Labor Occupational Health Program
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Workers' "Right to Know"

AFL-CIO CRITICIZES PROPOSED OSHA "RIGHT TO KNOW" STANDARD

On March 19, 1982, federal OSHA issued a proposed new standard which would require that workers be given information about some hazardous substances in the workplace.

The proposed standard, which federal OSHA calls the "Hazards Communication" standard, is intended to replace an earlier proposed "Right to Know" standard issued by former OSHA head Eula Bingham in January, 1981. (See *Monitor*, March-April, 1981, p. 10.) Bingham's proposal was withdrawn by the Reagan Administration within several weeks after taking office

The AFL-CIO has criticized the new Reagan administration proposal as a "watered-down substitute" for the previous administration's proposal. Peg Seminario of the AFL-CIO's Department of Occupational Safety and Health points out that one effect of the adoption of a relatively weak federal standard governing workers' "right to know" would be to preempt various state laws on the subject which are much stronger. (For information on the laws in California, Maine, and New York, see *Monitor*, September-October, 1980, p. 8.) The AFL-CIO charges that "the chemical industry and the government are looking to supercede these local initiatives with this federal regulation."

The new standard would require that chemical manufacturers evaluate the hazards of the chemicals which they produce, label containers, prepare material safety data sheets and forward this hazard information to employers who use the chemicals. User employers in turn would have to maintain the labels on containers (or substitute similar placards) and make material safety data sheets available to exposed employees, their designated representatives, or on request to OSHA and NIOSH. Employers would also have to provide employees with information and training on hazardous materials in the workplace at the time of their initial assignment or whenever a new hazardous chemical is introduced into their work area. As part of this training, workers would have to be informed about the requirements of the standard and the location and availability of the employer's list of hazardous chemicals and the material safety data sheets. These information and training requirements would be met through each employer's development of a "hazards communication program" which must meet defined criteria.

Some of the substantive differences between the new proposal and the one Bingham issued in 1981 are as follows:

*Fewer employers are covered. Importers of chemicals were obligated by the 1981 standard to provide the same information on imported chemicals that domestic manufacturers had to supply on products they manufacture, but the new standard does not apply to importers. Also, the former requirement that employers provide workers with hazard and identification information even in the absence of such information from the manufacturer has been dropped. Another limitation of both the 1981 and 1982 proposals is that they apply only to manufacturing employers who use chemicals, and construction, maritime, agriculture, service, and research industries are excluded entirely.

*Hazard determination procedures are at the discretion of the manufacturer. The AFL-CIO terms the hazard determination requirements of the new proposed standard "unenforceable." Only chemicals and mixtures which meet the standard's definition of "hazardous" are subject to the identification, warning, and training provisions, and the definition of "hazardous" largely relies upon manufacturer's opinions. OSHA has set forth no criteria for evaluating whether or not a substance should be considered a chronic hazard; that determination is left solely to the manufacturer. The manufacturer need only assess effects for which data is "scientifically well established." Specific toxicity definitions are not set forth in the standard, nor is there any requirement to follow the minimal criteria which are set forth. Hazard determination requirements are "performance oriented," that is, based on results and not whether particular procedures are followed. The standard does include non-mandatory "guidelines" for manufacturers' hazard determination but no minimum or exemplary determination procedures are set forth or required. The AFL-CIO points out that adequate hazard evaluation criteria will thus be determined through

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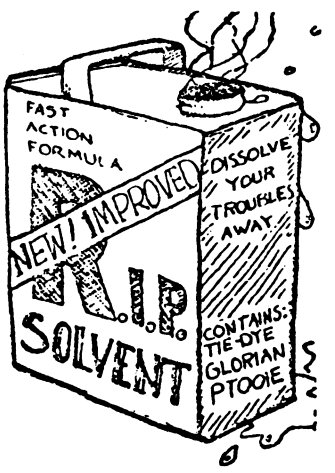

—PHILAPOSH

WORKER INFORMATION

continued from p. 1

"years of litigation" before the OSH Review Commission as various manufacturers are sued.

Material safety data sheets are less accessible to those who need them. Under the new proposed standard, only exposed employees (not former employees and not employees about to be assigned to a new work area) are eligible to see and copy material safety data sheets. No time period for providing access to the MSDS is set forth. A MSDS must only be kept until replaced by another or until the substance is no longer in the workplace; the 1981 standard would have required all MSDS's to be kept for 30 years. New and updated information on a MSDS must be added only "within a reasonable period of time" under the new proposal, but "reasonable" is not defined. Unions have no access rights to a MSDS unless they obtain explicit written authorization as the representative of an "exposed" employee under the new proposal; under the old one they had automatic access to all MSDS's kept by the employer.

Trade secret provisions are very broad. According to the AFL-CIO, employers may "claim almost all specific chemical identities trade secrets at their discretion" under the new proposed standard. On the other hand, the Bingham proposal was based upon a specific OSHA opinion that "worker health interests outweigh trade secret claims." Only recognized carcinogens, mutagens, and teratogens must have precise chemical name revealed under the new proposal.

If adopted, the Reagan administration standard would go into effect from one to three and one-half years after the adoption date, depending upon the number of employees an employer has. There will be hearings on the proposed standard during the summer of 1982 at various locations around the U.S. Hearings of particular importance will be held in Houston on July 13; in Los Angeles on July 20; and in Detroit on July 27. Notices of intent to appear at any of these hearings must be submitted to OSHA by June 15, and a written copy of testimony must be submitted by July 1.

For more information, please contact Peg Seminario at the AFL-CIO, (202) 637-5366. The address is: 815- 16th St., N.W., Washington, D.C. 20006.

Monitors New Format

-- SOME ADDITIONAL INFORMATION --

Due to major cuts in the Labor Occupational Health Program's federal funding for 1982, our health and safety newsletter Monitor will no longer be published in its original, 16-page format.

LOHP does place a high priority on maintaining a communications link with unions and unionists in California, as well as with the hundreds of Monitor subscribers around the U.S. and overseas. For this reason, we are inaugurating this limited Monitor format, which we hope to be able to expand over time. Despite the limited space, we will continue many of the features which readers found most valuable about the Monitor-- feature articles, news reports, announcements and reviews of new publications and materials in the field by LOHP and others, and reports on upcoming conferences and other activities.

The new Monitor will be sent, at no additional charge, monthly for the next year (until March, 1983) to all Monitor subscribers as of August, 1981 (the final issue in the old format), regardless of the number of issues remaining on the subscription.

Beginning with the next issue (July, 1982) the Monitor will be expanded to four pages.

When subscriptions expire, renewals will be available at $5.00/ year. New subscribers may order now at $5.00/ year.

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Newswire

NLRB UPHOLDS UNION RIGHT TO INFORMATION

After two years of deliberation, the National Labor Relations Board (NLRB) has decided a series of landmark cases which hold that employers must supply requested health and safety data to unions. The NLRB's decisions in *Minnesota Mining and Manufacturing Company, Borden Chemical,* and *Colgate-Palmolive Company* require that requests for lists of chemicals to which workers are exposed, together with other health, safety and medical information must be honored by the employer. The NLRB held that the companies involved violated federal labor law by refusing to comply with the unions' requests.

The NLRB reasoned that, "Few matters can be of greater legitimate concern to individuals in the workplace, and thus to the bargaining agent representing them, than exposure to conditions potentially threatening their health, well being, or their very lives."

The NLRB did, however, condition the duty of employers to disclose such information. The decisions recognize that an employer may object to full disclosure of information that may "constitute a trade secret or damage its competitive position." The NLRB will seek to promote union-employer agreements on how such "confidential" information should be disclosed. If no agreement is reached, the NLRB will then be forced to determine what reasonable precautions can be taken to assure union access to information along with safeguards to protect employer trade secrets or competitive advantages.

The decisions provide another legal means by which unions can seek company-held data. OSHA regulations provide for individual and union access to exposure data, hazard information, and medical records. In addition, state and local laws provide workers with a "right to know" about workplace hazards. The NLRB decisions complement these requirements to form a more comprehensive access to information right for workers and unions.