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WHATEVER HAPPENED TO OSHA?

by John Williams

Last year industrial disasters killed the equivalent of every man, woman and child in Albany, California. Job-related cancer wiped out the lives of a number equal to the entire populations of Livermore and San Leandro. "Brown lung,"a disease caused by cotton dust, clogged lungs with blood and phlegm of as many people as live in Berkeley. The number of Americans suffering on-the-job injuries that ranged from simple cuts to amputated limbs exceeded the population of the entire Bay Area. That's how many workers are killed or injured every year by job hazards in this country: 14,000 dead, over 2 million wounded, 100,000 afflicted with "brown lung," and between 20,000 and 150,000 dying from industrial cancer, according to Labor Department and *Vital Statistics* reports.

Yet the Federal Occupational Safety and Health Administration (OSHA), which is responsible for reducing this death and injury toll, has sharply reversed its protective role for workers in the last three years. OSHA has exploited a loophole in its original legislation that could allow the Federal government to weaken "right to know" laws at the state level. And OSHA has blocked implementation of stricter exposure standards for several job hazards.

AUCHTER APPOINTED – OSHA's changes came immediately after Thomas Auchter was appointed agency director in 1981. Auchter, who was Reagan's Florida campaign manager, headed a construction company that received 48 OSHA citations for unsafe workplace practices from 1972 to 1980 (*ILWU Dispatcher*, October 2, 1981).

Reagan's appointment of an employer—Auchter—to head an agency that is empowered to protect workers, symbolized a new direction for OSHA, whose previous director was Eula Bingham, a cancer researcher with close ties to the labor movement. The contrast between Auchter's OSHA and Bingham's OSHA swiftly moved beyond symbolism, however, when Auchter's OSHA remained "neutral" during a 1981 court battle between California's OSHA and the Florida citrus growers over regulations of the pesticide EDB. Previous OSHA directors would almost certainly have aided the California court suit. Auchter's agency instead gave evidence favorable to the growers, and implemented a regulations after the court case that could be used against state Right to Know laws.

RIGHT TO KNOW – When Congress originally passed the OSHA legislation in 1971, some states, including California, already had their own health and safety departments. In these states, Federal OSHA was responsible for monitoring state practices to ensure that workers received protection **at least equal** to Federal standards, and for assisting local OSHAs in job hazard investigations and setting of protection levels.

But in 1981 Federal OSHA made a ruling that would allow Federal "preemption" of state "Right to Know" laws, lowering higher state standards to the levels of a proposed Federal Right to Know regulation. Right to Know laws require employers to notify their employees about the harmful effects of exposure to workplace chemicals, usually by labeling the chemicals.

"The (Federal) OSHA rules will bring all the states down to the same inadequacy," said a former California OSHA attorney who provided background information. For instance, the present California Right to Know law forces employers to provide "data sheets" to workers handling hazardous chemicals, describing the chemicals' harmful effects. The California statute covers **all** workers handling toxic substances, but the proposed Federal law, by contrast, would cover only manufacturing workers, and not retail or transportation employees (47 *Fed. Reg.* 12,092, 1982).

The proposed Federal rule allows **employers** to determine what information goes into the data sheets and what can be withheld as a trade secret, while California law empowers the Indistrial Relations Director to make those determinations. A State Health Service physician pointed out a problem with this reliance on employers for data sheets information: "A major Bay Area refinery's data sheets days about asbestos (a proven cause of cancer) 'May cause lung disease.'" This was "grossly inadequate," he added.

LET THEM BREATHE EDB – The interpretation of the law allowing Federal OSHA to reduce protection for workers has its roots in a 1981 California court battle. In September of that year, Los Angeles dock workers and truck drivers began refusing to handle EDB-saturated Florida citrus fruit. Two men were killed when they entered a storage tank with high EDB concentrations; EDB "ate away" their internal organs. When California OSHA tried to set an emergency EDB exposure standard and the citrus growers challenged the standard in court, the State discovered it had two adversaries; the growers and Federal OSHA. Rather than assisting Cal-OSHA with legal research or a supporting legal brief, Federal OSHA actually provided a statement helpful to the growers' case.

"We had to fight them (Federal OSHA)," said Peter Weiss, who directed the California court case when he was the Industrial Relations Department's Chief Deputy.

After California OSHA prevailed in its court suit allowing it to set EDB standards, Federal OSHA ruled that from then on, it could exploit a loophole in the original law that allowed overruling of stringent state standards that "burdened commerce" (46 *Fed. Reg.* 224, p. 57061, November 20, 1981).

"In our opinion," said Mike Mason of California OSHA's legal staff, "This was a reversal (of previous policy)." While this ruling did not immediately effect the EDB standard, the principle of Frderal pre-emption of state rules is a time bomb that could effectively gut local Right to Know laws.

SIGNALS TO INDUSTRY – OSHA in the final days of the Carter Administration attempted to implement standards that had been developed for exposure to chemicals like asbestos, benzene (which causes irreversible bone marrow damage), lead (paralysis of exterior muscles results from repeated exposure), and other job hazards. The newly-elected Reagan Administration blocked these standards and failed to establish new regulations for many of these dangers.

Rescinding the Carter-era standards and procrastinating over the new rules "sends a signal to industry that OSHA is not making strong efforts to implement protection," according to a state Health Service physician who provided background information. Yet OSHA is not solely responsible for delays. The Office of Management and the Budget and the Federal courts have frequently blocked OSHA's efforts to regulate workplace hazards by charging that the costs of protections are too high to justify the possible benefit to workers.

For instance, OSHA tried to set a new asbestos standard in November 1983. It would have reduced exposure levels from 1 fiber per cubic centimeter to 1/2 fiber, saving 160 lives a year at a cost of $68 million the first year, and $53 million thereafter; a total cost of $331,250 a life. The Federal court concluded, however, that the new standard might save less than 100 lives a year which would be an unacceptable cost of over $500,000 a life. The standard was blocked.

The original OSHA legislation passed overwhelmingly in 1971 because Congress recognized that unsafe workplaces not only lead to injuries and deaths, but also cost billions in absenteeism, Workers' Compensation claims, court suits, poor morale, low productivity, and bad publicity. Pressure to take OSHA "off of the backs of business" displays short-sightedness if money saved by delaying asbestos standards, for example, is then spent on litigating damage suits. Hundreds of these suits are now in court.

Sadly, OSHA's foot dragging on setting new exposure levels, and its attack on local Right to Know laws, indicates that employers are successfully forcing OSHA, like the Environmental Protection Agency and the National Labor Relations Board, actively to erode the rights of the people the agency is supposed to protect.

--John Williams