

*From
Dept.
Chris Spomer*

**POLICY STATEMENT ON THE USES OF
TLVs AND BEIs**

The Threshold Limit Values (TLVs) and Biological Exposure Indices (BEIs) are developed as guidelines to assist in the control of health hazards. These recommendations or guidelines are intended for use in the practice of industrial hygiene, to be interpreted and applied only by a person trained in this discipline. They are not developed for use as legal standards, and the American Conference of Governmental Industrial Hygienists (ACGIH) does not advocate their use as such. However, it is recognized that in certain circumstances individuals or organizations may wish to make use of these recommendations or guidelines as a supplement to their occupational safety and health program. The ACGIH will not oppose their use in this manner, if the use of TLVs and BEIs in these instances will contribute to the overall improvement in worker protection. However, the user must recognize the constraints and limitations subject to their proper use and bear the responsibility for such use.

The Introductions to the TLV/BEI Booklet and the TLV/BEI Documentation provide the philosophical and practical bases for the uses and limitations of the TLVs and BEIs. To extend those uses of the TLVs and BEIs to include other applications, such as use without the judgment of an industrial hygienist, application to a different population, development of new exposure/recovery time models, or new effect endpoints, stretches the reliability and even viability of the database for the TLV or BEI as evidenced by the individual documentations.

It is not appropriate for individuals or organizations to impose on the TLVs or the BEIs their concepts of what the TLVs or BEIs should be or how they should be applied or to transfer regulatory standards requirements to the TLVs or BEIs.

The Policy Statement on the Uses of TLVs/BEIs was approved by the Board of Directors of ACGIH on March 1, 1988.

1994-1995

Threshold Limit Values

for Chemical Substances

and Physical Agents

and

Biological Exposure Indices



ACGIH

treatment equal to that afforded to any representative of the employer who is present during an inspection, except that a public employer may choose to allow only one public employe representative at a time to accompany the department representative on an inspection without a reduction in pay. If a representative of the employer does not accompany the representative of the department on an inspection, at least one public employe representative shall be allowed to accompany the representative of the department on the inspection without a loss of pay. Where no public employe representative accompanies the representative of the department on an inspection, the representative of the department shall consult with a reasonable number of employes concerning matters of employe safety and health. The department shall keep a written record of the name of any person accompanying the department representative during the inspection, the name of any employe consulted and the name of any authorized collective bargaining agent notified of the inspection by the public employer under sub. (7) (e).

(d) When making an inspection, a representative of the department may question privately any public employer or employe. No public employe shall suffer a loss in wages for time spent responding to any questions under this paragraph.

(e) A representative of the department shall have access to the records required under sub. (7) (a) and (b) and to any other records maintained by a public employer which are related to the purpose of the inspection.

(6) ENFORCEMENT. (a) *Orders.* 1. 'Issuance.' If, as a result of inspection, the department finds a violation of a safety and health standard or variance or a condition which poses a recognized hazard likely to cause death or serious physical harm to a public employe, the department shall issue an order to the employer. A public employer who is in compliance with any standards or variances is deemed to be in compliance to the extent of the condition, practice, means, method, operation or process covered by that standard. The order shall describe the nature of the violation and the period of time within which the employer shall correct the violation. The department shall send a copy of the order to the top elected official of the political subdivision of which the public employer is a part and to the appropriate collective bargaining agent for the employes affected by the violation cited in the order, if a collective bargaining agent exists. If the order is issued as a result of an inspection requested by an employe or public employe representative, the department shall also send a copy of the order to that employe or public employe representative. Upon receipt of an order, the employer shall post the order at or near the site of violation for 3 days, or until the violation is abated, whichever is longer. The order shall be posted regardless of whether there has been a petition for a variance under sub. (4) or for a hearing under subd. 3. The employer shall ensure that the order is not altered, defaced or covered by other materials.

2. 'Decision not to issue.' If the department decides not to issue an order in response to a request for inspection filed under sub. (5) (a), it shall mail written notice of that decision to the public employe or public employe representative who requested the investigation. A decision under this subdivision is reviewable by the department under subd. 3.

3. 'Review by department.' A public employer or employe affected by an order or decision issued by the department under subd. 1. or 2. or sub. (5) (a) may obtain review of the order or decision by filing with the department a petition requesting a hearing and specifying the modification or change desired in the order or decision. A petition for a hearing must be filed with the department not later than 30 days after the order is issued or the written notification is mailed. If the department denies the request for a hearing, the denial shall be in writing and shall state the reasons for denial. If the department holds a hearing, it shall issue an order affirming, vacating or modifying the order or decision under subd. 1. or 2. or sub. (5) (a), within 30 days after the close of the hearing.

4. 'Judicial review.' Orders and denials of requests for hearings under subd. 3. are subject to judicial review under ch. 227.

(b) *Injunction.* Whenever a hazard exists in a public employer's place of employment which could reasonably be expected to cause death or serious physical harm before other procedures under this section can be carried out, the department may seek relief through an injunction or an action for mandamus as provided in chs. 783 and 813. If the department seeks an injunction or an action for mandamus, it shall notify the affected public employer and public employes of the hazard for which relief is being sought.

(7) EMPLOYER OBLIGATIONS FOR RECORD KEEPING AND NOTIFICATION. (a) A public employer shall maintain records of work-related injuries and illnesses and shall make reports of these injuries and illnesses to the department at time intervals specified by rule of the department. These records shall be available to the department, the employer's employes and the employes' representatives. This paragraph does not authorize disclosure of patient health care records except as provided in ss. 146.82 and 146.83.

(b) A public employer shall maintain records of employe exposures to toxic materials and harmful physical agents which are required by safety and health standards adopted under sub. (3) to be monitored or measured. A representative of the department and any affected public employe and his or her public employe representative shall be permitted to observe the monitoring and measuring and shall have access to the employer's records of the monitoring and measuring. This paragraph does not authorize disclosure of patient health care records except as provided in ss. 146.82 and 146.83.

(c) A public employer shall promptly notify a public employe who has been or is being exposed to any toxic material or harmful physical agent at a level which exceeds that prescribed by the safety and health standards of the department and shall inform that public employe of any corrective action being taken.

(d) A public employer shall notify its employes of their protections and rights under this section by posting a summary of these protections and rights in the place of employment where notices to employes are usually posted.

(e) When a representative of the department enters a public employer's place of employment to make an inspection, the employer shall notify an appropriate representative of any collective bargaining unit which represents the employer's employes. The employer shall give the name of the collective bargaining unit representatives notified of the inspection to the department representative making the inspection.

(8) PROTECTION OF PUBLIC EMPLOYES EXERCISING THEIR RIGHTS. (ag) In this subsection, "division of equal rights" means the division of equal rights in the department of workforce development acting under the authority provided in s. 106.06 (4).

(ar) No public employer may discharge or otherwise discriminate against any public employe it employs because the public employe filed a request with the department, instituted or caused to be instituted any action or proceeding relating to occupational safety and health matters under this section, testified or will testify in such a proceeding, reasonably refused to perform a task which represents a danger of serious injury or death or exercised any other right related to occupational safety and health which is afforded by this section.

(b) A state employe who believes that he or she has been discharged or otherwise discriminated against by a public employer in violation of par. (ar) may file a complaint with the personnel commission alleging discrimination or discharge, within 30 days after the employe received knowledge of the discrimination or discharge. "A public employe other than a state employe who believes that he or she has been discharged or otherwise discriminated against by a public employer in violation of par. (ar) may file

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	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"?	Agree in part. See response no. 1 to Exhibit No. 3.

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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.

Minnesota Statutes 1999, Table of Chapters

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182.655 Occupational safety and health standards.

Subdivision 1. Standards and variances shall be proposed, granted, adopted, modified or revoked by the commissioner in accordance with the procedures of this section. The standards and variances are exempt from the Administrative Procedure Act but, to the extent authorized by law to adopt rules, the commissioner may use the provisions of section 14.386, paragraph (a), clauses (1) and (3). Section 14.386, paragraph (b), does not apply to these rules.

Subd. 2. Whenever the commissioner, in order to serve the objectives of this chapter, determines that a rule should be promulgated under this section, establishing, modifying or revoking an occupational safety and health standard, the commissioner shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard and shall afford interested persons a period of 30 days after publication to submit written data or comments.

On or before the last day of the period provided for the submission of written data or comments, any interested person may file with the commissioner written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within 30 days after the last day for filing such objections, the commissioner shall publish a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

Subd. 3. Within 60 days after the expiration of the period provided for the submission of written data or comments or within 60 days after the completion of any hearing, the commissioner shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be promulgated. Such a rule may contain a provision delaying its effective date for such period, not in excess of 90 days, as the commissioner determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

Subd. 4. The commissioner, in adopting standards dealing with hazardous substances or harmful physical agents under this section, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard dealt with by the standard for the period of the employee's working life. Development of standards under this subdivision shall be based upon research, demonstrations, experiments, and other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall

<http://www.revisor.mn.gov/statutes/182/055.mnml>

be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard adopted shall be expressed in the terms of objective criteria and of the performance desired.

Subd. 5. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of subdivision 7 and establishes that:

(a) It is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(b) It is taking all available steps to safeguard employees against the hazards covered by the standard; and

(c) It has an effective program for coming into compliance with the standard as quickly as practicable.

Subd. 6. Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and to employee representative and an opportunity for a hearing; provided, that the commissioner may issue one interim order to be effective until a decision is made on the basis of a hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice. No such order shall be renewed unless the requirements of this section are met and an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim order may remain in effect for longer than 180 days.

Subd. 7. An application for a temporary order under this section shall contain:

(a) A specification of the standard or portion thereof from which the employer seeks a variance;

(b) A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that it is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps being taken and which will be taken, with specific dates, to protect employees against the hazards covered by the standard;

(d) A statement of when it expects to be able to comply with the standard and what steps it has taken and will take, with specific dates, to come into compliance with the standard;

and

(e) A certification that it has informed employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means, and that it has informed employees of their right to petition the commissioner for a hearing.

Subd. 8. Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given a notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if the commissioner determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to employees which are as safe and healthful as those which would prevail if there was compliance with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes which it must adopt and utilize. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on the commissioner's own motion, in the manner prescribed for its issuance under this subdivision at any time after six months from its issuance.

Subd. 9. The commissioner is authorized to grant a variance from any standard or portion thereof whenever the commissioner determines that such variance is necessary to permit an employer to participate in an experiment approved by the commissioner or the United States Secretary of Labor or the United States Secretary of Health, Education and Welfare, designed to demonstrate or validate new and improved techniques to safeguard the health and safety of workers.

Subd. 10. Any standard adopted under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

In the case of containers containing a hazardous substance or equipment which generates a harmful physical agent, a label is required as an appropriate form of warning in providing substantially the same information as required under section 182.653, subdivision 4b, 4c, or 4e. As a minimum, a hazardous substance container must be tagged or marked with (a) the identity of the hazardous substance; (b) the appropriate hazard warnings; and (c) the name and address of the chemical manufacturer, importer, or other responsible party.

A label may be a coded reference to an appropriate and accessible data sheet containing the information required under section 182.653, subdivision 4b, 4c, or 4e. When appropriate, a current data sheet may be affixed to, or posted in, accessible

close proximity to a container containing a hazardous substance or a work area where there is a harmful physical agent in satisfaction of standards adopted for labels under this chapter. Containers may be labeled pursuant to federal or state labeling requirements that the commissioner certifies as satisfying the labeling standards adopted under this chapter. Specifically, pesticides that are labeled in accordance with the federal Insecticide, Fungicide and Rodenticide Act (United States Code, title 7, section 136 et seq.); any food, food additive, color additive, drug, or cosmetic including materials intended for use as ingredients in products labeled in accordance with the requirements of the federal Food, Drug, and Cosmetic Act (United States Code, title 21, section 301 et seq.); distilled spirits, (beverage alcohols), wine, or malt beverage labeled in accordance with the federal Alcohol Administration Act (United States Code, title 27, section 201 et seq.); any consumer products as defined in the Consumer Product Safety Act (United States Code, title 15, section 2051 et seq.) and labeled in accordance with the requirement of that act; or any hazardous substance as defined in the federal Hazardous Substances Act (United States Code, title 15, section 1261 et seq.) and labeled in accordance with the requirements of that act shall meet the requirements of the labeling standards adopted under this chapter.

Subd. 10a. Where appropriate, standards shall prescribe suitable protective equipment, if feasible engineering and administrative methods of protection alone do not provide adequate protection, and this equipment shall be made available by and at the cost of the employer. The standards shall also provide for monitoring or measuring employee exposure at the locations and intervals and in the manner as may be necessary and appropriate for the protection of employees. Where appropriate, a standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available by the employer, or at the employer's cost, to employees exposed to hazards in order to most effectively determine whether the health of those employees is adversely affected by the exposure. The results of these examinations or tests shall be furnished only to the commissioner, the employee's physician, at the request of the employee, and the employer with notice to the employee.

Subd. 11. The commissioner shall adopt an emergency temporary standard to take immediate effect upon publication if the commissioner determines:

(a) That employees are exposed to grave or imminent danger from exposure to hazardous substances or harmful physical agents or other hazards; and

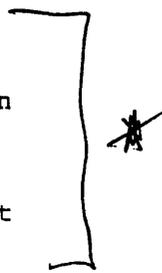
(b) That the emergency standard is necessary to protect employees from the danger. The standard shall be effective until superseded by a standard adopted in accordance with the procedures prescribed in subdivision 2.

Upon publication of the standard or standards, which interested persons may receive upon request and payment of fees, the commissioner shall commence a proceeding in accordance with subdivision 2 and the standard as published shall also serve as a proposed rule for the proceeding; the commissioner shall adopt a standard under this section no later than six months after the publication of the emergency standard.

Subd. 12. Standards promulgated under this section shall not be different from federal standards where the standard significantly affects interstate commerce, unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

Subd. 13. All standards adopted by the commissioner shall be at least as effective as those which are presently or will, in the future, be promulgated under section 6 of the federal Occupational Safety and Health Act of 1970.

Subd. 14. The commissioner may recommend for adoption those portions of current occupational health and safety standards deemed significant and deserving of mandatory status adopted by the Threshold Limit Value Committees of the American Conference of Governmental Industrial Hygienists, the American National Standards Institute, or other recognized national standard-setting organizations and recommended to the commissioner by the council; and may further periodically adopt changes in such standards under the same circumstances but not more often than once a year.



HIST: 1973 c 732 s 6; 1975 c 271 s 6; 1981 c 253 s 27; 1982 c 424 s 130; 1983 c 216 art 1 s 88; 1983 c 316 s 18-21,29; 1985 c 130 s 8,9; 1986 c 444; 1997 c 187 art 5 s 27

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*** THIS SECTION IS CURRENT THROUGH CH. 331, 7/16/99 ***

TITLE XXIII. LABOR
CHAPTER 277-A. TOXIC SUBSTANCES IN THE WORKPLACE

RSA 277-A:3 (1999)

§ 277-A:3. Definitions

As used in this chapter:

I. "Employee" means any person who currently works or formerly worked, with or without compensation, in a workplace. The term "employee" does not include domestic workers or casual laborers employed at the place of residence of the employer.

II. "Employee representative" means an individual or organization to which an employee gives written authorization to exercise his rights under this chapter. A recognized or certified collective bargaining agent shall be considered to be an employee representative without regard to written employee authorization.

III. "Employer" means any person, firm, corporation, partnership, association, the state, any political subdivision of the state, or any other entity which is engaged in a business or in providing services and which employs employees in connection with such business or services.

IV. "Material safety data sheet" means a written document prepared on a toxic substance containing all of the following information except as provided by RSA 277-A:4, III(c):

- (a) The chemical name, generic name, trade name, and any common name of the toxic substance and of each of the component toxic substances contained in any mixture.
- (b) The hazards of the substance, including its flammability, explosiveness, and reactivity.
- (c) The acute and chronic health effects and risks from exposure.
- (d) The potential routes and symptoms of overexposure.
- (e) The proper precautions, handling practices, necessary personal protective equipment, and other necessary or beneficial safety precautions.
- (f) Emergency procedures for spills, fire, disposal, and first aid.
- (g) A description, in nontechnical language, of the specific potential health risks posed by the toxic substance.
- (h) The date such information was compiled and the name and address of the manufacturer, producer or formulator responsible for compiling it.

V. "Toxic substance" means any radioactive or other substance which is defined as a toxic substance by a rule adopted pursuant to RSA 541-A by the department of health and human services. The department shall define as a toxic substance:

- (a) Any substance which appears on any list of toxic or hazardous substances which is included in any of the following:

(1) The United States Department of Transportation's 1980 Emergency Response Guidebook of Hazardous Waste Materials.

(2) TLV's: Threshold Limit Values for Chemical Substances and Physical Agents in the Workroom Environment, published by the American Conference of Government Industrial Hygienists.] *

(3) Title 29, Code of Federal Regulations, Section 1910.1000.

(4) Standards issued under Section 6(b)(5) of the Occupational Safety and Health Act of 1970.

(5) The Director of the Department of Industrial Relations' List of Hazardous Substances, published by the State of California.

(b) Any substance which has yielded positive evidence of acute or chronic health hazards in human, animal or other biological testing which could be applicable to human beings;

(c) Any other substance which the department determines should be so defined consistent with the purposes of this chapter and consistent to the extent possible with the methods and criteria used in compiling the lists of toxic or hazardous substances referred to in subparagraph (a). For the purposes of this chapter, the term "toxic substance" shall not include any liquor or beverage, as those terms are defined in RSA 175:1, VIII and XLII, or any other substance which has been packaged for retail sale or which is contained in a product which has been packaged for retail sale; and

(d) Any substance which is combustible, a compressed gas, explosive, flammable, a health hazard, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water reactive as established by the latest edition of the Fire Protection Guide on Hazardous Materials published by the National Fire Protective Association.

VI. "Trade secret" means any confidential formula, pattern, device or compilation of information which does all of the following:

(a) Is used in the employer's business.

(b) Gives the employer the opportunity to obtain an advantage over competitors who do not know or use it.

(c) Is known only to the employer and to those employees to whom it is necessary to confide.

VII. "Workplace" means any location, permanent or temporary, where an employee performs any work-related duty in the course of his employment.

VIII. "Commissioner" means the commissioner of labor.

HISTORY: 1983, 466:1. 1990, 255:10. 1995, 310:175, 181, eff. Nov. 1, 1995.

PENNSYLVANIA STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 1999 SUPPLEMENT (1998 SESSIONS) ***

TITLE 35. HEALTH AND SAFETY -- PENNSYLVANIA STATUTES
CHAPTER 41. WORKER AND COMMUNITY RIGHT-TO-KNOW ACT

35 P.S. § 7303 (1999)

[P.S.] § 7303. Hazardous substance list

(A) **HAZARDOUS SUBSTANCE LIST.** --The department shall, no later than 180 days subsequent to the effective date of this act, compile a list of hazardous substances which shall include, but not be limited to, the substances found in the latest compilation or issue of any one of the following lists:

- (1) Federal Environmental Protection Agency (EPA) list of toxic pollutants and hazardous substances prepared pursuant to sections 307 and 311 of the Federal Clean Water Act of 1977 (33 U.S.C. §§ 1317, 1321).
- (2) EPA list of hazardous air pollutants prepared pursuant to section 112 of the Federal Clean Air Act (42 U.S.C. § 7412).
- (3) EPA list of restricted use pesticides found at 40 CFR 162.30 (relating to optional procedures for classification of pesticide uses by regulation).
- (4) EPA Carcinogen Assessment Group's List of Carcinogens.
- (5) OSHA list of toxic and hazardous substances found in 29 CFR 1910, subpart Z (relating to toxic and hazardous substances).
- (6) International Agency for Research on Cancer sublist, entitled "Substances found to have at least sufficient evidence of carcinogenicity in animals."
- (7) National Toxicology Program's list of substances published in their latest Annual Report on Carcinogens.
- (8) National Fire Protection Association list found in "Hazardous Chemicals Data (NFPA 49)."
- (9) National Fire Protection Association list found in "Fire Hazard Properties of Flammable Liquids, Gases, Volatile Solids (NFPA 325M)," but only those substances found on sublists for health items, categories 2, 3 and 4; sublists for reactivity items, categories 3 and 4; sublists for flammability, categories 3 and 4.
- (10) American Conference of Governmental Industrial Hygienists' list found in Threshold Limit Value for Chemical Substances and Physical Agents in the Workplace.] *
- (11) National Cancer Institute sublist, entitled "Carcinogens bioassays with at least evidence suggestive of carcinogenic effect," but including only those substances which satisfy criteria of the National Toxicology Program indicating significant carcinogenic effect.

The list shall further include any other substance or mixture designated by the department as hazardous because of its known or probable adverse human or environmental effect. This list shall be updated, reduced or expanded by the department as necessary in light of new scientific evidence and knowledge. A copy of the list and any modifications thereof shall be transmitted to every employer subject to this act.

(B) ADDITIONS TO HAZARDOUS SUBSTANCE LIST. --Any chemicals which appear on any future compilation or issue of any of the lists contained in subsection (a) shall automatically be added to the hazardous substance list. Prior to adding any other chemicals to the list of hazardous substances enumerated in subsection (a)(1) through (11), the department shall, after giving proper notice, hold hearings on the proposed additions to allow for comment by interested parties. Upon conclusion of the hearings, the department shall, if it determines the propriety of including the chemicals, amend its regulations to reflect additions and publish the additions thereto in the Pennsylvania Bulletin, and notify employers regarding the additions.

(C) DELETIONS FROM HAZARDOUS SUBSTANCE LIST. --Any chemicals which are removed from any future compilation or issue of the lists contained in subsection (a), or any chemicals that have been added to the hazardous substance list under subsection (b), may be deleted from the hazardous substance list. Prior to deleting any chemical from the hazardous substance list, the department shall, after giving proper notice, hold hearings on the proposed deletions to allow for comment by interested parties. Upon conclusion of the hearings, the department, if it determines the propriety of deleting the chemical, shall amend its regulations to reflect deletions and publish the deletions therefrom in the Pennsylvania Bulletin, and notify employers regarding the deletions.

(D) SPECIAL HAZARDS AND ENVIRONMENTAL HAZARDS. --The department shall designate those hazardous substances which shall be considered special hazardous substances and those which shall be considered environmental hazards. The department shall compile separate lists of the special hazardous substances and the environmental hazards. These lists shall be updated, transmitted to employers and posted by employers in the same manner as the hazardous substance list. The department shall, by regulation, specify those special hazardous substances which, because of their particular or extreme properties, must be identified at concentrations of less than 0.01%.

(E) HAZARDOUS SUBSTANCE SURVEY FORM. --Every employer shall, upon a form supplied by the department, fill out a hazardous substance survey for each workplace, providing information on the hazardous substances present during the prior year. A listing of the hazardous substances shall be posted by the employer as required by section 7. Upon the written request of any person in Pennsylvania, the department shall require the employer to forward a copy of the completed survey form to the department within 20 days. The department shall, in turn, keep a copy of the survey form on file, and shall immediately transmit a copy of the form to the original requestor. The employer shall update the hazardous substance survey for each workplace every two years.

(F) ACCESS OF POLICE, FIRE AND EMERGENCY RESPONSE AGENCIES. --Upon the request of a local police, fire or emergency response agency, within whose jurisdiction an employer falls, an employer shall provide a copy of its latest hazardous substance survey, and, if requested, copies of all relevant Material Safety Data Sheets. The employer shall further provide, upon the request of said agency, all relevant and available information concerning any environmental hazards pertaining to the workplace in question.

(G) ENVIRONMENTAL HAZARD SURVEY. --Upon the written request of any person in Pennsylvania, the department shall require an employer to complete an environmental hazard survey for a particular workplace upon a form supplied by the department. The environmental survey shall include those substances emitted, discharged or disposed of from that workplace, and shall provide the following information to the extent that such information or reports are made under current provisions of Federal, State, county or municipal law:

- (1) The total known or estimated stack or point-source emissions of the substance.
- (2) The total estimated fugitive or nonpoint-source emissions of the substance.
- (3) The total known or estimated discharge of the substance into the

surface or groundwater, the treatment methods and the known or estimated raw wastewater volume and loadings.

(4) The total known or estimated discharge of the substance into publicly owned treatment works.

(5) The known or estimated quantity and methods of disposal of any wastes containing the substance, the method of onsite storage of these wastes, the location or locations of the final disposal sites for these wastes and the identity of the hauler of the wastes.

Within 30 days of the department's request, the employer shall return the completed environmental survey form to the department, which shall in turn keep a copy on file and shall immediately transmit a copy to the original requestor. The employer shall also keep a copy of the environmental hazard survey on file at that workplace and at its principal place of business in the Commonwealth.

(H) ONSITE TESTING. --Upon the request to the department, and for good cause shown and upon consultation with the interested parties involved, the department may conduct at its expense onsite testing or use such other methods as will provide more exact information concerning the environmental hazards reported in the environmental hazards survey under subsection (g). The site owner may conduct onsite testing instead of the department. Upon the written request of the employer, the department shall detail in writing the type and methods of testing and provide technical assistance to aid the employer who chooses to conduct testing instead of the department. In an emergency, the department may undertake said testing at the Commonwealth's expense. The department shall not conduct onsite testing which has already been conducted by OSHA.

(I) AUTHORITY TO MODIFY FILING REQUIREMENTS. --The department may, by regulation, require certain classes or groups of employers to automatically file with the department the completed hazardous substance survey and/or environmental hazard survey every two years, taking into account the nature and quantity of the hazardous substances and/or environmental hazards involved, the likely danger to the surrounding community, the number of employees affected or the importance of said information to future epidemiological or other health studies.

(J) RETENTION OF MATERIALS. --The department shall maintain a file of all completed hazardous substance surveys and environmental hazard surveys for 30 years. The department shall also retain at least one Material Safety Data Sheet for each hazardous substance and hazardous mixture, together with revisions thereof.

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THIS SECTION IS CURRENT THROUGH THE 1999 SESSION
ANNOTATIONS CURRENT THROUGH JULY 8, 1999

TITLE 28. LABOR AND LABOR RELATIONS
CHAPTER 21. HAZARDOUS SUBSTANCES RIGHT-TO-KNOW ACT

R.I. Gen. Laws § 28-21-2 (1999)

§ 28-21-2. Definitions

For the purpose of this chapter, the terms defined hereunder shall have the following meanings. Where terms are not defined, the ordinarily accepted meanings within the proper context shall apply:

- (1) "Chemical name" means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstract Service Rules of Nomenclature.
- (2) "Common name" means any designation or identification, such as trade name or number or code name or brand name, used by the employer to identify a substance other than by its chemical name.
- (3) "Designated substance" means any substance contained within the list of toxic or hazardous substances covered by this chapter provided they are in quantities exceeding two (2) gallons or ten (10) pounds of the substance within the workplace, except in the case of carcinogens, mutagen, or teratogen which shall be reported if the concentration is equal to or greater than one part of the substance per ten thousand (10,000) by volume, and provided further that nothing contained in this definition shall preclude the director of labor and training from establishing more stringent standards pursuant to rules and regulations in conformity with the Administrative Procedures Act, chapter 35 of title 42.
- (4) "Employee" means a person who is:
 - (i) A current employee;
 - (ii) A former employee whose physician has reason to believe that an illness or injury may be related to former employment;
 - (iii) An employee assigned or transferred to work where there will be exposure to designated substances; or
 - (iv) Any worker who may be exposed under normal conditions of use or foreseeable emergency to designated substances; and
 - (v) Includes employees of the state or political subdivision thereof.
- (5) "Employee representative" means any attorney, physician, or employee organization that represents an employee or employees in a company.
- (6) "Employer" includes an individual, partners, associations, corporations, business trusts, or any persons or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.
- (7) "Expose" or "exposure" means any situation arising from work operation where an employee may ingest, inhale, absorb through the skin or eyes, or otherwise come into contact with a designated substance; provided, that the contact shall not be deemed to constitute exposure if the designated substance present is in a physical state, volume, or

concentration for which there is no valid and substantial evidence that any adverse acute or chronic risk to human health may occur from the contact.

(8) "Hazardous substance" is any chemical substance listed in the latest edition of the chemical data section of the "Fire Protection Guide on Hazardous Materials" as published by the National Fire Protection Association.

(9) "Immediate use" means the hazardous substance will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

(10) "Mixture" means any solution or intimate admixture of two (2) or more substances which do not react chemically with each other.

(11) "Substance" means any element, entity, compound, combination, or any mixture thereof, whether organic or inorganic.

(12) "To store" means to deposit or place a substance in a locale for a period of forty-eight (48) hours or more.

(13) "Toxic substance" is any chemical substance listed in the latest edition of "Threshold Limit Value for Chemical Substance in the Work Environment" as published by the American Conference of Governmental and Industrial Hygienists and the list of carcinogens as published by the International Agency for Research on Cancer.]*

(14) "Work area" means any room or defined space, whether within or outside of a building or other structure, where toxic or hazardous substances are present.

(15) "Workplace" means an establishment or business at one geographic location containing one or more work areas.

HISTORY: P.L. 1983, ch. 18, § 1; P.L. 1984, ch. 441, § 1; P.L. 1987, ch. 250, § 1.

NOTES: REENACTMENTS. The 1995 Reenactment (P.L. 1995, ch. 323, § 1) arranged the definitions in alphabetical order.

Compiler's Notes. In 1996, the compiler substituted "director of labor and training" for "director of labor" in subdivision (3).

ALASKA STATUTES
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*** THIS SECTION IS CURRENT THROUGH THE 1999 SUPPLEMENT ***
*** (1999 1ST SESSION OF THE TWENTY-FIRST STATE LEGISLATURE) ***
*** (1999 1ST SPECIAL SESSIONS OF THE LEGISLATURE) ***
*** (ANNOTATIONS THROUGH DECISIONS RECEIVED BY AUGUST 27, 1999) ***

TITLE 18. HEALTH, SAFETY, AND HOUSING
CHAPTER 60. SAFETY
ARTICLE 1. PREVENTION OF ACCIDENT AND HEALTH HAZARDS

Alaska Stat. § 18.60.105 (1999)

Sec. 18.60.105. Definitions

(a) In AS 18.60.010 – 18.60.105,

- (1) "be exposed" means to ingest, inhale, or absorb through the skin or eyes a substance or physical agent, or fumes or other potentially harmful aspect of a substance or physical agent;
- (2) "commissioner" means the commissioner of labor and workforce development;
- (3) "department" means the Department of Labor and Workforce Development;
- (4) "employee" means a person who works for an employer;
- (5) "employer" means a person, including the state and political subdivisions of the state, who has one or more employees;
- (6) "OSHA" means the federal Occupational Safety and Health Administration;
- (7) "physical agent" means a physical agent that exceeds the threshold established in the 1986-1987 edition of "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment" published by the American Conference of Governmental Industrial Hygienists;
- (8) "suitable protective equipment" includes such personal protective equipment as is required by regulation issued under this chapter;
- (9) "toxic or hazardous substance" includes
 - (A) a chemical listed in 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, "General Industry Standards", Occupational Safety and Health Administration;
 - (B) a chemical listed in "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment", American Conference of Governmental Industrial Hygienists (Latest Edition);
 - (C) a substance for which an OSHA form 20 or equivalent information is required under OSHA regulations; and
 - (D) a substance determined by the department, in accordance with AS 44.62 (Administrative Procedure Act), to be a health hazard to an employee who is exposed to the substance, including a carcinogen, reproductive toxin, irritant, corrosive, sensitizer, hepatotoxin, nephrotoxin, neurotoxin, agent that acts on the hematopoietic system, agent that damages the lungs, a cutaneous hazard, and an eye hazard;

(10) "toxic or hazardous substance" does not include

(A) substances that because of their physical state, volume, or concentration do not pose a health hazard upon exposure;

(B) substances that are goods, food, drugs, cosmetics, or tobacco products intended for personal consumption; or

(C) substances in transit;

(11) "transit" means conveyed in a sealed or unopened container by a mode of transportation.

(b) In AS 18.60.030(14), 18.60.065 -- 18.60.068, and (a)(9) of this section

(1) "employee" means a person who works for an employer, but not in a place used primarily as a personal residence;

(2) "employer" means a person, including the state and a political subdivision of the state, who has one or more employees working in a place not used primarily as a personal residence;

(3) "health hazard" means a substance or physical agent capable of causing acute or chronic adverse effects to health;

(4) "workplace" means a place of employment other than a place used primarily as a personal residence.

HISTORY: (§ 43-2-21 ACLA 1949; am § 3 ch 148 SLA 1957; am § 8 ch 72 SLA 1973; am §§ 3, 4 ch 93 SLA 1983; am §§ 5 - 7 ch 35 SLA 1987)

NOTES: REVISOR'S NOTES. --Subsection (a) was reorganized in 1983 to alphabetize the defined terms and in 1987 to maintain alphabetical order. In 1994, in subsection (b), a reference to "(a)(9)" was substituted for a reference to "(a)(10)" to correct a manifest error in § 4, ch. 93, SLA 1983.

In 1999, "commissioner of labor" was changed to "commissioner of labor and workforce development" and "Department of Labor" was changed to "Department of Labor and Workforce Development" in (a) of this section in accordance with § 90, ch. 58, SLA 1999.

OPINIONS OF ATTORNEY GENERAL. --The Department of Labor can publish its list of designated toxic and hazardous substances pursuant to AS 18.60.030(12) and subsection (a) without going through the promulgation proceeding in the Administrative Procedure Act. The list is merely a compilation of chemicals and substances from sources already identified by the legislature. July 18, 1984 Op. Att'y Gen.

As the list to be published by the Department of Labor under AS 18.60.030(12) includes those chemicals and substances described in paragraph (a)(8) [now (a)(9)], they are coextensive. July 18, 1984 Op. Att'y Gen.

The Department of Labor does not have the authority, under subparagraph (a)(9)(A) [now (a)(10)(A)], to promulgate regulations excluding from its list of toxic and hazardous substances those described under subparagraph (a)(8)(A) and (B) [now (a)(9)(A) and (B)]. July 18, 1984 Op. Att'y Gen.

Cosmetic products, when used by employees in a commercial establishment, do not fall within the exemption for products intended for personal consumption under subparagraph (a)(9)(B) [(a)(10)(B)]; therefore, AS 18.60.065 requires that material safety data sheets be provided for cosmetics to be used in commercial establishments. November 1, 1985 Op. Att'y Gen.

NOTES TO DECISIONS

DUTIES IMPOSED ON GENERAL CONTRACTOR. --AS 18.60.010 -- 18.60.105 and the General Safety Code unquestionably impose duties on the general contractor. *Bachner v. Rich*, 554 P.2d 430 (Alaska 1976).

ACTIVITIES COVERED. --The Alaska Occupational Safety Health Act, AS 18.60.010 -- 18.60.105, embraces an enormous number of "unrelated and disparate activities" which make up private enterprise in the State of Alaska and

reaches many commercial undertakings which have no history of regulation, let alone a history of intensive regulation.
Woods & Rohde, Inc. v. State, Dep't of Labor, 565 P.2d 138 (Alaska 1977).

USER NOTE: For more generally applicable notes, see notes under the first section of this article, chapter or title.

FLORIDA STATUTES 1999

*** THIS DOCUMENT IS CURRENT THROUGH THE 1999 LEGISLATIVE SESSION ***

TITLE XXXI LABOR
CHAPTER 442 OCCUPATIONAL SAFETY AND HEALTH

Fla. Stat. § 442.103 (1999)

§ 442.103 Florida Substance List; establishment, content, and revision.

(1) (a) For the purposes of ss. 442.101-442.127, the secretary shall establish the Florida Substance List and make such list available to manufacturers and employers. Substances on the list may be designated by their chemical names or common names. Only those substances specifically enumerated on the list will be subject to the provisions of ss. 442.101-442.127. The secretary shall prepare and amend the list according to the procedures in this section. The list shall be promulgated only after opportunity has been provided for public comment and hearing pursuant to chapter 120 and upon a finding that, according to a preponderance of the evidence, substantial and valid scientific evidence exists that exposure to, or use of, the substance will result in an acute or chronic risk to human health or safety. This list will become official for purposes of ss. 442.106, 442.107, 442.108, 442.109, 442.115, 442.116, and 442.118 upon adjournment of the 1985 Legislature unless, prior to adjournment, the Legislature affirmatively delays implementation of the list.

(b) The secretary shall, no later than 45 days prior to the convening of the Legislature in regular session each year, make a recommendation to the President of the Senate and the Speaker of the House of Representatives on the need for revising the list. The revised list will become effective upon adjournment of the Legislature in the year in which the revision was made unless, prior to adjournment, the Legislature affirmatively delays implementation of such list.

(c) If at any time it is found that a substance that is not on the revised list poses a serious threat to human health or safety, the secretary may promulgate an emergency revision to the list after providing opportunity for public comment and hearing pursuant to chapter 120. The emergency revision will become effective upon promulgation and will remain effective unless the Legislature affirmatively repeals it in the year in which the emergency revision was promulgated.

(2) The list shall contain only specific chemical substances. Generic substances or categories are to be excluded. The list shall be drawn exclusively from those chemical substances enumerated in the most current edition of the following designated source lists:

(a) International Agency for Research on Cancer (Sublist: "Substances found to have at least sufficient evidence of carcinogenicity in animals").

(b) National Toxicology Program list of chemicals published in the annual report on carcinogens.

(c) Occupational Safety and Health Administration, Toxic and Hazardous Substances, 29 C.F.R. s. 1910, subpart Z.

(d) National Institute for Occupational Safety and Health/Occupational Safety and Health Administration, Occupational Health Guidelines for Chemical Hazards.

(e) American Conference of Governmental Industrial Hygienists, Threshold Limit Value for Chemical Substances and Physical Agents in the Workplace.] *

(f) Environmental Protection Agency, Carcinogenic Assessment Group's List of Carcinogens.

(g) National Cancer Institute (substances that meet the National Toxicology Program criteria for significant carcinogenic effect).

(h) National Fire Protection Association, Hazardous Chemicals (NFPA 49).

(i) National Fire Protection Association, Fire Hazard Properties of Flammable Liquids, Gases, Volatile Solids (NFPA 325M). (All items rated II through IV as health hazards or III through IV as flammability or reactivity hazards.)

(j) Extremely Hazardous Substances, Threshold Planning Quantities, and Reportable Quantities, 40 C.F.R. part 300, n2 Appendix D and Appendix E.

(3) For the purposes of ss. 442.101-442.127, a toxic substance is present in any mixture if it is 1 percent or more of the mixture, or 2 percent or more of the mixture if the toxic substance exists as an impurity in the mixture. However, the secretary may, by rule, raise the concentration requirement for a toxic substance which she or he finds is not toxic at the threshold levels, and she or he may lower the concentration requirement for a toxic substance, including a carcinogen or neurotoxin, for which there is valid and substantial scientific evidence that the substance is extraordinarily toxic. The manufacturer of a toxic substance shall notify the secretary of any valid evidence which indicates either:

(a) That the concentration requirement for a toxic substance is higher than is necessary to protect employees who work with, or may be exposed to, the substance; or

(b) That the concentration levels should be lowered because there is valid and substantial evidence that the substance is extraordinarily toxic.

(4) The provisions of ss. 442.101-442.127 do not apply to:

(a) Impurities which develop as intermediate materials during chemical processing but are not present in the final mixture and to which employee exposure is unlikely;

(b) Substances which are toxic solely due to chronic ingestion;

(c) Alcoholic beverages as defined in the Beverage Law;

(d) Substances which are merely being transported through the state as part of a through-shipment in interstate commerce;

(e) Substances or mixtures which may be toxic but which are labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or the Federal Food, Drug, and Cosmetic Act, as amended;

(f) Articles; or

(g) Any hazardous waste as defined by the federal Resource Conservation and Recovery Act of 1976.

(5) The secretary shall review the Florida Substance List annually. Any revision of the Florida Substance List shall be made only after opportunity has been provided for public comment and hearing pursuant to chapter 120 and upon the secretary's finding that, according to a preponderance of the evidence, substantial and valid scientific evidence exists that any substance added pursuant to this subsection results in an acute or chronic risk to human health or safety.

(6) Substances that are not present on the Florida Substance List established pursuant to this section are not subject to the provisions of ss. 442.101-442.127.

(7) The provisions of ss. 442.108, 442.111, 442.112, 442.113, 442.118, 442.119, and 442.121 do not apply to toxic substances which are:

(a) Stored in sealed containers;

(b) Sold at retail trade establishments as consumer products; and

(c) Not manufactured, produced, used, or applied in the workplace.

HISTORY: s. 4, ch. 84-223; s. 2, ch. 86-45; s. 2, ch. 87-202; s. 133, ch. 97-103; s. 14, ch. 99-240.

NOTES:

n1 Repealed effective July 1, 2000, by s. 14, ch. 99-240.

n2 Appendix D and Appendix E no longer exist as part of 40 C.F.R. part 300.

**Public Safety Advisory Council
Member and Staff List**

Name	Company	Address	City	St	Zip	Work Phone	Fax	Organization	CM
Sheri Ackley	UW System Administration	Environmental Health & Safety Office 780 Regent St Ste 145	Madison	WI	53715	(608) 265-5383	(608) 262-8589	The University of WI System	CM
Richard Bayer	Cities & Villages Mutual Insurance Company	400 N Executive Dr Ste 105	Brookfield	WI	53005	(414) 784-5666	(414) 784-5599	WI Alliance of Cities	CM
Ken M. Blomberg	WI Rural Water Association	350 Water Way	Plover	WI	54467	(715) 344-7778	(715) 344-5555	WI Rural Water Association	CM
Jerry Conway	WI Dept of Administration	State Risk Management 101 E Wilson PO Box 7844	Madison	WI	53707-7844	(608) 267-2729	(608) 264-8250	WI Department of Administration	CM
Kurt A. Dally	Green Bay Metropolitan Sewerage District	2231 N Quincy St PO Box 19015	Green Bay	WI	54307-9015	(920) 432-4893	(920) 432-4302	Green Bay Metropolitan Sewerage District	CM
Vance Forrest	Aegis Corporation	18550 W Capitol Dr	Brookfield	WI	53045	(800) 236-6885	(414) 781-7743	WI Counties Association	CM
Judith A. Grzegorski	Milwaukee Metro Sewerage District	700 E Jones St	Milwaukee	WI	53207	(414) 747-3868	(414) 482-3596	Milwaukee Metro Sewerage District	CM
Ron Kent	AFSCME - WI Office	8033 Excelsior Dr Ste A	Madison	WI	53717-1903	(608) 836-6666	(608) 836-3333	American Federation of State, County & Municipal Employees, AFL-CIO	CM
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Eskeitz, Anne

From: Sherry Knutson [sknutson@pjmlaw.com]
Sent: Tuesday, April 25, 2000 12:17 PM
To: Anne.Eskeitz@legis.state.wi.us
Subject: Clearinghouse Rule 99-139

Ms. Eskeitz

I left a phone message for you today, but am also sending an e-mail as this matter is very important to my client and is of some urgency. I represent Fisher Hamilton, a company in Two Rivers, Wisconsin, which employs over 1000 Wisconsin residents and has been in Two Rivers since 1880. It has just come to our attention that there is a proposed revision (Clearinghouse Rule 99-139) to Wis. Admin. Code COMM 32.24 with regard to the minimum face velocity of fume hoods. (Fisher Hamilton is the largest manufacturer of fume hoods in the country.)

I am trying to obtain all information possible about Clearinghouse Rule 99-139. I am contacting you because the Senate Committee on Labor reviewed this rule from 12/20/99 to 3/7/00. I do understand that the rule has already passed committee review, although it has not yet been received by the Revisor of Statutes or published in the Register.

If possible, I would appreciate it if you could send me a copy of the Legislative Report for Clearinghouse Rule 99-139. Also, I have been unable to locate a copy of the rule that passed committee review. (Modifications were received on 2/28/00.) If you could send me a copy of the rule that passed, I would appreciate it.

My address is: Peterson, Johnson & Murray, S.C., 733 N. Van Buren, 6th Floor, Milwaukee, WI 53202; phone 414-278-8800; fax 414-278-0920.

Please contact me if you have any questions.
Sherry Knutson



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Sherry Knutson

CR99-139

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. **581**

12-30-99. Referred to committee on Labor and Employment. **581**

01-31-00. No action taken.

SENATE ACTION

12-20-99. Report received from Agency. **372**

12-22-99. Referred to committee on Labor. **372**

01-18-00. Public hearing held.

01-18-00. Meeting with Agency requested.

01-25-00. Meeting with Agency held.

01-27-00. Modifications requested.

01-27-00. Modification refused.

02-03-00. Report objection recommended, Ayes 3, Noes 2. **420**

02-03-00. Referred to joint committee for review of Administrative Rules. *(J.C.R.A.A.)*. **420**

02-24-00. Public hearing held.

02-24-00. Executive session held.

02-24-00. Modifications requested.

02-28-00. Modifications received.

03-07-00. Report nonconcurrence in objection, Ayes 10, Noes 0. **478**

*Sherry - I am waiting for
Committee record from JCAAA
& will fax it.
Anne Eckert*

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

March 16, 2000

BY INTER-D MAIL

Brenda Blanchard
Secretary, Department of Commerce
201 West Washington Avenue
Madison, WI

Re: Clearinghouse Rule 99-139 (Comm 32)

Dear Secretary Blanchard:

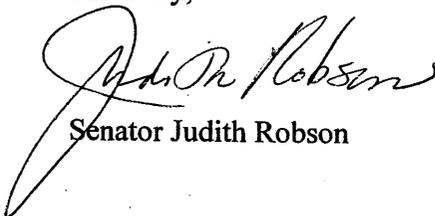
Thank you for your letter of February 28, 2000 regarding Clearinghouse Rule 99-139 (Comm 32). We appreciate your prompt reply, as well as the response of the Department to the concerns of the Joint Committee for Review of Administrative Rules.

Based on your response, the Joint Committee for Review of Administrative Rules met in executive session on March 7, 2000. At that meeting, the committee unanimously adopted the following motion:

THAT, pursuant to § 227.19(5)(d), *Wisconsin State Statutes*, and because of the modifications agreed to by the Department of Commerce in its February 28, 2000 letter to the committee's co-chairs, the Joint Committee for the Review of Administrative Rules DOES NOT concur in the objection of the Senate Committee on Labor to Clearinghouse Rule 99-139 (COMM 32), relating to public health and safety.

Thank you for your ongoing efforts to protect Wisconsin's workers.

Sincerely,



Senator Judith Robson



Representative Glenn Grothman

January 4, 1999

TO: Members of the Senate Labor Committee

Senator Russell Decker Senator David Zien
Senator Roger Breske Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

Re: Clearinghouse Rule referred to Senate Labor Committee

The following rule was referred to the Committee on December 22, 1999.

CLEARINGHOUSE RULE 99-139, relating to public employe safety and health. Submitted by the Department of Commerce.

Attached is a copy of the rule. As I advised you last week, the AFL-CIO has some problems with this rule & wants a public hearing.

Please **mark your calendars** for a public hearing on **Wednesday Morning, January 19th** (time to be determined) on this rule & several bills that have been referred to the Labor Committee.

cc: Dan Fernbach, Legislative Council Attorney

January 27, 2000

TO: Members of the Senate Labor Committee

Senator Russell Decker
Senator Roger Breske

Senator David Zien
Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

RE: Clearinghouse Rule Senate 99-139, relating to public employe safety and health.

.....
PAPER BALLOT FOR OBJECTION TO CLEARINGHOUSE RULE 99-139

MOTION

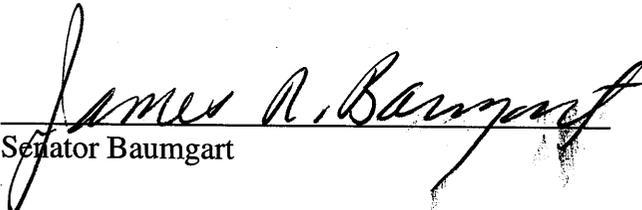
Moved by Senator Baumgart, Chair

THAT, pursuant to s. 227.19(4)(b) 2., Stats., the Senate Labor Committee requests modifications to Clearinghouse Rule 99-139, because certain public employe health and safety standards, specifically those cited in ss. ILHR 32.17 and Table 32.50-3, effective September 1, 1995, as originally set forth in ch. ILHR 32, Wis. Adm. Code, have not been incorporated in present ch. Comm 32, Wis. Adm. Code; and

THAT, if the Department of Commerce, on or before February 2, 2000, does not agree to incorporate the above-cited standards into present ch. Comm 32, Clearinghouse Rule 99-139 is objected to in its entirety pursuant to s. 227.19(4)(d) 6., Stats.

AYE: _____

NO: _____



Senator Baumgart

January 27, 2000

TO: Members of the Senate Labor Committee

Senator Russell Decker
Senator Roger Breske

Senator David Zien
Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

RE: Clearinghouse Rule Senate 99-139, relating to public employe safety and health.

.....
PAPER BALLOT FOR OBJECTION TO CLEARINGHOUSE RULE 99-139

MOTION

Moved by Senator Baumgart, Chair

THAT, pursuant to s. 227.19(4)(b) 2., Stats., the Senate Labor Committee requests modifications to Clearinghouse Rule 99-139, because certain public employe health and safety standards, specifically those cited in ss. ILHR 32.17 and Table 32.50-3, effective September 1, 1995, as originally set forth in ch. ILHR 32, Wis. Adm. Code, have not been incorporated in present ch. Comm 32, Wis. Adm. Code; and

THAT, if the Department of Commerce, on or before February 2, 2000, does not agree to incorporate the above-cited standards into present ch. Comm 32, Clearinghouse Rule 99-139 is objected to in its entirety pursuant to s. 227.19(4)(d) 6., Stats.

AYE: X

NO: _____

Russ Decker
Senator Decker

January 27, 2000

TO: Members of the Senate Labor Committee

Senator Russell Decker
Senator Roger Breske

Senator David Zien
Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

RE: Clearinghouse Rule Senate 99-139, relating to public employe safety and health.

.....

PAPER BALLOT FOR OBJECTION TO CLEARINGHOUSE RULE 99-139

MOTION

Moved by Senator Baumgart, Chair

THAT, pursuant to s. 227.19(4)(b) 2., Stats., the Senate Labor Committee requests modifications to Clearinghouse Rule 99-139, because certain public employe health and safety standards, specifically those cited in ss. ILHR 32.17 and Table 32.50-3, effective September 1, 1995, as originally set forth in ch. ILHR 32, Wis. Adm. Code. have not been incorporated in present ch. Comm 32, Wis. Adm. Code; and

THAT, if the Department of Commerce, on or before February 2, 2000, does not agree to incorporate the above-cited standards into present ch. Comm 32, Clearinghouse Rule 99-139 is objected to in its entirety pursuant to s. 227.19(4)(d) 6., Stats.

AYE: _____

NO: X

Margaret Farrow
Senator Farrow

February 1, 2000

Brenda J. Blanchard, Secretary
Department of Commerce
201 W. Washington Ave.
Madison, WI 53702

Dear Secretary Blanchard:

Pursuant to my letter to you, dated January 27, 2000, and your response on that same date, please be advised that the Senate Labor Committee will object to Clearinghouse Rule 99-139, relating to public employe safety and health.

The members of the Senate Labor Committee have returned a Paper Ballot for Objection to Clearinghouse Rule 99-139. The result of that vote was 3 Ayes and 2 Noes.

Unless I hear further from you, the rule will be reported out of this committee on Tuesday, **February 2, 2000** reflecting **OBJECTION RECOMMENDED**.

Sincerely,

Senator Jim Baumgart, Chair
Senate Labor Committee

JB:ae
cc: Chris Spooner

January 27, 2000

Brenda J. Blanchard, Secretary
Department of Commerce
201 W. Washington Ave.
Madison, WI 53702

Dear Secretary Blanchard:

As discussed at our meeting with representatives of the Department of Commerce, on January 25, we are requesting the Department to modify Clearinghouse Rule 99-139, relating to public employee safety and health as provided on the attached page.

Due to the expiration of the Senate Labor Committee's review period, please advise me in writing **on or before noon, February 2, 2000**, whether the Department agrees to make the attached modifications or similar modifications to CR 99-139.

If the Department is unwilling to make the modifications or if we do not receive written notice by the above time, I will distribute a ballot motion to the members of the Senate Labor Committee that objects to CR 99-139 in its entirety.

I look forward to hearing from you.

Sincerely,

Senator Jim Baumgart, Chair
Senate Labor Committee

JB:ae

Cc: Chris Spooner, Department of Commerce
Mike Corry, Department of Commerce
Eric Hands, Department of Commerce

Insert before SECTION 1:

SECTION . Comm 32.17 is created to read:

Comm32.17 ACGIH STANDARDS. All places of employment and public buildings of a public employer shall comply with the American Conference of Governmental Industrial Hygienists (ACGIH) threshold limit values and biological exposure indices adopted under s. Comm 32.50. The ACGIH standards apply only to the substances not covered by the OSHA standards specified in s. Comm 32.15.

Insert after SECTION 13:

SECTION . Comm 32.50 Table 32.50-3 is created to read:

Table 32.50-3

ACGIH American Conference of Governmental
 Industrial Hygienists
 Technical Affairs Office
 1330 Kemper Meadow Drive
 Cincinnati, OH 45240
 Telephone: 513/742-2020

1. Threshold Limit Values for Chemical Substances and Physical Agents, and Biological Exposure Indices, 1999-2000 Edition.
-

January 27, 2000

Senator James Baumgart
Post Office Box 7882
Madison, WI 53707-7882

Dear Baumgart:

The Wisconsin Department of Commerce has recommended the improvements included in Clearinghouse Rule 99-139 and requests approval of the rule as proposed. To address the concerns that have been raised, the Department will create a new advisory council to review the current code and consider ramifications of including the American Conference of Governmental Industrial Hygienists (ACGIH) recommendations in the next review of Comm 32.

We are not aware of an objection to the language in the rule as proposed. However, the issues brought forth at this time relate to a lack of inclusion of interested parties in the administrative code development process and to a request for the inclusion of language not currently being proposed.

We understand and appreciate the need to include additional members in the administrative rule making process. Additional members representing public employee organizations, such as AFSCME and WEAC/AFT will be considered in the membership of the next advisory council.

As for the second concern, we do not support the adoption of the ACGIH recommendations as was once adopted, by chapter ILHR 32 in August 1995. When the ACGIH recommendations were adopted in August of 1995, no formal, advisory council review process existed. The review of chapter ILHR 32 at that time was conducted internally. Furthermore, there never was full implementation of the standard; and therefore, the impact was not realized. Lastly, the ACGIH policy statement on the use of TLVs/BEIs states:

They (Threshold Limit Values) are not developed for use as legal standards, and the American Conference of Governmental Industrial Hygienists (ACGIH) does not advocate their use as such. However, it is recognized that in certain circumstances individuals or organizations may wish to make use of these recommendations or guidelines as a supplement to their occupational safety and health program.

The ACGIH recommendations are not consensus standards. Therefore, the necessary discussion and study was not conducted to determine the impact of implementing the ACGIH recommendations, without full consideration of all ramifications.

The code is on an annual review cycle and a formal advisory council will assist the Department in next update, which is currently scheduled for the end of the year. The Department of Commerce respectfully requests adoption of the rule and will create a new advisory council to review the code and consider the inclusion of the ACGIH recommendations.

Thank you for your consideration of this matter.

Sincerely,

for 
Brenda J. Blanchard
Secretary

January 25, 2000

TO: Members of the Senate Labor Committee

Senator Russell Decker Senator David Zien
Senator Roger Breske Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

Re: Clearinghouse Rules 99-139, relating to public employe
safety and health. (Department of Commerce)

At the meeting in my office this morning relating to the above Clearinghouse Rule, an informal request was made to the Department of Commerce to modify the rule and get back to me by Thursday.

If the department does not agree to modify the rule on Thursday, Dan Fernbach, the Legislative Council Attorney, has prepared a letter to send to the Department. Attached is a copy of that letter. You will note the letter refers to a ballot motion to be sent to our committee members. Attached is the ballot referred to above.

If the Department refuses to modify the rule, the jurisdiction of the committee will expire on February 2. Therefore, I ask that you sign and return the ballot to my office as soon as possible so we will be ready to use the ballot and object to the rule if need be. If not, the ballot will not be used.

January 18, 2000

Brenda J. Blanchard, Secretary
Department of Commerce
201 W. Washington Ave.
Madison, WI 53702

Dear Secretary Blanchard:

Pursuant to section 227.19(4)(b)1. a. of the Wisconsin Statutes, the Senate Labor Committee hereby requests a meeting with the agency to review and discuss possible modifications to Clearinghouse Rule Senate 99-139, relating to public employe safety and health. The rule was referred to the Senate Labor Committee on December 22, 1999, and a public hearing was held on the rule on January 18, 2000.

The meeting will be held on Tuesday, January 25, 2000, at 9:00 A.M., in my office at Room 306, State Capitol.

Sincerely,

Jim Baumgart, Chair
Senate Labor Committee

JB:a

cc: Christopher Spooner, Legislative Liaison,
Dept. of Commerce
Dennis Boyer & Ron Kent, AFSCME
Labor Committee Members