6-352

Air Products

Date January 30, 1978

INTEROFFICE MEMORANDUM

Subject Minutes TSCA Meeting - 1/30/78

To Distribution

From C. E. Blades

(Location, Organization, or Department)

Piscataway

(Location, Organization, or Department)

Distribution: R. Fleming, D. Baker, W. M. Smith, L. B. Tepper, J. C. Novak, A. J. Diglio, R. H. Schenck, J. H. Body, E. I. Handwerk, G. G. Handley, W. L. Ent, T. B. Collins, J. M. Egan, J. Urenovitch, M. G. Zeliner, A. I. Dalton

FEB 17 1977

In Attendance:

Members

C. E. Blades, W. M. Smith, R. H. Schenck, L. B. Tepper, A. J. Diglio, R. Woodbury (for G. Handley), J. Trent (for W. Ent), J. H. Body, T. B. Collins (for J. M. Egan), A. I. Dalton

Guests

E. I. Handwerk (Recording Sec'y)

....

1. Approval of Minutes - Meeting Dec. 12, 1977

Minutes were approved with suggestions to: 1) replace the last line in Part 6 with "A representative of the affected business area will be invited to sit in" and 2) to include A. J. Diglio on the TSCA Compliance Decision Group referred to in Part 6 as a special TSCA subcommittee.

2. Substantial Risk Notification

Appendix A to Background for Items on Agenda, TSCA Meeting-Jan. 30, 1978, "Directive on Substantial Risk Notification" and "APCI Implementation Policy For TSCA-Section 8(e)" were discussed. The "Directive" will be changed to reflect the penalties that may be invoked if substantial risk is not reported. The "Implementation Policy" will be supplemented in Part B(2)(a) to include environmental supervisors and in Part B(2)(b) to include profit center and business center managers. (Corrected and approved copies attached)

Each member of the TSCA Compliance Committee will provide C. E. Blades with a list of APCI personnel in their area to which the directive shall be sent.

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3. Budget & Cost Gathering Report

H. W. Parke described the TSCA cost collection system and TSCA budget for fiscal 1978. The TSCA costs for the first quarter were presented (see attachment). Parke indicated that the budget may have been overstated since there was no historical basis for guidance. A. J. Diglio indicated that the low total cost may be the result of improper time allocation within the profit centers and suggests that such personnel be made aware of the need to account for time spent on TSCA matters.

4. Product File (MID)

T. B. Collins reported that the Raw Materials Inventory study (see TSCA Committee Minutes, Dec. 12, 1977, Part 3) has been completed and a report will be submitted at the next TSCA Committee meeting.

Collins also reported that the recently finalized rules for reporting the chemicals inventory will now allow definition of elements to be placed in an APCI Product File. Work in this area is about to begin.

5. Review on Chemical Substances Inventory

E. I. Handwerk presented a brief review of the TSCA Chemical Substances Inventory reporting requirements. The first step will be to secure production site addresses for manufactured APCI chemicals.

6. Key Events for TSCA 1978

C. E. Blades presented a TSCA calendar of events for 1978 drawing particular attention to the March 1, 1978 request for test data on priority chemicals. Of concern is nitrobenzene, an intermediate in the Nitration Products area, since it is one of the 10 chemicals on the priority list.

7. Member Assignments

Member assignments were approved with the noted observation to find a replacement for R. Collins in MSD. C. E. Blades will handle through A. Mellon.

8. Significant Adverse Reactions

The memo concerning significant adverse reactions (see Appendix G/Background for Items on Agenda, TSCA Meeting - Jan. 30, 1978) is approved by the TSCA Compliance Committee. C. E. Blades requests committee members return a signed copy to him.

9. Next Meeting

The next TSCA Compliance Committee Meeting is scheduled for March 13, 1978 at 1:30 P.M.

C. E. Blades

CEB:EIH:sk
Encl.

AP00049053

February 3, 1978

APCI IMPLEMENTATION POLICY FOR

TSCA - SECTION 8(e) (SUBSTANTIAL RISK NOTIFICATION

I. ACTION SECTION

A. Problem/Issue/Situation

The Toxic Substances Control Act contains a self-actuating provision which requires any person who manufactures, processes or distributes a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such chemical or mixture presents a substantial risk of injury to health or the environment to immediately report such information to the EPA Administrator. This requirement is mandatory unless such a person has actual knowledge that the Administrator has been adequately informed of such information.

On September 9, 1977, the EPA published in the Federal Register (42, FR45362-6) a proposed "guidance" for Substantial Risk Notification. This proposal spells out the Agency's interpretation of this section of the law and how enforcement activities would be undertaken. Since this publication, in public addresses and meetings, EPA officials have indicated that certain parts of the guidance will be altered when published in final form. In any event, as of September 9, all officers and employees have a responsibility to comply with the law to the extent that they are capable of appreciating pertinent information, either by following company reporting procedures or by reporting directly to the EPA.

B. Policy/Action/Premise

The policy of Air Products with respect to Section 8(e) of TSCA is that:

(1) A TSCA Compliance Decision Group (C. E. Blades, L. B. Tepper, A.J. Diglio W. M. Smith, R. H. Schenck, plus a representative from the business unit concerned) is charged with collection of all pertinent and antecedent information, evaluation of data,

and with reaching a conclusion concerning substantial risk relative to reporting under Section 8(e) of TSCA.

(2) The Decision Group will prepare a recommendation for action concerning notification. A majority and minority opinion of the Group may be part of this recommendation. The Group will reach a decision in consultation with a designated corporate officer.

(3) Appropriate employees of the Company shall be informed of the provisions of Section 8(e). [See II.B.(2), (a)(b)(c)]

(4) The earlier procedure (Standard Practice No. 702A, p. 5) established to instruct employees requires evision. Periodically updated procedures are to be established to instruct employees, who obtain information which they consider pertinent, on how to promptly transmit such information to their supervisor and to the TSCA Compliance Committee Chairman.

(5) It is expected that EPA will issue 8(e) notices on a periodic basis. In the event that an employee has taken independent action to notify EPA contrary to a determination by the Company, or an employee has notified EPA without advice to the Company, or another company has notified EPA relative to an APCI product or waste, the TSCA Compliance Decision Group will meet to determine what action, if any, it should take with the EPA.

(6) Involved employees are to be advised of Committee actions and decisions.

(7) Newly assigned employees to pertinent job classifications and qualified to be capable of appreciating pertinent information are to be advised in employee orientation sessions. Also to be reviewed with employees at semi-annual safety meetings for review and training.

II. BACKGROUND SECTION

A. Facts Bearing On The Problem

(1) The requirements of Section 8(e) apply to "any person who manufactures, processes or distributes in commerce". It is Air Products' position that the "person" who engages in the commercial activity is only the business organization, whether a sole proprietorship, corporation, partnership or association.

(2) Conversely, the EPA proposes to define a "person" as any natural or juridical person including any individual, corporation, partnership or association. The proposed guidance further states that "in the case of corporations or other business organizations, all officers and employees of the organization are subject to the notification requirement to the extent that they are capable of appreciating pertinent information."

This EPA position places the burden on the Corporation--and the employee--to determine which employees are "capable of appreciating pertinent information".

(3) The Agency states it does not intend to require burdensome, duplicative reporting, nor to interfere in internal reporting practices. Thus, a qualified employee is not required to report information to the EPA that is reported by a formally designated company official.

(4) It is expected that the agency will concur that the "person" who manufactures is the corporation. However, it is expected that employees will be required by law to notify their employer of substantial risk concerns.

(5) The Agency has placed a stringent requirement upon industry to prepare 8(e) notifications in a very short time frame. Unresolved is the point in time when the "clock starts running." The agency proposes a 15-day period for reporting with the period beginning as soon as information becomes available. In other contexts, up to a 60-day period has been proposed. A more definitive period appears to be 15-30 days with the period beginning as soon as an employee has determined that the new information may suggest substantial risk.

B. Conclusions of the Study

(1) The existing procedure (Standard Practice 702A, p. 5) is to be modified immediately. A new procedural mechanism is to be provided whereby any employee who obtains, that which he considers to be substantial risk information, can submit such information to his supervisor and the TSCA Compliance Committee Chairman so that the Company can carry out its responsibility. This procedural mechanism will supersede the internal procedure already in place.

(2) The procedure referred to in B.(1) above is to be communicated to the following APCI personnel:

(a) Executive Officers -- Vice President and above.
Corporate Research Staff.
Plant Managers and their staffs, as well as the Medical Director and consulting doctors, safety supervisors, qualified industrial hygienists, environmental supervisors.

(b) Research Directors and all professionals under their direction.
Profit and Business Center managers, Product Managers.

(c) Overseas management personnel.

R. Fleming

February 3, 1978

DIRECTIVE ON
SUBSTANTIAL RISK NOTIFICATION

The Toxic Substances Control Act, signed in October 1976, became effective January 1, 1977. One of the features of the Act which became effective on January 1, 1977 is contained in Section 8(e) known as "Substantial Risk Notification". As passed by the Congress, any person engaged in the manufacture, processing, or distribution of chemical substances, who obtains information which supports the conclusion that substantial risk to human health or the environment exists, is required to notify the Environmental Protection Agency immediately of such risk.

Referring to APCI's Standard Practice No. 702A, p. 5, and to directions given at the training sessions on TSCA compliance, the company procedure for dealing with matters of potential "substantial risk" is given. It is reproduced here.

> "The Company is required to inform the EPA immediately if it obtains any information which reasonably supports the conclusion that one of its chemical products presents a substantial risk of injury to health or the environment. Anyone in the Company obtaining such information shall immediately forward it through the appropriate line management to the Group/Division Manager with environmental responsibility and to the TSCA Chairman who, along with the committee and appropriate management, shall evaluate the degree of risk presented."

The purpose of this present notice is to advise APCI employees of a revision in the Company procedure for compliance with TSCA-Section 8(e), Substantial Risk Notification. The following directions are to be followed in all sectors of the company:

(1) All employees capable of appreciating pertinent information relative to substantial risk are required to notify their line supervisor immediately* in writing, with a copy to the TSCA Compliance Chairman (C. E. Blades). Such written notification shall be followed by documentation with attached reports describing the information which leads to a potential conclusion of substantial risk to health or the environment.

Adherence to this directive satisfies an employee's personal obligation to report under the Act. The law requires us to state that failure to comply with the act could lead to a civil penalty of up to $25,000 for each day of non-compliance. A knowing or willful failure to comply could result in a criminal penalty of up to $25,000 and one year in jail for each day of non-compliance.

(2) Beginning January 1, 1978, all orders for toxicological testing are to be placed through the TSCA Chairman's office. Reports of results, the management of toxicological testing contracts, and the responsibility for evaluation and pertinence of testing will reside with C. E. Blades and the TSCA Compliance Committee.

For your guidance, we summarize below the types of information which could lead to a Substantial Risk Notification.

(1) Demonstrated instances (or a series of events in a pattern which lead to a conclusion of a relationship) in which a product produces cancer, gene mutations, birth defects, death, or serious prolonged incapacitation in humans.

(2) Epidemiological studies, bioassays (in vitro or in vivo) which would reasonably support the conclusion of substantial risk of injury to human health or the environment when levels of exposure and degree of toxic hazard are taken into consideration.

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* Immediately means within 1-2 days after the information is received.

(3) Information which illustrates:

(a) Organic chemicals with extreme persistance or non-biodegradability (excludes inorganic materials).

(b) Pronounced bioaccumulation (e.g., 50,000 X in 30 days for fish or >10,000 partition coeff. with n-octanol/water).

(c) Interference with biogeochemical cycles (e.g., kills or inhibits nitrifying bacteria).

(d) Stimulates primary producers (e.g., algae, macrophytes) in aquatic ecosystems. (e.g., excessive discharge of phosphates into natural waterways can stimulate algae growth which, in turn, depletes oxygen levels in the water and adversely affects other life.)

(e) Any observed acute or chronic toxicity effects relating to cancer, mutations of genes, or birth defects, or serious harm to health in non-human organisms.

(f) Facile metabolism or degradation to a chemical product with any of the above.

(4) Emergency incidents, such as spills or releases, which because of the extent of the contamination, critically imperils a human population and critically threatens other life forms with significant population destruction.

Richard Fleming

TSCA Cost Report
By Profit Center and Charging Department
3 mo. FY 1978

To Profit Centers	From Coordinator's Office		From Outside Testing		From Profit Center Marketing		From Profit Center R&D		Total Costs	
	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual
Processes & Catalysts	$ 2,750	$1,054	$ -	$-	$ -	$ -	$ -	$ -	$ 2,750	$ 1,054
Chemical Additives	5,750	2,107	16,750	-	-	276	6,500	2,027	29,000	4,1
Acetylenics	4,250	1,584	-	-	-	240	-	2,360	4,250	4,184
Polymers	500	208	8,250	-	-	420	6,250	-	15,000	628
Industrial Chemicals	7,250	2,639	-	-	2,250	72	-	293	9,500	3,004
Ammonia Products	1,500	530	-	-	-	72	-	-	1,500	602
Plastics	500	208	-	-	250	-	-	-	750	208
Fabricated Plastics	250	30	-	-	-	-	-	-	250	30
Specialty Gases	5,750	1,250	-	-	1,750	526	-	-	7,500	1,776
TOTAL	$28,500	$9,610	$25,000	$-	$4,250	$1,606	$12,750	$4,680	$70,500	$15,896

WP/dls
/27/78

January 19, 1978

APCI IMPLEMENTATION POLICY FOR

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R. Fleming

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HWP/dls
1/27/78