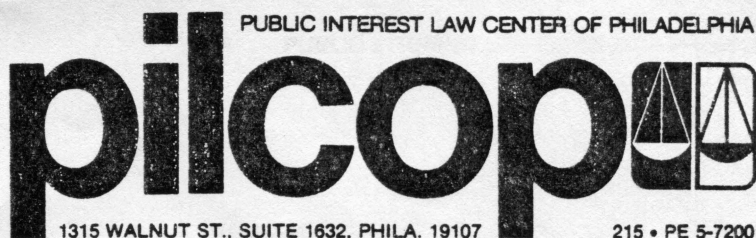


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May 18, 1984

Dr. Kenneth D. Rosenman
Occupational Health Program
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625

Re: Special Health Hazards

Dear Dr. Rosenman:

I have given some thought to the subject of developing a Special Health Hazard Substance List, as required by Section 5(b) of the Act, in light of the definition of Hazardous Substance under Section 3(m) of the Act:

Section 5(b) provides that:

"The [Department of Health] shall develop a special health hazard substance list comprising hazardous substances which, because of their known carcinogenicity, mutagenicity, teratogenicity, flammability, explosiveness, corrosivity, or reactivity pose a special hazard to health and safety, and for which an employer shall not be permitted to make a trade secret claim."

According to Section 3(m), hazardous substances, under the Act, do not include:

"3(m) (3). Any hazardous substance which is a special health hazard substance constituting less than the threshold percentage established by the Department of Health for that special health hazard substance when present in a mixture...."

As I interpret Section 3(m) (3), the Department of Health has the discretion to establish for each Special Health Hazard Substance

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an appropriate threshold percentage when such substance exists in a mixture. Section 3(m)(3) does not preclude the Department of Health from setting a zero percentage for any particular, or group of, Special Health Hazards. Where the Department of Health assigns a zero percentage threshold to a Special Health Hazard Substance, the employer will be required to provide survey and container label information about that Substance if the employer knows or has reason to know of its presence in the mixture.

It may very well be that for substances which are flammables, corrosives, or explosives/reactives establishing a threshold percentage makes no scientific sense and therefore that a zero threshold percentage be assigned. Indeed, there may be genotoxics which warrant a zero threshold percentage.

I believe that Section 3(m)(3) should also be understood to mean that if the percentage of the Special Health Hazard Substance in a mixture is below the threshold percentage for the substance established by the Department of Health, it nevertheless is a hazardous substance if in the aggregate the amount of the substance at the facility is 500 pounds or more. This construction of Section 3(m)(3) logically follows from the fact that a hazardous (but not a special health hazard) substance is considered to be a hazardous substance if in the aggregate there is 500 pounds or more at the facility even if it exists in a mixture at less than the threshold percentage of one (1) percent because Section 3(m)(2) provides that hazardous substances, under the Act, do not include:

"3(m)(2). Any hazardous substance constituting less than 1% of a mixture unless the hazardous substance is present in an aggregate amount of 500 pounds or more at a facility." (Emphasis added).

I hope you find these comments helpful.

Yours very truly,


Jerome Balter

JB/ram

cc: Kathleen O'Leary
Ed Tetelman
Rick Engler
James Lanard