

PUBCO

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Winter Issue

Pub and Bar Coalition of Canada — PUBCO

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PUBCO to pursue \$500,000,000 provincial compensation if smoking ban implemented

Beer statistics highlight destruction of Pub and Bar industry

Latest figures provided by the Canadian Brewers Association clearly show 100% smoking bans undermine the financial stability of Ontario's pub and bar industry. Figures for Kingston, London, Cornwall, and Belleville during the first four months of such bans show an average drop in licensee beer sales of almost 6% greater than in areas where no such bans exist. Licensee beer sales figures for the last two years clearly indicate that in practically every instance there is a drastic drop once bans are adopted. This is definitely not a short-term trend as claimed by various proponents of the health industry. For example, in Ottawa and Oakville decreases in beer sales of 6.6% and 10.78% were experienced respective-

ly during first 12 months of their bans. In both instances, decreases were over and above the average for areas where no bans were in effect.

Based on what has already occurred in areas where bans have been implemented, a province wide smoking ban would result in the closure of at least 900 small pubs and bars, most of which are family owned. No industry should have to undergo such an attack from its own government and PUBCO believes that the provincial government should provide bar-owners with \$500,000,000 in compensation if they insist on pursuing this misguided policy.

PUBCO will be actively lobbying the new Liberal government requesting immediate action be taken to

prevent such a melt down. It appears that so far the government has been listening only to the anti-tobacco advocates and, as is obvious to anyone who has studied the actual facts, their claims as to what is happening on both the health and economic fronts are both flawed and wildly exaggerated.

The time is long overdue for the government to thoroughly review the issue taking into account the input of all effected parties. This must include a realistic assessment of the economic impact of smoking bans on pubs and bars.

There remains no doubt whatsoever that smoking bans are a financial disaster for our industry.

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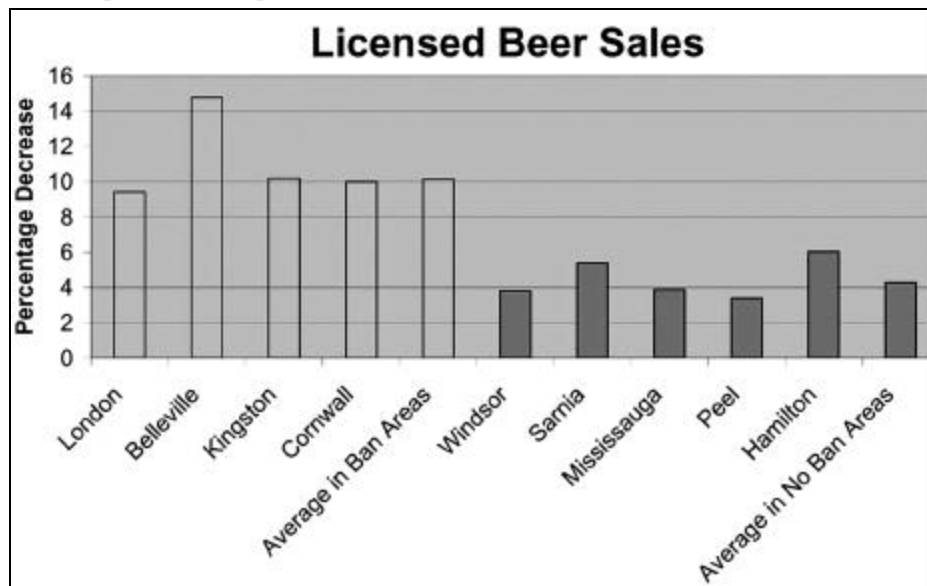


Chart shows licensed beer sales reductions in four month period 1/7/03 to 31/10/03 compared to four month period 1/7/02 to 1/1002. 100% smoking bans implemented in London, Belleville, Kingston, Cornwall 1/7/03. No bans in other areas.

PUBCO... from page 1

Even owners who manage to survive smoking bans find that the equity in their businesses has been wiped out. As for environmental tobacco smoke (ETS), the recent British Medical Journal serves once again to raise serious questions as to the validity of claims made as to the hazards ETS allegedly poses.

PUBCO strongly urges all owners - not only PUBCO members - who are concerned for the future of their businesses to write, fax, email or phone immediately both their local MPP and Premier McGuinty. You should fully explain your concerns and insist that, before making any final decision, the government listen to the owners' side of the story on the issues of economics and the exaggerated claims being made regarding secondary smoke. You should also stress that

you expect to be compensated for the financial impact of the smoking ban in the event that the proposed legislation is introduced. If you are unfortunate enough to reside in an area where such a ban already exists, you should also point out the impact that

the ban has already had on your business. If you can get your staff customers and staff to write in as well - so much the better.

Remember that politicians usually figure that one letter represents about 100 constituents and ten letters to

a politician will usually result in some action.

We can bring about the return of reason to this situation but it will take the united efforts of owners across Ontario to achieve it. So don't delay - write those letters today!

Protect Your Licence

Those of you who have been in the business for years know how different things are now in Ontario. The application process takes longer and is more complex. Enforcement by police and inspections by the AGCO are more rigorous. Add this to a difficult business year because of SARS and the Blackout and you have establishments hanging on for life minute by minute.

Though times are tough and challenging, there are things you can do to make the application process easier and less problematic and things you can

do to minimize problems with the police and liquor inspectors. Planning ahead rather than leaving things to the last minute or responding to emergencies will save you grief. Here are 10 things to keep in mind:

1. When applying for a licence make sure you fill out the application form properly and get the right input so that you maximize your capacity and minimize delays in processing.

WHY? If your application is incomplete or inaccurate, it will be returned or put at the bottom

of the pile. If you fail to disclose important information you will be under suspicion and be subject to a lengthy investigation that could delay your application for months. If you have not designed your space properly or have not applied the right formula, you may not get the capacity you could.

2. When applying for a licence or additional facilities such as a patio, have a plan to deal with potential objections from the neighbourhood and the municipality.

Continued on page 3

AGCO POLICE LIQUOR INSPECTORS

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PROBLEMS SINCE '95**

PROTECT YOUR LIQUOR LICENCE

Protect Your Licence.. *continued from p. 2*

WHY? Objections from neighbours and the municipality could delay your application for many months if not longer subjecting you to public hearings that could result in the denial of your application. With the right plan and proper dialogue you can many times satisfy the objectors or minimize the potential damage they can cause to your application.

3. Make sure your staff are Smart Served, give them a written policy for your operation, and have regular meetings with them.

WHY? No matter how well you run your establishment, one slip from a customer or staff can result in police charges and problems with the AGCO. Staff turnover is high so what you need, and what the police and the inspectors are looking for are rules by which your business operates in the sale and service of alcohol. So even if you are charged or receive a Notice of Proposal from the AGCO to suspend or revoke your licence, you can hopefully demonstrate that the problem was isolated and a mistake and that therefore your penalty should be minimal.

4. Get to know your inspector and the local police and keep a good dialogue going.

WHY? Most inspectors and police simply want your operation to be run lawfully. If they see you are trying to keep within your capacity, check ID's properly for minors and control intoxication, they will not come down hard on you. Licensees who have the most problems are usually ones the police and inspectors feel are antagonistic and ignore their advice.

5. Keep good records of purchases and sales, logs when capacity is an issue and notes when incidents occur.

WHY? Operators who do not have records are immediately under suspicion. If you do have good records and notes of inci-

dents it makes it easier to defend you when you are charged or up before the AGCO. Many times your word against the police or inspectors is not good enough.

6. Make sure you have a strict policy of taking care of patrons who do become intoxicated or are on the borderline, including preventing them from driving under the influence.

WHY? You have heard the news items of bars being held responsible for injuries or deaths. Do you want or need that kind of burden? Increasingly insurers are canceling policies and not renewing them for establishments with records. If you cannot get insurance or your premiums soar, you are out of business and your personal exposure to liability is substantial.

7. When you receive a police charge or a Notice of Proposal from the AGCO to suspend or revoke your licence, do not panic, be very careful what you say or admit to, and call a knowledgeable professional immediately.

WHY? Many times when confronted by the police or inspectors staff or owners apologize and admit to anything they are accused of. The police and inspectors put that down in notes which are used against you. Many times the police suggest you plead guilty and pay a low fine. What they do not tell you is that you are likely to be in trouble with the AGCO for the same thing and pleading guilty before you get to the AGCO on a hearing to suspend or revoke your licence could jeopardize your defense. If you represent yourself or have someone who does not specialize in Liquor Licence matters, you can often times make a bad situation a disaster.

8. Keep an eye on your competition. Visit their operations to see how their staff handle situations and get a feel for how they run their business.

News from around the world

State of New York admits bars damaged by smoking ban - announces provision for waivers

— announces provision for waivers

The State of New York is beginning to process claims for waivers for hundreds of owners throughout the State who have been financially damaged by the recently enacted smoking ban.

Backing down under the tremendous pressure exerted by New York State bar owners Governor Pataki has announced a plan by which bars hit hard by the NY State smoking ban can apply for waivers to exempt them from the no smoking legislation. The waivers could potentially lead to one in 10 bars and restaurants statewide allowing smoking despite the 5-month-old ban on indoor smoking in workplaces, an advocate of the waivers said.

There are several provisos governing issuance of such waivers one of which is that a business can show it lost 15 percent of their business since the ban was established compared to similar periods

Hundreds of business owners have inquired about waivers since the indoor smoking ban went into effect July 24. Scott

Wexler of The Empire State Restaurant & Tavern Association roughly estimated, based on applicants in one county, that as much as 10 percent of the state's thousands of bars and restaurants could allow smoking.

PUBCO sincerely hopes that the McGuinty government takes the New York situation into account when considering the development of provincial smoking legislation. New York Governor Pataki was clearly warned that the imposition of 100% no smoking legislation would result in financial disaster for the New York Pub and Bar Industry and yet he chose to ignore such warnings. Thousands of NY State bars are now facing financial difficulties and he is attempting to extricate himself from the implications of a bad decision. The waiver system is an attempt at a political compromise and although it will save some New York bars from ruin, there will be many for whom it will be a case of "too little too late." For the Ontario government to repeat this fiasco, especially with all of the new information now available, would be unconscionable.

WHY? Inspectors and police compare operations. If you run your business and handle situations better than your competition you will be less likely to have problems.

9. Read the Liquor Licence Act and its regulations.

WHY? It is not fun reading. But it will tell you things that will surprise you about your business and the problems you could have. It will also make you better prepared to deal with the police and the inspectors and they will respect your knowledge.

10. Sit down with a professional who has experience in Liquor Licence issues sooner rather than

later to review your operation and help you develop a plan.

WHY? If you are ready for challenges and problems you will minimize the headaches and financial losses that will occur. This will help you focus on the things that will help you have a successful business.

Keep these things in mind. Plan for the future and you will give yourselves a competitive edge. Your business will be less prone to setbacks and losses and you will protect your licence.

Jerry Levitan of Levitan Lawyers is a lawyer who specializes in liquor licence matters. Gerry Solursh is President of Alcohol Compliance Consultants Ltd.

Kenora Smoking Ban Extinguished

Appeal Board Decision favours owners

After a year of hearings and recent delays, a Health Services Appeal and Review Board has rescinded an order by medical officer of health Dr. Pete Sarsfield.

He told bars and restaurants to go entirely smoke free in 2002 but the appeals board says the order is beyond the scope of Sarsfield's authority who acted unilaterally in his decision to ban smoking.

Sarsfield had argued that it was his prerogative to protect citizens from the dangers of secondhand smoke. A strong opposition comprised of local restaurant and hotel operators won an interim stay of Sarsfield's order within a month of it being implemented.

There has been smoking in public places ever since and with the decision of the board, smoking will continue until the municipality or the province passes its own indoor smoking ban.



Debunking the Myths — Myth # 2: Municipal smoking ban by-laws are implemented by means of a valid democratic process

T Truth: Not a chance. What happens in most cases is that before any smoking policy is publicly announced, local health unit personnel are busy propagating their junk science and flawed poll arguments among mayor and council members claiming that smoking bans in bars are absolutely essential and what the public wants. Thus, by the time the public is informed of the Council's proposal a sufficient number of councillors have been brow-beaten into accepting that a ban is the right way to go. Subsequently, the public hearing process is nothing more than a sham, as the majority of councillors are

already in the bag before any open debate even gets off the ground.

Haldimand County is a typical example of how the process can be manipulated. For starters, PUBCO was given the bureaucratic run around when we attempted to find out when and where public meetings were scheduled. Some local bar owners were not even aware of the proposal until after the by-law was passed, and it took less than a month between the tabling of the proposal in Council and the passing of the by-law. The whole process made a mockery of democracy.

DEBUNKING THE MYTHS — Myth No 1: Smokers Cost the Health Care System Money

Truth: Health care costs for smokers at a given age are higher than those for non-smokers, but in a population where no one smoked the costs would be 7% higher among men and 4% higher among women than the costs in the current mixed population of smokers and non-smokers.

If all smokers quit, health care costs would be lower at first but after 15 years they would become higher than at present. In the long term, complete smoking cessation would produce a net increase in health care costs.

The Health Care Costs of Smoking, Barendregt et al, New England Journal of Medicine 10/9/97.

Across Canada

Facts and Figures Regarding the eighty-day Smoking Ban in British Columbia

48 Hours — Notice that was given to the hospitality industry that their ventilation proposals were rejected “out of hand”

80 Days — The duration of the 100% smoking ban, until the B.C. supreme Court threw it out for lack of proper consultation

with affected parties.

\$6 Billion — The value of the hospitality industry in British Columbia

\$100 Million — The estimated cost of a class action suit launched against the WCB by a northern B.C. hotelier.

11% — Drop in liquor sales during Jan/Feb 2000 compared to Jan/Feb 1999. - Source BC Liquor Distribution Branch

13% — Drop in draft beer sales during Jan/Feb 2000 compared with Jan/Feb 1999, equal to approximately 3 million dollars. — Source BC Liquor Distribution Branch

730 — Number of layoffs that were directly reported to the Coalition of Hospitality Organizations by individual establishments. A fax back request was sent only to members of the different organizations, and only those that reported back were counted. Therefore the actual number is expected to be greater.

Continued on page 5

Gatineau-Quebec — Councillors Break Law To Enact Smoke Free Legislation

Owners of pubs and bars in this region which has more than 300 licensed establishments and sits just minutes away from the nation's capital, are poised to fight local councillors in their attempt to pass a 100 percent smoking ban.

The attempt differs from that made in Ottawa in that the Provincial legislation does not give the municipalities the right to enact more stringent regulations than are already

contained in the Provincial legislation.

In December, the city, without consultation and behind closed doors, approached the Province to seek permission to pass its own bylaw. The province has agreed to let the region proceed and has also agreed to provide the necessary funding required to implement the by-law. The Feds have also go their cheque book out; it is Quebec after all - and between

them they are prepared to cough up half a million dollars of tax-payer' money to destroy Gatineau's pub and bar industry.

At a very well attended meeting organized by PUBCO in Gatineau in early January, owners discussed some of the alternatives being introduced in other provinces such as B.C. and Nova Scotia but agreed that a court fight is probably imminent. "We saw what happened in Ottawa. There are still places closing over there," said Dan Moreau, owner of La Boite du Chanson and leader of the new

group. "Owners from across the Province are interested in what is happening here in Gatineau." Continued Moreau, "They understand that the local government is trying to change the landscape of the Provincial legislation which was designed to protect our industry from these kind of intrusive bylaws. We have support from as far away as Chicoutimi to fight our Council here in Hull and we continue to gain support from across the Province," he said.

For updates in Quebec and other Provinces be sure to visit www.pubcoalition.com

The government is sponsoring regional town hall sessions in these communities to hear citizens' views about how to meet priorities and approaches the government should follow in setting out its first budget. Most sessions will be held in the evening from 6:30 to 9:30 p.m.

Kitchener-Waterloo March 2
Strathroy March 4
Ottawa March 11

Meetings had already taken place in London, Etobicoke and Hamilton at press time.

Have your say!

There are 446 Municipalities in Ontario

- ✓ 17 municipalities allow for DSRs* in workplaces
- ✓ 28 municipalities allow for DSRs in restaurants and/or bars
- ✓ 41 municipalities allow for DSRs in bingo halls
- ✓ 15 municipalities allow for DSRs in bowling alleys
- ✓ 6 municipalities allow for DSRs in billiard halls
- ✓ 21 municipalities allow for DSRs in gaming establishments
- ✓ 5 municipalities ban smoking on outdoor patios (Haldimand, Kingston, New Tecumseh, Sault Ste Marie, Thunder Bay).

* DSR = Designated Smoking Room

Facts and Figures... from page 4

67% — Percentage of female laid-off employees.

5 Million — Drop in revenues at charitable bingos during 80 day ban. — *Source BC Bingo Council*

100 — Approximate number of operators that pulled the Keno/Pull tab provincial lottery machines from their businesses in protest. This represented millions of lost revenue to the BC treasury.

5000 — Number of posters placed around the province to encourage patrons to call their MLA to complain

3000 — Number of employees who faxed a letter to the WCB

70000 — Number of post cards that were sent to the Premier's office from workers and patrons saying "Accept a ventilation standard."

According to a poll undertaken by Market Explorers in British Columbia

64% of British Columbians believed the WCB was heavy handed in its approach

79% believed that ventilation solutions should be considered by the government.

77% believed that workers should be able to choose whether or not to work in a smoking or non smoking section.

62% believed that owners should be able to choose whether amoking is allowed in their business.

Ottawa Adds Patio Standard

When the smoking bylaw was initiated, Ottawa was one of 34 municipalities that exempted Outdoor patio's from the public places legislation. Ottawa used a heavy handed media campaign and strict enforcement to implement its "indoor" smoking ban.



The patio at The Cock & Bull in Ottawa.

Poster Campaign a success



If they ban smoking in bars, what's next?

PUBCO recently initiated an anti smoking ban poster campaign. In addition to two very attractive and amusing posters we also provided post cards on which patrons could provide us with written comments. (See card samples on page 8.)

The campaign was focused mainly on Toronto but we made posters available to other areas including Thunder Bay, North Bay, Windsor and Oshawa. We still have some posters available, and if anyone else wants to become involved please drop us a line.

A reminder to those who have not yet had their post-cards picked up. Please put them in an envelope and send them to our office here in Ottawa. If you have too many to post please give us a call on our toll free line.

After the first cold spell and after owners saw an exodus of customers, some owners added heating and wind breakers to their patios in order to maximize the use of their outdoor areas.

Once again the city became heavy handed and visited establishments one by one to monitor smoking on patios in the city. They told owners to remove wind breakers and came up with the following standards. None of these standards were addressed in the Bylaw and therefore have very little foundation for owners to be prosecuted for patrons smoking on their patios.

These standards are being enforced but are they legal???? Bylaws do not address this issue.

The Standard reads Smoking is permitted on an outdoor patio, if the patio meets the following standards.

- a) Was not constructed or intended to be part of the interior of a building; and
- b) Has at a minimum,one continuous opening from ground to canopy to the outside (No roll down walls) that comprises of at least 25 percent of the total perimeter of all the patio walls.

The EPA Report and US OSHA Regulations

The shaky foundation of the consensus view about ETS risk is seen most clearly in two reports from the US. The first, the 1992 EPA report completely failed to establish ETS as a significant risk factor for lung cancer. The report had numerous flaws (see Luik Pandora's Box: Bostonia, 1993 and Gori and Luik) and was ultimately voided in US Federal Court due to its corrupt scientific process and findings. The key point about the report however can be seen in Table 1 from Gori and Luik, page 17, which shows the eleven studies on ETS risk that were used by the EPA to reach its conclusion. Even using the

EPA's confidence level of 90% instead of the traditional 95%, it can be seen that only 1 of the studies in Table One is statistically significant. So aside from all of its other problems, the EPA report, which is the most widely cited justification for smoking bans, provides absolutely no scientific evidence that demonstrates that ETS poses a risk of contracting lung cancer.

In 1994 the US OSHA issued a Notice of Proposed Rulemaking in which it proposed to regulate ETS. OSHA argued that ETS presented a "significant risk of hazard to workers."

Continued on page 7

The Vicious Cycle — Insurance matters

By Irvin Hoffman

Insurance has always been cyclical, soft markets where rates and conditions are easily negotiated and difficult markets where rates sky rocket and conditions are restricted.

Today, brokers are seeing hard times unlike anything in recent memory. We hear many opinions as to the reason: 9/11, international catastrophic natural disasters, low return on investments, out of control claims in the Ontario automobile sector etc etc etc... It may be all these factors, a combination of some or just an overreaction from the insurance companies. It is difficult to say, but unlike some markets, insurance is driven by people and not just numbers. Things that made sense a month ago are now unattainable. When will it change? Predictions vary, possibly 6 months or maybe 18 months? The questions for you are, why does this affect me and how can I manage the higher cost?

Underwriters are trained to assess risk, evaluate exposure, categorize, minimize and eventually assume risk for an adequate premium. There was a time when underwriters would accept risk on an individual basis but now they are seeing more and more class underwriting, where an insurance company's edict says this class is not to be written

under any conditions. Unfortunately, without exorbitant rates, the hospitality industry is one of the classes seen as unprofitable. One solution which has met with some success is a pooling of information and resources within industries, presenting underwriters with clear objectives, established risk reduction techniques and the creation of an attractive pool of premiums.

While not all establishments will meet the underwriting crite-

ria of the plan, a majority of members may find substantial value in this approach. PUBCO, in conjunction with a prominent Ottawa broker is setting that course and the first step is to collect general information to enable us to evaluate the level of interest among you.

The benefits will be measured in 1) reduced individual insurance costs, 2) improved risk management and loss prevention, 3) coverage designed and suited

for the risks of your business. The program would be designed to permit PUBCO members to deal with their broker of choice.

PUBCO has already circulated a survey form to members to initiate the process and we would ask that you take time from your busy day to complete it and return it to us. Once we have received a sufficient number we can move forward with this innovative solution to our industry's insurance needs.

— Recent letter to the editor, printed with permission from Warren Klass

RE: Danielle Bowditch's smoking column from last Sunday. Does she have a clue what she's talking about?

For disclaimer purposes, I am President of the Canadian Chapter of the world's largest smokers' rights group, Forces International (www.forces.org).

Her comment that "there is no safe level of second-hand smoke," is a lie. Has she ever heard of toxicology? The "threshold" levels quantified by toxicologists assume a sealed 8-ft. by 12-ft. non-ventilated room-per hour: Toluene - one million cigarettes per hour; Polonium -210,000 to 750,000 cigarettes per hour.

The lowest "threshold" level for the 19 substances in second-hand smoke is Hydroquinone, where only 1,250 cigarettes are needed to reach "threshold" levels. This would require 300 people smoking 62 packs per hour in said

room. A cup of coffee contains 19 carcinogens and 5,000 chemicals. This does not mean that a cup of coffee is harmful because the dosage is minute, just like second-hand smoke.

The other big lie in her column was about the effect of second-hand smoke on hospitality personnel.

The longest, most comprehensive study on this question was conducted by the U.S. Department of Energy's laboratory in Oak Ridge, Tenn. The peer-reviewed Oak Ridge study spent years replicating the prolonged effect of exposure to second-hand smoke on 173 non-smoking bartenders, waiters and waitresses.

After years of study, they came up with nothing. No lung cancer.

No heart disease. No asthma. No bronchitis. No pneumonia. No inner ear infection. Nothing.

What the Oak Ridge study found was that exposure to "respirable suspended particulate matter," which includes second-hand smoke, was less than one-sixth of the U.S. Occupational Safety and Health Administration's allowable level.

The Oak Ridge Study also found that the Journal of the American Medical Association (JAMA) manipulated levels of second-hand smoke in their studies to push for smoking bans.

*Warren Klass,
President Forces Canada,
Winnipeg
(So, everyone but smokers lie?)*

Ventilation — A Simple Solution

The most significant example of a safe working ventilation system still remains the Black Dog pub in Toronto. Despite their continued attacks on the Black Dog experiment, the opponents of ventilation have never been able to mount a reputable scientific challenge of the study or the effectiveness of ventilation because the scientific principles on which the study was based are rock solid. OCAT's claim that Health Canada refused to participate in the Black Dog because it did not believe in ventilation is false. Health Canada refused because

it considered the study to be outside of its jurisdiction.

Ventilation works in mines, chemical plants and in scientific laboratories all across Canada where dangerous emissions far more hazardous than second hand smoke are extracted on a regular day to day basis. If the government accepts that ventilation provides a safe working environment for workers employed in these workplaces, why are we having to fight to obtain the acceptance of similar safety standards for workers in the pub and bar industry?

The EPA Report... *continued from page 6*

During regulatory hearings and court battles that lasted until 2001, OSHA was unable to provide cogent scientific evidence that would support the claim that ETS was a workplace harm. At the end of the day OSHA withdrew its proposed regulations after determining that ETS exposures were much less than had been originally assumed (largely due to the flawed calculations of James Repace) and

that it was not reasonable to assume that workers faced elevated risk levels. Further, OSHA found that smoking restrictions were not economically feasible in the hospitality industry. Most importantly, OSHA concluded that it might be possible to determine a permissible exposure level for ETS, thus rendering workplace bans unnecessary.

Destroying the Second-Hand-Smoke Myth

There are several excellent publications available that describe how the anti-smoking industry deliberately distorts the truth and even lies to promote its crusade. All tackle the subject from differing angles, but for anyone looking for an accurate, and sometimes amusing, overview of how governments and the media are consistently manipulated we would recommend Michael McFaddens book "Dissecting Anti-Smokers' Brains".

Science without Sense
Steven Milloy

Smoking and Liberty
Pierre Lemieux

Junk Science Judo
Steven Milloy
Washington DC 20001

Silencing Science
Steven Milloy and Michael Gough

**Passive Smoking
The EPA's Betrayal of
Science and Policy**
Gio B. Gori and John C. Luik

**Dissecting Antismokers'
Brains**
Michael J. McFadden

Post cards part of successful Poster Campaign



These post cards were part of PUBCO's recent Poster Campaign (see story on page 6). Bar patrons were invited to provide PUBCO with a signed message of support on the reverse side of these post cards.

Visit our website www.pubcoalition.com or phone us at 1 866 314-2179

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