What the law means to you Jerome H. Heckman*

Legal Exchange

Readers' inquiries are solicited for this department, which is a forum for the discussion of legal questions of broad interest to the plastics industry. Inquiries will be used as the basis for general comment. The comments are in no way meant to serve as a substitute for expert legal advice. Names will be withheld on request.

We have been swamped with questions regarding application of specific provisions in the OSHA Vinyl Chloride Standard adopted on October 4, 1974. The questions below are among those asked most frequently. At the time of this writing, intensive appellate procedures were under way to attempt to have the entire Standard declared unlawful and invalid. Likewise, proceedings looking towards the staying of the effective date of the Standard were in process. Thus, while the responses to the questions are based on the assumption that the Standard will become effective January 1, 1975, it is our hope that it will not go into effect as written, that a Stay may have been granted by the time this column appears, and that the entire matter will be remanded to the Department of Labor for complete reconsideration.

An interpretation is needed concerning the Standard for Exposure to Vinyl Chloride (29 C.F.R. 1910.93q) promulgated by the Occupational Safety and Health Administration (OSHA) on October 4. The question relates to the need for warning signs required by subparagraph (1) of the Standard. If a processor-fabricator facility is below the "permissible limit" as defined, is the facility still deemed to be a regulated area? Is it required to post the area with the sign "Cancer Suspect Agent Area–Authorized Personnel Only"?

No. "Regulated areas" are discussed in subparagraph (e) of the Standard. This subparagraph states that (1) a regulated area shall be established where: (i) vinyl chloride or polyvinyl chloride is manufactured, reacted, repackaged, stored, handled or used; and (ii) vinyl chloride concentrations are in excess of the *permissible exposure* limit (1 p.p.m., 8 hour TWA, and 5 p.p.m. maximum for any 15-min. period). If the facility is below the permissible exposure limit, then no regulated area need be set up and consequently the signs are not required. (If monitoring shows less than 0.05 p.p.m. employee exposure to VCM, virtually no further action is required under the Standard; this "action level" concept is not to be confused with the "permissible exposure limit" concept.)

Although the question is limited to "processor-fabricators," the answer is equally applicable to all operations falling within the scope of this Standard.

Paragraph (1) (3) requires that "containers of... other waste contaminated with vinyl chloride shall be legibly labeled: Contaminated with Vinyl Chloride--Cancer Suspect Agent." Are such labels required on PVC scrap within a facility in inventory for further processing?

The purpose of the labels required by this subparagraph would be to warn employees that waste material is or may be contaminated with vinyl chloride so that a hazard might be posed to those who handle it without taking proper precautions. The provision in the Standard is aimed primarily at dealing with waste from polymerization reactors where the possibility of entrapment of relatively large quantities of vinyl chloride exists, or other waste generated in VC or PVC producing facilities, where contamination with vinyl chloride can be expected to occur. On the other hand, scrap produced in processors' or fabricators' plants by trimming of processed material poses little or no problem in this regard since such scrap can properly be considered to be a fabricated material which is outside the scope of the Standard. In other words, the type of scrap generated in the plant of a processor-fabricator that has already been through the mass melting stage need not carry the label while it is in inventory awaiting further processing. To the contrary, compounded material which has not been through a fabrication process (for example, excess compound remaining after a run has been completed), when stored in "in-plant" containers does require labeling, but such labeling should be in accordance with subparagraph (1) (4) which applies to containers of polyvinyl chloride. Labeling should read:

"Polyvinyl Chloride Contains Vinyl Chloride
Vinyl Chloride is a Cancer-Suspect Agent"

It should also be noted that we have confirmed this interpretation of the requirements of the Standard informally with the appropriate OSHA officials.

Shipments of polyvinyl chloride resin received from a manufacturer will no doubt bear the required labeling. If bulk shipments are received, are labels required on any polyvinyl chloride container within a facility?

The intent of the Standard is to warn employees of the possible hazard that exists in handling polyvinyl chloride which has not previously been subjected to mass melting and which may be expected to release vinyl chloride when it is mass melted. Consequently, if bulk shipments of polyvinyl chloride resins are received, and if the PVC is placed in containers within a facility which employees are intended to handle, those containers should carry the labeling required by subparagraph (1) (4) of the Standard.

Bulk shipments contained in silos and transported within a plant by pneumatic tubes so that there is no employee contact with the material do not pose the same employee exposure as might be posed by drums or bags of the same polyvinyl chloride that would have to be opened and emptied by hand. It is in these latter cases that the containers require hazard labeling. Consequently, if the bulk shipments are stored within a facility in containers that require opening and emptying by employees who might thereby be exposed to residual VC vapor, it is only these containers that will require the cautionary labeling.—END

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