



A Division of The Society of The Plastics Industry, Inc.

December 10, 1991

TO: VI Health, Safety & Environment Committee

RE: Decision by U.S. Court of Appeals for the Fifth Circuit -
Potential for Significant Implications for PVC Pipe Industry

REVIEW OF ENCLOSED DOCUMENT BY A REPRESENTATIVE

OF YOUR COMPANY IS REQUESTED NO LATER THAN

MONDAY, JANUARY 6, 1992

Background/Court Decision

On October 18 the U.S. Court of Appeals for the Fifth Circuit struck down the U.S. EPA's 1989 rule that would have banned virtually all uses of asbestos in the United States. Language from the Decision dealing with the risks of competing pipe materials is attached. Also attached is a letter from Peter de la Cruz that reviews succinctly the Decision and explains why the Court's action may have a significant impact on the PVC pipe industry.

With this action, EPA has several options: accept the Court's decision; ask the three-judge panel or the entire Fifth Circuit to review the decision; take the case to the Supreme Court; or to propose all or parts of the asbestos ban in a new regulatory proceeding. The Agency has decided as a first step to ask the panel to review the decision.

Whatever the disposition of this request and any further actions may be, it is clear from reading the Court's Decision that the PVC industry must be assured that the Agency has the most up-to-date technical information in its possession on the safety of PVC pipe.

Discussions of Vinyl Institute and Uni-Bell PVC Pipe Association to Date

At the November 6 meeting of the Uni-Bell PVC Pipe Association Board of Directors, it was decided that at this time it would be extremely costly and time consuming to do a complete review of the EPA docket on this issue. Further, it was agreed that should the

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docket contain dated information (which is suspected to be the case), it would be necessary to provide in one package the most up-to-date technical information available.

Following a) a thorough review of the technical information in the VI and Uni-Bell literature; b) conversations with attorneys representing both associations; and, c) a complete discussion of the issue at the December 4 meeting of the VI Pipe Resources Organization, it was agreed that at this point in time the best course of action would be to update the enclosed Uni-Bell brochure (VINYL CHLORIDE; The Control of Residual Vinyl Chloride Monomer in PVC Water Pipe).

Assistance of HS&E Committee Requested

Roy asked me to request the HS&E Committee members (or other representatives of your company) review the enclosed brochure. As you will notice, the brochure was produced in 1982 and much of the data on RVCM dates to 1975. Obviously, there have been rather significant changes in the last 16 years. There are several areas of this brochure that need updating, including Table 2 on page 5 and pages 20-22 on Industry Control of RVCM in PVC pipe.

Please thoroughly review the contents and provide us with updated information on RVCM levels in your products and your input no later than Monday, January 6, 1992. We will provide this information for use by Uni-Bell to update their brochure. If you pass this request along to someone else in your company, let me know so that I can follow up with them. In the meantime, if you have any questions/comments/ideas, please let me know.

Thanks, in advance, for your assistance.

Sincerely,



Meredith N. Scheck
Assistant Director

MNS/bg

cc: M. Barish (w/o enc.)
P. de la Cruz (w/o enc.)
D. Goodman (w/enc.)
R. Luss (w/o enc.)
R. Walker (w/o enc.)

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The language of concern is in the section dealing with AC pipe products (pages 47-51). Therein the Court states:

"As with friction products, the EPA refused to assess the risks of substitutes to asbestos pipe. Id. at 29, 497-98. Unlike non-asbestos brakes, which the EPA contends are safe, the EPA here admits that vinyl chloride, used in PVC, is a human carcinogen that is especially potent during the manufacture of PVC pipe. As for the EPA's defense of the ductile iron pipe substitute the EPA also acknowledges evidence that it will cause cancer deaths but rejects these deaths as overestimated, even though it can present no more support for this assumption than its own ipse dixit.

The EPA presented several plausible, albeit untested, reasons why PVC and ductile iron pipe might be less of a health risk than asbestos pipe. It did not, however, actually evaluate the health risk flowing from these substitute products, even though the EPA acknowledges that the individual lifetime cancer risk associated with the production of PVC may be equivalent to that associated with the production of A/C pipe, id. at 29,497. The agency concedes that "[t]he population cancer risk for the production of ductile iron pipe could be comparable to the population cancer risk for production of A/C pipe." Id.

It was insufficient for the EPA to conclude that while its data showed the "the number of cancer cases associated with production of equivalent amounts of ductile iron pipe and A/C pipe 'may be similar,' the estimate of cancer risk for ductile iron pipe 'is most likely an overestimate,' see 54 Fed. Reg. at 29,498, unless the agency can present something more concrete than its own speculation to refute these earlier iron pipe cancer studies. Musings and conjecture are "not the stuff of which substantial evidence is made," Aqua Slide, 569 F.2d at 843, and "[u]narticulated reliance on Commission 'experience' may satisfy an 'arbitrary, capricious' standard of review, but it does not add one jot to the record evidence." Id. at 841-42 (citations omitted). "While expert opinion deserves to be needed, it must be based on more than casual observation and speculation, particularly where a risk of fatal injury is being evaluated." Id. These concerns are of special note where the increased carcinogen risk occasioned by the EPA's proposed substitutes is both credible and known.

This conclusion only is strengthened when we consider the EPA's failure to analyze the health risks of PVC pipe, the most like substitute for asbestos pipe, which the EPA concedes poses a cancer risk similar to that presented by asbestos pipe. The failure of the EPA to make a record finding on the risks of PVC pipe is particularly inexplicable, as the EPA already is studying increasing the stringency of PVC regulation in separate rulemaking proceedings, an action that one of the very intervenors in the instant case has been urging for years. See NRDC v. EPA, 824 F.2d 1146, 1148-49. (D.C. Cir. 1987) (en banc).

The EPA, in these separate proceedings, has estimated the cancer risk from PVC plants to be as high as twenty deaths per year, a death rate that stringent controls might be able to reduce to one per year, see id. at 1149, far in excess of the fractions of a life that the asbestos pipe ban may save each year, by the EPA's own calculations. Considering that the EPA concedes that there is no evidence showing that ingested, as opposed to inhaled, asbestos is a health risk, while the EPA's own studies show that ingested vinyl chloride is a significant cancer risk that could cause up to 260 cancer deaths over the next thirteen years, see id.; 54 Fed. Reg. at 29,498, the EPA's failure to consider the risks of substitute products in the asbestos pipe area is particularly troublesome. The agency cannot simply choose to note the similar cancer risks of asbestos and iron pipe and then reject the data underpinning the iron and PVC pipe without more than its own conclusory statements."