

SENATE HEARING SLIP

(Please Print Plainly)

DATE: Jan. 18, 2000

BILL NO. Clearinghouse Rule
OR 99-139

SUBJECT _____

(NAME) Joanne Ricca

(Street Address or Route Number) 6333 W. Bluemound Rd

(City and Zip Code) Milwaukee WI 53213

(Representing) Wisconsin State AFL-CIO

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

unless Amended but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 1/18/00

BILL NO. Rule 99-139
OR _____

SUBJECT _____

(NAME) KEN OPIN

(Street Address or Route Number) 1314 Applegate Rd

(City and Zip Code) MADISON WI 53713

(Representing) WTF UGAC

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 1/18/2000

BILL NO. SR
OR 99-139

SUBJECT Safety Rules

(NAME) Dennis Boyer & Ron Korb

(Street Address or Route Number) 6033 Excelsior Dr

(City and Zip Code) Madison, WI 53717

(Representing) ASSCME

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: July 2005

BILL NO. Clearinghouse Rule 99-139

SUBJECT _____

(NAME) Ronald Kent

(Street Address or Route Number) 206 Brum Ct.

(City and Zip Code) Waukegan, IL 60085

(Representing) AFSCME

Speaking in Favor:

Speaking Against:

Registering in Favor:

Registering Against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: _____

BILL NO. CR 99-139

SUBJECT _____

(NAME) ERIC HANDS

(Street Address or Route Number) DEPT. OF COMMERCE

(City and Zip Code) MADISON WI

(Representing) DEPT. OF COMMERCE

Speaking in Favor:

Speaking Against:

Registering in Favor:

Registering Against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 1/18/00

BILL NO. _____

SUBJECT CR 99-139

(NAME) CHRIS SPOONER / Mike Corey

(Street Address or Route Number) DEPT. OF COMMERCE

(City and Zip Code) MADISON WI

(Representing) DEPT. OF COMMERCE

Speaking in Favor:

Speaking Against:

Registering in Favor:

Registering Against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

Senate Committee on Labor
300 Southeast - State Capitol
Tuesday, January 18, 2000
9:30 AM

Clearinghouse Rule 99-139

Background

The Wisconsin Department of Commerce is responsible for adopting standards to protect the safety and health of public employees in the state. Employees of cities, towns, villages, school districts, state agencies and the university system are protected by this provision.

According to state statute, the adopted standards must provide protection at least equivalent to that afforded to private-sector employees under standards administered and enforced by the United States Occupational Safety and Health Administration.

Current Rule

Chapter Comm 32 currently contains general safety and health standards for all public employees through the incorporation by reference of several OSHA standards. Chapter Comm 32 also contains requirements that minimally add to or modify the OSHA standards.

Annually, the Department of Commerce reviews Chapter Comm 32 in order to ensure the protection of the state's public employees.

Proposed Rules

The proposed rule update consists of revisions to Chapter Comm 32, including the incorporation by reference of the new OSHA standards adopted since July 1, 1998. Those standards cover powered industrial truck operator training, permit-required confined spaces, and methylene chloride.

The proposed rules also contain revisions to current requirements relating to recirculation of contaminated air, ventilation for kilns, and ventilation for laboratory fume hoods.

The development of administrative codes within Safety & Buildings now is conducted within the strategic goals and objectives of the Division. Those goals and objectives now include aligning our codes with national model codes and standards.

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-139

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. Comm 32.24 (5) (d), substitute "may" for "are permitted to." [See s. 1.01 (2), Manual.]
- b. In s. Comm 32.33 (4), delete "provision shall be made to prevent machines" and substitute "machines shall be prevented."

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-139

AN ORDER to repeal Comm 32.24 (2) (b) and Note and 32.24 Figure 32.24; to renumber Comm 32.24 (2) (c); to renumber and amend Comm 32.24 (2) (d); to amend Comm 32.24 (2) (a), (4) (c) and (5) (a) and (c) 2.; to repeal and recreate Comm 32.50 Table 32.50-2; and to create Comm 32.24 (5) (d) and (6), 32.33 (4) and (5) and 32.50 Table 32.50-1 items 7. to 10., relating to public employe safety and health.

Submitted by **DEPARTMENT OF COMMERCE**

09-23-99 RECEIVED BY LEGISLATIVE COUNCIL.
10-21-99 REPORT SENT TO AGENCY.

RS:DF:jal;rv



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 32

Relating to: Public Employee Safety and Health

Clearinghouse Rule No.: 99-139

The Department of Commerce proposes an order to repeal Comm 32.24 (2)(b) and Note, and Comm 32.24 Figure 32.24; to renumber Comm 32.24 (2)(c); to renumber and amend Comm 32.24 (2)(d); to amend Comm 32.24 (2)(a), Comm 32.24 (4)(c), Comm 32.24 (5)(a), and Comm 32.24 (5)(c)2.; to repeal and recreate Comm 32.50 Table 32.50-2; and to create Comm 32.24 (5)(d), Comm 32.24 (6), Comm 32.33 (4) and (5), and Comm 32.50 Table 32.50-1 items 7. to 10., relating to public employe safety and health.

Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1) and 101.055 (3), Stats.
Statutes Interpreted: s. 101.055 (3), Stats.

The Department of Commerce is responsible for adopting standards to protect the safety and health of public employes in the state of Wisconsin. The adopted standards must provide protection at least equivalent to that afforded to private sector employes under standards administered and enforced by the federal Occupational Safety and Health Administration (OSHA).

Chapter Comm 32 currently contains general safety and health standards for all public employes through the incorporation by reference of several OSHA standards. Chapter Comm 32 also contains requirements that add to or modify the OSHA standards.

The proposed rules consist of revisions in chapter Comm 32, including the incorporation by reference of the new OSHA standards adopted since July 1, 1998. Those standards cover powered industrial truck operator training, permit-required confined spaces, and methylene chloride.

The proposed rules also contain revisions to current requirements relating to recirculation of contaminated air, ventilation for kilns, and ventilation for laboratory fume hoods.

SECTION 1. Comm 32.24 (2)(a) is amended to read:

Comm 32.24 (2) EXHAUST VENTILATION AT SOURCE OF CONTAMINATION AND MAKE-UP AIR.
(a) Local Except as provided in sub. (5)(d), local exhaust ventilation ductwork specifically designed for the removal of harmful dusts, fumes, vapors and gases shall be maintained at a negative pressure through occupied areas.

SECTION 2. Comm 32.24 (2)(b) and Note are repealed.

SECTION 3. Comm 32.24 (2)(c) is renumbered (2)(b).

SECTION 4. Comm 32.24 (2)(d) is renumbered (2)(c) and amended to read:

Comm 32.24 (2) (c) Tempered make-up air shall be installed to insure that the flow of exhaust air effectively picks up harmful dusts, fumes, vapors and gases ~~prior to being exhausted.~~

SECTION 5. Comm 32.24 (4)(c) is amended to read:

Comm 32.24 (4) (c) Recirculation of contaminated air from local exhaust ventilation systems may be permitted where the exhaust system washes, scrubs or filters the air. Systems of this type ~~shall be designed in accordance with the criteria established in part 2 of the national institute for occupational safety and health (NIOSH) standard "Recirculation of Exhaust Air", HEW Publication (NIOSH) #76-186~~ perform in accordance with ANSI/AIHA Z9.7. Cleaning systems designed in accordance with other standards may be permitted if approved by the department.

SECTION 6. Comm 32.24 (5)(a) is amended to read:

Comm 32.24 (5) VENTILATION FOR KILNS. (a) *General.* 1. Local Except as provided in subd. 2., local exhaust ventilation shall be provided for all fuel-fired and electric kilns. ~~Ventilation systems shall be designed in accordance with the best practices of the industry and are subject to acceptability by the department.~~

2. Local exhaust ventilation need not be provided where the kilns can be isolated in a separate room and the room is ventilated by means of a dedicated system at ~~the~~ a minimum rate of 10 air changes per hour.

Note: Ventilation capacity for 10 air changes per hour can be calculated as follows:

$$\frac{\text{Room volume (cu. ft.)} \times 10}{60} = \text{cfm needed}$$

Note: Reduced atmosphere firing produces high concentrations of carbon monoxide and caution should be exercised when entering the kiln room.

3. ~~Canopy hood exhaust systems shall be designed in accordance with the requirements specified in par. (b) and Figure 32.24.~~ Exhaust ventilation systems for kilns shall be designed to

remove harmful quantities of air contaminants generated during the firing process in order to comply with s. Comm 32.35.

Note: For examples of canopy hood exhaust systems, see the American Conference of Governmental Industrial Hygienists "Industrial Ventilation Manual".

~~4. Movable kilns shall be positioned under an exhaust hood during the firing cycle.~~

SECTION 7. Comm 32.24 Figure 3~~2~~.24 is repealed.

SECTION 8. Comm 32.24 (5)(c)2. is amended to read:

Comm 32.24 (5) (c) 2. Kilns shall not may be located in boiler or furnace rooms if adequate combustion air is maintained for the boiler or furnace and the kiln under all operating conditions.

SECTION 9. Comm 32.24 (5)(d) is created to read:

Comm 32.24 (5) (d) *Downdraft ventilation.* Electric kilns with downdraft ventilation may have the ventilation ductwork maintained at a positive pressure through occupied areas provided the ductwork is sealed to prevent any leakage.

SECTION 10. Comm 32.24 (6) is created to read:

Comm 32.24 (6) VENTILATION FOR LABORATORY FUME HOODS. (a) *General.* 1. Except as provided in par. (b), laboratory fume hoods during use shall be operated with a minimum average 100 feet per minute face velocity at full open sash or sash stop position. When determining the minimum flow rate through the fume hood, the sash stop position may not be lower than 18 inches above the work surface.

Note: When operating the fume hood, the sash should be positioned to maximize the protection to the user.

2. Vertical sash fume hoods operated at sash stop positions shall have an alarm that gives a warning when the sash is raised above the sash stop position. Combination vertical/horizontal sash fume hoods shall have an alarm that gives a warning when the sash is vertically raised from the fully lowered position.

(b) *Alternate operation.* 1. Fume hoods operating at minimum average face velocities less than 100 feet per minute shall achieve a spillage rate less than 0.1 ppm at 4.0 liters per minute gas release for an "as used" condition in accordance with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) standard 110 - Method of Testing Laboratory Fume Hoods. The minimum allowable average face velocity for fume hoods achieving the ASHRAE 110 containment criteria shall be 40 feet per minute at full open sash.

2. Fume hoods operating at minimum average face velocities less than 100 feet per minute shall have a continuous flow meter with an alarm.

Note: For further information regarding fume hood operation, see ANSI/AIHA standard Z9.5 - Laboratory Ventilation.

(c) *Testing.* Operable fume hoods shall be tested annually for minimum average face velocity.

SECTION 11. Comm 32.33 (4) and (5) are created to read:

Comm 32.33 (4) PREVENTION OF AUTOMATIC RESTARTING. On applications where injury to the operator might result if motors were to restart after power failures, machines shall be prevented from automatically restarting upon restoration of power.

(5) MAINTENANCE. All equipment, machine tools, guards and power-driven machinery shall be operated and maintained in safe condition.

Note: For information regarding operation and maintenance of hoists, see ANSI/ASME standard B30.16 – Overhead Hoists (Underhung).

SECTION 12. Comm 32.50 Table 32.50-1 items 7. to 10. are created to read:

**Table 32.50-1
(Partial Table)**

| | |
|------|--|
| OSHA | Occupational Safety and Health Administration Superintendent of Documents 310 West Wisconsin Avenue, Suite 150 Milwaukee, WI 53203 Telephone: 414/297-1304 |
| 7. | Methylene Chloride, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 183, September 22, 1998. |
| 8. | Powered Industrial Truck Operator Training, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998. |
| 9. | Permit-Required Confined Spaces, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998. |
| 10. | Powered Industrial Truck Operator Training; Correction to Final Rule, Title 29 CFR Part 1910, Federal Register, Vol. 64, No. 80, April 27, 1999. |

SECTION 13. Comm 32.50 Table 32.50-2 is repealed and recreated to read:

Table 32.50-2

| | |
|------|---|
| ANSI | American National Standards Institute Attn: Customer Service 11 West 42 nd Street New York, NY 10036 Telephone: 212/642-4900 |
| 1. | Recirculation of Air from Industrial Process Exhaust Systems, ANSI/AIHA Z9.7-1998. |

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

RULE REPORT

Department of Commerce

Rule No.: Chapter Comm 32

Relating to: Public Employee Safety and Health

Agency contact person for substantive questions:

Name Eric Hands

Title Program Manager

Telephone Number 267-4434

Agency contact person for internal processing:

Name Ronald Acker

Title Code Consultant

Telephone Number 267-7907

1. Agency statutory authority under which the agency intends to promulgate the rule(s).
Sections 101.02 (1) and 101.055 (3), Stats.
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).
The proposed rules adopt the following federal regulations:
 1. Methylene Chloride, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 183, September 22, 1998.
 2. Powered Industrial Truck Operator Training, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998.
 3. Permit-Required Confined Spaces, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998.
 4. Powered Industrial Truck Operator Training; Correction to Final Rule, Title 29 CFR Part 1910, Federal Register, Vol. 64, No. 80, April 27, 1999.
3. Citation of court decisions which are applicable to the proposed rule(s).
None known.

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R02/97)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

1997 Session

LRB or Bill No./Adm. Rule No. Amendment No.
 Ch. Comm 32

Subject
 Public Employe Safety and Health

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None known

| II. Annualized Costs: | Annualized Fiscal impact on State funds from: | |
|---|---|-----------------|
| | Increased Costs | Decreased Costs |
| A. State Costs By Category | | |
| State Operations - Salaries and Fringes | \$ 0 | \$ - |
| (FTE Position Changes) | (0 FTE) | (- 0 FTE) |
| State Operations - Other Costs | | - |
| Local Assistance | | - |
| Aids to Individuals or Organizations | | - |
| TOTAL State Costs By Category | \$ 0 | \$ - 0 |
| B. State Costs By Source of Funds | | |
| GPR | \$ 0 | \$ - |
| FED | | - |
| PRO/PRS | 0 | - 0 |
| SEG/SEG-S | | - |
| III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | | |
| GPR Taxes | \$ 0 | \$ - |
| GPR Earned | | - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | | - |
| TOTAL State Revenues | \$ 0 | \$ - 0 |

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS \$ 0

\$ 0

NET CHANGE IN REVENUES \$ 0

\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/Ronald Acker 267-7907

Authorized Signature/Telephone No.

Bruce B...

Date

9/17/99

FISCAL ESTIMATE
DOA-2048 (R02/97)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Ch. Comm 32

Amendment No. if Applicable

Subject

Public Employe Safety and Health

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

None

Assumptions Used in Arriving at Fiscal Estimate

The Safety and Buildings Division currently administers and enforces the provisions of chapter Comm 32 as part of the public sector safety and health program. The proposed rules update the existing administrative rules now being enforced, with no new requirements that would affect costs or revenues. Therefore, the proposed rules will not have any fiscal effect on the Division.

At the local government level, there should be no significant fiscal effect. Some of the new requirements may result in additional costs in time and equipment for some local governments; however, these costs should be minimal.

Long-Range Fiscal Implications

None known

Agency/Prepared by: (Name & Phone No.)
Commerce/Ronald Acker 267-7907

Authorized Signature/Telephone No.

B. J. Ball

Date

9/17/99

**DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

| | | | |
|--|---|--|--|
| Clearinghouse Rule No.: 99-139 | | Hearing Location: Madison | |
| Rule Number: Chapter Comm 32 | | Hearing Date: October 25, 1999 | |
| Relating to: Public Employee Safety and Health | | | |
| Comments: Oral or Exhibit No. | Presenter, Group Represented, City and State | Comments/Recommendations | Agency Response |
| Oral | William Deppen Self Madison, WI | The Environmental Assessment indicates that the proposed action would adopt the 1998 OSHA standards. This should be changed to adopt the July 1999 OSHA standards. | Agree. |
| 1 | Ron Kent AFSCME Madison, WI | The proposed rules strike out ILHR 32.17 and 32.50 that protected public employees with appropriate ACGIH standards and allowed Department inspectors to cite ACGIH standards. Previously all Department Industrial Hygienists have supported inclusion of ILHR 32.17 and 32.50 (submitted letter from Department Industrial Hygienists). ILHR 32.17 and 32.50 must be retained in the text of the new code in order to be enforceable. The inclusions in a footnote is not enforceable coverage, nor is the assertion that the general duty clause covers this matter; it does not as attested to by Professor Niell DeClercq (submitted letter from Professor DeClercq). | Disagree. The proposed rules do not remove ILHR 32.17 and 32.50 relating to the ACGIH standards; these provisions are not in the current code. The ACGIH standards can be enforced through Department orders as allowed under section 101.055 (6)(a) 1. of the Wisconsin Statutes. |
| 2 | Bob Stigsell Environmental Management Consulting, Inc. Lake Mills, WI | There are some things the Department could do to be more accessible and helpful to those abiding by regulations. Our company has submitted questions to the Department and has not received an answer. It is frustrating when we are assisting school districts with compliance issues and cannot give them an answer. There should be educational sessions when rule changes come out. There should be a full-time, knowledgeable individual who would be at a central office location with a phone who would be available during business hours to field questions. Field representatives have been very helpful when we are able to get in contact with them. | Agree. Field representatives should remain the first point of contact regarding compliance issues. Educational sessions on the administrative code are provided, but the frequency varies within geographical areas. Questions about the public safety and health program can be directed to the program supervisor or the program manager during normal business hours. The contact information for the program persons can be obtained from the field representatives. |

**DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

| | | | |
|--|--|---|-----------------|
| Clearinghouse Rule No.: 99-139 | | Hearing Location: Eau Claire | |
| Rule Number: Chapter Comm 32 | | Hearing Date: October 26, 1999 | |
| Relating to: Public Employee Safety and Health | | | |
| Comments: Oral or Exhibit No. | Presenter, Group Represented, City and State | Comments/Recommendations | Agency Response |
| | | No comments/recommendations were presented. | |

**DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

Clearinghouse Rule No.: 99-139 Hearing Location: Mailed-in Comments
 Rule Number: Chapter Comm 32 Hearing Date: N/A

Relating to: Public Employee Safety and Health

| Comments: Oral or Exhibit No. | Presenter, Group Represented, City and State | Comments/Recommendations | Agency Response |
|-------------------------------------|--|--------------------------|-----------------|
|-------------------------------------|--|--------------------------|-----------------|

| | | | |
|---|--|--|--|
| 3 | Alan J. Schultz UW Capital Planning and Budget Madison, WI | <p>1. Comm 32.24 (6)(a)2. This sentence implies that during operation the sash must not be less than 18 inches above the work surface. This should be revised to read: "Sash stops that are provided for vertical sash fume hoods shall not be less than 18 inches above the work surface."</p> <p>2. Comm 32.24 (6)(a)3. Annunciating implies an alarm that produces an audible sound. These devices are very annoying not only to the user but others nearby and are often overridden by the users. Bright red indicating lamps would be less obtrusive and likely more acceptable to the user. If the alarms are to be audible, the alarms should be provided with an "alarm silence" feature that automatically resets every 2 minutes.</p> <p>3. Comm 32.24 (6)(b) The use of the term "as used" requires the test procedure be performed after the hood is installed in its final location, presumably resulting in "real life" operating conditions and performance. However, in order to demonstrate compliance with the code, each hood after it is installed and after the exhaust, supply and air transfer systems are completed, balanced and brought under control would require the performance of the ASHRAE 110 test. Fume hoods specifically designed for low flow face velocity make use of solid state sensors and controls technology that can lose calibration or fail. Manufacturers claim that the hood fails in a safe condition. Such hoods should be tested by simulating a failure of the controls to demonstrate code compliant performance in a fail-safe condition.</p> <p>4. Comm 32.24 (6)(c) This rule cannot be enforced. Documentation is not requested. If the intent is to enforce annual testing, statements regarding testing and documentation are needed.</p> | <p>1. Agree in part. The sentence in question has been removed. A sentence has been added to Comm 32.24 (6)(a)1. in order to clarify the 18-inch sash stop requirement.</p> <p>2. Agree. The rule has been revised to read "...an alarm that gives a warning when the sash ..."</p> <p>3. Agree. The rule has been revised by creating Comm 32.24 (6)(b)2. requiring a continuous flow meter with an alarm.</p> <p>4. Disagree. The rule is enforceable by the owner providing a written record that the test was conducted.</p> |
| 4 | George Gruetzmacher Division of Public Health Madison, WI | <p>Comm 32.24 (6)(a)2. is not clear. Should this read "Vertical sash fume hoods shall be operated with the sash stop positions lower than 18 inches above the work surface"?</p> | <p>Agree in part. See response no. 1 to Exhibit No. 3.</p> |

**DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

| Clearinghouse Rule No.: 99-139 | | Hearing Location: Mailed-in Comments | |
|--|---|--|---|
| Rule Number: Chapter Comm 32 | | Hearing Date: N/A | |
| Relating to: Public Employee Safety and Health | | | |
| Comments: Oral or Exhibit No. | Presenter, Group Represented, City and State | Comments/Recommendations | Agency Response |
| 5 | Phillip L. Neuenfeldt Wisconsin State AFL-CIO Milwaukee, WI | The AFL-CIO supports the statements of Ron Kent and Neill DeClercq urging that the original safety and health codes for public employees be reinstated. All Department industrial hygienists have supported inclusion of ILHR 32.50 and 32.17. The omissions of useful codes from the original foundation code should be remedied. | See response to Ron Kent's comments. |
| 6 | Susan Ruggles Wisconsin Committee on Occupational Safety and Health Milwaukee, WI | The proposed changes would have an adverse impact on public employee health and safety. ILHR 32.17, ILHR 32.27(2)(a) - (e) and ILHR 32.50 should be retained in Comm 32. Elimination of ACGIH standards strips away an important safeguard and leaves a gap in coverage. The ACGIH standards afford an extra measure of protection. Previous elimination of ventilation rules pertaining to darkrooms and woodworking is a disturbing trend that is noticeable in the weakening of rules regarding kiln ventilation. Photographers, woodworkers and craft workers deserve the same protections as other employees. | Disagree. The ACGIH standards can be enforced through Department orders as allowed under section 101.055 (6)(a) 1. of the Wisconsin Statutes. Ventilation rules are not being weakened, but are being changed from prescriptive to performance oriented. All workers must be protected from hazardous exposures as required under Comm 32.35. |

RA:h:\HeargComments\Comm32

SENATOR JUDITH B. ROBSON
CO-CHAIR

PO BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

PO BOX 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

February 24, 2000

BY HAND DELIVERY

Brenda Blanchard
Secretary, Department of Commerce
201 West Washington Avenue

Dear Secretary Blanchard:

We are writing on behalf of the Joint Committee for Review of Administrative Rules and in regards to Clearinghouse Rule 99-139 (Comm 32), relating to public employe safety and health.

The Senate Committee on Labor objected to this proposed rule on February 3, 2000. Today the Joint Committee for Review of Administrative Rules held a public hearing and executive session on the rule.

At the executive session, the committee adopted the following motion:

Motion:

That pursuant to section 227.19(5)(b)2, *Wisconsin State Statutes*, the Joint Committee for Review of Administrative Rules requests modifications to Clearinghouse Rule 99-139 (Comm 32), relating to public employe safety and health.

That if the Department does not notify the committee by 5:00 p.m., Monday, February 28, 2000 that it is willing to make modifications, then pursuant to section 227.19(5)(d), *Wisconsin State Statutes*, and for the reason set forth in section 227.19(4)(d)6, *Wisconsin State Statutes*, the committee concurs in the objection of the Senate Committee on Labor to Clearinghouse Rule 99-139.

Please notify us in writing prior to 5:00 p.m. on Monday, February 28, 2000 if the department is willing to consider modifications. If the department is not willing to consider modifications, the committee will be on record as objecting to the proposed rule.

Secretary Brenda Blanchard
February 24, 2000

Thank you for your attention to this matter.

Sincerely,



Senator Judith Robson
Co-chair



Representative Glenn Grothman
Co-chair

cc: members of the JCRAR
Ron Sklansky, Legislative Council

February 28, 2000

Senator Judith B. Robson
Post Office Box 7882
Madison, WI 53707-7882

Representative Glenn Grothman
Post Office Box 8952
Madison, WI 53708-8952

Dear Senator Robson and Representative Grothman:

Thank you for your letter regarding Clearinghouse Rule 99-139 (Comm 32) and the committee hearing held on February 24, 2000.

The Department of Commerce is responsible for the general safety and health standards for all public employees. Annually, the administrative rules are reviewed for modifications in order to ensure that the department remains current with recent changes to OSHA rules.

Before the next review begins, the Department will restructure its committee process. First, we will establish a policy level committee and a technical sub-committee. The policy committee, the Public Safety Advisory Council, will include policy level representatives from major public employer and employee groups. Specifically we will invite representatives of American Federation of State County and Municipal Employees (AFSCME) Councils 24 and 40, Wisconsin Federation of Teachers (WFT) and Wisconsin Education Association Council (WEAC).

The technical sub-committee will consist of industrial hygienists and other experts to look specifically at the substances and conditions that are covered in the ACGIH recommendations but not by OSHA. The purpose of the technical sub-committee is to identify the following:

- Identify chemical substances and conditions covered by ACGIH but not covered by OSHA,
- Identify where such chemicals and conditions may exist in the public sector,
- Identify the known safety and health risks of these chemical substances and the standards, and
- Identify likely mitigation actions and potential costs of implementation.

The report of the sub-committee will be presented to the Advisory Council.

It would be our intent to take any recommended changes to Comm 32 through the public hearing process to gather public comment.

Furthermore, the department will keep Joint Committee members informed of our process on this matter by providing copies of our meeting minutes.

With the Department's commitment to this plan, I respectfully request the Joint Committee for Review of Administrative Rules not to object to Clearinghouse Rule 99-139. Thank you for your consideration of this matter and I look forward to working with you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brenda J. Blanchard".

Brenda J. Blanchard
Secretary

Eskeitz, Anne

From: Eskeitz, Anne
Sent: Monday, December 27, 1999 1:55 PM
To: 'Joanne Ricca AFL-CIO'
Subject: Clearinghouse Rule Senate 99-139 (COMM 32)

The above Clearinghouse Rule was referred to the Senate Labor Committee (Senator Jim Baumgart, Chair) on 12-22-99.

I received an e-mail from Douglas Burnett (Chvala Office) that you have problems with the rule and will be requesting a hearing.

The Labor Committee has several other bills that we will be holding a hearing on and I am sure Senator Baumgart will hold a hearing on this rule. He will be in tomorrow and I will discuss this with him. I am looking at a possible date of Wed., January 19th for a hearing. Will get back to you in the next couple of days.

Anne Eskeitz, Committee Clerk, Senate Labor Committee
Office of Senator Jim Baumgart - 266-2056

*Joanne Ricca
 called
 1-3-99
 AFSCME Council 11
 from plant - Education Board
 608 836-6666 at 105
 problems w rule*

Eskeitz, Anne

From: Burnett, Douglas
Sent: Monday, December 27, 1999 9:32 AM
To: Eskeitz, Anne
Subject: FW: 30 days, not 10

Anne-The AFL-CIO (Joanne Ricca) has been in touch with me about COMM 32, which was just referred to your committee. They have some problems with the rule, and will be requesting a hearing on it. FYI, this is what I told Joanne about it.

-----Original Message-----

From: Burnett, Douglas
Sent: Monday, December 27, 1999 9:30 AM
To: 'Joanne Ricca'
Subject: 30 days, not 10

Joanne-I was mistaken when I told you we had only 10 days to schedule a hearing on this rule. In fact, we have 30 days. So a hearing must be publicly noticed and posted by the Labor Committee by January 21, and the hearing held by the committee by 30 calendar days after January 21, which is Sunday, February 20.

I'll give the Baumgart staff a heads up that you will be talking to them about the rule.

CLEARINGHOUSE RULE 99-139

AN ORDER to repeal Comm 32.24 (2) (b) and Note and 32.24 Figure 32.24; to renumber Comm 32.24 (2) (c); to renumber and amend Comm 32.24 (2) (d); to amend Comm 32.24 (2) (a), (4) (c) and (5) (a) and (c) 2.; to repeal and recreate Comm 32.50 Table 32.50-2; and to create Comm 32.24 (5) (d) and (6), 32.33 (4) and (5) and 32Table 32.50-1 items 7. to 10., relating to public employe safety and health.

Submitted by DEPARTMENT OF COMMERCE
09-23-99. Received by Legislative Council.
10-21-99. Report sent to Agency.

ASSEMBLY ACTION

12-20-99. Report received from Agency.

SENATE ACTION

12-22-99. Referred to committee on Labor



Field Staff

Joanne Ricca
Legislation & Lobbying

6333 W. Bluemound Road, Milwaukee, WI 53213

Business Phone: 414/771-0700

Fax: 414/771-1715

E-mail: jricca@execpc.com

Executive Board & Officers Report on State Legislation
// Health Care // Women



[Go back to Field Staff main page](#) // [Go back to Inside the Wisconsin State AFL-CIO](#)



This page is maintained by the Wisconsin State AFL-CIO. If you have any comments or suggestions, please send e-mail to: Solidarity@wisafcio.org Copyright © 1998 The Wisconsin State AFL-CIO. All rights reserved. Trademarks, Registered Trademarks, and Service Marks are the property of their respective holders.



Wisconsin State AFL-CIO

CHARTERED 1958

6333 W. BLUE MOUND RD., MILWAUKEE, WISCONSIN 53213 PHONE (414) 771-0700 FAX (414) 771-1715

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

TO: Members of Senate Labor Committee

FROM: Phil Neuenfeldt, Secretary-Treasurer
 Joanne Ricca, Legislative Staff

DATE: January 18, 2000

RE: **CLEARINGHOUSE RULE 99-139: CHANGES TO COMM 32**
Public Employee Safety and Health

The Wisconsin State AFL-CIO supports the position of AFSCME, the Wisconsin Federation of Teachers, Professor Neill DeClerq of the UW Extension School for Workers (a consultant on occupational safety and health for over 20 years), and our own state industrial hygienists who advocate that Rule 99-139 must be amended to strengthen health and safety standards for public employees. **We are simply asking that specific protective codes originally in COMM 32 be reinstated, so this is not an unreasonable request.** A number of other states include these codes as well.

What provisions need to be included?

- (1) **ILHR 32.50** which provides that state inspectors can cite ACGIH standards to protect public employees in areas such as chemical substances, physical agents, biological hazards, heat stress and cold standards; and
- (2) **ILHR 32.17** which protects public employees in "places of employment and public buildings".

What is the ACGIH and why is it important?

The American Conference of Government Industrial Hygienists (ACGIH) is a national organization that works with industry to develop safety and health standards based on careful, long-term studies that are respected in the scientific community. For instance, it develops standards on acceptable exposure levels for carbon monoxide, radiation, chemical contaminants, and the extremes of heat and cold on the human body. ACGIH standards cover a larger number of substances than federal OSHA standards and they are reviewed and updated annually.

According to industrial hygienists who work as inspectors for the State of Wisconsin, the ACGIH Biological Exposure Indices (BEIs) and the Harmful Physical Agents indicators sections are especially vital because, with few inspectors for the whole state, direct monitoring of an exposure site for contaminants is difficult. The BEIs place the burden of exposure determination on the employer because the standards are clear. It is not fair to public sector workers or employers if decisions are made on an arbitrary basis.

We ask for your support in amending Rule 99-139 to include the provisions necessary to ensure proper enforcement of safety and health for public employees. Clear, recognized and respected standards are absolutely key to effective enforcement and that can be ensured by the additions of ILHR 32.50 and ILHR 32.17 to the proposed rule.

PN/JR/mj

AFSCME International

8033 Excelsior Drive, Ste. A, Madison, WI 53717-1903

FAX

Date: 1/14/00
 Number of pages including cover sheet: 8

To: Senator Baumgart

 Phone: _____
 Fax phone: 267-6796
 cc: _____

From: Dennis Boyer

 Phone: 608-836-6666
 Fax phone: 608-836-3333

REMARKS: Urgent For your review Reply ASAP Please comment

PLEASE ADVISE AT ONCE IF ALL PAGES ARE NOT RECEIVED.



AFSCME®

WISCONSIN OFFICE • 8033 Excelsior Drive, Suite A • Madison, Wisconsin 53717-1903 • Telephone 608/836-6666

Date: January 14, 2000

Fax: 608/267-6796

To: Senator Baumgart

From: Dennis Boyer

Re: CR 99-139 Concerns

This communication is meant to provide additional information about the concerns stated in my e-mail of today.

Attached for your consideration is some of the correspondence which conveys, with more clarity than I can, our dismay at the lack of TLV and BEI standards.

Thank you for your consideration.

DB:ms

xc: Sandra Bloomfield
Marty Beil
Bob Lyons
Rich Abelson

in the public service

American Federation of State, County and Municipal Employees, AFL-CIO



Subject: CR 99-139(COMM 32/OSHA and SB 297

Chairman Baumgart:

We at AFSCME and other public sector unions expect to appear on the above-captioned matters at your 1/18/2000 hearing. We appreciate the timely airing of these matters.

It is likely that you have heard from some of our affiliates on these subjects. Both matters fall within the core of the legislative priorities shared by all AFSCME Councils in Wisconsin.

I. CR 99-139

Safety standards in the current era are complex and are of necessity evolving and dynamic. Advances in detection technology, medical science, protective equipment, and remedial measures make it absolutely essential that the rules incorporate the state of the art knowledge within the field of industrial hygiene. This is a desirable goal from the policy perspective of both employee safety and risk management.

The proposed rule is not without its advances. Our organization worked closely with the rulemaking process and is happy to report solid improvement in important areas like confined space entry. However, we are deeply concerned that the proposed rules do not incorporate THRESHOLD LIMIT VALUES (TLVs) and BIOLOGICAL EXPOSURE INDICES (BEIs) from the standard industrial hygiene references.

The TLVs and BEIs bring clarity to areas that are otherwise unclear. Without them it is possible that violations will occur and hazards will result simply because neither the employer nor the employees will know how to best handle these exposure situations.

We expect to provide you with additional documentation and testimony on these issues. If these matters seem obscure, I can sympathize. It is fairly technical stuff and the Department always depends on turning on the jargon fog machine to keep legislators and workers at bay.

Our bottomline is that we do not believe that the Department has adequately addressed the issues raised by its own staff. Which employers have been hamstrung by standards, what problems have occurred, and what real costs can be attributed to standard compliance?

We ask that you object to this omission in the rules and send the strongest signal possible that correction is required. If you are concerned that the committee's technical knowledge base is insufficient to evaluate these concerns might we suggest that Legislative Council scientists independently assess the concerns of inspectors and hygienists and report their findings.

II. SB 297

The practices surrounding the appointment of employee representatives to the Wisconsin Retirement Board occasions some confusion and resentment on the part of local government employees. It is our understanding that in recent years the positions designated for county and municipal employee representatives have been filled by highway commissioners, finance directors, executive assistants and others who can hardly claim to have their fingers on the pulse of rank and file workers. SB 297 would help remedy this problem. We appreciate Sen. Wirsch's advocacy on this matter and your committee's prompt consideration. We urge favorable action.

Thank you for consideration of these requests.

Dennis Boyer, AFSCME Lobbyist

InterOffice Memo

Department of Commerce

Date: March 23, 1998

To Public Safety & Health Council

From Thomas Pritchett, Industrial Hygienist 
Richard Brandt, Industrial Hygienist 

Subject **ACGIH BEI's and Harmful Physical Agents Exposure Indicators**

We are writing this letter to the council so that they may understand the importance in keeping the ACGIH standards codified in COMM 32.

The ACGIH Threshold Limit Values (TLV's) are important in cases where there is no Permissible Exposure Limit (PEL under 1910.1000) for a particular substance, and is only used where there is no PEL. The real importance is in the ACGIH Biological Exposure Indices (BEI's), and the Harmful Physical Agents Indicators sections. We have successfully used the BEI's in cases where, for example at a high school kitchen in Tony, Wis, employees complained about severe headaches and nausea. The employer refused to do anything about the complaints, so employees finally went to the clinic after a severe episode and it was determined that the COHb (carboxyhemoglobin in blood) was far above the BEI of 3.5% of hemoglobin. Based upon this we were able to determine that high exposures of carbon monoxide occurred and exposed these employees. On another occasion, on a worker's compensation investigation (done in both private and public sectors), the BEI of COHb was used to determine occupational exposures to the carbon monoxide also. Clearly the use of the BEI's is extremely important because the fact that only the two of us must do enforcement for the entire state of WI for occupational health matters, very often direct exposure monitoring of the contaminant is difficult due to the distances to travel. Therefore the BEI's allow us to put the burden of exposure determination upon the employer, **even after the exposure has occurred**. The Harmful Physical Agents section is equally important, as it allows us to enforce standards of Heat Stress and Cold Stress, (among others) upon employers whose employees spend a great deal of time outdoors (very often unprotected). Without these standards, very many employees suffer the harmful effects of extreme heat or cold.

It is also important to know that the codification of these ACGIH BEI's gives us direct enforcement "through the front door application," where the employer can look at COMM 32 and know then that he must comply with the sections of the ACGIH standards, versus applying the ACGIH standards through the "back-door" applications of citing the 'general duty clause' first then referencing the ACGIH standards. The employer's defense is that he never knew that the ACGIH standards applied to him, since they were not codified in COMM 32. This section of the code has extremely important applications for us INDUSTRIAL HYGIENISTS, and if the problems associated with keeping them in the code is the misapplication of the ACGIH standards by NON-industrial hygienists, then it is merely an internal management problem that must be corrected. If there has been some other application of the ACGIH standards that have resulted in problems for an employer, we would like to know about it, and if not, then why the problem with keeping this section of the code in force? We have not used the ACGIH TLV's or BEI's very often in the past 3 years, however the few instances that we did, it was extremely useful to have them actually applicable in ILHR ch. 32. With that, it is our intention to persuade the council to keep the ACGIH standards codified in COMM 32.

c: Ron Acker, Dept of Commerce
: Eric Hands, Dept of Commerce
: Ron Kent, AFSCME



AFSCME®

WISCONSIN OFFICE • 8033 Excelsior Drive, Suite A • Madison, Wisconsin 53717-1903 • Telephone 608/836-6666

October 25, 1999

Mr. Ronald Acker
 Department of Commerce
 Program Development Bureau
 P.O. Box 2689
 Madison, WI 53701

Dear Members of the Department of Commerce:

On behalf of 66,000 State, County and Municipal Employees we submit the following for your consideration in revising the rules of Chapter Comm.32, Public Employee Safety and Health:

1. The proposed Comm. 32 rules have stricken helpful safety and health standards from the previous ILHR 32 safety and health code for no rational reason;
2. Specifically, ILHR 32.50 that appeared in the original safety and health codes provided that department inspectors could site ACGIH standards to protect public employees in areas such as chemical substances, physical agents, biological hazards, including heat stress and cold standards; these exposures are significant for labor and where children as students maybe working in lab projects in schools;
3. Furthermore the proposed Comm. 32 code strikes out ILHR 32.17 that protected public employees in "places of employment and public buildings" with appropriate ACGIH standards. Buildings and labs should be safe to work in.
4. Previously all industrial hygienists of the Department of Commerce have supported inclusion of ILHR 32.50 and 32.17. The omissions and striking out of useful codes from the original foundation code, specifically ILHR 32.50 and ILHR 32.17 should be remedied. The foundation codes in the above areas should be retained in the new Comm.32 code to protect public employees, children and the public. (See attached letter from DOC industrial hygienists in this matter).

in the public service

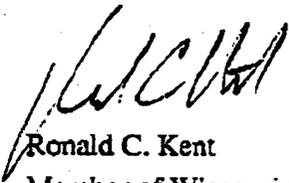
American Federation of State, County and Municipal Employees, AFL-CIO

5. The ILHR 32.50 and ILHR 32.17 Wisconsin codes must be retained in the text of the new code in order to be enforceable. The inclusions in a footnote is not enforceable coverage, nor is the bogus assertion (by some in the Department of Commerce) that the general duty clause covers this matter -- it simply does not as attested to by Professor Niell DeClercq of the School for Workers faculty, a noted national expert on health and safety law (see the attached letter from Professor DeClercq). The code should retain the valuable protections of ILHR 32.50 and ILHR 32.17.

Thank you for considering our testimony to strengthen the Comm.32 safety and health rules for all Wisconsin public employees and their families.

I will be happy to answer any questions.

Respectfully Submitted,



Ronald C. Kent
Member of Wisconsin Safety and Health Council
And
AFSCME Field Education Coordinator III
8033 Excelsior Drive
Suite A
Madison, WI 53717

RK:ms

Enclosures

xc: Council Directors
Sandra Bloomfield, IUAD

Council Presidents
Dennis Boyer, Council 11

**School for Workers**

School for Workers
Room 422 Lowell Center
610 Langdon Street
Madison, WI 53703
608-262-2112
608-265-2391 (fax)
608-265-9317 (TTY)

January 3, 2000

Mr. Ron Kent
AFSCME
8033 Excelsior Drive
Suite A
Madison, WI 53717-1903

JAN 5 2000

Dear Mr. Kent:

This letter is in support of retaining reference to the ACGIH recommended exposure limits as contained in ILHR 32.50 as part of the Wisconsin Administrative Code for the continued protection of public employee occupational safety and health.

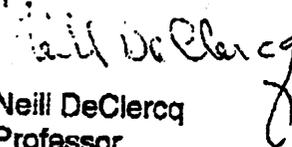
I am a professor of Labor Education at the University of Wisconsin-Extension. I have been involved in teaching, research, and consultation on occupational safety and health (OSH) at the University since 1976. I continue to be opposed to the deletion of reference to the ACGIH Threshold Limit Values (TLVs) and Biological Exposure Indices (BEIs) from the Code for the following reasons:

1. The ACGIH TLVs and BEIs are a well-recognized, scientifically valid set of guidelines that professionals and regulators in the field of industrial hygiene refer to and use regularly in addressing occupational health concerns.
2. The ACGIH TLVs and BEIs provide recommendations and guidance for substances that are not currently covered by OSHA or Wisconsin regulations. Consequently, they encourage broader protection of employee safety and health. This is particularly true in the biological exposure area.
3. The ACGIH TLVs and BEIs are reviewed and republished annually and thus are a source of the most current information on best practices for protecting against potentially hazardous occupational exposures to covered substances. OSHA's Permissible Exposure Limits (PELs) have not been updated in many instances since the 1970s. While I support the proposal for Wisconsin to adopt the 1991-92 proposed OSHA PEL revisions that were not adopted at the federal level, I believe the ACGIH guidelines provide additional and in some cases more current information on exposures. Both sources of information are needed and should be recognized in the Wisconsin code.
4. Under current Wisconsin law, hazards from substances not regulated by specific standards are covered by the "general duty clause" (Wis.Stats. sec. 101.55(6)(a)).

That provision empowers the Department to enforce violations of "a condition which poses a recognized hazard likely to cause death or serious physical harm to a public employe, ..." Crucial to application of this provision for health hazards is that the exposures be "recognized" as hazardous, which essentially means the exposure is recognized as hazardous in the scientific community. The ACGIH TLVs and BEIs can provide evidence of such recognition. Their removal from the code undermines their effectiveness in helping to establish a "general duty" violation, and thus weakens protection for public employee occupational health.

For the above reasons I support retention of the ACGIH guidelines for continued use by the Department in carrying out its responsibility to provide occupational safety and health to protection to public employees in the state of Wisconsin.

Sincerely,


Neill DeClercq
Professor



University of Wisconsin-Extension • Continuing Education Extension

422 Lowell Hall 610 Langdon Street Madison, Wisconsin 53703-1195 (608) 262-2111
FAX (608) 265-2391

School for Workers

March 25, 1998

Mr. Ronald H. Acker
Code Consultant
Wisconsin Department of Commerce
Bureau of Program Development
P.O. Box 2689
Madison, WI 53701

Dear Mr. Acker:

I am a professor of Labor Education for the University of Wisconsin – Extension. I have been involved in teaching and providing consultation on occupational safety and health in Wisconsin and nationally since 1976. It has come to my attention that the Public Employee Safety and Health regulations in ILHR 32 are under review. In particular, I understand the provisions referring to ACGIH recommended exposure limits may be eliminated from the regulations. I would oppose such a move on the part of the Department for the following reasons.

Currently, only a limited number of chemicals and other hazardous substances are regulated by specific standards. Those standards are adopted from the federal OSHA standards, which are only updated periodically, in some cases not for years. The ACGIH recommended exposure levels on the other hand cover a much larger number of substances, and they are reviewed and updated annually. The ACGIH exposure limits are a well-recognized, scientifically valid set of recommended standards that professionals in the field of industrial hygiene refer to and use regularly in addressing occupational health concerns.

Substances not regulated by specific standards are covered by the "general duty clause" of the state statute (Wis.Stats. 101.055(6)(a)). That provision empowers the department to enforce violations of "a condition which poses a recognized hazard likely to cause death or serious physical harm to a public employe,...." The ACGIH recommended exposure limits are a useful source of evidence for the Department to establish the requisite "recognized hazard" in general duty violations. Thus I am concerned that removing reference to the ACGIH limits from the regulations would jeopardize the Department's ability to use them in those instances where specific standards do not exist.

Sincerely,

Neill DeClercq
Professor of Labor Education
Cc: Ron Kent

G:\OSH\ILHR32