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Safety
#122

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J. C. NOVAK

CHIEF, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, D.C. 20535

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May 12, 1976

R. N. Wheeler, Jr.

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J. T. BARR

Letter from Mr. Barry White
of OSHA

Attached is a letter from Mr. Barry White of OSHA interpreting some aspects of the OSHA vinyl chloride standard on medical surveillance and massive releases.

If you do not already have this letter I suggest it be added to your OSHA vinyl chloride file.

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AP00021154

U.S. DEPARTMENT OF LABOR
DALLAS REGIONAL OFFICE

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The answer to your first question is that it is not mandatory that an employee take the tests set forth in the standard. An employer must provide to each employee, who is exposed to vinyl chloride in excess of the action level, the opportunity to take these tests and examinations. The employer must make it convenient for such employees to take the tests, must actively encourage employees to take the tests and must warn employees of the dangers inherent in refusing to take them. The instances in which employees will refuse to take the tests should be very rare. If abnormalities are found in the initial examination the employer has an obligation to provide the opportunity for follow-up examinations if necessary to diagnose the employee's condition or to determine whether further exposure to vinyl chloride would be detrimental to his health. Note that Appendix A of the standard provides that follow-up exams be administered as soon as practicable, preferably within 3 or 4 weeks of the initial exam. The answer to your second question is contained in answer to Question #1.

This is in response to your June 30, 1975 letter to Mr. Kenneth Gorman, Area Director of the Cleveland, Ohio Office of the Occupational Safety and Health Administration (OSHA) concerning OSHA's recently promulgated standard, 29 CFR 1910.1017, regulating employee exposure to vinyl chloride.

Dear Mr. Seyler:

H. E. Seyler, Plant Manager
Universal PVC Resins, Inc.
786 Hardy Road
Painesville, Ohio 44077

OCT 1 1975

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20319



As regards your third question, an emergency situation under the standard is one in which an employee is exposed to massive release of vinyl chloride, not necessarily exposure to concentrations of 100 ppm or greater. The medical surveillance offered to employees exposed to emergency conditions will be left to the discretion of the employer's physician. We will not cite employers for violation of the standard if their physician makes a professional judgment that no examination is warranted.

In answer to question 4, the employer need only provide the opportunity for examination as set forth in answers #1 and #3.

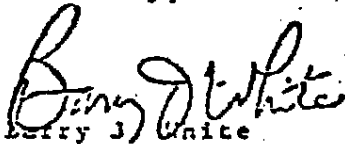
★ Question 5: An emergency situation is one in which employees are exposed to a massive dose of vinyl chloride. In the absence of exposure, a release of vinyl chloride need not be reported to OSHA. The employer, must, however, assure that employees do not enter the area in which the emergency occurred until the emergency has abated.

Question 6: If an employee refuses medical examination, no suitability statement need be issued.

Question 7: It is an employer's responsibility to retain the services of a physician who is willing to issue statements of suitability. Questions relating to possible civil liability should be referred to your private counsel.

I trust that this is the information you desire and I hope it will be helpful to you.

Sincerely,



Barry J. White
Associate Assistant Secretary
for Regional Programs

UNIVERSAL PVC RESINS, INC.

A SUBSIDIARY OF ROHINTECH

780 HARDY ROAD
PAINESVILLE, OHIO 44077
216-352-624
TWX B10 425 225

June 30, 1975

Occupational Safety & Health Administration, USDL
1240 East 9th Street, Room 847
Cleveland, Ohio 44199

Attn: Mr. Kenneth Bowman
Area Director

Dear Mr. Bowman:

The Department of Labor Standards on Vinyl Chloride, 29 CFR 1910.93q dated October 4, 1974, has since its promulgation, given rise to several questions and possible ramifications on interpretations of certain sections. In accordance with our meeting June 13, 1975, during discussion on several alleged violations, we agreed I'd reduce the questions to writing so that the regional or national office(s) could respond.

It is my understanding that the Standards reference to vinyl chloride on May 25, 1975 (page 23072) has been changed from 29 CFR 1910.93q to 29 CFR 1910.1017. References to sections for clarification are so indicated.

Reference: 29 CFR 1910.1017(k)(1) and Appendix A

1. Since the company must provide each employee the opportunity for examinations and tests, is it mandatory for the employee to take tests? If abnormalities are found in initial exam, would follow-up test be mandatory on the part of both employer and employee?
2. If it is not mandatory for the employee to take the medical examination and tests, what then is the company's responsibility?

Reference: 29 CFR 1910.1017(k)(3)

3. If under the Standard, OSHA considers an exposure of 100 ppm to be an emergency, what specific type of medical surveillance should the employee receive?
4. If an employee is exposed to an emergency and refuses medical attention, what is the company's responsibility?
5. If an emergency occurs in a plant but no employees are exposed to VCH, would this incident have to be reported within 24 hours to the OSHA director?

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Occupational Safety & Health
Administration, USDL

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Attn: Mr. Kenneth Bowman

Reference: 29 CFR 1910.1017(k) (4)

6. How would that affect the suitability statement that each employee is to receive after the exam from the examining physician if the examinations are not mandatory?
7. Malpractice suits against physicians are now a major problem. If there is a refusal on the examining physician's part to issue a statement of suitability to each employee after examination, what would the company's responsibility be? What action should the company then take?

Very truly yours,

H. E. Seyler
H. E. Seyler
Plant Manager

NES:sp



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May 12, 1976