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U. S. COURT OF APPEALS UPHOLDS OSHA STANDARDS ON VCM; SPI TO PETITION SUPREME COURT

On Friday, January 31, 1975, the U. S. Court of Appeals for the Second Circuit (New York) announced its decision upholding the standards promulgated in October 1974 by the U. S. Occupational Safety and Health Administration (OSHA) on employee exposure to vinyl chloride monomer. Because of the delay caused by the appeal proceedings, the Court ruled that the standards, which were scheduled to go into effect January 1, 1975, would become effective April 1, 1975. On Wednesday, February 19, 1975, SPI announced that it would petition the U. S. Supreme Court for a review of the decision, maintaining that the Court of Appeals erred in its interpretation of the "substantial evidence" rule and that the standard is technologically and economically infeasible.

STATE OF ECONOMY MAY AFFECT FUNDING OF FEDERAL ENVIRONMENTAL PROGRAMS -- CHLOROPRENE STUDIES DISTURB CONGRESS

The state of the economy may have a bearing on Congressional action involving four environmental programs whose appropriation authority expires on June 30, 1975. These are programs provided under the Water Pollution Control Act Amendments of 1972, Noise Control Act of 1972, Solid Waste Disposal Act of 1965, and the Clean Air Act of 1970. In the solid waste field, Congress has year after year voting six-month extensions of existing legislation, but in the state of the economy calls for revision of these acts as well as new findings. However, legislative revisions provide for increased federal spending, they may prompt a presidential veto. With the new Congress comprised of more environmentally minded members, this situation could lead to a series of de-facto veto environmental programs.

A new House Commerce Subcommittee on Energy and Conservation, headed by Congressman Dingell of Michigan, has already indicated that among its top priorities will be to look into its petroleum allocation and other policies involving energy. In the past, Dingell, who has also headed a Small Business Subcommittee for some years, has been sympathetic to pleas from plastic processors complaining about supply shortages.

Rep. David Obey (D-Wisc.), has introduced a bill to upgrade the National Institute of Occupational Safety and Health (NIOSH) and separate it from control by the Center for Disease Control. Obey used vinyl chloride and chloroprene as his examples for citing the problems NIOSH must deal with. He contends that NIOSH, as the one federal agency with primary responsibility to explore chemical hazards, has actually shrunk in size and with 582 employees is 12 percent below its January 1973 personnel level.

Several Congressmen have already leaped on the fact that recent Russian studies have disclosed a higher lung and skin cancer rate among workers exposed to chloroprene, used in the manufacture of many synthetic products (hoses, cable sheath, adhesives, etc.) and on the further fact that chloroprene is part of the same chemical family as vinyl chloride, the Congressmen are beginning to call for U. S. inquiries. Typical was the action of Rep. Dominick Daniels (D-N. J.), who on January 29, urged NIOSH "to move quickly and decisively to safeguard the lives of American workers exposed to this toxic substance..."

Rep. Hamilton Fish, Jr. (R-NY) has introduced a bill to extend the provisions of the Flammable Fabrics Act to construction materials used in the interior of homes, offices, and other places of assembly, and to authorize the establishment of toxicity standards. Similar bills have been introduced by Reps. John Murphy (D-NY) and Peter Peyser (D-NY).

Sen. Abe Ribicoff (D-Conn.) has re-introduced the 1975 version of the Consumer Protection Act, now known as the Agency for Consumer Advocacy. The bill (S. 10) is sponsored by 38 Senators indicating it will probably pass the Senate again with no difficulty.

On the regulatory side, the U. S. Department of Transportation is going ahead with February 18-19 hearings to encourage automakers to develop lighter weight bumper systems (i. e. plastics) which will help save energy by reducing the weight of cars by approximately 100 pounds. However, objections have surfaced to the National Traffic Safety Administration's recommendation that bumper strength requirements be reduced from being able to withstand a five-mile an hour impact to 2 1/2 miles. Opponents and others have until March 3 to comment.

(See Introduction to forthcoming Legislative Bulletin #2 or contact SPI for additional details.)

CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY RECOMMENDS NATIONAL STRATEGY TO CONSERVE ENERGY

In late January, the Citizens' Advisory Committee on Environmental Quality, in a 38-page report to the President, recommended a national strategy to conserve energy through the recovery, recycling and reuse of valuable resources now discarded.

in solid waste. Titled "Energy in Solid Waste: A Citizen Guide to Saving," the report points out that since 1965, research by the Council on Environmental Quality, the Environmental Protection Agency, the Bureau of Mines and other federal agencies have provided a wealth of information on better ways to recover, recycle and reuse materials and energy from solid waste. Now, the report says, it is up to the Administration and Congress to adopt a national policy to put this knowledge to work. Such a policy, the Committee said, should include at least the following five major elements:

1. Consideration of federal tax measures to provide economic incentives for private industry to reduce the depletion of critical natural resources and to maximize resource recovery, recycling and use. These could include incentives to encourage increased production and use of recycled materials and rapid amortization for recycling facilities.
2. Federal legislation requiring a refundable deposit on all beverage containers to promote the use and reuse of refillable instead of throwaway containers.
3. Revising interstate transportation rates to promote the movement of recyclable materials.
4. Requiring federal agencies to carry out programs of resource recovery, recycling and reuse.
5. Further study of the present program of federal grant assistance or loan guarantees for the construction of resource recovery facilities.

The Advisory Committee is chaired by Henry L. Diamond, New York State's former Commissioner of Environmental Conservation and includes among its members Laurence S. Rockefeller, scientist Rene Dubos, Robert Cahn, former member of the Council on Environmental Quality, Governor Tom McCall of Oregon, and Arthur Godfrey.

UNION CARBIDE EXECUTIVE ADVOCATES POSITIVE ATTACK ON CHEMICAL TOXICITY PROBLEM

In the keynote address at a January 29 Symposium on Toxic Substances Control and OSHA/NIOSH Regulations sponsored by the Synthetic Organic Chemical Manufacturers Association and the Council of Chemical Associations, a Union Carbide executive said a positive attack on the problem of possible chemical toxicity through immediate action to reduce worker exposure to all chemicals and an in-depth health research program. Thomas W. Carmody, Union Carbide's Vice President, Safety, Health and Affairs Related to the Environment (SHARE) for Chemicals and Plastics, said an additional research effort is necessary because "despite enormous investments in research, at this time industry, academia and government admittedly do not know enough about the long-term effects of many chemicals that are in use today." Long-term research, Carmody added, should focus on finding a means to realistically predict the effects of 20-to-40 years of exposures to minute amounts of chemicals... "present test methods for suspected carcinogens need improvement. They take too long and the results cannot now be translated directly to safe limits for human beings."

CHEMICAL COMPANIES WILL SPONSOR RESEARCH ON
OCCUPATIONAL HEALTH ASPECTS OF STYRENE AND VDCM

The Manufacturing Chemists Association has announced it will administer research projects dealing with occupational health aspects of styrene and vinylidene chloride monomer (VDCM). Twelve companies will sponsor the research on styrene, one of the most widely-used liquid monomers in the production of plastics; thirteen companies will fund the work on VDCM, a liquid monomer used principally in the production of plastic wrappings. Individual projects are expected to cover such animal testing as ingestion, vapor inhalation, fetal development, toxicity and metabolism. Both programs are designed to provide additional scientific information on which to base safeguards to protect employee health. According to MCA, styrene has not been linked with any health hazard. However, preliminary VDCM research in Europe "has caused the producers to feel there is a need for further tests."

URETHANE SAFETY GROUP PRETESTS
SLIDE PRESENTATION ON FIRE SAFETY

SPI's Urethane Safety Group has been pre-testing a slide presentation on fire safety. So far, Executive Director Arthur B. Chivvis has shown versions of the presentation to foam contractors in Tampa, Florida; fire chiefs in Goshen, New York; and farm builders in St. Louis, Mo. According to Chivvis, audience reaction has been enthusiastic, demonstrating a real need for this type of audio-visual information program. Comments and questions from all three audiences will be taken into account in developing the final presentation. In other areas related to combustibility, SPI:

- Has distributed drafts of an illustrated booklet on the uses of plastics in construction for expert comment and suggestion... it is anticipated the booklets will be available in several weeks.
- Is distributing copies of Appendix B of the FTC Consent Order to fire, insurance, government and building code audiences in compliance with Paragraph D of the Consent Order (see Public Affairs Bulletin No. 10, November 1974)

MCA STUDY DISCLOSES PLASTICIZERS
HAVE VERY LOW LEVEL OF TOXICITY

Research sponsored by 17 chemical companies under the direction of the Manufacturing Chemists Association (MCA) has found that phthalic acid esters (PAEs, -- used mainly as plasticizers in making plastics products and wrappings) appear to have a very low level of toxicity. The study, conducted by Dr. Rolf Hartung, professor of environmental toxicology at the University of Michigan, apparently disclosed that no problems attributable to PAEs have been noted due to constant low level exposures of the general population. However, "at higher occupational exposures, occasional mild skin irritation has been noted. The study also reports that "earlier concerns of effects from PAEs migrating from medical devices to biological tissues have lessened."

SUMMARY OF COURT OF APPEALS DECISION ON VINYL CHLORIDE STANDARDS

On Friday, January 31, 1975, a three-judge panel of the U.S. Court of Appeals for the Second Circuit (New York) unanimously upheld the standards on vinyl chloride monomer (VCM) promulgated October 4, 1974, by the U.S. Occupational Safety and Health Administration (OSHA).

The standards had been challenged by The Society of the Plastics Industry, Inc. (SPI) and by nine manufacturers of VCM or polyvinyl chloride (PVC) resin. The nine companies were: Hooker Chemicals and Plastics Corporation, Air Products and Chemicals, Inc., Tenneco Chemicals, Inc., Union Carbide Corporation, Firestone Plastics Company, The B. F. Goodrich Company, Uniroyal, Inc., The Diamond Shamrock Chemical Company, Inc., and General Dynamic Chemical Co., Inc.

The government was joined in its defense of the standards by the AFL-CIO and by the Industrial Union Department of the AFL-CIO, a separate organization. Both participated in the case as intervenors.

The appeals panel consisted of retired U.S. Supreme Court Justice Tom C. Clark and District Judges Frederick van Pelt Bryan and Kevin T. Duffy. Mr. Justice Clark wrote the 22-page decision.

The following is a summary of the basic arguments advanced by SPI and the VCM-PVC industry in opposition to the standards and excerpts from the Court's reply to those arguments as contained in the written decision:

1. Petitioners' Argument: The standards are technologically infeasible with known methods of control, and thus violate the basic OSHA law.

The Court's Reply: "We cannot agree with petitioners that the standard is so clearly impossible of attainment. It appears that they simply need more faith in their own technological potentialities, since the record reveals that, despite similar predictions of impossibility regarding the emergency 50 ppm standard, vast improvements were made in a matter of weeks, and a variety of useful engineering and work practice controls have yet to be instituted. In the area of safety, we wish to emphasize, the Secretary is not restricted by the status quo. He may raise standards which require improvements in existing technologies or which require the development of new technology, and he is not limited to issuing standards based solely on devices already fully developed."

2. Petitioners' Argument: Available scientific and medical evidence does not necessitate the establishment of a one part per million (ppm) standard in order to protect worker health.

The Court's Reply: "...the ultimate facts here in dispute are 'on the frontiers of scientific knowledge,' and, though the factual finger points, it does not conclude. Under the command of OSHA, it remains the duty of the Secretary (of Labor) to act to protect the workingman,

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and to act even in circumstances where existing methodology or research is deficient. The Secretary, in extrapolating the MCA (Manufacturing Chemists Association) study's finding from mouse to man, has chosen to reduce the permissible level to the lowest detectable one. We find no error in this respect."

3. Petitioners' Argument: The standard would force nearly all employees in the PVC resin industry to wear cumbersome, uncomfortable, potentially unsafe respirators nearly all of the time.

The Court's Reply: "To be sure, respirators have their drawbacks. These problems were detailed at the hearings and recognized by the Assistant Secretary (for OSHA). Self-contained and air-hose type breathing equipment is bulky, expensive, and infeasible for full-time use, as well as potentially hazardous in terms of trapping, restricted mobility, and over exhaustion of workers. But the fact remains that they effectively eliminate exposure to VCM, and they are already being used by some PVC companies in the cleaning process and at other points in production with good success.

"Like the industry's claims about the impossibility of achieving compliance through technological means, petitioners' claims of dire consequences from the requirement of respiratory protection are exaggerated. It does not appear that full-time use of respirators is necessary..."

4. Petitioners' Argument: Because exposures in the PVC fabricating industry are already extremely low, the application of all aspects of the standard to this segment of the industry is unjustified.

The Court's Reply: "If, in the future, the monitoring under the standard indicates that the VCM level among fabricators is sufficiently low and that the sporadic, unpredictable exposure of these workers to residual VCM has been controlled, the fabricators might well be excluded or included in a separate, less rigorous standard. Certainly if PVC producers were able to eliminate all residual VCM from the resin before it is delivered to the fabricator, there would seem to be no reason for their inclusion. But this would be for the Secretary to decide on appropriate application or on his own motion, and, as the record presently stands, their inclusion is amply justified."

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5. Petitioners' Argument: That section of the standard requiring a "cancer suspect agent" warning label on all containers of PVC resin is unjustified and unnecessarily alarming and exceeds the Secretary's statutory authority.

The Court's Reply: "...compliance is time-phased and, if the petitioners find that they cannot comply for reasons beyond their control, OSHA permits the amendment of standards. Upon application and sufficient proof of such a situation, we feel certain that the petitioners would obtain relief at the hands of the Secretary. This is especially true of the 'cancer suspect agent' labelling requirements which petitioners urge are beyond statutory contemplation. We think that the Secretary is simply 'fighting fire with fire' and using the labels to bring the danger of vinyl chloride forcibly to the attention of the workers."

In the concluding paragraph of the decision, the Court stated: "It is our conclusion that the challenged aspects of the Secretary's vinyl chloride standard are supported by substantial evidence in the record and that the petition for review must be denied."

The Court added, however: "Taking into account the delay occasioned by these petitions, we think that a reasonable 'lead time' is appropriate and therefore order that the Secretary's regulations, rather than being effective January 1, 1975, shall become effective sixty days after the date of this order and that the time requirement as to respiratory protection contained in (the standard) is re-scheduled accordingly."

The standard will thus go into effect April 1, 1975.

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