

Criminal Enforcement of California's Occupational Health Laws: A Preliminary Analysis of Occupational Carcinogens Control Act Violations*

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INTRODUCTION

Criminal sanctions are a well-recognized means of securing compliance with many statutes and ordinances, particularly those enacted to protect the public health and safety. They are provided in areas ranging from environmental statutes,¹ antitrust laws,² security laws³ and professional licensing and conduct requirements to numerous health and safety laws. Many of the laws regulating matters that directly affect the public health and safety, such as food and agricultural products, toxic substances, and sanitation matters, establish strict criminal liability for a violation of *any* of their provisions, whether or not the violation was wilful or even criminally negligent.⁴

The United States Supreme Court has recognized that criminal

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1. *See, e.g.*, (Federal Water Pollution Control Act) 33 U.S.C. §§ 1319, 1321, 1344; (Refuse Act) 33 U.S.C. § 407; (Clean Air Act) 42 U.S.C. § 7413; (Federal Insecticide, Fungicide, and Rodenticide Act) 7 U.S.C. § 1316(b); (Toxic Substances Control Act) 15 U.S.C. § 2615(b); (Resource Conservation & Recovery Act) 42 U.S.C. § 6928(d); (Rivers & Harbors Act) 33 U.S.C. § 411; (Endangered Species Act) 16 U.S.C. § 1538; (nonvehicular air pollution control) Cal. Health & Safety Code § 42400; (state forests) Cal. Pub. Res. Code § 4656.3; (Hazardous waste control) Cal. Health & Safety Code § 25191.

2. *See, e.g.*, (Sherman Antitrust Act) 15 U.S.C. §§ 1, 2; (Wilson Tariff Act) 15 U.S.C. § 8; (combinations in restraint of trade) Cal. Bus. & Prof. Code § 16757; (combinations to obstruct sales of livestock) Cal. Bus. & Prof. Code § 16804; (unfair trade practices) Cal. Bus. & Prof. Code § 17100.

3. *See, e.g.*, (Securities Act of 1933) 15 U.S.C. § 77x; (Securities Exchange Act of 1934) 15 U.S.C. § 78ff; (corporate securities law) Cal. Corp. Code § 25540.

4. A partial listing of California health and safety statutes which provide strict criminal

laws which hold corporate officials personally accountable can perform an important deterrent function. In *United States v. Park*, 421 U.S. 658, 672 (1975), the Court unequivocally affirmed the propriety and constitutionality of strict criminal liability under statutes affecting public health and safety. In that case, the statute in issue was the Food, Drug & Cosmetic Act. The Court held that:

[I]n providing sanctions which reach and touch the individuals who execute the corporate mission . . . the [Food, Drug and Cosmetic] Act imposes not only a positive duty to seek out and remedy violations where they occur but also, and primarily, a duty to implement measures that will ensure that violations will not occur. The requirements of foresight and vigilance imposed on responsible corporate agents are beyond question demanding, and perhaps onerous, but they are not more stringent than the public has a right to expect of those who voluntarily assume positions of authority in business enterprises whose services and products affect the health and well-being of the public that supports them.⁵

Criminal penalties can often be effective where civil penalties are not. For example, administrative fines, which are usually very

liability for any violation of their provisions, or rules or orders promulgated pursuant thereto, includes the following:

CAL. HEALTH & SAFETY CODE §§ 9675 (mausoleums and columbariums); 12400 and 12700 (explosives); 13450 and 13725 (fires and fire protection); 17995 (housing); 19170 (earthquake protection); 19997 (factory built housing); 20734.1 (petroleum storage labels); 25010 (septic tanks, chemical toilets, cesspools, and seepage pits); 25630 (nuclear medicine technology); 25692 (radiologic technology); 25654 (transportation of radioactive materials); 25865 (Radiation Control Law); 25889 (glazed ceramic tableware); 25911 (asbestos spraying); 28801 (Sherman Food, Drug and Cosmetic law); 27021 (processed pet foods); 28213 (California Bakery Sanitation Law); 28186 and 28726 (frozen foods); 28345 (food sanitation); 28455 (canneries); 28488 (olive oil); 28509 (food sulphurs); 28692 (sanitation of restaurants, itinerant restaurants, vehicles and vending machines); 28770 (California Hazardous Substances Act); 28862 (Retail Food Production and Marketing Establishments Law); CAL. FOOD & AGRICULTURE CODE §§ 10491 and 11391 (animal and poultry quarantine and pest control); 16154 (vessel and aircraft garbage); 16421 and 17702 (animals generally); 20221 (cattle protection); 23071 (horses, mules, burros, sheep and swine); 24831, 25151, 26151, 26681, 26981, 27081, 28141 (poultry, rabbits, eggs and egg products); 35281 (Milk and Milk Products Act of 1947); 41551 (certification, processing and canning, and canned foods); 42971 (fruit, nut and vegetable standards); 57043 (produce markets in Alameda, San Francisco and San Mateo Counties).

In addition, many professional licensing, registration and conduct requirements provide for strict criminal liability:

CAL. BUSINESS & PROFESSIONS CODE §§ 2426 (medicine); 2670 (physical therapy); 2799 (nursing); 2887 (vocational nursing); 2970 (psychologists); 3120 (optometry); 3420 (hearing aid dispensers); 4382 (pharmacy); 4543 (psychiatric technicians); 5120 (accountants); 5464 (advertisers); 6153 (attorney solicitation); 6600 (barbers); 7715 (funeral directors and embalmers); 9590 (cleaning dyeing and pressing); 9850 (electronic repair dealers); 9889.20 (automotive repair); 17830 (marriage, family and child counselors); 18782 (boxing and wrestling); 19220 (home furnishings); 19661 (horse racing); 21891 (brake fluid); 21941 (automatic transmission fluid).

5. 421 U.S. at 672.

small, can be written off by violators as a cost of doing business since it is often less expensive for a company to pay the fine than for it to comply with the law. Other civil sanctions such as injunctions are often too severe and, as in the case of occupational health and safety laws, tend to penalize the workers as much as the owners. In contrast, criminal prosecutions can be directed against companies and their responsible officials who, even if willing to pay a fine out of the corporate treasury, probably do not want to risk personal conviction for a criminal violation and the possibility of a stiff fine or jail term. If credible, the threat of criminal prosecution can thus serve as a deterrent to corporate misconduct.

Every occupational safety and health law in the United States, both federal and state, provides criminal penalties as well as civil administrative sanctions. Although civil actions have regularly been brought on the basis of occupational safety violations, until April 4, 1979, no criminal prosecution had *ever* been reported for an occupational health violation anywhere in the United States. At that time, a District Attorney filed criminal charges against Brassbestos Manufacturing Corporation in Orange County, California. The extent of the occupational health hazards in this country raises the question of why the criminal sanction, apparently the most powerful of all penalties, was never before invoked. Why, when working conditions are known to cause thousands of injuries and deaths each year, has there been such reluctance to bring criminal prosecutions? Further, could such prosecutions bring about stricter compliance with occupational health laws?

In the spring of 1979, attorneys from the Center for Law in the Public Interest undertook a study of the criminal enforcement of the occupational health laws of California. They examined the files of the state's Division of Occupational Safety and Health covering every company which, between January 1, 1978, and March 1, 1979, had been charged with a serious violation of California's occupational carcinogen control standards. Based on that analysis, they prepared a report published in May, 1979, presenting their findings and setting forth recommendations designed to improve the state's occupational health enforcement program.⁶ The following article includes the findings and conclusions set forth in that report.

Because of California's special concern over carcinogens, as re-

6. CENTER FOR LAW IN THE PUBLIC INTEREST, CRIMINAL ENFORCEMENT OF CALIFORNIA'S OCCUPATIONAL HEALTH LAWS—A PRELIMINARY ANALYSIS OF OCCUPATIONAL CARCINOGENS CONTROL ACT VIOLATIONS, (May, 1979).

flected in its Occupational Carcinogens Control Act of 1976, the authors decided to make a case study of all serious violations of the state's carcinogen standards cited by the Occupational Cancer Control Unit between January 1, 1978, and March 1, 1979. Based on their study, the authors found that all of the 35 cases reviewed were arguably appropriate for criminal action, that fifteen of those cases were probably proper for prosecution, and that in at least three cases criminal penalties would clearly have been warranted. Presumably there have been many cases involving noncarcinogenic health hazards such as lead, silica dust, and brucella bacteria which would be equally appropriate for prosecution.

Evidently, the failure of California officials to refer occupational health violations to local prosecutors was based on the unexamined assumption that health cases would be difficult to prosecute. In contrast, state officials regularly referred occupational safety violations for criminal prosecution under the state statute, and local prosecutors have consistently obtained an extremely high percentage of convictions and no contest pleas among the safety cases selected for prosecution.⁷

Following issuance of the report by the Center for Law in the Public Interest and February and March meetings between Center attorneys and representatives of the Campaign for Economic Democracy, on the one hand, and Governor Brown and top state occupational health officials on the other, the state officially adopted a policy of referring at least some serious health violations for criminal prosecution. On March 30, 1979, California's Division of Occupational Safety and Health referred the case of Brassbestos Manufacturing Corporation to the Orange County District Attorney. The District Attorney filed criminal charges against Brassbestos and Stewart Mazure, a member of its board of directors, on April 4, 1979, marking the first criminal prosecution anywhere in the United States for an occupational health offense.

Nonetheless, further development and implementation by the state of criminal referral policies and procedures for occupational health violations has been slowed somewhat by the recent California Court of Appeal decision in *Salwasser v. Municipal Court*, June 10, 1979 (Fifth District). That decision held that a showing of criminal probable cause, *i.e.*, specific evidence of an existing violation, was necessary to secure a CAL/OSHA inspection warrant because of the "far-reaching penal consequences" of a CAL/OSHA inspection.

7. See note 37 *infra* and accompanying text.

Since the California Supreme Court denied a hearing in that case on September 4, 1979, and the decision is now final, state officials have been in the process of preparing criminal referral policies which will distinguish sufficiently between civil and criminal enforcement procedures so as to comply with *Salwasser v. Municipal Court*, and which will allow most inspections to proceed on the basis of administrative rather than criminal probable cause.

BACKGROUND

No one knows the full dimensions of the occupational health hazard in this country, but the more that is learned, the larger it becomes. Cancer stands foremost among occupational health hazards. Approximately 400,000 people die of cancer each year in the United States,⁸ and, according to a HEW study, at least 80,000 of those deaths are caused by occupational exposure to carcinogenic substances.⁹

The HEW study, authored by nine distinguished medical and scientific experts from the National Cancer Institute, the National Institute of Environmental Health Sciences, and the National Institute for Occupational Safety & Health,¹⁰ analyzed exposure of workers to several different carcinogenic substances. The report concluded that between 20% and 40% of the cancer cases occurring in the United States in the coming decades will be "attributable to" occupational exposure to such substances "in the sense that most of [the cancers] would not have occurred in the absence of exposure, so that they could have been prevented by prevention of occupational exposure."¹¹

Exposure to asbestos,¹² perhaps the best known of all occupa-

8. AGRAN, *THE CANCER CONNECTION*, XV (1977); EPSTEIN, *THE POLITICS OF CANCER*, 8 (1978).

9. *Estimates of the Fraction of Cancer Incidence in the United States Attributable to Occupational Factors*, National Cancer Institute, National Institute of Environmental Health Sciences, and National Institute of Occupational Safety and Health (September 11, 1978) [hereinafter *Estimates*]. The American Cancer Society estimates that in 1978, there were 38,800 cancer deaths in California and 66,000 new cases of cancer diagnosed. AMERICAN CANCER SOCIETY, 1978 CANCER FACTS AND FIGURES (1978).

10. Kenneth Bridbord, M.D., NIOSH; Pierre Decoufle, Sc.D., NCI; Joseph F. Fraumeni, Jr., M.D., NCI; David G. Hoel, Ph.D., NIEHS; Robert N. Hoover, M.D., Sc.D., NCI; David P. Rall, M.D., Ph.D., NIEHS, Director; Umberto Saffiotti, M.D., NCI; Arthur C. Upton, M.D., NCI, Director.

11. *Estimates*, *supra* note 9 at 15.

12. Asbestos is used primarily as a fire retardant but has over 3,000 industrial uses, including use in building materials, brake and clutch linings, paints, cement, pipe coverings, insulation for buildings and ships, floor tiles, and paper products.

tional hazards, has caused and will continue to cause the death and disability of *millions* of workers over the next several decades. On April 26, 1978, HEW Secretary Joseph Califano stated that as many as 51% of the four million persons who have worked heavily with asbestos since the beginning of World War II will die of lung cancer or other diseases as a result of their exposure to asbestos.¹³ In addition, as many as one-half of the four to seven million workers who have had a lighter exposure to asbestos during this period will die of asbestos-related diseases. According to Califano, 20-35% of the heavily exposed workers will die of lung cancer, up to 9% will die of gastrointestinal cancers, 7-10% will die of mesothelioma, a cancer of the chest or abdominal cavities, and 7% will die of asbestosis, an irreversible lung disease.¹⁴

Even a very brief exposure to asbestos can be lethal. According to Dr. Irving Selikoff, professor of medicine at Mt. Sinai Hospital in New York and a leading researcher on the relationship of asbestos to cancer, "A worker could be heavily exposed to asbestos for even one day and conceivably develop cancer much later in life as a result of this exposure. He may have been exposed for only one day, but his

13. CAL-OSHA REP., 1503-04 (1978); Los Angeles Times, June 28, 1978; *see also* [1978] EMPLOYMENT SAFETY AND HEALTH GUIDE, (CCH) [hereafter CCH] ¶ —. Dr. Philip Polakoff, head of the Western Institute for Occupational Safety and Health, estimates that there may be as many as 400,000 people in the San Francisco Bay Area alone at high risk for asbestos-related diseases because during World War II over 2.5 million people worked at shipyards in northern California. CAL-OSHA REP., at 1504.

14. Asbestosis occurs when asbestos fibers which are inhaled become embedded in the lungs, setting off a reaction that causes scar tissue formation and the destruction of normal lung tissue. The result is an increasing shortness of breath as the lungs can no longer exchange carbon dioxide for oxygen at a normal rate.

The day after Califano's announcement, suits brought against insulation product manufacturers by four California insulation workers and the widows of four other workers because of the asbestosis and mesothelioma developed by the workers were settled for \$845,000. Some of the insulation workers in the lawsuit were members of Asbestos Union Local 16 in San Francisco. According to the union, at the time the suit was settled, 42 of 75 recent deaths of Local 16 members were directly attributable to asbestos exposure. CAL-OSHA REP., *supra* note 13 at 1504.

In October of 1978, Local 9 of the Marine and Shipbuilding Workers AFL-CIO filed a \$1 billion class action lawsuit on behalf of more than 5000 workers at two southern California shipyards charging 15 major American manufacturers of asbestos with conspiracy to conceal and distort scientific and medical reports regarding the health dangers of asbestos. Even before this suit was filed, there were more than 1000 asbestos-related lawsuits filed by injured workers or families of deceased workers seeking more than \$1 billion in courts throughout the United States. CAL-OSHA REP., *supra* note 13 at 1697-1698. Documents obtained during discovery in some of these cases indicate that manufacturers may have suppressed for decades information about the health dangers of asbestos. CAL-OSHA REP. (October 30, 1978); Los Angeles Times, June 28, 1978, October 23, 1978.

lungs continue to be exposed to the asbestos desposited there.”¹⁵ Even wives of workers who merely washed their husbands’ asbestos-laden clothes suffer asbestos-related diseases.¹⁶ Further, according to Dr. Selikoff, a smoker who is exposed to asbestos is thirty times more likely to develop lung cancer than a nonexposed nonsmoker.¹⁷

The two HEW studies published this past year just begin to outline the vast proportions of occupational health problems *already* caused by *past* business practices. To allow workers to continue to be exposed to substances which are known to cause cancer and other disabling diseases is inexcusable in the face of the conclusions of these reports. Yet companies continue to regularly violate occupational health standards,¹⁸ exposing workers to substances likely to injure and perhaps kill them.

CAL/OSHA and the Occupational Carcinogens Control Act of 1976

The Statutory Scheme

In 1970, Congress passed the Occupational Safety and Health Act (OSHA)¹⁹ “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”²⁰ The Act encourages states to adopt and implement their own programs meeting federal criteria, or in the alternative to be subject to the federal OSHA program. As of February 1979, twenty-four states were operating under federally-approved plans and another fourteen had plans pending federal approval.

The California legislature responded with the California Occu-

15. New York Academy of Sciences, *CANCER AND THE WORKER* 37 (1977). Since 1971, the U.S. government has been steadily lowering the permissible exposure levels for asbestos in the workplace. Even so, the current concentration limit of 2 fibers per cubic centimeter of air is not without controversy. Indeed, the Federal Occupational Safety and Health Agency has proposed lowering the limits to .5 fibers/cc and the National Institute for Occupational Safety and Health (“NIOSH”), after reviewing the most recent asbestos studies, recently called for a greatly lowered standard of .1 fibers/cc. *Los Angeles Times*, June 28, 1978.

16. *Los Angeles Times*, June 28, 1978, October 24, 1978.

17. *Los Angeles Times*, June 28, 1978.

18. Occupational health inspections in California in 1977 and 1978 found approximately 40 percent of the companies in violation of health standards and orders. *See* CAL-OSHA REP. (April 3, 1978, June 12, 1978, September 25, 1978). In the first four months of the operation of the Occupational Carcinogens Control Act, 65 percent of the inspections resulted in issuance of citations. CAL-OSHA REP. 1362 (1977).

19. 29 U.S.C. §§ 651-678 (1976).

20. 29 U.S.C. § 651(b) (1976).

pational Safety and Health Act (CAL/OSHA),²¹ which was approved by the U.S. Department of Labor and signed into law in 1973. The provisions of the Act apply to all places of employment within the state, except where health and safety jurisdiction has been vested in another state or federal agency.²² The Act creates the Occupational Safety and Health Standards Board which promulgates standards and orders regulating workplace conditions and potential hazards.²³ The principal purpose of CAL/OSHA is to ensure employer compliance with these standards.

The Division of Occupational Safety and Health (DOSH or the Division) is the state administrative agency charged with responsibility for enforcing the provisions of CAL/OSHA. The Division inspects places of employment either upon receipt of a complaint or upon its own initiative, and issues citations and civil penalties in

21. CAL. LAB. CODE §§ 6300 *et seq.* (West Supp. 1977).

22. For example, naval shipyards in California are not under the jurisdiction of CAL/OSHA. Naval shipyards are among the most dangerous industrial sites because of the large numbers of employees who are exposed to asbestos. In a study released in June of 1978, the Long Beach Naval Shipyard reported that 16% of its 6,640 production and office workers had the type of chest abnormalities associated with asbestosis. The number of workers whose X-rays showed they had asbestosis increased in direct relation to the number of years they were employed at the shipyard—workers employed for two years or less had chest abnormalities at a rate of 7.4%; workers employed for seven to twelve years had a 20.7% abnormality rate; workers employed at least seventeen years had an abnormality rate of 31%; and workers employed for a period of twenty-two to twenty-seven years had a whopping 39.7% abnormality rate. CAL-OSHA REP. *supra* note 13, at 1561; Los Angeles Times, June 26, 1978.

Studies of workers at other naval shipyards present even more disturbing results. A study of the Naval Shipyard at Groton, Connecticut, revealed that 38% of workers employed fifteen years or less had X-ray abnormalities; 51.2% of those employed twenty-five years or more showed abnormalities. Of 359 present and former employees with a minimum of ten years exposure at the Mare Island Naval Shipyard in Alameda County who were X-rayed at Berkeley's Herrick Hospital, 59% had chest abnormalities. Finally, a study of workers at the Naval Shipyard in Portsmouth, New Hampshire, revealed that workers there suffered from cancer at more than twice the national rate. *Id.*

Despite the enormous threat to workers' health posed by conditions in naval shipyards, California has no authority to impose civil fines or seek criminal sanctions pursuant to CAL/OSHA if the Department of Navy fails to comply with CAL/OSHA standards, because the Department of Navy is not an "employer" as that term is used in CAL/OSHA. CAL. LAB. CODE §§ 6304, 3300 (West 1973). In fact, the federal government is not an "employer" even for purposes of the federal OSHA and, therefore, federal agencies do not fall within the reach of its provisions. The exclusion of federal agencies from "employer" status under both CAL/OSHA and FED/OSHA means that the Department of Navy is insulated from the enforcement mechanisms of both of those statutes, including on-site inspections and investigations and imposition of civil and criminal penalties. *See generally* Marino, *The Occupational Safety and Health Act and the Federal Workplace: Implementation of OSHA by the Departments of Defense and Navy*, 29 JAG J. 125 (1977).

23. 8 CAL. LAB. CODE §§ 140-147.2 (West Supp. 1977); 8 CAL. ADMIN. CODE § 401. *See* 8 CAL. ADMIN. CODE §§ 450 *et seq.* (1979) for standards and orders promulgated by the Board.

cases of non-compliance.²⁴ The Standards Board has authority to grant variances for standards; the Appeals Board hears all appealed enforcement actions. Within the Division, a Bureau of Investigations (BOI) has been established to investigate serious accidents and to prepare cases for criminal prosecution.

The Act establishes a dual system of sanctions to achieve compliance with its standards. First, it provides civil penalties for non-compliance, consisting of citations, fines, and, in extreme cases, orders to close down facilities or portions of facilities. Second, it provides criminal sanctions to complement the civil penalty structure. Employers guilty of certain enumerated violations may be subject to fines, usually greater than the corresponding civil fines, or to jail terms of up to six months.²⁵

The type of sanction imposed depends upon the nature of the

24. Until July 1, 1978, the Occupational Health Branch of the State Department of Health performed the inspection and testing in cases of health violations, recommending to the Division of Industrial Safety the issuance of citations where appropriate. Effective July 1, 1978, Occupational Health and the Division of Industrial Safety were combined in a new Division of Occupational Safety and Health. This history of jurisdiction divided according to whether a violation is a "health" or a "safety" matter is relevant in that the two areas have always been treated entirely differently by the pertinent state enforcement agencies. ("Safety" violations are generally those involving obvious, detectable, structural defects, such as open pits, unguarded machinery, or faulty electrical wiring. "Health" problems, on the other hand, refer to working conditions, usually involving exposure to a toxic substance, which will gradually lead to the development of some type of occupational disease.) This report is concerned only with the problems of occupational health, and will discuss safety issues only incidentally for purposes of comparison.

25. The penalties and remedies provided in the California Business and Professions Code for engaging in unfair competition might also be used to deter employers who violate the health standards of CAL/OSHA and OCCA, although they have never been utilized for this purpose in the past. Under the broad terms of CAL. BUS. & PROF. CODE § 17200 (West Supp. 1980), companies which violate CAL/OSHA are guilty of unfair competition which ". . . include[s], unlawful, unfair or fraudulent business practice[s]. . . ." *Id.*

Actions to enjoin a company from performing acts of unfair competition may be brought by the state Attorney General, any district attorney or certain city attorneys, or "by any person acting for the interests of itself, its members or the general public." *Id.* § 17206. In addition to imposing an injunction, the court may make whatever orders or judgments are necessary, including the appointment of a receiver, to prevent further acts of unfair competition. *Id.* § 17203. A company found guilty of unfair competition is liable for a civil penalty of up to \$2500 for each violation, and each day of a continuing violation is treated as a separate violation. *Id.* § 17206. Furthermore, a person who intentionally violates a § 17203 injunction prohibiting unfair competition is liable for a civil penalty up to \$6000 for each violation. The statute of limitations for bringing an unfair competition cause of action is four years. *Id.* § 17208.

According to Richard Kalustian, head of the Consumer Protection Unit of the Los Angeles County District Attorney's Office, the D.A. brings about twenty-five § 17200 cases a year and wins virtually every case. Representative of these cases are actions against restaurants for using false and misleading menus or maintaining unsanitary conditions and actions against companies for making false representations in advertising or reneging on contracts. Unless the facts of a case are particularly outrageous, the fines are usually \$500 to \$1000. Cases with

violation. A violation may be "general" (non-serious), "serious," an "imminent hazard," or a "serious menace."²⁶ A general violation subjects the employer to potential civil liability only. A serious violation may subject the employer to civil or criminal penalties. A finding of an imminent hazard allows the Division to temporarily shut down the offending portion of a facility for a period of 24-96 hours, and a determination of a serious menace allows the Division to apply to Superior Court for an injunction to close the facility until the violation has been abated.

A general or serious violation may bring a civil fine of up to \$1,000, a willful or repeated violation may subject the employer to fines of up to \$10,000, and a failure to timely abate the violation may cost up to \$1,000 per day of non-compliance.²⁷ In practice, however, the actual fine charged is considerably less, because each assessed penalty is subject to a number of "reduction factors."²⁸

Under the criminal misdemeanor penalties, an employer²⁹ may be subject to fines of up to \$5,000 and/or six months in jail if he or she:

- (a) knowingly or negligently commits a serious violation;
or
- (b) repeatedly violates a standard, creating a real and apparent hazard to employees; or
- (c) fails to comply with a standard, once cited and after the abatement period has expired, thereby creating a real and apparent hazard to employees.³⁰

A willful violation causing death or prolonged injury to an employee is punishable by up to \$10,000 and/or six months in jail. If the employer has previously been convicted, however, he or she may be

multiple violations, however, have generated fines of up to \$50,000 (\$2500 per violation), and in some cases the court has gone so far as to appoint a receiver.

26. See CAL. LAB. CODE §§ 6427, 6432, 6325, 6323 (West Supp. 1977). A "serious" violation is defined in § 6432; none of the other standards are defined in the code or the published regulations. With respect to health violations in particular, the Division has a high degree of discretion regarding which label to apply to any particular non-complying operation.

27. CAL. LAB. CODE §§ 6428-30 (West Supp. 1977).

28. Each assessed penalty is reduced according to a complex formula which considers the size of the employer, its history and its good faith, as well as the severity of the violation. See 8 CAL. AD. CODE §§ 333-36 (1979).

29. Under CAL. LAB. CODE § 6423 (West Supp. 1977), criminal penalties may be applied to "every employer, and every officer, management official or supervisor having direction, management, control, or custody of any employment, place of employment, or other employee. . . ."

30. *Id.* § 6423(a)-(c). A criminal penalty is also provided for making a false statement in any document required by CAL/OSHA § 6426.

punished by a fine of up to \$20,000 and/or one year in jail.³¹

In 1976, the California legislature enacted the Occupational Carcinogens Control Act (OCCA)³² to supplement CAL/OSHA by strengthening regulation of certain identified carcinogenic substances. California was the first state in the country to enact such a law. The Act creates a presumption that any violation involving one of the listed carcinogens is a "serious" violation. Thus, the employer must show either that he could not reasonably have known of the violation or that the violation is *de minimis* in order for a violation of the Act not to constitute a "serious" violation. The Act also imposes a requirement that all employers using the listed substances report to the appropriate state agencies. The civil penalty is \$500 for failure to report, \$1,000 for violation of a carcinogen standard, and \$5,000 for repeated violations of carcinogen standards with no allowance for penalty reduction.

Present Enforcement Procedures

The true test of CAL/OSHA and OCCA is how effectively they are enforced. An examination of the selective and limited manner in which the statutory provisions have been implemented is revealing in many respects. Most notably, enforcement of safety standards is fundamentally different from enforcement of health standards. In fact, until 1978, they were administered by agencies from two different departments: health, by the Occupational Health Branch of the Department of Health Services, and safety, by the Division of Industrial Safety of the Department of Industrial Relations. Consolidation of the two under the Division of Occupational Safety and Health represents a step towards properly balancing priorities, but disparate treatment of the health and safety areas continues.

The state's pursuit of occupational health problems has always lagged far behind its attention to safety problems. To be sure, health violations can, in some cases, be more difficult to detect and prove than safety violations, but this fact would, if anything, seem to indicate that proper enforcement of health standards requires a greater allocation of resources. A comparison of California's inspection system with that of the federal OSHA and of other states reveals the

31. *Id.* § 6425.

32. CAL. HEALTH & SAFETY CODE §§ 24200 *et seq.* (1976). As originally passed, it applied to fourteen listed chemical carcinogens, as well as asbestos, and vinyl chloride. Since then, DBCP (1, 2, Dibromo-3-chloropropane), coke oven emissions, acrylonitrile, and arsenic have been included within its provisions. It is expected that coal tar pitch is among those substances soon to be added to the list of regulated carcinogens.

weakness of the state occupational health program in contrast to its safety enforcement program, which some consider among the best in the country.³³ In California, safety inspections are conducted by 145 safety engineers; health inspections by 43 industrial hygienists.³⁴ This 3:1 ratio of safety engineers to industrial hygienists compares with a ratio of 1.8:1 under federal OSHA.³⁵ Similarly, only 7.4% of the inspections conducted under CAL/OSHA are health inspections, whereas 18.8% of the federal OSHA inspections are for health problems.³⁶ Compared with the five largest federal OSHA states, California ranks second in the number of safety inspectors per 1000 workers, but it has only half as many health inspectors per 1000 workers as the other five states.³⁷

In addition, promulgation of new health standards has lagged far behind safety standards. As noted by the California Joint Legislative Audit Committee:

Although occupational health was mentioned [by the Division] as a high priority area, development of these

33. CAL-OSHA REP. *supra*, note 13, at 1582-83.

34. CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ACT—A PROGRAM REVIEW, Joint Legislative Audit Committee 8 (1979) [hereafter cited as AUDIT COMMITTEE REVIEW].

35. CAL-OSHA REP. 1790 (1979).

36. AUDIT COMMITTEE REVIEW, *supra* note 34, at 37.

37. See AUDIT COMMITTEE REVIEW, *supra* note 34, at 42 for the following table.

COMPLIANCE STAFFING FOR CALIFORNIA
AND THE FIVE MOST POPULOUS FEDERAL OSHA STATES*

State	Number of Covered Workers**	Number of Safety Inspectors	Number of Industrial Health Inspectors	Total Inspectors	# Safety Inspectors /1000 Workers	# Industrial Health Inspectors /1000 Workers	Total Inspectors /1000 Workers
Cal.	7,677,710	145	43	188	.019	.006	.025
N.Y.	5,543,637	103	67	170	.019	.012	.031
Ill.	3,774,890	49	45	94	.013	.012	.025
Tex.	3,755,267	77	40	117	.021	.011	.031
Penn.	3,698,732	59	43	102	.016	.012	.028
Ohio	3,343,165	49	41	90	.015	.012	.027

*Figures for three right-hand columns are rounded and therefore may not total.

**Includes private and public sector employees for California and private sector employees for other states.

standards has been particularly slow. . . . We were able to identify only 4 of the 21 state-initiated standards . . . [adopted between November 1975 and November 1977] as being health-related. At least two of these—reporting requirements for asbestos and vinyl chloride users—were no more than modifications of the existing federal standards.³⁸

The semi-annual evaluation reports of CAL/OSHA done by federal OSHA, which have generally been favorable, have also noted and criticized the low priority given to health violations by CAL/OSHA.³⁹

The disparity in treatment between the health and safety areas is reflected in the Division's use of criminal sanctions for violations of CAL/OSHA and OCCA. The Division's Bureau of Investigations had *never* referred a health case to a local prosecutor for criminal prosecution until the Brassbestos case was referred in April, 1979.⁴⁰ By comparison, between February 1 and July 31, 1978, the BOI forwarded 68 cases, all of safety violations, to district attorneys. The D.A.'s filed complaints in thirteen cases, and convictions or no contest pleas were obtained in eleven of those cases.⁴¹

Not only has the BOI never forwarded a health case for prosecution, but in at least one case, the Bureau's intransigence actually prevented the Division from issuing civil citations because the BOI failed to take action before the statute of limitations ran. In the case

38. AUDIT COMMITTEE REVIEW, *supra* note 34, at 23.

39. CAL-OSHA REP., *supra* note 13, at 1582-83; EMPL. SAFETY & HEALTH GUIDE (CCH), September 27, 1977, at 11,922.

There is some reason to believe this situation is improving. Art Carter, chief of DOSH, has stated that the Division is starting to place "a major emphasis on occupational health." CAL-OSHA NEWS, (September 1978). He cites as evidence of the Division's increased emphasis on occupational health, consolidation of the Occupational Health Branch with the other components of CAL/OSHA, passage of the OCCA, and Governor Brown's proposals for a toxic chemical information repository and expanded occupational health education.

40. *Brassbestos* was not referred to the Orange County D.A. as a result of an investigation by the BOI but rather as a result of the Division's review of serious carcinogen violations for potential criminal cases.

41. CAL-OSHA REP. 1790 (1979). The BOI has sent two safety cases to prosecutors in 1979 resulting in one guilty plea and one no contest plea. In 1975, BOI referred 91 cases to local district attorneys, resulting in one trial with a guilty verdict, 28 no contest or guilty pleas and 5 dismissals. BOI referred 122 cases in 1976 and requested 41 criminal complaints. The prosecutors issued 30 complaints, charging 35 individuals and 27 companies. Twenty-eight cases were completed in 1976, resulting in one jury trial with a verdict of not guilty, two court trials with verdicts of not guilty, four dismissals, and 21 cases with guilty or no contest pleas. In 1977, BOI referred 101 cases and requested 27 criminal complaints. The prosecutors issued 21 complaints, charging 19 individuals and 16 companies. Fourteen of these cases were completed in 1977 with one dismissal and 13 guilty or no contest pleas. CAL-OSHA REP., *supra* note 13, at 1480.

of Glenn Roller Company, which is described in detail *infra*,⁴² an inspection in March of 1978 by a Division industrial hygienist revealed several serious violations in the use of MBOCA. The hygienist saw MBOCA spilled in the plant and saw what he thought to be a great deal of MBOCA in a room which the employer refused to let him enter. Though the employer repeatedly stated that the company no longer used MBOCA, wipe samples taken from the plant were later determined to be MBOCA. Because of the serious nature of the violation and the apparent misrepresentations by the employer, the inspector referred the case to the BOI the day after the inspection (March 31, 1978) and an investigator from the Bureau agreed to look into the case. The BOI never did anything. The hygienist obtained a search warrant and returned to Glenn Roller on September 26, 1978, but the six month statute of limitations ran out on September 30 and no citations were issued on the basis of the March inspection.

The same disparity between health and safety enforcement holds true in virtually every other jurisdiction, although perhaps to a lesser extent. Under the federal OSHA, for example, nearly twenty cases have been forwarded to the Justice Department for possible criminal prosecution. No health violations have been prosecuted.⁴³

USE OF CRIMINAL SANCTIONS FOR OCCUPATIONAL HEALTH VIOLATIONS

The principal explanation offered by the state as to why no occupational health violation was even referred for criminal prosecution involves the problems of proving the requisite elements of a criminal health violation. It can be difficult both to detect the violation itself as well as to determine the extent of the injuries resulting from the violation. Moreover, some critics argue that the vast majority of offenders respond positively to civil citations, thereby eliminating any need to bring the criminal process into play, even for the small minority who persist in their violations.

Neither of these arguments is persuasive. First, the additional elements necessary to support a criminal conviction do not pose overly burdensome proof problems. Section 6423 of the California Labor Code provides criminal sanctions: (a) where an employer has committed a serious violation knowingly or negligently, (b) where an employer has repeatedly violated a standard, or (c) where it has

42. See text at notes 65-68.

43. R. Fisher, *Criminal Trials on Safety Issues*, PROCEEDINGS OF ABA NATIONAL INSTITUTE ON OCCUPATIONAL SAFETY AND HEALTH LAW 178 (1976).

failed to remedy a violation after the period of abatement has expired. The latter two sections presumably provide for strict criminal liability, and nothing need be shown about the state of mind of the offending employer. Rather, it is enough that a standard was violated repeatedly or that a violation was not abated.

Conviction under section 6423(a), in contrast to sections 6423(b) and (c), would require proof beyond a reasonable doubt of several elements: (1) that the employer has violated a standard, (2) that the violation could result in a substantial probability of death or serious physical harm⁴⁴ and (3) that the violation was committed knowingly or negligently.⁴⁵ The law does not state whether proof of negligence requires anything more than ordinary civil negligence, but section 7(2) of the California Penal Code defines negligence as "a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns." Read in conjunction with the applicable health laws, negligence might thus be defined as "a want of such attention to the nature or probable consequences of the act as a *prudent employer using carcinogens [or other known hazardous substances]* ordinarily bestows. . . ."

Although employers are likely to claim that they could not reasonably know of the existence of the violation,⁴⁶ in the case of carcinogens, since employers must register as carcinogen users,⁴⁷ the presumption should be that they are fully aware of all of the carcinogen regulations and of the probability that serious harm will result from violation of those regulations. Also, because of the especially hazardous nature of the substances, employers should be held to a high standard of care pursuant to which they must keep close vigilance over the operations of the company. For noncarcinogen standards which are well known and understood, the presumptions should also be both that employers are fully aware of the legal requirements and the likely consequences of failure to comply, and that they are under a duty to closely oversee their companies' compliance.

44. If the violation is of a carcinogen standard, then the burden instead rests with the employer to show that the violation resulted in no substantial health hazard. CAL. HEALTH & SAFETY CODE § 24261 (West Supp. 1977).

45. If the employer did not know of the violation and was not negligent in failing to know of the violation, then, by definition, the violation is not serious. CAL. LAB. CODE § 6432 (West Supp. 1977); CAL. HEALTH & SAFETY CODE § 24261(b) (West Supp. 1977).

46. *Id.*

47. CAL. LAB. CODE § 6432 (West Supp. 1977).

Further, whether or not it is true that most companies will comply with the law once cited for a health violation, criminal prosecutions remain important because of their deterrent function. In this regard, it is important that they are invoked not only against repeat violations, such as Brassbestos, but also against first-time offenders, whether the violation is knowing or negligent but serious. After all, a violation of occupational health standards, even for a brief period, can cause disease and death. The law must therefore be designed to prevent violations from occurring in the first place. It is that particular deterrent function that is served far better by the credible threat of a criminal prosecution than by the possibility of an administrative fine.

The manner in which the health standards of CAL/OSHA and OCCA have heretofore been enforced has created very little incentive to comply with the law. Fines are low. The average penalty for a non-serious violation is \$10; for a serious violation it is \$239.⁴⁸ Even the most egregious violation of CAL/OSHA, a willful or repeat violation, carries a maximum civil penalty of \$10,000. Under the circumstances there is only a modest financial incentive to comply with the law.⁴⁹ By contrast, criminal laws which hold corporate officials personally accountable can perform an important deterrent function, as the U.S. Supreme Court emphasized in the *Park* case.⁵⁰

As important as reforming the practices of the particular company charged with violations is the likelihood that other companies, once aware that the health violations may result in criminal prosecutions, will increase their efforts to prevent violations from occurring in the first place. The notoriety attached to criminal conviction, along with the resulting economic ramifications, appears to be an effective sanction in this type of "white collar" crime; civil sanctions can achieve no equivalent effect.⁵¹ The likelihood that judges will be

48. AUDIT COMMITTEE REVIEW, *supra* note 34, at 37.

49. Furthermore, the risks of large payouts under workers' compensation laws are less in occupational health cases than in safety cases since it is so difficult to trace and prove the causes of occupational illnesses.

50. *United States v. Park*, 421 U.S. 658 (1975).

51. One striking case where criminal sanctions have had dramatic effects has been prosecutions for nursing home abuses in the city of Los Angeles. In 1975, the vast array of nursing home abuses in Los Angeles was extensively documented in the "Hearing Examiner's Report on Nursing Homes" prepared by the Los Angeles City Attorney's office. The report summarizes the testimony of over 500 witnesses who detailed hundreds of examples of abuses resulting in enormous physical, psychological, and financial injury to the nursing home patients. Between 1975 and 1978 the Los Angeles City Attorney's office filed twenty criminal cases for nursing home abuses; as a result, twenty staff members and licensees were convicted at twelve nursing homes. Of those twelve facilities, eleven were sold and are under new management (a

reluctant to impose jail sentences on individuals who are convicted does not detract from the effectiveness of criminal sanctions. Since the stigma and bad publicity stem from the conviction itself, not the penalty. Furthermore, the possibility of a jail sentence, even if remote for first-time violators⁵² provides a strong incentive to comply with the law, particularly since that possibility is less remote for repeat violators.⁵³ Even with first-time violators the possibility of jail may be an incentive, since the court may require as a condition of the employer's probation that the violations at the plant be remedied, and that failure to abate the violations will automatically result in a jail term.

The function of the criminal sanction is thus two-fold. First, criminal convictions of companies persisting in their unlawful practices in the face of civil penalties presumably can bring an end to such violations, either by placing the violator in jail or by stigmatizing the offender to such an extent that he or she desists. Second, and equally important, the use of criminal penalties not only deters the company against whom charges are brought from future violation, but, in addition, deters all other companies from violating the law. The availability of criminal sanctions thus imposes an affirmative duty on *all* companies to act in such a way as to prevent violations from ever coming about. In addition, a single criminal prosecution against an offending company official will affect all enterprises owned or managed by that individual, many of which may have been involved in violations of the law but which had remained undetected. This situation is well illustrated by Glenn Roller Company and Brown Rubber Company described below,⁵⁴ both of which have been in gross violation of OCCA while under the management

condition agreed to by facility owners to avoid future probation violations and a possible jail sentence). A county health inspector reports that the great majority of these establishments now provide an adequate standard of care. (See Adams & Miller, *Implementation of a Model Misdemeanor Nursing Home Enforcement Program*, 10 U. WEST L.A.L. REV. 141-58 (1978)).

52. In some cases, jail sentences have been imposed against corporate officials convicted of "white collar" crimes even where the violations were for the first time. For example, the president of Kentucky Liquid Recycling Inc., after being convicted of dumping toxic chemicals into Louisville's sewer system, was given the maximum sentence of two years in prison and fined \$50,000. (United States v. Distler, No. 77-00108-01-L, (W.D. Ky., Sept. 14, 1979)).

53. Again, the nursing home prosecutions described *supra* note 51 provide a good example. As a result of all the convictions, only one person was sentenced to jail (90 days). In most cases, the judge ordered the defendants to pay fines and sentenced them to several years of probation, warning that probation violations would result in jail sentences. Still, the threat of jail time apparently served to enhance the deterrent effects of the penalties substantially.

54. *Supra* note 42.

of a single individual.⁵⁵

Other serious limitations on efforts to achieve compliance through the administrative process could be avoided by use of criminal sanctions. Governmental entities, for example, are exempt from civil penalties under CAL/OSHA,⁵⁶ despite the fact that many are in violation of the law. Fully twenty per cent of the employers cited for serious violations of OCCA between January 1, 1978, and March 1, 1979 (seven of thirty-five companies) were not fined because they were governmental entities.⁵⁷

Moreover, even the worst violators can draw the civil enforcement process to a virtual halt merely by appealing their citations. The filing of an appeal triggers a stay of the abatement period. Therefore, as long as citations are on appeal, the Division will not, on its own initiative, conduct any further inspections of the plant.⁵⁸ The history of Brown Rubber Co.⁵⁹ demonstrates how a company which has been found to have serious health violations can keep DOSH inspectors away for a substantial period of time, thereby leaving it free to continue its unlawful practices unabated. Needless to say, a criminal prosecution could not be so easily deferred or discounted.

Significantly, California is better suited than any other state or the federal government to using criminal sanctions against occupational health violations because criminal prosecutions may be brought directly against the responsible corporate officials themselves, not just against the corporate entity. CAL/OSHA expressly extends personal criminal liability to all officers, managers, and supervisors for willful or negligent violations over which they had "direction, management, control, or custody."⁶⁰ In contrast, criminal provisions of the federal and other state OSHA laws extend liability only to "employers," interpreted to include only the corporate entity, or individuals, if they are sole proprietors.⁶¹

55. Division personnel have reason to believe that this same individual owns other companies as well but have not had occasion to pursue this fact. Were a criminal investigation to be made, all other companies owned by the individual could be traced and, if necessary, charges brought for violations at these other plants.

56. CAL. LAB. CODE § 6434 (West Supp. 1977).

57. See Appendix —, *infra*.

58. 8 CAL. ADMIN. CODE § 360. The Division's reasoning appears to be that it will not inspect during an abatement period because it cannot issue two citations for the same violation.

59. *Supra* note 42.

60. CAL. LAB. CODE § 6423 (West Supp. 1977).

61. See, e.g., *Skidmore v. Travelers Insurance Co.*, 356 F. Supp. 670, 672 (E.D. La. 1973), *aff'd*, 483 F.2d 67 (5th Cir. 1973).

Finally, criminal sanctions have become an increasingly feasible and desirable remedy because both CAL/OSHA and OCCA have been in effect for a long period of time; their requirements have presumably become known and understood both by the companies affected and by Division personnel administering the laws. Over the years, a company's uncertainty as to its legal duties decreases as procedures solidify and issues in questions are litigated to conclusion. Ignorance of the laws' requirements therefore poses less and less of an obstacle to criminal prosecutions.

FINDINGS AND CASE STUDIES

Findings

This section of the report presents a review and analysis of all serious violations of the Occupational Carcinogens Control Act from January 1, 1978, through March 1, 1979. First, the overall findings are presented on all of the serious carcinogen violations. (Fact sheets on each of the thirty-five companies cited for serious violations are included in Appendix A.) Second, four companies cited for serious violations are discussed in far more detail. The circumstances of the violations are described as well as was possible, based on OCCU files and conversations with OCCU industrial hygienists.

It is the authors' contention that all of the employers cited for serious violations of the OCCA between January 1, 1978, and March 1, 1979, are potential targets of criminal prosecutions, since they have all "knowingly or negligently comit[ted] a serious violation" and thus potentially fall within Labor Code § 6423(a).⁶² A review of the thirty-five cases where employers were cited for serious violations of the OCCA reveals that at least fifteen employers (43%) were apparently guilty of violations which either excessively exposed workers to carcinogenic substances or posed an immediate risk of such overexposure. All of these cases merit special review by a prosecuting attorney to determine whether criminal charges should be filed. Three employers (involving four companies) are singled out for a more comprehensive analysis and presentation because we believe that these three cases represent the clearest examples of the

62. By definition, a serious violation is at least negligent, since both CAL/OSHA and OCCA provide that if an employer "did not, and could not with the exercise of reasonable diligence, know of the presence of the violation," then the violation will not be labeled "serious." CAL. LAB. CODE § 6432. Of course, it is possible that a violation could be considered serious with respect to the administrative remedies and yet not serious with respect to criminal sanctions because it was not established as serious beyond a reasonable doubt, which is the higher standard of proof required in criminal proceedings.

kinds of violations which should be referred to local prosecuting attorneys.

Some DOSH officials, explaining the Division's failure to refer health violations for criminal prosecution, emphasized the Division's desire that the first violations so referred be cases in which convictions would be especially easy to obtain (as with repeated violations). Unfortunately, a policy of referring only those cases involving almost certain convictions translates into a policy of nonreferral. If repeat violations might be prosecuted, employers would still be relatively certain that they could get away with a first time violation, notwithstanding the effects on the workers. The deterrent function of criminal prosecutions would thus be virtually eliminated. The presumption should be that all serious health violations will be referred for prosecution, unless the industrial hygienist who conducted the inspection and issued the citation makes a written finding that referral is inappropriate because the employer did not act negligently. Under such a system, the prosecuting attorney would then make the legal determination whether charges should be filed; ultimately, it would be up to the court to decide whether the evidence warrants a conviction under the terms of the statute.

The first of the three cases presented below as typical of those that should be referred is that of Brassbestos Manufacturing Corporation. As noted above, it was recently referred by DOSH to the Orange County District Attorney's office for prosecution, and criminal charges were filed within a week after referral. None of the other cases discussed below (involving Brown Rubber Company, Glenn Roller Company, and Amvac Chemical Corporation), have been referred for criminal prosecution.

The focus on companies cited for serious violations of the OCCA should not be interpreted to indicate that these are the only potential targets of criminal prosecutions. On the contrary, they may be just the tip of the iceberg. Companies cited for serious carcinogen violations were selected for study both because criminal convictions against such employers violating OCCA could be somewhat easier to obtain than under the rest of CAL/OSHA,⁶³ and because occupa-

63. It is difficult to predict the outcome of criminal prosecutions where no such cases have ever been brought; however, there are two reasons that convictions may be more likely in prosecutions under the OCCA than under CAL/OSHA. First, because companies must register as carcinogen users, they are placed on notice that they must comply with all of the standards and regulations contained in OCCA. Second, there is well-established medical and scientific evidence that exposure to each of the substances listed in the OCCA can cause a substantial probability of death or serious physical harm in the form of cancer.

tional exposure to carcinogenic substances is one of the leading causes of cancer in the United States. The focus on violators of the OCCA is intended to demonstrate the feasibility of bringing criminal prosecutions against employers guilty of violating either CAL/OSHA or the OCCA rather than single out carcinogen users as the only employers who merit criminal penalties.

Indeed, unlike other CAL/OSHA violations, for which the Division must show a substantial probability of death or serious physical harm for the violation to be classified as "serious," OCCA violations are presumed serious. It is therefore likely that the percentage of serious non-carcinogen OSHA violators deserving criminal prosecution is actually *higher* than the equivalent percentage of serious OCCA violators. Thus, many violations that may not result in harmful employee exposure are cited as serious under OCCA when they might be general violations for any substances not covered by OCCA. Companies guilty of such violations may not merit criminal prosecution. But virtually all "serious" OSHA violations are truly hazardous because they directly result in employee overexposure or experiences likely to result in injury or death.

Case Studies

The Occupational Cancer Control Unit understandably desires to protect the employees it interviews from company reprisals. As a result, some of the information in the inspection files remains confidential. The following case studies and findings therefore omit some of the most pertinent and incriminating information about the efforts of certain companies to conceal their use of regulated carcinogens from inspectors. Much of this confidential information could be helpful to OCCU in determining a company's knowledge of and intent to comply with carcinogen standards.

BRASSBESTOS MANUFACTURING CORPORATION

On April 6, 1978, an industrial hygienist from CAL/OSHA's OCCU, notified that an industrial accident had occurred, inspected Brassbestos Manufacturing Corporation. This company, a manufacturer of brake linings, was registered for using and storing asbestos. At the plant in which the accident occurred, the industrial hygienist measured the asbestos concentration in the breathing zones of employees working in the production area and the storage room of the plant. At the conclusion of the inspection, Brassbestos was cited for four violations: one serious and three repeat serious.

The serious citation was issued based on findings of airborne asbestos concentration well above the permissible level. The 8-hour time weighted average (TWA) was 7.09 fibers/cc in the breathing zone of the man operating the brake lining grinder, over 3.5 times greater than the maximum concentration allowed. In the breathing zone of another worker, the brake lining centerer, the 8-hour TWA was almost twice the allowable level; a third worker, a batch mixer, was also found to have a breathing zone 8-hour TWA significantly above the permissible level. For this serious violation, Brassbestos was fined \$1000.⁶⁴

Brassbestos was also cited for three repeat serious violations. The first was actually two separate acts of noncompliance since two subsections of the same standard were violated.⁶⁵ A broken bag of asbestos was found just outside an open doorway to the work production area, indicating that Brassbestos was not promptly cleaning up asbestos spills. In addition, Brassbestos did not place asbestos-containing wastes from the outside collector into sealed, impermeable bags for disposal. Since this was a repeat serious violation, the penalty imposed was a \$5000 fine.

The second repeat serious violation was based on Brassbestos' failure to sample the airborne asbestos concentration within the breathing zone of the employees on a six month basis.⁶⁶ In fact, the most recent sampling month was July, 1977. Twenty employees were affected by Brassbestos' failure to comply with the sampling requirement, and a \$5000 fine was imposed for this violation.

Brassbestos was cited for a third repeat serious violation because it had failed to make available at no cost to its employees a comprehensive preplacement medical examination by a licensed physician for employees exposed to more than a certain level of asbestos.⁶⁷ For this omission and for not providing employees with annual follow-up examinations, Brassbestos was penalized \$5000.

Brassbestos was ordered to abate the resulting health hazards by October 13, 1978, and to pay the fine totalling \$16,000. Brassbestos appealed all four citations, and a hearing on the appeal was scheduled for March 29, 1979. When the District Attorney of Orange County filed criminal charges against Brassbestos for these violations, however, the civil appeal was suspended.

64. 8 CAL. ADMIN. CODE § 5208(a) (1979).

65. 8 CAL. ADMIN. CODE § 5208(c)(1)(2) (1979).

66. 8 CAL. ADMIN. CODE § 5208(g) (1979).

67. 8 CAL. ADMIN. CODE § 5208(j)(1)(2) (1979).

Unfortunately, perhaps because this first case was hurriedly prepared by the BOI and the District Attorney's office, it was not as vigorously prosecuted as it might have been. Because of the repeat violations, the criminal action was brought under Labor Code § 6423(b) only, with no charges brought pursuant to § 6423(a), another applicable statute.⁶⁸

Under § 6423(b), the D.A. need prove no awareness of the condition, nor even negligence on the part of the defendants, Brassbestos and Stewart Mazure, a director. He need only establish that Brassbestos committed a repeat violation and that Mr. Mazure had direction, management, control, or custody over the operation resulting in the repeat violation. An agreement was reached before trial whereby the case against Stewart Mazure was dismissed and Brassbestos was fined \$275 and given two years informal probation. The terms of probation provide that if Brassbestos violates any of the same health standards under which it was originally cited, it must stand trial for both those charges and the earlier ones.

BROWN RUBBER COMPANY, INC. AND GLENN ROLLER COMPANY

On or about February 1, 1978, the medical officers of the Occupational Health Branch received a complaint from a private physician to the effect that two patients the physician was treating had been exposed to the regulated carcinogen MBOCA (4,4'-Methylene bis [2 chloroaniline]) at their place of employment, the Brown Rubber Company, Inc. of Gardena. One of the patients, a general factory worker, had objective symptoms of dyspnea, labored respiration and respiratory wheezing. The doctor diagnosed the patient's condition as bronchial asthma secondary to TSI sensitization.

Brown Rubber is a manufacturer of forklift truck tires and skateboard wheels and employs 80 people. MBOCA, which is commonly used as a curative for the urethane employed in the manufacturing of skateboard wheels, has been found to induce breast cancer and lung cancer in laboratory animals.

Based on the complaint from the private physician, two industrial hygienists from the OCCU visited Brown Rubber on February 10, 1978, for the purpose of conducting a health inspection. Brown Rubber was extremely uncooperative at the meeting of February 10. A person who identified himself as the director of marketing claimed that the company's managers were presently away and would not be

68. *See, supra* notes 29 & 60.

back until late afternoon. The marketing director also claimed that he had no authority to allow the OCCU industrial hygienists to see the plant, and he therefore refused them entry. The hygienists were, however, able to observe in the alleyway beside the plant two empty forty-gallon dums bearing MBOCA labels in direct violation of state health standards.⁶⁹

After being refused entry to the plant, the OCCU industrial hygienists interviewed the two employees who had visited the private physician. These employees reported that Brown Rubber used MBOCA on a regular basis. According to the two employees, MBOCA was hand-mixed and heated in open containers, and the only protection an employee had was a paper mask. A paper mask is of little or no protection to employees mixing MBOCA in an open container. This type of procedure poses a very serious health problem, with a high probability that employees so exposed may contract cancer. Furthermore, these two employees informed the industrial hygienists that when the Compliance Safety Engineer from CAL/OSHA visited the plant, Brown Rubber's managers directed the employees to take all the MBOCA outside and conceal it.

In the face of Brown Rubber's refusal to allow an inspection of the plant for possible health violations, the industrial hygienists petitioned the court for a search warrant. The Compton Municipal Court issued such a warrant for the Brown Rubber plant, and on February 16, the industrial hygienists returned to the plant. The company's officers, including the director of marketing and Robert Brown, the company president, delayed the inspection for approximately forty-five minutes until Bill Brown arrived. The hygienists then proceeded to inspect the premises and to take samples (urine, air and wipe) to test for the presence of MBOCA.

The OCCU inspection on February 16 revealed four serious and seven regulatory and general violations involving MBOCA. The hygienists discovered that Brown Rubber had committed the following four serious violations: (1) handling MBOCA in an open vessel system operation, rather than a closed system, heated MBOCA was being weighed out in paint cans and then mixed with polyol, thus exposing the 40 employees in the production area, (2) failure to decontaminate and clean up MBOCA spills in the production area, resulting in exposure of 40 employees, (3) failure to establish a regulated area for the use of MBOCA, and (4) allowing employees to heat their food on a skateboard pouring table that was

69. 8 CAL. ADMIN. CODE § 5209(c)(3) (1979).

contaminated with MBOCA and in a microwave oven used to heat MBOCA.⁷⁰

The company's seven regulatory and general violations included: (1) failure to post a summary of occupational illnesses and injuries during the month of February, 1977, (2) failure to maintain a roster of employees using MBOCA, (3) failure to prescribe or post specific emergency procedures for MBOCA, (4) failure to post with a proper sign the area where MBOCA was used, (5) failure to place a label with the warning legend "Cancer-Suspect Agent" on a container contaminated with MBOCA, (6) failure to train the employees who handled MBOCA, and (7) failure to provide medical exams to the employees who handled MBOCA.⁷¹ Although only 40 of the plant's 80 employees were directly involved with the use of the MBOCA, the company's use of potentially contaminated drums for storage and for in-plant shipment of finished products created the possibility that all 80 employees would suffer exposure.

The results of urine, air and wipe samples taken during the February 16 inspection were positive, indicating a gross contamination of the plant and MBOCA above the carcinogen standard established by California law.⁷² Based on these environmental and biological samples, a DOSH medical report concluded that the plant posed an imminent health hazard due to the uncontrolled exposure of employees to MBOCA. This medical report recommended closing down the production area of the plant until it was decontaminated and the company's storage, handling, and use of MBOCA satisfied the established legal requirements. Therefore, on February 22, the DOSH issued an order prohibiting the company from using its production area, the MBOCA storage area in the production shop, and the empty containers in the outside yard until the company had decontaminated these parts of the plant.

In addition to temporarily closing parts of the plant, the Division gave Brown Rubber one citation for each serious violation and an additional citation covering all seven of the regulatory and general violations. Each of the four serious violations carried a \$1000 fine, and the fifth citation for the regulatory and general violations imposed a fine of \$675. Thus, the total civil penalty imposed was \$4,675.

The Division also issued a seven-page special order directing

70. 8 CAL. ADMIN. CODE § 5209(c)(3),(c)(5),(c),(d)(3)(A) (1979).

71. 8 CAL. ADMIN. CODE § 5209(c)(5),(d)(1),(d)(2),(e)(1), (e)(2)(B),(e)(D)(5),(g) (1979).

72. 8 CAL. ADMIN. CODE § 5209 (1979).

Brown Rubber to establish a medical surveillance program for each employee exposed to MBOCA or isocyanates in excess of the standard. Pursuant to this special order, Brown Rubber was required to provide each employee with an opportunity for medical exams and tests performed by or under the supervision of a licensed physician, without cost to the employee.

Brown Rubber appealed its citations and fines to the Occupational Safety and Health Appeals Board. Although this appeal was filed on August 10, 1978, each time a hearing was scheduled the company asked that the hearing be postponed. By lodging an appeal and then obtaining continuances of the hearing date, a company can effectively block OCCU industrial hygienists from inspecting the plant again. As stated previously, the OCCU will not conduct a new inspection on its own initiative while a matter is on appeal because an appeal stays the abatement period.⁷³ Thus, there is no way of knowing whether or not a company is complying with the health standards it was cited for violating. On May 2, 1979, the Appeals Board denied Brown Rubber's request for another continuance and took the case under submission. Finally, on June 1, 1979, the Appeals Board issued a decision affirming all but one citation against Brown Rubber. As of December, 1979, DOSH had not inspected the plant since February 16, 1978.

Robert Brown, the president of Brown Rubber Co., is also one of the directors of Glenn Roller Co., a print roller manufacturing company in Rosemead, California. On March 30, 1978, only a month and a half after Brown Rubber had been inspected and given multiple citations for mishandling MBOCA, two OCCU industrial hygienists went to Glenn Roller to inspect that facility for possible MBOCA violations. When asked if MBOCA was used at Glenn Roller, Robert Brown and Thomas Schulte, the company's chief executive officer, repeatedly stated that although it had previously been used, it was no longer part of the operation and had therefore been cleaned out of the plant. Nonetheless, the inspectors found what appeared to be spilled MBOCA pellets and two large drums which apparently contained MBOCA. Mr. Brown ushered them from the room explaining that it was a weigh station for white pellets used for filler in some of the company's products. Later, when the inspectors told Brown that they had seen the MBOCA pellets and asked to return to the weighing room, Brown refused to let them back into the

73. 8 CAL. ADMIN. CODE § 360 (1979).

room, claiming that the room contained company secrets; he then asked the inspectors to leave immediately.

The next day, at a DOSH conference among the two inspectors and other Division personnel, the case was referred to a senior special investigator from the Bureau of Investigations for follow-up investigation. There was particular reference to the possibility of criminal prosecution for Brown's apparent misrepresentations concerning the use of MBOCA.

In the meantime, citation for willful and serious violations, as well as three serious and one regulatory citation, were prepared for Glenn Roller. The violations were for (1) maintaining an open vessel system operation involving MBOCA, (2) not properly labeling a container containing MBOCA as a "Cancer-Suspect Agent," (3) failing to maintain a daily roster of employees entering areas where MBOCA was being used, (4) failing to have a medical surveillance program, and (5) failing to register as a carcinogen user.⁷⁴ All of the serious violations were the *same* violations for which Brown Rubber had been cited a few weeks previously.

The citations were not issued, pending the outcome of the BOI investigation. But by the beginning of August, the Bureau had still failed to report anything, so the inspector requested a search warrant from the OCCU legal counsel. A month later, still having heard nothing from counsel, the inspector renewed his request for a warrant. He obtained one on September 25, five days before the six month statute of limitations was to run on the March inspection.⁷⁵ When the two hygienists returned to Glenn Roller, they were given access to the plant without having to serve the warrant. During this inspection, they found MBOCA pellets spilled over the entire floor of the plant. In addition, employees' urine samples revealed the presence of MBOCA.

However, a reanalysis of the product samples in the lab a month later, just prior to issuance of the citations, turned up no evidence of MBOCA. Apparently, the MBOCA, a highly reactive substance, had reacted out of the product samples. By this time, the statute of limitations had run on the first inspection. Finally, on November 8, one citation was issued on the basis of the September inspection. The penalty was \$1000 for a serious violation: failing to institute

74. 8 CAL. ADMIN. CODE § 5209(c)(4),(d)(1),(c)(7)(c),(g),(f) (19—).

75. CAL. LAB. CODE § 6317 (West Supp. 1977) provides that "no citation or notice shall be issued by the Division for a given violation or violations after six months have elapsed since occurrence of the violation."

decontamination procedures to clean up the MBOCA which was left throughout the plant from earlier operations.

In December, 1978, the inspector met with another person from the BOI who undertook an investigation into the case. In April, the BOI investigator told the inspector that the case was neither important enough to merit investigation nor would it be a strong enough case to forward to the D.A. for criminal prosecution.

The experience of these two companies reveals the ineffectiveness of the civil enforcement mechanism in several respects. First, in the case of Brown Rubber, the company managed to drag out the appeal process for nearly a year; thus, no inspection of the plant has been made since early 1978. OCCU has no idea whether the company has continued to commit the violations for which it was cited. Second, the Glenn Roller situation indicates the ineffectiveness of the BOI with respect to carcinogen violations and the total lack of coordination and cooperation between the different sections of the DOSH. Finally, the citations of Glenn Roller, while technically the first for that company, could, in the context of criminal proceedings against Robert Brown, be analyzed together with the citations of Brown Rubber, many of which were for precisely the same MBOCA violations. Mr. Brown was presumably aware of the MBOCA regulations after the February, 1978, inspection of Brown Rubber, yet Glenn Roller was not brought into compliance. A criminal prosecution in this instance could have had a direct affect on both of these companies as well as on any other companies operated by Brown; it could also have served to deter similar conduct by other employers.

A criminal action could have been filed against Mr. Brown, charging him under Labor Code § 6423(a) with knowingly or negligently committing serious violations. Mr. Brown was president of Brown Rubber and present at the OCCU inspection of the Brown Rubber plant. He was also on the board of directors of Glenn Roller and present at that inspection where many of the same violations were found. There is therefore strong evidence that he committed the violations at Glenn Roller knowingly or negligently. Also, Mr. Brown could perhaps have been charged under § 6423(b) with repeated violations of the same standard; although the citations were issued to different companies, they were issued for precisely the same practices. Criminal charges also could have been filed under Labor Code § 6423(a) against both of the companies and all responsible corporate officials for negligent commission of serious violations.

AMVAC CHEMICAL CORPORATION

Dibromochloropropane ("DBCP") is a pesticide which, until recently, was widely used to kill the nematode worms that commonly attack the roots of perennial plants such as citrus, grapes, cotton, soybeans and other fruits and vegetables. The manufacture of DBCP in the United States was halted in August, 1977, after it was discovered that thirteen of twenty-three workers directly involved in the pesticide manufacturing process at the Occidental Chemical Company in Lathrop, California, either were sterile or had low sperm counts.⁷⁶ The Environmental Protection Agency subsequently reregistered DBCP; a federal standard was promulgated allowing DBCP production and use if the level of DBCP in the air was kept below one part per billion.⁷⁷ In the fall of 1979, the EPA banned the use of DBCP everywhere in the United States except on pineapple trees in Hawaii. Use of DBCP has been banned continuously since August, 1977, in California.⁷⁸

Amvac Chemical Corporation, which employs 35 persons at its Los Angeles plant, has been in the business of importing and selling DBCP. As of March, 1979, it manufactured approximately 1500 gallons of DBCP a day.⁷⁹

On December 20, 1978, approximately one to two gallons of DBCP spilled inside the plant at Amvac during an equipment suitability test; several ounces also spilled outside the plant. Two employees wearing cotton overalls, rubber boots and gloves, and hard hats then proceeded to clean up the spill by placing absorbent material over the spill and then discarding the absorbent material. The

76. Los Angeles Times, January 26, 1979. Subsequent tests showed the same effects on 62 of the 86 employees of Dow Chemical's DBCP plant in Magnolia, Arkansas. In These Times, 6, November 8-14, 1978.

77. One public health expert who has studied DBCP explained that "a single drop of DBCP vaporized in a 20 by 20 foot room would exceed the one part per billion safety level 10 times." Los Angeles Times, January 26, 1979.

78. DBCP has been used extensively as an agricultural pesticide since 1955. California farmers have estimated that the ban on use of DBCP could result in a loss of \$150 million worth of crops.

Last fall the two plants manufacturing DBCP in Mexico, two of the last plants in the world to continue producing DBCP, were shut down by the Mexican government because the majority of the workers at the plants either were sterile or had low sperm counts. Many of the other companies that once produced DBCP but discontinued production in 1977 never resumed manufacture even when the ban was replaced by strict regulations. Los Angeles Times, December 6, 1978.

79. Although the use of DBCP is prohibited in California, its manufacture, transportation and handling are not. Recently however, the OCCA was amended to cover DBCP and a standard regulating its use in the workplace was promulgated. 8 CAL. ADMIN. CODE § 5212 (1979).

outside spill was contained and absorbed only after a supervisor discovered that an employee was washing it away with ammonium hydroxide to an outside drain. The employees who cleaned up the spill did not wear essential protective gear, including respirators, eye protection, and impermeable clothing. Amvac did not file a spill report with the DOSH until January 12, 1979.

On January 10 and 16, 1979, an OCCU industrial hygienist inspected Amvac. On January 24, 1979, OCCU issued eight citations against Amvac⁸⁰ for five serious, one general and two regulatory violations. The violations alleged were: (1) failure to monitor areas containing DBCP for possible exposure of employees to airborne DBCP, (2) failure to enforce the use of respirators in cleaning up the spill, (3) failure to administer sperm count and alternate hormone tests to employees who cleaned up the spill, (4) failure to require that impermeable clothing be worn by the employees who cleaned up the spill, (5) failure to develop a written plan for emergency procedures for each workplace where DBCP was stored and handled, (6) failure to submit a written report to DOSH within ten days of the introduction of DBCP into the workplace, (7) failure to report the occurrence of an emergency within twenty-four hours, and (8) failure to properly label drums containing DBCP. Amvac was fined \$1000 for each of the serious violations, \$500 for one of the regulator violations, and \$20 for the general violation, totaling \$5520.

Amvac appealed all eight citations on the grounds that it was unaware of its legal requirements and that it had complied with the law. On April 1, 1979, counsel for Amvac and for OCCU filed a joint stipulation whereby OCCU withdrew two of the five serious citations (regarding an emergency plan and monitoring of airborne DBCP), and Amvac withdrew its appeal. Amvac was fined \$3520.

Although CAL/OSHA regulations limit the effectiveness of DOSH-initiated inspections while any citation is being appealed, OCCU was able to conduct an inspection of the plant in April pursuant to Amvac's registration, during the appeal, as a carcinogen user. Based on the results of the tests conducted during this inspection, the Division cited Amvac for two more serious violations: failure to establish a regulated area for the use of DBCP concentrations above a certain level (\$1000 fine) and exhausting harmful amounts of DBCP into the air (\$250 fine).⁸¹

80. 8 CAL. ADMIN. CODE § 5212(f)(2),(h)(1)(D),(m)(6),(j)(1), (1),(d)(1),(d)(2)(A),(o)(3)(B) (1979).

81. 8 CAL. ADMIN. CODE §§ 5212(e)(1), 4153(a)(1) (1979).

Criminal charges could have been filed against Amvac and/or the appropriate officers, management personnel and supervisors for either set of serious violations on the grounds that the company had either knowingly or negligently violated a standard which created a substantial probability of death or serious physical harm.⁸² Specifically, the company's failure to ensure that the two employees cleaning up the spill wore the protective gear required under the DBCP regulations could be alleged to be negligent conduct. This is possible because of the known ultra-hazardous nature of DBCP and the fact that the DBCP regulations require not only protective gear but also that all companies using DBCP register with DOSH, an act which puts them on notice of the DBCP regulations.

RECOMMENDATIONS

As the study by the Center for Law in the Public Interest demonstrates, the Brassbestos case is only one of many in which criminal prosecutions could be brought. To be sure, civil penalties can serve to enforce occupational health laws with respect to the majority of employers. Most companies, when cited and fined for a violation, will abate the violation in good faith. Yet some firms apparently do not comply unless compelled to do so; for these companies, criminal penalties must be invoked. Equally important, criminal enforcement, especially if it is not limited to repeat violations, greatly increases the incentive of *all* employers to keep careful watch over their plants, and to prevent initial violations. Thus, while recognizing that criminal enforcement in the occupational health field is not a panacea, the authors of this study believe that criminal sanctions can induce stricter compliance with both California's occupational health standards and with many other health and safety laws.

A number of specific measures should be undertaken by state officials and local prosecutors in connection with the decision to commence criminal referrals and prosecutions. In addition, certain legislative changes are recommended which could greatly enhance the effective criminal enforcement of CAL/OSHA and OCCA.

Criminal Referrals

The Division should institute a policy of referring all serious, willful, and repeated occupational health violations to local prosecutors unless, in the case of serious health violations, the industrial hy-

82. CAL. LAB. CODE § 6423(a) (West Supp. 1977).

gienist who issued the health citation makes a written finding that referral is inappropriate because the employer has not acted negligently. The Division should determine whether its Bureau of Investigations should develop a case before it is referred, or perhaps act in an advisory capacity with respect to the attorney prosecuting the case.

Training Programs

Training programs or workshops should be instituted by the Division to educate its industrial hygienists. Local prosecutors should educate their staff regarding the availability and nature of criminal sanctions. Unless both hygienists and prosecutors are fully aware of, and conversant with, the circumstances under which criminal prosecutions can be brought, the criminal sanctions will continue to be the forgotten or ignored enforcement tool that they have been so far.

Record-Keeping

Records on occupational health violations should be kept in an orderly, systematic manner, followed uniformly by all hygienists and everyone with input into the files. Also, the Division's policy of destroying files which are more than three years old should be discontinued, as information in such files could be important in establishing elements of a criminal offense such as willfulness or repeated violations. All files on each company should be kept in one location for the same reason. The files should be maintained in an orderly, intelligible fashion such that someone unfamiliar with the particular case or violation, such as a prosecutor or another hygienist, could easily read and understand them.

Inspections During Appeals and 8 Cal. Admin. Code § 360.

The Division should also discontinue its policy of never initiating a plant inspection while a violation at the plant is under appeal. This policy appears to be in response to 8 Cal. Admin. Code § 360 which provides that the "abatement period is stayed upon the proper filing of an appeal with the Appeals Board and remains stayed until withdrawal of the appeal or a final resolution of the matter by the Appeals Board." Since a violation need not be abated until an appeal is resolved, the Division cannot cite a company during the appeal for any violation that is the subject of the appeal as that would be a second citation for the same violation. This possibility of double jeopardy seems to be the basis of the Division's policy of

never initiating an inspection during an appeal or during any abatement period. The practical effect of this regulation and of the Division policy which it has generated is to give companies a green light for continuing violation of the health laws for a substantial period of time without fear of sanctions. The Brown Rubber case is a good example of this phenomenon.

The apparent justification for the Division's regulation and policy is a belief that it is unfair to make a company spend the time and money necessary to abate a violation if that violation will not be upheld on appeal. However, it is our position that the companies should have the burden of making a sufficient showing to obtain a stay of an administrative decision, especially since allowing these violations to continue could pose a substantial threat of death or serious injury to employees. The usual factors considered in deciding whether a stay should be granted are: (1) whether the moving party has made a strong showing that it is likely to prevail on the merits of the appeal, (2) whether the party will be irreparably injured if a stay is not granted, (3) whether the granting of a stay would harm other parties, and (4) where the public interest lies.⁸³ Section 360 of the regulations should be amended to encompass these criteria for obtaining a stay.

Furthermore, if a stay is granted, there should be an expedited appeal process to ensure that a decision by the Appeals Board is rendered before the schedule abatement period ends. Otherwise, the company will continue to utilize systems or procedures that pose a serious threat of death or substantial harm to employees during the period between the date the abatement period was scheduled to end and the date the Appeals Board finally issues a decision upholding the citation.

In situations in which the Division issues citations for several violations, it should not wait until *all* the violations are abated before it reinspects the plant if the abatement period for one or more of the violations is substantially longer than the abatement period for the other violations.⁸⁴ Rather, once a company has demonstrated that it has not complied with the health laws, the Division should conduct follow-up inspections to ensure that spills are being decontaminated and cleaned up, that regulated areas have been estab-

83. *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958).

84. CAL. LAB. CODE § 6320 (West Supp. 1977) provides that after the Division issues a citation for a serious violation it "shall conduct a reinspection at the end of the period fixed for abatement of the violation or within a reasonable time thereafter."

lished, and that the proper labeling of containers and posting of warning signs is being done. Conducting follow-up inspections to check for these types of violations will ensure that companies do not revert to their earlier procedures in disregard of the health laws.

Legislative Reforms

STRICT LIABILITY FOR SERIOUS HEALTH VIOLATIONS.

Cal. Labor Code § 6423(a) should be amended to omit the requirement that a violation be committed “knowingly or negligently” and to provide strict criminal liability for serious violations, treating them the same as repeat violations or failures to abate. Since a violation is not considered to be “serious” if the employer could not reasonably have known of the violation, employers who in good faith attempt to comply with the law will not be subject to criminal liability. Additionally, “serious” violations are only those which “could result” in “a substantial probability” of death or serious physical harm; thus, first-time violations of a procedural or regulatory nature which do not pose any risk to workers would not subject employers to criminal liability under this section.

CRIMINAL PENALTIES

The amount of fines that can be required under Labor Code § 6423(d) of an employer upon criminal conviction should be raised significantly above the present level of \$5,000. In particular, the fines for knowing, willful and repeat violations should be increased and there should be a sizeable minimum penalty for such violations.

Occupational Health Laws

APPENDIX COMPANIES CITED UNDER CAL/OSHA

Armstrong Cork Company
5037 Patata Street
Southgate, California 90280

Type of Business: Manufacturer of vinyl asbestos floor tile.

Size of Business: 24,000 employees in company, 12 employees affected by inspection.

Carcinogen in Question: Asbestos; vinyl chloride.

Date of OCCU Inspection: October 24, November 2 and 22, 1978.

Findings and Citations:

Serious violation of 8 CAC 5208(c): Failure to promptly clean up spills.

Serious violation of 8 CAC 5208(g)(1)(D): Failure to provide for proper sampling.

Serious violation of 8 CAC 5208(b): 16 f/cc exceeded maximum allowable level of 10 f/cc and 8-hour TWA of 4.5 exceeded allowable level of 2 f/cc.

Measures Taken to Prevent Cited Health Hazards: Serious citation (3) not issued because health standard violations were found to have occurred in an emergency operation being performed for the last time.

Agreement order issued. .

Asphalt Products Oil Corporation*
3050 Walnut Avenue
Long Beach, California 90807

Type of Business: Production of cold patch roofing cement.

Size of Business: 6 employees, all 6 employees affected by inspection.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: August 16, 1977; September 22, 1977.

Findings and Citations:

Serious violation of 8 CAC 5208(a): Failure to keep concentration of airborne asbestos fibers within health standard. Excessive exposure to airborne asbestos fibers was measured in employees' breathing zones. 63 f/cc exceeded the maximum allowable peak concentration of 10 f/cc and the maximum allowable 8-hour TWA concentration of 2 f/cc.

Serious violation of 8 CAC 5208(b): Failure to provide adequate engineering controls.

General violation of 8 CAC 5208(c): Failure to promptly clean up asbestos spills.

General violation of 8 CAC 5144 (b): Failure to ensure employees wear respirators.

General violation of 8 CAC 5208(e)(1): Failure to provide protective gear.

General violation of 8 CAC 5208(h)(1): Failure to post "Caution" signs in areas where airborne asbestos concentrations exceeded 2 f/cc.

General violation of 8 CAC 5208(j): Failure to provide preplacement medical examinations.

Measures Taken to Prevent Cited Health Hazards: Order prohibiting use issued and kept in effect until health hazard abated.

Subsequent Action: On appeal, APOC prevailed in overturning the serious citation of 8 CAC 5208 and the general citation of 8 CAC 5208(c).

The administrative law judge found that the Division had failed to establish by the preponderance of evidence that employees were exposed above the maximum allowable peak concentration.

* Although the inspections of Asphalt Products Corp. were conducted in 1977, this company was on the list of employers cited for serious carcinogen violations between January 1, 1978 and March 1, 1979 that was given to us by the Division. An asterisk following the names of other companies in this Appendix denotes those employers from the Division-supplied list which were inspected in 1977.

Bachem, Inc.
3132 Kashiwa Street
Torrance, California 90505

Type of Business: Manufacturer of fine chemicals, peptides and various amino acids.

Size of Business: 12 employees, 10 employees affected by inspection.

Carcinogen in Question: beta-Naphthylamine.

Date of OCCU Inspection: December 26, 1977; January 25, 1978.

Findings and Citations:

Serious violation of 8 CAC 5209(c): Failure to use and store a carcinogen in a regulated area.

General and regulator violation of 8 CAC 5209(f)(1): Failure to report use and storage of a carcinogen.

Measures Taken to Prevent Cited Health Hazards: Total civil penalty imposed: \$1500. \$1000 for the serious violation. \$500 for the general and regulatory violation.

Subsequent Action: Company appealed the citations and the fines. On November 9, 1978, the Occupational Safety and Health Appeals Board denied the company's appeal with respect to the serious violation and granted the appeal with respect to the general and regulatory violation. The Division has petitioned the Appeals Board to reconsider its decision.

City of Santa Cruz Waste Water Treatment Facility
110 California Street
Santa Cruz, California

Type of Business: Waste water treatment facilities.

Size of Business: 460 employees, 15 employees affected by inspection.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: November 28, 1978.

Findings and Citations:

Serious violation of 8 CAC 5208(i): Failure to affix an asbestos caution (ABE) to a container of asbestos fibers stored in the laboratory.

General violation of 8 CAC 5144(d): Failure to store respirators properly to protect against moisture, dust or damaging chemicals.

General violation of 8 CAC 5144: Failure to establish a written respiratory protective program governing the selection, instruction and training, cleaning and sanitizing, inspection, and maintenance of respirators.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued: December 29, 1978.

A proposed penalty of \$1000 for the serious violation was not imposed because the City of Santa Cruz, as a governmental agency, is immune from civil monetary penalties.

Subsequent Action: Health hazards abated December 29, 1978.

College of San Mateo
1700 West Hillsdale Boulevard
San Mateo, California

Type of Business: Educational institution.

Size of Business: 600 employees, 30 employees affected by inspection.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: December 5, 1978.

Findings and Citations:

Serious violation of 8 CAC 5208(c): Failure to remove or cover asbestos wall insulation. Asbestos insulation was on the floor of the machine shop in at least two different areas. This asbestos has been gouged from the walls and spilled on the floor, posing a hazard to anyone who may have come in contact with it.

Regulatory violation of 8 CAC 5208(1): Failure to report that asbestos containing material is disturbed and worked on by the staff.

General violation of 8 CAC 5154.1(c): Failure to provide sufficient airflow for the laboratory hood in the chemistry stock. Room to maintain an average face velocity of 100 linear feet per minute (fpm) or a minimum point velocity of 70 fpm. The measurements were 83 fpm average and 50 fpm in the lower right corner of the hood.

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General violation of 8 CAC 5154.1(e)(7): Failure to maintain an average of 100 fpm average face velocity for the hoods in the general chemistry and organic chemistry laboratories. The measurements with the air on dropped as low as 70 fpm average.

General violation of 8 CAC 3400(d): Failure to provide eyewash bubble fountain of the type that can wash both eyes simultaneously in the chemistry stockroom.

Measures Taken to Prevent Cited Health Hazards: Abatement issued: For regulatory violation, February 12, 1979. For serious and general violations, March 30, 1979.

Proposed penalty of \$1,500. \$1000 for the serious violation. \$500 for the regulatory violation of 8 CAC 5208(1).

Fines not imposed because College of San Mateo, as a governmental institution, is immune from civil monetary penalties.

Cordova Chemical Company
P.O. Box 13400
Sacramento, California 95813

Type of Business: Chemical company.

Size of Business: 257 employees, 150 employees affected by inspection.

Carcinogen in Question: Ethyleneimine; asbestos.

Date of OCCU Inspection: August 25, October 17, December 2, 15, 1978; March 22, 1979.

Findings and Citations:

A. August 25, 1978 inspection:

Serious violation of 8 CAC 5209(c)(4)(B): Failure to provide local exhaust ventilation with a scrubber system over the sampling port on R-240. R-240 is the closed system reactor used in DMT and Cysteamwe HCL production.

B. October 17, 1978 inspection:

Serious violation of 8 CAC 5209(c)(5)(A): Failure to make certain that employee wore the required continuous air-supplies full face respirator while opening an ethyleneimine closed system.

Serious violation of 8 CAC 5209(d)(1): Failure to maintain complete daily roster of employees entering regulated area.

Serious violation of 8 CAC 5209(d)(2)(c): Failure to provide special medical surveillance by a physician to employees who were present in potentially affected areas at the time of emergencies.

Regulatory violation of 8 CAC 5209(f)(2)(A): Failure to report within the prescribed 24 hour period two incidences which resulted in the release of ethyleneimine.

Regulatory violation of 8 CAC 5209(f)(2)(B): Failure to file a written report for the incident on September 23, 1978.

C. March 22, 1979 inspection:

Serious violation of 8 CAC 5208(c): Failure to clean up spills of material containing asbestos found in the tank farm area of plant 2, and hot water tank V407 of Plant 1.

Measures Taken to Prevent Cited Health Hazards:

On September 15, 1978: \$1,000 civil penalty imposed for serious violation of 8 CAC 5209(c)(4)(B)—abated September 1, 1978.

On October 20, 1978: Total civil penalty imposed: \$4,000. \$1,000 for each serious violation: \$3,000. \$500 for each regulatory violation: \$1,000.

On April 4, 1979: \$1,000 civil penalty imposed for serious violation detected 3-22-79. Abatement date issued: April 10, 1979.

Subsequent Action: After \$4,000 civil penalty was imposed on October 20, 1978, Cordova Chemical filed an appeal. The Division amended the citation of a serious violation of 8 CAC 5209(d)(1) to a general violation and deleted the \$1,000 penalty. It also combined the regulatory violations into one regulatory violation, thus deleting \$500 more of the penalty.

C.S. Campanella, Inc. (CAMCO Equipment Company)

5401 San Leandro Street
Oakland, California 94601

Jobsite in question: Nicolai Joffe Salvage

401 Wright Avenue
Richmond, California*Type of Business:* Contractor.*Size of Business:* 6 employees affected by inspection.*Carcinogen in Question:* Asbestos.*Date of OCCU Inspection:* August 25, 1978.*Findings and Citations:*

Serious violation of 8 CAC 5208(c): Asbestos-bearing scrap was not being worked wet to impede dust generation.

Serious violation of 8 CAC 5208(h): Failure to post "CAUTION ASBESTOS" signs around the work area.

Regulatory violation of 8 CAC 5208(l): Failure to report use of asbestos to Division.

Measures taken to Prevent Cited Health Hazards: Abatement dates issued: September 25, 1978.

Total civil penalty imposed: \$2,500. \$1,000 for each serious violation. \$500 for the regulatory violation.

Subsequent Action: An appeal filed with the Occupational Safety and Health Appeals Board was to be heard April 11, 1979 but counsel for CAL/OSHA decided to drop the case because Nicolai Joffe Salvage accepted responsibility for the violations. Furthermore, Nicolai submitted an Employer's Report of Corrected Conditions stating that all cited health hazards had been abated. It did file an appeal, however, arguing that the fine of \$2,500 was excessive. The appeal was heard April 12, 1979.

Del Mar Western Chemical Company

1779 Whittier Avenue
Costa Mesa, California 92627*Type of Business:* Tire sealer manufacturer.*Size of Business:* 8 employees, 5 employees affected by inspection.*Carcinogen in Question:* Asbestos.*Date of OCCU Inspection:* July 21, 27, 1978.*Findings and Citations:*

Serious violation of 8 CAC 5208(a): Asbestos concentration exceeds permissible ceiling concentration.

Serious violation of 8 CAC 5208(c): Failure to clean up asbestos spill promptly.

Serious violation of 8 CAC 5208(i)(l): Failure to label drum with asbestos properly.

Measures Taken to Prevent Cited Health Hazards:

Total civil penalty imposed: \$3,000. \$1,000 for each serious violation.

Subsequent Action: Del Mar Western appealed all three violations. Appeal was originally scheduled to be heard on January 10, 1979, was first continued until March 30, 1979, and then continued until April 26, 1979.

El Dorado County Health Department

931 Spring Street
Placerville, California 95667*Type of Business:* Public health laboratory.*Size of Business:* 45 employees, 3 employees affected by inspection.*Carcinogen in Question:* Benzidine; alpha-Naphthylamine.*Date of OCCU Inspection:* March 15, 1978.*Findings and Citations:*

Serious violation of 8 CAC 5209(c): Failure to establish a regulated area in the Health Department Laboratory where benzidine and alpha-Naphthylamine are stored and used.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued: March 22, 1978.*Subsequent Action:* Health hazard abated March 22, 1978.

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Essex Chemical*
19451 Susana Road
Compton, California 90221

Type of Business: Manufacturer of adhesives and sealants compounding.

Size of Business: 300 employees in all branches, 33 employees affected by inspection.

Carcinogen in Question: MBOCA: 4,4'-methylene bis (2 Chloroaniline).

Date of OCCU Inspection: December 7, 1977.

Findings and Citations:

Serious violation of 8 CAC 5209(e): Failure to store MBOCA in regulated area.

Regulatory violation of 5209(f): Failure to register MBOCA.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued: December 9, 1977.

Subsequent Action: Health hazard abated December 9, 1977.

Fairchild Camera
464 Ellis Street, Building 20-2499
Mountain View, California 94042

Type of Business: Semiconductor manufacturer.

Size of Business: 5,500 employees at site, 132 employees affected by inspection.

Carcinogen in Question: Benzidine hydrochloride; 4-dimethylaminoazobenzene.

Date of OCCU Inspection: November 29, 1978.

Findings and Citations:

Serious violation of 8 CAC 5209(c): Failure to establish a regulated area for the use and/or storage of regulated carcinogens.

General violation of 8 CAC 5209(e)(2)(C): Failure to label containers of carcinogens with warning legend "Cancer-Suspect Agent".

Regulatory violation of 8 CAC 5209(f)(1): Failure to report use of regulated carcinogens.

Measures Taken to Prevent Cited Health Hazards:

Total civil penalty imposed: \$1,500. \$1,000 for the serious violation. \$500 for the regulatory violation.

Subsequent Action: Fairchild Camera appealed the serious violation and a hearing was held May 15, 1979.

Harvey Tyrrell Buick-Opel, Inc.
4645 Lankershim Boulevard
North Hollywood, California 91602

Type of Business: Auto sales and repairs.

Size of Business: 25 employees, 3 employees who work in the brake department of the service area were affected by inspection.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: December 28, 1978.

Findings and Citations:

Serious violation of 8 CAC 5208(c)—3 instances:

- (1) Cleaning brake assembly by air hosing, thereby blowing around brake shoe-lining dust containing asbestos.
- (2) Asbestos spill on top of brake shoe grinding machine was not cleaned promptly.
- (3) Brake shoe lining dust containing asbestos was not collected and disposed of in sealed impermeable container.

Measures Taken to Prevent Cited Health Hazards: Civil penalty imposed—\$1000.

Subsequent Action: Company has appealed the citation and fines. The Occupational Safety and Health Appeals Board has set a hearing for June 1, 1979.

John O'Connell Community College—Auto Welding Center
425 Fourth Street
San Francisco, California 94107

Type of Business: Auto welding center.

Size of Business: Over 100 employees, 2 employees affected by inspection.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: September 25, 1978.

Findings and Citations:

Serious violation of 8 CAC 5208(c): Failure to clean up promptly asbestos spills around the brake arcing machine.

Serious violation of 8 CAC 5208(h): Failure to post asbestos caution sign near the brake arcing machine.

Serious violation of 8 CAC 5208(i): Failure to affix an asbestos caution label to the dust collection bag for the brake arcing machine.

Regulatory and general violation of 8 CAC 5208(l): Failure to report the arcing of brake shoes, containing asbestos, to the Chief of the Division.

Measures Taken to Prevent Cited Health Hazards: Proposed penalty of \$3,500: \$1000 for each serious violation. \$500 for the regulatory and general violation.

Penalty not imposed because John O'Connell Community College, as a governmental institution, is immune from civil monetary penalties.

Keysor-Century Corporation
26000 Springbrook Road
Saugus, California 91350

Type of Business: Manufacturing.

Size of Business: 200 employees, 12 employees affected by inspection.

Carcinogen in Question: Vinyl chloride.

Date of OCCU Inspection: September 1, 2, 7, 1977; Follow-up January 30, 31, 1978.

Findings and Citations:

General violation of 8 CAC 5210(f)(2): Failure to correct general violation and provide adequate engineering control over reactor in vinyl chloride plant.

General violation of 8 CAC 5144(e)(1): Employee breathing air in air line respirator located in the reactor area was contaminated with low levels of vinyl chloride.

Measure Taken to Prevent Cited Health Hazards: Total civil penalty imposed: \$4450. \$3750 for failure to correct general violation. \$700 for repeat general violation.

Subsequent Action: Keysor-Century appealed, contending that it had begun a long-term re-vamping of its system, had put engineering controls into effect, and would submit monthly status reports to the Division outlining the progress achieved. Consequently, the Division changed the repeat general violation to a general violation, issued a new abatement date of June 30, 1979, and withdrew the civil penalties in their entirety.

Libby-Owens-Ford Company
Post Office Box 128
Lathrop, California 95330

Type of Business: Manufacturer of float glass.

Size of Business: 900 employees at site, 5 employees in quality control lab affected by inspection.

Carcinogen in Question: Benzidine dihydrochloride; 1-Naphthylamine.

Date of OCCU Inspection: September 20, 1978.

Findings and Citations:

Serious violation of 8 CAC 5209(c): Failure to establish a regulated area for the storage of bottles and regulated carcinogens.

Regulatory and general violation of 8 CAC 5209(e)(2)(C): Failure to label bottles of regulated carcinogens with the "Cancer-Suspect Agent" logo as part of hazardous substance labels.

Regulatory and general violation of 8 CAC 5209(f)(1)(O): Failure to report the storage of a regulated carcinogen to the Chief of the Division.

Measures Taken to Prevent Cited Health Hazards: Total civil penalty imposed: \$1500. \$1000 for the serious violation. \$500 for the regulatory and general violation of 8 CAC 5209(f)(1)(O).

Subsequent Action: Company appealed the citation and fines. The Occupational Safety and Health Appeals Board set a hearing for April 5, 1979.

Occupational Health Laws

Los Angeles County Rancho Los Amigos Hospital
7601 East Imperial Highway
Downey, California 90242

Type of Business: Public health care, rehabilitation hospital.

Size of Business: 2500 employees on site, 50 employees affected by inspections.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: November 3, 1977 through May 15, 1978.

Findings and Citations:

A. November 15, 1977-April 14, 1978 inspections:

General and regulatory violation of 8 CAC 5208(b): Airborne levels of asbestos measured on February 15, 1978, in breathing zone of an employee removing asbestos containing insulation in an attic were in excess of both the allowable 8-hour time weighted average and the allowable ceiling concentration.

General and regulatory violation of 8 CAC 5208(c): Failure to clean up promptly asbestos containing debris from deteriorating insulation in tunnels and attics.

General and regulatory violation of 8 CAC 5208(i)(1): Failure to label bags of asbestos containing debris being removed from attics on February 15, 1978.

General and regulatory violation of 8 CAC 5144(c): Failure to adequately instruct employees who may be working in areas where respiratory protection is required as to proper use and maintenance of respirators.

General and regulatory violation of 8 CAC 3208(a)(1): Failure to provide an effective health and safety program, including instructions in general and specific work hazards for employees whose jobs require working in the attics of tunnels.

General and regulatory violation of 8 CAC 3308: Failure to guard or cover metal surfaces having an external surface temperature sufficient to cause thermal tissue damage on contact.

B. January 12, 1978 inspection:

Serious violation of 8 CAC 5209(c): Failure to store bottle of benzidine in properly regulated area.

Regulatory violation of 8 CAC 5209(f)(1): Failure to report use of benzidine.

C. January 26, 1978 inspection:

General violation of 8 CAC 5154(c): Failure to provide adequate lab hood ventilation for Chloroform and pyridine.

General violation of 8 CAC 5155(b)(3): Chloroform exceeded concentration limit.

General violation of 8 CAC 3382(a): Failure to provide adequate eye protection.

Measures Taken to Prevent Cited Health Hazards: Special Order issued. Employees working on or after January 3, 1976, and exposed to asbestos but no longer actively employed shall be notified by company of exposure to excessive amounts of asbestos.

Other violations abated.

Martin Mechanical
12902 Lakeland Road
Santa Fe Springs, California 90670

Jobsite in question: East Los Angeles Community
College, Brooklyn and
Atlantic, Los Angeles, California

Type of Business: Building contractor.

Size of Business: Construction assignment on E.L.A. College campus affected 2 workers.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: October 2, 1978.

Findings and Citations:

Serious violation of 8 CAC 5208(c)(1) and (2):

(a) Failure to clean up asbestos spills promptly;

(b) Failure to collect and dispose of asbestos debris in sealed, impermeable containers.

Regulatory violation of 8 CAC 5208(l): Failure to report use of carcinogen.

Measures Taken to Prevent Cited Health Hazards: Total civil penalty imposed: \$1500. \$1000 for the serious violation. \$500 for the regulatory violation.

Subsequent Action: Appeal heard March 14, 1979. Administrative Law Judge Gerald

Winerman ruled that the employer had not been shown to know of the substantial health hazard that was present and found that the penalties were excessive. Accordingly, the \$1000 penalty was reduced to \$500 and the \$500 penalty to \$200.

Napa State Hospital
Imola, California 94558

Type of Business: Mental hospital.

Size of Business: 10,000 employees, 40 employees affected by inspection.

Carcinogen in Question: Benzidine; dimethylaminoazobenzene.

Date of OCCU Inspection: August 15, 1978.

Findings and Citations:

General violation of 8 CAC 5209(c): Failure to establish a regulated area for the use of benzidine base and dimethylaminoazobenzene found in the hospital laboratory.

General violation of 8 CAC 5209(f)(1): Failure to report to the Division the use and/or storage of benzidine base and dimethylaminoazobenzene found in the hospital laboratory.

General violation of 8 CAC 5209(e)(2)(c): Failure to provide "Cancer-Suspect Agent" labels on bottles of benzidine base and dimethylaminoazobenzene found in the hospital laboratory.

Measures Taken to Prevent Cited Health Hazards: Abatement dates issued: September 15, 1978 for violations of 8 CAC 5209(e)(2)(C) and 8 CAC 5209(f)(1); September 29, 1978 for violation of 8 CAC 5209(c).

Information memorandum issued warning of asbestos content in pipe insulation which could pose a potential health hazard should the insulation deteriorate to such a state that asbestos fibers are released.

Subsequent Action: Health hazards abated as of September 6, 1978.

National Brake Supply
218 Wilhardt
Los Angeles, California 90012

Type of Business: Brake rebuilding.

Size of Business: 40 employees, 6 employees affected by inspection.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: August 28, 1978.

Findings and Citations:

Serious violation of 8 CAC 5208(g)(1)(A): Failure to monitor and determine concentration of asbestos within breathing zone of employees whose exposure to airborne asbestos exceeded 8-hour time weighted average (TWA) concentration of 1 f/cc.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued.

Subsequent Action: National Brake Supply filed an appeal contending that because it had installed a dust collection system, it was unfair to cite the company without first giving it an opportunity to install additional controls. The appeal was scheduled to be heard March 21, 1979.

Pacific Gas & Electric Company
P.O. Box 27
Moss Landing, California 95039

Type of Business: Electricity generation.

Size of Business: Over 1000 employees at site, 167 employees affected by inspection.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: August 2, 1978.

Findings and Citations:

Serious violation of 8 CAC 5208(c): Failure to clean up promptly asbestos spills and debris from lagging material on boilers and pipes throughout the plant.

Regulatory and general violation of 8 CAC 5208(i): Failure to affix a caution label to a sealed impermeable bag containing asbestos scrap or waste which was located at Unit 7-1, Grade 30.

Occupational Health Laws

Measures Taken to Prevent Cited Health Hazards: Civil Penalty of \$1000 imposed for the serious violation.

Pacific Gas & Electric Company
Willow Pass Road
P.O. Box 590
Pittsburgh, California 94565

Type of Business: Electricity generation.

Size of Business: 200 employees at the site, 100 employees affected by inspection.

Carcinogen in Question: Asbestos.

Date of OCCU Inspection: January 4, 1979.

Findings and Citations:

Serious violation of 8 CAC 5208(c): Failure to clean up asbestos containing debris (from sloughed lagging) from walkways and environs in several locations throughout plant.

Measures taken to Prevent Cited Health Hazards: Civil penalty imposed—\$1000.

Raychem Corporation
300 Constitution Drive
Menlo Park, California 94025

Type of Business: Manufacturer of heat shrinkable tubing/wire and cable.

Size of Business: 2000 employees at site, 100 employees affected by inspection.

Carcinogen in Question: MBOCA: 4,4'—Methylene bis (2 Chloroaniline); Benzidine Dihydrochloride; 1-Naphthylamine; N-Nitrosodimethylamine; Acrylonitrile.

Date of OCCU Inspection: February 8, 1979.

Findings and Citations:

Serious violation of 8 CAC 5209(c): Failure to establish a regulated area for use and storage of MBOCA, Benzidine Dihydrochloride, 1-Naphthylamine, and N-Nitrosodimethylamine.

Serious violation of 8 CAC 5209(e)(2)(C): Failure to label containers of MBOCA, Benzidine Dihydrochloride, 1-Naphthylamine, and N-Nitrosodimethylamine with "Cancer-Suspect Agent" warning.

Serious violation of 8 CAC 5213(e)(2): Failure to conduct initial monitoring of the workplace and work operations involving use of Acrylonitrile found in the R&D solvent storage room.

Serious violation of 8 CAC 5213(f)(2): Failure to establish written plan describing proposed means to reduce employee exposure to Acrylonitrile, found in the R&D solvent storage room, by engineering and work practice controls.

Serious violation of 8 CAC 5213(n)(3)(B): Failure to label properly acrylonitrile found in the R&D solvent storage room.

Regulatory and General Violation of 8 CAC 5209(f): Failure to submit in writing to the Chief of the Division the reporting information required for the use and storage of MBOCA, Benzidine Dihydrochloride, 1-Naphthylamine, and N-Nitrosodimethylamine.

Regulatory and General Violation of 8 CAC 5213(d): Failure to submit in writing to the Chief of the Division the reporting information required for the use and storage of Acrylonitrile found in the R&D (research and development) storage room.

Measures Taken to Prevent Cited Health Hazards: Total civil penalty imposed: \$6,000. \$5,000 for serious violations. \$1,000 for the regulatory and general violations.

Rubber Engineering of California*
2350 East Central Avenue
Duarte, California 91010

Type of Business: Manufacturer of oil well drilling machinery parts from polyurethane.

Size of Business: 6 employees, all 6 employees were affected by exposure in the MBOCA heating and pouring area.

Carcinogen in Question: MBOCA: 4,4'-Methylene bis (2-chloroaniline).

Date of OCCU Inspection: October 27, 1977.

Findings and Citations:

Serious violation of 8 CAC 5209(c)(3): Failure to use a closed system in processes involving MBOCA.

General and regulatory violation of 8 CAC 5209(d)(1): Failure to maintain a roster of employees handling MBOCA.

General and regulatory violation of 8 CAC 5209(c)(4)(C): Failure of employees to wear proper protective clothing in working areas where there was a potential exposure to MBOCA.

General and regulatory violation of 8 CAC 5209(c)(1)(A): Failure to post signs in areas where MBOCA was used.

General and regulatory violation of 8 CAC 5209(g): Failure to conduct medical surveillance for employees having potential exposure to MBOCA.

Measures Taken to Prevent Cited Health Hazards: Plant closed for 9 days until completion of work to improve workers' health. Civil penalty imposed: \$1000 for the serious violation.

Santa Barbara City College*
721 Cliff Drive
Santa Barbara, California 93105

Type of Business: Junior college [education].

Size of Business: 450 employees, 5 employees affected by inspection.

Carcinogen in Question: Benzidine; 4-Dimethylaminoazobenzene, alpha-Naphthylamine.

Date of OCCU Inspection: July 6, 1977.

Findings and Citations:

Serious violation of 8 CAC 5209(c): Failure to provide a regulated area for Benzidine, 4-Dimethylaminoazobenzene and alpha-Naphthylamine.

General violation of 8 CAC 5209(f)(1): Failure to report storage and use of regulated carcinogens.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued. No monetary penalties imposed.

Subsequent Action: Violations abated—chemistry and biology departments discontinued use of the carcinogens and the bottles of the carcinogens were removed to the university for hazardous waste disposal.

Santa Clara County District Attorney's Office
1557 Berger Drive
San Jose, California 95112

Type of Business: Laboratory of criminalistics.

Size of Business: 21 employees in criminal laboratory, 2 employees affected by inspection.

Carcinogen in Question: Benzidine; 4-Dimethylaminoazobenzene.

Date of OCCU Inspection: January 26, 1978.

Findings and Citations:

Serious violation of 8 CAC 5209(d)(3): A container for heating beverages was being stored within the regulated area of carcinogen use.

General violation of 8 CAC 5209(g): Failure to establish and implement a program of medical surveillance for employees authorized to enter the regulated area.

General violation of 8 CAC 5209(d)(1): Failure to establish and maintain a daily roster of employees entering the regulated area.

General violation of 8 CAC 5209(d)(2): Failure to prescribe and post specific emergency procedures.

General violation of 8 CAC 5209(e)(2)(C): Failure to label containers of carcinogens with the warning "Cancer-Suspect Agent."

General violation of 8 CAC 5209(e)(5): Failure to provide upon request to the representatives of the Chief of the Occupational Health Branch materials relating to the training and indoctrination program for employees authorized to enter the regulated area.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued: March 15, 1978.

Subsequent Action: On January 31, 1978, all of the carcinogens used in the laboratory were removed for disposal.

Occupational Health Laws

Southern California Kaiser Permanente Medical Group
Regional Endocrinology Laboratory
1050 West Pacific Coast Highway
Harbor City, California 90710

Type of Business: Laboratory.

Size of Business: 1100 employees, 1 employee affected by inspection.

Carcinogen in Question: Benzene.

Date of OCCU Inspection: March 8, 1978.

Findings and Citations:

Serious violation of 8 CAC 5155(b)(3): Airborne benzene levels in the breathing zone of a laboratory technologist doing several extractions were in excess of both the allowable 8-hour time-weighted average (10 parts per million) and the maximum allowable peak concentration (50 parts per million/10 minutes). Exposure to the peak level measured (81 ppm/30 minutes) was judged by the CAL/OSHA medical staff to be a serious health hazard.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued: March 23, 1978.

Subsequent Action: Health hazard abated March 23, 1978. All extractions, including those requiring use of solvents other than benzene, are now being done under a hood. No civil penalty imposed.

Sutter-Yuba Health Department
370 Del Norte Avenue
Yuba City, California 95991

Type of Business: Environmental health.

Size of Business: 65 employees, 3 employees affected by inspection.

Carcinogen in Question: Benzidine; alpha-Naphthylamine.

Date of OCCU Inspection: March 16, 1978.

Findings and Citations:

Serious violation of 8 CAC 5209(c): Failure to establish a regulated area for the use and/or storage of benzidine and alpha-Naphthylamine in the laboratory.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued: March 24, 1978.

Subsequent Action: Health hazard abated: March 24, 1978.

University of California, Davis
Davis, California 95616

Type of Business: Education and research.

Size of Business: 101 employees at site; 68 employees affected by inspection.

Carcinogen in Question: N-Nitrosodimethylamine; Benzidine and Benzidine diHCC; 4-Aminodiphenyl; Alpha-Naphthylamine; Beta-Naphthylamine; 2-Acetylaminofluorene; 4-Nitrobiphenyl.

Date of OCCU Inspection: November 1, 2, 6, 7, 14, 1978.

Findings and Citations:

Serious violation of 8 CAC 5209(d)(3): A coffee pot was used and maintained in Room 4430 of Chemistry Annex, a regulated area.

Serious violation of 8 CAC 5209(g)(1): Failure to provide a medical surveillance program to employees entering regulated area (Room 4430 of Chemistry Annex).

Serious violation of 8 CAC 5209(c)(6)(D): Contaminated waste and disposal equipment were not collected in special containers or decontaminated prior to removal from Room 1134 Haring Hall.

Serious violation of 8 CAC 5209(c)(6)(F): Failure to protect laboratory vacuum system in Room 1134 Haring Hall with a disposal absolute filter or high efficiency scrubbers.

Serious violation of 8 CAC 5209(c)(6)(K): Failure to decontaminate exhaust air from Room 1134 Haring Hall prior to discharge.

Serious violation of 8 CAC 5209(c)(6)(L): Failure to isolate ventilation system in Room 1134 Haring Hall from ventilation systems in other areas.

Serious violation of 8 CAC 5209(g)(1): Failure to provide a medical surveillance program for employees entering regulated areas.

Serious violation of 8 CAC 5209(g): Failure to establish a medical surveillance program for employees entering regulated areas (Room 387 and 573, Hutchison).

Serious violation of 8 CAC 5209(g): Failure to establish a medical surveillance program for employees entering Room 115, FOLB-1, in the microbiology laboratory.

Serious violation of 8 CAC 5209(g)(1): Failure to establish medical surveillance program for employees entering regulated areas (Rooms 3302 and 3149 MS-1A).

Serious violation of 8 CAC 5209(g): Failure to establish a medical surveillance program for employees entering Room 323, Briggs Hall.

Serious violation of 8 CAC 5209(c)(6)(K): Failure to decontaminate exhaust air from Room 204, environmental toxicology, prior to discharge.

Serious violation of 8 CAC 5209(e)(6)(L): Failure to isolate ventilation system in Room 204, environmental toxicology, from ventilation system in other areas.

Serious violation of 8 CAC 5209(g): Failure to provide a medical surveillance program to employees entering Room 204, environmental toxicology.

Serious violation of 8 CAC 5209(d)(3): A partially filled bottle of Antacid (Mylanta) was stored in Room 207, Young Hall.

Measures Taken to Prevent Cited Health Hazards: Abatement dates issued. Fines not imposed because the University, as a governmental institution, is immune from civil monetary penalties.

USC Medical Center & Department of Astronomy
1200 North State Street
Los Angeles, California 90033

Type of Business: Laboratory work.

Size of Business: 10,000 employees at site, 20 employees affected by inspection.

Carcinogen in Question: Bis-Chloromethyl ether; methyl chloromethyl ether.

Date of OCCU Inspection: November 28, 1978.

Findings and Citations:

Serious violation of 8 CAC 5209(c)(3): Chemical carcinogens were being used in an open vessel system operation.

Measures Taken to Prevent Cited Health Hazards: Order prohibiting use of Bis-Chloromethyl ether and methyl chloromethyl ether in open vessel system operation.

Western Clinical Laboratory
333 Sunrise Boulevard
Roseville, California 95678

Type of Business: Clinical laboratory (pathology).

Size of Business: 85 employees, 14 employees affected by inspection.

Carcinogen in Question: Benzidine.

Date of OCCU Inspection: March 14, 1978.

Findings and Citations:

Serious violation of 8 CAC 5209(c): Failure to establish regulated area in the tuberculosis (TB) niacin laboratory test area where benzidine is stored and used.

Measures Taken to Prevent Cited Health Hazards: Abatement date issued: March 28, 1978.

Subsequent Action: Health hazard abated as of March 28, 1978.

Wheelwright Company
2037 East 38th Street
Vernon, California 90058

Type of Business: Manufacturer of industrial wheels and casters.

Size of Business: 40 employees, 3 employees affected by inspection.

Carcinogen in Question: MBOCA: 4,4'-Methylene bis (2 Chloroaniline).

Date of OCCU Inspection: March 14, 1978.

Occupational Health Laws

Findings and Citations:

Serious violation of 8 CAC 5209(c): MBOCA was being used and stored in a non-regulated area and was being handled in an open vessel operation.

General violation of 8 CAC 5209(g): Failure to implement employer-paid medical surveillance program for employees working with MBOCA.

Regulatory violation of 8 CAC 5209(f)(1): Failure to report in writing to the Division the presence of MBOCA.

General violation of 8 CAC 5155(b)(1): Failure to keep exposure to TDI Toluene 2,4-diisocyanate within allowable ceiling concentration of 0.02 parts per million. Measurements showed that one employee, a mold pourer, was exposed to TDI in excess of the allowable ceiling concentration of 0.02 ppm by a factor of 2.

Measures Taken to Prevent Cited Health Hazards: Shutdown and order prohibiting use issued March 14, 1978 forbidding any work done with MBOCA until serious violation of 8 CAC 5209(c) abated.

Abatement dates issued for the regulatory violation, April 5, 1978, and for the two general violations, June 19, 1978.

Subsequent Action: Resumption of MBOCA operations was allowed on March 23, 1978 after compliance with regulated area requirements. Abatement dates met for other violations; no civil penalty imposed.

