

WORKSAFE

A CALIFORNIA COALITION FOR WORKER OCCUPATIONAL SAFETY & HEALTH PROTECTION

Comments of Worksafe, Inc.

Request for an Extension of Time

Request for Hearings

on

“Requirements for DOL Agencies’ Assessment of Occupational Health Risks”

RIN 1290-AA23

September 29, 2008

The following requests and comments are submitted on behalf of Worksafe, Inc., in strong opposition to the above-entitled proposal, which was published on Friday, August 29, 2008.

Worksafe is a California-based non-profit organization dedicated to promoting occupational safety and health through education, training, technical and legal assistance, and advocacy. Worksafe has been a national leader in the fight for health-protective standards for workplace exposure to toxic chemicals and substances, advocating for the use of the same sound science that drives the setting of health-protective environmental standards for the general community. Worksafe has also taken the lead in calling out the staggering and indefensible disparities between permissible exposure limits (“PELs”) for many carcinogens and developmental toxicants in the workplace, versus the far more protective limits set for exposure to the same toxic substances in the general environment. Worksafe has sponsored the first of its kind legislation in California to try to address these disparities.

While our work has focused on California standards, the disparity between occupational and environmental exposure standards exists across the nation. The DOL proposal would make this long-standing, inequitable and highly risky situation for working people even worse. The proposal would cause substantial delay and weakening of occupational health protections in the future, further denying workers needed protection from cancer and other chronic diseases.

Current worker protections against harmful chemical exposures are woefully inadequate. An illustration with which Worksafe is all too familiar is the fact that only a handful of the existing OSHA regulations protect against known carcinogens and reproductive or developmental toxicants at all. At least four important substances known to cause cancer, birth defects, or reproductive harm—1-bromopropane (solvent), ceramic fibers, diesel engine exhaust, and N-Methylpyrrolidone (solvent)—have *no* OSHA PELs at all, and there are many other chemicals that *are* regulated by OSHA, but still pose unacceptably high cancer risks even at the established OSHA PELs.

According to a December 2007 study released by the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment (OEHHA),¹ the following are among the chemicals that pose excessively high cancer risks at the existing OSHA PELs:

CHEMICAL	ESTIMATED EXCESS CANCER CASES (per 1000 Workers, at OSHA PEL)
Acetaldehyde	188
Benzyl chloride	48
p-Dichlorobenzene	959
1,1-Dichloroethane	125
1,4-Dioxane	537
Ethylbenzene	210
Naphthalene	330
Nickel & nickel compounds	51
Tetrachloroethylene (Perchloroethylene)	777
Trichloroethylene	209

Despite this backdrop, the proposal's language implies that existing practices for promulgating workplace exposure standards are hasty and reckless, and that existing standards are churned out without giving stakeholders a meaningful opportunity to comment on the standards. The reality is quite the opposite. The proponents of the proposal are well aware that OSHA has promulgated only *one* occupational health standard during the entire Bush Administration – for hexavalent chromium – and it did so only when it was required by a federal court order.²

As the 2000 report of the National Advisory Committee on Occupational Safety and Health made clear, the real problem with OSHA and MSHA rulemaking is delay. Rather than solving this problem, the proposal would add new steps and requirements to the already protracted rulemaking process, worsening the very problem that the DOL should be trying to solve. Indeed, the proposal would exacerbate the situation by imposing new procedural requirements on OSHA and MSHA for carrying out occupational risk assessments when developing workplace health rules. In particular, the proposal would require OSHA and MSHA to issue an advanced notice of proposed rulemaking (ANPR) for every occupational health standard to solicit scientific studies and other information on health risks and exposures. The proposed procedure would also require OSHA and MSHA to respond to every public comment submitted on risk assessment, without regard to the comment's relevance or merit, before issuing a proposed or final rule.

¹ The December 2007 OEHA Report, entitled *Occupational Health Hazard Risk Assessment Project for California: Identification of Chemicals of Concern, Possible Risk Assessment Methods, and Examples of Health Protective Occupational Air Concentrations*, may be found on the website of the California Department of Public Health at <http://www.cdph.ca.gov/programs/hesis/Documentsriskssummary.pdf>.

² If DOL were serious about wanting to expeditiously address the unacceptably high health risks to workers posed by exposure to these unregulated and under-regulated substances, OSHA could use the *existing* quantitative risk assessment data and guidelines published by EPA and Cal/EPA (with adjustments for worker exposure), and Worksafe would strongly recommend that it do so. This approach would also avoid duplication of scarce government resources at this time of economic crisis in the country. Based on Worksafe's experience with the current PEL-setting process before Cal/OSHA, however, we are well aware that the DOL proposal will only favor representatives of the chemical industry, who can afford to hire toxicologists to provide input that promotes their interests, and as to which DOL must expend scarce resources to respond. Conversely, the proposed rule will do nothing to address the fact that there is an almost total lack of worker representation (due to a lack of comparable resources) in setting protective PELs for toxic chemicals in the workplace.

Mandating this additional step in the rulemaking process, along with the requirement for OSHA and MSHA to respond to all comments on risk assessment issues, will add approximately two years to a process that already takes eight or more years to complete. Because of the prospect of such delay, the Administrative Conference of the United States in 1987 recommended that OSHA *not* routinely use ANPRs. (ACUS Recommendation 87-10, *Regulation by the Occupational Safety and Health Administration*, 52 Fed. Reg. 49,147 (1987).) Moreover, these requirements are unnecessary. OSHA and MSHA standard-setting processes already provide for much more extensive public input and participation than virtually all other government agencies.

The proposal would also require OSHA and MSHA, in evaluating risk, to gather and analyze available industry-by-industry evidence related to working life exposures, a step whose infinitesimal benefit is completely outweighed by the delay, inefficiency, and harm it will cause. Neither agency currently gathers such evidence. This additional procedural requirements would substantially increase the length of the rulemaking process, adding years of delay to an already glacial process and, if adopted, will result in unnecessary death and disease for workers.

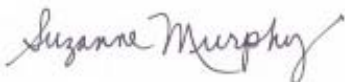
Currently, both OSHA and MSHA evaluate the risk posed to the overall population of workers exposed to the hazard in question at the level of exposure under an existing rule or conditions, and assess how a reduction in exposure would reduce that risk. Both agencies usually set a single permissible exposure level for all workers exposed to the hazard. The agencies appropriately assume that exposure to similar levels of a chemical pose the same risk to workers, regardless of the sector of the economy in which the exposures occur. The proposed industry-by-industry assessment of health risks, based on the idea that the same level of exposure will differently affect workers in different sectors, makes no sense for rules that cover many groups of workers.

Most importantly, if the proposal is implemented, many workers will needlessly suffer horrible, but preventable, illnesses and death. For example, OSHA's own risk assessment on hexavalent chromium reveals that every year of delay in the adoption of the new 5.0 µg/m³ standard resulted in 40 to 145 lung cancer deaths. Similarly, OSHA's preliminary risk assessment on silica estimates that for each year of delay in setting a silica rule 60 unnecessary deaths will occur. The silica rule currently under development, designated a "priority" by the Bush Administration since 2002, would also be affected and further delayed by the proposal's requirements. Thus, at least once every week, a silica-exposed worker will draw his last painful breath and die a completely preventable death, because of the imposition of this useless and duplicative proposal. If such deaths do not sway DOL and corporate decisionmakers, perhaps the lawsuits and workers' compensation claims based on these deaths eventually will.

We are aware that there are many more criticisms of this rule that scientists and other health experts have made in more detail, and submitted in opposition to this proposal. We implore you to accept these criticisms for the serious scientific statements that they are.

For all the foregoing reasons, the proposal should be withdrawn. If the proposal is not withdrawn, the DOL should schedule public hearings and extend the comment period until 60 days after those hearings. Thank you for your attention to these comments.

Respectfully submitted,



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