

ALLIED CHEMICAL CORPORATION

LAW DEPARTMENT

~~Wages~~
Do we really need to
do this??

July 29, 1975

John M. De Voe

EW C We had nothing to do with this - ICD asked
for an opinion. Does anyone kill after the
fact.

VCM Standard

WBR

In response to your request for a legal opinion concerning deferring compliance with an OSHA standard, the following must be noted.

1. Penalties for non-compliance with the Occupational Safety & Health Act include:

- a) A single nonserious or serious violation..... up to \$ 1,000
- b) A willful or repeated violation..... up to \$10,000
- c) Additional penalty for failure to abate within the allotted time period after notification..... up to \$ 1,000 per day

2. Criminal penalties include:

- a) Willful violations causing death or filing false information..... up to \$10,000 or six (6) months imprisonment or both.

3. Considering the sensitivity of the VCM standard, we may expect OSHA to move promptly to enforce it. The only way we can legally forestall compliance is to apply for a temporary variance. Such an application must contain a representation that we are unable to comply and statements setting forth: the steps we have taken to comply; when we expect to be able to comply; and the facts we have to establish that: we "are unable to comply with [the] standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment ... or because necessary construction or alteration of facilities cannot be completed by the effective date" * 29 CFR § 1905.10 (b) (7).

*A copy of the "Rules of Practice for Variances" are attached.

4. In the last six (6) months OSHA has denied two (2) applications for variances in full. It has granted five (5) Interim Orders for variances, each of them for portions of the VCM standard. It has yet to grant a full variance.

5. As a final point, Mr. Robert H. Sand and I agree that it would be wise to bear in mind that the VCM standard is particularly sensitive at present and a request for a variance at this relatively late date might well present a difficult situation, both as to the merits of the immediate request and the bona fides of our Corporation's overall program with respect to carcinogens.

Arthur F. Woodard

Arthur F. Woodard

cc: R. H. Sand
J. W. Quinn
E. W. Callahan ✓
W. S. Ferguson
F. G. Coombs