Julius Uehlein

STATEMENT OF JULIUS UEHLEIN

PRESIDENT

PENNSYLVANIA AFL-CIO

ON

PRODUCTS LIABILITY

WORKPLACE SAFETY

AND

PRODUCTS SAFETY

BEFORE

THE HOUSE JUDICIARY AND

LABOR RELATIONS COMMITTEES

HONORABLE THOMAS CALTAGIRONE

HONORABLE MARK COHEN

HARRISBURG, PA NOVEMBER 2, 1989

CHAIRMAN CALTAGIRONE, CHAIRMAN COHEN, MEMBERS OF THE JUDICIARY AND LABOR RELATIONS COMMITTEES AND COMMITTEE STAFF, MY NAME IS JULIUS UEHLEIN AND I AM PRESIDENT OF THE PENNSYLVANIA AFL-CIO. IT IS A PLEASURE FOR ME TO BE HERE TODAY TO DISCUSS THE INTERRELATED ISSUES OF PRODUCT LIABILITY, WORKPLACE SAFETY AND PRODUCT SAFETY.

THE 1.2 MILLION MEMBERS OF THE PENNSYLVANIA AFL-CIO WORK IN A CROSS-SECTION OF THE STATE'S ECONOMY. ALMOST ONE OUT OF EVERY FOUR WORKING MEN AND WOMEN IN THE COMMONWEALTH ARE MEMBERS OF OUR AFFILIATED UNIONS. THEY WORK IN THE INDUSTRIAL, PUBLIC AND CONSTRUCTION SECTORS.

THE LAWS WHICH WE WILL DISCUSS TODAY ESTABLISH THE FRAMEWORK FOR WORKPLACE SAFETY. WHETHER WORKING WITH AN INDUSTRIAL PRESS; JACK HAMMER; TOXIC CHEMICAL; ASBESTOS OR COMMERCIAL LIFT, THE LIABILITY RULES AND THEIR RELATIONSHIP TO COMPENSATION AND REGULATORY SCHEMES TOGETHER DETERMINE SAFETY AND THE ADEQUACY OF COMPENSATION TO THOSE UNFORTUNATE ENOUGH TO BE VICTIMS.

I KNOW THAT YOU HAVE HEARD A GREAT DEAL OF TESTIMONY ON THESE BILLS.

IF YOU REMEMBER NOTHING ELSE FROM MY TESTIMONY, PLEASE REMEMBER THAT I WAS CONCERNED WITH SAFETY.

THERE IS A TENDENCY FOR THOSE WHO FIRST ENCOUNTER THIS BROAD

AREA TO GET WRAPPED UP IN A LEGALISTIC DISCUSSION ABOUT FAIRNESS.

THE MOST OBVIOUS EXAMPLE IS THE PROPOSED STATUTE OF REPOSE. H.B. 941 PROPOSES A 15-YEAR LIMITATION AFTER WHICH NO LEGAL ACTION OF ANY KIND CAN BE BROUGHT. NORMALLY, THIS THEN TURNS INTO A DEBATE ABOUT HOW LONG IS LONG ENOUGH. FIFTEEN YEARS ON THE SIMPLE FAIRNESS TEST IS TOO SHORT. THE AVERAGE AIRPLANE IN SERVICE IS 16.4 YEARS AND SO ON.

REASONABLE PEOPLE CAN DISAGREE ABOUT THE EXACT NUMBER OF YEARS, BUT I BELIEVE THEY ALL MISS THE POINT. TAKING THE STATUTE OF REPOSE AS THE EXAMPLE, ANY FIXED PERIOD IS A LIMITATION NOT NOW FOUND IN THE LAW. THE DIRECT EFFECT OF A FIXED PERIOD IS TO ARTIFICIALLY CUT-OFF INDIVIDUAL RIGHTS - REGARDLESS OF THE MERITS OF THE CLAIM. THE FIRST QUESTION MUST BE - WHAT IS THE JUSTIFICATION FOR LIMITING INDIVIDUAL RIGHTS?

BUT EVEN MORE IMPORTANT IS WHAT IMPACT WILL A STATUTE OF REPOSE HAVE ON WORKPLACE SAFETY? THE CURRENT UNLIMITED TIME REQUIRES THE MANUFACTURER OF A PRODUCT TO MAINTAIN INFORMATION ON PRODUCT DEFECT FOR THE LIFE OF THE PRODUCT. THE MANUFACTURER IS IN A UNIQUE POSITION TO KNOW THE DEFECT IN PRODUCT MANUFACTURE.

FOR EXAMPLE, A POORLY HINGED SAFETY SHIELD ON A PRESS WOULD NOT BECOME KNOWN TO THE PURCHASER OF A SINGLE PRESS UNTIL AN

ACCIDENT OCCURS. ON THE OTHER HAND, THE MANUFACTURER WHO PRODUCED A THOUSAND SHIELDS IS LIKELY TO KNOW AFTER THE THIRD OR FOURTH DEFECT IS BROUGHT TO THEIR ATTENTION.

THE MANUFACTURER CAN THEN NOTIFY THE PURCHASERS OF THE DEFECT AND TAKE APPROPRIATE STEPS TO AVOID ANY FUTURE INJURY. PRODUCT RECALL, IMPROVED LABELLING AND SAFETY NOTICES ARE AN IMPORTANT INGREDIENT IN WORKPLACE SAFETY.

IF YOU ADOPT THE 15-YEAR STATUTE OF REPOSE PROPOSED IN H.B. 941, YOU ARE, IN EFFECT, TELLING MANUFACTURERS THEY DON'T HAVE TO WORRY ABOUT THE PRODUCT AT ALL AFTER 15 YEARS. CLEARLY, THE USEFUL AND INTENDED LIFE OF MANY MACHINES IS FAR BEYOND 15 YEARS AND MUCH OF THE EQUIPMENT IN OUR PLANTS DATES BACK TO THE 1940'S AND 1950'S.

I SIMPLY CANNOT UNDERSTAND WHY THE LEGISLATURE WOULD, IN EFFECT, TELL A MANUFACTURER TO STOP KEEPING INFORMATION ON A MACHINE WHICH COULD MAIM OR KILL SOMEONE SIMPLY BECAUSE OF A FIXED PERIOD OF TIME HAS PASSED.

DOES THE LEGISLATURE PLAN ON ALSO MANDATING THAT ALL PLANT EQUIPMENT MORE THAN 15 YEARS OLD BE REPLACED, OR THAT THE EMPLOYER IS THEN HELD DIRECTLY LIABLE?

THE IMPACT OF THIS CHANGE IS TO DIMINISH SAFETY IN THE WORKPLACE.

ANOTHER SERIOUS IMPACT OF THE STATUTE OF REPOSE IS TO CUT OFF ANY POTENTIAL OF COMPENSATION TO VICTIMS OF OCCUPATIONAL DISEASES. MANY INDUSTRIAL DISEASES - ASBESTOSIS, BLACK LUNG OR CANCERS TAKE 15 OR MORE YEARS TO EVIDENCE THEMSELVES. AS WAS TRUE WITH ASBESTOS, BLACK LUNG AND THE INDUSTRIAL CHEMICAL BCME, MEDICAL TEST RESULTS WERE KEPT SECRET OR FALSIFIED AND WORKERS WERE ACTIVELY MISLED ABOUT THE NATURE AND DANGERS OF THEIR WORKPLACE EXPOSURE.

IN THESE AND OTHER SITUATIONS OF OCCUPATIONAL DISEASE, A STATUTE OF REPOSE WOULD EFFECTIVELY KNOCK OUT ANY PRODUCT LIABILITY CLAIM. THE PROPOSAL TO CUT OFF THE RIGHTS OF OCCUPATIONAL DISEASE VICTIMS BY A STATUTE OF REPOSE IS PARTICULARLY CRUEL BECAUSE OUR COMPENSATION SYSTEM DOES SUCH A POOR JOB IN THIS AREA. NATIONALLY, ONLY 5% OF THE OCCUPATIONAL DISEASE VICTIMS RECEIVE WORKERS' COMPENSATION. AT THE SAME TIME, THERE ARE AN ESTIMATED 100,000 OCCUPATIONAL DISEASE DEATHS PER YEAR.

ARTIFICIAL RULES IN THE OCCUPATIONAL DISEASE AREA, SUCH AS A REQUIREMENT THAT THE INJURED PARTY ESTABLISH A GREATER PREVALENCE OF THE DISEASE IN THE INDUSTRY THAN IN THE POPULATION AT LARGE, DENY VICTIMS NEEDED AID. ADMITTEDLY, AT STAKE IN THE PRODUCTS

LIABILITY AREA, ARE ONLY A SMALL NUMBER OF CLAIMS, BUT THEY REPRESENT, AS WITH ASBESTOS, THE MOST OUTRAGEOUS CASES. THE PARALLEL IMPLICATIONS FOR SAFETY BY TRACKING AND WARNING POTENTIAL OCCUPATIONAL DISEASE VICTIMS WITH LONG LATENCY PERIODS, IS OF EQUAL CONCERN. ADOPTING A 15-YEAR CUT OFF WOULD END THE OBLIGATION TO NOTIFY PEOPLE WHO WERE EXPOSED OF THE POTENTIAL DANGERS AND THE TREATMENT SUGGESTED.

AT STAKE IN THIS CLOUD OF LAWS GOVERNING OUR BASIC RELATIONSHIPS, ARE THE FUNDAMENTAL ISSUES OF SAFETY AND THE RELATED STANDARD OF CARE WHICH GOVERNS OUR DAILY LIFE AND THE QUALITY OF LIFE FOR INJURED AND DISABLED VICTIMS.

I WOULD LIKE TO COME AT THIS POINT FROM ONE OTHER ANGLE TO MAKE IT ABUNDANTLY CLEAR THAT THE REAL ISSUE HERE IS SAFETY.

I AM ATTACHING TO MY STATEMENT A DOCUMENT FROM WESTINGHOUSE CORPORATION, ONE OF PENNSYLVANIA'S LEADING EMPLOYERS, ENTITLED <u>CORPORATE STATEMENT OF POLICY ON HOW TO PROTECT YOUR COMPANY FROM PRODUCT LIABILITY LOSSES.</u>

THE FIRST PARAGRAPH OF THIS POLICY ON LIMITING PRODUCT LIABILITY LOSSES STATES;

"OBJECTIVES:

ACTIONS SHALL BE TAKEN TO IDENTIFY AND MINIMIZE POTENTIAL PRODUCT HAZARDS DURING ALL PHASES OF THE PRODUCT'S LIFE INCLUDING DEVELOPMENT, DESIGN, MANUFACTURE, MARKETING, INSTALLATION, SERVICE, USE AND DISPOSAL. ALL REASONABLE MEASURES SHALL BE TAKEN TO MINIMIZE THE RISK OF INJURY TO PERSONS AND DAMAGE TO PROPERTY AND THE ENVIRONMENT GIVING FULL REGARD TO APPLICABLE FEDERAL, STATE, LOCAL, AND INDUSTRY SAFETY STANDARDS, REGULATORY REQUIREMENTS, TECHNOLOGY STATE-OF-THE-ART AND CONVENTIONAL STANDARDS OF CARE AND USE REQUIRED BY SOCIETY."

WESTINGHOUSE SHOULD BE APPLAUDED FOR THIS POLICY BECAUSE IT PLACES THE ENTIRE EMPHASIS WHERE IT SHOULD BE - ON MANUFACTURING SAFE PRODUCTS.

THE BEST WAY TO LOWER COSTS IS TO PRODUCE SAFE PRODUCTS.

THE ALTERNATIVE, AS PROPOSED IN H.B. 941, IS TO SPEND YOUR RESOURCES TRYING TO CHANGE THE RULES SO THAT INJURED PEOPLE CAN'T

RECOVER, EVEN IF THE PRODUCT IS UNSAFE.

CHANGING THE RULES TO LIMIT THE RIGHTS OF VICTIMS IS A WRONG-HEADED APPROACH. WESTINGHOUSE HAS THE RIGHT APPROACH-DESIGN AND MANUFACTURE PRODUCTS SAFELY.

I ENCOURAGE YOU TO REMEMBER THAT EVERY SINGLE PRODUCT LIABILITY CASE HAS ONE THING IN COMMON - A VICTIM. NO CASE IS EVER BROUGHT WITHOUT A VICTIM. THE WESTINGHOUSE APPROACH CUTS TO THE CORE OF LIABILITY COSTS BY ELIMINATING THE VICTIM.

BEYOND THAT, THE WESTINGHOUSE POLICY IS SOUND PUBLIC POLICY FOR OUR COMMONWEALTH. SAFETY FIRST IS NOT ONLY GOOD ECONOMICS, IT SAYS WE PLACE THE HIGHEST VALUE ON HUMAN LIFE.

FINALLY, ON THIS ISSUE, I WOULD LIKE TO QUOTE FROM A REPORT BY THE CONFERENCE BOARD, A <u>BUSINESS INFORMATION</u> SERVICE WHOSE PURPOSE IS TO ASSIST SENIOR EXECUTIVES AND OTHER LEADERS IN ARRIVING AT SOUND DECISIONS.

THIS IS AN EXCLUSIVE BUSINESS GROUP AND THEY ISSUED A DEFINITE REPORT ENTITLED <u>PRODUCT LIABILITY; THE CORPORATE RESPONSE.</u>

THE CONFERENCE BOARD'S MAJOR FINDING WAS A MINOR IMPACT FROM

PRODUCT LIABILITY LAWS. IN FACT, THEY QUOTE ONE MANAGER WHO SAID, "THERE MAY BE LESS HERE THAN MEETS THE EYE."

SPECIFICALLY, THE CONFERENCE BOARD REPORT STATES IN THEIR 1986 REPORT:

> " MAJOR FINDING: MINOR IMPACT:
>
> THE MOST STRIKING FINDING IS THÀT THE IMPACT OF THE LIABILITY ISSUE SEEMS FAR MORE RELATED TO RHETORIC THAN TO REALITY. GIVEN ALL THE MEDIA COVERAGE AND HEATED ACCUSATIONS, THE SO-CALLED TWIN CRISES IN PRODUCT LIABILITY AND INSURANCE AVAILABILITY HAVE LEFT A RELATIVELY MINOR DENT ON THE ECONOMICS AND ORGANIZATION OF INDIVIDUAL LARGE FIRMS, OR ON BIG BUSINESS AS A WHOLE. IN THE WORDS OF ONE MANAGER: "THERE MAY BE LESS HERE THAN MEETS THE EYE."
>
> **PRODUCT** LIABILITY: FOR THE MAJOR CORPORATIONS SURVEYED, THE PRESSURES OF PRODUCT LIABILITY HAVE HARDLY AFFECTED LARGER ECONOMIC ISSUES, SUCH AS REVENUES, MARKET SHARE, OR EMPLOYEE RETENTION. LIABILITY LAWSUITS, WHICH ARE INDEED NUMEROUS, ARE OVERWHELMINGLY SETTLED OUT OF COURT, AND USUALLY FOR SUMS THAT ARE CONSIDERED MODEST BY CORPORATE

STANDARDS. AS A MANAGEMENT FUNCTION, PRODUCT LIABILITY REMAINS A PART-TIME RESPONSIBILITY IN MOST OF THE RESPONDING FIRMS. WHERE PRODUCT LIABILITY HAS HAD A NOTABLE IMPACT - WHERE IT HAS MOST SIGNIFICANTLY AFFECTED MANAGEMENT DECISION MAKING- HAS BEEN IN THE QUALITY OF THE PRODUCTS THEMSELVES. MANAGERS SAY PRODUCTS HAVE BECOME SAFER, MANUFACTURING PROCEDURES HAVE BEEN IMPROVED, AND LABELS AND USE INSTRUCTIONS HAVE BECOME MORE EXPLICIT."

LET ME REPEAT THAT LAST PART..."MANAGERS SAY PRODUCTS HAVE BECOME SAFER, MANUFACTURING PROCEDURES HAVE BEEN IMPROVED AND LABELS AND USE INSTRUCTIONS HAVE BECOME MORE EXPLICIT," BECAUSE OF OUR PRODUCT LIABILITY LAWS.

IF LABOR, BUSINESS, SAFETY EXPERTS AND OTHERS AGREE THAT PRODUCT LIABILITY LAWS ARE THE EQUALIZING FORCE ON SAFETY AND BELIEVE RETREAT FROM THIS POLICY IS A MAJOR MISTAKE.

LET ME JUST ACKNOWLEDGE A RECENT REPORT PAID FOR BY THE PRODUCTS LIABILITY TASK FORCE.

THIS IS THE MOST MISLEADING REPORT I HAVE SEEN IN MY 23 YEARS IN HARRISBURG.

THE AUTHORS ANNOUNCE THEIR BIAS, "RISING COSTS" AND "ADVERSE IMPACT," AND THE LEGISLATIVE ADVOCACY PURPOSE IN THE COVER LETTER TO A HANDFUL OF CEO'S WHO WERE ASKED A TOTAL OF 16 QUESTIONS IN THE SELF-SERVING SURVEY.

THE SURVEY, WHICH ASKS ONLY ABOUT THEIR OPINION ON THE PRODUCT LIABILITY LAW, FAILS TO DISTINGUISH BETWEEN PENNSYLVANIA'S PRODUCT LIABILITY LAW AND ALL PRODUCT LIABILITY LAWS.

FINALLY, AND MOST IMPORTANTLY, THE REPORT FAILS TO ASK A SINGLE QUESTION ON THE BENEFITS OF PRODUCT LIABILITY LAWS.

THIS IS PURE BUSINESS ADVOCACY PROPAGANDA AND NOT RESEARCH. I HAVE WRITTEN TO THE DEAN OF THE WHARTON SCHOOL TO QUESTION THE EXPLOITATION OF THAT FINE INSTITUTION'S NAME BY THESE PHD'S FOR HIRE.

TO PUT THIS ISSUE IN BETTER PERSPECTIVE, LET ME SHARE WITH YOU A SNAPSHOT OF OUR COMMONWEALTH'S HEALTH AND SAFETY RECORD.

IN PENNSYLVANIA DURING THE PAST TEN YEARS:

* ON AVERAGE, 270 PENNSYLVANIANS ARE KILLED BY ON-THE-JOB TRAUMATIC INJURIES EACH YEAR;

* A STAGGERING 130,000 LOST TIME INJURIES ARE REPORTED TO THE WORKERS' COMPENSATION BUREAU EACH YEAR; APPROXIMATELY HALF OF THOSE INJURED ARE SERIOUSLY INJURED, MANY WITH LIFETIME EARNINGS IMPAIRED AND SUFFERING PERMANENT LOSS AND DISFIGUREMENT;

* AN ESTIMATED 3 TO 5 THOUSAND, OR OVER 10 PEOPLE PER DAY, IN PENNSYLVANIA, DIE EACH YEAR FROM WORKPLACE EXPOSURES TO TOXIC AGENTS;

* AN ESTIMATED 20 TO 30 THOUSAND NEW OCCUPATIONAL DISEASES FROM ASBESTOSIS TO SKIN DISEASES OCCUR ANNUALLY.

EACH DEATH, EACH INJURY, CAUSES MUCH UNNECESSARY HUMAN SUFFERING TO A FATHER, MOTHER, BROTHER OR SISTER - FAMILY MEMBERS WHO SHARE THE PERSONAL TRAGEDY.

WE HAVE THE KNOWLEDGE AND TECHNOLOGY TO DO WORK SAFELY. THAT MUST BE OUR PRIORITY.

RETREAT FROM SAFETY, THAT IS FROM THE STANDARD OF CARE OR FROM THE QUALITY OF LIFE FOR INJURED VICTIMS, IS ONLY JUSTIFIED TO SATISFY OTHER, EVEN MORE COMPELLING INTERESTS.

BUSINESS IDEOLOGY TO LIMIT THE RIGHTS OF INDIVIDUALS IS NOT SUFFICIENT JUSTIFICATION TO LESSEN OUR STANDARD FOR SAFETY.

IDEOLOGY TO ME IS WHEN THE MOTIVATION FOR A CHANGE IN OUR BASIC LAW HAS MORE TO DO WITH PHILOSOPHY THAN PRACTICAL IMPACT. THE PREDICTABLE, PRACTICAL EFFECT OF CHANGING OUR PRODUCT LIABILITY LAW AS PROPOSED BY H.B. 941 IS TO LIMIT THE RIGHTS OF PENNSYLVANIA CITIZENS WHO ARE INJURED.

ON THE OTHER HAND, THE BENEFIT OF CHANGING PENNSYLVANIA'S RULES ON RECOVERY FOR INJURY, WILL HAVE A MARGINAL TO NO ECONOMIC GAIN TO PENNSYLVANIA'S MANUFACTURERS. PRODUCT LIABILITY COSTS FOR PENNSYLVANIA MANUFACTURERS ARE BASED EXCLUSIVELY ON THE RISK OF EXPOSURE WHERE THE PRODUCT IS SOLD. SIMPLY PUT, MANUFACTURERS' COSTS ARE BASED ON THE LAWS OF THE 50 STATES, AND INTERNATIONAL LAW. CHANGING THE LAW IN PENNSYLVANIA, WOULD ONLY HAVE MARGINAL COST SAVINGS TO PENNSYLVANIA EMPLOYERS AND WOULD LIKEWISE HAVE A MARGINAL IMPACT FOR ALL MANUFACTURERS IN THE WORLD.

OUR STRONG DEFENSE OF THE PRODUCT LIABILITY LAW, AS IT APPLIES TO THE WORKPLACE, IS LARGELY SHAPED BY THE FAILURE OF THE OTHER PARTS OF THE LEGAL SYSTEM TO DEAL ADEQUATELY WITH THE PROBLEM OF WORKPLACE SAFETY.

NATIONALLY, EACH YEAR, OVER 5,500,000 WORKERS ARE INJURED OR KILLED WHILE AT WORK. IN PENNSYLVANIA, OVER 300,000 WORKERS ARE INJURED OR KILLED WHILE AT WORK. IN ADDITION, IT IS ESTIMATED THAT EACH YEAR, AT LEAST 100,000 WORKERS, AS I MENTIONED, NATIONALLY, DIE AS THE RESULT OF DISEASES CONTRACTED THROUGH OCCUPATIONAL EXPOSURE TO TOXIC SUBSTANCES SUCH AS ASBESTOS. IN PENNSYLVANIA, CLOSE TO 5,000 WORKERS DIE FROM EXPOSURES TO TOXIC SUBSTANCES. AND HUNDREDS OF THOUSANDS, IF NOT MILLIONS, OF ADDITIONAL WORKERS ARE AT SERIOUS RISK BY REASON OF THE EXPOSURE TO SUCH SUBSTANCES EACH YEAR IN THE COURSE OF THEIR EMPLOYMENT.

IN 1970, CONGRESS ENACTED THE OCCUPATIONAL SAFETY AND HEALTH ACT TO DEAL WITH THIS SITUATION. THE THEORY OF THAT ACT IS THAT THROUGH REGULATIONS PROMULGATED AND ENFORCED BY THE SECRETARY OF LABOR, EMPLOYERS WOULD BE REQUIRED TO ELIMINATE UNSAFE CONDITIONS AND PRACTICES AND EMPLOYEES WOULD THEREBY BE "ASSURED SO FAR AS POSSIBLE...SAFE AND HEALTHY WORKING CONDITIONS.'

THE THEORY HAS NEVER BEEN PUT INTO PRACTICE. ESPECIALLY DURING THE PAST EIGHT YEARS, THE DEPARTMENT OF LABOR HAS DONE PRECIOUSLY LITTLE TO REQUIRE EMPLOYERS TO MEET THE GOALS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT, AND THE DEPARTMENT HAS DONE EVEN LESS TO ENFORCE THOSE RULES THAT HAVE BEEN PROMULGATED. AND THE DRASTIC CUTS THAT HAVE BEEN MADE IN THE BUDGET FOR THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION MAKE IT DIFFICULT

TO FORESEE THE DAY IN WHICH THE DEPARTMENT WILL HAVE THE CAPACITY TO ADEQUATELY ENFORCE THE LAW.

ENFORCEMENT OF THE OCCUPATIONAL SAFETY AND HEALTH ACT HAS BEEN SCALED BACK TO THE POINT OF ALMOST COMPLETE AGENCY PARALYSIS. WITH 850 INSPECTORS NATIONWIDE FOR 4 MILLION WORKSITES, OSHA HAS BECOME MORE OF A ROADBLOCK THAN A GATEWAY TO PROTECTION FOR THE NATION'S WORKING MEN AND WOMEN. IN ADDITION, PENNSYLVANIA IS ONE OF TWENTY-FIVE STATES WHICH DOES NOT YET PROVIDE HEALTH AND SAFETY PROTECTION FOR OUR PUBLIC WORKERS.

THE SHORT OF IT IS THAT CONGRESS' ATTEMPT TO PREVENT OCCUPATIONAL INJURIES, DISEASES AND DEATHS THROUGH A REGULATORY SYSTEM WHICH WOULD OUTLAW UNSAFE PRACTICES HAS ESSENTIALLY FAILED.

JUST AS A REGULATORY SCHEME TO MONITOR SAFETY HAS FAILED, THE VERY NATURE OF OUR STANDARD OF CARE IS IMPACTED BY PROPOSED RESTRICTIONS ON THE PRODUCT LIABILITY LAW. WITHOUT A REGULATORY SCHEME IN A FREE ENTERPRISE ECONOMY, THE DUTY OF CARE IS ESTABLISHED BY THE "POTENTIAL FOR BEING SUED." THE CALCULATION OF RISK PRESCRIBES THE NATURE OF CARE. NARROWLY RESTRICTED RIGHTS BY NATURE LESSEN THE STANDARD OF CARE.

UNFORTUNATELY, CORPORATE MANAGERS REGULARLY COMPLETE COST

BENEFIT ANALYSIS ON VARIOUS PRODUCTION AND PRODUCT IMPROVEMENTS DESIGNED FOR SAFETY.

EITHER IN MAKING THE COST OF UNSAFE CONDITIONS MORE EASILY CALCULABLE, OR BY REDUCING THE COST, YOU ALTER THE STANDARD OF CARE. IN ESSENCE, YOU LEGALIZE THE PINTO DESIGN; THE DALKON SHIELD; DRANO CLEANER AND SIMILAR MANAGEMENT DECISIONS. THESE LANDMARK CASES SERVE AS DETERRENTS TO UNSAFE MANAGEMENT DECISIONS. THEY SERVE AS A TOOL FOR RESPONSIBLE MANAGERS TO ARGUE IN THE BOARDROOM TO TEST, PROTECT AND WARN. LESSENING THE CHANCE OF BEING SUED, MAKING IT MORE EASY TO CALCULATE THE COST, OR INSULATING THE PRODUCT FROM LIABILITY, UNDERMINES THE ABILITY OF RESPONSIBLE CORPORATE LEADERSHIP TO ADVOCATE FOR SAFETY.

BARRING OTHER MECHANISMS TO INSURE SAFETY, SUCH AS REGULATION OR CRIMINAL PROSECUTION, THE THREAT OF BEING SUED IS THE SINGLE MOST IMPORTANT CONTRIBUTOR TO SAFETY IN OUR SOCIETY. ACTIONS WHICH ALTER THE CALCULATION OF COST CAN BE DIRECTLY TRANSLATED INTO HARM FOR USERS AND INNOCENT VICTIMS.

THE LEGAL SYSTEM, PUTTING TORT LAW TO ONE SIDE FOR THE MOMENT, HAS BEEN NO MORE SUCCESSFUL IN ITS ATTEMPT TO PROVIDE COMPENSATION FOR WORKERS WHO ARE THE VICTIMS OF OCCUPATIONAL INJURIES OR DISEASES. IN THEORY, WORKERS' COMPENSATION LAWS WERE ENACTED TO ASSURE THAT INJURED WORKERS (AND THE SURVIVORS OF

DECEASED WORKERS) WOULD RECEIVE ADEQUATE RECOMPENSE. BUT THE REALITY IS THAT THE BENEFIT LEVELS UNDER THESE LAWS HAVE FAILED TO KEEP PACE WITH THE COST OF LIVING. THOSE BENEFIT LEVELS ARE TODAY GROSSLY INADEQUATE TO SUPPORT AN INJURED WORKER AND HIS OR HER FAMILY. SIMILARLY, THE COVERAGE PROVISIONS OF OUR WORKERS' COMPENSATION LAW HAVE NOT BEEN UPDATED IN LIGHT OF CURRENT KNOWLEDGE ABOUT THE RELATIONSHIP BETWEEN OCCUPATIONAL EXPOSURES TO TOXIC SUBSTANCES AND DISEASES WITH LONG LATENCY PERIODS. FOR EXAMPLE, THE WORKERS' COMPENSATION LAW REQUIRES OCCUPATIONAL DISEASE VICTIMS TO NOT ONLY ESTABLISH THEIR OWN ILLNESS, BUT THE SPECIAL PREVALENCE OF THIS OCCUPATIONAL DISEASE WITHIN THE INDUSTRY. THIS INDUSTRY TEST IS IMPOSSIBLE TO ESTABLISH GIVEN THE LIMITED AMOUNT OF TESTING AND KNOWLEDGE. AS A RESULT, MANY WORKERS SUFFERING FROM OCCUPATIONAL DISEASES ARE NOT EVEN ELIGIBLE FOR ANY WORKERS' COMPENSATION BENEFITS AT ALL.

IT IS AGAINST THIS BACKGROUND THAT WE APPROACH THE SUBJECT OF PRODUCT LIABILITY AND THE WORKPLACE. BECAUSE, AS JUST EXPLAINED, THE LEGAL SYSTEM HAS FAILED TO ASSURE WORKPLACE SAFETY OR TO PROVIDE ADEQUATE COMPENSATION TO INJURED WORKERS, IT HAS BECOME NECESSARY FOR EMPLOYEES TO TURN TO THE PRODUCT LIABILITY SYSTEM AS A MEANS OF PROMOTING SAFETY AND SECURING ADEQUATE COMPENSATION FOR WORKPLACE INJURIES. THROUGH SO-CALLED "THIRD PARTY" SUITS, MANY WORKERS HAVE SUED THE MANUFACTURERS OF MACHINES, TOXIC CHEMICALS, OR OTHER PRODUCTS THAT CAUSE

OCCUPATIONAL INJURIES AND DISEASES. INDEED, ACCORDING TO A STUDY BY THE INSURANCE SERVICES OFFICE, 50% OF THE COMPENSATION PAID IN PRODUCT LIABILITY ACTIONS GOES TO WORKERS WHO HAVE BROUGHT SUCH "THIRD PARTY" ACTIONS. THROUGH THESE SUITS, WORKERS HAVE FOUND A MEANS OF SECURING A FAIRER MEASURE OF COMPENSATION FOR THEIR INJURIES AND OF PROVIDING A FINANCIAL INCENTIVE TO ENCOURAGE THE MANUFACTURE OF SAFER PRODUCTS.

THIS INCREASED RELIANCE---OR MORE PRECISELY DEPENDENCE---OF WORKERS ON THE PRODUCT LIABILITY SYSTEM IS ELOQUENT TESTIMONY TO THE FAILURE OF THE REGULATORY; WORKERS' COMPENSATION AND CRIMINAL LAW SYSTEMS. WORKERS HAVE TURNED TO TORT LAW AS A MEANS OF PROTECTION IN SPITE OF THE FACT THAT TORT LITIGATION IS SLOW, COSTLY AND UNPREDICTABLE IN TERMS OF RESULTS. THE FACT OF THE MATTER IS, HOWEVER, THAT THERE IS NOT PRESENTLY ANY WORKABLE ALTERNATIVE TO THE TORT SYSTEM FOR ASSURING WORKPLACE SAFETY AND FOR PROVIDING ADEQUATE COMPENSATION TO INJURED WORKERS.

SO LONG AS THAT IS TRUE, ANY LEGISLATION THAT WOULD RESTRICT THE ABILITY OF INJURED PERSONS TO RECOVER DAMAGES FOR INJURIES CAUSED BY UNSAFE PRODUCTS, IS INDEFENSIBLE.

I HAVE SPENT A LOT OF TIME ON H.B. 941 AND I WOULD LIKE TO TURN BRIEFLY TO THE AREA WHERE WE CAN AND MUST MAKE CHANGES TO CORRECT PUBLIC POLICY AND IMPROVE WORKPLACE SAFETY.

I WOULD LIKE TO COME BACK BEFORE THE COMMITTEE AND DISCUSS THESE ISSUES MORE COMPLETELY.

FIRST, THE PENNSYLVANIA SUPREME COURT DECISIONS, WHICH GIVE EMPLOYERS THE RIGHT TO INTENTIONALLY HARM WORKERS WITH CIVIL IMMUNITY, MUST BE REVERSED BY LEGISLATIVE ACTION.

PUBLIC POLICY IN A CIVILIZED SOCIETY CANNOT TOLERATE A STANDARD WHERE INTENTIONAL HARM GOES UNPUNISHED BOTH CIVILLY AND CRIMINALLY.

AT ISSUE ARE A DISTINCT MINORITY, OR SHOULD I SAY FRINGE EMPLOYERS WHO COMPETE BY CONCEALING KNOWN HAZARDS FROM THEIR EMPLOYEES, ACTIVELY MISLEADING WORKERS ABOUT SAFETY HAZARDS AND THERE IS DEATH OR WORKPLACE INJURY.

HOUSE BILLS 1012 AND 1013 ADDRESS THIS OUTRAGEOUS PRONOUNCEMENT OF THE SUPREME COURT.

ADDITIONALLY, THE WORKER AND CONSUMER PRODUCTS SAFETY PACKAGE ATTEMPTS TO CREATE A SAFER WORKPLACE.

I WOULD LIKE TO EMPHASIZE THE NEED TO ADOPT THE HIGH RISK OCCUPATIONAL DISEASE AND NOTIFICATION ACT. SIMILAR LEGISLATION HAS BEEN SOUGHT FOR YEARS AT THE NATIONAL LEVEL. WE WILL

CONTINUE TO SUPPORT FEDERAL ACTION, BUT IMMEDIATE STATE ACTION IS NECESSARY AND WITH THE GENERAL ASSEMBLY'S POWER TO ADOPT.

THOUSANDS OF WORKERS ARE DYING EACH YEAR FROM OCCUPATIONAL CANCERS AND OTHER DISEASES THAT COULD HAVE BEEN PREVENTED. I BELIEVE THAT WORKERS HAVE THE RIGHT TO KNOW WHETHER THEY ARE AT RISK OF LIFE-THREATENING ILLNESS. THIS BILL GRANTS THEM THAT BASIC CIVIL RIGHT.

IF WORKERS ARE INFORMED THAT THEY HAVE BEEN EXPOSED TO OCCUPATIONAL HAZARDS, THEY CAN GET MEDICAL MONITORING AND COUNSELLING BEFORE THE DISEASE REACHES A CRITICAL, UNTREATABLE STAGE. THAT IS WHAT THIS BILL IS ALL ABOUT - GETTING INFORMATION TO WORKERS IN A TIMELY FASHION IN ORDER TO PREVENT DISEASE. HIGH RISK OCCUPATION WILL BE DESIGNATED ON THE BASIS OF SCIENTIFIC INFORMATION AND THE WORKERS INFORMED.

OTHER KEY ELEMENTS OF THE WORKER AND CONSUMER PRODUCT SAFETY PACKAGE ALSO AIM AT THE DISCLOSURE OF KNOWN HAZARDS.

LEGISLATION PROHIBITING THE CONCEALMENT OF PUBLIC HAZARDS WILL VOID AS A MATTER OF STATE POLICY AGREEMENTS TO CONCEAL HAZARDOUS INFORMATION WHERE BODILY HARM TO OTHERS IS LIKELY TO OCCUR. COMMONLY KNOWN AS "GAG" ORDERS, THESE AGREEMENTS WORK COUNTER TO PUBLIC POLICY AND UNDERMINE SAFETY.

THE PRODUCT IDENTIFICATION AND RECORD RETENTION ACT WILL ALLOW US TO TRACE THE TRAIL OF THE MANUFACTURER'S CONCERN WITH SAFE PRODUCTS. CURRENTLY, VICTIM COMPENSATION IS NOT AVAILABLE IN CASES WHERE THE MANUFACTURER DESTROYS KEY RECORDS REGARDING PRODUCT SAFETY. THESE RECORDS MUST BE RETAINED TO ESTABLISH THE MINIMUM OF SAFETY ACCOUNTABILITY.

OUR EMPHASIS MUST BE ON PREVENTION. THE ONLY SOUND POLICY IS ONE THAT PLACES THE HIGHEST VALUE ON PROTECTING LIFE.

SCHEMES TO LIMIT COSTS BY CURTAILING RIGHTS ARE MISGUIDED AND WRONG-HEADED.

I DEEPLY APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU.

I WILL BE GLAD TO ANSWER ANY QUESTIONS.

bg/UFCW-72

WESTINGHOUSE

1 Text of a company-wide program for limiting product hazards. It states the general principles for production of safety-oriented products. Circulate it to all levels of management. It should be included in guides and manuals intended for supervisors and executive personnel. *(—provided by Westinghouse Electric Corp.)*

CORPORATE STATEMENT OF POLICY

On How To Protect Your Company From Product Liability Losses

OBJECTIVES

Actions shall be taken to identify and minimize potential product hazards during all phases of the product's life including development, design, manufacture, marketing, installation, service, use and disposal. All reasonable measures shall be taken to minimize the risk of injury to persons and damage to property and the environment, giving full regard to applicable federal, state, local and industry safety standards, regulatory requirements, technology state-of-the-art and conventional standards of care and use required by society.

DOCUMENTATION

A written product safety policy and procedures for its implementation shall be readily available for the responsible employes. Product safety procedures shall be controlled and maintained up-to-date.

RESPONSIBILITY

General Management

Each Westinghouse operating unit, including those performing product service, shall have appropriate procedures and clearly assigned responsibilities for the safety of the product it designs, makes, sells, installs or services. To assure the implementation of a sound safety program, the unit manager shall:

- Assign appropriate responsibilities for implementation of a product safety program to members of his staff.
- Monitor federal and state legislation and the latest industry codes and standards which may regulate the design, manufacture, and marketing of his units products and services.
- Ensure training programs for employes including product safety related practices and procedures, a review of legislation — and a review of industry codes and standards.
- Establish a product identification/traceability/recall system appropriate to the product type and user and which complies with the Consumer Product Safety Act. Periodic "dry runs" should be conducted in locating particular groups of products after they have been released to the distribution system.
- Ensure that product safety reviews are conducted on all new product designs and major redesigns to minimize chances of personal or property damage.
- Assign responsibility for reviewing all situations and claims involving personal injury or property damage arising from the use of his units products and services and assisting the legal staff in preparing for any litigation.
- Ensure periodic internal audits of the product safety program and procedures are conducted to evaluate its adequacy and effectiveness.

Marketing

- Marketing personnel shall be made aware of their product liability exposures due to advertising, written warranties, implied warranties, and through verbal claims made about the product. Marketing personnel should be informed in the proper use of the product, potential hazards and product limitations and the consequences of exceeding them. Marketing personnel shall be informed of current government policy concerning product safety and liability including recent court rulings, Williams-Steiger Act (OSHA), Consumer Product Safety Act, etc.
- Advertisements and sales literature shall be reviewed by other departments (design engineering, quality and law department) for safety and legal (warranty) implications before release. Advertisements and sales literature should encourage safe practices, outline product limitations, and avoid inflated product claims. Product promotion displays should present product safety features and portray safe operating practices. Adequate warning and caution labels should be attached to the product.
- Warranties shall be reviewed by the law department for adequacy and clarity of language. Warranties should not lead customers to expect more than the product can perform.
- Marketing personnel shall be instructed in the procedures to follow in the event they are informed of personal injury or property damage involving Westhouse products and services by the customer/user.
- Instruction manuals shall provide safety instructions, warn against misuse of the product and provide information on potential product hazards and how best to avoid them. Instruction manuals shall be reviewed by other departments (design engineering, quality

Man & Manager, Inc., 799 Broadway, NYC 10003

Exhibit A-1

and field service).

- Disclaimers in Westinghouse purchase orders, and hold harmless agreements in Westinghouse sales contracts, shall be avoided to the extent they obligate company to assume liability that should normally ...st on others. All Westinghouse sales contracts shall ...tain appropriate disclaimers — set forth clearly ...d conspicuously.
- New product safety features should be offered to owners of earlier generation products which do not contain the safety features and the offer should be documented and made a part of the job record file.

Engineering

- Product safety engineering practices and procedures shall be made a part of the design assurance program and maintained up-to-date.
- Engineering personnel shall have access to up-to-date copies of applicable governmental regulations, codes and standards (federal, state, local and industry) which influence product safety design.
- Product design specifications for all new product designs and major redesigns shall include appropriate safety criteria and applicable federal, state, local and industry standards. Expected service life of the product shall be documented in the product design specification.
- The product shall be designed to be safe under conditions of intended use and foreseeable misuse and shall be tested to assure reasonable safety margins exist. Where the product cannot reasonably ...esigned to be safe under certain misuses, those ...nditions shall be documented in the user's instruc...n books and warnings shall be permanently at...ached to the product in a conspicuous location.
- If a decision is made not to incorporate a specific safety feature in a product design — or if the product has a parameter which is in non-compliance with a standard — the reasons shall be documented and reported to division management. The report shall be made part of the job record file.
- Formal design reviews, conducted on all new product designs and major redesigns shall include a product safety review. A product safety design checklist shall be provided to designers and to the design review team.
- Safety-related features and parameters which are identified in the product design specification, and any additional safety critical items discovered by design analysis, shall be tested and verified safe by test programs. Test programs should include, as appropriate, engineering test programs, independent laboratory testing and certification, factory and field test programs. Test specifications must include all safety critical parameters and test conditions. Test results should be documented, acted upon when failures or problems occur, and made a part of the engineering job record file.
- ...roduction design changes shall be reviewed for ...r effect on product safety.

Product packaging for transportation shall be designed to meet applicable standards and tested under appropriate transportation and environmental conditions of shipping, storage and handling.

- Procedures for vendor source control, inspection and test of incoming materials, parts, and assemblies, parts in process, and final assembly test shall be reviewed periodically by engineering.
- Summaries of quality and manufacturing records shall be reviewed periodically by engineering with those departments for safety-relevant consideration. Such data should include test failures, defect rates, manufacturing discrepancies, vendor evaluations, and any non-conformance of parts or materials which could relate to product safety.
- Sales promotional literature shall be reviewed by engineering for technical accuracy and exaggerated performance claims.
- Instruction books such as care and use manuals, maintenance manuals and operation manuals shall be reviewed by engineering for product safety considerations. Instruction book procedures should be simple and easy to follow. Safest methods and practices shall be stressed. Potential hazards, if any, shall be included and information given on avoiding or lessening the potential hazard. Warnings against misuses shall be included.
- A key engineer shall be trained in proper handling of litigation and in how to function as an expert witness.

Quality Assurance

- The quality program shall give emphasis to product safety and liability in both in-house and vendor quality programs.
- Quality Assurance Personnel shall have access to up-to-date copies of applicable governmental regulations, codes and standards (federal, state, local and industry) which pertain to product safety-related quality assurance activities.
- Quality control procedures for incoming raw material, component parts, parts in process and final assembly shall be periodically reviewed with design engineering for product safety considerations.
- Final assembly inspection shall include checks to ensure all safety-related features (such as guards) are in place, that required caution and warnings are attached to the product, and that appropriate instructions are provided with the product.
- The quality department's review of inspection and test data shall include a review for safety-related problems.
- The quality department's review of field failure reports and field complaints shall include a review for safety-related problems. These problems shall be promptly investigated.

Manufacturing and Purchasing

- All parts and assemblies shall be manufactured in accordance with approved drawings and specifications to assure product safety.
- Manufacturing shall have procedures which assure that equipment and facilities are maintained properly to meet engineering drawing and specification requirements.
- Procedures shall be established in manufacturing to

control documentation, change information, work instructions, test and inspection methods which are necessary to meet product safety.

- All material shall be properly identified, protected from deterioration, and properly handled from the time of receipt to final assembly packaging.
- All materials, parts, or assemblies which are critical to product safety should be well identified. Special procedures, if necessary, should be developed to handle and store them. This identification of safety critical items should be continued into the processes of manufacturing, fabrication, and assembly to ensure the desired degree of product safety in the final product.
- Quality records shall be used by manufacturing to identify manufacturing discrepancies, material review actions, investigation and analysis of nonconforming articles and any failures which relate to product safety.
- Purchase orders and sales contracts shall contain hold harmless or indemnification clauses under which vendors and subcontractors assume liability for their products and/or performance.
- Suppliers shall be given prompt written notice when non-conforming materials are received and corrective action is deemed necessary for recurring safety-related problems.

Field Service

- Service personnel shall be made aware of their product liability exposures due to written warranties, implied warranties and through verbal claims made about the product. Service personnel should be completely informed in the proper use of the product, potential hazards in normal use and misuse of the product, and product limitations and the consequences of exceeding those limitations.
- Service personnel shall be instructed in the procedures to follow in the event they are informed of personal injury or property damage involving Westinghouse products and services by the customer/user.
- Service personnel shall record any defective or unsafe conditions observed during servicing of the product, not included in the authorized service work, in their service report. The customer should be requested to sign the service report as evidence that the conditions have been brought to his attention.
- Field service reports shall include all potentially unsafe product conditions.
- Instruction book procedures for service personnel should stress safe methods and practices. Potential hazards, if any, shall be included and information given on avoiding or lessening the potential hazard.

22 Basic Pitfalls To Watch Out For

The prevention of safety hazards involves the recognition of conditions which open the door to hazardous products or services. The following list identifies many conditions which a sound safety program will minimize or eliminate:

1. Failure of involved personnel to be completely aware of applicable codes, laws, and regulations.
2. Inadequacy of, or absence of, labeling which advises the user of hazards or safety procedures in connection with the product.
3. Overestimating the capability of the user, or failure to anticipate misapplication of product by user.
4. Lack of consideration given to the wide variance in physical and intellectual ability of users.
5. Implied warranties derived from laudatory sales and advertising literature.
6. Compromise of good, substantial, functional design for a visually more appealing design.
7. Implementation of cost reduction methods and processes which require performance compromises.
8. Crash basis design revisions to incorporate sales features in existing designs with minimum tooling changes.
9. Periodic design changes which do not allow adequate time for complete product evaluation before market exposure.
10. Failure to evaluate the additive effects of minor design or specification compromises.
11. Testing and evaluation programs not designed to create realistic user situations.
12. The tendency to terminate safety pursuit after the product has "gotten by" Underwriter's Laboratories, Canadian Standards Association, or similar organizations, even if on the basis of minimum standards.
13. Incompatibility of the product with other materials with which the product will come in contact.
14. Emergency incidents and situations involving production continuity which cause a relaxation of critical surveillance operations.
15. Inadequate packaging considerations resulting in product damage, malufnction, or contamination.
16. Failure to apply the same evaluation methods and safety criteria to purchased components as are applied to internally processed components.
17. Interpretation of the statistical quality control function as absolute equality assurance rather than a basis for action.
18. Arbitrary material substitution by the purchasing or manufacturing departments, without benefit of adequate engineering evaluation.
19. Errors in fabrication or assembly due to poor material identification or material control.
20. Reluctance on the part of production employees to jeopardize their incentive rate position by identifying questionable material.
21. Failure to analyze field complaints or take proper action based on field return experience.
22. Errors in installation and service by personnel not in the manufacturer's employ.

$7 million fine urged for USX

Violations cited at two plants

By Lisa Ellis
Inquirer Staff Writer

The Occupational Safety and Health Administration yesterday proposed fines of $7.3 million, a national record, against USX Corp. for about 2,000 violations at its Fairless Works in Fairless Hills and Clairton Coke Works near Pittsburgh.

The $6,095,600 fine proposed at the Fairless Works — site of three worker deaths in the last two years — is the largest ever proposed for violations at a single work site, said Jack Hord, a spokesman for the U.S. Labor Department's Philadelphia regional office.

In each of those three deaths, the company was cited for safety violations, said Marie Stranahan, assistant administrator of OSHA for the Philadelphia region. Those violations have been corrected and the fines levied for them have been paid, she said.

The fines proposed yesterday resulted from a June 7 inspection at the Fairless Works that found related deficiencies, she said. "The condition that caused the fatality was corrected, but we found similar violations in other parts of the plant," Shanahan said.

For example, one of the three deaths at the Fairless Works occurred when an outside contract worker fell through a rusted platform and into a vat of hot metal. Yesterday's citations, Shanahan said, included 307 allegations of unsafe walking or working surfaces, including rusted or deteriorated walkways or platforms.

"Company managers have known about many of these safety and health deficiencies for years, yet have failed to take action to correct the hazards," Gerard F. Scannell, assistant secretary of the U.S. Department of Labor, said in a statement yesterday.

A USX spokesman did not return telephone calls yesterday afternoon.

USX has 15 working days to contest the citations and proposed penalties before the independent Occupational Safety and Health Review Commission.

The citations at the Clairton works

(See USX on 7-B)

$7.3 million fine urged for two USX plants

USX, from 1-B

resulted from a May 8 inspection that was prompted by complaints from the United Steelworkers of America. "The complaint was given to OSHA only after the company stonewalled for over a year," said Michael Wright, national director of safety and health for the union.

At Fairless, complaints by four employees at the Bucks County plant, as well as the three fatalities, triggered the inspection.

Wright said that the union would have gone to OSHA about problems at the Fairless Works sooner but that it was still trying to get the company to correct problems voluntarily at the time of the inspection.

"About a year ago in the Fairless plant we thought the situation was so bad that we proposed the step of having the union and company do a comprehensive health and safety evaluation," he said.

The company refused the request, which came during negotiations over a USX plan to institute random drug testing at the plant, Wright said.

USX proposed the expanded testing after a worker involved in an October 1988 fatality tested positive for drugs. The union contended that the accident was caused by safety problems. OSHA cited the company for several violations at the time.

In a statement released yesterday, Secretary of Labor Elizabeth Hanford Dole said the penalties resulted from "corporate indifference to worker safety and health and severe cutbacks in the maintenance and repair programs needed to remove those hazards."

"Particularly flagrant are the company's numerous failures to properly record injuries at its Fairless Works in spite of the firm promise it had made in an earlier corporate-wide settlement agreement to correct those deficiencies," she said.

The citations issued yesterday included a doubling of proposed penalties for these previously cited record-keeping violations, which were supposed to have been corrected under the settlement Dole mentioned. That settlement was signed in April 1987.

"What they had done was underreported on their OSHA records the injuries and illnesses at the plant," Shanahan said. At the Fairless Works, the practice did not stop after the 1987 settlement, she said.

The Fairless Works, which employs 4,000 people, was cited by OSHA for 515 alleged violations of electrical safety requirements and 297 alleged cases of crane-safety problems.

The electrical violations included 200 to 300 cases of exposed live wires, Shanahan said. The crane problems included cranes without brakes, failure to make other repairs and failure to do required inspections, she said.

OSHA also cited the Fairless Works for 91 alleged violations of occupational noise standards, 135 deficiencies in protective guards for machines and transmission equipment, six alleged violations of structural integrity standards, and 245 other violations.

Violations cited at the Clairton Works included numerous violations of electrical and structural-safety standards. Proposed penalties totaled $1.2 million.

Wright, of the steelworkers union, said he hoped the citations would lead to changes at the plants. "We're not terribly interested in the size of the penalties," he said. "We would much rather see that money go into fixing the plants. We'll be talking to OSHA and USX about that."

The previous record fine proposed by OSHA was $5.1 million against companies involved in a building collapse in Bridgeport, Conn. That fine is still being contested.

Journal of the National Cancer Institute

COMMENTARY

Tobacco Liability Litigation as a Cancer Control Strategy[1]

Richard A. Daynard[2]

Since the 1930s there has been a steadily rising trend in cigarette-induced cancer deaths in the United States, reaching about 120,000 such deaths in 1984 (*1*). This trend reflects a similar trend in cigarette consumption that began about 20 years earlier. While total U.S. cigarette consumption has been falling 1%–2% annually since 1982, even at that rate of decline several million more Americans will die from cigarette-induced cancers before the epidemic concludes. Obviously, any viable strategy for further reducing cigarette consumption deserves high priority among cancer control strategies.

Reasons for Viewing Tobacco Liability Litigation as a Cancer Control Strategy

Successful products liability suits against cigarette manufacturers on behalf of diseased smokers and their families would be likely to reduce future cigarette consumption dramatically. Briefly stated, they could shift billions of dollars of health and productivity costs from families and third-party payers to cigarette companies, forcing increases in cigarette prices and consequent large drops in consumption, especially among children and teenagers. They may drive home the point about the dangers of smoking, while forcing the industry to stop its deceptive advertising, promotion, and public relations. Finally, materials documenting the industry's disinformation campaign, discovered by plaintiffs' attorneys in the litigation process, may hinder industry lobbying efforts against other anti-smoking strategies.

Products liability suits have achieved similar effects with respect to asbestos and other dangerous products.

Economic effects. Products liability suits transfer costs, albeit inefficiently, from injured parties to the manufacturers of defective or unreasonably dangerous products. Plaintiffs include the injured person, his immediate family, and—by "subrogation"—whoever has paid his medical bills. Plaintiffs' attorneys bear the cost of pressing the suits and, where successful, share in the judgment or settlement. It is, however, the defendants' costs that are most relevant from a public health standpoint.

Defendants pay their own attorneys' fees, plus whatever judgments or settlements are reached. Attorneys' fees and other costs in successfully defending a single smokeless tobacco products liability case in 1986 were estimated at $15 million (*2*): This may have contributed to a consequent price increase and sharp decline in smokeless tobacco use. Cigarette manufacturers obviously spend much more to defend the 120+ cases currently pending against them. However, since sales and profits from cigarettes are many times those from smokeless tobacco, the recent cigarette price increases may not have been motivated by a need to pass along defense costs.

But five or ten successful tobácco liability suits should impact quickly and heavily. Thousands of suits, distributed widely throughout the United States, can be expected. The six major cigarette companies will have to retain counsel in every large city. Fresh liability insurance will cease to be available, while the manufacturers' financial statements will have to reflect enormous contingent liabilities. Industry executives and directors will have to decide whether to try to absorb current liability costs, to raise prices to cover them, or to raise prices even further to cover the average additional liability exposure incurred with each additional pack sold.

The amount of exposure is very substantial. The annual cigarette-caused medical costs and productivity losses, divided by annual cigarette sales, have been conservatively estimated at $2.17/pack (*3*). Of course, every affected smoker will not sue, and every meritorious suit will not succeed. On the other hand, the manufacturers have to cover their defense costs as well, and punitive damages may raise some judgments well above the amounts needed for compensation.

[1]Received December 30, 1987; accepted January 7, 1988.

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Furthermore, even a relatively small price increase—such as $.25/pack—will have very significant consumption effects. Price increases of 10% have been shown to produce overall consumption decreases of 4%, with 14% decreases among males 12–17 years old (*4*). Since 50% of smokers begin by age 14 (*5*) and the great majority by age 18, the reductions in smoking by children and teenagers may be the most relevant for cancer control purposes. In any event, the hypothesized $.25/pack, 20%, price increase would produce long-term reductions of at least 10,000 cigarette-caused cancer deaths annually, and possibly much more.

Information/disinformation. Public education against smoking faces the problems of abstractness and diminishing marginal effectiveness. In an age of "celebrities," neither statistics nor even anonymous diseased lungs make the point that "real" people actually suffer and die from cigarette-induced diseases. Furthermore, new reports of the adverse health effects of cigarettes make little impression on people who already know at some level that cigarettes are dangerous. But the first few nationally publicized cases of particular individuals suing cigarette companies for their disease—and the first few such cases in each local media market—will focus media and public attention on the plaintiffs' cigarette-induced suffering, as well as exciting widespread discussion and debate on the larger issues of personal and corporate responsibility.

This debate has already produced a salutary shift in the industry's public relations. Public statements by industry representatives portray smokers who would sue cigarette companies for their lung cancer, emphysema, or peripheral vascular disease as people who knowingly and voluntarily accepted these risks. Since the industry *still* denies the reality of these and other health risks, their new position is essentially that "anyone foolish enough to believe us deserves the disease he gets." This is surely not the most effective posture for selling cigarettes: It is at least possible that some portion of the dramatic drop in smoking incidence reported between 1985 and 1986 was attributable to this public relations shift.

Successful cases are likely to produce even more dramatic changes in the industry's communicative behavior. Continuing deceptions, ranging from not admitting that smoking causes a range of diseases to actively misrepresenting the state of scientific knowledge (*6*), are likely to outrage jurors and judges, making substantial punitive damage awards more likely. Industry lawyers are likely to advise their clients and their clients' public relations and lobbying representatives to stop the active denials and perhaps actually to admit the dangers. Advertising campaigns using juvenile culture heros, young models, people engaged in active sports, and so forth may have to be curtailed for similar reasons.

Success of tobacco industry lobbying. A wide variety of anti-smoking efforts fail as a result of the tobacco industry's lobbying power. Recent efforts to regulate cigarette design and advertising have been completely thwarted, and efforts to regulate cigarette use in public places have met only partial success.

Information obtained by plaintiffs' attorneys through the "discovery" process in tobacco products liability cases will document industry "stonewalling" and disinformation campaigns, as well as publicize the actual ingredients of commercially available cigarettes. The resulting public embarrassment to the industry will likely make future lobbying efforts significantly more difficult.

Relevant Legal Doctrines

A successful lawsuit requires a viable legal theory. The common law of most states offers products liability attorneys a variety of possible theories, any or all of which may be available in tobacco cases.

The "failure-to-warn" theory has gotten the most attention, though it may be the hardest to prove in the cigarette context. While any significant differential between the manufacturers' and the ordinary customers' knowledge of the dangers of smoking should be sufficient to invoke this theory, the public seems wedded to the absurd notion that there has been no such differential at least since warnings started appearing on cigarette packs in 1966. In any event, three U.S. Circuit Courts of Appeals have decided, perhaps erroneously, that Congress intended to "preempt" failure-to-warn claims once the warning started appearing (*7–9*). Inadequacy of pre-1966 warnings can still be proved and may even be more relevant, since the warnings received or not received before addictions set in may be the ones that really matter.

A related theory is "overpromotion," that a manufacturer may not deliberately subvert the consumers' understanding of the warnings which it is legally required to display. Thus the manufacturer of chloromycetin was held liable for suggesting to doctors that the required warnings of aplastic anemia were overstated (*10*). Of course, cigarette manufacturers and their public relations representatives continue to urge, contrary to the mandated warnings, that smoking has not been proved to cause any disease. The major problem with this theory is that the three Circuit Court preemption decisions used language broad enough to preclude claims based on post-1966 overpromotion: Whether they really intended this indefensible result will be tested in future litigation.

Even if the cigarette manufacturers did not "know" that their products were lethal, they certainly had enough information no later than 1950 (*11,12*) to be under a moral and legal obligation to test whether their products were toxic. If they performed the relevant tests, they would have found their cigarettes toxic; since they have continued publicly to deny the dangers, they would be guilty of actionable misrepresentation. If, on the other hand, they failed to test, they are guilty of negligence, since the relevant tests, properly conducted, would have demonstrated toxicity.

If cigarettes have been improperly designed or manufactured, in that a feasible alternative design, or simply more careful manufacturing techniques, would have avoided some of their dangers, then their manufacturers are liable to anyone injured as a result of these unnecessary dangers.

Evidence recently discovered by plaintiffs' attorneys and anti-smoking activists strongly suggests that the industry has known for many years how to make cigarettes that are less likely to cause cancer. For example, the Liggett &

Myers Tobacco Co. obtained a patent in 1977 for tobacco mixed with palladium and magnesium nitrate hexahydrate: The patent claimed that while tar from ordinary cigarettes produced 38 tumors after 79 weeks when applied to the skin of 50 mice, tar from the treated cigarettes produced only one tumor in a similar test (*13*).

Similarly, the R. J. Reynolds Tobacco Co. recently announced a new "smokeless" cigarette and publicly claimed: "Since the tobacco does not burn, a majority of the compounds produced by burning tobacco are eliminated or greatly reduced, including most compounds that are often associated with the smoking and health controversy" (*14*). Private representations on the same subject made the same day to federal health officials were allegedly even more explicit (*15*). The new device, which is described in a patent as producing "wet total particulate matter having no mutagenic activity, as measured by the Ames test" (*16*), appears to be quite similar to the device described in a 1966 patent (*17*).

Evidence is beginning to appear suggesting that at least some brands of cigarettes may contain non-tobacco carcinogenic substances. Thus a former maintenance employee at a cigarette plant submitted an affidavit in a pending case that chemicals that came in barrels "marked with skull and crossbones" were sprayed on all tobacco and were not washed off: The chemical was later identified as dimethyl 2,2-dichlorovinyl phosphate (*18*). Furthermore, a materials analyst retained by the plaintiff's attorneys in the same case discovered 35 inorganic fibers (man-made or asbestos-like) in a sample of cigarette ash under a transmission electron microscope: The equivalent number for an entire cigarette would be 46 million (*19*). Similarly, both hydrazine residues and polonium-210 have been found in cigarettes. None of these are naturally contained in tobacco: If their presence and carcinogenicity are proved, the cigarettes that contain them could easily be found defective.

Finally, it may be possible to win a case on the basis of the inherent dangers of tobacco. Most states permit juries to find liability if a product is more dangerous than an ordinary consumer would expect, or if its risks exceed its benefits, or even if it is simply unreasonably dangerous. While many courts may be reluctant on their own authority to find wanting a generic product like tobacco, at least one court (in Louisiana) has taken that step with respect to asbestos, and others may follow. It is clear that any of these tests, fairly applied, would make tobacco product manufacturers strictly liable for the deaths and diseases that their products cause.

There are also legal theories under which the industry as a whole, including the Tobacco Institute (its lobbying and public relations arm) and the Council for Tobacco Research, could be held liable. One is "civil conspiracy," based on evidence that the manufacturers may have gotten together beginning in the 1950s to plan and implement a strategy for marketing cigarettes in the face of the developing scientific evidence of their dangers. Another is a "Good Samaritan" theory: that the companies, having publicly pledged in 1954 to investigate the possible dangers of smoking, were obliged to carry out their promise and take reasonable action based on what they found.

Required Inputs

To succeed in its purpose of reducing cigarette consumption, the tobacco products liability strategy requires the cooperation of *a*) doctors willing to testify, *b*) attorneys willing to invest, *c*) organization(s) willing to perform clearinghouse functions, *d*) judges willing to apply settled legal doctrine, *e*) juries willing to relax the impulse to blame smoker victims, and *f*) legislatures and law-making coalitions willing not to interfere.

Doctors. Medical testimony is, of course, needed both from the treating physicians and from experts in relevant fields. While any physician should be competent to testify to the causal link between smoking and lung cancer, cigarette manufacturers still deny this link in their pleadings and find some scientists willing to testify against it in court. The causation defense is more powerful where science is less certain: thus, on the relationship between moist snuff use and tongue cancer, a snuff manufacturer was able to persuade a jury that no causal link exists (*20*).

Testimony is needed not only from oncologists but also from epidemiologists (on the methodology of causal attribution), from historians of medicine (on the state of medical knowledge when the plaintiff began smoking), from toxicologists (on the proved effects of cigarette smoke and its components), from pathologists (on both the diagnosis and diagnostic methodology), from psychiatrists (on nicotine dependence), and perhaps from other medical specialists. Nonmedical experts are also needed on such issues as the purpose and effect of cigarette advertising, the chemical composition of cigarettes and cigarette smoke, nature of addiction, and methods of comparing the risks and "benefits" of smoking.

Medical experts have been very forthcoming, often waiving their fees. Doctors have, however, been more reluctant to take other supportive steps, with only a few publicly supporting the strategy or referring cases to attorneys or to the Tobacco Products Liability Project.

Attorneys. The prosecution of products liability cases is financed by plaintiffs' attorneys, who look to contingent fees obtained in successful cases to finance their enterprise. The financial attractiveness of any given case depends on the likely cost of bringing it to completion, the likelihood of success, and the damages likely to be awarded or obtained in settlement.

Tobacco products liability cases are at present extremely expensive to bring, since the cigarette companies defend them with unprecedented ferocity and the plaintiffs' attorneys have no successful models to emulate, no "cookbooks" to follow. Trials are delayed by complicated pretrial skirmishing, and the paucity of relevant experience, combined with the strength and complexity of public feelings on the issue, makes it impossible to estimate the prospects for eventual success in any given case. While the majority of products liability cases are settled before trial, the cigarette manufacturers have refused to settle any cases against them, thereby maximizing the costs to attorneys contemplating such cases. It is unlikely that attorneys will be able to recoup their costs in litigating their first tobacco case through fees earned in that case.

Attorneys are sometimes attracted to new fields in the hope of obtaining recognition and additional cases, recouping their initial investment further down the line. Attorneys are also sometimes motivated by a desire to prove that they can succeed where others have failed, and even sometimes by a desire to do justice. Some combination of these three factors has motivated a small number of highly competent attorneys to press forward with tobacco products liability cases.

Organization(s). The costs of bringing tobacco products liability cases have been reduced, and their prospects for success brightened, by the Tobacco Products Liability Project. The purpose of the Project is to help lawyers avoid some mistakes made in the first wave of tobacco liability cases in the 1960s by sharing information with each other and with medical authorities, as well as generally to explain and promote the strategy.

The Project, located in Boston, MA, at Northeastern University School of Law, holds annual meetings of physicians, attorneys, and others who support this strategy; convenes plaintiffs' lawyers to discuss tactics on a more frequent basis; submits *amicus curiae* briefs in important cases; does legal and other backup research; and explains and advocates the strategy to a variety of audiences. It created and works closely with a reference service for lawyers—the *Tobacco Products Litigation Reporter*—and publishes its own newsletter for nonlawyers—*Tobacco on Trial.*

The defendants, however, are even better organized. The six cigarette manufacturers have mounted a "joint defense." They work out a common strategy for defending each case and exercise tight central control over local counsel, thereby ensuring that, for example, an attorney representing one of them in Montana does not repeat the recent faux pas of one of their attorneys in admitting that smoking causes lung cancer and other diseases (*15*).

Furthermore, the industry in its defense vastly outspends the plaintiffs' attorneys and the Project. It is, therefore, well positioned to take advantage of any inadequacies in preparation and coordination among plaintiffs' attorneys. As a practical matter, for the strategy to succeed, the Project may need additional financial support, and plaintiffs and their attorneys may need some measure of sympathetic understanding from judges and juries.

Judges. The strategy requires judges to apply in an even-handed manner legal principles developed with respect to products less lethal than cigarettes. Many of the principles supporting tobacco products liability cases—such as that toxic as well as traumatic injuries are compensable and that some awareness of the danger by plaintiffs does not bar recovery where the manufacturer had more precise information—were established by 1973 in the asbestos cases (*21*). Other legal doctrines—such as that compliance with regulatory standards does not prevent a jury from determining that a reasonable manufacturer would have done more—were settled even earlier (*22*). Since judges generally have life tenure, they should not be as susceptible as legislators to tobacco industry pressure to bend principle for the industry's benefit.

Surprisingly, three appellate courts have ignored settled interpretative principles in deciding that the Federal Cigarette Labeling and Advertising Act preempts failure-to-warn claims in cigarette products liability suits (*7–9*). Their decisions have made these cases more difficult—but by no means impossible—to bring.

Many judges, however, have applied existing principles to tobacco cases, developing especially useful precedents with respect to the scope of discovery of tobacco industry documents and the ability of plaintiffs' attorneys to share the results.

Juries. Jurors need to be convinced to relax their impulse to blame the victims of tobacco-induced disease. A dominant notion, even among smokers, is that "anyone stupid enough to smoke deserves what he gets." Ignored, in this reasoning, is that most smokers became addicted as teenagers (*5*), that most have tried unsuccessfully to quit, and that few have had an accurate notion of the range and magnitude of the dangers presented by smoking (*23*). Also ignored is the role played by the tobacco industry in encouraging the addiction and in publicly denying the dangers that, in the litigation context, they insist lay plaintiffs should have been fully aware of.

Increasing public awareness of the addictiveness of tobacco use can be expected to reduce the prejudice against smokers. Nor will smokers be thought to have knowingly accepted the additional risks posed by carcinogenic contaminants. Furthermore, detailed evidence of unsavory tobacco industry behavior may redirect some public animosity toward the industry.

In the first cigarette case to go to a jury this decade *Galbraith* v. *R. J. Reynolds Tobacco Co.*, the jury found f the defendant on a 9–3 vote (*24*). The three holdouts would have voted for the plaintiff despite a paucity of evidence that he had died of a tobacco-related disease. The impulse to hold the tobacco industry accountable for the damage that it causes is potentially as strong as the impulse to blame the victim.

Legislatures. The tobacco industry thus far has been able to defeat most proposed anti-smoking measures both in Congress and the state legislatures. Thus it is a strength of the tobacco products liability strategy that it does not require affirmative legislative support. It can, however, be defeated by hostile legislation.

The tobacco industry by itself is not strong enough to obtain legislation protecting itself from products liability suits. The limited protection that it has received from the recent judicial interpretation of the Federal Cigarette Labeling and Advertising Act is not supported by the legislative history of that Act. But, ever resourceful, it combined in 1987 with pharmaceutical manufacturers and other groups—in one state including plaintiffs' malpractice attorneys!—to obtain products liability "reforms" designed to protect their special interests. Thus while earlier such reforms impacted evenly on various industries, three states adopted statutes in 1987 that either explicitly (California) or indirectly (New Jersey and Ohio) made bringing tobacco products liability st especially difficult.

Prospects

As of the end of 1987 there were about 125 cases against the tobacco industry pending in 17 states. Two—*Horton* v. *American Tobacco Co.*, pending in the Mississippi state court (*25*), and *Cipollone* v. *Liggett Group, Inc.*, pending in the New Jersey federal court (*26*)—were scheduled for trial in January 1988.

Perhaps the greatest difficulty confronting the tobacco products liability strategy is the inference that, since no case has yet been won, the cases must simply not be winnable. This is buttressed by the tobacco industry's extraordinary record of emerging unscathed from over three decades of convincing evidence of the lethal consequences of smoking. This difficulty will not go away until a case is won.

Until a case is won, most lawyers, public health advocates, and journalists will likely stay on the sidelines. The typical citizen will probably continue to think that someone who "chose" to smoke should not be permitted to sue a tobacco company. The tobacco companies will probably be able to continue to make legislative deals, even with doctors and lawyers who do not think they are giving up anything of substance by agreeing to ban tobacco products liability suits.

Once a case is won, the general perception of the value of the strategy should change rapidly. The useful economic, educational, and political effects described at the beginning of this commentary would follow.

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$7 million fine urged for USX

Violations cited at two plants

By Lisa Ellis
Inquirer Staff Writer

The Occupational Safety and Health Administration yesterday proposed fines of $7.3 million, a national record, against USX Corp. for about 2,000 violations at its Fairless Works in Fairless Hills and Clairton Coke Works near Pittsburgh.

The $6,095,600 fine proposed at the Fairless Works — site of three worker deaths in the last two years — is the largest ever proposed for violations at a single work site, said Jack Hord, a spokesman for the U.S. Labor Department's Philadelphia regional office.

In each of those three deaths, the company was cited for safety violations, said Marie Stranahan, assistant administrator of OSHA for the Philadelphia region. Those violations have been corrected and the fines levied for them have been paid, she said.

The fines proposed yesterday resulted from a June 7 inspection at the Fairless Works that found related deficiencies, she said. "The condition that caused the fatality was corrected, but we found similar violations in other parts of the plant," Shanahan said.

For example, one of the three deaths at the Fairless Works occurred when an outside contract worker fell through a rusted platform and into a vat of hot metal. Yesterday's citations, Shanahan said, included 307 allegations of unsafe walking or working surfaces, including rusted or deteriorated walkways or platforms.

"Company managers have known about many of these safety and health deficiencies for years, yet have failed to take action to correct the hazards," Gerard F. Scannell, assistant secretary of the U.S. Department of Labor, said in a statement yesterday.

A USX spokesman did not return telephone calls yesterday afternoon.

USX has 15 working days to contest the citations and proposed penalties before the independent Occupational Safety and Health Review Commission.

The citations at the Clairton works

(See USX on 7-B)

$7.3 million fine urged for two USX plants

USX, from 1-B

resulted from a May 8 inspection that was prompted by complaints from the United Steelworkers of America. "The complaint was given to OSHA only after the company stonewalled for over a year," said Michael Wright, national director of safety and health for the union.

At Fairless, complaints by four employees at the Bucks County plant, as well as the three fatalities, triggered the inspection.

Wright said that the union would have gone to OSHA about problems at the Fairless Works sooner but that it was still trying to get the company to correct problems voluntarily at the time of the inspection.

"About a year ago in the Fairless plant we thought the situation was so bad that we proposed the step of having the union and company do a comprehensive health and safety evaluation," he said.

The company refused the request, which came during negotiations over a USX plan to institute random drug testing at the plant, Wright said.

USX proposed the expanded testing after a worker involved in an October 1988 fatality tested positive for drugs. The union contended that the accident was caused by safety problems. OSHA cited the company for several violations at the time.

In a statement released yesterday, Secretary of Labor Elizabeth Hanford Dole said the penalties resulted from "corporate indifference to worker safety and health and severe cutbacks in the maintenance and repair programs needed to remove those hazards."

"Particularly flagrant are the company's numerous failures to properly record injuries at its Fairless Works in spite of the firm promise it had made in an earlier corporate-wide settlement agreement to correct those deficiencies," she said.

The citations issued yesterday included a doubling of proposed penalties for these previously cited record-keeping violations, which were supposed to have been corrected under the settlement Dole mentioned. That settlement was signed in April 1987.

"What they had done was underreported on their OSHA records the injuries and illnesses at the plant," Shanahan said. At the Fairless Works, the practice did not stop after the 1987 settlement, she said.

The Fairless Works, which employs 4,000 people, was cited by OSHA for 515 alleged violations of electrical safety requirements and 297 alleged cases of crane-safety problems.

The electrical violations included 200 to 300 cases of exposed live wires, Shanahan said. The crane problems included cranes without brakes, failure to make other repairs and failure to do required inspections, she said.

OSHA also cited the Fairless Works for 91 alleged violations of occupational noise standards, 135 deficiencies in protective guards for machines and transmission equipment, six alleged violations of structural integrity standards, and 245 other violations.

Violations cited at the Clairton Works included numerous violations of electrical and structural-safety standards. Proposed penalties totaled $1.2 million.

Wright, of the steelworkers union, said he hoped the citations would lead to changes at the plants. "We're not terribly interested in the size of the penalties," he said. "We would much rather see that money go into fixing the plants. We'll be talking to OSHA and USX about that."

The previous record fine proposed by OSHA was $5.1 million against companies involved in a building collapse in Bridgeport, Conn. That fine is still being contested.