

No. 74-2284

United States Court of Appeals

For the Second Circuit

No. 74-2284

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.,
Petitioner,

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
UNITED STATES DEPARTMENT OF LABOR;
PETER J. BRENNAN, SECRETARY, DEPARTMENT OF LABOR;
AND JOHN STENDER, ASSISTANT SECRETARY
FOR OCCUPATIONAL SAFETY AND HEALTH.
Respondents.

FIRESTONE PLASTICS COMPANY, A DIVISION OF
THE FIRESTONE TIRE & RUBBER COMPANY,
Intervenor.

INDUSTRIAL UNION DEPARTMENT, AFL-CIO
Intervenor.

On Petition for Review of an Order of the
Occupational Safety and Health Administration

FILED FOR DEPOSITION

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The Society was officially requested to involve itself on behalf of its members in all aspects of the VCM and PVC regulatory situation by its VCM and PVC Producers Committee. Accordingly, it appeared and presented evidence on its behalf at the informal Occupational Safety and Health Administration (OSHA) Hearings conducted June 23 through June 28, 1974 and July 8 through July 11, 1974, submitted written Comments on the Proposed Permanent Standard; the Draft and Final Environmental Impact Statements; and the study by Foster D. Smith Co., Inc. commissioned by OSHA. Similarly, the Society has been duly authorized by its members to present the industry's case to this Court.

STATEMENT OF THE ISSUES PRESENTED

1. Whether the promulgation of the Vinyl Chloride Standard was based on determinations by the Secretary of Labor which are unsupported by substantial evidence

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THE RECORD BEING BEYOND OF A SCIENTIFIC OR TECHNICAL NATURE TO SUPPORT THE TECHNOLOGICAL FEASIBILITY OF ACHIEVING THE EXPOSURE LIMITS OF THE VARIOUS CHLORIDE STANDARDS. THE FACT OF ADOPTION OF THE STANDARD WILL BE TO CAUSE FULL-TIME USE OF RESPIRATORY PROTECTION BY THE WORK FORCE. THE ONLY EVIDENCE OF RECORD INDICATES THAT THIS RESULT WILL MAKE SAFE PLANT OPERATION TECHNOLOGICALLY INFEASIBLE AND BE DETRIMENTAL TO EMPLOYEE HEALTH.

In promulgating a standard dealing with toxic materials or harmful physical agents, the Secretary is required to set a standard which, *to the extent feasible*, most adequately assures no employee will suffer impaired health or functional capacity. OSH Act § 6(b)(5); 29 U.S.C. § 655 (b)(5) (emphasis added). Feasibility in this sense must take into account the technological possibilities of achieving compliance with a standard as well as any adverse impact on employee welfare that adoption of a standard might have. *I.U.D. v. Hodgson, supra*, at 477-78.¹⁸

In the course of the fact finding process, the Secretary recognized the evidentiary importance of the feasibility issue and directed that a special technological and economic feasibility study be conducted by Foster D. Snell, Inc. to determine the technological and economic feasibility of compliance with the original Proposed Permanent Standard and several other exposure levels. The study, however, proposed "no detectable" and "no significant" levels.

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