

A G E N D A
 CMA EXECUTIVE COMMITTEE MEETING
 Monday, January 28, 1985
 12:00 Noon - Luncheon, Northeast Kingman Room
 1:30 p.m. - Meeting, Madrid Room
 Boca Raton Hotel, Boca Raton, Florida

		<u>TAB</u>
1:30-1:33 p.m.	1. Call to Order and Approval of Minutes of Meeting, October 29, 1984 -- Chairman Sella	1
1:33-1:35	2. Committee Appointments -- C. W. Van Vlack	2
1:35-1:40	3. Treasurer's Report -- G. C. Herrman	3
1:40-1:50	4. Employee Benefits Committee Report -- Chairman Leahy	
1:50-2:05	5. Clean Sites, Inc. Discussion -- John A. Klacsmann, Clean Sites, Inc.	
2:05-2:20	6. Report of the President -- R. A. Roland	
	a. Consolidated Safety and Health Committee	4
	b. Appointment of Chemical Industry Trade Advisor	
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	1. 2-Ethylhexanoic Acid	
	2. Dibenzofurans and Dibenzodioxins	
2:20-2:50	7. Bhopal Incident and Chemical Industry Response - Association Activities and Proposed Action Plans -- R. A. Roland and E. Hamilton Hurst, Nalco Chemical Company	
2:50-3:00	8. Chemical Industry Mutual Aid Network (CHEMNET) Proposal -- Keith J. Bunting, Dow Chemical U.S.A.	6
3:00-3:10	9. Export of Hazardous Substances Policy -- Allan J. Spilner, Rohm and Haas Company	7
3:10-3:25	10. Right-to-Know Guidelines -- Harry A. Eschenbach, W. R. Grace & Co.	8
3:25-4:15	11. Superfund Reauthorization:	9
	a. Overview of Association Activities and Development of Work Plan -- W. M. Stover	
	b. Legislative Report -- Wells Denyes, Eastman Kodak Company	
	c. Policy Development and Technical Issues -- Juliane H. Van Egmond, American Cyanamid Company	

(continued)

CMA 065238

MINUTES OF MEETING
CMA EXECUTIVE COMMITTEE
Madrid Room
The Boca Raton Hotel
Boca Raton, Florida
January 28, 1985

1. The meeting was called to order at 1:25 p.m. by Chairman Sella. There were present:

George J. Sella, Jr., Chairman	Robert D. Kennedy
Alan Belzer	Richard J. Mahoney
W. H. Clark, Jr.	Robert H. Malott
Robert C. Forney	Robert L. Mitchell
Vincent L. Gregory, Jr.	Robert A. Roland
Edwin C. Holmer	David L. Rooke
John W. Johnstone, Jr.	Harold A. Sorgenti

Charles W. Van Vlack - Corporate Secretary
Gary C. Herrman - Treasurer
David F. Zoll - General Counsel

By Invitation:

Peter R. Agnew, CMA
David L. Baird, Jr., Exxon Chemical Company
Keith J. Bunting, Dow Chemical U.S.A.
J. R. Condray, Monsanto Company
Geraldine V. Cox, CMA
Wells Denyes, Eastman Kodak Company
Harry A. Eschenbach, W. R. Grace & Co.
Thomas M. Hellman, Allied Corporation
Jon C. Holtzman, CMA
E. Hamilton Hurst, Nalco Chemical Company
Hugh R. Irvine, Exxon Chemical Americas
Bruce W. Karrh, M.D., E. I. du Pont de Nemours & Company
John A. Klacsmann, Clean Sites, Inc.
S. M. Leahy, Minnesota Mining and Manufacturing Company
Leslie F. Nute, Dow Chemical U.S.A.
Vernon R. Rice, E. I. du Pont de Nemours & Company
Randal P. Schumacher, CMA
Thomas G. Singley, Shell Chemical Company
Allan J. Spilner, Rohm and Haas Company
William M. Stover, CMA
Juliane H. Van Egmond, American Cyanamid Company
Gabrielle H. Williamson, CMA

CMA 065240

2. Minutes of the Last Meeting The minutes of the October 29, 1984, meeting were approved as distributed.
3. Committee Appointments Mr. Van Vlack presented the list of standing committee nominations, attached as Exhibit A, to fill the vacancies created by resignations. The nominations were approved.
4. Treasurer's Report Mr. Herrman reported that the December 31 Treasurer's report, which is attached as Exhibit B, has been mailed to the Board. The report indicates that overall revenue and expenses are tracking within the amended budget levels and that dues payments have been received in full from all member companies. With respect to the upcoming budget year, requests for 1984 calendar year chemical sales have been mailed and member companies were urged to return that data as soon as possible if they had not already done so.
5. Report of Employee Benefits Committee Chairman Leahy reported the results of the Employee Benefits Committee's meeting which was held that morning. Based upon the decision reached at the October Board meeting, a survey of the member companies represented on the Board was made. The purpose of this survey was to determine what the industry practice had been since 1979 with respect to providing adjustments for cost-of-living increases. Thirty-seven companies responded and of those, only four indicated that no adjustment had been made or was not contemplated. The vast majority of those responding had made adjustments and would continue to review their plans for appropriate adjustments in the future. Discussion followed concerning the basis and rate of the adjustment. It was agreed that the adjustments should continue to be considered in the future on an ad hoc basis and that the industry's practice would continue to be the reference point for purposes of pension adjustments. It was also agreed that the increases for existing Association retirees should be approved and funded as provided in Exhibit C, which is attached.
6. Clean Sites, Inc. Following up on Mr. Klacsmann's presentation at the morning Board meeting, there was general discussion of the revenue and expense projections for CSI for both the current and succeeding fiscal years. For the current fiscal year, revenues are expected to total approximately \$2.5 million and expenses will be kept at that level. Of the \$2.5 million, all except approximately \$200,000 was contributed by the chemical industry. The proposed budget for fiscal 1984/85 had originally been projected at \$3.9 million and contemplated substantial contributions from six other industries. Considerable discussion followed concerning the need to continue to seek funding from those other industries and foundations; the extent of the relationship between CSI contributions and CMA dues; the effect on CSI's projection of a continuing shortfall in revenues; and the status of resolving the issue of indemnification of CSI. It was agreed that Mr. Klacsmann would report at the March Executive Committee meeting on CSI's progress and outlook for programs and defined objectives; funding; and the 1985/86 budget. Mr. Malott requested that Executive Committee members be provided with a list of the leaders in those targeted, noncontributing industry groups.

7. Report of the President

a. Health and Safety Committee Mr. Roland presented a proposal to consolidate the activities of the existing Chemical Regulations Advisory Committee, Occupational Safety and Health Committee, and Public Compensation Task Group into a new Health and Safety Committee. This consolidation was approved, as was the charter, officers, and membership of the Health and Safety Committee, as specifically provided in Exhibit D, which is attached.

b. Special Programs Special programs on 2-Ethylhexanoic Acid and on Dibenzofurans and Dibenzodioxins were approved as described in Exhibit E, which is attached.

c. Appointment of Trade Advisor Mr. Roland reported that Mr. Dexter F. Baker, President, Air Products and Chemicals, Inc., had been designated as the Chemical Industry Trade Advisor, replacing Leo Johnstone who has retired.

8. Bhopal Incident Mr. Roland described the impact of the Bhopal incident on Association programs and activities and also outlined the initiatives taken by the officers, committee chairmen, and staff to address the challenges and opportunities presented by Bhopal. These actions focused in two areas. The first was an examination of the impact of Bhopal on all the Association's ongoing advocacy programs. This has resulted in each of the standing committee's reviewing the issues under their jurisdiction and developing programs to address the new challenges which have been presented. The second area was to bring forward several new initiatives at the request of the expanded officers group which met in early January. Mr. Hurst accepted the assignment to chair the effort to develop the concepts which were to be presented for consideration by the Executive Committee and Board. The two new initiatives identified were the Community Awareness and Emergency Response (CAER) program and the establishment of a National Chemical Information Center.

Mr. Hurst described the efforts of several groups he had subsequently chaired to examine the feasibility of carrying out the two programs. While there are clearly considerable details and contingencies to be resolved, Mr. Hurst reported that both proposals seem feasible to pursue.

There was considerable discussion of the two proposals as well as a supplementary policy statement which was also presented. It was agreed that the supplementary policy statement was not necessary in light of both the existing 1983 Board position on health, safety and the environment, and the specific proposals contained in the two new initiatives. It was agreed to move forward on the industry response program outlined in Exhibit F, attached. The Community Awareness and Emergency Response segment of that program was agreed to with the understanding that the real burden of its success would fall to individual companies at the plant level. The National Chemical Information Center was also agreed to in concept, but with the Executive Committee favoring initially a networking program rather than the creation of a comprehensive, centralized Association data base. It was also agreed that the Distribution Committee would report to the Executive Committee in more detail on its proposals for first responder training.

9. Chemical Industry Mutual Aid Network (CHEMNET) Mr. Bunting presented the CHEMNET proposal which is attached as Exhibit G. This was agreed to with the understanding that the actual language of the CHEMNET agreement needed to be resolved to meet certain legal concerns.

10. Export of Hazardous Substances Mr. Spilner reported on the status of proposals to regulate the export of hazardous substances. The recommendation, contained in the attached Exhibit H, for CMA to actively support publication of the latest reported draft of the White House policy on the export of hazardous substances, was approved.

11. State Hazard Communication Programs Mr. Eschenbach presented a package of interim guidelines for state programs on hazard communication (right-to-know). The major new element of the guidelines is support for expansion of the federal hazard communication program to all employees through the mechanism of approved state plans. The interim guidelines, as contained in the attached Exhibit I, were approved.

12. Superfund Reauthorization

a. Association Activities Mr. Stover highlighted the various Association programs and activities under way with respect to Superfund reauthorization. A revised work plan was distributed.

b. Legislative Report Mr. Denyes' report is attached as Exhibit J. Highlights of his report included legislation introduced in the Senate by Senator Stafford and by Senators Bentsen and Moynihan. An Administration bill is expected to be introduced by mid-February and Rep. Florio is expected to reintroduce a revised bill in the near future.

c. Policy Positions Mr. Stover and Mrs. Van Egmond presented a package of recommended CMA positions on Superfund issues raised in the reauthorization process. These positions, which are detailed in the attached Exhibit K, were approved. With respect to the position on joint and several liability, it was agreed at Mr. Malott's request that a further report on the possibility of the Association being more aggressive in seeking favorable changes in this liability be presented at the March Executive Committee meeting.

d. Economic Impact Mr. Irvine reported on the activities of the economic impact group and indicated that a blind survey was being distributed to those companies currently paying feedstock tax. He urged those companies to respond to the survey as soon as possible so that the results could be made available to the advocacy effort in the near future.

e. Funding and Tax Issues Mr. Singley reviewed the existing CMA position on fund size and revenue sources. This position supports a fund not exceeding \$1 billion to be funded from a combination of sources including:

- Continuation of the current feedstock tax
- Enactment of a national waste-end tax of \$50 per dry weight ton
- Use of general revenues
- Inclusion of interest payments, recoveries from responsible parties and borrowing against future revenues.

Mr. Singley then reported on joint discussion with the American Petroleum Institute (API) on fund size and revenue sources. Mr. Holmer described the nature of these discussions as seeking API support for CMA's existing position on fund size and funding mechanisms up to \$1 billion, while working jointly on developing a broad-based tax on manufacturing to be advocated as a contingency.

Considerable discussion followed which reinforced the need for CMA advocacy to focus on the issues of fund size; limiting the uses of the fund; the inequity and economic impact of oil and chemical based taxes; and the need to retain general revenues to the fullest possible extent.

It was agreed that CMA approve the concept of a broad-based tax on manufacturing, to be used as a contingency, and that CMA work with API to agree on a mutually preferred mechanism.

13. Public Compensation and TSCA Reauthorization Discussion of these items was deferred until the following morning's Board meeting.

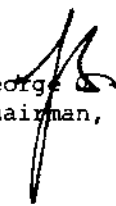
14. 1985/86 Budget Consideration As chairman of the Finance Committee, Mr. Sorgenti reported on the status of the Association's budget and dues outlook for the 1985/86 fiscal year. He indicated that the staff had been asked to prepare a preliminary 1985/86 budget on the assumption that expenses would increase overall by only 3.5%. Based upon this assumption, there may be \$2.5 million in programs which will not be funded. The Finance Committee will review the proposed budget and both the funded and unfunded programs in March, and will report its findings to the Executive Committee. Included as part of those findings will be a recommendation on the dues structure for next year as it was noted that it is difficult to continue increasing programs, such as federal legislative consulting and other activities, without some consideration being given to an increase in the schedule of fees.

On motion, made and seconded, the meeting adjourned at 5:45 p.m.



Charles W. Van Vlack
Corporate Secretary

Certified correct:



George Sella, Jr.
Chairman, CMA Executive Committee

CMA 065244

COMMITTEE APPOINTMENTS

1. Energy Committee

L. Raymond Taunton, Allied Corporation - Term ending May 31, 1986
(replacing Walter F. Allaire, same company)

2. International Trade Committee

Geoffrey Gamble, E. I. du Pont de Nemours & Company - Term ending
May 31, 1987 (replacing Theodore F. Killheffer - same company)

Stephen E. Littlejohn, Monsanto Company - Term ending May 31, 1987
(replacing Robert S. Reitzes - same company)

3. International Affairs Group

A. Sumner West, Rohm and Haas Company (replacing William D. Carr,
same company)

Jon Simplicio, Celanese Corporation (replaces James Ramey, same company)

CMA
EC-1/28/85

CMA 065245

TREASURER'S REPORT

Seven Months Ending December 31, 1984

The December 31 Treasurer's report analyzing actual revenue and expenses versus budget for the seven months which have just ended has been prepared and distributed to all Board Members.

For your reference, the following are provided:

- The originally approved budget and funding for the fiscal year beginning June 1, 1984 and ending May 31, 1985.
- A summary of amendment #1 to the current year budget. Following the October guidance of the Executive Committee, our Government Relations staff projected total expenditures this year of \$550,000 for the legislative consulting activity. Amendment #1 accommodates this level of expenditure by a combination of internal budget transfers and recognition of anticipated greater than budgeted revenue. Projected reserve use for this year remains unchanged at \$496,200.
- The budget and funding for the separately funded Biomedical and Environmental Special Program area.
- Association Reserves as of the beginning of the year were \$6.1 million and with the projected use of reserves should be approximately \$5.6 million at year end.

CMA

EC - 01/28/85

BD - 01/29/85

CHEMICAL MANUFACTURERS ASSOCIATION
 APPROVED BUDGET AND FUNDING FOR
 BIOMEDICAL AND ENVIRONMENTAL SPECIAL PROGRAMS
 Fiscal Year Beginning June 1, 1984 and ending May 31, 1985

<u>REVENUE:</u>	<u>1984-85 Annual Budget</u>
Overhead Reimbursement	\$1,267,600
Publication Sales	<u>2,800</u>
TOTAL REVENUE	<u>\$1,270,400</u>
<u>EXPENSES:</u>	
Salaries & Related Expense	\$ 461,200
Employee Benefits	104,400
Travel & Staff Training	9,400
Dues, Subscriptions & Publications	2,600
Computer Services	100
Outside Printing & Graphics	4,600
Meetings & Workshops	400
Direct Postage, Freight & Delivery	26,500
Direct Supplies & General Office	9,800
Taxes & Insurance	40,500
Rent & Occupancy	58,600
Common Cost Expenses	79,000
Special Insurance	41,600
Administrative Support:	
Technical Administration	101,100
Executive Department	71,400
Meetings & Conventions	20,000
Office of General Counsel	32,000
Accounting & Business Services	49,200
Printing, Distribution, Computer, and Information Services	<u>83,000</u>
TOTAL EXPENSES	<u>\$1,195,400</u>
EXCESS REVENUE (EXPENSES)	<u>\$ 75,000</u>

AUTHORIZED PERSONNEL	16
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CHEMICAL MANUFACTURERS ASSOCIATION
BUDGET AND FUNDING FOR THE
Fiscal Year Beginning June 1, 1984 and Ending May 31, 1985

<u>REVENUE</u>	1984-85 <u>Annual Budget</u>	Amendment <u>No. 1</u>	1984-85 <u>Annual Budget As Amended</u>
Membership Fees	\$11,712,200	\$ --	\$11,712,200
Investment Revenue	1,160,000	125,000	1,285,000
Meetings, Seminars and Other Revenue (net of expenses)	165,800	50,000	215,800
Revenue From or (Dues support to) Special Program Area	--	75,000	75,000
TOTAL REVENUE	<u>\$13,038,000</u>	<u>\$ 250,000</u>	<u>\$13,288,000</u>
<u>DIRECT PROGRAM ACTIVITIES:</u>			
Health, Safety and Chemical Regulations	\$ 730,300	\$ --	\$ 730,300
Environmental Activities	720,700	--	720,700
Distribution - Including the Chemical Transportation Emergency Center (CHEMTREC)	785,100	60,000	845,100
Energy and Engineering	210,000	--	210,000
Technical Administration	317,800	--	317,800
Outside Research & Consulting	834,000	(58,000)	776,000
Federal Legislative Activities	1,247,600	(14,500)	1,233,100
Federal Coalitioning Activities	130,500	434,500	565,000
Federal Grassroots Network	335,700	(20,000)	315,700
State Legislative & Regulatory Affairs	607,400	--	607,400
Communications Program	2,431,800	(17,000)	2,414,800
General Counsel	1,106,400	--	1,106,400
Outside Legal Fees	1,600,000	(135,000)	1,465,000
Member & State Services	160,500	--	160,500
Association Liaison	177,400	--	177,400
TOTAL	<u>\$11,395,200</u>	<u>\$ 250,000</u>	<u>\$11,645,200</u>
<u>UNALLOCATED MANAGEMENT AND GENERAL SUPPORT ACTIVITIES:</u>			
Executive Department	\$ 806,200	\$ --	\$ 806,200
Meetings and Conventions	225,600	--	225,600
Accounting & Business Services	514,600	--	514,600
Computer & Internal Information Services	370,400	--	370,400
Printing & Distribution	222,200	--	222,200
TOTAL	<u>\$ 2,139,000</u>	<u>\$ --</u>	<u>\$ 2,139,000</u>
TOTAL EXPENSES	<u>\$13,534,200</u>	<u>\$ 250,000</u>	<u>\$13,784,200</u>
PLANNED USE OF RESERVES	<u>\$ (496,200)</u>	<u>\$ --</u>	<u>\$ (496,200)</u>

AUTHORIZED PERSONNEL	153	N/A	153
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Note: The above budget and funding does not include the activities and 16 staff of the separately funded Biomedical and Environmental Special Programs area which are reported on the following page.

EXHIBIT C

COST OF LIVING ADJUSTMENT
FOR EXISTING ASSOCIATION RETIREES

Effective April 1, 1985, the monthly benefit for each former Participant and beneficiary of a former Participant whose benefit was in pay status at any time during the period December 1, 1980 to April 1, 1985, shall be increased by an amount equal to .115% of his monthly benefit, calculated without regard to this paragraph, multiplied by the number of months that such benefit was in pay status during such period.

CMA
EC-1/28/85
BD-1/29/85

CMA 065249

REORGANIZATION OF HEALTH, SAFETY
AND CHEMICAL REGULATIONS ISSUES

BACKGROUND

Issues that cross both of the current standing committees have surfaced many times since the 1978 reorganization as well as issues that did not quite fit into the current structure. This has been addressed by forming special committees such as the Public Risk Assessment Special Committee (PRASC), the Regulatory Impact Special Committee (RISC), the Hazard Communications Special Committee, the Public Compensation Special Committee, and the UAREP ad hoc work group. These solutions were temporary at best and proved that ad hoc units were not effective.

The overlapping issues addressed by CRAC, OSHC, Public Compensation, RISC, and UAREP will become increasingly more difficult to coordinate between groups under the time pressures of legislative activities. Consolidation of the many activities into a single standing committee should lessen redundant coordination needs and time requirements -- increasing company and CMA staffing effectiveness. It should permit a single committee to focus on these many related and interlocking issues.

With the increasing activity in the public compensation area and CMA's implementation of the public compensation plan, the current program's activities could easily grow into yet another full committee and task group structure if some action to consolidate activities is not undertaken now. The UAREP and Public Compensation ad hoc groups have completed their current missions and the timing is ideal to unify activities before we begin implementing their plans.

This consolidation may cause temporary disruption, but that should be minimal if it can be completed before the 1985-86 legislative agenda begins. Much of the current task and work group structure should be disrupted and would be coordinated through major subgroups of the new committee -- using the EMC structure as a model. A coordinator of each of the subgroups would report to the new committee on a topical area.

The consolidation would be effective February 1, 1985. Dr. Bruce Karrh would be the obvious choice for Chairman as would be Ron Condray for Vice Chairman. The issue coordinators would be responsible for:

- Product Regulation Activities (TSCA)
- Safety
- Health
- Risk Analysis
- Public Compensation

Existing task groups would be coordinated under the appropriate structure for the activity.

PURPOSE

This reorganization consolidates management of many interrelated issues currently managed through two standing committees and a special ad hoc committee. This should allow more effective management of both company and CMA resources to address many crosscutting issues while focusing activities in a central management body.

PROPOSAL

Dissolve the Chemical Regulations Advisory Committee (CRAC) and Occupational Health and Safety Committee (OSHC) and the ad hoc group on Public Compensation. Form a new, consolidated standing committee: Named the Health and Safety Committee. The consolidated committee should have responsibility for health (chronic and acute), safety, fire protection, production protection (toxic substances control), risk analysis and risk management, public compensation and hazard communications (right-to-know). (See attachment for proposed structure.)

ACTION REQUIRED

Approve reorganization as presented.

Attachments

CMA
EC-1/28/85

CMA 065251

PROPOSED CHARTER

Health and Safety Committee

PURPOSES: The Committee oversees Association programs concerning human health and safety. The Committee will: identify key health and safety issues and focus on matters of greatest significance to the chemical industry; establish specific objectives and mobilize resources to produce timely results; develop and recommend to the Executive Committee policies and positions on legislative, regulatory, and technical questions; provide cost-effective support for authorized Association programs that enhance chemical industry productivity and competitiveness through health and safety programs; seek relief from unreasonable health and safety legislation and regulation by appropriate means; sponsor research and development on human health and safety issues of widespread interest to the chemical industry.

CMA
EC-1/28/85

CMA 065252

HEALTH AND SAFETY COMMITTEE

CHAIRMAN

Bruce W. Karrh

VICE CHAIRMAN

J. Ronald Condray

Term Ending May 31, 1986

Jackson B. Browning
Harry A. Eschenbach
Janice D. Florin
Bruce W. Karrh
Leslie F. Nute

Union Carbide Corporation
W. R. Grace & Co.
Standard Oil Company (Indiana)
E. I. du Pont de Nemours & Company
The Dow Chemical Company

Term Ending May 31, 1987

J. Ronald Condray
Ralph Fruendenthal
Raymond W. Hussey
Charles E. Stehr
Carl W. Umland

Monsanto Company
Stauffer Chemical Company
The Lubrizol Corporation
Shell Chemical Company
Exxon Chemical Americas

Term Ending May 31, 1988

Robert F. Brothers
Thomas A. Caldwell
George A. Rodenhausen
Enzor Rodriguez
I. Rosenthal

Eastman Kodak Company
American Cyanamid Company
Celanese Corporation
ARCO Chemical Company
Rohm and Haas Company

CMA

EC-1/28/85

CMA 065253

PROPOSED PROGRAM ON 2-ETHYLHEXANOIC ACID

Problem/Background: The Interagency Testing Committee (ITC) placed ethylhexanoic acid (EHA) on the 14th list of chemicals for priority testing. The manufacturers and importers of EHA requested that CMA set up a program for this chemical. Accordingly, the Special Programs Division convened an exploratory meeting where a tentative budget to cover program initiation was approved.

Objectives: The Program panel will work with EPA in providing test data to assure that the regulations developed on EHA are appropriate.

Recommendation: It is proposed that the Executive Committee approve establishment of this program.

Impact:

Money	- Participating companies will support program activities and necessary overhead.
Company Personnel	- One representative from each participating company.
CMA Personnel	- No additional staff required.

Acting Required: Approval of recommendation.

CMA
EC-1/28/85
BD-1/29/85

CMA 065254

2-ETHYLHEXANOIC ACID PROGRAM

Proposed Charter

The Program Panel will be concerned with 2-ethylhexanoic acid and its salts. The Panel will be concerned with the collection and evaluation of information necessary to assess the environmental and health effects arising out of the production, storage, transportation, use and disposal of 2-ethylhexanoic acid.

The Panel will adopt and convey advocacy positions, as appropriate, emanating from regulatory agency activities on 2-ethylhexanoic acid.

The Panel will be responsible for certain administrative matters, including the election of officers, voting procedures, basis for cost sharing among participating companies, designation of appropriate task and/or work groups, and liaison with other trade associations and interested non-participating parties.

Consistent with CMA practices and policies, the Panel will interact with federal agencies in all matters relating to safety and health issues concerning 2-ethylhexanoic acid. The Panel will function as a special committee under CMA's bylaws, and its operation will be subject to the Special Programs Guidelines.

CMA
EC-1/28/85
BD-1/29/85

CMA 065255

2-ETHYLHEXANOIC ACID PROGRAM

ROSTER

Dr. Ralph T. Flaherty
BASF WYANDOTTE
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Parsippany, NJ 07054
201-263-5744

Dr. Roderick D. Gerwe
TENNESSEE EASTMAN COMPANY
Senior Chemist
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Dr. N. M. Scarpa
AMERICAN HOECHST CORPORATION
Route 202-206 North
Somerville, NJ 08876
201-231-3086

Mr. Richard C. Wise
UNION CARBIDE CORPORATION
Manager, Health, Safety and
Environmental Affairs
Old Ridgebury Road
Danbury, CT 06817
203-794-2939

Mr. William J. Higgins
FILO CHEMICAL INCORPORATED
50 Broadway
New York, NY 10004-1698
212-514-9330

CMA
EC-1/28/85
BD-1/29/85

CMA 065256

PROPOSED PROGRAM ON DIBENZOFURANS AND DIBENZODIOXINS

- Problem/Background : The Environmental Defense Fund (EDF) and the National Wildlife Federation (NWF) filed a petition with EPA, under Section 21 of TSCA, requesting rulemakings to control certain isomers of dibenzodioxins and dibenzofurans. Several major chemical producers requested that CMA set up a program to address the petition and any subsequent rulemakings. Accordingly, the Special Programs Division convened an exploratory meeting where a tentative budget to cover program initiation was approved.
- Objectives : The Program Panel will work with the EPA, petitioners, and other interested parties to address issues arising from the petition.
- Recommendations : It is proposed that the Executive Committee approve the establishment of this program.
- Impact :
- Money - Participating companies will support program activities and necessary overhead.
 - Company Personnel - One representative from each participating company.
 - CMA Personnel - No additional staff required.
- Action Required : Approval of recommendation.

CMA
EC-1/28/85
BD-1/29/85

CMA 065257

DIBENZOFURAN/DIBENZODIOXIN PROGRAM

Proposed Charter

The Program Panel will be concerned with addressing research and regulatory issues relating to dibenzofurans and dibenzodioxins. The Panel will adopt and convey advocacy positions, as appropriate, emanating from regulatory agency activities relating to inadvertent generation of dibenzofurans and dibenzodioxins.

The Panel will be responsible for certain administrative matters, including the election of officers, voting procedures, basis for cost sharing among participating companies, designation of appropriate task and/or work groups, and liaison with other trade associations and interested non-participating parties.

Consistent with CMA practices and policies, the Panel will interact with federal agencies in matters relating to safety and health issues concerning dibenzofurans and dibenzodioxins. The Panel will function as a special committee under CMA's bylaws, and its operations will be subject to the Special Programs Guidelines.

CMA
EC-1/28/85
BD-1/29/85

CMA 065258

DIBENZOFURANS/DIOXINS

ROSTER

John B. Wilkinson
REICHHOLD CHEMICALS
2340 Taylor Way
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Thomas A. Robinson
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M. J. McCarville
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(314) 694-8891

Edward Noble
DIAMOND SHAMROCK CORPORATION
1100 Superior Avenue
Cleveland, Ohio 44114
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CMA
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Board Policy on Health, Safety and Environmental Quality

In September, 1983, CMA's Board of Directors adopted the following Policy Statement on Health, Safety and Environmental Affairs:

COMMITMENTS

POSITION STATEMENT

HEALTH, SAFETY & ENVIRONMENTAL QUALITY

Public recognition of the benefits of chemicals in today's society is tempered by public concern about the impact of chemicals and hazardous waste on human health and the environment. Recognizing this, CMA endorses the following principles and urges its members and all chemical manufacturers to adopt them.

- We intend to produce only those chemicals that can be manufactured, used and disposed of safely.
- We will conduct our operations in compliance with all applicable laws and regulations.
- We will cooperate with appropriate federal, state and local agencies to deal with problems created by past disposal of hazardous substances.
- We will conduct or sponsor studies to increase understanding about health and environmental effects of our processes, products and waste materials. We will communicate with government agencies, employees, customers and the public about any significant health or environmental effects that may be identified and about methods necessary for safety and health protection.
- We will foster continuing dialogue with a broad range of groups who are concerned about the impact of chemicals and hazardous waste on health and the environment.

To implement the Board approved policies, the following action plan is proposed.

1. Review and Reconsideration of Existing Programs and Issues

The action plan's first segment is to reexamine all the existing advocacy programs and issues within CMA and determine Bhopal's impact on them. If adjustments in our priorities and policies are required as a result of that assessment, recommendations will then be brought forward through the normal committee process for Executive Committee and Board action. This process is well underway as a result of initiatives taken by the Officers, Committee leadership and staff in December and January. Several revised positions are before the Executive Committee and Board for action at the January meetings. It is expected that these efforts will help quantify and address the direct impact of Bhopal on the Association's individual advocacy programs.

2. New Initiatives

The second segment of the action plan consists of several new initiatives, combining elements of present programs and positions with some new concepts. These new initiatives will not only demonstrate the industry's continued and renewed commitment to superior standards of safety within the plant environment, but will also involve the local, state and national community in this effort in a manner which will earn their confidence.

These two new program initiatives proposed are:

- Community Awareness and Emergency Response Program (CAER)
- National Chemical Information Center (NCIC)

Community Awareness and Emergency Response Program (CAER)

An integrated company and community effort designed to deal with problems associated with safety and health risks attendant to the production, storage and distribution of chemical products at a specific plant location. In some cases where multi-plant and multi-company situations exist the plan will be coordinated with all facilities. A preliminary program outline follows:

A. Emergency Response Program

1. In Plant
 - a. Define Model E.R. Program
 - Large Company
 - Small Company
 - Customer/User
 - Warehouse or Storage

- b. Process and Plant Safety
 - Siting
 - Design
 - Safety Systems and Alarms
 - Training
 - Audit and Review
 - Plume Modeling, etc.

2. Community

- a Define and Develop Model E.R. Program
 - Detection and Warning Systems
 - Response Equipment and Training
 - Fire-Safety-Medical
 - Evacuation Plan
 - Education = School - Senior Citizens - General
 - Right-to-Know, Hazards Communication System
- b. Implementation
 - Communications Plan
 - Training and Equipping Plan
 - Local Organization and Lines of Authority
 - State/Regional Coordination

B. Community Awareness Program

1. Right-to-Know (What to Know?)
 - Hazard Education and Interpretation
 - Kinds of Emissions or Waste
 - Amounts of Emissions or Waste
2. Emergency Response Plan
3. Company/Citizen Advisory Group
4. Economic Analysis
5. Community Relations Effort
 - Education
 - Open House Program
 - Media Relations
 - Cultural

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National Chemical Information Center (NCIC)

A clearinghouse program for information, training and response activities, related to chemical products, their use, and distribution. Operating on a 24-hour a day basis the Center would relay emergency response information, refer inquiries of a non-emergency nature to appropriate companies or other information sources and manage a network of response mechanisms that have been established to provide specialized assistance for certain hazardous materials. The center would also be the focal point for preparing and developing training resources for both chemical manufacturing and using industries related to emergency response programs and process safety programs. A preliminary program outline follows:

A. Information

1. Emergency Response Information (CHEMTREC)
 - Transportation Related
 - Other
2. Chemical Hazard Information (General Public)
3. Disposal Information (General Public)
4. Emergency Medical Treatment Information
(For emergency treatment physicians -
not a poison control center!)

B. Training and Education

1. Emergency Response Training
 - CHEMTREC
 - First Responders
 - How to Develop Community E.R. Plans
 - Advanced E.R. Training

C. Response Programs

1. Chemical Industry
 - CHEMNET
 - CHLOREP)
 - LPG ASSN.) outside CMA but accessed through CHEMTREC
 - Pesticides
 - Acrylonitrile
 - Vinyl Chloride
 - Phosgene
 - Anhydrous Ammonia
 - Phosphorus
 - Hydrofluoric Acid
 - Cyanide

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2. Other Special Relations

- Bureau of Explosives
- F.E.M.A.
- DOT (USCG) Response Team
- State Environment Management Authorities, D.N.R.'s,
Police
- Local Response Units, e.g. Fire, Sheriff, etc.

* * * * *

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CHEMNET
Executive Summary

BACKGROUND - A work plan has been developed by the Distribution Committee in response to four needs: (1) to enhance the emergency response capabilities of the chemical industry (2) to improve the industry's public image by showing that there is an industry emergency response program that will reduce the severity of a chemical release (3) to provide an alternative to DOT and Congress who are being pressured by state/local governments for an industry supported fund or use of CERCLA monies to pay for their emergency response teams and (4) to stem the growing state and local restrictions on chemical shipments.

The first part of the work plan is an enhanced mutual aid network of company and for-hire company response teams. The objective of this network (called CHEMNET) is to put chemical experts at the scene of serious accidents in the minimum amount of time.

The network would be activated through CHEMTREC when the shipper agrees that a chemical industry presence is required at an incident but for reasons of proximity or availability the shipper cannot provide that assistance. Payments for services by the responding member or for-hire contractor would be the responsibility of the shipper/manufacturer.

This mutual aid network is similar in concept to other mutual aid networks such as the ones covering pesticides and chlorine. However, in addition to the formal agreement between the shippers to share emergency response capabilities, it adds the resource of for-hire contractors. The network would also make it more feasible for firms without emergency response teams to send expert help to the scene of incidents.

The Distribution Committee believes that implementation of the CHEMNET program will enhance emergency response capabilities of the industry and reduce pressures for the federal government to establish special funds paid for by industry to accomplish that purpose. Further, enhanced emergency response should reduce state/local regulations that are a reaction to perceived risks. Finally, like CHEMTREC, the proposed pro-active effort would be a major feather in the cap of our industry that vividly demonstrates our concern with emergency response and our ability to respond quickly to chemical releases.

RESOURCE NEEDS - The costs of the CHEMNET program are (1) a half of a staff person's time (\$30,000 per year). No additional staff will be required for this program. (2) CHEMNET insurance (one estimate received was \$70,000 per year but lower rates are being sought).

ACTION REQUIRED - The Distribution Committee is seeking approval of the CHEMNET program and its active support in obtaining a high level of participation from CMA members. The other feature of the work plan, first responder training, will be proposed at another time.

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Export of Hazardous Substances - "White House Policy"

The CMA Ad Hoc Group on the Export of Hazardous Substances (Ad Hoc Group) has recommended that CMA change its neutral position on the draft "White House Policy" on this subject to one of active support for the publication of this Policy, in its last reported form. The Ad Hoc Group serves as a coordinating group between CMA's Chemical Regulations Advisory Committee (CRAC), the Export of Hazardous Substances Task Group of the International Trade Committee, and the International Affairs Group on issues involving the export of hazardous substances.

The draft Administration Policy on the export of hazardous substances has been dormant at the White House since August, 1982. This Policy, at last report, had five main components:

1. Notification by the Department of State to foreign governments, through their embassies in the United States, of information on all regulatory actions banning or severely restricting domestic U.S. commerce in a substance. This notification would occur as soon as possible after the regulatory action in question was taken and would be supplemented by an annual compendium of such regulatory actions.
2. Elimination of existing requirements for export shipment specific notifications to receiving governments (except for exports of consumer products not conforming to U.S. consumer product safety standards). [The Office of the U.S. Trade Representative (USTR) and the State and Commerce Departments requested that this section be amended to require a first shipment per country notification in accord with the April, 1984 action of the Organization for Economic Cooperation and Development (OECD)].
3. Elimination of existing prohibitions on commercial exports of drugs and biologicals which can be lawfully marketed overseas but which cannot be marketed in the United States. [CMA would defer on this point to the Pharmaceutical Manufacturers Association.]
4. Cooperation by the Department of State, and other appropriate Departments and agencies, in efforts to encourage other countries to share information on regulatory actions and the scientific bases for such actions on substances which are, or might be, subject to banning or severe restrictions.
5. Continuation by the United States in its efforts to assist countries to develop their own informed decisions regarding the use of substances which pose hazards to human health or the environment.

CMA did not endorse this Policy for two reasons. First, it was reported that EPA's Office of General Counsel interpreted item 2 above to require amendment of the Toxic Substances Control Act (TSCA). CMA does not share this interpretation. However, we did not want the language of TSCA "opened up" over this issue. Second, CMA, in a June, 1981, petition filed with EPA, requested that the Agency's regulations under Section 12(b) of TSCA (the export provision) be revised to eliminate any export shipment specific

notifications. ^{1/} Therefore, it was believed that CMA could not endorse a White House Policy which contained a first shipment per country notification requirement for certain regulated chemicals.

The Ad Hoc Group is now recommending that CMA's position on the White House Policy be changed to reflect new pressures for the publication of this Policy. The Chemical Regulations Advisory Committee, at its December 19, 1984, meeting endorsed this recommendation. In January, 1985, the International Affairs Group, the Government Relations Committee, and the International Trade Committee likewise endorsed this recommendation. Preliminary coordination with the Pharmaceutical Manufacturers Association, the National Agricultural Chemicals Association, and the Synthetic Organic Chemical Manufacturers Association is also underway. CMA has worked with these other three organizations on this issue in an informal coalition for the last five years.

The Ad Hoc Group recommended the proposed change in CMA's position because it appears that TSCA will be under legislative scrutiny in any event this year. Therefore, concern about initiating such scrutiny on Section 12 grounds has been assuaged. Moreover, it is likely that stringent legislation on the export of hazardous substances will be introduced in the 99th Congress, especially in light of the Bhopal tragedy. A published White House Policy could soften any such efforts.

In addition, domestic and international events appear to have advanced beyond credible opposition to all export shipment specific notifications. Under domestic legislative and regulatory frameworks, the concept of some form of export notification in certain instances is gaining increasing acceptance. The concept of export shipment notification has also gained considerable recognition by international organizations, such as the OECD and the United Nations. ^{2/} In fact, these organizations repeatedly attempt to develop considerably more stringent requirements than a one time per country notification. It is believed that a published comprehensive U.S. policy on this subject could be used as a responsible alternative to such attempts.

ACTION REQUIRED: Approval of the recommendation that CMA actively support publication of the draft White House Policy on the export of hazardous substances in its last reported form.

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^{1/} EPA, to date, has not responded to this petition.

^{2/} It should be noted that foreign governments, while participating in and supporting many of the activities of international organizations on this subject, have not generally adopted export notification requirements into their own regulatory systems. The United States, in contrast, has at least seven federal statutes which require some notification to or consent from receiving governments in certain cases.

Interim Guidelines For State Programs On Hazards Communication
(Right-to-Know)

Overview

The Chemical Manufacturers Association (CMA), actively supports the informed use of chemicals. On November 25, 1983, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) issued an occupational safety and health standard on hazard communication (Title 29 of the Code of Federal Regulations, Part 1910.1200).

The standard requires chemical manufacturers and importers to assess the hazards of chemicals which they produce or import, and all employers in SIC Codes 20 through 39 to provide information to their employees about the hazardous chemicals to which they may be exposed. The required hazard communication programs must include labels and other forms of warning, material safety data sheets (MSDS's), and employee education and training.

CMA believes that standard provides a comprehensive, uniform mechanism for manufacturing employees to receive hazard information. It ensures that downstream employers receive the information they need to inform their employees properly, and to design and implement employee protection programs. The Standard preempts State laws which address hazard communication requirements for employees in the manufacturing sector. Any state which desires to assume responsibilities in this area may only do so under the provisions of Section 18 of the Occupational Safety and Health Act (29 U.S.C. 651 et.seq.) which deals with state jurisdiction and state plans. A state must submit their intended requirements to OSHA for approval and show that they are at least as effective as the Federal Standard, do not unduly burden interstate commerce and that there is a compelling need for a different state standard. [Section 18(c) of the Act; 29 U.S.C. 667 (c)].

Guidelines

CMA recognizes that under certain circumstances states may want to expand the provisions of the federal standard. The following guidelines provide a framework under which states could administratively tailor the scope and coverage of hazard communication programs, without causing a burden on commerce or creating other conflicts with the federal standard.

I. Non-manufacturing employers -

CMA supports the federal standard as providing the basis for effective communication, through the hazards assessment process, the mandatory development and use of MSDS, hazard warning labels, and education

and training programs. The chemical industry recognizes that some states have adopted the standard and expanded the coverage to include employers in both the manufacturing sector (SIC codes 20 through 39) and non-manufacturing sector (all other SIC codes). CMA believes that it is good public policy to extend the protections provided to manufacturing employees under the federal standard to all employees. Any state desiring to expand the federal standard to cover all employers must do so through the provisions of Section 18 of the Occupational Safety and Health Act.

II. Emergency Response Information -

CMA supports cooperation between chemical manufacturers and state and local fire, safety and emergency service agencies. All available information regarding potential hazards associated with chemical manufacturing, processing and use should be available to agencies that are responsible for protecting the community in the event of emergency situations or accidental releases. CMA recommends that chemical manufacturers follow these local action guides:

A. Local plant managers and emergency response leaders must establish a regular communications forum to identify and evaluate local concerns, and to develop strategies for reducing hazardous materials emergency risks within both plant sites and the community. This effort should include, but not be limited to:

- Joint preincident emergency planning for the site, including regular site visits and drills;
- Joint preincident emergency planning for the community and drills to evaluate the plan;
- Industry providing access to and training in hazards information on materials which are present in quantity or are highly hazardous in storage or use;
- Emergency services and industry cooperation to assure that the roles and responsibilities in case of emergency are defined, command channels established and resources brought to bear promptly and effectively;
- Industry providing access to lists of available MSDS's, communicating the availability of the lists and providing MSDS's to appropriate agencies upon request.

- Identification of available specialized equipment, such as foam, personal protective equipment, suppression and detection equipment, etc., and make it available for use in an emergency; and
- Provisions for industry personnel to serve as technical advisors to the emergency services agencies in hazardous materials emergencies, both on-site and in the community.

B. Industry and emergency services leaders should propose, support and actively seek passage of "Hazardous Materials Emergency Response Good Samaritan" laws.

III. Community Access to Information -

Industry and state and local government leaders must work together in developing Community Right to Know programs. This joint effort should encourage providing appropriate information to improve response and cleanup safety, training, and risk management without undue administrative burden to state and local agencies, taxpayers or industry. Legislation could include requirements for employers to provide lists of hazardous materials present in a facility to appropriate state and local emergency services agencies and providing MSDS type information to those agencies when requested. State and local agencies which collect information regarding potentially hazardous substances (MSDS's, lists, etc.) through OSHA approved hazard communication programs should develop mechanisms to allow public access to the information, while protecting trade secrets.

In addition, many existing government programs give general access to large amounts of information regarding the potential health and environmental hazards that chemicals may pose. Federal, state and local programs developed under such laws as the Toxic Substance Control Act (TSCA), the "Resource Conservation and Recovery Act" (RCRA), the "Comprehensive Environmental Response Compensation Liability Act" (CERCLA), the "Clean Water Act" (CWA), and the "Clean Air Act" (CAA) contain strict compliance and reporting requirements. Public access to information is authorized through these laws and the "Freedom of Information Act." CMA opposes duplicative reporting requirements proposed under hazard communication programs.

CMA believes that all levels of government which collect and disseminate information must have

procedures under which manufacturers and employers can protect trade secrets and prevent the disclosure of confidential information, while at the same time providing necessary hazard and health care related information to the public.

IV. Material Safety Data Sheet and Labeling Requirements -

CMA strongly opposes any state modifications to the federal standard which require different MSDS or labeling requirements. CMA believes that the cut-off levels for assessing health hazards under the federal standard are reasonable and effective, and provide a uniform method of identification and warning through MSDS's and labels for all states. Any differences between state programs and the federal standard in these areas would only create confusion among the workforce, without contributing to overall safety and protection.

V. Protecting Trade Secrets -

Trade secret protections under the federal standard extend only to chemical identity, not hazard information. The standard assures that information regarding the potential hazards of a chemical is available to all employees and the public through labeling and MSDS's. Chemical identity information which is a trade secret is made available to those who have a legitimate need for it, such as treating physicians. CMA believes that the standard thus assures employee and public protection, while maintaining the confidentiality of bona fide trade secrets. CMA opposes any state modifications to the federal standard in the area of trade secrets.

ACTION REQUIRED: Approval of interim guidelines for use in the states.

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SUPERFUND STATUS REPORT
LEGISLATIVE UPDATE

By Walls Denyes, Eastman Chemical Products, Inc.

The 98th Congress adjourned without finalizing Superfund legislation but came closer to final action than most had expected. The House passed a \$10.2 billion Superfund bill which relied primarily on increased taxes on chemical feedstocks and crude oil. The Senate Environment and Public Works Committee reported a \$7.5 billion bill, but in the final days no consensus was reached in the Senate Finance Committee on a funding mechanism and thus the Superfund bill did not come to the Senate floor.

The CMA effort to convince Members of Congress, especially in the Senate, that increased feedstock taxes would adversely affect the domestic chemical industry appeared to have an impact. Progress was also made in promoting the need to broaden the tax base with a waste-end tax on disposal.

Political judgement suggests that the November elections will result in little change in Congressional attitudes to reauthorization of Superfund. It is expected that the House will be slightly more favorably inclined towards business positions and the Senate slightly less favorably inclined. In addition, the change in leadership in EPA will not change the Administration's posture. Mr. Thomas was personally selected by Mr. Ruckelshaus to continue his program and Mr. Thomas is the person who had been directly responsible for the Superfund program.

Action on Superfund in the 99th Congress has begun on a somewhat slower pace than was anticipated. Congressman Florio has not introduced Superfund legislation, nor has he announced his schedule for hearings. Although Senator Stafford did introduce a bill on the first day of the new Congress, mid-March appears to be the earliest date on which Senate hearings will be held. The Administration, led by EPA, is developing a legislative proposal. It is expected to be introduced by early February. This proposal will likely recommend funding of about \$1 billion a year, achieved principally by increased feedstock and crude oil taxes, plus a new waste-end tax, but without general revenues. It will likely recommend narrowing the scope of Superfund responses so that the program will be directed principally toward waste site clean-up and not expanded to other hazardous materials. The Administration will oppose inclusion of a public compensation program or an expanded federal cause of action. This Administration bill could become the centerpiece for Congressional debate.

The Superfund Task Force of CMA's Government Relations Committee continues to press for the CMA position on the reauthorization of Superfund. Contacts are continuing with Congressional leadership, every member of the principle committees in Congress that will be involved, and with Administration leadership. In addition, the Task Force is working with other industries to develop broad based support.

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POSITION OF CHEMICAL MANUFACTURERS ASSOCIATION
ON SUPERFUND REAUTHORIZATION,
SUMMARY OF PRINCIPAL POINTS

- o The Chemical Manufacturers Association (CMA) supports the Superfund waste site cleanup program and supports reauthorization of Superfund taxing at higher levels for another five years.
- o EPA can effectively use a maximum of \$850 million to \$1 billion per year for the next five years of the Superfund cleanup program, according to estimates based on EPA's data and recent EPA testimony before House and Senate Committees.
- o CMA supports the following taxing mechanism to provide EPA with funds in this range: (1) continuation of "feedstock" taxes at current levels of \$307 million per year; (2) enactment of a national waste disposal tax to raise an additional \$307 million per year; and (3) support from general revenues of \$176 million per year. The balance of the EPA spending needs would be funded from "cost recovery" from liable parties and from interest on fund deposits.
- o The current feedstock tax base is extremely narrow. Only 12 companies pay almost 70% of the petrochemical taxes collected. Yet many other basic industries have large shares of waste at Superfund sites. Particularly when funding at higher levels is contemplated, it would be highly unfair to continue the entire tax burden on such a narrow segment of industry. A waste disposal tax at \$50 per dry weight ton can provide a reliable, workable method of spreading the tax base under Superfund.
- o CMA opposes the funding levels and mechanisms contained in the Superfund Bill passed by the House in 1984 (H.R. 5640). That Bill raises taxes at an annual rate approximately three times the level necessary to meet EPA's funding needs, and fails to include a waste disposal tax. CMA similarly opposes the funding levels recommended in the Bill reported by the Senate Environment and Public Works Committee (S. 2892). This Bill recommends taxes at an annual rate approximately two times EPA's needs.
- o Feedstock taxes at the levels required by H.R. 5640 will have severe economic impacts on a narrow segment of our industry. Since Superfund was enacted in 1980, the petrochemical sector has suffered significant setbacks. Its 1983 sales were only 85 percent of the 1980 level. It lost approximately \$400 million in 1982 and was barely at the breakeven level in 1983. Chemical employment has also dropped by 50,000.
- o The positive chemical trade balance has declined from \$15 billion in 1980 to \$10.6 billion in 1983, and the decline appears to be accelerating. This is being caused by both declining exports and increasing imports, and an increase in the feedstock tax will only worsen these problems.
- o A statement released in September, 1984, by Congress's Office of Technology Assessment (OTA) confirms both that EPA cannot effectively use funding at the levels provided by H.R. 5640 and that our industry's fears of severe economic impact are well-founded. The OTA statement also provides strong support for a national waste disposal tax.

o Congress should reject attempts to divert Superfund away from its waste-site clean-up purposes. A particularly objectionable feature of the Senate bill was a 5-state Superfund health insurance scheme for persons who may have been exposed to waste sites. Such a program would be likely to develop into an uncontrollable federal entitlements program similar to the Federal Black Lung Act.

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SUPERFUND STRATEGY

The Problem

1. Public concern over and media attention to hazardous waste sites is widespread and emotional; there is a growing fear of possible adverse health effects; a perception of EPA inaction and manipulation intensifies those concerns.
2. Superfund taxing authority expires September 30, 1985. Reauthorization, and expansion of other parts of the act are expected this year.
3. The perception that the chemical industry is the sole origin of waste site problems and the industry's poor public image leave it vulnerable to expedient or punitive Superfund legislation.
4. Approval of more broadly based sources of new Superfund revenue will be difficult to achieve at the same time Congress is considering tax reform; a substantial infusion of general revenue is made less likely because of concerns over the Federal deficit.

Objectives

1. Enhance the credibility and influence of the chemical industry by clear and early public support of Superfund reauthorization and for the added resources needed to accelerate cleanup.
2. Avoid enactment of punitive legislation that unfairly singles out the chemical industry, with emphasis on:
 - A. avoid a victims compensation scheme predicated on loose causation and paid out of narrow, chemical industry based funding
 - B. broaden the base of Superfund funding
 - C. hold funding at the most reasonable level attainable
 - D. avoid or minimize other punitive or burdensome amendments, such as
 - (1) expanded liability
 - (2) unrealistic cleanup standards
 - (3) funding of inappropriate activities
 - (4) Federal cause of action

Tactics

1. To enhance industry credibility and influence:
 - A. develop a positive message (testimony, media responses);
 - B. participate directly and visibly in the public policy process by
 - carrying policy message to appropriate governmental forums at every opportunity,
 - seeking to be heard in the press and the electronic media,
 - take part actively in the legislative/regulatory decision making processes;
 - C. seek re-established EPA credibility;
 - D. convey message to key members of Congress, identifying spokesmen and assisting in their efforts;
 - E. contribute voluntary company efforts to the cleanup process.

2. To avoid punitive legislation:
 - A. help quantify job to be done (waste data, site data, etc.)
 - B. help quantify funding (EPA needs; Waste-end methodology, etc.)
 - C. help understand economic impact (DeWitt Study, etc.)
 - D. help develop more accurate understanding of health factors (UAREP Study)
 - E. coalition with like-minded

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Executive Summary

Recommended CMA Positions on Superfund Reauthorization

<u>Issue</u>	<u>Recommended Position</u>	<u>Status</u>
<u>How Clean is Clean</u>	Support codification of Environmental Defense Fund (EDF)/ New Jersey (NJ) Settlement agreement. The agreement requires application of relevant standard, is flexible on preference for "permanent solutions emphasizes "cost effective" remedies.	Change from prior position. Previous CMA position supported existing CERCLA which was silent on the use of standards.
<u>Uses of the Fund</u>	Support Fund uses that cover clean-up of abandoned hazardous waste sites, spills of hazardous substances, studies, monitoring and surveillance of same. EPA's use of the Fund to respond to non-hazardous substances should be limited to emergencies.	<u>New Position</u> This issue arose in the context of legislation introduced in 1984, which expanded the uses of the Fund dramatically.
<u>Authorization of Superfund Dollars to Pay for Federal Facilities' Remedies</u>	Oppose any use of Superfund dollars at federal facilities. Current law allows EPA to provide alternative water supplies as part of emergency response actions. At issue is using the Fund to provide alternative water supplies at sites when the federal government is not the only responsible party. CMA should continue to support the existing law which prohibits Superfund dollars at federally-owned facilities.	<u>New Position</u> Senate bill in 1984 introduced this amendment.
<u>State Share Operation and Maintenance</u>	Support change in CERCLA that requires EPA to pay 90% of the capital and operation and maintenance costs and requires states to pay 10%.	<u>No change</u> This position was adopted in 1984 to increase likelihood that the clean-up remedy chosen would be cost-effective. The state's cost sharing responsibilities would begin when EPA's clean-up assures that a site no longer poses "a significant public health risk."

Issue

State Share: 10% and 50% Cooperative Agreements and Credits

Recommended Position

Support CERCLA requirements that local, state or government entities that owned or operated a site must pay 50% of the clean-up costs.

Status

No Change
Legislation introduced in 1984 sought to lessen governmental burden by requiring the 50% cost-sharing responsibility only when states both owned and operated sites.

Joint & Several Liability

Support existing standard of liability in CERCLA. The issue is being resolved in the courts and under common law. In addition, support so called "Simpson Amendment," introduced in 1984. This amendment adopts the Administrative Conference Recommendations that encourage settlement and give EPA discretion to apply the concepts presented in the report.

Modification of existing CMA positions

Venue for Judicial Review

Support broadening of venue beyond D.C. circuit. The D.C. circuit is not generally regarded by industry as a desirable location for judicial review.

New Position
Senate introduced this amendment which is considered favorable to CMA members.

State and Federal Response Actions Cost Recovery

Support an amendment to limit the use of Fund money in responding to pollutants or contaminants. Oppose any expansion of liability for pollutants and contaminants.

New Position

Superfund Grants to Citizens to Hire Contractors to Review EPA's Clean-up Proposals

Oppose Fund use of this activity. EPA uses contractors to develop clean-up plans. It makes little sense to hire more contractors to review other contractors recommendations. The Fund should be used for clean-up and associated projects.

New Position

Issue

Delayed Judicial Review

New Position

Support existing law that allows private parties to seek judicial review of clean-up orders. The House bill in 1984, introduced an amendment that would prohibit private parties from seeking judicial review until the remedial action was completed.

State & Local Government Liability

New Position

Support "Good Samaritan" legislation that protects state & local governments taking response actions. Both House & Senate bills in 1984 introduced such "good samaritan" legislation.

New Restrictions on DOT Discretion

New Position

Support legislation that establishes deadlines for EPA to promulgate "responsible quantities" for all CERCLA hazardous substances. (Under current law, one pound of any listed RCRA wastes must be reported to the National Response Center, if spilled. This is because EPA has never completed its requirement to establish reportable quantities for all referenced and listed CERCLA hazardous substances.) The problem is further exacerbated by the DOT, who does not regulate any hazardous substance for which EPA has not established a reportable quantity.

Pre-Emption

No Change

Take no position pending court proceedings

<u>Issue</u>	<u>Recommended Position</u>	<u>Status</u>
<u>Post Closure</u>	Support a five year extension of the Post Closure Tax (\$2.13/dry weight ton of hazardous waste). Support the \$200 million fund ceiling.	<u>No Change</u>
<u>Authority to Close Active RCRA Treatment Storage and Disposal Facilities</u>	Oppose. RCRA provides such authority already. This amendment arose in 1984 in the House bill.	<u>New Position</u>
<u>Natural Resource Damages</u>	Support eliminating natural resource damage claims against the Fund. This was the approach taken by the House in 1984.	<u>New Position</u>
<u>Administrative Victims' Compensation Fund</u>	Oppose any administrative fund to compensate people -- pilot or complete programs, at either the federal or state level.	<u>No Change</u> from our prior position.
<u>Federal Cause of Action</u>	Oppose a federal cause of action and any changes in the Federal Rules of Evidence or Civil Procedure.	<u>No Change</u> from our position last year. More specific on accompanying evidentiary and procedural provisions.
<u>Public Health Surveillance</u>	Support public health surveillance as a remedy under Superfund, in response to congressional initiatives.	<u>Change</u> from prior position. Clarification of last year's position supporting an expansion of CERCLA §104(i).

Issue

Citizen Petitions
for Health
Assessments

Support citizens' right to petition ATSDR to conduct tests around waste sites. Citizens to pay for initial testing with reimbursement for significant exposure to waste site substances.

New Position
not addressed last year.

Toxicological
Testing

Oppose use of Superfund money to conduct toxicological tests. Would restrict current ATSDR practice of funding these studies out of Superfund.

New Position
not addressed last year.

Alternative Water
Supplies or
Supply Systems

Support administrative authority to provide alternative water supplies or supply systems where water presents an unreasonable risk to human health.

New Position
not addressed last year.

Relocation
Expenses

Support administrative authority to relocate citizens exposed to a significant human health risk.

New Position
not addressed last year.

Recommended Position

CMA
EC-1/28/85
BD-1/29/85

HOW CLEAN IS CLEAN

BACKGROUND

The Statute does not specify standards, methods, or procedures for determining the appropriate extent of remedy (AER) for each site. Rather, the statute (§105) directs EPA to include "methods and criteria" within the National Contingency Plan (NCP) for determining the AER and specifies that remedial measures must be cost-effective. The NCP which EPA issued in July 1982 adopts a site-by-site approach to determining the AER.

EPA is formulating policy and NCP revisions pursuant to agreements in the EDF/New Jersey suit settlement which would apply to waste sites relevant and applicable standards and criteria developed under other environmental statutes. The latest EPA approach has merit, because it relies primarily on codified regulations. However, the strict application of such standards without adjustment for actual site conditions may force excessive expenditures that provide little or no protection of public health and environment. Major CMA efforts will be needed to assure that "relevant" and "applicable" are reasonably defined and interpreted.

Efforts are also mounting to emphasize the selection of permanent technology (i.e., treatment or destruction) as the remedy of choice. Such permanent remedies are preferable in some cases but in others may be extremely expensive and may not contribute to protection.

The House of Representatives' proposal on "how clean is clean" contained mandatory application of standards. Both House and Senate bills expressed preferences for permanent solutions. It is expected that future legislation will address this issue and adoption of an affirmative position is necessary to preserve as much flexibility as possible for site-by-site decisions.

RECOMMENDED POSITION

CMA supports amendments that codify the EDF/New Jersey settlement requiring application of relevant and applicable standards, since Congress has shown its desire to include requirements on "how clean is clean" in the statute. Further, CMA may be willing to accept amendments expressing a preference for permanent solutions, if the remedy selection process continues to require application of the most cost-effective solution.

CMA
EC-1/28/85
BD-1/29/85

CMA 065282

USES OF THE FUND

BACKGROUND

The primary intent of the CERCLA Trust Fund (and the current tax structure on hazardous substances) is to clean up inactive hazardous waste sites. Attempts are being made to permit use of the fund to finance such items as: administrative costs for State Superfund programs; grants to citizen participation in review of remedial plans; state reimbursement for "oversight" of responsible party clean-ups; and non-reimbursable remedial actions which involve pollutants and contaminants, mining wastes, clean-up of pesticide contaminated aquifers, and various forms of compensation claims.

RECOMMENDED POSITION

We oppose expanding the uses of the Fund to include the clean-up of pesticide contaminated aquifers, remedial actions at mining sites which are disproportionate to the mining industry's contribution to the Fund, grants to citizens to review EPA clean-up plans, grants to states to provide oversight of private clean-up and compensation programs. Response actions for non-hazardous substances (pollutants and contaminants) should be limited to emergency actions (6 months or 1 million dollars).

Use of the CERCLA Trust Fund should be dedicated to those actions required to support the clean-up of inactive hazardous waste sites, to provide emergency response to environmental releases, and to support other activities such as studies, monitoring and surveillance related to remedial actions for environmental releases of hazardous substances.

CMA
EC-1/28/85
BD-1/29/85

CMA 065283

AUTHORIZATION OF SUPERFUND DOLLARS TO PAY FOR FEDERAL FACILITIES'
REMEDIES

BACKGROUND

Under Section 111(e)(3) of CERCLA, Congress restricted use of Superfund dollars to pay for remedial actions at federally-owned facilities. Where a federally-owned facility is creating a problem, cleanup is funded through the responsible agency's own budget.

An amendment added to S. 2892 would have made a potentially significant incursion into the principle of federal responsibility. That amendment would have made Superfund dollars available to provide alternative drinking and household water wherever there is groundwater contamination outside the boundary of a federally-owned facility and the federal facility "is not the only potentially responsible party."

Because of the "multi-layered" approach to liability under CERCLA where prior owners, generators, and transporters may all be liable as well as a current owner (CERCLA §107), there may be very few sites where the federal government is the only potentially responsible party. Thus, under this amendment, special industry tax dollars would be diverted to pay for the government's own problems.

RECOMMENDED POSITION

This provision should be rejected as an unwarranted drain on Superfund resources. The principle of federal responsibility for federally-owned facilities should not be compromised in this legislation.

CMA
EC-1/28/85
BD-1/29/85

CMA 065284

STATE SHARE: OPERATION AND MAINTENANCE

BACKGROUND

Operating and maintenance costs have become an issue because of EPA's desire to limit Trust Fund expenditures to pay for only the capital costs involved in remedial action and to leave the expenses associated with operating the equipment to the states. The states have resisted this approach because of high costs involved in long term groundwater pumping and treatment systems needed to remedy groundwater contamination. States have generally taken the position that a remedial action alternative should be capital intensive so that it does not require significant O/M costs (example - selection of a remedial action plan that calls for complete removal of wastes rather than containment or in-place treatment). This can lead to actions which:

- a) extend beyond those which are necessary to protect the public health and the environment; and
- b) do not meet the cost-effectiveness requirements of the National Contingency Plan.

RECOMMENDED POSITION

Section 104(c) should be revised to clarify that: (1) as one of the prerequisites for Superfund remedial actions, the states will pay or assure payment of operating and maintenance costs after completion of all Fund financed remedial actions necessary to achieve the health and environmental quality standards established for the site; and (2) the CERCLA Trust Fund is responsible for all costs (capital, operating, and maintenance) needed to complete the remedial actions objective of restoring the site to a condition where it no longer poses a significant threat to public health or the environment. This will ensure cost effective response actions are chosen and mitigate the states' tendency to favor complete removal in all cases. Note: It should be recognized that federal and private remedial actions that involve long term pumping and treatment programs to reach the agreed upon clean-up standards impose a long-term Fund on either federal or the state governments.

CMA
EC-1/28/85
BD-1/29/85

CMA 065285

STATE SHARE: 10% AND 50% COOPERATIVE
AGREEMENTS AND CREDITS

BACKGROUND

Section 104(c) of CERCLA established certain requirements that States must satisfy before they are eligible to receive Superfund monies for remedial action at hazardous waste sites. In particular, the States must assure, through a cooperative agreement with EPA: a) Payment of 10% of the cost of Superfund financed remedial actions, or in the case of state owned sites, at least 50% of the cost of those actions. Recently proposed legislation has attempted to modify the requirements by providing that the states' contribution for the 50% matching share apply to only those sites which were state owned and state operated, and by crediting the states with any prior expenditures made at sites they owned but did not operate if those expenditures exceeded the 10% matching share required for non-owned sites.

RECOMMENDED POSITION

We support current law that requires states to contribute at least 50% for those sites which are owned or operated by the government. Where a state is the owner, its connection with the site is sufficiently great to warrant at least 50% responsibility. Any site owner, whether private or public, has primary responsibility for occurrences on its own property and should not be allowed to shirk that responsibility simply by leasing land to others.

CMA

EC-1/28/85

BD-1/29/85

CMA 065286

JOINT AND SEVERAL

BACKGROUND

CERCLA does not specify whether multiple parties at a site may be "jointly and severally" liable. Federal courts have ruled that as a matter of common law, EPA may apply joint and several liability under CERCLA in appropriate circumstances. They have also stressed, however, that as a matter of equity damages should be apportioned whenever the responsible parties can come up with a "reasonable basis for division" among themselves.

During 1984, CMA accepted the principle that EPA should have discretion to apply "joint and several" liability. CMA recognized that if the theory did not apply, EPA would have to prove in multiple party situations exactly how much each party contributed to the damages. At many multiple party sites, this could be an impossible burden and there would be no cost recovery at all. Thus, the petrochemical industry-financed fund would pay for more sites caused by other industries' disposal practices, and the fund size would have to be increased even further.

In the face of Congressional attempts (particularly in the House) to require application of joint and several in all cases, CMA took the position that this was not necessary. CMA cited the unanimous court rulings upholding joint and several authority, and warned that specification of a uniform standard in the legislation could produce the harsh and inequitable results that the courts had sought to avoid.

The bill passed by the House specifies joint and several as a standard, but provides that courts may equitably apportion damages (using certain factors) after adjudication of liability. CMA has substantial concerns over the stipulation that apportionment can come only "after" adjudication. Because it might unfairly impose all liability on a party at a site, apportionment should not be delayed until after adjudication.

The Senate decided to leave the issue to the courts. The Senate did, however, include an amendment by Senator Simpson which generally endorsed the Recommendations of the U.S. Administrative Conference of June 29, 1984. These recommendations, among other things, encourage EPA to use "greater flexibility" in cases of negotiated settlements, to consider dropping its "80% rule," and to use Superfund resources to pay for non-settling parties' shares.

RECOMMENDED POSITION

CMA supports no change to the current statute. Congress should leave the issue of joint and several liability to the courts and not attempt to specify common law rules in the statute. If CMA were to support any change to current CERCLA at all on this issue, it would be appropriate to support the 1984 Simpson amendment. This approach would ratify EPA's joint and several authority as a discretionary matter, would encourage fair share settlements, and would avoid infringing on EPA discretion and/or common law development in the way the House bill would.

CMA
EC-1/28/85
BD-1/29/85

CMA 065287

VENUE FOR JUDICIAL REVIEW OF EPA REGULATIONS

BACKGROUND

Section 113 of CERCLA authorizes review of EPA regulations only in the Court of Appeals for the D.C. Circuit. The Senate bill authorized filing such suits in the circuit where a directly affected party resides.

RECOMMENDED POSITION

CMA should support efforts to broaden venue because other circuit courts are more likely to acknowledge localized concerns.

CMA
EC-1/28/85
BD-1/29/85

CMA 065288

STATE & FEDERAL RESPONSE ACTIONS: COST RECOVERY

BACKGROUND

CERCLA specifies that federal and state response costs "not inconsistent with the National Contingency Plan" (NCP) may be recovered against responsible parties. Section 116(a)(1) of H.R. 5640 would have improperly deleted this phrase and allowed the parties to recover any costs they incur, not just those that are "not inconsistent with the NCP". Not only would this be unfair to the responsible parties, it would also remove a valuable incentive for the government to maintain cost effective response actions.

If the intent of the amendment was to lessen the government's burden in sustaining a "non-inconsistency" showing in court, that fear should be put to rest by the court's opinion in U.S. v. North Eastern Pharmaceutical, 20 ERC 1401 (W.D. No., February 3, 1984). The Court there clearly distinguished between the "not inconsistent" language of CERCLA §107(a)(4)(A) (which applies to the government) and the "consistent" language of CERCLA §107(a)(4)(B) (which applies to other parties), and ruled that the burden of proof would rest with parties trying to challenge the government's expenditures.

RECOMMENDED POSITION

CMA should oppose amendments that allow the government to recover "any" costs associated with Superfund clean-up actions. Timely, reasonable, and cost effective response actions should be encouraged by law for both government and private parties alike. Removing the requirement that they "not be inconsistent with the NCP" eliminates a degree of uniformity and accountability. In particular, state and federal responses should be held to the cost effective standard.

CMA
EC-1/28/85
BD-1/29/85

CMA 065289

SUPERFUND GRANTS TO CITIZENS TO HIRE CONTRACTORS TO REVIEW EPA'S CLEANUP PROPOSALS

BACKGROUND

Section 111 of H.R. 5640 provided, without any limitations on the total dollar amount, for grants of Superfund dollars to "groups of individuals" to obtain consultants' review of EPA's cleanup proposals. While it is important that individuals who may be affected by a site have the opportunity to review and comment on EPA's cleanup proposals, it would be duplicative and wasteful for the government to fund consultants to review its own consultant's work. The prime beneficiary of such a provision would be the consulting industry.

This amendment is yet another example of attempts to broaden the uses of Superfund. If the Fund is not primarily limited to site clean-up, the scope of Superfund will become unwieldy and "all-purpose." Efforts to divert funds away from cleanup, such as those provisions in proposed Section 111, should be rejected.

Moreover, the unfairness of this section is manifest. The federal government proposes literally thousands of regulations, permits, licenses, projects, and other actions each year that may have a real impact on citizens. Many of these actions can affect citizen's social, physical, or economic well-being just as much as a particular remedial plan at a particular site. Why should the government pay for citizens to hire private consultants to review its consultant's work in this area but not in all the others?

RECOMMENDED POSITION

CMA should oppose funding citizens grants from the Hazardous Substance Response Trust Fund for contractor review of EPA clean-up plans. CMA should support efforts to restrict Fund uses to those most directly related to clean-up.

CMA
EC-1/28/85
BD-1/29/85

CMA 065290

DELAYED JUDICIAL REVIEW RIGHTS

BACKGROUND

Sections 115(b) and 117(e) of HR 5640 would have seriously curtailed the right of judicial review. Section 115(b) would have prevented persons subject to an administrative abatement order from seeking judicial review of that order until EPA sought to enforce that order in court, notwithstanding the fact that violation of such an order is punishable by treble damages and fines of up to \$25,000 per day. This limitation on judicial review would have applied despite the fact that EPA has generally issued these orders limited notice (usually a quick "right to confer"). Similarly, Section 117(e) would have cut off the right of potentially liable parties to seek judicial review of an EPA decision to incur fund expenditures at a site until EPA sought to recover its costs for such a site in court.

Both of these provisions are highly unfair. As to the abatement orders, where any party faces an order requiring massive expenditures and efforts which might take months to complete, that party should not be cut off by statute from the option of at least attempting to convince a court to review the propriety of the order. The fact that the propriety can be reviewed once EPA brings an enforcement suit is wholly insufficient to protect against abuse. EPA may bring such a suit months or years after an order is issued, during which time a party may be required either to spend millions or to risk the millions (trebled) and criminal liabilities by betting that a court at the enforcement stage will agree with his arguments. This would put an incredibly heavy and punitive club in EPA's hands and cut off any effective way to guard against possible abuse.

With respect to EPA fund-financed remedy selections, there must again be the right for interested parties to seek judicial review. Courts need not grant it in inappropriate circumstances, but a statutory cut-off is highly unfair. Some parties may honestly believe that a remedy is going to entail unnecessary "gold-plating;" other parties may honestly believe that a remedy is going to be inadequate. Under these provisions of H.R. 5640, neither type of party even has the opportunity to try to get judicial review of this until after it's done.

Of course, the judicial review process should not be abused so as to delay the waste-site cleanup program. The courts are fully equipped, however, to assure that such abuses will not occur. Even though the law can preserve the normal right for parties to seek judicial review, this does not mean that courts will grant judicial review in inappropriate circumstances or allow such review to delay cleanup.

Moreover, granting judicial review does not mean that the cleanup process need be impeded. Since remedies often require a design phase and several months of preliminary work before the "heavy dollar" phase of the cleanup is actually underway, judicial review could proceed on an expedited basis in appropriate cases without delaying cleanup.

The Senate bill contains no similar provisions.

RECOMMENDED POSITION

CMA should oppose legislative restrictions on judicial review, thereby allowing courts to decide when judicial review is appropriate.

CMA
EC-1/28/85
BD-1/29/85

CMA 065291

STATE AND LOCAL GOVERNMENT LIABILITY

BACKGROUND

"Good Samaritan" proposals have been made to grant state and local governments immunity from all liability for non-negligent emergency response actions they take at hazardous waste sites they do not own.

RECOMMENDED POSITION

We support such provisions which insulate state and local governments from CERCLA liability for non-negligent emergency response actions taken at sites they do not own or operate. However, they should not be insulated from liability for planned remedial actions since CERCLA requires such actions to be thoroughly evaluated and carefully planned before actions is taken.

CMA

EC-1/28/85

BD-1/29/85

NEW RESTRICTIONS ON DEPARTMENT OF TRANSPORTATION DISCRETION

Section 203 of H.R. 5640 proposed a significant change to Section 306 of CERCLA, which deals with transportation of hazardous substances. It would make the Department of Transportation "regulate," not just "list" (as provided in current law), CERCLA hazardous substances under the Hazardous Materials Transportation Act. This would result in a significant burden since shippers would have to provide hazardous materials shipping papers and meet other requirements for about 700 additional CERCLA substances, many of which have an unrealistically low reportable quantity.

RECOMMENDED POSITION

Congress should call upon EPA to speed up its efforts to establish appropriate "reportable quantity" levels for the remaining hazardous substances. DOT should then incorporate them into the regulations.

CMA
EC-1/28/85
BD-1/29/85

CMA 065293

PREEMPTION

BACKGROUND

Section 114 - CERCLA states that ". . . no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title."

The issue of whether Section 114 precludes the states from imposing a State Superfund tax to fund an inactive hazardous waste site program similar to CERCLA is currently under appeal in the courts.

POSITION

CMA should take no position on the preemption issue.

CMA
EC-1/28/85
ED-1/29/85

CMA 065294

POST CLOSURE

BACKGROUND

An additional Superfund tax (the Post Closure Tax) became effective on 10/1/83 and is paid into a separate fund which is designed to take over the responsibility for current RCRA sites after they are properly closed. The tax rate is \$2.13/dry ton of hazardous waste land disposed. Unless renewed by Congress, authority to collect this tax expires on September 30, 1985. It is generally believed that this expiration date was a technical drafting error.

A provision for the assumption by the Federal Government of on-going liability is important to owner/operators of permitted RCRA facilities.

Because of the lack of IRS regulations and the absence of clear guidance on what is to be taxed, the fund has collected taxes at a rate of about \$8 million/yr. to date. At the current \$2.13/ton rate, one can calculate that the tax was based on 3.8 million tons of hazardous waste disposed.

RECOMMENDED POSITION

Support extension of authority to collect Post-Closure Tax. The Post-Closure Fund is an essential part of an orderly national system of hazardous waste management. It provides "perpetual care" and on-going financial responsibility for all properly closed RCRA sites.

The tax should continue for another five years with the fund ceiling remaining at \$200 million and the tax continuing to be on a dry weight basis. Also needed is a clear regulatory plan to implement the statutory requirements.

CMA
EC-1/28/85
BD-1/29/85

CMA 065295

AUTHORITY TO CLOSE ACTIVE TREATMENT STORAGE
& DISPOSAL (TSD) FACILITIES

BACKGROUND

Section 115(b) of H.R. 5640 mandated that EPA force the closure of certain facilities regulated under the Resource Conservation and Recovery Act (RCRA). EPA must close any active RCRA facility (landfill, storage area, or surface impoundment) where 75,000 persons reside within a 2.5 mile radius of the facility and where a state or local government has required temporary or permanent relocation of any individuals because of the facility.

Although this amendment was intended to close the BKK landfill in West Covina, Ca., it is written more broadly. For example, the amendment could force EPA to close a landfill when a product release from a chemical plant caused a temporary evacuation. Also, since only a temporary relocation of an undefined number of individuals is required, quick and minor relocations might be engineered for the sole purpose of closing a TSD facility which is operating legally and safely.

S. 2892 contained no similar provision.

RECOMMENDED POSITION

Oppose any similar amendment which could force closure of TSD facilities based on broad criteria. Current RCRA provides adequate authority to close TSD facilities when they present "imminent and substantial endangerment".

CMA
EC-1/28/85
BD-1/29/85

NATURAL RESOURCE DAMAGES

BACKGROUND

While CERCLA is commonly regarded as a waste site cleanup program, the law currently includes provisions for "natural resource damages" which could potentially divert a great amount of financial resources and efforts away from waste site cleanup. The law covers natural resources (such as flora, fauna, groundwater, land, etc.) owned or controlled by any federal/state/local government in two basic ways. Whenever a government agency believes such resources have been damaged in connection with a CERCLA release, the agency may either (1) seek reimbursement from the Superfund for damages, or (2) seek recovery under the private party liability provisions of CERCLA.

While relatively few claims have yet been filed against the fund or private parties, it appears that the potential size of the claims could be large. Even though the current fund is capped at \$1.6 billion, pending natural resource claims against the fund already exceed \$2.7 billion.

It appears that a major part of the problem thus far has been the potentially open-ended nature of the theoretical "damages" that can be computed and alleged with respect to groundwater and contaminated soil. For instance, most of the \$2.7 billion in claims against the fund relate to alleged soil contamination and groundwater damages.

The final version of H.R. 5640 as passed by the House on August 10, 1984, prohibited the use of the fund to pay any natural resource damage claims. §9505(c). The relevant committee report language explained this prohibition as follows:

Superfund revenues used to pay such damage claims are diverted from the cleanup of the nation's worst abandoned hazardous waste sites, which is the primary objective of the Superfund program. Also, the Committee was concerned that the Superfund might not be able to satisfy current and future damage claims. (H.R. Rept. No. 98-890, Aug. 8, 1984, at p. 25.)

While the Bill did not remove the provisions for liability against private parties from CERCLA, CMA's members would stand to gain significant advantages from the approach taken by the House. First, the Superfund (which is largely drawn from petrochemical industry taxes) would be better preserved. Second, there would probably be fewer claims against private parties under the House approach. This is because under current law, one cannot claim against the fund unless he first attempts to recover against any known responsible parties (§112(a)). Thus it may be surmised that many claims against private parties are actually viewed by claimants as just a necessary step on the way to a future claim against the fund. While claimants can expect private parties to fight hard in court against unreasonable claims, they may also expect "easier sailing" through the administrative process of filing claims against the fund.

RECOMMENDED POSITION

CMA should support the approach taken by the House in 1984 which prohibited use of the fund to pay any natural resource damage claims.

CMA
EC-1/28/85
BD-1/29/85

CMA 065297

ADMINISTRATIVE VICTIMS' COMPENSATION FUND

BACKGROUND

The Senate Superfund bill in 1984 contained provisions that would create a five-state pilot compensation scheme for persons exposed to hazardous substances. The proposal identifies classes of individuals which may have experienced an injurious exposure to a waste site hazard and goes on to provide that persons within each class so identified, who are not otherwise being compensated by a liable party, are eligible for Superfund financed burial benefits, health insurance and disability insurance to be secured through the purchase of group burial, health and disability insurance policies. These benefits are available only to the extent that an eligible individual does not otherwise have health care, disability, or burial coverage under "another policy." If the member of the covered class later obtains a damage recovery against a responsible party, that class member is obligated to repay to Superfund the costs of assistance out of any recovery obtained. It appears that the claim procedures contained in Section 112 of CERCLA are applicable to any request for victim assistance.

The experience under the Federal Black Lung Program raises serious concerns about an administrative fund to compensate people exposed to waste site substances.

The Federal Black Lung Program is now widely recognized as a classic overreaction to a problem. The Comptroller General of the United States reported in 1980 and again in 1982 that in 88.50% and 84, respectively, of the claims approved in the program, the claim record lacked any credible evidence of death or disability due to black lung disease. A draft report prepared by the Franklin Institute under congressional authorization, which is now circulating, will demonstrate that the vast majority of assumptions used in making awards are scientifically unsupported or completely invalid.

Scientific evidence available today fails to support the conclusion that waste site release related harm is of such proportions that a dramatic federal solution is appropriate. The black lung experience proves that the existence of the dramatic remedy will vastly increase utilization and, that the overriding intention to compensate will progressively erode scientific integrity and blur a rational analysis of issues involving causation and the extent of harm done.

RECOMMENDED POSITION

CMA should oppose any administrative fund to compensate people exposed to waste site substances -- pilot or complete programs. Results of the UAREP study suggest that injuries from waste sites are not widespread; existing legal remedies and insurance programs provide redress and assistance to those who may be affected adversely by these substances.

CMA
EC-1/28/85
BD-1/29/85

CMA 065298

FEDERAL CAUSE OF ACTION

BACKGROUND

In the last Congress, Rep. Florio introduced legislation that would have created a retroactive cause of action for alleged injuries from releases of hazardous substances, pollutants, or contaminants. It also would have amended the Federal Rules of Evidence and Civil Procedure to allow as relevant admissible evidence so-called "junk science," and encourage certification of class actions. The bill also would have changed burdens of proof and going forward, thereby disrupting judicial checks and balances to favor plaintiffs' recovery. Damage remedies were also broadened for prevailing plaintiffs. Support for such a drastic change in traditional state tort laws was based on perceived inadequacies in state laws and a belief that the proposal was more equitable to injured plaintiffs.

At the same time the federal cause of action was being proposed, insurance companies had already begun a major withdrawal of environmental impairment liability coverage from the open market. Of the several reasons cited for this happening was an uncertainty about the impact of existing environmental laws and courts' interpretation of issued policies. The insurance industry predicted the availability of environmental impairment liability insurance would diminish if the the proposed federal cause of action were enacted.

RECOMMENDED POSITION

CMA should oppose a federal cause of action and any accompanying changes in the Federal Rules of Evidence or Civil Procedure that would change existing rules to ease jurisdictional requirements, admissibility of evidence, class action certification, burden of proof, burden of going forward, or liability.

CMA
EC-1/28/85
BD-1/29/85

CMA 065299

PUBLIC HEALTH SURVEILLANCE

BACKGROUND

CERCLA Section 104(i) now provides ATSDR authority to conduct public health surveillance studies. The language is ambiguous on the circumstances under which ATSDR could do health surveillance studies. The concept of public health surveillance was embodied in legislative language in both the Senate and House bills in the 98th Congress. In addition, the Keystone group endorsed this concept in its draft report. Public health surveillance would entail medical monitoring of people exposed to hazardous waste site substances from NPL sites. Screening tests for effects expected from the exposure would be conducted over a period of time in which these effects would manifest. Early intervention may reduce the severity of the effect.

States are now drafting their own health surveillance legislation or plan to conduct such studies under existing law, which may be inconsistent with methodologies that ATSDR uses. This increases the potential for false or inconclusive results and inappropriate administrative or legislative responses.

RECOMMENDED POSITION

In response to congressional initiatives, CMA should support public health surveillance as a remedy under Superfund. This policy is consistent with our earlier policy of broadening ATSDR authority under Section 104(i) of CERCLA. Federal public health surveillance would be limited to NPL sites. We would support state surveillance programs for non-NPL sites, which were consistent with ATSDR standards.

CMA
EC-1/28/85
BD-1/29/85

CMA 065300

CITIZEN PETITIONS FOR HEALTH ASSESSMENTS

BACKGROUND

CFRCLA does not presently grant citizens the right to petition the government when they believe they have been exposed to hazardous substances from waste sites that might affect their health. Superfund bills introduced in the last Congress contained provisions granting such rights to citizens, which created new duties and deadlines for EPA or ATSDR. The Keystone Toxic Exposure Compensation Project recommended in its draft report that citizens be provided the right to petition ATSDR to conduct testing in various media around waste sites. Under the Keystone concept, citizens may request testing for possible exposure to toxic waste site substances, and would be responsible for the costs incurred for such testing.

RECOMMENDED POSITION

CMA should support legislation that provides citizens the right to petition ATSDR to conduct tests to determine whether significant exposure to toxic waste site substances has occurred. The citizens petitioning would bear the initial cost of this testing. ATSDR would have discretion to proceed or decline the request to conduct exposure testing and follow-up health surveillance. Citizens would be reimbursed for testing costs where the results indicated significant exposure to toxic waste site substances. We would support similar state legislation.

CMA
EC - 1/28/85
BD - 1/29/85

8:30

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CMA 065301