suit protection is forcing employers to contest practically every citation as a matter of self protection. MCAA believes that the large backlog of appeals cases may be due in large measure to apprehensions over additional ramifications of citations. Without proper protection for employers against civil actions, the number of citation contests will continue to grow.

7. INDEMNIFICATION

OSHA requires first-aid kits, and in certain cases, employees trained in first-aid to be present at jobsites. We are concerned over possible liability and lawsuits which may arise following administration of first-aid. Without proper indemnification, an employer can be subject to lawsuits, if he complies with OSHA first-aid requirements; and he may become subject to OSHA citation if he does not. The employer and the employee should be indemnified against such suits, where first-aid treatment facilities are an OSHA requirement.

8. FINANCIAL IMPACT STATEMENTS

We believe there is a need for OSHA to develop data on the economic impact of its requirements. Certainly, safety and health conditions must not be considered solely a function of cost. However, OSHA should evaluate carefully the cost of implementing a regulation in relation to actual safety benefits gained; there may be less costly alternatives that are of equal value or perhaps more effective. A requirement for OSHA to publish financial impact statements for proposed requirements would aid in providing proper protection, while avoiding unreasonable costs.

9. EXEMPTIONS FOR FIRMS WITH LIMITED NUMBERS OF EMPLOYEES

MCAA agrees with the concept that OSHA should apply to all employers regardless of the number of their employees. If OSHA applies to one firm, it should apply to all, if safety and safety considerations are to be equitable. Exemptions based on numbers of employees can be confusing and difficult to administer, particularly in firms whose numbers of employees may vary just above or below the limitation. Further, on a multiple-employer worksite it can be confusing and even hazardous unless all workers are subject to the same OSHA requirements.

Also, in regard to exemptions, MCAA strongly advocates that OSHA be applied to government agencies working in conjunction with civilian contractors that now enjoy exemption from the Act.

10. CONGRESSIONAL ACTION NEEDED

As a final point, we believe that actions and impetus to correct deficiencies with OSHA must come from the Congress as well as from the Department of Labor and OSHA. Despite several public and well-publicized statements by various OSHA administrators and Secretaries of Labor (including the present incumbents) over several years that changes to improve OSHA are pending or imminent, significant improvements have been elusive.

Certain measures that will provide permanent or at least long range improvements in OSHA should be legislated by the Congress. In other areas guidance from the Congress to OSHA, based on results of this type of hearing and direct contacts from constituents can bring mutual cooperation in achieving worksite safety.

SUMMARY

To summarize, MCAA recommends that:

1. Responsibility for violations be pin-pointed. The contractor on a multi-contractor job responsible for OSHA violation should be the only one cited.
2. Fines be eliminated if an OSHA citation is abated by an employer in a reasonable time.
3. The OSHA consultative services must be structured to assure employer confidence that a consultative visit will not trigger an inspection or citation.

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4. Procedures for appealing OSHA citations and proposed penalties be simplified.

5. (a) The existing OSHA standards be completely replaced by succinct, understandable regulations.

   (b) A "vertical standard" be implemented consolidating those regulations of the Part 1926 and 1910 Series that are applicable to the construction industry.

6. Use of OSHA citations in civil suits be precluded.

7. Employers and employees be indemnified against liability on first-aid treatment.

8. Financial impact statements be required for proposed OSHA regulations.

9. Exemptions to OSHA not be granted based on a specified limited number of employees.

10. Action to correct deficiencies in OSHA be directed by the Congress, including changes to the Act itself.

On behalf of all members of MCAA, we thank you and other members of your committee for this opportunity to present our views. I will be pleased to respond to your questions.

SAFETY BULLETIN

MCAA SAFETY COMMITTEE

Number 30
June 1975

SUBCONTRACTOR NOT RESPONSIBLE FOR NON-SERIOUS VIOLATIONS CREATED BY ANOTHER EMPLOYER AT MULTI-CONTRACTOR JOB SITE - U.S. COURT OF APPEALS

A subcontractor at a multi-contractor job site cannot be cited for non-serious violations of OSHA regulations created by another employer according to a recent ruling of the Seventh Circuit, U.S. Court of Appeals (Chicago).

This ruling will help remove one of the significant OSHA compliance problems of MCAA members -- namely, being cited because of employee exposure to alleged OSHA violations, although the conditions are caused by and are the responsibility of another contractor.

The Seventh Circuit case (Nos. 74-1381 and 74-1382, May 27, 1975) involved the Anning-Johnson Co. and Workinger Electric, Inc. vs. OSAHRC and Brennan. An OSHA inspection at a bank building project in Elkhart, Inc. resulted in citations for failure to provide proper guardrails for open sided floors, floor holes and stairways. The two firms and the general contractor were cited because their employees allegedly were exposed to the OSHA violations which were termed non-serious. Penalties of $150 each were assessed each contractor.

Anning-Johnson Co., which was installing fireproofing material, and Workinger which had electrical, sheet metal and plumbing work, appealed to the Occupational Safety and Health Review Commission. The appeal was denied in a split decision. The Commission's decision was then contested in the U.S. Court of Appeals. The two subcontractors maintained that they were not responsible for guardrails under their contracts and that they had not installed the guard barriers existing at the open-sided floor edges.

Circuit Judge Sprecher stated "The single narrow issue in this appeal is whether subcontractors working at a multi- employer construction site can receive citations and be held liable under OSHA for non-serious violations of standards promulgated by the Secretary of Labor to which their employees were exposed, but which the subcontractors neither created nor were responsible for pursuant to their contractual duties." Final decision was that the subcontractors could not be held liable, under the circumstances.

(over)

ENCLOSURE 1

The Court noted that the language of the Act (OSHA) does not clearly require imposing liability on subcontractors for exposure of their employees to non-serious violations; neither does it clearly indicate that subcontractors should have some kind of broad exemption. Extracts of the decision include the following:

> "The Act is designed not to punish, but rather to achieve compliance with the standards and abatement of the hazard".
>
> "We fail to see how requiring several different employers to place a proper guardrail .... fulfills the purposes of the Act any more effectively than requiring only one employer to do so."
>
> "...The Secretary of Labor (OSHA) policy of citing all employers at a site whose employees are exposed to a violation prompted these comments:
>
> "Even if contractural liability was fairly allotted to the party at fault, the Secretary's policy .... might necessitate litigation between the parties to affix liability."
>
> ".....The Secretary's policy requires multiple expenditures in the discovery of violations. Since each employer is responsible for every violation to which his employees are exposed, they are in effect required to discover violations that are beyond their areas of expertise."
>
> "The Secretary's rule might cause duplicate expenditures to be made in the actual abatement of hazards by different employers. Further, union contracts require that only employees of certain crafts be permitted to undertake certain work. Thus...a subcontractor would often be required to hire additional employees in order to abate a hazard."
>
> "The alternative for a subcontractor to remove his employees from the job after a violation is discovered ... is an unrealistic and economically unfeasible solution."

The Court also pointed out that a subcontractor who pulled his workers off a site because of a possible non-serious violation, might be subject to damages from the owner or general contractor if the project was delayed.

It is important to note that the ruling in this case was LIMITED TO SITUATIONS FOR NON-SERIOUS VIOLATIONS where questions of joint responsibility are not involved. It states:

> "We have not told the Secretary whom he must hold responsible where there is a joint responsibility for the existence of a standard violation" "...we have not held that the Secretary's policy of imposing liability on employees for exposure to conditions that are serious violations of promulgated standards is invalid." (Underlining added by MCAA).

Statements by MCAA to Congressional Committees conducting oversight hearings on OSHA has stressed (and will continue to stress) the need for OSHA to establish clearly the responsibility for OSHA violations on multi-contractor sites and for only the employer responsible be cited. the U.S. Court of Appeals action strengthens the MCAA position.

A copy of the complete Court decision can be obtained by writing the MCAA national office, Attention: Safety Committee.

THE MCAA SAFETY COMMITTEE
E. J. Stano, Chairman
John A. Christiansen
Jack Ryan
Charles R. Stroh

The CHAIRMAN. The Manufacturing Chemists Association is next. I wonder, gentlemen, if you could relax for a moment; there is a phone call that must be made. Do you mind?

Dr. KARRH. Not at all.

[Whereupon, a brief recess was taken.]

The CHAIRMAN. Who is chairman of the group?

Dr. KARRH. I am.

The CHAIRMAN. All right, Doctor, will you introduce your panel, and we will proceed.

STATEMENT OF BRUCE W. KARRH, M.D., MEDICAL DIRECTOR, E. I. DU PONT DE NEMOURS & CO., WILMINGTON, DEL., REPRESENTING THE MANUFACTURING CHEMISTS ASSOCIATION, ACCOMPANIED BY R. D. FULWILER, PH. D., ASSOCIATE DIRECTOR, HEALTH DEPARTMENT, THE PROCTOR & GAMBLE CO., CINCINNATI, OHIO; JERRY M. SMITH, PH. D., DIRECTOR OF TOXICOLOGY, ROHM & HAAS CO., SPRING HOUSE, PA.; AND NED K. WALTERS, MANAGER, SAFETY AND FIRE PROTECTION, E. I. DU PONT DE NEMOURS & CO., WILMINGTON, DEL.

Dr. KARRH. My name is Bruce W. Karrh, medical director of the Du Pont Co. With me on my right is Ned Walters, the manager of the safety and fire protection division of Du Pont. On the far left is Dr. Jerry Smith, director of toxicology for Rohm & Haas Co.; and to my immediate left, Dr. Rick Fulwiler, the associate director of the health department, which has responsibility for industrial hygiene, with the Proctor & Gamble Co.

We appear today on behalf of the Manufacturing Chemists Association, which is a nonprofit trade association having 191 U.S. company members, representing more than 90 percent of the production capacity of basic industrial chemicals within this country.

These comments are presented as constructive suggestions for more effective administration of the occupational health and safety program by the Department of Labor. They also respond to some points that have been raised by the subcommittee.

The Department's Occupational Safety and Health Administration, or OSHA, should take advantage of the obvious stake of employers in a healthy, injury-free work force by seeking cooperation, rather than by threatening punitive action. In turn, this would encourage productive cooperation between employees and employers in carrying out programs designed to provide a workplace free of occupational illnesses and injuries. The commitment of management and labor is essential to the success of such a program.

Although we have submitted rather detailed testimony for the record, I will summarize the major points in my verbal presentation in the interest of time.

We feel that OSHA should also place greater emphasis on more effective coordination between government and the private sector in applying the results of job-related research.

During its life, OSHA has raised the awareness of industry, labor, and society in general in regard to safety and health issues. It has fallen short, however, of the lofty expectations which Congress and others foresaw at the time of its enactment.

The interagency task force on workplace safety and health has concluded that if all present OSHA standards were fully effective and complied with fully, 25 percent of the injuries now occuring in the workplace would be prevented or affected favorably.

The only way to affect all workplace injuries is through a program that begins with management commitment. An overall approach is necessary to control risks in the workplace, whether these risks are due to safety or health hazards.

The essential program elements are, first, management commitment; second, well-defined objectives and plans; third, the training of employees; fourth, information exchange with employees; fifth, monitoring for employee compliance with safety and operating rules; sixth, discipline where necessary and appropriate; seven, supervisory accountability; and, eighth, auditing for effectiveness of the program.

Whether the risk is to health or to safety, control is exercised by the same mechanism. Risk identification techniques may vary, but once the risk has been identified, all these elements are required for adequate control.

OSHA's current adversarial approach fails to encourage the employer to develop effective programs. Cooperation between the employers, the employees, and OSHA is the key to a successful attack on industrial injury and illness.

The employer is ultimately responsible for workplace safety and health. We have heard that many times during these hearings. Any agency or individual which bypasses or interferes with the employer in carrying out this responsibility does so to the detriment of the worker by removing the employer's accountability.

The report of the interagency task force supports a position many have held since enactment of the act—namely, that workplace safety and health requires commitment by and cooperation among the regulated—or industry—the regulator—or government—and the ultimate beneficiary—the worker.

OSHA can do more to encourage cooperation between the employee and the employer and their commitment to good safety and health performance. To do so, OSHA should, first, redirect its current emphasis on enforcement of detailed standards to encourage and enforce the eight essential elements of the comprehensive safety and health program we have outlined.

Second: Congress should amend the Occupational Safety and Health Act to permit consultation of employers with Federal industrial health specialists without peril of violation and citation.

Third: OSHA should concentrate consultation and inspection efforts on those segments of industry which have the worst performance records, encouraging development of a comprehensive safety and health program.

Fourth: OSHA should assist in training safety and health professionals by reinstating the government-industry personnel exchange program. This would help relieve the adversarial relationship between OSHA and industry, and perhaps improve industry's credibility with OSHA.

Fifth: OSHA should develop comprehensive training programs for its officers.

Sixth: OSHA should make earnest attempts to bring into balance the competing interests of industry, labor, and society in general. Labor relations and normal employee-employer relations should be left to those agencies charged with that responsibility, or to negotiations between the employee and the employer.

Seventh: OSHA should strive for education and enlightenment of employers.

We believe it essential that a Federal cancer policy be developed which would apply to all Government agencies, rather than having each agency develop its own policy to regulate carcinogenic substances.

I would like to spend a brief period of time discussing OSHA's standards. Over the years, draft proposals, proposed rules, and final rules have caused industry occupational health professionals to question the basic thrust of OSHA's standards-writing activities.

We are convinced that industry and OSHA have the same objective—that is, the prevention of occupational disease. We are also convinced that changes in OSHA's standards activities would expedite the standards-setting process and accelerate progress in the prevention of occupational disease.

Proposed and final standards from OSHA take the form of specification instead of performance standards. OSHA should reevaluate its posture in the use of performance standards. Performance, which in the case of occupational health is prevention of disease, should be the concern of OSHA.

Standards which contain highly specific requirements on exposure evaluation, employee training, labeling and posting, medical monitoring, recordkeeping, and work practice and control procedures delay the standard-setting process. Performance standards would provide incentives for voluntary or even anticipatory compliance action by employers.

Also of importance is the uncompromising position that OSHA has taken on specific methods of exposure reduction. With very few exceptions, engineering controls represent the exclusive solution in OSHA's eyes.

Personal protection must be recognized in the face of technical and economic infeasibility.

Occupational health professionals in industry are continually involved in the political and scientific debates and hearings to assure that standards that issue are responsive to the prevention of occupational disease. Their responsibility is, first and foremost, to the health of the worker.

When these practitioners and their employers are burdened by standards which require levels, controls, and programs beyond that which is necessary, the capacity to maintain practical and voluntary programs of broader application in the prevention of occupational disease and injury is seriously affected.

OSHA's proposed and final standards essentially are drafted by individuals of limited professional qualifications and experience. Since OSHA cannot be expected to have a cadre of professionals with a working knowledge or experience in all of the involved industries, the Agency should consider the promulgation of performance standards versus the current reliance on specification standards.

OSHA also should rely more on the experience of the occupational health professionals who are employed by industry, since all parties have the same ultimate goal—the prevention of occupational illnesses and injuries.

Postpromulgation reevaluation of its standards at preestablished time intervals should be provided by OSHA. OSHA should establish a validation test to be applied after a reasonable interval following promulgation, such as 2, 3 or 5 years, for determining how effective the rule or standard is in meeting its intended objective.

A validation process also would provide this Senate committee and other congressional bodies with a valuable tool for defining problems and focusing its oversight responsibilities.

I would like to briefly discuss the role of industrial research in occupational safety and health. Any scientific discipline must have a foundation of basic research to remain viable and grow. This is true for occupational health and for its subspecialties of medicine, industrial hygiene, and toxicology.

For any successful research effort, including occupational health, there are several requirements. First, there must be an objective. The program must be viewed by the scientific community as being professionally and technically acceptable and have as a primary goal the growth of the scientific data base.

Second, there must be technology. A program is only as deep and strong as the scientists who comprise the staff.

Third, funding is necessary. Researchers require long-term support and proper facilities to be productive.

Fourth, there must be communications, with the need of free and unencumbered flow of information within the natural research community, and thorough peer review is essential.

Industry can find specific areas to coordinate research with OSHA. However, there is a need to establish a working relationship with OSHA and a need to be able to develop common areas to start cooperative efforts.

We are here today to restate our interest in establishing an ongoing effective working relationship with OSHA, and to cooperate on research problems of mutual concern. One readily identifiable area of mutual interest would be to develop appropriate methods to test the adequacy of protection afforded by respirators, including how well the respirator fits the individual.

The remainder of my testimony explains some of the problems in research in areas of occupational health and safety and will be omitted from the verbal presentation in the interest of time.

In summary, Mr. Chairman, it is our view that OSHA can be an effective force in promoting a safe and healthful workplace and in preventing occupational illnesses and injuries. Economic considerations, however, must be taken into account during any rulemaking process.

Also, it will be necessary for the agency to develop a willingness to assist and cooperate, rather than to continue taking a doctrinaire approach and specifying exact compliance methodology. The members of the MCA look forward to working cooperatively with OSHA in developing sound and practical regulations.

We want to express our appreciation to you for the opportunity the subcommittee has given us to express our views today. Thank you.

The CHAIRMAN. Thank you very much, Dr. Karrh. It would seem to me that all of you are in what I would describe as a fortunate but unique situation. The head of OSHA is your peer. Is not Dr. Bingham from industrial medicine? Is she not an industrial toxicologist? This is something you particularly understand, am I right? This is your world, too?

Dr. KARRH. That is correct. Dr. Bingham is from the scientific community concerned with industrial and occupational health.

The CHAIRMAN. And it is the layman's impression that this is the area of gravest concern—the health problems arising out of the workplace. I say gravest because it seems we are still in the beginning stages of knowing what some of the risks are.

It is, in that way, unlike safety. In the specific regulations for safety on the job, the hazards seem more readily identifiable. It is more difficult to identify those conditions that will promote health—we are struggling on that, am I right?

Dr. KARRH. We can identify the hazard better with a safety hazard than we can with a health hazard, that is correct. In many cases, a health hazard is not as obvious as a safety hazard.

The CHAIRMAN. That is the layman's impression, and now we are getting it from the professional side of the table. That is why I say I think the Nation is fortunate that someone of Dr. Bingham's background is directing the governmental aspects of the search for knowledge and for answers, where they can be found.

I just wondered, do you have adequate opportunities to informally consult with Dr. Bingham, any of you?

Dr. KARRH. I think all of us have had the opportunities, since Dr. Bingham has been in office, to consult with her on more than one or two, or even several, occasions. I personally have consulted with her on two or three occasions.

One of the concerns that we have, both in our consultations and in standard-setting processes, is whether or not our inputs are being heard and are being considered in the final promulgation of standards and other types of communications that come out of the OSHA standard-setting process.

The CHAIRMAN. I was just trying to think, and I am helped by some notes that I have, of situations where industry, pursuing its own efforts to understand these health risks, did discover, through monitoring and usual research ways, that problems existed. Both Dow and DuPont, I believe, had some early observations out of research on one of the chemicals, and did apprise OSHA of this. And out of this came some work on a standard, and I believe there is a standard on acrylonitrile.

Am I right on that? Have you been part of the acrylonitrile situation? That one both you and Dow monitored and came to certain conclusions. You communicated that information to OSHA, and out of that have come developing standards?

Dr. KARRH. Yes, Senator Williams. What actually happened is that the organization that we are here to represent today, the Manufacturing Chemists Association, put together a research program to try to develop toxicity data on acrylonitrile, particularly whether or not acrylonitrile was a carcinogen.

Dow did the animal research for the Manufacturing Chemists Association. At the same time, Du Pont started an epidemiological study of workers who were exposed to acrylonitrile at an acrylics fiber plant. The animal data were reported earlier, because preliminary results indicated that acrylonitrile probably was a carcinogen in animals.

Shortly thereafter, we reported the preliminary results of our epidemiological study of workers exposed to acrylonitrile which indicated these workers were at increased risk of developing cancer. Both sets of these data were immediately provided to OSHA and NIOSH, and to other Federal agencies on a need-to-know basis—NCI, the National Institute of Environmental Health Sciences, and others.

From this, OSHA did develop the emergency temporary standard on acrylonitrile, and last week it went on a permanent standard.

The CHAIRMAN. What is the status now of the acrylonitrile standards? Is there a standard, and has the effective date been established?

Dr. KARRH. The final standard was published in the Federal Register last week, and the effective date is sometime in the future. I think it is sometime within the next couple of months, but I do not remember exactly what it is at this time.

The CHAIRMAN. Now, this seems to be a model of the intelligent approach, both on the part of industry, sensing they had a problem, a risk, or a hazard, researching it, and discovering there was, is that right?

Dr. KARRH. That is correct.

The CHAIRMAN. And communicating all your information to the agency that could take your findings and put them in form so that the risk could be protected against.

Dr. KARRH. That is correct. We do have a concern, though, that is somewhat reverse to that. What if the data had come out negative? We find quite frequently, if we have negative data, even though it is very well done scientifically, it is discounted and not even considered on its own scientific merits, because it did not show anything.

In our opinion, negative data in a work siuation where you have had long experience and you have not had an adverse health effect, or if you do animal testing and you do not get an adverse health effect in the animals, are just as important as positive data.

We do not get the same reception from the agencies with negative data as we get with positive data.

The CHAIRMAN. Now, when you say "agencies," you say that in the plural. Is that OSHA–NIOSH?

Dr. KARRH. OSHA–NIOSH. Another point I should make is that Dr. Bingham is a scientist and is a professional, and part of our testimony today is to encourage OSHA to develop more scientists and more professionals, because we feel that there is a need for scientists in industry and scientists in Government to coordinate research and work together on efforts that will provide a safer and healthier workplace.

The CHAIRMAN. In one way, we have, through work in this committee, advanced the state of the art in industrial hygiene through the health manpower program, to encourage training opportunities for hygienists, but we have done nothing that I can recall for advancing basic training for scientific personnel. I think that is what you are suggesting.

Dr. KARRH. We are suggesting that, and in addition, we would like to see some resolution of the adversarial relationship that exists between governmental scientists and the scientists in industry, so that we can begin to work together and accept each other as scientific equals, and not have a situation where the work that we do is not accepted unless it shows what the governmental scientists would like to see.

The CHAIRMAN. Well, this has happened in relation to industry and OSHA?

Dr. KARRH. Yes, it has happened, and I think we have a very good example that Dr. Fulwiler can give you in the cottonseed industry.

Dr. FULWILER. If I might, Senator, I notice we did spend some time on the cotton situation, and picking up on Dr. Karrh's comments on negative data, prior to the promulgation of the cotton standard and prior to the proposed rule, we did cooperate in a study with Tulane University in some cottonseed mills.

That study indicated a very small prevalence of byssinosis, which was discussed Monday; the prevalence of about 2½ percent which, when looked at, was found to be within the wobble of the questionnaire technique for diagnosing byssinosis. The resulting standard, however, did not appear to consider this quite well controlled study in the United States, and went on to regulate the cottonseed processing industry, primarily basing its arguments on some rather old foreign studies that did not appear to be well-controlled.

The CHAIRMAN. I was searching for something and I did not hear all of that. You say that their information was based on old studies?

Dr. FULWILER. Well, the apparent relationship of some kind of occupational disease to cottonseed processing being specific would have to go back to foreign literature in Australia and in Egypt. The studies which were done here showed a very low prevalence of byssinosis; I think it is 2.6 percent, which is within the wobble.

In other words, byssinosis, as we discussed Monday, is diagnosed based on employee's response to a questionnaire, and that prevalence was what was also observed in a federally-sponsored study in a non-cotton textile industry. In other words, a team went in and gave this questionnaire and found that they, too, got a 2- to 3-percent positive response for byssinosis, although the workers were not exposed to cotton dust.

I am trying to differentiate what is a significant, measurable level of byssinosis, and what is not. We put our study forward to OSHA prior to the proposed cotton dust rule, indicating this. However, the subsequent rule did include the cottonseed processing industry.

The CHAIRMAN. Now, can you give me a little more detail of your studies of cottonseed dust and your conclusions?

Dr. FULWILER. Well, the studies which we participated in with the University of Tulane and Dr. Weil, were designed to look at the clinical and exposure levels associated with cottonseed processing operations, and those studies were done in 1975 and repeated in 1977, as a means to try to determine, is there byssinosis in the cottonseed processing industry—is there respiratory disease. That was the purpose of the study.

The CHAIRMAN. This was all part of that record that was made of 150,000 pages?

Dr. FULWILER. Yes, sir, it was.

The CHAIRMAN. You see how these things can go awry; there was only 105,000, and I just said 150,000; a juxtaposition there. Someone could loosely say 510, and that could go into the record as 150, and then we would be off to another race.

In any event, were you part of that record?

Dr. FULWILER. Yes, sir, we were.

The CHAIRMAN. This dealt with just one of the stages of dealing with cotton in manufacturing, the cottonseed stage, is that right?

Dr. FULWILER. Yes, sir.

The CHAIRMAN. And bringing the oil out of cottonseed?

Dr. FULWILER. Yes, sir.

The CHAIRMAN. And you found what you call negative results in your research?

Dr. FULWILER. We found what we would call negative; we did find 2½ percent, which is within that wobble.

The CHAIRMAN. We had testimony earlier this week that said that the research showed 1 percent byssinosis in the process. You say 2.5 percent?

Dr. FULWILER. I am not familiar with the particular study of the individual who testified Monday. I do not know where he got 1 percent. I think we are splitting hairs; we would probably find certain mills which would have zero, and other mills that might have 3 percent. So I think it depends on the population studied.

There is not a great difference between 1 and 2.5 percent, when you are operating down at the limit of sensitivity of your ability to determine byssinosis. This is the percent you will get in a nonexposed population responding to the same questionnaire.

The CHAIRMAN. And that was the research? The response, both yours and theirs, was a response to a questionnaire?

Dr. FULWILER. No, sir; no, sir. The research would include broader investigation. Chronic bronchitis was also reviewed, and pulmonary function. It is a rather standard approach to field studies. If I could comment on chronic bronchitis, again the populations in the cottonseed industry did not demonstrate a prevalence, or incidence, of chronic bronchitis greater than what we would expect in a normal industrial population.

The CHAIRMAN. Are there any other examples?

Dr. KARRH. I think another good example, Senator, would be the situation recently, that has arisen over the beryllium epidemiological studies that were done by NIOSH, in which the actual methodology has come to question whether or not standard epidemiological principles were followed in conducting these studies, and whether or not the study really shows what the authors of the study finally decided it did show.

My understanding is that HEW is looking into this study and reevaluating it at this time to determine whether or not it is a valid study. But it was put into the standard-making process as a scientifically done study that was representative of the hazards of the industry.

One of the other things that we get concerned about as professionals and as scientists, is the sometime unscientific ways in which things are done to try to influence the emotional side of the standard-setting process.

For instance, in Secretary Marshall's opening statement on the opening day of the hearings, he chose again to quote this often-repeated number of the estimated 100,000 occupational disease deaths annually. This number first appeared in 1972, in President Nixon's address on occupational safety and health, and it was derived from some pretty unsupportable assumptions and mathematical manipulations.

Unfortunately, the number has been quoted so much that, now, people do not recognize how it was derived, and it has become almost fact, just because it has been quoted so much.

Another good example that Secretary Marshall quoted was, as he said, at least 20 percent—I will quote Secretary Marshall—"At least 20 percent, and perhaps as much as 38 percent, of all cancers have been, or will be, caused by exposure to workplace carcinogens." That is the end of the quote from his testimony on Tuesday.

The CHAIRMAN. He was quoting Secretary Califano, I believe, was he not?

Dr. KARRH. He was paraphrasing Secretary Califano.

The CHAIRMAN. Paraphrasing?

Dr. KARRH. This number, I might also point out, was also derived from a large number of somewhat unsupportable assumptions and unscientific manipulations, which really do not follow good epidemiological principles.

Our greatest concern is that these statements, when they are voiced by someone of Secretary Marshall's stature, begin to develop some credibility which they really are not due. The only thing they do, really, is add an emotionalism factor to an issue that is of such importance that it really should require sound, rational, cooperative programs for control, and not the emotional reaction to influence one.

The CHAIRMAN. We are running short of time. But it would be helpful for me to further discuss the nature of standards; whether they should provide specific behavior criteria or call for general performance levels.

It would seem to me that something is found to be scientifically certain, and the risk is defined, and protection from the risk is known, it would be sensible for the standard to be specific, even if it may be quite a burden. You mentioned labeling as one of the specifics that I gather you were suggesting, would be unnecessary if you had a performance standard rather than a specification standard.

Labeling has been found in many ways and in many areas to be an effective way to protect workers in the first instance. Then monitoring, again, is a specific requirement that would seem to make sense. You have a latency period before something manifests itself. I would think that knowing who comes into the area of risk and who stays there and for how long, a monitoring record of this sort would be a tremendously useful tool, particularly to scientific people who have that patience to stay with something, as long as they know that what they are investigating is based on reliable information.

I just do not quite get the feeling that the more amorphous performance standard is better than specifications when something is known and can be dealt with specifically.

Dr. KARRH. Let me, briefly, if I can, try to let you know what we are talking about when we say performance standards as opposed to

specification. The specification standards that OSHA is promulgating now specify an exact compliance methodology that you cannot deviate from, even if you have an equally effective compliance methodology. You have to follow A, B, C, D, E, F, exactly the way they say.

A performance standard would not be totally devoid of specification; there would be some specifications even in a performance standard. But the performance standard would specify certain ways that an employer could meet the objectives of the standard, but it would also allow for recognition of equally effective methods of meeting that standard.

The end result, as far as compliance monitoring, would be the absence of an occupational disease or injury that would occur, and OSHA would still have the ability to inspect and to decide whether or not that employer was meeting the standard by whether or not he had programs that would, indeed, prevent the condition that the standard was directed toward.

As far as labeling and monitoring, we are totally in favor of both, and MCA has gone on record that an employee should be fully informed of the toxic and physical hazards of the workplace. We endorse monitoring, but we feel that many times, OSHA specifies what the label will say; how many inches from the top or how many from the bottom; what the size will be and the size of the letters; and also specifies the monitoring methodology that many of us may even have a better method to monitor, but it would not be in compliance, because it is not recognized by the specification standards.

The CHAIRMAN. I think that the idea of performance standards, which would require the same beneficial results without the specific methodology, could be a good idea, again as a layman, provided that your method of compliance were known and could be evaluated.

But, what bureaucratic burden would that create? I will be darned if I know! There are areas in law where the law requires that certain things be done but the law also says that if the same result can be arrived at in other ways, that is OK, too. That is what you are urging.

Dr. KARRH. That is what we are asking, yes, and we would be more than glad to share our methodology in monitoring with the agencies. Most of the time, we publish it anyway for others who have similar problems to utilize it, and there would be no problem with sharing it. The problem would be whether or not OSHA would recognize it.

The CHAIRMAN. Again, I have the impression that you feel there is governmental resistance, to your findings and conclusions in certain areas. That is true where you have negative research; you feel that there is a resistance to accepting that. Is that right?

Dr. KARRH. We feel your questioning gets right to the very basic problem that we have, and that is the problem of attitude; that there is an adversarial relationship between professionals and scientists in industry and the agencies that are charged with the responsibility for workplace safety and health.

We do not feel that we are recognized as scientists and that our inputs are not recognized as scientific inputs, because of this negative attitude and the adversarial relationship.

The CHAIRMAN. This is one of the difficulties we encounter. We know that there are regulatory agencies that have been found to be so close to an industry that they will accept, without question, an industry

attitude. We find, in other agencies, a resistance. There should be a way to find that middle road of appreciation without blocks of resistance.

Dr. KARRH. "Suspicion" is a good word.

The CHAIRMAN. Yes, or on the other hand, unquestioning acceptance.

Dr. KARRH. Yes, and we are not asking for the latter. We are asking to be reviewed as peers and to be entitled to the peer review.

The CHAIRMAN. Where these are matters of dollars and cents and economic questions, I can see that that is one problem. Where you are dealing basically with subjects susceptible to scientific fact, that is another thing. It would seem to me that scientists should be able to find a way to work together to get the facts. But when you have got an economic question, then you get a lot of theory and opinion rather than facts.

Dr. KARRH. That is correct, but I think all of us in occupational health, as professionals, are there because our companies have recognized the need for having this type of expertise available in occupational safety and health, and our companies would not have us there if they did not feel that they would benefit in their efforts to provide a safe and healthful workplace by having us there.

We have good rapport; we are able to discuss with management any health and safety problems. We feel that we can assist management in providing these safe and healthful workplaces, and we would like to be able to have a working relationship with the agencies where we can benefit from their expertise and they can benefit from ours.

The CHAIRMAN. And you think that this can be done even though your fundamental responsibilities are different. Corporate responsibility is a lot different than governmental responsibility.

Dr. KARRH. I am not sure that it is different; it is just that we are advising different people. Our corporate responsibility is to advise management on health and safety issues and their resolution. I think the governmental people are in the same situation. The difference is that they have enforcement authority that we do not have.

I think the overall objective is the same, and that is the safe and healthful workplace and preserving the health and safety of the workers.

The CHAIRMAN. Well, I accept that. Yet there will be those business people who will not put the same kind of emphasis on safety and health within a company that you do. The business side can overshadow the scientific side within a company. We often see the shortcutters; those who would find profits in shortcuts.

Dr. KARRH. We recognize that that problem could occur, and that is why one of our eight points was that OSHA has to be in a position to advise and educate employers, because I think the employer has to ultimately be responsible for the workplace, but OSHA can assist that employer to try not to get those shortcuts and to try to provide a safe and healthful workplace, and assist in those overall efforts.

The CHAIRMAN. I know that we have tried, and we have been successful, I think, on occasion, in advancing to the agency the idea that something is developing in industry that we thought was worthy of consideration by the agency. I think that in some of these standards, that has been true. This is not our primary responsibility, but when we do learn things, we can pass them on.

I have learned a lot today, by the way, and I appreciate very much your testimony.

Dr. KARRH. Thank you, Senator Williams. If I could, I would like to introduce into the record one booklet that the Manufacturing Chemists Association has just developed, entitled "Guidelines for a Chemical Plant Safety Program and Audit." This was developed by MCA to assist in the establishment, measurement and maintenance of an aggressive safety program in the chemical industry.

It is just right off the press, and we would like to enter it into the record as something that the trade organizations, and industry in general, are trying to do to assist OSHA in its efforts, and we would like to see the ability to cooperate and coordinate these efforts enhanced. Thank you very much.

The CHAIRMAN. I appreciate that. We will find that useful and it will be part of our record. Thank you.

[The prepared statement of Dr. Karrh, the booklet referred to and supplemental material supplied for the record follows:]

MCA MANUFACTURING CHEMISTS ASSOCIATION

STATEMENT

OF THE

MANUFACTURING CHEMISTS ASSOCIATION

PRESENTED BY

DR. BRUCE W. KARRH

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

U. S. SENATE COMMITTEE ON HUMAN RESOURCES

AT OVERSIGHT HEARING ON

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OCTOBER 5, 1978

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My name is Bruce W. Karrh, medical director of E. I. du Pont de Nemours & Company. I appear today on behalf of the Manufacturing Chemists Association (MCA), a non-profit trade association having 191 United States company members representing more than 90 percent of the production capacity of basic industrial chemicals within this country.

These comments are presented as constructive suggestions for more effective administration of the occupational health and safety program by the Department of Labor. They also respond to points raised by this Subcommittee. The Department's Occupational Safety and Health Administration (OSHA) should take advantage of the obvious stake of employers in a healthy, injury-free work force by seeking cooperation rather than threatening punitive action. In turn, this would encourage productive cooperation between employees and employers in carrying out programs designed to provide a workplace free of occupational illnesses and injuries. The commitment of management

and labor is essential to the success of such programs.

OSHA also should place greater emphasis on more effective coordination between government and the private sector in applying the results of job-related research. The continuing preoccupation with unproductive and inapplicable details in the preparation of OSHA standards underlines the scarcity of health professionals as well as wasting of the talents of the few that are available.

OSHA's current approach has built-in limits to its potential effectiveness in preventing workplace injuries and leads to attempted implementation of programs technically deficient or inappropriate to safety needs. The recent regulatory proposals on the making of employee medical records available to non-medical personnel is an example of permitted invasion of the traditional doctor-patient private relationship. The OSHA cancer proposal, in addition to its many substantive defects, is an example of one federal agency attempting to implement its own distinct policy on a complex subject which should be uniform for all government agencies.

The enactment in 1970 of the Occupational Safety and Health Act was viewed by many companies as an indication of a stronger sense of national commitment to the goal of improving overall safety performance on the job. Starting with the accumulation of general industry statistics after World War I, the U.S.

experienced a steady reduction in work-related injuries, reaching the lowest level in the mid-60s. This was followed by an upward trend during the latter part of that decade. Congress saw OSHA as the mechanism that could accomplish significant gains in job safety and health.

ONLY 25 PERCENT OF WORKPLACE ACCIDENTS CAN BE AFFECTED BY OSHA

OSHA has raised the awareness of industry, labor and society in general in regard to safety and health issues. It has fallen short, however, of the lofty expectations which Congress and others foresaw at the time of enactment.

The Interagency Task Force on Workplace Safety and Health has concluded that if all present OSHA standards were fully effective and complied with fully, 25 percent of the injuries now occurring in the workplace would be prevented or affected favorably. The First Recommendations Report of the Task Force, dated August 1, 1978, states in its Executive Summary that enforcement by inspection to insure compliance with a combination of physical and work practice standards has increased private-sector awareness of job safety and health problems. However, the report indicates that such an approach:

> ". . . is estimated, with present standards, to possess a potential for preventing perhaps 25% of workplace accidents by itself, since most injuries involve the behavior of management and workers as well, and some hazards are transient and will not be seen during an inspection."

The report finds it also noteworthy that:

". . . 25-50% of reported occupational fatalities are caused by circumstances (e.g., highway motor vehicle accidents, heart attacks, and violent acts committed between employees or by outsiders upon employees) that are unlikely to be prevented by OSHA regulations."

THE ONLY WAY TO AFFECT ALL WORKPLACE INJURIES IS THROUGH A PROGRAM THAT BEGINS WITH MANAGEMENT COMMITMENT.

An overall approach is necessary to control risks in the workplace, whether these risks are due to safety or to health hazards. Essential program elements are:

1. Management commitment
2. Well-defined objectives and plans
3. Training of employees
4. Information exchange with employees
5. Monitoring for employee compliance with safety and operating rules
6. Discipline where necessary and appropriate
7. Supervisory accountability
8. Auditing for effectiveness

Whether the risk is to health or safety, control is exercised by the same mechanism. Risk identification techniques may vary, but once the risk has been identified, all these elements are required for adequate control.

OSHA'S CURRENT ADVERSARIAL APPROACH FAILS TO ENCOURAGE THE EMPLOYER TO DEVELOP EFFECTIVE PROGRAMS. COOPERATION BETWEEN EMPLOYERS, EMPLOYEES AND OSHA IS THE KEY TO A SUCCESSFUL ATTACK ON INDUSTRIAL INJURY AND ILLNESS.

The employer ultimately is responsible for workplace safety and health. Any agency or individual which bypasses or interfers with the employer in carrying out this responsibility does so to the detriment of the worker by removing accountability.

The report of the Interagency Task Force supports a position many have held since enactment of the Act, namely that workplace safety and health requires commitment by and cooperation among the regulated (industry), the regulator (government) and the ultimate beneficiary (the worker).

Cooperation between the worker and the employer is essential to the success of the eight-point risk-control program just outlined. Workplace safety and health will be improved only when each is committed and is confident of the other's commitment.

OSHA CAN DO MORE TO ENCOURAGE COOPERATION BETWEEN THE EMPLOYEE AND THE EMPLOYER AND THEIR COMMITMENT TO GOOD SAFETY AND HEALTH PERFORMANCE.

1. OSHA should redirect its current emphasis on enforcement of detailed standards to encourage and enforce the eight essential elements of the comprehensive safety and health program we have outlined.

2. Congress should amend the Occupational Safety and Health Act to permit consultation of employers with federal industrial health specialists without peril of violation citation.

3. OSHA should concentrate consultation and inspection efforts on those segments of industry which have the worst performance records, encouraging development of a comprehensive safety and health program.

4. OSHA should assist in training safety and health professionals by reinstating the government-industry personnel exchange program. This would help relieve the adversary relationship between OSHA and industry and perhaps improve industry's credibility with OSHA.

5. OSHA should develop comprehensive training programs for its officers.

6. OSHA should make earnest attempts to bring into balance the competing interests of industry, labor and society in general. Labor relations and normal employee-employer relations should be left to those agencies charged with that responsibility or to negotiations between the employee and employer.

7. OSHA should strive for education and enlightenment of employers.

A recently released publication from the Wharton School states that OSHA's ". . . lack of significant impact exists because the added attention to safety and health generally has been focused primarily on the requirements of regulations instead of on reduction of risks, in large part because the regulatory system focuses more

on means than ends in the control of potential hazards."*

The following proposals suggest methods OSHA might use to focus on its goal of risk control without expending fruitless efforts over the means involved.

NEED FOR UNIFORM CANCER POLICY

We believe it essential that a federal cancer policy be developed which would apply to all government agencies. Differences exist among the proposals on this subject from various regulatory bodies. The OSHA generic approach to regulating carcinogens is offered as a model for other agencies.

The efforts of the Interagency Regulatory Liaison Group, which includes representatives of OSHA, EPA, CPSC and FDA, in this direction should be encouraged. A panel of scientifically qualified individuals which would review all the available evidence for the classification of a material as a carcinogen, a suspect carcinogen or for any other category is a key element of a uniform policy. The panel also should advise regarding potency of materials. Details on the inadequacies of the OSHA proposal and on the alternative suggested here were presented by the American Industrial Health Council during OSHA's recent public hearings.

OSHA STANDARDS

Over the years, draft proposals, proposed rules and final rules have caused industry occupational health professionals to question

*Northrop et al. The Impact of OSHA, Labor Relations and Public Policy Theories, No. 17. University of Pennsylvania: The Wharton School , Industrial Research Unit, 1978. p.537.

the basic thrust of OSHA's standards writing activities. We are convinced that industry and OSHA have the same objective -- prevention of occupational disease. We also are convinced that changes in OSHA's standards activities would expedite the standard-setting process and accelerate progress in the prevention of occupational disease.

Recent draft proposals and proposed and final standards are too broad in scope and lacking in focus. The result is a questioning of the scientific basis supporting them. Unfortunately, the promulgation of industry-wide standards, which include segments of the industry not showing a basis for the likely occurrence of an occupational disease forces regulatory compliance without providing any worker benefit. This is poor use of financial resources and occupational health personnel and results in nonproductive political/scientific debates and litigation. The worker pays the price through slow or negligible progress.

To be specific; with reference to permissible noise levels, the debate over 90 dBA versus 85 dBA -- 8-hour average equivalent -- has slowed the pace of industry in studying and implementing source controls for noise because of uncertainty of the future. Had OSHA promulgated a 90 dBA standard with a sound

program of audiometric examinations and personal protection based on those examinations, we are convinced greater progress would have been made in the prevention of noise-induced hearing loss. The debate, however, could have continued, but noise-exposed workers would have been adequately protected from adverse health effects in the meanwhile.

Proposed and final standards take the form of specification instead of performance standards. OSHA should reevaluate its posture on performance standards. Performance, which in the case of occupational health is prevention of disease, should be the concern of OSHA. Standards which contain highly specific requirements on exposure evaluation, employee training, labeling and posting, medical monitoring, record keeping and work practice and control procedures delay the process. Since the standards do not allow the employer to use equally protective and frequently more cost-effective means of compliance, they cause considerable debate. They also are, in no small part, responsible for the slow progress in promulgation of final rules as well as for the increased tendency to use the courts for legal remedy.

Performance standards would provide incentives for voluntary or even anticipatory compliance action by employers.

Also of importance is the uncompromising position OSHA has taken on specific methods of exposure reduction. With very few exceptions,

engineering controls represent the exclusive solution in OSHA's eyes. To again quote from "The Impact of OSHA" (p. 539) ". . . this preference for the most costly approach to the control of occupational health hazards -- engineering controls -- has weakened incentives for voluntary or anticipatory compliance action and strengthened incentives to challenge proposed new standards and compliance orders under old standards. The net result is to diminish the effectiveness of the additional resources which both government and industry have committed to occupational health activities."

Personal protection must be recognized in the face of technical and economic infeasibility. Effective control of noise exposures, one of the most ubiquitous hazards in industry, has been accomplished in a successful and acceptable manner by the use of hearing protective devices. OSHA, however, insists on pushing for engineering solutions to the point where dollars may be spent on such solutions at the expense of other advances in health and safety. Parity for effective and accepted alternate methods of compliance, where reasonable and appropriate, must be allowed.

Recent draft proposals on proposed and final standards result in poor utilization and misdirection of the limited number of occupational physicians and industrial hygienists. A recent study by the National Institute of Occupational Safety and Health, "A Nationwide Survey of the Occupational Safety and Health Work Force" (DHEW/NIOSH Publication No. 78-164), indicates that 540 physicians, 690 industrial hygienists

and 1,440 safety personnel will be needed every year for 1981 through 1985. The survey did not include small organizations of 100 employees or less, causing NIOSH to state that this resulted in underestimating these needs.

This same study indicates that the rate of training of personnel in the same time period is expected to be 57 physicians, 350 industrial hygienists and 615 safety personnel. Ironically, NIOSH stated that the above projections of trained personnel may be biased upward. When one considers that the gap between need and supply may be greater than the raw numbers indicate, the concern over the role and utilization of this valuable resource is even greater.

Occupational health professionals in industry are continually involved in political-scientific debates and hearings to assure that standards are responsive to the prevention of occupational disease. Their responsibility is, first and foremost, to the worker. When these practitioners and their employers are burdened by standards which require levels, controls and programs beyond that which is necessary, the capacity to maintain practical and voluntary programs of broader application in the prevention of occupational disease and injury is seriously affected.

Efforts to accelerate the training of occupational health professionals are laudable but will not meet the near-term needs of the next three to five years. Maximum utilization of these limited resources can occur only if industry and OSHA cooperate unemotionally in

developing efficient standards.

Two specific examples of OSHA's promulgation of standards which have resulted in short-term wasting of occupational health resources were the initial failure to exempt materials with insignificant quantities of benzene and arsenic from some or all provisions of their respective standards. Considerable effort and monies would have been spent addressing an aspect of these regulations without any improvement of health or safety in the workplace if it had not been for industry and/or trade associations. Discussions with OSHA, after promulgation of the benzene and arsenic standards, indicated it was not the agency's intent to regulate for materials containing trace quantities of benzene or arsenic.

Proposed and final standards essentially are drafted by individuals of limited professional qualifications and experience. Yet broad-based standards, with many requirements ranging from specific work practices to specifying the transmittal of exhaustive amounts of information to a physician, have evolved. In many cases, a large number of specific requirements result in nuisances for the workers and administrative burdens for the employers.

Since OSHA cannot be expected to have a cadre of professionals with a working knowledge or experience in all of the involved industries, the agency should consider the promulgation of performance standards versus the current reliance on specification standards.

OSHA also should rely more on the experience of the occupational health professionals employed by industry, since all parties have the same ultimate goal -- prevention of occupational illnesses and injuries.

Although one must be cautious in criticizing the technical competence of an individual or organization, we are concerned about the technical competence in OSHA today. There is board certification for both occupational physicians and industrial hygienists. This is a measure of an individual's expertise. It is our observation that very few of the individuals in the standards promulgation process, are board certified in either specialty. This Senate Committee may want to request a report on the status of board certified personnel in this very important scientific and technically oriented agency.

Proposed and final standards have not consistently defined exposure levels below which specific requirements are not required. To OSHA's credit, "action levels" have been established for some materials. Continuation of the practice of defining occupational exposure, exempting specific requirements when workers are not "occupationally exposed", is urged. However, we are concerned over OSHA's indication of using an action level arbitrarily chosen to be 50 percent of the permissible exposure level for all chemicals, regardless of chemical and toxicological characteristics and potencies.

Post-promulgation reevaluation of its standards at preestablished time intervals should be provided. OSHA should establish a validation test to be applied after a reasonable interval following promulgation -- such as two, three, or five years -- for determining how effective the rule or standard is in meeting its intended objective. When proposing a rule, the agency would describe, as quantitatively as possible, the problem the rule is to address, its objective, the criteria to be used in assessing effectiveness and the explicit goals to be achieved. Lastly, the proposal would specify what data are to be obtained and how and when the effectiveness of the rule in meeting its objectives is to be assessed. This validation requirement could become a vehicle for periodically evaluating the need to continue the rule and provide opportunity for the modification of numeric-based regulations, such as exposure levels. Most importantly, it would require agencies to sharpen their problem definition processes and conduct realistic assessments as to the likely impact of the chosen regulatory requirement.

The validation process also would provide this Senate Committee and other congressional bodies with a valuable tool for defining problems and focusing its oversight responsibility.

With regard to the shortage of qualified industrial hygienists, OSHA should consider awarding grants directly to individual students for graduate training in industrial hygiene, much like the past

Atomic Energy Commission program for health physics. Industrial hygiene is becoming ever more sophisticated and complex and board certification for its industrial hygienists should be encouraged by OSHA. Graduate training, certification and performance then could used in promoting and rewarding its professional staff.

OSHA needs to employ industrial hygienists with formal education, preferably a masters degree in industrial hygiene, at civil service grades and compensation levels approximating remuneration for other comparable job opportunities.

An industrial hygienist is capable of recognizing and controlling health-associated stresses of occupations. We must recognize, however, that there is a fundamental difference between compliance-type and research-type industrial hygienists. Industry would be most likely to employ the latter -- an individual who must develop his or her own tools and solve complex problems. The problem and its solution may very well lead to standards. The compliance-type is most likely to be of use to OSHA as compliance officers -- comparing findings and conditions with existing standards. OSHA's insistence on specification standards which do not allow deviation from "following the book" does not provide sufficient challenge to attract the innovative industrial hygienist. However, if OSHA were to adopt performance standards and provide consultation to employers, then trained research-type industrial hygienists would be essential.

THE ROLE OF INDUSTRIAL RESEARCH IN OCCUPATIONAL SAFETY AND HEALTH

Any scientific discipline must have a foundation of basic research to remain viable and grow. This is true for occupational health and its subspecialties of medicine, industrial hygiene and toxicology. For any successful research effort, including occupational health, there are several requirements:

1. Objective - The program must be viewed by the scientific community as being professionally and technically acceptable and have as a primary goal growth of the scientific data base.
2. Technology - A program is only as deep and strong as the scientists who comprise the staff.
3. Funding - Researchers require long-term support and proper facilities to be productive.
4. Communications - There must be a free and unencumbered flow of information within the natural research community. Thorough peer review is essential.

It might be helpful to look at these requirements in respect to how occupational health research is being conducted now.

1. Objective

   The professional image and status of many reputable scientists and many well-conducted programs have been made suspect because of the adversarial relationship between industry, labor, consumer groups and frequently the government. Governmental

agencies should encourage better understanding and communication among all technical groups.

2. Technology

The governmental health agencies have attempted to develop more scientifically trained personnel for the field of occupational health. The efforts of NIOSH and the development of the regional centers are commendable. It is hoped their efforts will be continued. However, few teaching scientists are familar with an occupational setting, nor do they have any basic understanding of the health problems of the American worker. NIOSH and OSHA also could benefit from a greater interchange with industry. It is difficult to regulate, communicate and understand something about which one has inadequate knowledge.

There must be more occupational health technology and experience within academia and government for the recent graduate to have broad and complete understanding of this science.

3. Funding

Occupational health research programs are extremely costly and must receive adequate financial support. This support must come from all sectors of society -- industry, government, academia and labor. One of the major responsibilities

of the governmental health agency should not be to fund appropriate research programs within and without the private sector, but to encourage the direct investment by the private sector in cash programs. Governmental health agencies frequently view any contribution from industry as suspect and thus is often totally discounted or judged by an entirely different set of standards. We frequently enter into areas where we not only do not know what is normal but where we are not sure of the significance of an abnormal finding or what causative factor resulted in an altered finding. The "suspect" attitude tends to discourage fundamental research in developing new parameters and mechanisms for evaluating the effects of workplace exposures. Often a fine line exists between the normal biological variations of a population and the early indications of disease. It requires years of careful research to define the parameters of a biological function in health and disease.

It is unfortunate that the results of research of an exposed worker population are not subject to peer review before being disseminated widely. This would be appropriate and constructive, particularly in respect to any data that is even suspect of an abnormal toxic effect. As it is today, the results of many research programs suffer adverse publicity. To name a few:

(a) Epidemiology -- especially in the area of reproductive toxicology.

(b) The monitoring of body fluids for mutagenicity and carcinogenicity.

(c) Cytogenetics -- the study of our genetic apparatus.

(d) Cytology -- lung, skin bladder cells may be an indicator of early cancer.

(e) Behavioral toxicity and neurotoxicity. The nervous system is one of the most sensitive organs of the body.

(f) Endocrinology.

(g) Tissue residues of trace materials (DDE, DDT, PCB, PBB, EKC).

(h) New analytical procedures for more sensitive evaluation of man and his environment.

While these vitally important programs find little encouragement in today's political environment, they are essential to the development of a safer and more productive environment for all American workers. The American worker deserves to have this information and the resulting alteration in his working standards and environment, where indicated. One cannot accept the first segment of data from any research program as being final. Research data needs unencumbered

peer review and discussion to fully evaluate the data and its significance and whether additional, confirmatory studies are needed.

It is becoming more and more prudent for industry to invest its research dollars in defensive efforts -- those frequently bearing the negative burden of proof or in the evaluating of results of a poorly conducted study which has been accepted by governmental agencies.

4. Communications

The governmental health agencies should develop a system for communications and professionsl consultation of scientific problems without an adversarial relationship. The health of the American work force depends on the continued development of better and more realistic guidelines for health standards in the workplace. These standards can be developed only through the technology generated by all occupational health scientists. The larger the technological base and the more careful the peer review, the sounder and safer will be the health standards. This cannot be accomplished by segregating classes of science and scientists into political camps.

A very positive influence would accrue to the benefit of the workplace and worker if: Government provided an arena where

protocols, preliminary data, problems, conflicting reports and other classic segments of early research data could receive careful consultation at peer review, and where the information would remain unpublished until facts were defined and their meaning described by the professional community.

MEDICAL RECORDS

OSHA recently issued a proposed rule (Federal Register, July 21, 1978) granting access to employee medical and exposure records to the employee, OSHA and NIOSH with restriction, as well as requiring preservation of such records. MCA agrees with the philosophy that employees should be fully informed as to the toxic or physical hazards of the workplace, the results of exposure monitoring and medical information relating to these hazards. However, we oppose extensive access because it breaches the traditional physician-patient relationship, might lead to premature public release of sensitive personal information and misinterpretation by non-professionals. Further, it possibly could lead to still greater governmental intrusion into individuals' private affairs.

A copy of detailed comments on this issue, recently submitted to OSHA by MCA, is attached.

SUMMARY

It is our view that OSHA can be an effective force in promoting a safe and healthful workplace and in preventing occupational injuries and illnesses. Economic considerations, however, must be taken into account during any rule making process. Also, it will be necessary for the agency to develop a willingness to assist and cooperate, rather than to continue taking a doctrinaire approach and specifying exact compliance methodology. The members of the MCA look forward to working cooperatively with OSHA in developing sound and practical regulations.

We appreciate the opportunity this Subcommittee has given us to present our views.

MANUFACTURING CHEMISTS ASSOCIATION

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ALBERT C. CLARK
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September 22, 1978

Docket Office, Docket No. H-112
Room S-6212
U. S. Department of Labor
Third Street and Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Sir:

Enclosed are comments of the Manufacturing Chemists Association on the proposed rule "Access to Employee Exposure and Medical Records" which appeared in the Federal Register July 21, 1978.

In view of the importance of this matter and the need to obtain additional information, particularly in regard to the expected effect on the confidentiality of records, we request that a hearing be held on the proposal.

Sincerely,

Enclosure

September 22, 1978

Manufacturing Chemists Association
Comments on Occupational Safety and Health Administration
Proposed Rule
"ACCESS TO EMPLOYEE EXPOSURE AND MEDICAL RECORDS"
in Federal Register July 21, 1978

The Manufacturing Chemists Association is a nonprofit trade association having 191 United States company members representing more than 90% of the production capacity of basic industrial chemicals within this country.

MCA is deeply concerned with the consequences of the proposed regulation, which we believe presents a serious invasion of employee privacy. Further, widespread dissemination of such data can create even more anxieties in a society already alarmed by information it does not understand.

MCA agrees with the philosophy that employees should be fully informed as to the toxic or physical hazards of the workplace, the results of exposure monitoring and medical information related to these hazards.

Our overriding concerns about the proposed rulemaking fall into five categories:

1. Disregard of the confidentiality inherent in the physician-patient relationship;
2. Potential inhibition of occupational health programs;
3. Misuse and misinterpretation of data by unqualified reviewers;
4. Unconsented government access to sensitive personal records; and
5. Protection of confidential nature of certain materials and processes in the workplace.

Discussion of each category follows:

1. Disregard of the Confidentiality Inherent in the Physician-Patient Relationship.

In its effort to insure worker protection, OSHA has failed to recognize the adverse consequences of its action in regard to the privacy of the medical records.

Proper medical records reflect an historical picture of an individual's total encounter with life. Those elements dealing with workplace safety are but a small portion of the record.

Medical records contain information about the frailties of people, anxieties and coping mechanisms, physical infirmities, psychiatric encounters social diseases and the inevitable aging processes. Information received from third parties frequently may be recorded along with prognostic notes by the treating physicians.

Traditionally, these records have been guarded by physicians, with support from the courts, upholding the privacy of contents from management, labor or other third parties.

MCA believes such private data is protected by law as well as by ethics, and that disclosure should be only with the consent of the worker.

2. Potential Inhibition of Occupational Health Programs.

The keeping of demographic data in large quantities and the use of computer analysis for its meaningful retrieval has been lacking heretofore in medical research. Several major companies are carrying on research in this area and have arrived at solutions by considerable

effort. Such programs are jeopardized by the very nature of the rulemaking which negates the confidentiality of records.

Other forward-looking companies have programs on the forefront of health and medical surveillance. The results of these may serve society and the employee well if the normal course of peer review and scientific interpretation is applied properly. These programs deserve support by industry and government.

Such endeavors will be diminished by lack of privacy of records, the fear of misinterpretation of collected data and the consequential liabilities to which companies might be exposed. Many employees do not wish to participate in programs where their unprotected disclosures, including data developed dealing with highly personal matters, will be available to governmental agencies and other third parties.

It is obvious that the proposal will penalize those companies that already have extensive exposure-monitoring and medical programs. The regulation totally ignores the sound occupational health status of the majority of American workers. At best, it offers no help or support to the relatively few responsible occupational health programs presently in existence. At worst, it discourages other companies from embarking on such programs. The regulation should encourage industry in the development of innovative occupational health programs without incurring the risk of premature disclosure of data to unqualified persons.

3. Misuse and Misinterpretation of Data by Unqualified Reviewers.

The individual employee in many firms may review the content of his or her medical file with the firm's medical personnel. Other firms may review the file with the individual's physician, permitting that person to give the proper perspective to the disclosed information. In either system, the ability to provide perspective is the reason for an expert intermediary. Laymen, including attorneys, union representatives and other nonmedical personnel, cannot give a person whose file is disclosed the proper guidance on either medical observations or exposure calculations. Damage to the individual's perception of his or her state of health could result from lay interpretations of technically complex information in these files.

The proposal, in fairness, must come to grips with the psychological consequences of an individual's misreading of specialized information. Individuals cannot interpret their own X-rays just as they cannot consider the pulmonary effects of exposure in parts per billion to a chemical whose lengthy and forbidding name may sound alarming. What is routine to the professional interpreter may seem foreboding to the non-scientific worker.

In summary, if the "blind lead the blind" in the complex interpretation of medical and exposure data, significant harm may result to the worker. The proposal should define "designated representative" solely as a "licensed physician."

4. Unconsented Access by Government to Sensitive Personal Files.

The importance of personal privacy in today's society is evidenced by the large number of pending legislative proposals to enact segments of the final report of the Privacy Protection Study Commission, issued in summer 1977. A recurring theme drawn from that blue-ribbon study of privacy issues is that disclosure of medical records should be upon individual consent, not upon any arbitrary decision of "need" by a party other than the physician or patient.

That concern with personal privacy also was manifest in the only litigated case on the issue to reach the courts, DuPont v Finklea, decided in December 1977. NIOSH's right of access in that case was specifically tied to an injunction which forbade the dissemination of sensitive medical files by government employees or officials. The Finklea case does not, however, support the present proposal's generalized arrogation of power to see any medical record of any employee, by either NIOSH or OSHA. Instead, it suggests that a combination of public health needs, solid assurance of continued confidentiality and lack of optimal alternative sources, led to a special remedy on special facts. As the Finklea case quoted from a recent Supreme Court opinion, the courts have not yet faced squarely the potential for unwarranted disclosure of accumulated private data "by a system which did not contain comparable security provisions"; where that system was less than a solid governmental protection for the secrecy of personal data.

MCA feels that lack of comparable assurances of secrecy, coupled with the dragnet approach to records for OSHA's use, makes this actually the future case against which the Supreme Court and the Finklea court warned.

First, nonconsented disclosure by OSHA is possible under the Labor Department's Freedom of Information Act regulations. These favor maximum disclosure and do not provide advance notice of the pending dissemination to the subjects of the record requested under the Freedom of Information Act. Even if names were deleted on file copies, requests for a medical records disclosure from a small plant or plant unit would be identifiable to individuals.

Second, OSHA has not demonstrated that it has a secure system for retention of the personal data as required under the Privacy Act. Without such a system, there is no assurance that individuals' rights will be respected. Leaks from the OSHA file could occur.

Third, OSHA and NIOSH inspectors apparently would be permitted, by the proposal, to remove the individual copies of personal medical records from the plant site for their use at agency offices. What security measures are to be taken when records of this sensitive nature are removed from a secure location and left in briefcases, transported in autos, carried during plant visits or left in offices where their confidential nature is not routinely recognized or preserved? What incentives are given to inspectors, most of whom are not health-care professionals, to treat these special records with special care?

Even though the Finklea case was not appealed, the government's access to sensitive medical information is not a settled issue. The policy decision which should be made by the Secretaries of Labor and Health, Education, and Welfare should acknowledge employees' individual rights to consent to the dissemination of their files. The MCA urges the adoption of a policy which requires prior employee consent as a condition for government access to files. In the rare case in which consent is not forthcoming, special remedies can be formulated. For example, the court in Finklea attempted to formulate special safeguards within the NIOSH recordkeeping system. Though we hesitate to predict the outcome of another challenge to such forced access, the agencies should not adopt a policy which leaves significant legal concerns about privacy unanswered. The Administration's own response to the Privacy Protection Study Commission is expected to be issued from the White House in the near future. Whatever Department of Labor and HEW policies are adopted, they should contain those principles of individual privacy rights.

Beyond the medical record issue, we feel the proposal appears to include records pertaining to employment in general, including exposure records, which should not be released to government authorities without the specific written authorization of the employee involved. This is for the employee's protection from potential abuse of those records.

5. Protection of Confidential Nature of Certain Materials and Processes in the Workplace.

Certain chemical compounds provide unique advantages for chemical

mixtures. The presence of these compounds provides a marketplace advantage for the person who knows of them and uses them. If unpatented and secret, these chemicals lawfully can be considered trade secrets. They are protected by federal and state laws against any dissemination by private persons through contractual and civil tort liability or criminal penalties and against dissemination by government, under the Freedom of Information Act and under 29 USC § 664 and 18 USC § 1905.

Firms which have confidential chemical substances or mixtures would be deprived arbitrarily of that marketplace advantage if governmental agencies forced public disclosure of the secret. For purposes of federal law, disclosure of a trade secret to one person without restriction requires the disclosure to any person, since the value of the secret is lost as secrecy is lost. The Congress and the courts, in such recent cases as Westinghouse v.Schlesinger and Zotos International v.Kennedy, have been made aware of the due process and constitutional property considerations involved in governmental disclosures of private business information. OSHA should recognize those important considerations, and the finality with which trade secrecy is lost when any disclosure occurs, in considering the disclosure of the exposure information.

Assuming that exposure records will disclose confidential commercial chemical substances under some circumstances, firms are confronted with a problem if they are to comply with the current OSHA proposal. A better course of action would be for exposure records which contain confidential

chemical information to be withheld by the employer so long as the employee is informed of the common name of chemicals found to be present in the sampling. The worker's best advisor on exposure results, his or her physician, can consult with the company's medical personnel and may, in some cases of professional interchange, be provided with detailed information about the class of compounds being used. Such disclosure would not void the trade secret status of the information and provide for the secret's continued legal protection.

In some cases, exposure records would include process information, which is extremely sensitive trade secret technology. In such cases, the employer should be able to withhold process details so that the disclosure does not jeopardize continued protection.

MCA's submission of May 19, 1978, to Mr. Grover C. Wrenn (copy enclosed) regarding the identification of chemical substances in the work-place is consistent with this need for protection. We have endeavored to arrive at a satisfactory solution to this problem, and for all information necessary for the employee to protect himself, without abrogating the necessary confidentiality. Both process and chemical substances can and should be kept confidentially in the system proposed by that submission.

COMMENTS ON THE LANGUAGE OF THE PROPOSAL

(References are made to the paragraph references of the proposed regulation)

(d) Availability of Records

(d)(1) General

As previously stated, full medical records never should be copied, except in the instance of their being forwarded to the employee's own physician, as requested by the employee, nor should these records be made available, except as noted below:

(1) Upon request of the employee, company medical personnel will review the content of the employee's medical record with the employee;

(2) Health data could be released to agencies of the government without employee consent only under the following conditions:

a. A need for the information has been demonstrated.

b. Only specific information relevant to the possible hazard should be made available.

c. Such information would be made available only in summary statistical form.

(3) In the event that a serious problem is demonstrated, further information would be provided with employee consent. This information would be provided only to licensed physicians.

As to the agency, we would recommend that it be NIOSH. Should actual medical records be transferred, a receipt should be given and proper safeguards established to limit access by other employees of government.

(d)(2) Employees, Former Employees and Designees

We recommend that this section be revised to incorporate the following concepts:

Designated Representatives

No data of the type contemplated under this proposal should at any time be revealed to other than licensed physicians, and only with employee consent.

Exposure Records of Other Employees

A given employee is entitled to know his exposure levels. If measured by monitoring of fellow employees, the data should be summarized for the employee and be limited to the period that the requesting employee was assigned to the work area.

Records Containing General Exposure Information

Again, there must be a limitation of time during which the employee was specifically in the workplace.

Potential Exposures

This is a loose term which should be better described.

(d)(3) OSHA and NIOSH

For the reasons previously mentioned, the requirements that the medical records be made available to the agencies mentioned in this subparagraph should be deleted. In its place, there should be substituted a provision for making statistical summaries of pertinent vital data available to NIOSH, together with a provision for further consultation, if a need exists, with NIOSH medical professionals.

(e) Instructions of Employees

This paragraph might be augmented, or another section added, to provide for an annual review with the employees of the toxic or hazardous materials present in the workplace, the consequences of excessive exposure and, to the extent the information is available, discussion of the levels of exposure actually experienced by the employees in the specific workplace. This information, together with a review of prescribed safe working practices, would in large measure serve the objective of creating employee awareness.

SAFETY GUIDE

SG-21

PUBLISHED 1978

PRACTICES AND PROCEDURES
EMPLOYED IN THE
CHEMICAL MANUFACTURING INDUSTRY

Guidelines for a Chemical Plant Safety Program and Audit

MCA

MANUFACTURING CHEMISTS ASSOCIATION

1825 CONNECTICUT AVENUE, N. W. WASHINGTON, D. C. 20009

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Introduction

An aggressive safety program is essential for every well-managed organization. Such a program is necessary to fulfill the moral, community, legal and financial obligations that are vested in management.

An aggressive safety program includes periodic audits of its effectiveness—deliberate, planned steps to measure and maintain its desirable characteristics.

The program and audit procedures described in this safety guide have been prepared to assist in the establishment, measurement, and maintenance of an aggressive safety program in the chemical industry.

I. Management Commitment:

A. ORGANIZATION

1. The organization for safety stresses the principle that safety must be an inseparable part of every job. For this reason, line management is directly responsible for the safety of its operation in the same way that it is responsible for production, sales, costs, and quality.
2. The key element in developing and maintaining an effective plant safety program is a total commitment to safety by the plant manager. A safety commitment that is *demonstrated* by the plant manager will be reflected in the rest of the work force.
3. Although the plant manager cannot assign the overall responsibility for safety to others, it is appropriate (and usually necessary) to assign others to the details of planning and initiating a safety program.

B. POLICY

Since a safety program involves every person at every location, each employee should know that the top manager has a personal interest in and commitment to safety. These should be communicated as a written safety policy which clearly expresses management's requirements and concerns.

A good safety policy should state that every employee is entitled to a safe and healthful workplace. It should define the scope of activities covered, such as on-the-job safety, off-the-job safety, product safety, fleet safety, fire prevention, etc. The policy should define responsibilities at each level in the organization, and *define the methods by which each level will be held accountable*. Ancillary policy statements define the responsibilities of staff safety specialists and list specific standards that will be used to govern and evaluate the safety program.

There are many ways of writing a safety policy and many safety policies. The two main points to remember are: (1) safety policy comes from the top since safety affects everyone in the organization, and (2) safety policy clearly communicates management's intentions, indicating that all personnel are expected to act in conformance with those intentions.

C. PARTICIPATION

1. The continuing commitment of management to an aggressive safety program includes attention to safety as a part of the agenda of every staff or management meeting. This portion of an agenda should include the following topics:
   a. Review of planned safety projects
   b. Discussion of any significant accidents
   c. Review of accident rates
   d. Review of plans for correcting unsafe conditions noted, etc.

2. Continuing commitment also includes demonstrations of support of the safety program by management. The following items illustrate ways to demonstrate such support:
   a. Accident investigation with management participation
   b. Periodic safety inspections by management
   c. Management sets good safety example by following all rules

D. ASSIGNMENT OF RESPONSIBILITIES

While top management cannot delegate its overall responsibility for safety, responsibilities to implement the program will be assigned to others. Different responsibilities are assigned to line supervisors, to staff safety specialists, and to employees such that the organization as a whole can act as a team to assure the success of the program.

Typical responsibilities and organizational relationships are described in figure 1.

E. SAFETY COMMITTEES

Safety committees play a valuable role in a safety program as a means of establishing and maintaining interest and as channels for safety communications. The several possible safety committees include these:

1. Plant Management Safety Committee

Composed of key managers at a single plant or location. Charged with reviewing safety policy and procedures and making recommendations to the plant manager.

2. Department Safety Committee

Composed of members from a single department, e. g. maintenance. Purpose, to review departmental safety problems and recommend specific programs to solve them.

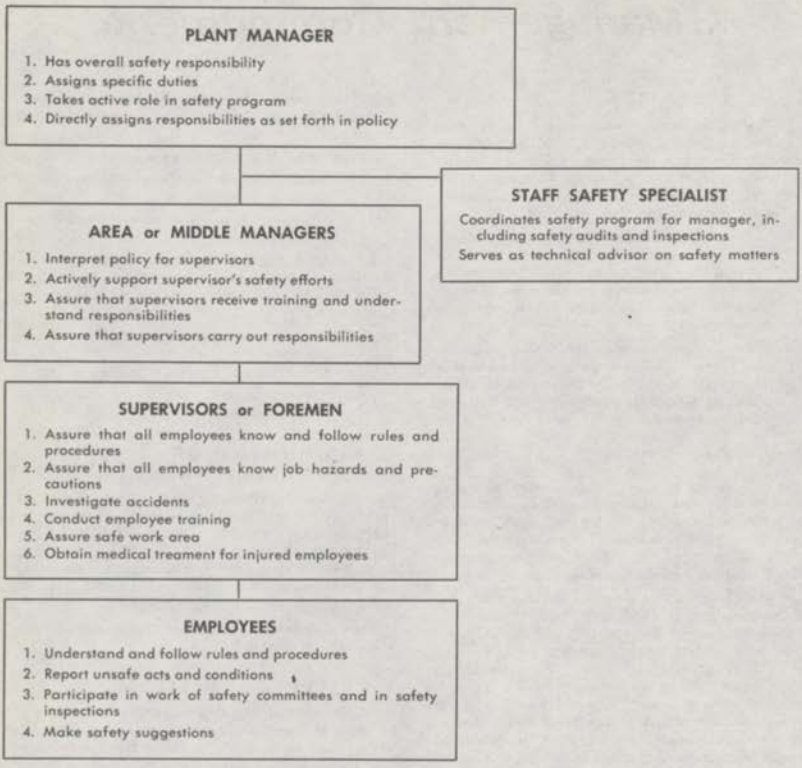


Figure 1. Typical responsibilities and organizational relationships for a safety program.

3. Employee-Management Safety Committee

Composed of both management and other employees. Serves as an effective means of maintaining safety communications, thus helping to assure the cooperation of everyone in the safety program.

4. Inspection Committees

Composed of persons who conduct safety inspections. These committees conduct both complete safety inspections and special inspections, such as housekeeping, fire, materials handling, unsafe conditions, unsafe acts.

5. Special Assignment Committees

These are usually appointed by the plant manager for short periods and charged to achieve specific goals, one for each such committee. Typically, goals might include a review of a supervisor's safety training, a review of highly technical safety controls, such as pressure relief systems, or a review of a new chemical process.

F. SAFETY AUDITS

The incorporation of an audit procedure as part of a total protocol is not new but it is nonetheless an

essential part of an aggressive safety program. It is necessary that the program be periodically evaluated in and of itself, that the results be explicitly identified, and measured quantitatively, if possible, and that improvements be instituted and maintained. Audits of each part of a safety program will help to make this possible.

A critical audit can establish that a safety program is poor, excellent, or somewhere in the middle. Beginning with this section, at the end of each substantive section of this safety guide there is presented a set of criteria for use in evaluating the results of an audit of each part of a safety program. The criteria may be applied both to self-audits and to review audits performed by an outside source. Both kinds of audits are recommended as an essential part of an aggressive safety program. Neither kind of audit is worth the cost and inconvenience unless the results are *used* to improve the safety program.

G. MANAGEMENT COMMITMENT AND RESPONSIBILITIES, AUDIT

Poor: No statement of policy or management involvement. Responsibility and accountability not assigned.

Fair: General understanding of policy, responsibilities, and accountability. Not written. Some management involvement in safety programs.

Good: Policy and responsibilities written, understood, and distributed to all concerned. Safety organization and responsibilities well-defined.

Excellent: In addition to "good", accountability for responsibilities emphasized in performance reviews, safety policy is reviewed periodically and results posted. All levels of management and employees carry out their responsibilities.

II. Planning and Organizing:

Safety should be planned for in the same manner as production, sales, quality and cost control. Good safety is a result, consequent upon a well conceived and continuous safety program.

A. PLANNING ELEMENTS:

Planning a safety program requires laying out a schedule of safety events for a period of time, usually a year, in advance. This generally requires that both time and money be allotted for safety needs. In the preplanning stage, all facets of the total program should be considered so that an applicable safety activity will be ongoing in the plant each week throughout the year. Major items to include in a preplan are:

1. Safety committee meetings.
2. Safety practice inspections.
3. Safety equipment inspections.
4. Developing and updating safety procedures.
5. Review of chemical processes.
6. Safety meetings, tailgate talks,* individual contacts.
7. Supervisor safety training.
8. Specialized safety training and drills.
9. Follow-up safety training with new employees.
10. Safety and fire inspections.
11. Management involvement (committees, inspections, audits).
12. Contests, publicity, incentives.

* See section VII.

B. GOALS AND OBJECTIVES

Once a safety program has been developed and scheduled specific duties and completion dates should be assigned. For those with specific duties, safety becomes a part of their overall performance plan for evaluation purposes. Plant goals for performance also should be established.

Set positive safety objectives such as:

1. Specify the number of safety meetings that should be held.
2. Establish good housekeeping criteria.
3. Develop specific training requirements.
4. Identify the approximate number of safety suggestions desired to be submitted.
5. Determine "accident repeaters" and begin appropriate counseling.
6. Establish due dates for completing a new employee safety check list and follow-up.
7. Conduct timely accident investigations and prompt follow-up reports.
8. Review the safety performance goals of supervisors and leadmen on a pre-set time schedule.

C. COMMUNICATION

It is essential that every facet of a safety program be fully comprehended. Each person responsible for each of the parts of a safety program should understand their own responsibilities including in particular their accountability for results. Plant rules, procedures and safety objectives should be communicated freely

both up and down the line. Each employee should be involved in the program and know the reasons for the specific requirements that apply to them.

D. MEDICAL FACILITIES

Adequate and clean medical facilities should be available as close to the job site as possible. In larger plants a "first aid" room with a bed, shower, first aid and emergency medical supplies is usually provided. In smaller plants, providing they can be kept sterile and close to washing facilities, these items could be kept in a laboratory, office or rest area. A physician should be contacted for advice concerning the supplies to be provided.

Prior arrangements should be made with a local hospital, with a physician who will be on call 24 hours a day, and with a local paramedics or ambulance service for handling injury or illness cases. The physician should visit the plant to become acquainted with the types of chemicals handled and typical exposures it may be necessary to treat.

In rural areas where emergency medical services may not be immediately available, specified plant personnel should be trained in first aid, life saving techniques and emergency transportation.

E. PLANNING AND ORGANIZING, AUDIT

Poor: Safety program is not developed beforehand; safety goals not established; minimal first aid supplies are available.

Fair: Preplanned safety program is not consistently followed. Objectives are set but not followed-up for accomplishment. Medical facilities adequate but personnel are not trained.

Good: Safety program is planned in advance; specific dates, assignments and objectives are set and followed. Local physician visits plant site periodically.

Excellent: Not only is the entire program preplanned but completion dates are met on regular basis. Specific individual and plant goals are established and achieved. Medical facilities are maintained in a sanitary condition and the required number of personnel are trained in first aid, life saving techniques and emergency transportation.

III. Employee Selection:

A. GENERAL CONSIDERATIONS

In addition to the usual pre-employment screening interview, compilation of work and education histories, references, aptitude testing (when appropriate and permitted), EEO requirements, etc., screening and testing before employment should include the following:

1. Brief tour of the work area(s) involved in the prospective job.
2. Pre-employment physical examination and medical history (including blood, urine, hearing level and pulmonary function tests, X-rays). A testing scheme specific for each different job should be constructed. Consult the examining physician.
3. Other information:
   a. Verification of previous work history.
   b. Motor vehicle record where appropriate.
   c. Workmen's compensation record.

B. EMPLOYEE SELECTION, AUDIT

Poor: Employees hired on a "crash" basis. Records maintained but not current. Pre-employment physical examination given.

Fair: Interview screener does all hiring. Aptitude test administered to new employees. Special medical tests given when required.

Good: After screening, supervisors select employees for their work force. New employees' past work record is considered in their employment. All special medical tests are completed as required. Permanent files (medical and personnel) are started and maintained for each employee.

Excellent: Criteria listed for "Good" and, additionally, when all new employees are considered for permanent employment, their safety attitude and record is considered. Security and driving record checks are completed and recorded as a part of the permanent file. Supervisors are well versed in interviewing techniques. Part-time employees are well screened before employment.

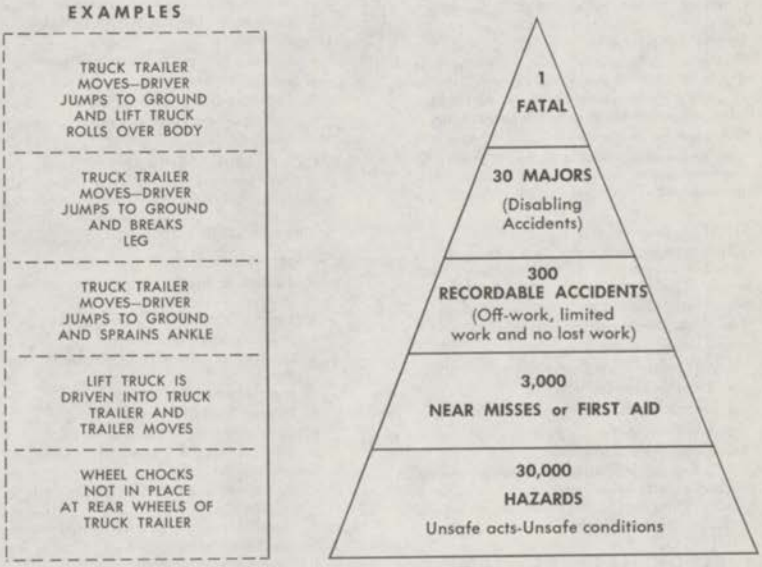
IV. Hazard Identification:

Identification of hazards is essential to the elimination of accidents. As hazard identification skills are developed, they will become a predominant aspect of all work activities. Safety is common sense; generally, if the question is raised whether something is safe or unsafe, it probably has some degree of hazard.

A. FOUNDATION OF AN ACCIDENT

Statistical experience has shown that frequency of accidents is related to the number of hazards in a workplace.

The interpretation of the revised Heinrick accident triangle, figure 2, shows the relation between accidents and their identified related hazard.



INTERPRETATION:

For every 30,000 hazards, 3,000 will result in a near miss or first aid case. Of the 3,000 near miss or first aid cases, 300 recordable accidents will result. From the 300 recordable accidents, there will be 30 resulting in disablement. Of these 30, there is expected to be 1 fatal injury.

This sequence of possibilities is applicable to industry in general. Consequently, reduction in the frequency of hazards will reduce the probability of more serious consequences.

Figure 2. Revised Heinrick accident triangle and interpretation.

B. TYPES OF ACCIDENTS AND EXPOSURES

Typical exposures which can cause accidents include:

1. "Struck By" Exposures.

   An exposure in which a person is struck by an object in motion.

2. "Fall" Exposures.

   An exposure when a person falls from a higher level or trips on the same level. Usually caused by insecure footing, inattention, by a prior "struck by" exposure, etc.

3. "Strike Against" Exposures.

   The opposite of a "struck by" exposure, when a moving person collides with a stationary object.

4. "Caught On" Exposures.

   An exposure in which a person (or some part of their clothing) is caught on a protruding part of a stationary or moving object. Loose clothing entangled in a rotating mixer is an example.

5. "Over-exertion" Exposures.

   An exposure in which a person is injured by excessive strain on some part of the body; sprained backs from improper lifting are in this category.

6. "Health" Exposures.

   This hazard could result in injury or illness caused by exposure to harmful conditions such as:

   a. Toxic gases, fumes or vapors.
   b. Toxic airborne particles.
   c. Extreme heat or cold.
   d. Oxygen deficient atmosphere.
   e. Radioactive radiation.
   f. Intensely bright light.
   g. Excessive noise.

7. "Caught Between" Exposures.

   An exposure in which a person is pinched, crushed, or otherwise caught between either a moving object and a stationary object, or between two moving objects.

C. TYPES OF HAZARDS

Basically, two types of hazards are found in the workplace, unsafe acts and unsafe conditions.

1. Unsafe acts (due to "people factors") are those in which the employee causes a hazard to his or her own safety and health or to the safety and health of others. Most hazards are created by unsafe acts.

   Examples are:

   a. Failing to follow established safety rules and procedures.
   b. Operating or using equipment without authority.
   c. Failing to secure equipment or material against unexpected movement.
   d. Operating or using mobile equipment in a manner so as to endanger themselves or others.
   e. Failing to warn or signal as required.
   f. Removing or making safety devices inoperative.
   g. Using defective tools or equipment.
   h. Using tools or equipment in an unsafe manner.
   i. Working in an unsafe position or posture.
   j. Servicing, moving or energizing hazardous equipment without observing proper safety precautions.
   k. Riding hazardous moving equipment.
   l. Taking shortcuts.
   m. Engaging in horseplay.
   n. Failing to wear personal protective equipment.

2. Unsafe conditions (due to "environmental factors") are physical surroundings which cause a hazard to employee's safety and health. Management has prime responsibility for correcting such unsafe conditions.

   Examples are:

   a. Lack of or inadequate guards and safety devices.
   b. Lack of or inadequate warning systems.
   c. Fire and explosion hazards.
   d. Unexpected movement (of objects) hazards.
   e. Poor housekeeping hazards.
   f. Protruding object hazards.
   g. Close clearance and congestion hazards.
   h. Working under hazardous atmospheric conditions.
   i. Hazardous arrangement, placement or storage.
   j. Hazardous defects of tools, equipment, etc.
   k. Inadequate illumination.
   l. Hazardous personal attire.
   m. Hazardous substances.
   n. Intense noise.
   o. Improperly functioning mobile equipment.
   p. Incorrect warning sign or board posting.
   q. Expended, damaged, or uninspected fire protection equipment.
   r. Unsafe working or walking surfaces.
   s. Failure to identify function or controls and electrical disconnects.
   t. Exposed electrics and temporary wiring.

D. ANALYZING THE WORKPLACE

1. *Design and Process Review*

It is imperative that every maintenance operation, every construction plan, every new process and every change of process be reviewed for compliance with company, local, state and federal regulations. It is less costly to incorporate safe practices in an initial design than to make modifications after a unit is operating.

2. *Safety Observation and Inspection*

Both observation of everyday operations and inspection of facilities are necessary to insure that safe practices, incorporated in the procedural designs, are in fact being carried out. To facilitate these observations it is desirable to use an observation check list; two examples are shown in figures 3 and 4.

ELIMINATE HAZARDS

REACT

Review Activity — Evaluate Responsibility — Audit Area — Correct Hazards — Tell

UNSAFE ACTS (Over 80% of incidents)

A 1. Operating or using equipment without authority.
A 2. Failure to secure against unexpected movement.
A 3. Operating or working mobile equipment in such a manner as to endanger himself or others.
A 4. Failure to warn or signal as required.
A 5. Removing or making safety devices inoperative.
A 6. Using defective tools or equipment.
A 7. Using tools or equipment unsafely.
A 8. Taking an unsafe position or posture.
A 9. Servicing, moving, or energizing hazardous equipment without proper safety precaution.
A10. Riding hazardous moving equipment.
A11. Horseplay: distracting, startling, teasing, etc.
A12. Failure to wear personal protective equipment.

UNSAFE CONDITIONS (Less than 20% of incidents)

C 1. Lack of or inadequate guards and safety devices.
C 2. Lack of or inadequate warning systems.
C 3. Fire and explosive hazards.
C 4. Unexpected movements hazards.
C 5. Poor housekeeping hazards.
C 6. Protruding objects hazard.
C 7. Close clearance and congestion hazards.
C 8. Hazardous atmospheric conditions.
C 9. Hazardous arrangement, placement, or storage.
C10. Hazardous defects of tools, equipment, etc.
C11. Inadequate illumination.
C12. Hazardous personal attire.
C13. Hazardous substances.
C14. Intense noise.
C15. Improperly functioning mobile equipment.
C16. Incorrect sign or board postings.
C17. Unsafe working and walking surfaces.
C18. Expended, damaged, blocked, or uninspected fire, safety or health protection equipment.
C19. Failure to identify function of controls and electrical disconnects.
C20. Exposed electrics and temporary wiring.

Week of: _____

CONTACTS

Code or Description	Employee's Name

OBSERVATIONS

Code or Description of Act or Condition	Employee's Name	Action Taken

Supervisor _____ Department _____

Reviewed by _____ (Date) _____

Retain card in dept. files indefinitely (Employee Training and Observation Record)

Figure 3. An observation check list, reproduced through the courtesy of ICI Americas, Inc.

STOP UNSAFE ACTS

OBSERVATION CHECK LIST

DECIDE REPORT

STOP ACT

OBSERVE

Unsafe Acts Cause 96% Of The Major And Sub-Major Injuries

___PERSONAL PROTECTIVE EQUIPMENT
- ___ Eyes And Face
- ___ Ears
- ___ Head
- ___ Hands And Arms
- ___ Feet And Legs
- ___ Respiratory System
- ___ Trunk

___POSITIONS OF PEOPLE
- ___ Striking Against ___ Struck By
- ___ Caught Between
- ___ Falling
- ___ Temperature Extremes
- ___ Electric Current
- ___ Inhaling ___ Absorbing ___ Swallowing
- ___ Overexertion

___ACTIONS OF PEOPLE
- ___ Adjusting Personal Protective Equipment
- ___ Changing Position
- ___ Rearranging Job
- ___ Stopping Job
- ___ Attaching Grounds ___ Lockouts

___TOOLS AND EQUIPMENT
- ___ Right For The Job
- ___ Used Correctly
- ___ In Safe Condition

___PROCEDURES AND ORDERLINESS
- ___ Adequate (Reviewed And Upgraded)
- ___ Established (Understood)
- ___ Maintained

STOP UNSAFE ACTS

OBSERVATION REPORT

Name _____ Unsafe Acts Observed

Date _____ Action Taken

Figure 4. An observation check list and observation report; from the E. I. du Pont de Nemours and Company Safety Training Observation course, "STOP". Copyright by E. I. du Pont de Nemours and Company, reproduced with permission.

3. *Job Analysis*

A job safety analysis program is intended to identify hazards that are associated with specific tasks. It is a technique for isolating and identifying the individual actions within a total job so that each act can be evaluated and if necessary changed or eliminated in order to make that job safer.

The four steps in a job safety analysis program are:

a. Select the job.
b. Break the job down into separate actions.
c. Identify hazard potential for each action.
d. Eliminate or control the hazards.

Figure 5 is an example of a standard form used when these steps are carried out.

SITE _____

DEPT. _____ OCCUPATION _____

JOB TITLE _____

Date of Analysis	_____	Supervisor _____	Employee _____
" " Review	_____	" _____	" _____
" " Review	_____	" _____	" _____
" " Review	_____	" _____	" _____

General Safety Aparrel (yes or no) add additional items

Safety Glasses	____	Gloves	____	____	Lock out ____
Safety Shoes	____	Respirator	____	____	Entry Permit ____
Hard Hats	____		____	____	Tie off ____

General Procedures (yes or no)

OPERATION OR JOB STEPS	HAZARD POTENTIAL	HAZARD CONTROL
In sequence after observation-brief terms as to what is done with "do" words; not how, i.e., "Replacing a Light Bulb" Steps: (1) Get a ladder (2) Anchor ladder (3) Climb ladder (4) Remove light globe (5) Replace light bulb (6) Replace light globe (7) Decend ladder (8) Remove & store ladder.	Look for: struck by, fall, strike against, caught on, over exertion, health, and caught between exposures. Get answers by observation, discussion and recall of past accidents, i.e. fall from ladder, etc.	i.e.: Inspect ladder and shoes to be certain of firm footing. Avoid generalities, i.e.: "Be careful", "Be alert", "Take Caution", etc. Possibly there is a safer, better way to do job.

MIDDLE MANAGER (DATE) SAFETY SPECIALIST (DATE) PLANT OR SITE MANAGER (DATE)

Figure 5. A job safety analysis form, reproduced through the courtesy of ICI Americas, Inc.

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4. *Past History*

To "keep it from happening again", use First Report of Injury data, OSHA records, and in-house statistics to analyze incidents and eliminate hazards. Corrective action may be needed at almost any location or at any stage in a process; look for repetitive patterns of incidents. Such repetitions may involve:

a. A specific operation in a process.
b. A particular area within the plant.
c. An unsafe condition.
d. An unsafe action.
e. A type of injury.
f. A type of illness.
g. A part of the human body.
h. An age group.
i. The length of service as an employee.

E. HAZARD IDENTIFICATION, AUDIT

Poor: No hazard identification program.

Fair: General understanding of hazard identification but no formalized program or activity.

Good: Written program and evidence of activity, however, some hazards exist.

Excellent: Written program, obvious hazards identified and controlled, and activity continuing to correct remaining unsafe acts and conditions.

V. Hazard Control:

Once hazards are identified, they should be controlled. Unsafe acts are controlled by emphasizing employees' safey awareness. Unsafe conditions are controlled by the adherence of management to established safety standards.

A. RULES AND PROCEDURES

1. *General Safety Rules*

Safety rules should be a part of general plant rules. They should be administered in the same manner as other general plant rules. These rules should be distributed to all and understood by all employees; they should be enforced.

2. *Operating Procedures*

Step-by-step safe operating procedures should be developed for each unit or process and should cover start-up, normal operation and shutdown. These safe operating procedures should be an integral part of the training program and available as well at each job site.

3. *Emergency Plans*

Emergency plans should be prepared for incidents such as:

- Fire and explosion
- Power failure
- Evacuation
- Bomb threat
- Hurricane preparation (high winds)
- Flood preparation
- Labor dispute
- Civil disturbance
- Snow, ice, torrential rains
- Major gas release
- Executive kidnapping and hostage situations

Each employee should be trained by participating in periodic practice drills.

4. *Safety Work Permits*

The use of safety work permits is recommended. These work permits are used to insure that persons in a position to know and who have authority to permit or prevent action on a job are aware in advance that a hazardous task is proposed to be carried out. Their authorizing signature is required before such work can begin. A sample safety work permit is shown in figure 6.

Typical examples of the use of safety work permits include:

a. Lock-out Tag-out/Electrical Disconnects

A formal procedure to provide protection from injury or illness which could be caused by accidental activation of equipment or process. This procedure also insures against damage to equipment or other catastrophe. In essence all equipment is de-energized and secured before it can be worked on. See MCA Safety Guide SG-8, "Electrical Switch Lockout, Tag and Try Procedure".

b. Hot Work Permits

A formal procedure to establish control over jobs that produce open flames or sparks. This procedure insures against personal injury or illness or damage to equipment or processes from fires and explosions.

_____ Facility

SAFETY WORK PERMIT

Job Description _____

_____

_____

Name	Date
Name	Time Start
Name	Time End

Safety Equipment Required

☐ Boots ☐ Face Shield ☐ Protective Clothing
☐ Gloves ☐ Safety Belt ☐ Non-Sparking Tools
☐ Gas Masks ☐ Dust Masks ☐ Fire Extinguisher

Other _____

_____

_____

Check Applicable Items When Provided

☐ Electrical Switches locked out
☐ Valves locked or tagged
☐ Vessel and/or attached piping drained
☐ Piping blanked or disconnected
☐ Mechanical or natural ventilation
☐ Gas test (list frequency, if required)
☐ Adjacent equipment and area protected
☐ Standby fire watch
☐ Other precautions—Explain _____

_____

_____

Gas test results _____

_____

Work Completed Yes ☐ No ☐

_____
Gas Tester Signature

_____ _____
Responsible Authorizing Supervisor | Responsible Servicing Person

Figure 6. Sample safety work permit.

c. Confined Space Entry

A formal procedure to insure safety when entering into and working within confined spaces. A permit should be obtained by any employee who must enter a confined space. The permit should be approved (signed) by two responsible persons—an area supervisor, and a project engineer, maintenance engineer, or safety engineer. Approval should not be given until proper precautions have been taken, such as sampling for oxygen content, explosion properties, and toxicity. Also, before entry all persons involved should be properly trained and equipped. Manned emergency rescue and fire fighting equipment should be maintained at the entry port while the confined space is occupied. See MCA Safety Guide SG-10, "Entering Tanks and Other Enclosed Spaces".

d. Line Breaking

A formal program to assure that all safety precautions have been taken prior to breaking a pipeline which could unexpectedly release solids, liquids or gases capable of causing harm. This procedure applies to the breaking of lines which may contain hazardous materials such as:

- Acids
- Caustics
- Corrosives
- Explosives
- Toxic substances
- Flammable materials
- Hot materials (for example, 60°C (140°F) or higher temperature)
- Materials under pressure

5. *Contractors*

Establish a safety policy which applies to contractors and other non-employees while they are on plant premises. These persons should be required to conform to plant safety rules, as well as to local, state and federal regulations.

B. EMPLOYEE TRAINING

1. *General*

Typically, well trained employees have the best work records and the least number of accidents. For new employees safety training should begin the first day on the job and continue whenever they are assigned new tasks, or transferred, and when processes or equipment are changed. See for example MCA Safety Guide SG-15, "Training of Process Operators".

2. *New Employees and Transferred Employees*

New employees in particular need safety training; generally they will not be familiar with chemical processes, chemical hazards, personal protective equipment, nor with industrial and personal hygiene requirements. In their training use a check list such as is shown in figure 7 to make certain that safety and other important aspects of the job are fully covered. Whenever possible, assign the new employee to work alongside an experienced employee for the first few weeks. Choose experienced employees who have a "knack" for explaining *why* as well as showing *how* in preference to other even more experienced employees who have a "knack" only for showing how. In the instruction, employees should learn why certain procedures are followed while they are trained in how to carry them out.

For training purposes, employees transferred to a new unit or to another part of the plant should be considered as new employees.

3. *Responsibilities*

It is the responsibility of each individual supervisor to ascertain that his or her employees each receive the training required so they can perform their work safely. Such a successful training program is best conducted ON-THE-JOB. Classroom training is recommended on a regularly scheduled basis using "in-house" experts and consultants. Use job safety analysis (see Section IV) both to assess safety problems and to develop training guides.

Packaged training materials are available from several sources such as:

a. National Safety Council
b. E. I. du Pont de Nemours & Company
c. U.S. Department of Labor
d. American Petroleum Institute
e. National Fire Protection Association
f. Local University, College or Trade School
g. American Manufacturers Association
h. American Society of Training & Development
i. Mine Safety and Health Administration
j. Raw Material & Equipment Suppliers

Many of these materials are prepared as programmed learning packages; they can be self-administered. Instructions for many different subjects, operations, and crafts are available. Each of those that are used should treat safety and fire protection information that is relative to the subject.

4. *Follow Up*

Follow up safety training is important at appropriate intervals (one or a few months, one year). The length of the interval depends upon the nature of the operation and the make up of the work force. Maintenance employees also should receive special craft training as deemed appropriate.

5. *New Processes*

A new unit or process should be started only after all employees assigned have been extensively trained in all phases of the operation. Particular emphasis should be placed on unit start up, unit shutdown and emergency procedures.

C. ENGINEERING/PROCESS CONTROLS

1. *Safety in Design*

The goal of hazard control by engineering is to design a workplace so that employee exposure to potential injury is either eliminated or controlled completely. This is effected either by eliminating the hazard from the machine, from the process or from the plant structure, or by containing the hazard by enclosing or guarding it at its source. Obviously, the higher the degree of safety incorporated into a design, the less the effort that will later be required for training and supervision related to accident prevention.

Important safety features are usually less costly to incorporate at the design stage than they are to add on to an existing operation. Further, when existing operations are to be modified, the entire operation should be reviewed to determine if still other engineering controls are necessary.

Safety features should be considered in every aspect of engineering design. These include, but are not limited to, structure, layout, process design, piping, electrical, valving, instrumentation, drainage, materials handling, fire protection, ventilation and materials of construction.

Note that this approach to design is universally applicable; it can be effectively applied to small operations, such as setting up a laboratory experiment, as well as to large projects, such as the construction of a new chemical plant.

2. *Engineering Control of Health Hazards*

Government regulations generally recognize three methods to control excessive exposures to noise and air contaminant standards. In order of preference they are:

a. Engineering
b. Administrative
c. Use of Personal Protective Equipment

COPY FOR:
EMPLOYEE FILE
EMPLOYEE
SUPERVISOR

SAFETY CHECKLIST FOR NEW OR TRANSFERRED EMPLOYEES

CHECK BOXES AS INDICATED
X COMPLETED
O FOLLOW-UP NECESSARY
— NOT APPLICABLE

NAME OF EMPLOYEE _____ LOCATION _____ DATE _____

A. REVIEW WORK RULES ☐

B. PERSONAL PROTECTIVE EQUIPMENT
Purpose, Use, Storage & Care of:
1. Work Clothes ☐
2. Safety Glasses ☐
3. Hard Hat ☐
4. Gloves ☐
5. Safety shoes ☐
6. Goggles ☐
7. Respirators ☐
8. Hearing Protection ☐
9. Hair Nets ☐
10. Aprons ☐
11. Acid Suits ☐
12. Face Shield ☐
13. _____ ☐
14. _____ ☐

C. HAZARDOUS CHEMICALS
1. Types Discussed ☐
_____
_____
_____
_____
2. Action in Case of Exposure ☐
3. Formula Safety Checklists ☐
4. Material Information Bulletins ☐

D. EMERGENCY EQUIPMENT
Location and Use of:
1. Safety Shower ☐
2. Eye Wash ☐
3. Scott Air Pak ☐
4. First Aid Station ☐
5. Fire Equipment ☐
6. Fire Alarm ☐
7. Fire Blanket ☐

E. REPORTING INJURIES & ILLNESSES
1. Importance/Urgency ☐
2. Procedure ☐
3. Telephone Numbers ☐
A. Day _____
B. Night _____
C. Co. Doctor/Clinic _____

F. EMERGENCY PROCEDURES
1. Personal Injury ☐
2. Fire ☐
3. Spill ☐
4. Evacuation ☐

G. JOB ASSIGNMENT
1. Housekeeping ☐
2. Chemical Goggle Areas ☐
3. Lifting ☐
4. Using Ladders ☐
5. Pinch Points ☐
6. Knives, Scissors ☐
7. Slippery Surfaces ☐

H. PERSONAL HYGIENE
1. Shower Requirements ☐
2. Changing Clothing Daily ☐
3. Eating Areas ☐
4. Cleanup before Eating or Smoking ☐
5. Locker Policy ☐

I. SPECIAL MEDICAL TESTS
1. Cholinesterase ☐
2. Urinalysis ☐
3. Hearing ☐
4. Chest X-Ray ☐
5. Pulmonary Function ☐
6. Other: ☐

J. MOTOR VEHICULAR EQUIPMENT
1. Plant Vehicle Rules ☐
2. Forklift, Payloader, Tractor ☐
3. Driver Qualification Record ☐
4. Loading, Placarding & Tie Down ☐
5. Smith System of Driving ☐
6. Reporting Accidents ☐

K. OTHER ITEMS DISCUSSED
1. No Contact Lenses ☐
2. Smoking Locations ☐
3. Questions at any time—Contact Supervisor ☐
4. Safety Suggestions ☐
5. Other (Use Reverse Side) ☐

The above was discussed with me and is understood.

_____
Employee Signature

_____ _____
Completed By Date

Trace Required (Date) None _____ _____ _____ _____

Figure 7. Sample safety checklist, reproduced through the courtesy of Chevron Chemical Company.

Examples of engineering controls are: (1) reducing the decibel level to regulated levels by isolating the employee from the noise through accoustically insulated enclosures or walls; (2) substitution of equipment which does not generate excessive noise; (3) providing a maintenance or lubrication program to reduce noise levels. A sound level survey with a noise level meter is recommended.

Air contaminants can be reduced by improving ventilation. General ventilation is effective in relatively open work areas; however, local exhaust ventilation that captures the contaminant at the source is preferable. Sometimes merely increasing the air volume or proper positioning of present ventilation is all that may be required. An industrial hygiene survey is recommended.

D. ADMINISTRATIVE CONTROL OF HEALTH HAZARDS

Administrative controls limit exposure by moving an employee to a non-exposed area.

1. *Example:* Currently, employee exposure at the 95 decibel level is limited to four hours by both OSHA and MSHA standards (higher decibel levels require shorter exposure times). Employees on an eight hour workshift who are so exposed should be transferred at mid-shift to an area with noise level below the 90 decibel maximum allowable level.

2. *Example:* Air contaminants—Time weighted average eight hour workshift exposure at less than defined parts per million (ppm) or milligrams per cubic meter (mg/m^3) levels are prescribed for OSHA and MSHA regulated substances. Should an employee's permissible exposure level be reached before the eight hour shift is completed, that employee must finish the remaining portion of the shift at a location where there is no exposure. Some regulated substances require that an employee not be exposed above a ceiling or peak level at any time.

E. PERSONAL PROTECTIVE EQUIPMENT

1. *Management Responsibilities*

Personal protective equipment should be provided, used and maintained in a sanitary and reliable condition wherever this means is used to protect employees from exposure to or contact with a hazard. It does not eliminate hazards and, except in temporary situations, should not be used as a substitute for engineering controls. Protective equipment should be tailored to the specific job or hazard and be the best that can be obtained. Management and supervision should convince employees of the need for protective equipment by properly explaining and demonstrating its need and use.

2. *Employee Acceptance*

Protective equipment should be individually assigned whenever possible. Employee acceptance is vital; for this, personal comfort and proper fit is necessary. Field testing a piece of equipment beforehand is recommended; give employees a chance to "try it" before being required to "wear it". The cleaning and storing of protective equipment should be the responsibility of each employee who uses such equipment.

3. *Types of Equipment*

Typical personal protective equipment used in the chemical industry includes:

a. Safety glasses
b. Goggles (chemical, chipping, welding)
c. Face shield
d. Hard hat
e. Respirators and gas masks
f. Welding helmets and hoods
g. Self-contained breathing apparatus
h. Acid suits
i. Coveralls and special clothing
j. Gloves (several types)
k. Hearing protective devices
l. Safety shoes and boots

In addition, safety showers, eye wash units, plant breathing air systems and decontamination equipment and supplies are necessary, depending upon the process.

F. HAZARD CONTROL, AUDIT

Poor: The following hazard control programs are not employed.

a. Rules and regulations
b. Employee training
c. Engineering/process controls
d. Administrative controls
e. Personal protective equipment

Fair: The above, a through e, have been developed and circulated but not emphasized.

Good: The above, a through e, have been developed, circulated and emphasized throughout the operations.

Excellent: The above, a through e, have been developed, circulated, emphasized, enforced and are updated on a continual basis throughout the operations.

VI. Supervisory Training and Accountability

A supervisors training program should be established on a regular, ongoing basis as one of the most important parts of a safety program. If supervisors are not properly trained, they can neither instruct their people effectively nor adequately enforce safety rules. The supervisors training program should have two components: 1) Basic supervision techniques, and 2) Basic safety management.

A. BASIC SUPERVISION TECHNIQUES

To be most effective, training in basic techniques should be given by a training specialist or consultant and in a location away from the work site. These subjects in particular should be covered:

1. Techniques of good supervision.
2. Communications and effective listening.
3. Interviewing, coaching, counseling.
4. Public speaking, discussion leading.
5. Labor regulation, policies, practice, discipline.

B. BASIC SAFETY MANAGEMENT

Training programs for safety management should be given by a safety professional, consultant, or a member of management, and should cover the following subjects:

1. Basics of accident prevention.
2. Controlling unsafe acts.
3. Controlling unsafe conditions.
4. Employee safety training.
5. Personal protective equipment (all types used at the facility).
6. Safety meeting, and sources of material.
7. Safety procedures (lock/tag, safe entry, gas testing, fire and work permits).
8. Principles of environmental health.
9. Chemical exposures and information.
10. Safety suggestions and safety work orders.
11. Identifying and counseling unsafe workers and accident repeaters.
12. Basics of fire prevention and extinguishing.
13. Job safety analysis.
14. Accident investigation, reporting and follow-up.
15. Workers compensation and claims procedure.

C. ACCOUNTABILITY

As a result of proper training programs, supervisors will be able to set goals and objectives, and then should be held accountable for their goals and objectives.

D. SUPERVISORY TRAINING AND ACCOUNTABILITY, AUDIT

Poor: Formal program exists.

Fair: Some training takes place on a haphazard basis, but follow-up, use and accountability are missing.

Good: Written program exists and training takes place, but follow-up, use and accountability are inconsistent.

Excellent: Written program exists and is being implemented, training takes place on a regular basis. Management is being held accountable.

VII. Safety Meetings

Safety meetings are used to provide employees with an opportunity to meet on a planned basis in order to discuss potential hazards and the personal action necessary to control them. Ideas, suggestions, accidents and near-misses are reviewed as they pertain to the group. Records of all meetings should be maintained to avoid both duplication of subjects recently covered and future controversy.

A. FORMAL MEETINGS

These are generally held at the beginning of the shift or at a natural break point, always on a regular basis and attended by an entire crew. Meetings should be held where employees can be comfortable and should not last over one hour.

Points to Remember:

1. Prepare in advance—rehearse if necessary.
2. Select a major topic—one the group can discuss.
3. Use visuals or demonstrations whenever possible—but preview beforehand.
4. Map the presentation—outline objectives and key points.
5. Start and end on time—control irrelevant discussion.

6. Be sincere, firm and convincing—show your own concern.
7. Introduce the subject—explain the meeting.
8. Present facts; discuss relevant accidents.
9. Promote group discussion and suggestions.
10. Help the group distinguish between fact and opinion.
11. End on a positive note—agree on doing something.
12. Summarize the meeting—explain follow-up.

Meeting material is available from the National Safety Council, trade associations, public libraries, trade journals, newspaper articles, equipment and chemical suppliers, federal and state governmental agencies, past experiences, safety suppliers, colleges and universities.

B. TAILGATE TALKS

These are informal discussions held on a regular basis with a few employees at the job site, lasting from 5 to 10 minutes. Usually only one brief subject is discussed. In addition to the points listed above under "Formal Meetings", consider these:

1. Hold at a natural break point or beginning of shift.
2. Allow employees to relax outside of hazardous areas.
3. Make only one key point.
4. Hold whenever a process changes, a new chemical is used, or a potentially hazardous job is encountered.
5. Discuss a recent relevant accident or near miss.
6. Use employees to conduct tailgate talks.
7. The National Safety Council's "Industrial Supervisor" and "Safe Worker" are excellent sources of topic material.

C. INDIVIDUAL CONTRACTS

Employee-supervisor communication is the key to fostering job understanding, safety awareness, good morale, pride and trust. Supervisors should talk to at least one employee per shift about safe job performance. Unsafe acts should be called to the attention of employees each time they are noticed, and corrective measures should be discussed. A record should be maintained of all such contacts, listing the items discussed and the action taken.

D. SAFETY MEETINGS, AUDIT

Poor: Infrequently held or if regularly held, often of poor quality. Some tailgate sessions.

Fair: Scheduled regularly, but not well prepared, presented or attended. Infrequent safety discussion between supervisors and employees.

Good: Material well prepared on appropriate topics. Sometimes held at job sites. Feedback received. Meetings planned in advance. Supervisors regularly cover safety when reviewing work practices, correct unsafe acts on the spot.

Excellent: Employees regularly conduct part of meetings. Two-way communication evident with good attendance and follow-up. Regular planned tailgate meetings; safety review sessions held prior to jobs of high accident potential or when processes or chemicals change. Each supervisor discusses safe job performance with at least one employee daily.

VIII. Accident Managment:

Accidents are unplanned occurrences that result in employee injury or illness, or in damage to property. They signify deficiencies in the operation and always indicate that a review is in order. Identification of the real cause or causes of an accident is usually accomplished through standard investigation techniques. Usually identification of the cause of an accident will also indicate the means that is required to prevent similar occurrences.

A. TREATMENT

All injuries and illnesses resulting from accidents should be reported and treated immediately.

B. INVESTIGATION

Every near miss as well as all accidents should be investigated. Solutions should be found and communicated to all employees.

Accident investigation is an inquiry into why an accident happened; the purpose is to prevent similar occurrences. Investigations should be fact finding, not fault-finding; the purpose is not to find someone or something to blame.

Facts are discovered by asking the six words: who, what, where, when, why and how.

1. Who was hurt? Who were the witnesses?
2. What happened?
3. Where did it happen?
4. When did it happen?
5. Why did it happen?
6. How did it happen?

The causes of the accident, whether unsafe acts and conditions, or both, should be determined and described on the report. Specific measures to correct these unsafe acts and conditions should be determined and recommendations made to prevent a recurrence. Corrective measures should be assigned and completion dates established for follow-up. An example of an investigation and reporting form is attached, figure 8.

OCCUPATIONAL INJURY AND ILLNESS ACCIDENT AND ANALYSIS REPORT

INJURED OR ILL EMPLOYEE:

Name_____ Job Title_____ Department_____

Address_____ Soc. Sec. No._____ Pay No._____

Age____ Yrs. Date of Hire_____ Sex ☐ M ☐ F

OCCUPATIONAL INJURY OR ILLNESS

Date of incident_____ Time_____ a.m. ☐ p.m. ☐

Date Reported to Supv._____ Time_____ a.m. ☐ p.m. ☐

CLASSIFICATION OF INCIDENT

☐ Fatal ☐ Major ☐ Off Work ☐ Limited Work

☐ No Lost Work ☐ First Aid ☐ Transferred or Terminated

Diagnosis of Injury or Illness_____

Diagnosed by_____ (name) (position)

Description of Treatment_____

Treated by_____ Place of Treatment_____

On Day of Incident Employee Sent ☐ Plant Dispensary ☐ Hospital (Out patient) ☐ Hospital (Admitted)
☐ Dr. Office ☐ Home ☐ Back to Work (Indicate sequence by numbers in appropriate blocks)

ANALYSIS OF INCIDENT:

Location of Incident_____ On Premises ☐ Yes ☐ No

Object or Substance Involved_____

Unit Operation Involved_____

How Did Incident Occur_____

Unsafe Act(s)_____

Unsafe Condition(s)_____

Basic Cause of Unsafe Act(s) or Condition(s)_____

Actions Recommend or Taken to Prevent Recurrence (Assign responsibility and completion dates)

SIGNATURES

Supervisor (date) Middle Manager (date)

Safety Specialist (date) Plant or Site Manager (date)

Figure 8. Sample accident and investigation reporting form.

C. REPORTING

Government regulations require documentation, logging, and in certain instances reporting of accidents to either OSHA or MSHA offices. Standardized forms are available from these offices.

A standard policy should require that all accidents must be reported to the employee's supervisor as soon as possible. The supervisor should also initiate paperwork required to complete an investigation and follow-up.

D. RECORD KEEPING

Government regulations require that all fatalities, accidents involving lost workdays, transfers to another job, medical treatment, loss of consciousness or restriction of motion must be recorded on prescribed record keeping forms.

In addition to this, supervisors should be aware of accidents occurring in their areas so that they can take remedial action.

E. ACCIDENT REPEATERS

Repeating accidents are a sign of deficiencies in the work procedure, in an employee's ability, or are the result of poor supervision.

If the cause of the repeat accident is found to be procedural, the procedure should be reviewed and altered.

Where an employee's ability is in question, his eyes, hearing or tactile senses should be checked. Retraining in proper procedural techniques may also be required. All aspects of the physical, mental and emotional states of the employee may have to be evaluated to determine if there may be deficiencies and to institute appropriate counseling.

If the supervision has been poor, then the supervisor may need further training with a re-emphasis on accountability. See section VI.

F. ACCIDENT MANAGEMENT, AUDIT

Poor: Only serious accidents investigated and with little follow-up.

Fair: Accidents investigated; however, corrective action is spotty and employees are not always informed of circumstances. Basic OSHA record keeping requirements met.

Good: All accidents, including near misses, are investigated promptly. Causes determined, corrective action assigned and expedited to completion, employees informed of details and action taken.

Excellent: In addition to "Good", the plant manager personally investigates recordable injury cases and potentially serious close calls. Cause and correction analysis is made and is then used to update the procedures, the training program and the overall safety effort. Accident repeat files are maintained and counseling given when appropriate.

IX. Public Relations and Recognition:

The promotion of a well planned safety program is essential to maintain employee awareness and a good company image. These positive results are heightened further because employee motivation spills over into increased productivity, better quality and favorable profits.

A. AWARDS

One method of stimulating the positive is to recognize cases of superior safety performance. This may be individual recognition in the form of achievement letters or certificates. Another is to create peer recognition by administering a group, department or plant awards program. Examples of this recognition could be similar to the individual awards, but on a larger scale. In most instances inter-plant and industry comparisons with appropriate organizations such as the Manufacturing Chemists Association and National Safety Council Awards Programs is meaningful.

It is essential that awards and recognition be based on the premise that superior safety performance is an expected part of each employee's job. This program element is the icing on the cake; it cannot substitute for a well managed basic safety program.

B. SUGGESTIONS

Fundamentally, all employees should be indoctrinated with the concept that a basic function in their job is to make safety suggestions intended to correct hazards in the workplace. Accordingly, management should be positive in responding to these suggestions. In some instances, increased awareness and motivation is achieved by rewarding solicited suggestions or by holding contests.

However fruitful in the short-term, award and suggestion programs are short-lived. The necessary elements to achieve continued results is management attention and awareness as well as publicity and recognition of contributing employees.

C. PUBLIC RELATIONS AND RECOGNITION, AUDIT

Poor: The safety program, employee attitude and community posture is lacking. The workplace has a reputation as an unsafe place to be employed.

Fair: The workplace has no negative reputation of being unsafe; however, a positive counterbalance is not apparent.

Good: There is a positive program; employee attitudes reflect the reputation in the community as a safe place to work.

Excellent: A positive program is apparent, employees are aware, involved and committed. The community recognizes the workplace as the safest in the area.

X. Off-the-Job Safety:

A. ESTABLISHING A PROGRAM

Accidents that occur away from work should be a real concern to management. The direct and most measurable cost is the wages paid to injured workers while they are off the job. Insurance premiums, training expense for replacement workers, or overtime pay when others are required to work over to cover a shift, all these add significantly to the cost of off-the-job injuries.

Companies with effective off-the-job safety programs notice an improvement in their work injury rates because they stress the "total safety" concept, i.e., employees are motivated to follow the same safe practices in their outside activities as they use on the job. Driving a family car is the same as driving a company vehicle; using power tools at home requires the same skills as using them at work. Off-the-job safety programs also show employees that the company is interested in their well-being.

To establish an off-the-job safety program, first develop meaningful data on what types of accidents occur and how much time is lost. These steps are recommended:

1. Establish a reporting system.
2. Supervisors should show their concern personally. To obtain the data needed they should interview injured employees when they return to work to determine both the details of the accident and what safety training would have prevented it.
3. Make an analysis of the accident types, lost time and effect on the company.
4. Determine if the employee is a "repeater" (having several accidents both on and off-the-job). "Repeaters" usually need special attention.

To get the off-the-job safety message across, education and persuasion are effective. Programs that involve the family have worked well. Safety brochures, home safety check lists, the National Safety Council's quarterly "Family Safety" magazine, defensive driving tips, seat belt campaigns, films, recreational safety programs, evening meetings that include the families, safety picnics, off-the-job promotional themes quizzes, posters and contests, all have a place in off-the-job safety programs.

The off-the-job safety approach should be positive, stressing that an activity can be done safely if it is properly thought out, planned, and if precautions are taken. Programs can be part of national promotional activities, such as National Fire Prevention Week. Company programs also can tie into local community activities; they can coincide with the particular season. Periodically, safety meetings at work should be devoted to off-the-job safety topics. Local police, fire, Red Cross, health and gun clubs, YMCA, and other organizations can be invited to participate in promoting off-the-job safety. An improved company image can result from such activities.

B. OFF-THE-JOB SAFETY, AUDIT

Poor: No information is available on off-the-job injuries.

Fair: An occasional film or safety talk is directed to the subject. Records of injuries are maintained.

Good: Records are kept and off-the-job injuries are analyzed. Seasonal information and the "Family Safety" magazine are sent to the homes. Supervisors interview injured employees when they return to work.

Excellent: The plant is active in the community off-the-job safety promotions. Supervisor's off-the-job injury record is considered in overall performance. "Repeaters" are counseled.

XI. Audit Performance:

It has been said, not inaccurately, that complacency breeds accidents, and, there is always room for improvement. Applied to the intent of this safety guide, an audit of the performance of the other audits described in this safety guide is recommended:

Poor: Audits of the safety program are not conducted; hence there is no information concerning the value of the safety program.

Fair: Audits are made on an irregular basis and results indicate that the program is lacking.

Good: Audits are performed regularly, deficiencies are programmed by priority and there is evidence of an improving program.

Excellent: In-depth audits are performed regularly; deficiencies are found and corrected in a timely manner. The safety record is improving and there is continual awareness and commitment.

XII. For Further Reference:

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U.S. Dept. of Labor, "The Industrial Environment, Its Evaluation and Control".

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ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD

Public Employee Department AFL-CIO

815 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006 • (202) 393-2820-21

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Treasurer

STATEMENT OF THE PUBLIC EMPLOYEE DEPARTMENT, AFL-CIO
TO THE LABOR SUBCOMMITTEE, SENATE COMMITTEE ON HUMAN RESOURCES, ON
THE OCCUPATIONAL SAFETY AND HEALTH ACT

OCTOBER 12, 1978

Mr. Chairman and members of the Subcommittee:

From its inception in 1974, the Public Employee Department (PED) has taken a keen interest in safety and health conditions affecting public employees in all government jurisdictions -- state-local, federal and postal. Through its 31 affiliates, the Department represents the interests of some 2 million persons employed in public jurisdictions.

The basic problem confronting government employees with respect to OSHA is the absence of equal protection with private industry workers under the statute. Both the AFL-CIO and PED have advocated consistently that the law be revised to afford all employees the same safeguards. That issue is not the subject of this oversight hearing. For that reason we will not dwell on it, except by brief reference.

In February, 1977, PED produced a comprehensive review of OSHA as it affects public workers.

Hundreds of thousands of those employed by state and local jurisdictions are confronted with serious safety and disease hazards every day. Yet, in the absence of an OSHA plan approved by the Department of Labor, they lack any coverage under that law. Private sector workers, on the other hand, are entitled to the benefits of OSHA legislation as a primary source or of a state OSHA system endorsed by the Department of Labor.

For state and local government employees, our review revealed that their rate of injuries far exceeds the frequency and severity figures for private industry. Attachment A presents an excerpt from the PED study depicting the gulf existing between private industry and public service at the state and municipal levels for 1973-75.

On an overall basis, the table indicates that the frequency rate for municipal employees was more than three times that for the private sector, while the severity figure was almost twice as large as the rate for all industries.

The frequency difference ranges from 9.78 for municipal administration to 129.18 for fire services. In addition to the intolerable fire service figure, extremely high frequency was noted for refuse collection, equipment services, sewer systems and street and highway maintenance. The remaining categories demonstrate clearly that state and municipal workers are experiencing hazards out of all proportion to exposure in private firms.

Prior to March, 1977, public employees at the state and local government level were faced with a dilemma in preparing a critical evaluation of state OSHA plans. On the one hand, these programs afforded public employees their only opportunity to come within the scope of the 1970 Occupational Safety and Health Act. On the other hand, development of a state OSHA plan preempted federal coverage and made employees in the state's private sector exempt from direct federal provisions of the Act. They were protected solely by the state OSHA plan which is supposed to be "as effective as" the federal requirements.

In an attempt to meet this staggering problem, the Department of Labor, in March, 1977, produced a new policy permitting states to apply for grants covering public workers only. Subsidies are available on a 50-50 basis. To date, no state has taken advantage of the program. Four, however -- Colorado, Connecticut, Missouri and Wisconsin -- have indicated an interest.

It is clear, then, that a crying need to address the particular safety and health problems of these government employees prevails.

For federal and postal workers, the situation differs somewhat. Section 19 of OSHA requires federal agency heads to promulgate general safety and health policies, conform to OSHA standards and consult employee representatives in formulating their policies. The statute authorizes an advisory committee to the Secretary of Labor consisting of federal management and labor representatives to review the entire program.

Several executive orders and Presidential memoranda have stressed the importance of federal agencies observing the precepts of OSHA. Meanwhile, the General Accounting Office has produced two studies criticizing the deficiencies in the federal program. The House Manpower and Housing Subcommittee, in a late 1976 report, emphasized the need for strengthening the federal system in seven ways.

During the past 18 months, the Department of Labor has been engaged in producing a new executive order on the subject for consideration by the President.

On the positive side, a significant number of agreements negotiated between federal activities and unions representing their employees contain clauses relating to safety and health.

Figures produced by the U.S. Civil Service Commission for 1977 indicate that 77% of the collective bargaining documents deal with safety policies. However, only 27% refer to health matters.

One of the compelling needs in this area is a deeper analysis of these bargained agreements to determine whether they contain simple statements of safety and health policy or supply the mechanisms needed to make the system truly effective, as a matter of labor-management cooperation.

Two of the most elementary problems associated with the federal effort are the inability of the Department of Labor to make unannounced on site inspections to evaluate hazards and the absence of authority to enforce the decisions it makes on safety issues. Until these conditions are relieved, it will be impossible to hold that agency responsible for overall administration of the law.

Unfortunately, the existing OSHA statute forces the federal government to utilize a double standard in assessing dangers confronting workers in private industry and public service. In effect, the law instructs the Department of Labor to inspect work areas for compliance with its standards and to utilize the tools available to remedy infractions. But in evaluating the performance of federal agencies, neither criterion exists.

In its preliminary report last month, the Interagency Task Force on Occupational Safety and Health asserted that the federal government should be the model employer in this field. The Task Force stated it expects to accord greater detail to the matter in its final report.

As for the general administration of the program, this Department subscribes fully to the testimony presented to the Subcommittee by the AFL-CIO on October 5, 1978.

ATTACHMENT A

TABLE II

THREE-YEAR Z16.1 INJURY RATES, REPORTERS TO NATIONAL SAFETY COUNCIL
1973-1975

	Freq.	Sev.
All Industries	11.21*	670*
Government Employees		
Federal civilian employees	6.39	604#
State highway departments	15.60	1,175
Municipal employees	36.75	1,176
Administration	9.78	239
Airports	26.60	554
Equipment services	63.28	1,616
Fire	129.18	3,067
Library	5.58	99
Parks - recreation	35.49	1,149
Police	47.35	3,014
Refuse collection	95.05	2,825
Refuse disposal	55.11	3,555
Schools, bd. education	19.37	514
Sewer plants	35.38	1,283
Sewer systems	50.85	1,859
Streets & highways maint.	57.50	1,815

NOTE: Based on Z16.1 Standard. Rates are not fully comparable from year to year due to change in numbers of employers reporting and increased representation of service, trade, and government.

*1970 - 1972

#1967 - 1969

35-644 O - 79 - 25

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PHILIP CALDWELL, *Chairman*
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THOMAS H. HANNA, *Senior Vice President*

October 19, 1978

The Honorable Harrison A. Williams
Chairman, Committee of Human Resources
United States Senate
4230 Dirksen Senate Office Building
Washington, D.C. 20501

Dear Senator Williams:

Thank you for your October 9, 1978, letter inviting written submissions for the Labor Subcommittee's oversight hearing record on the Occupational Safety and Health Act.

We welcome the opportunity to present the enclosed written statement outlining our concerns with the Federal occupational safety and health program.

We hope that the enclosed statement will be helpful in assessing the need for legislative and regulatory improvements.

Very truly yours,

Thomas H. Hanna

Thomas H. Hanna

Enclosure

THH/pc

Comment
of the

Motor Vehicle Manufacturers Association
of the United States, Inc.

on

Governmental Regulatory Workplace
Safety & Health Programs

for the
Subcommittee on Labor of the
U.S. Senate Committee on Human Resources

Washington, D.C.
October 19, 1978

Motor Vehicle Manufacturers Association
of the United States, Inc.

Comment on Governmental Regulatory
Workplace Safety and Health Programs

I. Introduction and Summary

The Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA)* appreciates the opportunity to comment to the Senate Committee on Human Resources on the subject of governmental regulatory workplace safety and health programs and in particular the Occupational Safety and Health Act of 1970 (the Act) and its seven years of administration. MVMA's eleven member companies produce more than 99 percent of all motor vehicles manufactured in the United States and have had broad experience with the administration of the Act in 448 assembly, manufacturing and parts plants located in 37 states and Puerto Rico. This experience has clearly demonstrated the need for legislative changes and for improvements in the Occupational Safety and Health Administration's (OSHA's) approach to its responsibilities and in its programs and priorities.

In passing the Occupational Safety and Health Act of 1970, Congress declared that its purpose was "to assure so far as possible every working man and woman in the nation...safe and healthful working conditions, and to preserve our human resources..." After seven years there is little tangible evidence that the resulting Federal regulatory programs have significantly contributed to improving safety and health in the workplace. Instead, as repeated several times at the recent AFL-CIO National Conference on Occupational Safety and Health, the Act is being viewed as a labor law, not a health or safety law.

MVMA member companies share a deep concern for and commitment to the safety and health of all of their employees, including more than one million in the United States alone. The motor vehicle industry recognizes the value of effective government encouragement and assistance in its efforts to reduce workplace injuries and illnesses. Ultimately, of course, safety and health goals are only accomplished through a total effort by all parties involved, employers, employees and where needed, government.

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* MVMA member companies include: American Motors Corporation, Checker Motors Corporation, Chrysler Corporation, Ford Motor Company, Freightliner Corporation, General Motors Corporation, International Harvester Company, PACCAR Inc, The Nolan Company, Walter Motor Truck Company and White Motor Corporation.

Government involvement should not be the same for all companies. For some, government encouragement of demonstrated successful programs is all that is needed; while for others, a firm enforcement effort is appropriate. The Act recognized both approaches in the "Congressional Findings and Purpose" section but overwhelmingly emphasizes the enforcement procedures in the remainder of the Act and thus creates an adversary climate between government and industry. OSHA has extended this emphasis on enforcement which not only fails to properly encourage voluntary safety and health activities, but also diverts the efforts of safety and health professionals from their in-house programs that better address their own special problems and priorities. Moreover, OSHA views the Act as a labor law and thus exacerbates the adversary climate.

There is good reason, therefore, to recommend a fundamental change of emphasis in the Act through legislative revisions to support the preventive rather than the punitive approach to achieving the objectives of the Act. Safety and health activities could be greatly encouraged by changing the Act to limit enforcement for employers with favorable injury and illness experience and with successful safety and health programs. This would allow OSHA to more productively concentrate its enforcement resources where they are most needed and would allow companies to direct their attention to their own special problems and priorities.

At the same time that the Act is changed to reflect a new, more balanced emphasis, the opportunity should be taken to correct some other problems which have become apparent since the Act was implemented. These improvements include Federal preemption of state standards in order to eliminate certain inconsistencies, and a clearer definition of a repeated violation in order to clarify Congressional intent and to specify some form of statute of limitations.

Moreover, OSHA should improve its administration of the Act by taking a more constructive approach to its duties. Although the present structure of the Act is responsible for much of the adversary relationship between industry and government, OSHA's questionable interpretation of its mandate under the Act has aggravated the problem and further impeded communication and cooperation.

OSHA must better identify real safety and health problems and then carefully develop feasible and effective programs to address those problems. Inspection procedures must also be improved to make the most effective use of industry's and OSHA's time and resources, and to take advantage of and to encourage existing programs. OSHA's announcement of numbers of inspections, citations, and more recently the size of penalties proposed has little direct relationship to the prevention of injuries and illnesses.

Many of the improvements suggested in these comments have economic implications, but there is merit in formalizing economic incentives to enable business to use capital more effectively. On the other hand, we do not believe that heavier emphasis on financial disincentives is either effective or fair.

II. Problems Calling for Legislative Action

The administration of the Act over the last seven years has revealed many problems which Congress did not foresee and which can be effectively resolved only by legislative reconsideration of the Act.

A. Encouragement of Voluntary Safety and Health Activities

Years before the Act was passed many employers recognized the need for and value of complete health and safety programs for all employees. These employers were responsible for many of the voluntary concensus standards and for much of the safety and health literature and scientific advances which have occurred through the years. Their success at reducing workplace illnesses and injuries raised the possibility of similar success by other employers and set the stage for enactment of the Act.

Section (2) (b) of the Act contains a long list of strategies for achieving the Congressional purpose, the first of which is:

> "...by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions."

Despite the apparent prominence of "encouragement," the remainder of the Act and the administration of it to date have emphasized enforcement.

The broad goals of the Act can only be achieved if voluntary compliance is encouraged and enforcement is used only where necessary. Toward this end in 1971, OSHA indicated:

> "On the critical matter of compliance the Department intends to make every effort to encourage and obtain voluntary compliance before resorting to the enforcement features of the Act. Thus, the Department understands the vital importance of the education and informational function." 1/

1/ May-June, 1971 Safety Standards, Vol. 20, No. 3
U.S. Department of Labor

Thus, the voluntary approach was well conceptualized and OSHA appropriately recognized that voluntary safety and health activities should precede enforcement in the plan for compliance. However, because of the structure of the Act, OSHA has been unwilling to sufficiently promote this vital function of voluntary compliance.

Voluntary compliance must be given its rightful and prominent place, but a reemphasis will not, or apparently cannot, be achieved administratively. Instead, it must come from Congressional action. Therefore, MVMA supports legislation which would encourage voluntary compliance with the safety and health objectives of the Act. One possible measure to achieve this end is the limitation of enforcement inspections for favorable experience.

The Act is largely concerned with inspections and citations for physical hazards, and does not (nor should it) try to specify in detail other equally or more important elements of effective safety and health programs such as the following:

-- management support and direction;

-- supervisory and employee motivation and training;

-- accident investigation and review;

-- on-site health and medical services;

-- safety and health planning of processes and facilities;

-- establishment of occupational safety and health priorities;

-- commitment of manpower and resources toward achieving those priorities.

Indeed, it is not possible and no attempt should be made by Congress or OSHA to regulate the precise application of these elements of an effective overall safety and health program. Instead, encouragement of overall company safety and health programs could take the form of legislation which would limit enforcement activities for certain employers in recognition of favorable safety and health experience and effective accident and illness prevention programs.

Complaints to OSHA could still be investigated but complainants would be advised to make full use of in-house programs, such as labor-management grievance procedures. Needed investigations should be limited to the area of the complaint. Such legislation would also allow more employers to direct the activities of their professional safety and health staff toward improving in-house safety and health programs and priorities rather than toward OSHA's more narrow compliance activities and time-consuming citation, hearing and contest proceedings. It would also allow OSHA to direct its resources toward the industries most in need of assistance.

B. Federal Preemption of State Standards

MVMA favors Federal preemption of state standards. Under current conditions, a multi-state employer must be thoroughly familiar with both Federal and state standards. In some states, such as California and Michigan, the specific state standards regulating certain safety and health issues are markedly different from the Federal standards dealing with the same matter. Furthermore, some states' standards, such as California's, are numbered and indexed using systems which are so completely different from Federal and other state standards that it is very difficult even to find a particular standard or section to compare with Federal requirements. These differences increase the cost of compliance and complicate the efforts of the multi-state employer to maintain a meaningful and effective ongoing compliance program.

Informal and haphazard procedures used by many states for developing standards and notification of interested parties often preclude input from some of the interested parties. For example, California merely requires publication of a proposed standard in a newspaper of general circulation. Because of this limited notification procedure, a Michigan-based employer is hard put to keep abreast of California's standards development or to offer timely comment on standard proposals. This lack of input from affected parties often results in ill-conceived rules and standards.

In contrast, Federal rulemaking procedures are controlled by the Administrative Procedure Act, which at a minimum preserves the basic due process guarantees. At the Federal level, proposed standards are published in the Federal Register, and all interested persons are given an opportunity to comment on them.

From the standpoint of the orderly and efficient allocation of professional staff time and resources, it would be preferable to deal directly with the Federal government on standards development.

Federal preemption of state standards would not preclude state implementation of the standards as long as state interpretations and enforcement strategy were consistent with those of the Federal program. OSHA could maintain consistency in the same way that uniformity is currently being maintained among Federal field personnel (i.e., through the issuance of compliance operations manuals, field information memoranda, video tapes and other materials to field personnel with instructions on application of standards). Under a program of state implementation of Federal standards, state judicial systems would have to recognize Federal interpretations and judicial precedents concerning application of those standards.

C. Definition of Repeated Violation

The Act contains no guides or constraints on the use of the repeated violation citation. This oversight has resulted in confusion and some questionable use of discretion by OSHA. Legislative action is needed to provide a better description of when a determination of a repeated violation is justified. The repeated violation cita-

tion can only be an effective enforcement tool if it is fairly applied in accordance with clearly expressed Congressional intent.

The need for legislative action has been manifested by the inability of the Occupational Safety and Health Review Commission to agree on a definition of a repeated violation. 2/ As observed by Chairman Barnako in the George Hyman Construction Company decision:

"The concept of a repeated violation is derived from section 17 (a) of the Act, which states:

> Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than $10,000 for each violation."

The Act does not otherwise define or mention the word "repeatedly." Nor is there any explicit indication in the legislative history of the Act concerning the intent of Congress in including the word "repeatedly" in section 17(a). In the past, the Commission has determined whether a violation was repeated on a case-by-case basis without developing and consistently applying a rule applicable to all cases.

The problem is complicated by the varying interpretations of the Circuit Courts of Appeals in reviewing the actions of the Review Commission.3/

Some of the questions which have been raised in the attempts to define a repeated violation relate to the number of prior violations necessary, the particularity of the worksite involved, the relative level of supervision to consider, the linking of "repeatedly" and "willfully," and the demonstration of flaunting disregard or flouting of the Act.

2/ See for example, Secretary of Labor v. George Hyman Construction Company, OSAHRC Docket No. 13559, August 26, 1977; Secretary of Labor v. Eliason & Knuth Drywall Company, OSAHRC Docket Nos. 14226 and 14227, August 19, 1977; and Secretary of Labor v. Vappi and Company, Inc., OSAHRC Docket No. 15540, September 21, 1977.

3/ See for example, Bethlehem Steel Corporation v. Occupational Safety and Health Review Commission and Peter J. Brennan, Secretary of Labor, 540 R.2d157 (3rd Cir. 1976); George Hyman Construction Company v. OSAHRC, 6 OSHC 1855, (4th Cir. 1978); and Todd Shipyards Corporation v. Secretary of Labor, 605HC1227, (9th Cir. 1977).

Many of these decisions have looked to the legislative history of the Act for guidance but have found little indication of Congressional intent upon which to base an interpretation. A Congressional clarification of this issue is the only reasonable way to avoid further confusion.

Sooner or later many common types of violations could be expected to reoccur in spite of conscientious employer efforts to comply with safety and health standards. It is only reasonable, therefore, that some form of statute of limitations be included in any further Congressional discussion of a definition for repeated violations.

D. Economic Incentives

In addition to those legislative changes affecting the administration of the Act, there is substantial merit in the development of economic incentives to encourage additional investment in occupational safety and health improvements. Some of the suggestions discussed above, such as limiting enforcement for favorable accident and illness experience, have economic implications which could function as incentives. Other, more direct economic incentives should be formalized.

One constructive way to encourage safety and health investment would be tax relief for businesses that are severely affected by government regulation. Several measures of this type have been introduced in Congress including HR 10692 introduced by Rep. John Anderson (R-IL), and Rep. William Steiger's (R-WI) measure, HR 11078. Similar provisions for fast amortization of the cost of large capital outlays for compliance with EPA air pollution controls have been adopted. We believe this approach should be fully explored with respect to occupational safety and health related expenditures.

In addition to the above consideration, MVMA would like to call the Committee's attention to a recent report prepared by Murray L. Weidenbaum, Director, Center for the Study of American Business, Washington University, St. Louis. The study, "The Cost of Government Regulations of Business," was submitted to the Joint Economic Committee Subcommittee on Economic Growth and Stabilization in April, 1978. The study contains many valuable insights and several recommendations and alternatives to regulation which should be considered by this Committee.

III. OSHA's Role and Responsibilities

Apart from concerns which can be clarified or resolved by legislative change there are several administrative obstacles to effective reduction of workplace injuries and illnesses. These include the adversary climate surrounding OSHA, the apparent willingness of OSHA to defer to the courts rather than to reasonably interpret the mandates of the Act and the failure to use cost-

effectiveness approaches in regulatory activities.

A. The Adversary Climate and the Need for More Balanced Private Sector Input

OSHA's administration of the Act has emphasized enforced compliance and assessment of penalities and has allowed (and even encouraged) the Act to be used as a labor law rather than a safety and health law. This approach has tended to alienate industry and has created an adversary climate around OSHA's activities. This relationship, while healthy to the extent that it dramatizes different approaches to achieve national goals, can be detrimental if it is carried to the extreme. Government and industry should emphasize cooperation in order to achieve the stated Congressional intent of providing every worker with a safe and healthful workplace.

One example of the emphasis on compliance and penalties is OSHA's apparent tendency to measure its performance by how many citations and fines are imposed upon employers (as shown in detailed OSHA inspection figures published monthly), and not by how successful it is at helping employers to recognize and eliminate hazardous conditions.

Evidence that the Act is being used as a labor law comes from statements from various OSHA representatives and from labor itself. Indeed, the theme of the 1978 AFL-CIO Health and Safety Congress was that the Act was "...Our Law."

Despite the adversary climate surrounding OSHA which impedes communication between the regulator and the regulated, industry, including MVMA, stands ready to assist OSHA in this task of developing standards and has provided input into numerous rulemaking proceedings.

MVMA would welcome the opportunity to acquaint OSHA project officers with the types of hazards for which regulations are contemplated and has extended such invitations to various OSHA representatives in the past. Certainly other industries would also welcome the opportunity to cooperate in this fashion with standards development activities. Congress should therefore encourage OSHA to become familiar with the industries or hazards it is to regulate and to provide a travel and expense budget for this purpose.

MVMA favors greater use of the private sector's input and expertise early in the rulemaking process. This can be accomplished in several ways, including the following:

-- making more use of the expertise of the National Advisory Committee on Occupational Safety and Health;

-- requesting the private sector's input at an earlier stage, as via the Advance Notice of Proposed Rulemaking process;

-- requiring OSHA standards writers to make several plant visits before writing or revising safety and health standards;

-- considering the efforts of and working through recognized voluntary consensus standards making organizations.

B. The Need for a More Responsible Approach--
OSHA's Deference to the Courts

OSHA's apparent willingness to defer to the courts has been demonstrated by several questionable interpretations of its Congressional mandate.

In some cases regulatory policies or standards which go beyond the intent of the Act have been adopted by OSHA and employers have had little recourse but to make use of the courts to define the limitations on OSHA's authority and to establish the proper balance between the ideal and the practical. The recent U.S. Court of Appeals decision declaring the OSHA coke oven emission standard's research and development requirement to be invalid is an example of this process.4/ This regulatory strategy of adopting an extreme interpretation and having the courts bring it into focus with the Act has a chilling effect on compliance with standards since many employers feel compelled to wait for the courts to determine the scope and application of a standard or policy before making costly or significant changes.

OSHA's refusal to bring its actions into focus with the realities of the business and industrial world can be demonstrated by several examples.

1. No Safe Level Concept

One of the areas subject to challenge is OSHA's interpretation of what constitutes a safe level of exposure for regulatory purposes. In the Federal Register preamble to its proposed carcinogen policy, OSHA declared that the only reasonable way to proceed is to assume that there is no safe level of exposure. MVMA disagrees with OSHA's philosophy, as does the American Industrial Health Council which has said:

> "'Implicit in this notion, if not explicit, is the concept that "safe" within the meaning of the Act means entirely risk-free. There is a correlative notion that industrial or other useful activity can occur on a completely safe, risk-free basis. Neither proposition is warranted or attainable. There are risks associated with all societal activities. (There are even risks associated with efforts to avoid activity). Moreover, in enacting the Occupational Safety and Health Act of 1970, Congress explicity recognized the impossibility of assuring American workers a risk-free workplace. It follows, therefore, that there is a legitimate role for the evaluation of relative risk and the acceptance of some degree of risk, a concept commonly regarded as 'acceptable risk.'" 5/

4/ American Iron and Steel Institute, et al. vs. Occupational Safety and Health Administration, 6 OSHC 1451, (3rd Cir. 1978).

5/ "AIHC Recommended Alternatives to OSHA's Generic Carcinogen Proposal." February 24, 1978, OSHA Docket No. H-090.

Other Federal regulatory statutes including Section 9 of the Consumer Product Safety Act, Medical Devices Amendments to the 1976 amendments of the Food, Drug and Cosmetic Act and various sections of the Toxic Substances Control Act also require consideration of benefits and risks in determining an appropriate regulatory response. Moreover, various government agencies have approved risks from chemicals under other regulatory laws. Therefore, it is difficult to accept OSHA's "no safe level" regulatory philosophy as either theoretically correct or administratively justifiable.

2. Consideration of Regulatory Alternatives and Use of Cost-Effectiveness Information

All government agencies have the responsibility to critically examine the need for, and to determine the proper scope of, their regulation, taking into account the effect on the nation's economy. The legislative history and the administrative and judicial decisions construing the meaning and intent of the Act support the conclusion that alternatives and economic concerns must be considered in evaluating the feasibility of proposed standards. Yet, the evidence points to the conclusion that, in occupational safety and health, too little consideration is being given to possible alternatives, cost effectiveness comparisons or economic and inflationary impact information.

The apparent rationale for this lack of consideration is that no cost can be placed on a human life and that therefore, economic comparison of regulatory alternatives is meaningless and unnecessary. That is a very shortsighted rationale which belies some fundamental economic facts of life. To suggest that an employee should not have to choose between his health and his job is an oversimplification meant to force alternatives that need not be mutually exclusive. OSHA should not frame its regulations so that health advances only at the expense of jobs. Rather, cost-effective regulatory alternatives which could protect both health and job must be properly considered. OSHA must make regulations which adequately protect employees but at the same time must realize that certain regulatory alternatives can have a more severe impact on the economy and on employment than others which offer equally effective safety and health protection.

MVMA suggests that OSHA obtain more economic expertise for its staff at the policy level. This would enable OSHA to more properly assess its intended actions and the alternatives to these actions in light of the availability of new products, the employment of the work force and the final cost to the consumer.

OSHA must consider the following if the final regulations are to be meaningful:

a. A proven need for action on the basis of workplace safety.

b. Careful analysis of the costs, benefits, risks and other implications of the known methods of dealing with the problem within the present state of technical knowledge.

c. Pre-rulemaking dialogue among government agencies and between government and industry to assure that standards:

-- are measurable, justified and carefully written;

-- take account of all feasible countermeasures;

-- and are cost-beneficial, or at least cost-effective, and consider tradeoffs and uncertainties.

3. Feasibility Consideration in Hazard Control

The Act establishes a control scheme which gives preference to engineering and administrative controls, but allows the use of personal protective equipment if other controls are not feasible, a consideration which includes, of course, economical feasibility. Nevertheless, OSHA favors the mandating of engineering controls, regardless of the expense involved or the marginal benefit derived. OSHA has been requiring the use of engineering controls even when they are inadequate or ineffective in controlling employee exposure. At the same time, personal protective equipment is not recognized as an appropriate control despite the fact that it often provides more protection for the employee than engineering controls.

4. Rate Retention

Still another question regarding Congressional intent arises on the issue of "rate retention." As part of its proposed lead standard, OSHA has proposed maintenance of

> "...rate of pay, seniority and other rights of an employee for the time period, or a portion thereof, that the employee is transferred or removed from his or her job as a result of an increased health risk from exposure to lead. After a follow-up medical examination and opinion, the following options would be available with no loss of earnings or rights: return to the original job, assignment to a different job (transfer) or continuation of the transfer or removal."

The stated justification for the proposal, which would amount to "rate of pay and seniority retention" (rate retention), is that it would eliminate employee reluctance to submit to medical surveillance. OSHA therefore contends that the Act authorized the imposition of regulations governing employment conditions despite the tenuous relationship to worker safety and health.

However, in mandating rate retention, OSHA would be imposing --under the guise of implementing medical surveillance--what is in effect a workers' compensation program. An interpretation of the statutory authority which would permit imposition of rate retention requirements, couched in terms of safety and health standards, would flout the purposes of the Act, be in contradiction to the clear intent of Section 4(b)(4), and preempt Section 27 of the Act.

In summary, a more responsible, reasonable standards development and enforcement approach by OSHA would help control questionable interpretations of its Congressional mandate, reduce adversarial contests and facilitate implementation of the Act.

IV. OSHA's Programs and Priorities

Improvement is needed in OSHA's method of establishing and following through on priorities, including some of the procedures for inspections. Furthermore, the current OSHA program of "common sense priorities" is, in fact, superficial, nonproductive and erroneously characterized as a "redirection."

A. Identification of Problems and Design of Programs

Many of OSHA's well-intended programs have been launched with enthusiasm but have never been successfully concluded. OSHA has had difficulty both in identifying the problems of real concern and in planning and developing realistic and workable programs. Public discussion before initiation of programs could lead to their improvement, or to the conclusion that a particular program may have no chance of succeeding and that any time and effort committed to it would be wasted.

Over the years, considerable personnel and other resources have been committed to various programs including the Target Industries Programs, Target Health Hazards Program, and the National Emphasis Program. However, few positive results can be identified from any of these programs. Noting that the cost of compliance to the private sector is likely to be 20 times the regulatory agency's administrative cost, 6/ MVMA urges that Congress review the costs incurred to date by OSHA on these and other similar programs and provide a public accounting.

Such a public accounting would provide valuable information with which to gauge the cost-effectiveness of these programs and would provide guidance for considering future proposals of similar magnitude.

6/ Weidenbaum, M.L., "The Costs of Government Regulation of Business"; study submitted to United States Congress, Joint Economic Committee Subcommittee on Economic Growth and Stabilization; April, 1978.

1. Injury Data

Occupational safety and health efforts would be aided by improvements in and more effective use of the present systems for the collection, analysis and dissemination of workplace injury data. In this regard OSHA should give priority to its program of analysis of workplace fatality information. Although fatalities are extensively investigated there has been little information produced by OSHA which would help industry in the prevention of such workplace tragedies in the future.

Undoubtedly there are many valuable accident and illness prevention lessons to be learned from a thorough analysis of the OSHA fatality investigations which have been conducted. Perhaps some of the effort going into the monthly compilation and analysis of inspection figures could be better spent in reviewing the fatality reports.

Additionally, support should be given to the recent initiatives of the National Safety Council to establish a system for collecting causal data for occupational accidents. These improvements will enable the preparation of better new standards and revision of present ones, provide direction for compliance activities and identify education and training needs.

2. Use of Different Enforcement Strategies

OSHA has vigorously applied its energies toward large industrial concerns. Many of these industries had the technical expertise to recognize, evaluate and control safety and health hazards and had established appropriate safety and health priorities long before OSHA was formed. While it is true that the Act and its enforcement have increased the number of safety and health professionals even in these industries, it is equally true that marginally productive compliance activities consume much of their time and talent.

There is merit in using different enforcement strategies for different companies based upon the level of safety and health program development. For those businesses which have good management awareness, technical support, and a knowledgeable workforce, the OSHA inspection simply provides another pair of eyes to search for hazards which may be overlooked during routine company safety and health activities. Advanced forms of program assistance, such as safety management seminars, may be more meaningful for these companies, while inspections may be more useful for companies with no formal mechanisms to discover hazards and no formal policy to systematically control them.

B. OSHA's Current Redirection Program

OSHA's current program has been given the title of "Common Sense Priorities" and has been characterized by the media (with the agency's encouragement) as:

-- a redirection of priorities which will turn the troubled agency around;

-- an elimination of standards which are excessively detailed, nitpicky or not relevant to safety and health, particularly those most subject to past criticism and ridicule;

-- a reduction of the paperwork burden and expense associated with compliance and recordkeeping requirements.

Such characterizations and impressions generally continue unchallenged despite several obvious contradictions.

1. Standards Revocation

The standards revocation project is being widely hailed by OSHA as supposedly removing over 1,100 irrelevant and excessively detailed standards from the existing regulations. However, the tally actually refers to 1,100 changes, including many single-word changes, as distinguished from 1,100 "standards."

Concurrent with this "revocation," OSHA is proposing a generic carcinogen standard which would give the Secretary the authority to promulgate thousands of comprehensive and detailed standards while foreclosing debate on actual risk or relevance to worker health from occupational exposure. This proposed standard, which would substitute arbitrary policy decision for expert scientific review, far outweighs any possible relief from irrelevant standards which may be afforded by the "revocation" project.

2. De Minimis Violations

OSHA has widely publicized that de minimis citations are being used as a means of providing relief to employers burdened by the detailed specifications contained in the general industry occupational safety and health standards. However, what is not being publicized is that OSHA, at the same time, has directed its field personnel to greatly increase the use of citations for serious, willful and repeat violations for the same types of violations which had previously been considered non-serious. 7/

3. Paperwork Reduction

The OSHA form "200" was introduced and publicly announced as providing a 30 million dollar savings in recordkeeping costs and as a means of reducing paperwork by substituting one form for two.

7/ Video Tape Classifying Serious Violations and Assessing Penalties, January, 1978; VTR-Unit of OSHA's Office of Public Affairs.

On May 11, 1978, at the American Industrial Hygiene Conference in Los Angeles, Cal., Dr. Eula Bingham quoted a savings of 100 million dollars as a result of this action.

In truth, one of the previous forms only had to be filled out once a year and that requirement was simpler than the new procedure which combines the two forms and contains the same recordkeeping requirements on a continual instead of an annual basis. Furthermore, the recordkeeping burden is increased by the necessity to recompute the cumulative totals every time a reclassification of an injury or accident statistic occurs. The supposed paperwork reduction actually has reduced neither paperwork nor cost.

C. Inspection Procedures

OSHA should improve its safety and health efforts by modifying some of its enforcement activities. In particular the procedures for complaint investigation, recognition of employer efforts and determination of repeated violations need revision.

1. Complaint Investigation

A great deal of OSHA's compliance activity is consumed by investigation of complaints instead of working on priorities such as known hazardous industries.

Reportedly, Area Directors often are not exercising professional judgment in deciding whether or not complaints warrant investigation by OSHA Compliance Officers. Instead, it appears that all complaints, including some anonymous ones, are investigated regardless of their merit, and complainants are seldom advised to take advantage of internal plant procedures which may be available to address the problem more quickly or effectively.

2. Recognition of Company Programs

Section 5(b) of the Act states:

> "Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to the Act which are applicable to his own actions and conduct."

However, the Act does not provide for the issuance of citations or the proposal of penalties against employees who flagrantly violate OSHA regulations and company safety and health policies and procedure. Instead, employers are held responsible for failing to comply with standards applicable to employee action and conduct.

Employee responsibility is recognized in instructions in the Occupational Safety and Health Field Operations Manual (FOM), Chapter X, subsections E.1.c. and E.2. as follows:

"However, if it becomes clear during the CSHO's* investigation that the following conditions are present, with reference to a given violative condition, it is appropriate to take such conditions into consideration when determining whether a violation should be alleged;

1) The violation resulted exclusively from employees conduct;

2) The violation was not participated in, observed by, or performed with the knowledge and/or consent of any supervisory personnel; and

3) The employee conduct was in conflict with a well established company policy or work-rule which was in effect at the time, and which was actively enforced through disciplinary action or other appropriate procedures. In addition, in determining that the employer has a pertinent company policy or work-rule, the CSHO must find that the employer has a specific program for instructing employees in safe work practices."

"Appropriate Action. In all cases where an isolated incident is found by the CSHO, he shall discuss the employee conduct with the employee(s) and where appropriate, his representative. At the closing conference the CSHO shall specifically discuss with the employer such employee actions or conduct, and shall advise the employer that it is his responsibility under the Act to assure compliance by his employees with the applicable standards. The CSHO shall also advise the employer that an appropriate memo entry will be made in the inspection file so that if such a violation is found to exist on reinspection, a citation may be issued."

However, compliance officers are reluctant to identify specific employees who are violating company policy or work rules even though such information would assist the employer in obtaining employee cooperation with his safety and health efforts.

The application of this section of the manual has been largely confined to the use of personal protective equipment by employees. However, it should be extended to other areas of employee behavior which are covered by employer enforced work rules and programs. Compliance officers should increase their use of discretion as provided

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* Compliance Safety and Health Officer.

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*Executive Committee
+Honorary

October 19, 1978

The Honorable Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
Senate Committee on Human Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

On behalf of the Nonferrous Smelter Advisory Council of the American Mining Congress, I am pleased to submit this letter for the record in your Subcommittee's oversight hearings concerning administration of the Occupational Safety and Health Act. The burden of complying with increasingly onerous governmental regulations is one of the principal problems facing the nonferrous metals industry today. The Nonferrous Smelter Advisory Council is composed of Chief Executive Officers of companies operating primary copper, lead and zinc smelters in the United States and was formed so that the industry can more effectively discuss its regulatory problems with government.

The nonferrous smelting industry is seriously concerned over several current regulatory issues under the Occupational Safety and Health Act. Among these are the standard for occupational exposure to inorganic arsenic promulgated in May 1978 by the Occupational Safety and Health Administration and the soon-to-be-promulgated standard for occupational exposure to lead. The arsenic standard causes concern because arsenic is present, in varying degrees, in most ores of copper and lead. The proposed lead standard would impact severely on primary and secondary lead smelters and refineries.

Regrettably, our experience with OSHA has been such that we cannot agree with Secretary Marshall's statement in these hearings that "the common sense approach of this administration . . . has turned OSHA from an ineffective whipping boy into a model of regulatory reform." The Occupational Safety and Health Act places upon OSHA the burden of setting exposure limits for airborne substances when knowledge of the effects of such substances is not definitive. To this burden, Section 6(b)(5) of the Act adds the task of ensuring that a standard is feasible and provides affected employers with objective criteria concerning what is required. OSHA, in our experience, has not carried out these difficult responsibilities in a reasonable manner.

OSHA has based its standard for inorganic arsenic and its proposed standard for lead upon extreme views of what is necessary to protect worker health, without giving

sufficient weight to credible evidence presented by industry representatives who have had many years of experience in studying and successfully preventing occupational illness. In the case of arsenic, OSHA has set the exposure limit at the extremely low level of 10 micrograms of arsenic per cubic meter of air on the assumption that, because exposure to very high concentrations of arsenic is associated with respiratory cancer, only a near-zero exposure to arsenic can be considered a safe level of exposure. "Common sense," however, would suggest that there is a safe level of exposure to an element that occurs naturally in all living things, and throughout the earth's crust. The epidemiological data before OSHA showed a tenuous association between airborne arsenic exposure and cancer only at levels substantially above 100 micrograms per cubic meter. The best evidence of association was obtained through biological monitoring data. Yet OSHA rejected 100 micrograms as an engineering control standard and rejected biological monitoring as the ultimate standard to protect worker health.

In the case of lead, OSHA's proposal to reduce the exposure limit from 200 micrograms per cubic meter of air to 100 micrograms is based on the incorrect assumption that such a reduction will ensure that employee blood lead levels do not exceed 60 micrograms of lead per deciliter of blood. The record before OSHA demonstrates that employee blood lead levels are based on many factors besides workplace air concentrations of lead, that reduction to 100 micrograms -- to be achieved by engineering controls -- will be an ineffectual, though costly change, and that alternative approaches will more adequately protect worker health. A curious aspect of OSHA's lead standard proposal is that the agency has no data on the incidence of lead illness among the nation's lead workers.

It might be said that the public interest, viewed narrowly, is furthered by lower exposure limits because they are more protective of worker health. But workers are not in fact benefited by ill-conceived, impossibly difficult standards that serve only to generate uncertainty and confrontation. And the cost of such standards must be measured in terms of lost investment, lost productivity, lost economic growth and lost jobs. As one court has observed, "Congress does not appear to have intended to protect employees by putting their employers out of business . . . ." Industrial Union Department v. Hodgson, 499 F.2d 467, 478 (D.C. Cir. 1974).

It has been our experience that while OSHA gives lip service to considering the feasibility of its standards, that consideration itself is superficial. For example, the heart of OSHA's analysis of the economic feasibility of the arsenic standard is its comparison of the estimated costs of the standard with the average

pre-tax profits of four entire companies for the years 1966-1975, and its conclusion that a 12.3% reduction in those companies' earnings is not unreasonable. But in making this comparison, OSHA did not consider that the companies involved have major lines of business besides domestic primary metal processing. One report in the record estimated that the costs of the OSHA standard would reduce the average pre-tax profits from the domestic primary metals business of ASARCO Incorporated by 80%. Nowhere does OSHA suggest that a reduction in profits of this magnitude would be reasonable; nor does the agency explain why a prudent management would tolerate losses or an unacceptable return from one plant or one line of business becuase it has income from unrelated lines of business.

OSHA's degree of concern with the inflationary impact of its regulations is reflected in its view in the arsenic case that the price of arsenic trioxide -- a vital industrial raw material -- should be increased 50% in order to help pay for the compliance costs.

In promulgating the arsenic standard, OSHA also failed to consider the costs imposed on the nonferrous metals industry by other environmental regulations. OSHA analyzed the average profits for the industry for the years 1966-1975, but most of these years preceded the years of heavy impact of the Clean Air Act. Copper producers are currently spending on environmental controls upwards of 9 cents per pound of copper, a commodity now selling for about 70 cents per pound. Because of competition from foreign producers not similarly burdened by environmental costs, the domestic industry cannot pass these increased operating costs along to the consumers of copper, lead, and zinc. Thus, while the domestic copper industry was required to spend $270 million of capital for pollution control in 1977, its operations in that year lost $100 million. No reasonable analysis of the economic impact of an OSHA regulation can fail to consider the already-mandated costs of other governmental regulations.

A final problem that I wish to bring to the Subcommittee's attention involves the paralyzing effect upon industry of OSHA's promulgation of standards that set impossibly difficult exposure limits. By OSHA's own account, 5 of the 16 U.S. copper smelters cannot comply with the 10-microgram exposure limit for inorganic arsenic using only engineering and work practice controls. Such smelters, however, are required by the standard to institute such controls to the extent that they are "feasible" (even though such controls will not reduce concentrations to the exposure limit) and then provide personal protective equipment, e.g., respirators, to employees. One difficulty with this approach is that the agency

provides no guidelines by which to determine what controls are "technologically" or "technically feasible." To this uncertainty is added the further uncertainty of determining whether controls are "economically feasible." The record before OSHA in the arsenic case shows that the cost of installing possible engineering controls would force the shutdown of at least one or two copper smelters. The record before OSHA in the lead case similarly shows that it is very doubtful that engineering controls can reduce exposures in lead smelters to 100 micrograms per cubic meter, and that the costs of attempting to meet the standard by engineering means would jeopardize the future of one of the six primary lead smelters, 17 to 19 secondary smelters, and 113 battery plants.

OSHA's answer to such contentions is to say that the problems of individual plants can be taken care of in the compliance plans for those plants. But this solution is wholly unsatisfactory. It means that a company faces a potentially never-ending series of demands that it install additional engineering controls at various plants, as a control not deemed "feasible" today may be so deemed tomorrow. It is not enough for OSHA to assert that it will be reasonable in enforcing compliance with impossible standards. The proliferation of costly regulations and potential regulations under, among others, the Occupational Safety and Health Act, the Clean Air Act, and the Clean Water Act has created too vast an area of uncertainty. Our companies are coming to the point where they can no longer justify the spending of more tens of millions of dollars with no prospect of ever satisfying governmental demands.

OSHA standards should be fashioned in a way that they can with some assurance be met by reasonable control measures, that allows forward planning for the productive use of capital, and that protects worker health without destroying the employers. We believe that Congress intended to provide for certainty and stability when it stated in Section 6(b)(5) of the Occupational Safety and Health Act: "Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired."

There is no question of the nonferrous smelter industry's commitment to protecting the safety and health of its workers. In both the arsenic and the lead cases the industry has proposed alternative courses of action that would both protect workers and maintain the industry's financial viability. We believe that OSHA has unjustifiably rejected those recommendations.

If we can furnish any further information to the Subcommittee, please do not hesitate to contact me.

Yours sincerely,

Charles F. Barber

Charles F. Barber
Chairman
Nonferrous Smelter Advisory Council

Statement Submitted to the Senate Human Resources Committee by E. L. McGowan, Commissioner of Labor, South Carolina.

Mr. Chairman, members of the Subcommittee, I am E. L. McGowan, Commissioner of Labor, South Carolina, and I appreciate this opportunity to present a written statement to this Subcommittee in an effort to advise you of the role played by the states in carrying out the intent of Congress when it enacted the Occupational Safety and Health Act of 1970. In passing the Act, Congress included Section 18 which provides the states with the option of conducting state programs in conjunction with the U. S. Department of Labor. South Carolina is proud of the fact that not only was she the first state to exercise this Congressional proviso, but also that she became the first state to begin enforcement and was the first state to be certified as having completed all development steps. Today, 21 states and 2 territories are operating state programs for the protection of workers within their borders and are seeking to carry out the intent of Congress in providing safe and healthy worksites for their citizens. These states and territories have an organization known as the Organization of State Designees who have elected me their Chairman. It as their Chairman that I am here today. Within the borders of the 21 states and 2 territories is 39% of the total population of this nation. These states, in carrying out their programs, are providing one-half of the funds for such programs, and therefore, are in effect supplementing the federal program with their money and their efforts.

We in South Carolina and our sister states engaged in the operation of state programs view our efforts as a partnership with the U. S. Department of Labor; a partnership formed to protect the greatest natural resource our country has - our working men and women.

During the period April 1, 1977 through March 31, 1978, which are the latest statistics available to me, the states conducted 69% of all OSHA inspections. They conducted 71% of the safety inspections and 53% of the health inspections. In this compliance activity the 21 states and 2 territories covered 875,000 more employees than the Federal enforcement in the other 29 states and all the other territories. In these inspections, the states issued citations on 70% of all violations cited in the nation, or 198,000 more than the Federal. The states issued 71% of all safety violations and 56% of all health violations which were cited during this period. In addition, the states issued 61% of all repeat violations which were issued.

These statistics are not quoted to reflect on the performance of the Federal program, but merely to emphasize that a state program can be much more efficiently administered due to its size. The Federal program is so immense that it is impossible for the Assistant Secretary of Labor to really direct the operation of the Occupational Safety and Health Administration no matter how dedicated the Assistant Secretary may be. Whereas at the state level, the administrator knows every compliance officer and employee personally, and there is a lot more personal direction.

I do not contend that every state program is as effective as Congress intended. During the past seven years, the states with approved plans have entered the area at various times and some still have areas in which they need to improve; however, I know each designee personally, and each of them is fully dedicated to seeing that their citizens have a safe and healthy worksite. Many of our problems are mutually shared with the Federal program, but in time I feel sure that both will resolve what deficiencies there are and carry out the intent of the Act.

In addition to the state programs protecting the private sector employees, they also protect the public sector employees. A few of the states which do not have state programs conduct public sector programs; however, the public sector employees in many states where the Federal program is administered have no protection, and the incident rates in the public sector are higher than the private sector.

I do not have available the incident rates for the various states who are operating their programs; however, South Carolina incident rates as compared to the national incident rates are as follows:

Calendar Year	S.C. Rate	National Rate
1972	9.4	10.9
1973	9.2	11.0
1974	7.8	10.4
1975	6.7	9.1
1976	6.8	8.9

For the year 1975 in the private sector, South Carolina enjoyed the lowest incident rate of any state in the nation and was preceded only by the District of Columbia which has little private sector industry.

Although the states have from the beginning considered their relationship with the Occupational Safety and Health Administration as being one of a partnership, there have been times when it appeared our counterparts in Washington failed to recognize the contribution which the states were making to carry out the intent of Congress in providing safe and healthy worksites. During the past 7 1/2 years there have been many problems between the partners, some created by the states and some created by the Federal Administration, and some of these problems have yet to be resolved. However, when any program is initiated, it takes a certain amount of time and effort before it becomes effective. The states feel that they have made a major contribution to making this program an effective program. If both partners will recognize the contribution being made by the other partner and work together to carry out the purpose of the Act, all of the problems will be resolved.

Gentlemen, the intent of Congress in its enactment of the Occupational Safety and Health Act is being met! OSHA is working! You senators have heard much wailing and gnashing of teeth from both labor and management. From labor you have heard that OSHA is too lenient on the businessmen, and from management you have heard that OSHA is too strict. Well, I recall that about a year after I was appointed Commissioner of Labor my Governor called me and said that he had just , that day, had the AFL-CIO in his office who were raising hell about Ed McGowan, and the previous day the state Chamber of Commerce had been in his office complaining about Ed McGowan. He said that

I must be treating both sides fairly because neither side was satisfied. OSHA is working! We have reduced the injuries and the illnesses suffered by our working men and women due to occupational hazards, and the states, as Congress intended, have made a major contribution which cannot be ignored.

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Organization Resources Counselors, Inc.

SENATOR WILLIAMS, N.J.
1978 OCT 20 PM 3 40

October 19, 1978

The Honorable Harrison A. Williams
Chairman, Committee on Human Resources
United States Senate
Dirksen Office Building
Washington, D.C. 20510

Dear Senator Williams:

Organization Resources Counselors, Inc. (ORC) sponsors an occupational safety and health group comprised of over 50 companies representing a broad cross-section of industry. The Group is concerned with improving the process of rulemaking for occupational safety and health standards, the impact of those standards on relationships between employers and employees, and the general effectiveness and quality of safety and health regulatory programs.

My September 19 letter to you requested that representatives of ORC be scheduled to testify during the recent oversight hearings of the Labor Subcommittee. My subsequent letter of September 28 expressed our disappointment at being denied the opportunity to testify, although we recognize that there were more requests than could be accommodated. The number of requests clearly reflects the widespread concern that exists in many quarters concerning the far-from-satisfactory implementation of the Occupational Safety and Health Act of 1970.

ORC representatives attended each day of the Oversight Committee hearings, and are aware that some meaningful issues and viewpoints were discussed. The balance of this statement will be concerned with three issues that we believe are of major importance and that either were not raised during the hearings or for other reasons warrant additional comment:

1. The increasingly adverse effect that OSHA's policies and actions are having on relationships between management and employees, between management and unions, and on the collective bargaining process itself.

2. The failure of OSHA to adequately consider the economic and social implications of its decisions and standards.

3. OSHA's demonstrated capacity to create unnecessary confrontation and adversarial relationships instead of encouraging the kind of cooperative effort on which all sound safety and health programs must be based.

Before commenting on each of these issues, it should be specified that the need for a sound and objective occupational safety and health regulatory process is not being questioned. The concern is that the regulatory process has not met those criteria thus far and there has been no clear evidence of significant progress in that direction.

Impact on Employee Relations, Labor Relations, and Collective Bargaining

ORC has been directly involved in a broad spectrum of employee relations and labor relations activities for many years, and is consequently in a position to view the impact of the occupational safety and health regulatory process on those areas from a substantial base of knowledge and experience. It is our considered view and deep concern that OSHA policies and actions, particularly in the recent past, have had significantly adverse effects, wittingly or unwittingly, upon the relationships between management and employees, between management and unions, and upon the collective bargaining process itself. A few of many examples that could be cited are the following:

(a) Objective scrutiny of training materials and communications emanating from OSHA will reveal that many clearly and unfairly depict employers as being unconcerned, or even callous, about the safety and health of their employees. The fact is that there are many employers in this country

who are as concerned as is anyone in government. For OSHA to suggest otherwise is not only inaccurate, but is directly counterproductive in carrying out its mission of promoting safety and health in the workplace.

(b) OSHA has introduced into some of its standards and proposed standards a variety of provisions that would substantially disrupt existing wage and seniority policies and practices. Little effort appears to have been made to assess the implications of those actions or to identify alternatives that might have less disruptive effects. In addition, these types of OSHA provisions have varied from one standard to another, and have sometimes been contradictory or unnecessarily confusing. For example, OSHA's standards do not recognize that more than one form of seniority may apply at a single workplace, such as job seniority, shift seniority, department seniority, and plant seniority. As another example, the proposed standard on lead uses the terms "rate" and "earnings" interchangeably, although they have substantially different meanings in practice. These types of shortcomings should be of serious concern to employers and unions alike.

It remains for the courts to determine whether the Occupational Safety and Health Act gives the Secretary of Labor the authority to include job displacement and rate retention provisions in OSHA standards. In our view, it does not. In any event, the implementation of the Act should not be misdirected to the accomplishment of collective bargaining objectives or the modification of company personnel policies under the guise of seeking to improve safety and health in the workplace.

(c) Section 5(b) of the Act provides that "Each employee shall comply with OSHA standards and all rules, regulations, and orders issued pursuant to this Act that are applicable to his own actions and conduct." This provision is sound. To the best of our knowledge, however, it has not been reflected in any published

OSHA standard or proposed standard. The full burden is placed on the employer to assure compliance with OSHA standards without any explicit recognition of the fact that employees also have an obligation as citizens to comply with the law. We do not recommend that sanctions against employees be included in standards, but explicit reminders of the need for individual compliance would be constructive.

(d) OSHA's recent proposal regarding access to individual medical records will have a serious adverse impact on relationships between employers and employees, as well as those between physicians and patients and between management and unions. Few things that OSHA has done will have a more deleterious effect on the improvement of safety and health in the workplace. The proposal's potential for undermining the effectiveness of occupational medical programs and creating conflict in the workplace is almost unlimited.

It is difficult to imagine any area of activity in which there is a potentially greater mutuality of interest among management, employees, and unions than occupational safety and health. Instead of building upon that mutuality of interest, OSHA has increasingly chosen to impose its decisions and regulatory authority upon established employee relations and labor relations practices and procedures that usually have evolved over many years.

One might conjecture that this course has been taken with some encouragement from at least a few representatives of the labor movement, perhaps with the hope that collective bargaining objectives might be achieved through regulatory action more readily than at the bargaining table. In any event, the best interests of safety and health in the workplace have not been served by that diversion.

There is an urgent need for OSHA to reexamine its priorities and approaches. The laudable objectives of the Occupational Safety and Health Act can and should be accomplished without doing unnecessary damage to the broader relationships between management and employees, between management and unions, and to the collective bargaining process in this country.

Economic and Social Impact of Regulatory Actions

The stated objective of the Occupational Safety and Health Act to ensure a safe and healthful workplace to every employee is entirely commendable. The implementation of the Act, on the other hand, has often appeared to reflect an attitude that safety and health is the one and only consideration worthy of any attention. It is incumbent on any public official to consider the public interest as a whole rather than to consider only the specific public policy area that he or she is administering.

Even if one takes the position that the value of human life is infinite, it must also be recognized that the resources available to protect human life in this or any other society are less than infinite. Responsible administration of any law or public policy must, therefore, accept the burden of making trade-off judgments that take into consideration the broader economic and social impacts of each decision or action. Cost-benefit analysis is the appropriate mechanism.

Public positions taken by OSHA and by the Secretary of Labor that it is neither necessary nor appropriate to consider the economic impacts of OSHA regulations cannot be justified. That position is not only contrary to the provisions of Executive Order 12044, but has also been found by the Fifth Circuit Court of Appeals to fail to meet the obligation imposed on OSHA "to enact only standards that are reasonably necessary or appropriate to provide safe and healthful workplaces."

The refusal of OSHA and the Department of Labor, particularly in the last two years, to give serious consideration to the broader economic and social impacts of its decisions and standards has greatly increased resistance to OSHA regulations. In so doing, it has unnecessarily undermined and delayed the realization of improvements in workplace safety and health which a more reasonable and more realistic approach could have accomplished.

Unnecessary Confrontations and Adversary Relationships Created by OSHA

As has already been mentioned, the safety and health of employees in the workplace provide about as natural an area for cooperation and mutuality of interest between employers and employees and between employers and unions

as one could find. Despite that fact, the policies and actions of OSHA have worked in the direction of promoting dissension and confrontation instead of cooperation.

That effect has not been confined to those areas, however, but is also found in the relationships between OSHA and various other agencies of government and between OSHA and important segments of the scientific community. Attached to this letter is an article from the October 11, 1978 edition of the Wall Street Journal. It comments on a recent and representative example of OSHA's unwillingness to utilize information and counsel available to it from the National Institute for Occupational Safety and Health. Numerous similar examples of lack of receptivity to opposing views could be cited.

In ORC's view, the primary cause of this serious shortcoming in the implementation of the Occupational Safety and Health Act has been the increasing politicization and subjectivity of the regulatory process. As the attachment indicates, OSHA has frequently indicated by its statements and actions that many of its policy decisions are determined in advance of the rulemaking process and are not likely to be changed by any combination of facts or arguments that may be presented during rulemaking.

The confrontation and adversarial relationships that have increasingly impeded the effectiveness of the regulatory process have been augmented by additional shortcomings. One of these is OSHA's frequent change of priorities. This vacillation has been exhibited in many ways, including such examples as the standard revocation proposal, payment of walk-around time, the National Emphasis Program, and the ABC Program. Among the essential conditions for healthy relationships is a reasonable degree of predictability, which has not been a characteristic demonstrated by OSHA.

A further cause of the excessively adversarial relationships in recent years has been growing evidence of a strong bias against the viewpoints of the business community. Some indications of that bias have already been mentioned; others are apparent, such as the fact that the position of industry liaison representative on the OSHA staff has remained unfilled since it last became vacant early in 1977. Other examples were discussed during the oversight hearings.

OSHA has failed to recognize that the objectives of the Occupational Safety and Health Act can only be accomplished by relying primarily on a high level of cooperation and acceptance of the health and safety regulatory process by employers, employees, and unions. Prejudgment of major policy issues and reliance on punitive enforcement will continue to be counterproductive, because they inevitably create the unnecessarily high levels of confrontation and adversary relationships that have marked most of OSHA's history.

In closing, we would like to reiterate that ORC and the member companies of the ORC Occupational Safety and Health Group recognize and accept the need for a sound and objective safety and health regulatory process. Our request to testify at the oversight hearings stemmed from our deep concern about both the status and the current directions of that process. We hope that the comments included in this document will be helpful to you and your associates on the Labor Subcommittee in seeking to stimulate improved implementation of the Act.

We would welcome the opportunity to discuss any of these points further with you or members of your staff.

Very truly yours,

J. W. Miller
Executive Vice President

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Enclosure

THE WALL STREET JOURNAL, WEDNESDAY, OCTOBER 11, 1978

OSHA's Action Plan on Cancer

By Robert W. Merry

WASHINGTON — A peculiar question hovers over the Occupational Safety and Health Administration's effort to produce a sweeping new policy for regulating cancer-causing substances at places of work. The question: When OSHA sponsored a long series of cancer-policy hearings last summer, were OSHA officials there to hear the testimony?

OSHA officials insist they were. In fact, they add, the hearings were taken so seriously at the agency that officials at one point found it necessary to admonish Eula Bingham, the agency's director, to stop spending so much time listening to testimony to the exclusion of other pressing problems. Meanwhile, many of Mrs. Bingham's top hands stuck around throughout the proceedings, the agency says.

But other government officials, who say they sat through the entire 10 weeks of testimony, insist that OSHA policymakers were absent during much of the hearings. Labor Department lawyers were there, they say, and OSHA officials dropped by from time to time. But generally, they insist, the hearings were dominated by executives of an outside consulting firm called Clement Associates Inc.; that firm had been retained by OSHA to provide scientific expertise in evaluating testimony, finding expert witnesses and determining which substances should be regulated under the proposed cancer policy.

"It was unfortunate," says one official at the National Institute for Occupational Safety and Health, the federal agency that conducts research for use in OSHA's policy making. "An owner of some small dry-cleaning establishment would come in and testify about how the proposed cancer policy would hurt his business, and nobody in a policymaking capacity at OSHA would be there to hear him."

This bureaucratic debate may seem a little frivolous. Actually it reflects a more significant question surrounding the government's role in diminishing the specter of cancer: in their efforts to make the workplace as safe as possible from carcinogens, have OSHA officials ignored scientific arguments that don't support their regulatory aims? Is policy in this emotional area increasingly the product of a kind of intellectual inbreeding with the same potential for flawed results as the genetic inbreeding of the European aristocracy?

The Role of Clement Associates

Many observers in Congress and industry believe OSHA's recent cancer hearings reveal a certain scientific closed-mindedness at the agency. They point particularly to the role of Clement Associates, which [illegible] much of the work that normally would have been performed by officials of NIOSH.

Some NIOSH officials feel that OSHA, departing sharply from past practice, purposely excluded the institute from the process of shaping the cancer proposal. NIOSH officials weren't invited to testify at last summer's hearings, and they couldn't even get copies of the proposal until just before it was released publicly, they complain. "NIOSH was completely bypassed," says the institute's deputy director, Edward Baier. "To what purpose, for what reason, I can't say."

OSHA officials dismiss the complaint as coming from an agency that lacks high-caliber scientists and bends too easily with the political winds. They also dispute the notion that NIOSH strongly influenced the agency's regulatory actions in the past. But others view things differently, concluding that NIOSH was bypassed because OSHA officials didn't want to deal with an agency not always in sympathy with OSHA's regulatory outlook.

According to this view, OSHA sought the assistance of a more sympathetic organization, Clement Associates. OSHA's critics bolster their case by pointing out that the agency's top lawyer in the cancer-policy area, Anson Keller, once worked closely at the Environmental Protection Agency with Clement's president, John C. Kolojeski. At the EPA, the two pressed for many of the same policies that are now incorporated into OSHA's anticancer proposal.

All this has left some industry scientists and like-minded observers wondering if

In their efforts to make the workplace as safe as possible from carcinogens, have OSHA officials ignored scientific arguments that don't support their regulatory aims?

their views will get full consideration. "I don't see how you can escape the conclusion that the deck is stacked," says U.S. Rep. James Martin of North Carolina, a frequent critic of what he considers overzealous government efforts to regulate suspected carcinogens. "By bypassing NIOSH and hiring instead outside consultants with established views on scientifically debatable issues, OSHA raises questions about its commitment to consider all points of view."

Rep. Martin considers the question an important one because of the OSHA cancer policy's likely significance as a model for other agencies. But it's important as well because of the nature of the policy itself, which is designed to set aside some of the debate on regulating carcinogens in order to speed up the regulatory process.

Essentially, the proposed policy would establish two broad categories of carcinogens—confirmed and suspected—and outline criteria for determining which substances fit into each category. The policy also would outline in general the regulatory action needed to limit workers' exposure to substances the agency considered carcinogenic.

Thus, when OSHA took action on a specific substance, the only issues to be resolved would be whether the agency had correctly classified it and placed the appropriate limit on workers' exposure to it. This would eliminate the OSHA-industry standoff that has tied up the agency's past substance-by-substance regulatory approach.

But that's just the problem, in the view of many scientists and chemical industry officials. They contend there's still plenty of room for debate on some issues the agency wants to dispose of.

For example, the industry clings to the view that the cancer-causing properties of some substances are more potent than those of others. Thus, according to this view, it may be reasonable to allow limited exposure to certain low-potency substances. OSHA's anticancer proposal is based on the view that there's no safe level of exposure to a known carcinogen and thus exposure must be limited to the lowest "feasible" level.

In addition, industry executives and some scientists believe the OSHA proposal would be too lax in evaluating the validity of research used to determine the cancer-causing potentials of particular substances. They want an independent panel of scientists to evaluate the research before OSHA could use it as a basis for regulatory action. And they also question the proposed policy's reliance on animal tests to show a substance to be carcinogenic.

But for every scientist who supports the industry position, it seems, there's another who supports OSHA's views. Agency officials say that for particular individuals there may be thresholds of safe exposure to certain carcinogens. But the thresholds vary from person to person, they contend, and so it's impossible to identify a safe threshold for entire populations. Besides, they add, some research indicates that various carcinogens may act in combination with each other to increase risk, and thus the agency can't set a proper threshold for any given substance.

Who's Right?

Essentially, then, industry contends OSHA is going further in its regulatory approach than scientific knowledge justifies, and OSHA retorts that it must interpret available research conservatively in order to save lives. But the problem with this scientific debate is that it's simply impossible to know who's right. Cancer research has progressed far enough to give support to both sides but not far enough to give definitive weight to either.

"It becomes a matter of technology, really," says a NIOSH official. "You pretty much have to take it on faith."

The result is that a scientific debate is lost behind the sound and fury of a political battle. In regulatory politics, notwithstanding all the high-priced talent the industry mustered for the cancer hearings last summer, the forces of regulation usually end up holding the best cards.

And it's clear from OSHA's approach to the current cancer issues, as well as pronouncements by some of its officials, that the agency is gambling its political hand on terminating much of the scientific debate that's ensnarled the agency since its beginning seven years ago.

"The debate is still very much open on any new scientific issues that might be raised about cancer," says OSHA's Anson Keller. "But on those old issues that industry has been raising since the cows came home, we just won't listen to 'em any more. The track record is that it takes us two years to regulate each substance when we have to deal with those same old arguments every time. Well, we'd never get finished, so we're simply through dealing with those issues."

Mr. Merry, a member of the Journal's Washington bureau, covers labor issues.

TESTIMONY OF
SIDNEY M. WOLFE, M.D., AND ROBERT B. STULBERG
PUBLIC CITIZEN'S HEALTH RESEARCH GROUP

BEFORE

THE SUBCOMMITTEE ON LABOR OF
THE COMMITTEE ON HUMAN RESOURCES
UNITED STATES SENATE

OCTOBER 31, 1978

Mr. Chairman and members of the subcommittee. We represent the Health Research Group, a public interest organization funded by Public Citizen, Inc. and engaged in research and advocacy on health and safety issues. We welcome this opportunity to submit written testimony to the subcommittee concerning the Occupational Safety and Health Act of 1970.

This testimony represents the third time the Health Research Group has participated in hearings before this subcommittee. In July 1972, we testified that the Department of Labor had failed to implement the Occupational Safety and Health Act of 1970.[1] In August 1974, we reiterated this view and warned that the cause of worker safety and health had been seriously compromised.[2] Today we regret to report that the situation has not changed significantly. Although officials in the Department of Labor have, since 1976, expressed a strong commitment to protecting working people from injury, illness and death, the government's performance continues to fall far short of the massive effort needed to stop the silent violence which workers suffer each day.

By now, the statistics are well known. According to conservative estimates, occupational hazards annually cause 100,000 deaths,[3] 390,000 disabling illnesses[4] and 2.3 million disabling injuries.[5] That is: one death every five minutes, one disabling illness every minute and a half, one disabling injury every thirteen seconds. According to the government's most recent statistics, 5.16 million workers in the private sector, or about one out of every eleven, suffered a work-related injury or illness in 1976.[6] The rate among industrial workers in the private sector was even higher: one out of every eight of those workers were victims of workplace hazards.[7]

Although the statistics are alarming, they do not begin to convey the extent of the problem. The figures do not include injuries, illnesses and deaths which go unreported, undiagnosed or untreated. Nor do they include disabilities and fatalities caused by past exposure to workplace hazards. The National Cancer Institute has predicted that 20 percent or more of cancer deaths in forthcoming decades will be associated with occupational exposure to chemicals.[8] Some researchers have said occupationally-related cancer may soon constitute 38 percent of the total.[9] (See Appendix A.)

Of course, no statistic can ever describe the human suffering caused by this carnage. There is no way to measure

the grief of a mother whose son has been crushed beneath a scaffold. There is no way to assess the loss of a child whose father has been killed in a grain shaft explosion. The situation cries out for energetic and creative programs to curb the spiralling institutional violence. Regrettably, the government--under intense pressure from corporate interests--has failed to protect America's workers.

OSHA's Budget

Perhaps the best way to assess the federal government's commitment to occupational safety and health is to examine the budget of the Department of Labor's Occupational Safety and Health Administration (OSHA). Although this subcommittee is not directly responsible for OSHA's yearly appropriations, a review of the agency's funding is essential to any discussion of the agency's performance.

Since its inception in 1971, OSHA has received a total of $828 million in Congressional appropriations, or about $13.80 per worker--an average of $1.97 per worker per year. This year, Congress appropriated $171.2 million to OSHA for Fiscal Year 1979 (see Table 1). While this figure represents OSHA's largest yearly appropriation since 1971, it still constitutes a meager $2.85 per worker. Unless this figure is substantially increased in future years, OSHA will surely be unable to fulfill its statutory mandate "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions."

The OSH Act empowers the agency, inter alia, to issue health and safety standards, inspect workplaces, issue citations, assess penalties and protect workers who complain about hazards from discrimination. To perform these functions, OSHA needs large numbers of compliance personnel, health and safety experts, and support staff. Without sufficient funds to increase its staff, OSHA will continue to be a weak and ineffective agency.

Of course, inadequate funding is not OSHA's only problem.

In the sections that follow, we will discuss a number of areas in which the agency, through ineffective administration, political weakness or both, has failed to vigorously enforce the law.

OSHA's Health Standards Program

About 2 million chemical compounds are known to exist today.[10] Of these, scientists have identified about 100,000 toxic substances for which toxic effect information may be available.[11] About 13,000 of the known toxic substances are commonly used in the nation's workplaces, and about 500 new substances are introduced into workplaces each year.[12] Scientific studies have shown several hundred workplace substances to be carcinogens (cancer causing agents).

Not only are vast numbers of toxic substances present in the workplace, but recent studies indicate that most workers have no protection from these hazards. In December 1977, NIOSH*--in the largest survey ever made of America's workplaces--reported that "nine out of every ten workers in the United States are unprotected from exposure to at least one of the 163 most common industrial chemical and physical hazards."[13] Those hazards include such potent carcinogens as asbestos, benzene and inorganic lead. In addition, NIOSH revealed that only 3 percent of the nation's workplaces have "the type of services which could reduce exposure to chemicals and other toxic substances."[14] For example, the institute reported, 16.8 million workers are exposed to hazards in workplaces where there are no industrial hygiene services,[15] 17.3 million workers are exposed to hazards in workplaces where environmental conditions are not routinely monitored,[16] and 13.1 million workers are exposed to hazards in workplaces which do not provide medical examinations of any type.[17]

The OSH Act provides far-reaching mechanisms by which OSHA can protect workers from exposure to toxic substances and other health hazards. OSHA has been authorized to

*The National Institute for Occupational Safety and Health.

promulgate three different types of health and safety standards:

1. Between 1971 and 1973, OSHA could adopt national consensus standards, developed by non-governmental groups.[18]

2. Whenever OSHA determines that employees are exposed to "grave danger" due to exposure to toxic substances or harmful physical agents, the agency can immediately issue temporary emergency standards.[19]

3. Whenever OSHA receives substantial evidence[20] in a rulemaking proceeding demonstrating the need for rules protecting workers from a workplace hazard, the agency can issue permanent standards.[21]

All three types of standards can prescribe broad forms of protections, e.g., exposure limits, monitoring systems, engineering controls, technological procedures, protective equipment, medical examinations, warning labels and other work practices.[22] If OSHA promulgates standards dealing with toxic substances or harmful physical agents, the Act requires the agency to "set the standard which most adequately assures to the extent feasible...that no employee will suffer material impairment of health or functional capacity."[23]

Unfortunately, OSHA has failed to exercise its statutory mandate to shield employees from workplace health hazards. In May 1971, OSHA adopted national consensus standards setting exposure levels for about 400 toxic substances or groups of substances.[24] Despite the fact that OSHA and NIOSH officials have since acknowledged that many of the consensus standards fail to adequately protect employees,[25] OSHA has taken little action to strengthen those provisions. Moreover, since 1971, OSHA has made meager efforts to promulgate emergency or permanent standards for additional toxic substances.

As of October 1978, OSHA had established permanent standards for only 22 toxic substances.* Five of those standards were issued within the past year (see Table II). At this rate

*Prior to issuing the 22 permanent standards, OSHA had issued temporary emergency standards for 19 of the 22 substances. The agency has issued only one other temporary emergency standard (organophosphorous pesticides, issued in May 1973).

(21 permanent standards over a 7 year period), it will take OSHA 4,333 years to establish permanent standards for the 13,000 toxic substances which are commonly used in the workplace. Even if OSHA continues to issue permanent standards at the rate of this past year (5 per year), it will take the agency two millenia to promulgate the standards. Of course, these figures do not take into account hundreds of new substances entering the workplace each year--substances for which toxic effect information is not yet known.

Even when OSHA has had definitive evidence that a toxic substance is endangering the health and lives of workers, the agency has failed to act expeditiously to address the problem. As of July 1978, NIOSH had submitted to OSHA 82 "criteria documents" recommending permanent standards for toxic substances or harmful physical agents. To date, OSHA has issued final permanent standards for only 8 of those 82 substances.* OSHA has been in possession of the other 74 criteria documents for an average of 3-1/2 years. Some of the documents have been stalled in OSHA's bureaucracy for as long as 6-1/2 years (e.g., beryllium, carbon monoxide, hot environments). (See Table II.)

OSHA has published proposed permanent standards for only 8 of the outstanding 74 criteria documents. After receiving the criteria documents, OSHA took an average of 2 years to publish each of these 8 proposed standards. To date, an average of 3-1/3 years has passed since each of the proposed permanent standards was published (see Table II).

Of the 74 criteria documents for which no final standard has been issued, 9 concern known carcinogens affecting an estimated 975,000 workers (see Table II). Many of the other criteria documents concern substances which have a potential for cancer and can cause other severe and irreversible health effects. In sum, OSHA has evidence that about 1 million workers are exposed to known or suspected carcinogens and

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*The other 14 permanent standards OSHA has issued were not discussed in NIOSH criteria documents.

that millions of other workers are exposed to other grave toxic substances. Yet the agency has failed to issue standards which could protect workers from these deadly hazards.

It is clear that lack of scientific knowledge is not responsible for OSHA's failure to issue urgently needed health standards. We can only suggest that OSHA's failure might be traced to lack of funds, lack of resolve or both. For the past seven years, OSHA has devoted a total of only $36.8 million, or 5.6 percent of its total appropriations to health and safety standards development.* (See Table 1.) This sum represents an average of about $5.3 million per year, or about 88 cents per worker per year. Given this level of funding and allocation of resources, OSHA will be unable to carry out its legal responsibilities in years to come. If Congress is serious about implementing the OSH Act and OSHA is serious about enforcing it, additional funding and attention must be directed to the development of health standards.

OSHA's Compliance Program

The OSH Act places primary responsibility for maintaining safe and healthful working conditions on employers.[26] To provide employers with incentives to comply with federal health and safety standards, however, the Act empowers OSHA to inspect workplaces, cite employers for violations of the Act and propose monetary--and, in some instances, criminal--penalties.[27] In theory, OSHA's compliance program should encourage employers to meet their legal obligations. In practice, however, the enforcement procedures have been extremely ineffective.

From the outset of OSHA enforcement in April 1971 to this past August, "first-time" inspections were conducted at 288,791 workplaces, or less than 6 percent of the approximately 5 million workplaces in the nation (see Table III). If OSHA continues to conduct "first-time" inspections at the same rate as the past seven years (an average of 47,570 per

*An estimate of funds solely for health standards development is not available.

year), the agency will need more than a century to inspect all the remaining workplaces. Even if OSHA ignores the less hazardous workplaces and concentrates its efforts on high-hazard industries (as it has been doing in recent years), the agency will need decades to visit the remaining workplaces even once.

One contributing factor to OSHA's low inspection rates is the lack of compliance personnel, particularly industrial hygienists. As of September 30, 1978, OSHA had 1,504 inspectors (981 for safety standards and 523 for health standards),[28] or 1 for every 3,324 workplaces. Without increased appropriations for compliance personnel, OSHA will not be able to develop an adequate enforcement program.

OSHA has not only conducted few workplace inspections, it has also shown little interest in using its statutory powers to deter health and safety violations. From 1974 to 1976, less than 2 percent of OSHA's citations were for serious violations (those involving a substantial probability that death or serious physical harm could result from a condition which the employer knows or, with the exercise of reasonable diligence, could know to exist).[29] While the percentage of serious violations increased dramatically in 1977 (15.4 percent) and in the first half of 1978 (26.2 percent) (since Dr. Eula Bingham has been directing OSHA), we believe OSHA should make even greater use of this kind of citation to protect workers from workplace hazards. (See Table III.)

Moreover, the record indicates that OSHA has consistently avoided assessing substantial penalties--even for serious violations. Between 1974 and August 1978, the average penalty proposed for a serious violation was $493--less than 50 percent of the maximum permitted by statute.* Despite OSHA's recent pronouncements that it intends to vigorously enforce the law, the average penalty proposed for a serious violation in 1977

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*The OSH Act requires the agency to assess a civil penalty of "up to $1,000" for each serious violation. It also permits the agency, at its discretion, to assess a civil penalty of "up to $1,000" for each non-serious violation. 29 U.S.C. §§666(b) and (c).

reached an all-time low of $303. As for penalties proposed for non-serious violations, OSHA's assessments have made a mockery of the Act. Between 1974 and August 1978, the average penalty proposed for a non-serious violation was $9.31--less than 1 percent of the statutory maximum. In 1977, the average penalty proposed for a non-serious violation was even lower--$5.00 (see Table III). Surely, these token penalties do not encourage employers to obey the law. On the contrary, they probably foster disrespect for OSHA and its statute.

OSHA's enforcement effort has also been compromised by the wide variation in penalties proposed in individual regions. While Region 2 (New York) assessed the highest penalty per violation in 1976 ($52.47), Regions 1 (Boston), 4 (Atlanta) and 3 (Philadelphia) recorded average penalties of $21.85, $20.06 and $5.10--no more than 41 percent, 38 percent and 9 percent of the New York average. More importantly, none of the regions assessed average penalties even approaching 10 percent of the statutory maximum of $1,000 (see Table IV).

As with any kind of government regulation, maximum compliance is achieved when there is a high probability of detection coupled with severe penalties. Unfortunately, OSHA has provided neither component. Congress has not appropriated sufficient funds for compliance staff to allow OSHA to increase the likelihood of inspection. At the same time, OSHA has, in most cases, not compensated for its low inspection rate by issuing appropriately severe penalties. The result is an enforcement effort which sanctions violations with impunity.

Even when OSHA does conduct inspections, however, workers often do not receive adequate protection. According to two 1978 reports by the General Accounting Office (GAO), OSHA's inspection program has overlooked important health and safety hazards.

In its first report, the GAO concluded that OSHA has failed to devote sufficient attention to workplaces with "high-risk health hazards."[30] For example, the report stated that between 1973 and 1976, OSHA inspectors took samples for

inorganic lead at workplaces covering only about 15,000 employees. NIOSH estimates that 783,000 million employees are exposed to this substance, which causes kidney, blood and nervous system disorders. During the same period, the report said, OSHA inspectors took samples for benzene at workplaces covering only about 2,400 workers. NIOSH estimates that 2 million employees are exposed to this substance, which causes leukemia and bone disorders. Finally, the report said, during the same period, OSHA inspectors took samples for vinyl chloride at workplaces covering only about 27,000 workers. NIOSH estimates that 2.2 million workers are exposed to this substance, which causes liver cancer.[31] The GAO also found that "inspectors frequently did not identify high-risk substances in the workplaces inspected. In addition, when these substances were identified, inspectors frequently did not take air samples to evaluate whether substance concentrations exceeded allowable levels."[32] The GAO report urged the Secretary of Labor to take "prompt, aggressive actions" to rectify these problems.[32]

In the second report, the GAO concentrated on safety inspections and concluded that "inspections do not assure workers that all hazards observed are cited as violations."[33] The report stated:

> Some worksite hazards that could cause death or serious injury were overlooked during inspections. OSHA and the States need to improve their control over inspections to insure that serious hazards are identified and cited....
>
> Some serious hazards were not being cited, and probably not corrected, because compliance officers were unaware of the applicability of some standards and believed others were not enforceable. Although OSHA is aware of these problems, it has not acted to solve them. (emphasis added)[34]

In addition to these shortcomings, the GAO noted that OSHA inspectors often classified serious violations as non-serious "because of varied and inconsistent interpretations of the term 'serious.'" As a result, the report stated, follow-up inspections--which are only required by law in the case of

"serious violations"--were often not conducted.[35] Also, the report said, "citations for serious hazards were withdrawn or modified in some cases without valid justification," and employers were "routinely" granted additional time to correct serious hazards even though OSHA had not determined, as required by law, that the employers tried in good faith to correct the hazards.[36]

The two GAO reports provide powerful evidence that OSHA has failed to "assure, so far as possible every working man and woman...safe and healthful working conditions." We respectfully request that the full text of the GAO reports be entered into the record of this proceeding.

The OSH Review Commission

OSHA is not the only administrative body responsible for the weakness of the Occupational Safety and Health Act. The Occupational Safety and Health Review Commission, a quasi-judicial body empowered to adjudicate contested OSHA citations, has also done its part to undermine the cause of workplace safety and health.

The Review Commission is a creature of the congressional compromise which yielded the Occupational Safety and Health Act of 1970 in the last days of the Ninety-First Congress. The sponsors of the Commission argued that it would provide an impartial review of the Secretary of Labor's enforcement actions and that it would perform its task more efficiently and expeditiously than the Labor Department. However, the sponsors of the Commission were never secretive about their true intentions. They said they wanted an agency that was acceptable to the business community, or, as Senator Javits phrased it, an agency which would give business a "measure of real reassurance." Senator Williams doubted that the Commission would provide any significant savings of time, and Senator Harris warned that the Commission might promote "unnecessary foot-dragging, evasion and indecision."[37] The record of the Commission demonstrates that their doubts and

fears were well-founded.

As of October 19, 1978, the three-judge Review Commission had 386 cases pending on its docket. Although the Commission's rules permit workers to initiate and participate in Commission cases under certain circumstances, 97 percent of the cases pending were brought by management.[38*] Of the total 386 cases, 21 were interlocutory appeals from administrative hearings, 361 were on appeal from administrative hearings and 4 were on remand from federal circuit courts. On the average, the interlocutory cases had been awaiting final decision for one year, the appeal cases for 2-1/4 years and the remanded cases for 4 years. Of the cases on appeal from an administrative law judge decision, the average case took about 1 year to be decided by the judge and had been pending before the Review Commission for 1-1/4 years. Two of those cases had been awaiting a final decision at the Commission for about 5 years. (B.F. Goodrich, No. 2038 and CF&I Steel Corporation, No. 5619.) Another case had been undecided for 6-1/2 years. (Butler Lime & Cement, No. 855.) (See Table V.)

These time delays are not mere statistics. They can have a real and practical effect upon workers' health and safety. An employer is not required to abate a hazard until the Review Commission proceedings are final, so every day of delay by an administrative law judge or a Review Commission member is an added day of risk for individual workers. Simply put, the lazy pace of the bureaucracy can have devastating consequences for workers and their families.

Proposed OSHA Amendments

Despite the fact that OSHA and the Review Commission have failed to enforce federal health and safety laws, corporate

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*One of the main reasons workers have not become involved in Commission proceedings is that the Commission's rules are extremely complex. To help workers better understand those rules, we published a handbook in 1975 entitled Winning at the Occupational Safety and Health Review Commission (available through the Health Research Group publications department).

lobbyists have made incessant attempts to weaken the Act with a long list of amendments. In the most recent flurry of legislative activity, the corporatists, led by Senators Dewey Bartlett (R-Okla), J. Bennett Johnston (D-La) and Robert Dole (R-Kan) tried to undermine the Act's coverage, standard-setting authority and enforcement procedures.* Thankfully, two of the three measures were defeated. Following is a brief review of the issues raised by the three proposed amendments.

In a clever procedural maneuver designed to sidestep this subcommittee, Senator Bartlett proposed last session an unprinted floor amendment to H.R. 11445, a bill to amend the Small Business Act. The amendment would have exempted from OSHA coverage all employers who have 10 or fewer full-time employees and whose businesses fall into broad industrial categories with average injury/illness rates of seven percent per year. We strongly opposed this measure for reasons outlined in a Wasington Post article attached hereto as Appendix B. The amendment was rejected in conference.

We strongly urge this subcommittee to oppose any similar small business exemptions in the future. More than 11 million workers are employed in 3.3 million small businesses (10 or fewer employees), representing 79 percent of all worksites covered by OSHA.[39] The employees of these businesses face many of the same hazards as workers at huge industrial centers. In fact, since many small business employees do not enjoy union representation, they often face particularly hazardous working conditions. The OSH Act was enacted to ensure safe and healthful conditions for "every working man and woman in the Nation" (emphasis added). There can be no justification for an exemption which says one person's life is worth less than another's simply because that person works at a small business.

The second OSHA amendment considered this past session

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*A number of other anti-OSHA amendments--including one to exempt the seafood canning packing and processing industry from certain sections of the Act--were offered, but withdrawn last session.

was a measure sponsored by Senator Johnston which would have postponed enforcement of OSHA's permanent standard for cotton dust. The amendment, tacked onto the Labor-HEW Appropriations Bill (H.R. 12929), would have denied funds for inspections and other compliance actions mandated by the standard. Like the Bartlett Amendment, this measure was defeated in conference.

If passed, the Johnston amendment would have represented a grave precedent for OSHA and all working Americans. When Congress created OSHA, it delegated authority to an administrative agency to develop the scientific, economic and technological expertise necessary to craft health and safety standards. To assure that the standard-setting process was fair, Congress provided for federal court review of the standards.[40] Despite this statutory mechanism, Senator Johnston and a majority of the Senate was prepared to exercise an impetuous legislative veto over the cotton dust standard and, thereby, deny protection to 800,000 potential victims of byssinosis. Surely, OSHA and the federal courts--with the aid of 105,000 pages of medical, scientific and economic evidence--was better equipped to judge the legality and propriety of the cotton dust standard than a legislative body which had not held so much as one day of hearings. We urge this subcommittee to strongly oppose any similar attempts in the future to undermine the orderly legal processes of the OSH Act by second-guessing OSHA's standards decisions.

The final amendment considered this past session was a measure sponsored by Senator Dole to exempt employers with ten or fewer employees from civil penalties for non-serious violations of the OSH Act if those employers (1) had a consultant examine the hazards cited and (2) made or were "in the process of making" a "reasonable good effort" to eliminate those hazards. This unprinted amendment, also offered without the benefit of hearings, was approved as part of the 1979 Labor-HEW appropriations bill.

This measure contravenes the fundamental policy of the OSH Act: that employers have an obligation to furnish employees

with safe and healthful workplaces. The amendment removes the chief incentive small business employers now have to obey the Act and permits those employers to violate the law with impunity. In addition, the amendment is unnecessary. Section 17(j) of the OSH Act already requires the OSH Review Commission to consider employer good faith in deciding penalties, and OSHA's regulations (29 CFR 1908.6) state that a consultant's report may be used to determine an employer's good faith for the purpose of deciding penalties. For these reasons, we strongly urge this subcommittee to use its power to remove this amendment next year and to oppose similar exemptions from civil penalties in the future.

All three of these amendments represent the latest attempts by corporate interests to gut the OSH Act entirely. The measures were not designed to merely "streamline" the law. Rather, they were fashioned as part of a continuing campaign to undo the work of the Ninety-First Congress. Hopefully, this subcommittee will stand up to these efforts in the future and staunchly defend the rights of workers. There can be no room for legislative compromises when life and limb are at stake.

The Willow Island, W. Va. Disaster

On April 27, 1978, 51 construction workers died when a scaffold collapsed at a construction site in Willow Island, West Virginia. Two weeks after that accident occurred, our organization released a 31-page report on the circumstances surrounding the disaster. Since this subcommittee has taken testimony concerning the Willow Island disaster during this proceeding, we have attached a copy of our report to this submission. We have also attached testimony concerning our report delivered by Robert B. Stulberg before the U.S. House Subcommittee on Compensation, Health and Safety on August 1, 1978. (See Appendix C.)

Conclusion

Although seven and one-half years have passed since the Occupational Safety and Health Act of 1970 took effect, tens of millions of working Americans continue to face daily crises in their workplaces. Scientific studies and statistical reports confirm that workers in hundreds of occupations are exposed to deadly workplace hazards. As one columnist recently observed in the Washington Post, "the sweatshops of the 19th century [are] becoming the cancer shops of the 20th."[41]

Yet, in the face of this widespread domestic violence, Congress and the agency it created to tackle the problem have failed to devote the energy or funds needed to deal with the crisis. At the same time, corporate interests, intent on maximizing profits without regard for their workers' lives, have spent fortunes to throttle the already weak federal efforts.

If Congress truly desires to protect American workers from occupational injury, illness and death, it must assure that the Occupational Safety and Health Act is enforced. It must increase OSHA's appropriations, urge OSHA to exercise its authority and resist political pressures from those who would trade financial gain for human loss. Eight years ago, the Congress made a promise to 60 million working Americans. It is time that the promise be kept.

Footnotes

1. U.S. Congress, Senate, Committee on Labor and Public Welfare, Testimony of Dr. Sidney Wolfe, M.D., Health Research Group, July 27, 1972.

2. U.S. Congress, Senate, Committee on Labor and Public Welfare, Subcommittee on Labor, Testimony of Bertram Cottine, Esq., Health Research Group, August 1974.

3. President's Report on Occupational Safety and Health, Commerce Clearing House ed. (May 22, 1972), p. 111.

4. Id.

5. National Safety Council, Accident Facts: 1978 Edition, National Safety Council (1978), p. 3.

6. U.S. Department of Labor, Bureau of Labor Statistics, BLS Recordable Occupational Injury, Illness and Lost Workday Incidence Rates for Selected Industries, 1976, published in Accident Facts: 1978 Edition, National Safety Council (1978), p. 31.

7. Id.

8. U.S. Department of Health, Education and Welfare, National Cancer Institute, Draft Summary Report on the Incidence of Cancer from Occupational Factors, published in Bureau of National Affairs, Occupational Safety and Health Reporter, Vol. 8, No. 16 (September 14, 1978), p. 476-477. (See Appendix A for full text of report.)

9. Id.

10. U.S. Comptroller General, Report to the Congress, Delays In Setting Workplace Standards for Cancer-Causing And Other Dangerous Substances, HRD-77-71 (May 1977), p. 9.

11. Id.

12. Id.

13. U.S. Department of Health, Education and Welfare, National Institute for Occupational Safety and Health, Technical Information from NIOSH (undated press release on National Occupational Hazard Survey, Vol. III), p. 1.

14. Supra. at p. 2.

15. U.S. Department of Health, Education and Welfare, National Institute for Occupational Safety and Health, National Occupational Hazard Survey, Vol. III, p. 626.

16. Supra. at p. 642.

17. Supra. at p. 634.

18. 29 U.S.C. §655(a).

19. 29 U.S.C. §655(c).

20. 29 U.S.C. §655(f).

21. 29 U.S.C. §655(b).

22. 29 U.S.C. §655(b)(7).

23. 29 U.S.C. §655(b)(5).

24. See footnote 10, pp. 10-11.

25. Id.

26. 29 U.S.C. §654(a).

27. 29 U.S.C. §§657, 658, 666.

28. U.S. Department of Labor, Occupational Safety and Health Administration, Office of Public Affairs (September 30, 1978).

29. 29 U.S.C. §666(j).

30. U.S. General Accounting Office, Report to the Congress by the Comptroller General of the United States, Sporadic Workplace Inspections for Lethal and Other Serious Health Hazards, HRD-77-143 (April 5, 1978), p. 12.

31. Supra. at p. 11.

32. Supra. at p. 35.

33. U.S. General Accounting Office, Report to the Congress by the Comptroller General of the United States, Workplace Inspection Program Weak In Detecting And Correcting Serious Hazards (May 19, 1978), p. 4.

34. Supra. at p. 13.

35. Supra. at p. 25.

36. Supra. at p. 36.

37. Legislative History of the Occupational Safety and Health Act of 1970 (S. 2193, P.C. 91-596), pp. 446, 462-479.

38. U.S. Occupational Safety and Health Review Commission, Office of Public Information (October 30, 1978).

39. U.S. Department of Labor, Occupational Safety and Health Administration, The Bartlett Amendment (undated), p. 1.

40. 29 U.S.C. §655(f).

41. "Industry's Assault on Workplace Safety," Colman McCarthy, Washington Post, September 19, 1978.

TABLE 1: OSHA BUDGETARY DATA

Fiscal Year	Total Funds (millions)	Standards Office Funds (millions)	Percent of Total
1972	$36.5	$2.2	6
1973	69.4	3.0	4
1974	70.4	4.4	6
1975	102.3	4.8	5
1976	109.8[a]	6.7[b]	6
1977	130.3	10.9[b]	8
1978	139.1	4.8[c]	3
1979	171.2	---[d]	--[d]
TOTAL (excluding 1979)	$657.8	$36.8	5.6

a. Funds for transition quarter not included.

b. Large portions of the increase in funds for FY 1976 and FY 1977 were for inflationary impact evaluations required by Executive Order 11821.

c. Of this total, $1.85 million was for development of safety standards and $2.96 million was for development of health standards. A breakdown of health and safety expenditures is not available for earlier years.

d. FY 1979 standards budget not available.

Sources:

U.S. Office of Comptroller General, Report to the Congress: Delays in Setting Workplace Standards for Cancer-Causing And Other Dangerous Substances, HRD-77-71 (May 10, 1977), p. 5.

Bureau of National Affairs, Occupational Safety and Health Reporter, Vol. 8, No. 21 (October 19, 1978), p. 668.

U.S. Department of Labor, Occupational Safety and Health Administration, Office of Public Information (October 23, 1978).

TABLE II: NIOSH CRITERIA DOCUMENTS
FOR OCCUPATIONAL HEALTH STANDARDS
(July 1978)

SUBSTANCE	TRANSMITTED TO OSHA[a]	WORKERS AT RISK[b]	NATURE OF HEALTH HAZARD[a]	PROPOSED STANDARD[c]	FINAL STANDARD[c]
Acetylene	7/76	1,700,000	indirect asphyxia	NO	NO
Acrylamide	10/76	20,000	skin, eye, nervous system effects	NO	NO
*Acrylonitrile	9/77	125,000	lung and bowel cancer	YES	YES 10/78
Alkanes	3/77	2,800,000	skin and nervous system effects	NO	NO
Allyl Chloride	9/76	5,000	liver, kidney, lung effects	NO	NO
Ammonia	7/74	500,000	airway irritation	YES 11/75	NO
*Arsenic, Inorganic	1/74 revised 6/75	1,500,000	dermatitis, lung and lymphatic cancer	YES	YES 5/78
*Asbestos	1/72 revised 12/76	90,000[d]	asbestosis, lung cancer	YES	YES 6/72
Asphalt Fumes	9/77	500,000	eye and respiratory irritation	NO	NO

SUBSTANCE	TRANSMITTED TO OSHA	WORKERS AT RISK	NATURE OF HEALTH HAZARD	PROPOSED STANDARD	FINAL STANDARD
*Benzene	7/74 revised 7/77	2,000,000	blood changes including leukemia	YES	YES 12/10/78
Benzoyl Peroxide	6/77	25,000	airway and eye irritation, skin effects	NO	NO
*Beryllium	6/72 revised 8/77	26,500	lung cancer	YES 10/75	NO
Boron Trifluoride	12/76	50,000	respiratory system effects	NO	NO
Cadmium	8/76	100,000	lung and kidney effects	NO	NO
Carbaryl	9/76	100,000	nervous and reproductive system effects	NO	NO
Carbon Dioxide	8/76	2,000,000	respiratory effects	NO	NO
Carbon Disulfide	5/77	20,000	heart, nervous and reproductive system effects	NO	NO
Carbon Monoxide	8/72	no estimate	heart effects	NO	NO
*Carbon Tetrachloride	12/75 revised 6/76	160,000	liver cancer	NO	NO

SUBSTANCE	TRANSMITTED TO OSHA	WORKERS AT RISK	NATURE OF HEALTH HAZARD	PROPOSED STANDARD	FINAL STANDARD
Chlorine	5/76	15,000	eye, airway irritation	NO	NO
Chloroform	9/74 revised 6/76	80,000	liver or kidney tumors and central nervous system effects	NO	NO
Chloroprene	8/77	2,500	reproductive effects and potential for cancer	NO	NO
Chromic Acid	7/73	15,000	nasal ulceration	YES 1/17/74	NO
*Chromium (IV)	12/75	175,000	lung cancer, skin ulcers, lung irritation	NO	NO
*Coal Tar Products	9/77	145,000	lung and skin cancer	NO	NO
*Coke Oven Emissions	2/73	10,000	lung cancer	YES	YES 10/76
Cotton Dust	9/74	800,000	pulmonary disease (byssinosis)	YES	YES 6/78
Cresol	2/78	11,000	skin, lung, kidney and pancreas effects	NO	NO

SUBSTANCE	TRANSMITTED TO OSHA	WORKERS AT RISK	NATURE OF HEALTH HAZARD	PROPOSED STANDARD	FINAL STANDARD
Cyanide, Hydrogen and Cyanide Salts	10/76	21,000	thyroid, blood, respiratory system effects	NO	NO
Decomposition Products of Fluorocarbon	9/77	5,000	lung effects, polymer fume fever	NO	NO
Dibromochloropropane (DBCP)	9/77	2,000-3,000	sterility, renal and liver effects	YES	YES 3/78
Dinitro-Ortho-Cresol	2/78	3,000	central nervous system and metabolic effects	NO	NO
*Dioxane	9/77	100,000	liver and kidney effects, cancer	NO	NO
Epichlorohydrin	9/76	50,000	skin, kidney, liver and respiratory system effects	NO	NO
Ethylene Dibromide	8/77	660,000	damage to skin, eyes, heart, liver, spleen, respiratory and central nervous systems; potential for cancer and mutagenesis	NO	NO
Ethylene Dichloride	3/76	18,000	nervous system, respiratory, heart, liver effects	NO	NO

SUBSTANCE	TRANSMITTED TO OSHA	WORKERS AT RISK	NATURE OF HEALTH HAZARD	PROPOSED STANDARD	FINAL STANDARD
Fibrous Glass	4/77	200,000	eye and skin and airway effects	NO	NO
Fluorides, Inorganic	6/75	350,000	kidney and bone effects	NO	NO
Formaldehyde	12/76	8,000	irritation, lung effects	NO	NO
Glycidyl Ethers	6/78	118,000	skin, mucous membrane effects, sensitization potential, tumorigen, mutagen	NO	NO
Hot Environments	6/72	no estimate	heat stress	NO	NO
*Hydrazines	6/78	106,500	liver, blood, eye, skin effects, cancer	NO	NO
Hydrogen Fluoride	3/76	22,000	skin, eye, airway irritation, bone effects	NO	NO
Hydrogen Sulfide	5/77	125,000	irritation, severe acute effects, nervous and respiratory systems	NO	NO
Hydroquinone	4/78	250,000	eye and skin effects	NO	NO

SUBSTANCE	TRANSMITTED TO OSHA	WORKERS AT RISK	NATURE OF HEALTH HAZARD	PROPOSED STANDARD	FINAL STANDARD
Isopropyl Alcohol	3/76	141,000	mucous membrane irritation, possible cancer threat	NO	NO
*Kepone	1/76	600[e]	nervous system effects, liver cancer	NO	NO
Ketones	6/78	10,549,000	irritation; liver, kidney and nervous system effects	NO	NO
Lead, Inorganic	1/73 revised 3/77	783,000	kidney, blood and nervous system effects	YES 10/3/75	NO
Malathion	7/76	75,000	nervous system effects	NO	NO
Mercury, Inorganic	1/73	150,000	central nervous system and mental effects	NO	NO
Methyl Alcohol	3/76	175,000	blindness, metabolic acidosis	NO	NO
Methyl Parathion	9/76	150,000	nervous system effects	NO	NO
Methylene Chloride	3/76	70,000	central nervous system effects, carbon monoxide toxicity	NO	NO

SUBSTANCE	TRANSMITTED TO OSHA	WORKERS AT RISK	NATURE OF HEALTH HAZARD	PROPOSED STANDARD	FINAL STANDARD
Nickel, Inorganic and Compounds	5/77	250,000	skin effects, lung and nasal cancer	NO	NO
Nitric Acid	3/76	27,000	dental erosion, nasal, lung irritation	NO	NO
Nitrogen, Oxides	3/76	1,500,000	airway and blood effects	NO	NO
Nitroglycerin: Ethylene Glycol Dinitrate	6/78	8,000	circulatory system effects	NO	NO
Noise	8/72	no estimate	hearing damage	YES 10/24/74	NO
Organotin Compounds	11/76	30,000	eye, skin, liver, nervous system, heart effects	NO	NO
Parathion	6/76	250,000	nervous system effects	NO	NO
Phenol	6/76	10,000	skin, eye, central nervous system, liver, and kidney effects	NO	NO
Phosgene	2/76	10,000	airway effects	NO	NO

SUBSTANCE	TRANSMITTED TO OSHA	WORKERS AT RISK	NATURE OF HEALTH HAZARD	PROPOSED STANDARD	FINAL STANDARD
*Polychlorinated Biphenyls	9/77	12,000	cancer, skin, liver, and reproductive effects	NO	NO
Refined Petroleum Solvent	7/77	1,046,000	skin, lung, and nerve irritation	NO	NO
Silica, Crystalline	11/74	1,200,000	chronic lung disease (silicosis)	NO	NO
Sodium Hydroxide	9/75	150,000	airway irritation	NO	NO
Sulfur Dioxide	2/75 revised 5/77	500,000	respiratory effects	YES 11/75	NO
Sulfuric Acid	6/74	200,000	pulmonary irritation	NO	NO
1,1,2,2-Tetrachloroethane	12/76	5,000	liver, gastrointestinal and nervous system effects	NO	NO
Tetrachloroethylene	7/76	275,000	nervous system, heart, respiratory, liver effects	NO	NO
Toluene	7/73	100,000	central nervous system depressant	YES 10/75	NO
Toluene Diisocyanate	7/73	40,000	airway effects	NO	NO

SUBSTANCE	TRANSMITTED TO OSHA	WORKERS AT RISK	NATURE OF HEALTH HAZARD	PROPOSED STANDARD	FINAL STANDARD
1,1,1-Trichloroethane	7/76	2,917,951[e]	nervous system, liver, and heart effects	NO	NO
Trichloroethylene	7/73	200,000	central nervous system depressant	YES 10/75	NO
Tungsten and Cemented Tungsten Carbide	9/77	30,000	lung and skin effects	NO	NO
Ultraviolet Radiation	12/72	320,000	skin and eye effects	NO	NO
Vanadium	8/77	174,000	eye, skin, and lung effects	NO	NO
*Vinyl Chloride	11/74	2,267,465[e]	liver cancer	YES	YES 10/74
Waste Anesthetic Gases and Vapors	3/77	214,000	reproductive effects and audiovisual performance decrements	NO	NO
Xylene	5/75	140,000	central nervous system depressant, airway irritation	NO	NO
Zinc Oxide	10/75	50,000	metal fume fever	NO	NO

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SOURCES:

[a]U.S. Department of Health, Education and Welfare, National Institute for Occupational Safety and Health, Summary of NIOSH Recommendations for Occupational Health Standards, July 1978.

[b]U.S. Department of Health, Education and Welfare, National Institute for Occupational Safety and Health, Selected Criteria Documents. 1972-1978.

[c]U.S. Department of Labor, Occupational Safety and Health Administration, Directorate of Health Standards Programs, Status of Standards Projects (October 2, 1978).

[d]This figure does not include persons exposed to asbestos during manufacture of products involving previously manufactured components containing asbestos.

[e]U.S. Department of Health, Education and Welfare, National Institute for Occupational Safety and Health, Public Information Office (October 27, 1978).

*Known carcinogen.

TABLE III: NATIONAL OSHA COMPLIANCE ACTIVITY
April 1971 - August 1978

	Apr.-Dec. 1971	1972	1973	1974
Establishments Inspected	14,500	36,100	67,153	80,210
% Establishments Inspected*	.29%	.72%	1.34%	1.60%
First-Time Inspections	13,300	13,500	57,564	54,013
Violations	35,800	125,400	224,786	308,847
Proposed Penalties	$737,500	$3,121,000	$6,059,000	$7,336,707
Average Penalty Per Violation	$20.60	$24.89	$26.95	$23.75
Serious Violations				3,553
% Serious Violations				1.2%
Proposed Serious Penalties				$2,069,205
Average Penalty Per Serious Violation				$582
Non-Serious Violations				304,129
% Non-Serious Violations				98.5%
Proposed Non-Serious Penalties				$4,054,870
Average Penalty Per Non-Serious Violation				$13.33
Citations Issued	9,500	23,900	43,099	59,002
Contested Citations	358	1,610	3,901	2,542
% Contested Citations	3.8%	6.7%	9.1%	4.4%

*Based on total establishments = 5,000,000 (OSHA Public Information Office)

TABLE III (continued)

	1975	1976	1977	Jan.-Aug. 1978
Establishments Inspected	88,801	76,671	60,943	36,363
% Establishments Inspected*	1.77%	1.5%	1.2%	.72%
First-Time Inspections	53,189	40,946	24,213	14,066
Violations	361,750	311,097	165,300	84,848
Proposed Penalties	$9,542,181	$11,646,703	$11,296,918	$13,277,120
Average Penalty Per Violation	$26.37	$37.43	$68.34	$156.48
Serious Violations	5,598	9,357	25,522	22,236
% Serious Violations	1.5%	3.0%	15.4%	26.2%
Proposed Serious Penalties	$3,389,199	$5,801,545	$7,746,047	$7,907,595
Average Penalty Per Serious Violation	$605	$620	$303	$355
Non-Serious Violations	352,635	296,586	134,989	59,344
% Non-Serious Violations	97.4%	95.3%	81.6%	66.4%
Proposed Non-Serious Penalties	$4,545,512	$3,574,208	$675,126	$194,949
Average Penalty Per Non-Serious Violation	$12.89	$12.05	$5.00	$3.28
Citations Issued	66,159	61,879	45,985	27,180
Contested Citations	4,056	5,109	4,296	3,641
% Contested Citations	6.1%	8.2%	9.3%	13.3%

Sources:

U.S. Department of Labor, Occupational Safety and Health Administration, President's Reports on Occupational Safety and Health for 1971-1973;
Cumulative Data on Job Safety and Health Inspections: Report on June 1974 Compliance Activity;
Monthly Inspection Activity Data for the Months of December 1975, December 1976, December 1977, August 1978.

TABLE IV: OSHA COMPLIANCE ACTIVITY BY REGION, 1976

REGION	TOTAL INSPECTIONS	TOTAL VIOLATIONS	WILLFUL, REPEAT VIOLATIONS	SERIOUS VIOLATIONS	NONSERIOUS VIOLATIONS	TOTAL PROPOSED PENALTIES (ALL VIOLATIONS)	AVERAGE PENALTY PER VIOLATION
Boston (I)	6,061	37,682	512	407	36,763	$823,671	$21.85
New York (II)	17,129	62,794	579	2,831	59,384	$3,295,191	$52.47
Philadelphia (III)	7,558	28,275	770	1,445	26,060	$2,123,523	$5.10
Atlanta (IV)	13,823	58,259	686	637	55,613	$1,168,781	$20.06
Chicago (V)	14,566	67,810	1,327	1,644	64,819	$2,387,197	$35.20
Dallas (VI)	9,973	33,251	621	1,560	31,251	$1,706,016	$51.30
Kansas City (VII)	4,788	13,793	308	510	12,975	$618,306	$44.82
Denver (VIII)	1,377	4,760	76	129	4,555	$197,049	$41.39
San Francisco (IX)	424	1,209	8	18	1,183	$32,795	$27.12
Seattle (X)	935	3,955	245	100	3,610	$156,101	$39.47
NATIONAL[a]	76,634	325,039	5,132	9,281	296,213	$12,508,630	$33.87

[a]The totals in this Table are slightly different than those covering the same period in Table III. OSHA officials did not offer an explanation for the slight discrepancy.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, President's Report on Occupational Safety and Health for 1976 (draft).

TABLE V: OSH REVIEW COMMISSION PENDING CASES
October 19, 1978

	Cases	Average Months From Notice of Contest	Average Months From Directed for Review	Average Months Before ALJ
Cases on remand from circuit courts	4	50.25		
Cases on interlocutory appeal	21	13.90		
Cases on appeal from ALJ decision	361	27.12	14.3	12.7
TOTAL	386			

Source: U.S. Occupational Safety and Health Review Commission, Office of Executive Secretary (October 19, 1978).

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

JAN 26 1979

Honorable Harrison A. Williams
Chairman
Subcommittee on Labor
Committee on Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your November 28, 1978 letter in which you requested my response to a number of questions resulting from the October 3, 1978 oversight hearings before your Subcommittee concerning the Occupational Safety and Health Administration. I apologize for the delay in response, and hope that my remarks are helpful to your Committee's deliberations.

Thank you for your continued interest in and support of our efforts to protect the safety and health of American workers.

Sincerely,

Ray

Secretary of Labor

Enclosures

QUESTION: There has been considerable controversy about first instance penalties. Some claim that they only foster antagonism between OSHA and employers, and others claim that first instance penalties are an essential inducement to voluntary compliance.

Do you view first instance penalties as necessary to the enforcement mechanism?

ANSWER: First instance penalties serve as the principal incentive for employers to comply voluntarily with OSHA standards. If an employer does not face monetary sanctions for violations cited during an initial inspection, there will be very little incentive to eliminate workplace hazards until directed to do so by an OSHA inspector. Such inspections occur infrequently -- if at all -- in any given worksite. Consequently, in the the absence of first instance penalties, the entire preventive goal of the Act would be forfeited.

Federal and State enforcement personnel inspect about 220,000 of the Nation's 4.2 million worksites every year. Voluntary compliance must therefore be the norm for industry rather than the exception. Without first instance penalties, the most important incentive for voluntary compliance would be lost, and self-enforcement would be curtailed.

No matter what priority is given to voluntary compliance, however, the relatively small number of employers who operate recklessly must be dealt with firmly and effectively. In these cases, first instance sanctions are needed to establish the credibility of the agency through the authority to propose a monetary penalty at the first instance of a hazard.

Further, employers who are neither unscrupulous nor unconcerned about workers' health and safety cannot afford to invest in abatement measures and remain competitive unless all employers are compelled to invest in similar measures. The economic disequilibrium created when some employers voluntarily comply with OSHA while others do not is especially evident where there is a long period between exposure to a hazard and manifestation of an occupational illness. In such cases, an employer seldom has to pay for the consequences of neglect. Thus, there is no economic incentive to invest in abatement measures until an inspection is conducted -- other than the threat of a first instance penalty imposed by OSHA.

In a Supreme Court ruling on the Federal Coal Mine Health and Safety Act of 1969 (which preceded the OSH Act), the Court noted that "... monetary penalties have long served a remedial rather than a punitive function ... the Act's penalties are not excessive, especially in view of the remedial functions obviously served by improved industrial practices that help to prevent future deaths." Since first instance penalties help to prevent accidents and illnesses by encouraging employers to comply with OSHA even in the absence of inspections, these penalties are crucial to the preventive function of the Act.

It should be noted that, while OSHA firmly believes in the preventive function served by first-instance penalties, these sanctions are used with a great deal of discretion to insure that they are appropriate. We believe that the criteria contained in section 17(j) of the Act for proposing penalties -- namely, size of business, gravity of the hazard, good faith of the employer and history of previous violations -- provides for flexible, yet equitable, enforcement. It is essential that the agency have this latitude in order to insure that penalties assessed are appropriate in every case.

QUESTION: Is there any information available which would measure the effect of the Labor-HEW Appropriation restrictions on overall employer compliance during the past two years? As you are aware, this legislation precludes first instance penalties where there are fewer than ten non-serious, non-willful, non-repeat violations.

ANSWER: Although recent statistics indicate that more of the firms which have been inspected by OSHA have been found in compliance, we are unable to say that this trend is a result of the Labor-HEW appropriations restriction on OSHA's proposing penalties. Rather, we believe that this trend may result from a number of factors, such as more education and training activities and a heightened awareness of the importance of the elimination of safety and health hazards. The agency has also increased use of de minimis or oral notification of employers in those cases where violations are not directly related to worker safety and health. Consequently, we are not issuing "nitpicking" citations or assessing penalties in these situations. It is therefore difficult to sort out the specific impact of this penalty restriction on compliance, given that a number of factors affect the worksite.

QUESTION: A constant complaint is that the enforcement officers are just not skilled or trained enough to effectively enforce the Act. We hear, for example, that an inspector with training in one field often performs inspections of plants engaged in totally unrelated operations. Another problem is that health inspectors know little about safety enforcement, and that safety inspectors cannot perform health inspections.

Do you view these as problems? What steps are you taking to improve the recruiting, training, and retention of inspection personnel?

ANSWER: It is important that the agency's compliance personnel be well trained in order to deal knowledgeably with workplace hazards throughout industry. All compliance personnel are knowledgeable in hazards that are common throughout industry, such as fire and electrical hazards. When a new standard is promulgated, compliance personnel are selected for special training in the standard's requirements as well as in the processes used by the industries where the standard will be applied. Specialized training has also been provided for small industrial processes, such as copper smelting and foundries. Cross-training is provided so that both industrial hygienists and safety compliance officers will be able to identify hazards in each field. In the construction and maritime areas, OSHA has a full complement of specialists. OSHA compliance personnel are skilled and well trained. They understand industrial processes and recognize hazards well enough to enforce the Act effectively.

Under the classification system of the Civil Service Commission, OSHA has three categories of compliance officers: industrial hygienist, safety engineer and safety specialist. Each category has its own minimum education and experience requirements. For the journeyman level: an industrial hygienist is required to have a four year degree in engineering, physical or natural sciences, or four years of progressive technical experience, and three years of professional industrial hygiene experience; a safety engineer is required to have a four year degree in engineering or equivalent experience and/or education; safety specialists must have 6 years of experience, 3 years of which must be specialized safety experience.

OSHA has been negotiating with the Civil Service Commission to change the qualification standards to broaden recruitment sources without diminishing the quality of candidates.

All safety and health compliance officers are required to complete a three-phase program at the OSHA Training Institute near Chicago, Illinois. The first phase of training provides basic technical courses in safety and health problems and in the development of civil law enforcement skills. Second and third phase training provide more specialized courses to build competency in areas not covered in previous studies, for example, analysis of toxic substances.

Safety officers and industrial hygienists receive cross-training. Safety officers receive basic instruction in health hazard recognition, while industrial hygienists are trained to detect obvious safety violations. The training also develops the ability of compliance personnel to communicate effectively with employers and workers.

The Institute has been recently expanded to eight classrooms, with laboratory space and a library to provide improved instruction. In addition, new audiovisual aids and laboratory equipment permit simulation of selected workplace situations and hands-on experience. Entry level compliance officers receive considerable on-the-job training, under the guidance of their seniors, and may not conduct fully independent inspections for approximately three years after they are hired.

Senior level officers receive additional training. Advanced, specialized training that OSHA is not equipped to provide at the Institute is offered through cooperative programs with the following organizations: Argonne National Laboratory, Los Alamos Scientific Laboratory, National Institute for Occupational Safety and Health, National Mine Safety and Health Academy and public and private universities.

Long-term training is provided by selecting approximately one percent of the inspection staff for one-year professional development training at universities throughout the nation. Highly specialized training programs geared to specific health and safety hazards have been increased. These include programs for: grain elevator safety, cotton dust, temporary labor camps, foundry operations, coke oven operations, tunneling, benzene and arsenic. Finally, OSHA strongly encourages certification of its industrial hygienists and safety personnel by the American Board of Industrial Hygiene and the Board of Certified Safety Specialists, respectively.

The loss of compliance personnel is most acute among industrial hygienists. We lose industrial hygienists to private industry primarily because salaries are not competitive and because some personnel are unable to adapt to the enforce-

ment role of a compliance officer. Where adequate replacements are available, the loss of industrial hygienists to private industry is not considered undesirable. In fact, demand in the private sector for industrial hygienists indicates the impact which the OSH Act has had in terms of raising employers' awareness of the necessity of protecting workers health.

To minimize this loss, OSHA has successfully negotiated with the Civil Service Commission to change the qualification standard for industrial hygienists. Appeals have also been made to the CSC to consider special salary rates for industrial hygienists currently at the GS-5 through GS-12 levels. However, the Commission has refused to look at salary issues until it can assess the impact of the revised qualification standard. OSHA is currently preparing an appeal of the CSC decision on special salary rates.

OSHA recognizes the difficulties faced by individual inspectors enforcing standards in a variety of industrial settings. No individual can be fully conversant with all phases of every industry. For this reason, OSHA is evolving ways to bring specialized information or expertise to the inspection process when it is needed. OSHA is increasing its technical support operations to provide better access to scientific and technical information. In the case of new standards, we are using teams of trained specialists to conduct inspections involving highly technical industrial processes. We are also continuing to use teams of safety and health inspectors on routine inspections of large or complex workplaces.

We should also take care not to overlook the fact that many hazards are common to a number of industries, and that OSHA safety and health inspectors are trained to look for these hazards regardless of the type of workplace in which they might occur. The sampling methods used by our industrial hygienists are also quite similar from industry to industry. However when inspectors encounter unfamiliar situations, they are instructed to seek expert advice and to acquire the information they will need to diagnose the hazard correctly.

QUESTION: What guidelines do you provide to field inspection personnel to insure the greatest possible consistency in interpretation and enforcement of the Act and its standards?

ANSWER: In order to ensure that inspection policy is consistent throughout the nation, OSHA has established and is staffing the Office of Field Coordination and the Directorate of Technical Support. There has also been a complete revision of OSHA's Directive System to combine and simplify our directions to the field staff. Specific directives on enforcement of new health standards such as acrylonitrile, arsenic, and coke ovens have been issued as part of this revision.

Further, uniform methods for scheduling programmed inspections and for involving employees and their representatives in the complete inspection process (including opening and closing conferences and informal conferences and settlements) have been formulated. Uniform guidelines have been developed for responding to emergencies such as grain elevator explosions, cooling tower collaspes or situations involving hazardous new chemicals. There is also a continuing policy for Area Directors to use uniform language when issuing citations.

There have been other initiatives to improve consistency of enforcement. In January 1978, directions and guidelines were issued for the classification of violations and proposed penalties. The OSHA Industrial Hygiene Field Operations Manual was rewritten and new Industrial Hygiene forms were developed. In addition, when the National Institute for Occupational Safety and Health issues a Health Hazard Evaluation where it is noted that exposure to a toxic substance exceeds permissible limits, the agency positively responds by disseminating the information among field personnel.

Area offices are systematically monitored by regional offices and the national office under guidelines developed by the national office. In this regard, field personnel are involved in ad hoc committees and groups for input into and understanding of guidelines and directives to insure that the field follows national office policy.

A recent initiative to insure uniformity of enforcement of the Act is the December 22, 1978, rule change which clarifies the legal action to be taken to permit the inspection of a workplace over an employer's objection. This rule change was issued in response to the U.S. Supreme Court's decision in Barlow's Inc. v. Marshall.

QUESTION: There have been fears that if an employer seeks consultation, somehow he will shortly thereafter be visited by an enforcement officer. What is done to keep the consultation and the enforcement operations apart?

ANSWER: Employers who voluntarily seek on-site consultation need assurances that their requests will not result in an OSHA inspection. Consequently, both the CFR 1908 regulations (which govern the consultation program) and operating instructions to the field have provided clear parameters to ensure separation of consultation and enforcement. The consultant and enforcement staffs are entirely separate and names of employers receiving consultation are not provided to enforcement personnel. However, in cases of high risks which pose immediate or critical danger to employees, employers are required to take timely and appropriate action to insure effective employee protection. If an employer fails to take remedial action, OSHA compliance personnel may be notified.

These requirements and all features of the consultation service are made clear to employers prior to commencement of the visit. It has been our experience that employers who request consultation are generally satisfied with the service, and in fact, take action to improve their workplaces. An employer who requests consultation is usually concerned with identifying and eliminating hazards observed by the consultant.

QUESTION: Another fear is that consultants often render bad advice, and that employers follow this advice, sometimes at considerable expense, only to find themselves in violation of the Act. Is this a real problem? What is being done to improve the quality of consultation?

ANSWER: We are aware of only a few isolated instances in which a consultant's advice or recommendations conflicted with the findings of an inspector. In none of these instances did the employer have to spend a substantial sum to make changes.

To help assure that such a situation does not develop, however, we are taking several important steps. Recently, more than 300 consultants under the section 7(c)(1) consultation program received training in criteria and procedures for classification of violations, as well as program requirements and communication techniques.

Further, in fiscal year 1979, 7(c)(1) consultants will receive upgraded training in abatement technologies and cross-training in safety and health areas. In addition, 7(c)(1) and private firm consultants are continually advised of OSHA's standards interpretations, and hazard abatement policies.

In early fiscal year 1979 a monitoring system for 7(c)(1) and private firm programs will also be implemented. The system will include monitoring of consultants' on-site performances and review of consultants reports (with business identification removed so as to insure that consultation is separate from any enforcement activity).

QUESTION: Do you think that consultants could certify an employer's operation as being in compliance with OSHA?

ANSWER: The term "certification" implies that an employer has fulfilled his legal obligation to maintain a safe and healthful workplace for a given period of time. The agency does not consider this concept of certification, whether by a consultion or an inspection, as being consistent with the OSH Act. The purpose of an inspection or a consultation is to determine whether violations exist at a given point in time; the existence of hazards at any future time is not precluded.

The workplace is a dynamic environment. Employers must constantly be alert for the existence of hazards due to the breakdown of machinery, worker turnover, or the introduction or expansion of substances or processes in the worksite. Moreover, in some environments, such as grain elevators, hazardous conditions can develop quickly. An analagous situation is a physical examination. A determination of "good health" by a physican does not guarantee that all potential health problems have been eliminated or that illness will not occur in the future.

Fulfillment of the legal obligation to maintain a safe and healthful workplace through certification is thus undesirable and could be misleading to employers and employees. The purpose of OSHA's consultation program is to assist employers in discharging their responsibilities under the Act by identifying hazards and offering abatement advice. Employers cannot assume that just because a consultation is conducted a condition is permanently alleviated or that there is no continuing duty to protect workers.

QUESTION: The Supreme Court's decision in the Barlow case requires that a warrant be based on "reasonable legislative and administrative standards" for conducting an inspection.

Could you explain the administrative standards which you now have in place for determining whether an employer will be inspected?

ANSWER: OSHA's system for scheduling inspections is divided into two separate but interdependent segments: unprogrammed inspections and programmed inspections. Unprogrammed inspections are defined as those inspections which are conducted pursuant to factors which provide specific identification of an individual establishment. They include fatality and catastrophe investigations, complaints, follow-ups, referrals, and certain special emphasis programs.

Programmed inspections, on the other hand, are those inspections which are conducted by OSHA under an administrative system based upon neutral criteria. This system takes into account the hazardous nature of the industry, based upon BLS survey data, toxic substances which may be present in an industry, the size of the establishment, the need for geographic dispersion of inspections, the impact of unprogrammed inspections, the availability of resources, and other relevant factors. The system places emphasis upon inspection of larger establishments in hazardous industries but at the same time insures broad overall coverage.

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QUESTION: In your opinion, do these procedures meet the Supreme Court's test?

ANSWER: We believe that these procedures are consistent with the Supreme Court's holding in the Barlow decision. Unprogrammed inspections are based upon specific probable cause in the form of the knowledge that a particular hazard is present at a specific establishment through a complaint, fatality or accident. Selecting workplaces for programmed inspections, as described in answer to the prior question, also satisfies the Supreme Court's requirement for an administrative system based on neutral criteria.

QUESTION: Has the Barlow decision complicated enforcement?

ANSWER: Since the Supreme Court's decision in Barlow the level of refusals of entry has risen from approximately 1 percent to 2.6 percent. Although most warrants sought have been obtained, and inspections have taken place, refusals of entry have diverted compliance and legal resources which could have been more effectively and efficently utilized.

QUESTION: How much of OSHA's enforcement activity is scheduled? How much is the result of accidents and complaints?

ANSWER: During Fiscal Year 1978, OSHA conducted 57,242 inspections. Of that number 2,058 (4%) were conducted as result of accidents, 21,495 (38%) were based on complaints and 20,252 (36%) were general schedule or programmed. The 13,437 (22%) remaining inspections were followups of previously conducted inspections where serious hazards were observed.

QUESTION: What efforts are made to direct OSHA's enforcement activity to the most hazardous workplaces? Are hazardous workplaces identified on the basis of broad industrial classifications, or does OSHA attempt to identify specific workplaces which are unusually hazardous?

ANSWER: OSHA regional and area offices have been directed to devote at least 95% of programmed efforts to high hazard safety and health inspections.

Safety inspections are prioritized according to the relationships between industries and occupationally related injuries and deaths, with more resources directed at those industries where the injury rates are highest. A Safety Inspection Planning Guide has been developed for each OSHA area office. While the Guide is based on standard industrial classification groupings, it does take into account the different industrial and geographic makeup of each office to further refine our targeting. OSHA regional and area directors have authority to further modify the Guide based on their knowledge of local conditions and workplaces.

A separate but similar Guide exists for health inspectors. Again, while using broad industrial classification as a base, the Guide considers the potential for toxic and carcinogenic substances that might be found in each industry.

As in the safety guide, the area and regional directors use their knowledge of local conditions to "fine tune" the targeting system to specific firms or workplaces they know are more hazardous.

Special programs consist of short-term special purpose projects initiated by the National Office to focus on specific hazardous situations. Examples of special emphasis programs include the Foundry Inspection Program and the National Office Grain Elevator Inspection Program. We also concentrate on enforcement of new health standards where we are aware of hazardous situations, such as coke ovens, copper smelters (inorganic arsenic exposure), and chemical plants (exposure to acrylonitrile).

In addition, complaints by workers concerning imminent dangers, serious hazards, fatalities and accidents direct our attention to individual worksites where there are specific hazardous situations.

QUESTION: What statistical information is available to OSHA to identify hazardous operations and to assist OSHA in directing enforcement activities? Is the statistical information available to OSHA generally adequate to enable OSHA to effectively target its enforcement activities? If not, what additional data do you think would be helpful?

ANSWER: OSHA uses the illness and injury rates available from the Occupational Safety and Health Survey of the Bureau of Labor Statistics to set priorities for inspections of industrial establishments. The BLS survey, while adequate for identifying which industries have the most severe safety problems, cannot be expected to pinpoint the specific establishments or operations that are most hazardous. Expanding the survey to serve such a function would add to employers' federal paperwork requirements. Also the survey is not adequate for the development of a health priority system as the illness rates from the survey are generally considered unreliable. The problem stems from the long latency period from the time of exposure to the manifestation of many occupational illnesses as well as the survey's dependence upon employers and employees to identify work-related illnesses.

OSHA's Division of Statistical Studies is using the National Occupational Hazard Survey as a source of information on the distribution of health hazards in industry. A "hazardousness index" is being developed for each industry based on the chronic disease potential of known toxic substances in the industry. These indices will be used to rank industries for inspection scheduling.

The data available to OSHA could be improved to allow the agency to more effectively target its enforcement efforts. In some states, Workers' Compensation reports are now being used as a supplemental statistical base to direct enforcement activities. Unfortunately, the reports are not uniform from state to state, frequently are unavailable to federal officials, and contain inconsistencies that make infeasible the use of such data at a national program level. Additionally, this data is reflective more of compensation laws than safety and health conditions. Studies are now being intiated to explore using this data to supplement the BLS survey to direct our field inspectors to the specific establishments having the worst safety records.

QUESTION: What steps are being taken to improve the quality of the Federal agencies' job safety and health programs?

ANSWER: The President's Interagency Task Force on Workplace Safety and Health recently recommended that Federal agency worksites be models for private sector efforts to protect workers. We have moved to strengthen our assistance to Federal agencies toward this end. A Federal agency coordinator has been appointed in each of the 10 regional offices. The coordinator is responsible for providing direct assistance to all Federal agencies in his or her area. We have designed and developed specialized courses for Federal agency safety and health personnel, offered at the OSHA Training Institute and at agency sites. We have also increased our support to Field Federal Safety and Health Councils so that these organizations can better serve the agency administrators and employees. We are also preparing suggested revisions to Executive Order 11807, Occupational Safety and Health Programs for Federal Employees, which would strengthen the program. The revised Executive Order will be submitted to OMB early in 1979 for coordination and clearance and transmittal to the President for signature.

QUESTION: What guidance is provided by the Department of Labor to other Federal agencies in the development and enforcement of Federal agency OSH programs?

What role should the Occupational Safety and Health Administration and the Department of Labor play in insuring adequate job safety and health conditions for all Federal employees?

ANSWER: The Office of Federal Agency Safety Programs (OFASP) was created within OSHA to carry out the responsibilities of the Secretary of Labor to the Federal establishment. OFASP is responsible for coordinating the Federal agencies' safety and health programs.

The Office has developed and published regulations and guidelines on which all agencies and employee representatives have had an opportunity to comment. The development of these regulations and guidelines is coordinated through the Federal Advisory Council on Occupational Safety and Health (FACOSH).

The Office also provides assistance and guidance in the interpretation of the Act, regulations and guidelines; helps agencies establish the essential elements of an occupational safety and health program; and, upon request and where deemed necessary, assists agencies in performing functions such as training, inspections and investigations which agencies cannot provide through their own personnel.

The agencies' occupational safety and health programs are evaluated by the OFASP based on the mandated requirements of the Act. Recommendations for improvements are made, where needed, to agency heads. The present OSHA and DOL role of providing assistance, consultation and evaluation service for Federal agency heads should continue. However, means of encouraging more effective compliance with regulations and procedures to parallel those in the private sector are being explored by OSHA. These ideas to strengthen the program will be reflected in our suggested revisions to Executive Order 11807.

QUESTION: How effective are the provisions of Section 11(c) of the Act in protecting workers from employment discrimination because they may have asserted their rights under the Occupational Safety and Health Act?

ANSWER: During Fiscal Year 1978 OSHA reached determinations concerning 1689 complaints filed by employees under Section 11(c) of the Act. Of this number, 602 complaint investigations resulted in an OSHA determination in favor of the complainant. A more specific breakdown follows:

Informally adjusted	18
Settled in favor of the employee	244
Legal action filed and relief obtained on behalf of the employee	14
Referred to legal section for litigation	326
	602

In the remaining 1087 complaints, the investigations resulted in either a withdrawal of the complaint by the employee or a finding that no violation of Section 11(c) could be substantiated. The breakdown is as follows:

Complaint withdrawn by the complainant	580
Dismissed by DOL	499
Litigated and lost in the District Court (appeals pending in several cases)	8
	1087

The ratio of determinations favorable to the employee (602) of the total number of determinations (1689) is about 34%. By way of comparison, in Fiscal Year 1977, of a total of 1532 determinations 1216 resulted in a finding of no violation of Section 11(c) while 316 complaints resulted in favor of the complainant (167 of which were settled and 149 were submitted for legal action). Thus, the ratio of determination favorable to the employee during FY 1977 was about 21%.

QUESTION: What procedures have been established to investigate and determine employee complaints of discrimination under Section 11(c) of the Act? Does the Department plan any changes in the procedures to ensure more prompt and effective enforcement of Section 11(c)?

ANSWER: Under the current procedures, all employee complaints which are received are assigned to an investigator. The investigator commences his investigation of the complaint as soon as possible. However, the investigation and recommendations of the investigator must be submitted to the Operations Review Office (ORO) within 45 days after the complaint is received by OSHA. The ORO determines whether or not the complaint is meritorious. If it is determined that the complaint has no merit, the ORO, in consultation with the Regional Solicitor, notifies the complainant by letter that the complaint has been dismissed. The ORO consults with the Regional Solicitor on all issues involving legal matters, novel or unusual circumstances, and possible jurisdictional issues prior to dismissing the complaint. If the ORO believes the complaint is meritorious, or if he is uncertain about the merits of the case, he refers the case file to the Regional Solicitor.

The Regional Solicitor reviews the file and makes his determination regarding the merits. If the ORO agrees with the Solicitor's recommendation that the case should be dismissed, the ORO notifies the complainant of the determination. If the ORO and the Regional Solicitor agree that the case is meritorious, the ORO notifies the complainant that an 11(c) suit will be filed in his behalf. If the ORO and the Regional Solicitor cannot agree on the disposition of the case, it is resolved in the National Office.

At the end of each dismissal letter the ORO informs the complainant that he or she may appeal the dismissal to the Deputy Assistant Secretary for OSHA who reviews it in conjunction with the Associate Solicitor for OSHA. If suit is authorized, the case is sent to the appropriate Regional Solicitor's Office. If the appeal is denied, the file is returned to the ORO who administratively closes the case.

Recognizing the national policy favoring voluntary resolution of disputes, OSHA encourages settlement efforts before large

backpay liabilities accrue and positions harden. During the investigation stage the ORO is responsibile for conducting settlement negotiations.

A series of test projects is under consideration to increase the speed of the investigation process and to increase the number of merit cases in which appropriate remedies are obtained for the complainant without recourse to the courts. A test of a screening process is already under way in the eastern half of the country. This screening process is intended to separate purely frivolous or inappropriate complaints from those requiring at least minimal investigation through a telephone interview. So far the test appears to be successful. Another project under consideration would involve conferences with the employer and the complainant. This project may be undertaken in several locations during the current fiscal year.

QUESTION: Do you think that it is the statutory mechanism for standards promulgation or the complexity of the subject matter which is the reason for the slow pace of health standards development?

ANSWER: The length of time required for health standards development results from the combination of a number of factors. The subject matter of health standards is inherently complex. Development of a proposal requires careful evaluation of epidemiological and toxicological research on the health effects of a given chemical. In addition, agency staff must research the available literature on medical surveillance, environmental monitoring, personal protective equipment and engineering controls relevant to the development of the standard.

Once the lengthy proposal development process is complete, formal statutory and administrative procedures are initiated with the publication of the proposal. At least 30 days of public comment must be provided, and the agency typically allows a substantially longer period to ensure adequate opportunity for comment. The Act also provides for informal hearings to be permitted if requested. These hearings can be quite lengthy and, in fact, a number have extended over a period of several months.

The agency must then evaluate the voluminous public comment received on health issues. Since the scientific and policy issues of health rulemakings are usually complex and difficult, a considerable amount of staff time and research is required to carefully analyze the rulemaking record and develop a final standard. The agency must assure that the preamble to the standard is sufficiently detailed to provide the public a clear and thorough understanding of the requirements of the standard and our rationale for our decisions, as well as being sufficiently detailed to meet legal challenges to the standard.

The standards development process is not completed upon the issuance of a final standard. Section 6(f) of the Act allows judicial review of a standard by petition to a Court of Appeals. This appeals process often requires substantial periods of time and the standards development process cannot be considered complete until the appeals process has been concluded.

Other factors which lengthen the rulemaking include the mandatory requirements for enviromental impact statements and economic impact analysis. While these documents are prepared concurrently with the preamble and supporting documentation

for the standard, they do require extensive development and analysis and have become major issues discussed during the rulemaking hearing, thereby affecting the length of the rulemaking process.

Notwithstanding these difficulties, the agency has significantly increased the effectiveness and productivity of OSHA's health standards-setting without sacrificing the opportunity for public participation.

For example, OSHA's proposed generic cancer policy will effectively streamline the standard-setting process for carcinogens by identifying and classifying 1500-2000 potential workplace cancer hazards, and by establishing model standards to regulate these hazards. Once promulgated, the classification criteria and model standards will be consistently applied and foreclosed from reconsideration in future regulatory activity. Promulgation of standards relating to workplace carcinogens should therefore proceed more smoothly and quickly, since issues common to all carcinogens will have been decided by the generic policy. Issues such as the relevance of animal carcinogenicity data and the priority of engineering controls over personal protective equipment will be examined and resolved in the generic policy and will not be re-examined during substance-specific rulemakings.

However, the agency has renewed its commitment to increase its health standards activity. In the last 18 months, the number of final health standards has more than doubled with the issuance of standards covering benzene, DBCP, inorganic arsenic, cotton dust, acrylonitrile and lead. OSHA has also begun to aggressively use the authority to promulgate emergency temporary standards as provided for in section 6(c)(1) of the Act. Three such standards have been issued under this administration and we will continue to use this provision when necessary.

QUESTION: There has been considerable criticism of the cotton dust standard, that it is unnecessary and unnecessarily stringent. You had weeks of hearings on this standard, and amassed a huge hearing record.

Do you think that the current standard-making procedure gives opponents, and all interested parties the opportunity to make their case?

ANSWER: Section 6(b) of the OSH Act specifies the extensive procedures which must be followed to insure that the views of all interested parties are heard, publicly recorded, and taken into account during standard-setting procedures.

An OSHA rulemaking is announced in the Federal Register and through widely distributed press announcements. Any party may then request an informal public hearing on the proposal. Hearings are open and only minor administrative steps are required of parties to be able to testify. Any party who testifies may be questioned by any other party to the rulemaking. Following the hearings, OSHA holds the record open for a reasonable period to allow potentially affected parties time to become aware of the rulemaking, analyze the proposal, and prepare comments on any relevant issue. Following the close of hearings, the presiding administrative law judge establishes a post-hearing comment period to allow for submission of additional data.

The entire record of rulemaking on which OSHA bases a final standard is publicly available in the Docket Office. Individual comments, transcripts, and exhibits are made available almost immediately after their receipt.

OSHA believes these procedures maximize the opportunity for all interested parties to make their cases and to question or comment upon the positions of other parties, including the agency. OSHA's rulemaking procedure sets no legal or administrative barrier to an individual, firm or association that wishes to have views taken into consideration in the preparation of a final standard.

After a standard is promulgated, any person who may be adversely affected may file a petition with the U.S. Court of Appeals challenging the standard's validity. Further, any employer may apply to OSHA for a temporary variance from the standard.

QUESTION: Do you think industry representatives have the opportunity, under the current procedures, to participate fully in the standards development process, say, even before proposal of the standard?

ANSWER: As a matter of administrative policy, OSHA takes a number of steps beyond those required by the Act to assure meaningful industry involvement in the process of regulating a workplace hazard. Advance notice that a standard is being considered is published in the Federal Register; such notice usually appears months before the development of a proposed standard.

Prior to the issuance of a proposal, OSHA staff visit a variety of industrial facilities to understand the actual workplace conditions which a standard will affect. In a number of instances, fact finding hearings have been convened to permit informal discussion of major issues involved in a standard before the proposed regulation is issued. The principal participants in these hearings are usually industry representatives.

The economic impact and technical feasibility studies developed by contractors prior to the issuance of proposed standards rely upon the affected industries as the principal source of information regarding the cost of compliance and the technical feasibility of alternative standards. For major health standards, draft environmental impact statements are prepared. These statements are widely circulated for comment to affected industries and other government agencies.

Of course, industry representatives have virtually unlimited opportunity to participate in the rulemaking during the period for public comment and hearing.

QUESTION: Does the procedure give industry the opportunity to present all its data? Is industry generally forthcoming with all the information it has?

ANSWER: We believe these procedures provide ample opportunity for industry representatives to present their position on a proposed standard. However, OSHA has no means of determining how forthcoming industries are with health hazard data.

We can cite instances where firms have come forward with information which contributed significantly to our rulemaking. For example, Dow Chemical and Allied Chemical came forward with evidence of cancer as a result of exposure to arsenic. Similarly, DuPont supplied evidence of cancer risk among workers exposed to acrylonitrile. However, these instances of cooperation are not pervasive. There have been other instances where industry representatives have been reluctant to acknowledge the existence of an occupational disease despite evidence to the contrary.

The CHAIRMAN. This concludes our hearings for this round.
[Whereupon, at 12:39 p.m., the subcommittee was adjourned.]

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