

CURRENT CONCEPTS OF PRODUCT RESPONSIBILITY

Remarks By

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Here in the serenity of sun-splashed Boca, it is easy to forget that a lot of people across the land hold our business system in rather low esteem.

The polls tell us that the general public views the business community with a mixture of hostility and mistrust. Only one American in five believes that business strikes a fair balance between concern about profits and concern for the public good.

Disenchantment with business takes many forms...rejection of the profit motive by some; beliefs held by many that business is callous to the health and safety of its workers; a litany of complaints about the safety and quality of our products; and now the headlines that industry is not only the principal source of pollution but also a primary cause of cancer.

There is a cause and effect relationship between the bad press we have been getting and the trend toward excessive regulation of business.

As John T. Dunlop, the outgoing Secretary of Labor, explains: "When a problem acquires national attention -- as pollution, inflation, and occupational disease have in recent years -- the natural reaction has been to create a new regulatory agency to deal with it."

Certainly the climate for stiff new regulation of industry is abetted by scare headlines about cancer-causing chemicals, such as the controversies surrounding beta-naphthylamine, asbestos, vinyl chloride and, more recently, "Kepone".

Greatly increased public concern over health, safety and environmental hazards -- including potential hazards in the manufacture and use of paint and coatings -- has brought industry under unprecedented attack. The consequences include not only loss of business due

to ever more stringent government restrictions, but also further erosion of public trust essential to our continued operations and success.

How do we get out of this forest? How do we avoid future disasters, regain public confidence and help return the rule of reason to the policy-making process? One place to start is within our own organizations and with our own performance in the area of Product Responsibility. That's what I want to talk about today.

I would define Product Responsibility as the moral and ethical obligation of manufacturers to provide quality products at fair prices that can be made, transported, stored, used and disposed of safely. It is imposed at all levels of the manufacturing and marketing chain, from the raw material supplier to the ultimate customer. Its objective is to provide the optimum measure of protection for the public health and safety and for the environment.

Some of the elements of Product Responsibility are reflected in our legal responsibilities and the cost of ignoring them can be substantial. Take product liability as an example.

Recent case law has shifted the conventional idea of liability in many jurisdictions. Concepts of strict liability and comparative negligence are becoming well established. Supplier disclaimers intended to limit liability, if overly broad, are being rejected by the courts. No one in a product's distribution chain is immune from a lawsuit. Under certain conditions, suit may be brought against the vendor, the wholesaler, the manufacturer and the suppliers of component parts.

The suit against a "third party" is actually encouraged by workers' compensation laws that limit the amount an employee

can recover from his employer. There is no corresponding limit in product liability suits as evidenced by the recent American Can suit. In this case, American Can Company closed down its Jersey City plant, which was obsolete and uneconomic. Hundreds of workers then applied for awards under the state's Workers' Compensation Act. Next, these workers brought a joint action against 15 of American Can's suppliers of coatings, alleging that they had suffered irreversible lung damage from exposure to fumes from these coatings, and that the suppliers had failed to give adequate warning of the fume hazards. This action is moving slowly through the courts.

Basically, product liability litigation is a punitive approach to product safety after the damage has been done. Product Responsibility, on the other hand, has as one of its priority objectives the prevention of injury.

I firmly believe that the affirmative concept of Product Responsibility -- namely, taking positive steps to prevent injury or pollution -- is the foremost moral, ethical and social responsibility of industry. This responsibility must be addressed vigorously and uncompromisingly by management.

Product Responsibility involves a host of complicated problems. There are medical and technological aspects which I shall touch on in a moment. There are cost considerations which are obvious to all of us. And I have already cited legal and governmental factors, particularly changing concepts of product liability and the trend toward more Federal controls via such instruments as the Occupational Health and Safety Act, the Clean Air Act, Federal Water Pollution Control Act, Consumer Product

Safety Act, Federal Environmental Pesticide Act...and need I go on? There are more regulations down the road. Toxic substances legislation now pending in Congress would require premarketing approval of new chemicals by the government. The proposed legislation may require screening and testing of new paint mixtures. If you haven't studied the implications of this, I suggest that you do so because the burden may be extraordinarily heavy if the bill passes unchanged.

All of the factors I have just mentioned are important, but they should not mask the most basic element: The key issues in Product Responsibility are not the laws, the cost, or the technical problems, but rather the integrity and courage of the people who run industrial organizations.

I do not use the words integrity and courage lightly. By integrity, I mean a firm pledge that we will not make or sell any substance, or use any production process, unless this can be done safely. By courage, I mean nothing less than a policy that we will immediately make known to employees, customers, shippers or others who may be affected any new, pertinent, factual information indicating potential dangers not already well understood, or any steps that might be taken to reduce hazards. In other words, as soon as we discover we have a problem, we must make full disclosure without delay -- and have the guts to face up to the consequences, even if it means the loss of sales. On the other side of the coin, we must also have the courage to oppose hasty, ill-conceived, regulatory reactions to poorly defined problems which have been emblazoned in the headlines.

Management in private industry should let no other body -- not even the Federal government -- get out in front of us in recognizing and correcting safety and pollution problems.

At first glance, this approach may sound altruistic, but I submit that it is also eminently practical -- and consistent with our own enlightened self-interest.

First, public opinion will not tolerate the manufacture and distribution of products that cannot be made and used safely and without damage to the environment.

Second, if business ignores these precepts, and in effect sets aside the public will, government has little choice but to contain industry within an ever-tightening ring of controls and legal actions.

Third, product liability litigation will become an even larger element in the cost of doing business unless we do all we can to prevent injuries from occurring.

Therefore, in our own interest, we should take the lead in seeking the highest practical levels of protection for employees, customers, and the environment. Where protection of the public health and safety and the environment is at stake, business should operate with the utmost openness and candor. The public's perception of industry's responsibility is all-important. Industry's failure to communicate its responsiveness on these issues is a failure we will regret for a long time to come.

None of these points will strike you as particularly new. Industrial concern for safety is not a recent invention. In many companies, product and employee safety programs began decades before public pressures and government codes generated the present ground rules.

Based on my own experience in a chemical company manufacturing some 1600 product lines, several hundred of which are inherently toxic, flammable or otherwise hazardous if not handled properly, I am convinced that business is doing a better job of building safety into its operations and products than at any time in the past. Problems remain and new ones arise to surprise even the most farsighted of companies, but the record of industries such as ours proves that we can match our performance to the public's expectations. Our goals and the public's do not differ, but unfortunately the public tends to disbelieve what we say or fails to give us credit for what we do right.

Take our industrial safety record, for which we can rightfully be proud. Du Pont's Philadelphia Works holds a coatings industry record of over 13.5 million man-hours worked without a major injury. Accident records show that our employees are at least 15 times safer on the job than they are at home. For the entire coatings industry, injury frequency rates are considerably lower than the average for U. S. industry as a whole.

But today, there are new dimensions to safety and Product Responsibility. We are learning that products or processes considered safe for years may unexpectedly, through the discovery of new information, turn out to be hazardous.

Perhaps the classic example is vinyl chloride. Nothing about the structure of this commonplace, widely used material would have led scientists to suspect this would be a carcinogen. There was no earlier epidemiological record to suggest that the material might be hazardous. It came as a shock and surprise to both science and industry to learn that workers who had been exposed to vinyl chloride in some instances developed cancer many years later.

In our end of the business, chromates pose another example. Pigments manufacturers and the NPCA exercised Product Responsibility on this issue by promptly informing employees, customers, and members about the results of studies indicating that prolonged, excessive inhalation of chromates may cause cancer. We in the coatings industry, as well as our suppliers in the pigments industry, are taking steps to reduce worker exposure below the currently mandated legal levels and to the lowest practicable limits. When more definitive information is developed, we may have to do more.

Unfortunately, there have been enough well-publicized incidents related to worker health to mar the best of records -- and our critics, as expected, are making the most of it. Last month, for example, at a House Environmental Study conference, Ralph Nader said the world is "clearly entering the carcinogenic century" caused in part by corporate-produced chemicals used in "historic abuse" of the environment.

Critics such as Nader capture headlines, and the general public has understandable difficulty in separating fact from innuendo. Let's set the record straight. In the United States, the overall cancer mortality rate has been increasing for men but actually decreasing for women. The cause of the increase in cancer in males is specifically an increase in lung cancer. There has long been abundant evidence that lung cancer is associated with cigarette smoking.

When corrected for the change in the age distribution of our population and lung cancer associated with cigarette smoking, the data show that death rates from cancer in the United States are actually decreasing. It is simply not true that we are

experiencing an epidemic of cancer resulting from occupational exposure or exposure to the products of the chemical industry.

I am not suggesting that occupational carcinogens are of no concern or can be treated casually. Occupational carcinogens do exist. We can no longer assume that only a limited number of industrial chemicals can cause cancer. We are now aware that adverse health effects may occur after long incubation periods, and we must now suspect that a number of relatively old chemicals, tested long ago for other hazards, may be potential carcinogens.

In dealing with potential carcinogens, we face a tremendous technical challenge and one that only can be met through industrywide cooperation. I'm proud to work for a company that operates the oldest industrial laboratory for toxicology and industrial medicine. Our Haskell Laboratory near Newark, Del., has been in operation for more than 40 years, and a major expansion of its program is now well under way.

Even though we operate Haskell, Du Pont was pleased to take a leadership role in the recent formation of the Chemical Industry Institute of Toxicology. We are one of 11 founding companies which have pledged more than \$12 million for start-up costs. Membership in the Chemical Industry Institute has now grown to 18 U. S. companies, and several leading European chemical firms have expressed a strong indication of interest. This is intended as an independent institute, sponsored by the chemical industry, and it will provide a mechanism for the selection and testing of chemicals. Initially, it will concentrate on the carcinogenic potential of commodity chemicals.

We in the coatings industry can make a significant contribution to the total effort. I have in mind cooperation in and support for an epidemiological study. As a demonstration of Product Responsibility, there is very little which, in my opinion, rates a higher priority. The record of human experience that can be developed in a properly designed epidemiological study will have substantially more impact and value than screening studies, animal testing or technical discussions about the effect of suspected carcinogens.

Just last month, the NPCA Executive Committee approved an \$84,000 survey to determine the feasibility and cost of a full-scale coatings industry epidemiological study. Before long, the association as a whole will have to face this issue and the increased expenses such a study will require.

And where do we go next? What else should you and I be doing to make Product Responsibility a way of life in our industry? Here are some specific suggestions:

1. We must work side by side with experts in industry, government and universities to obtain reliable data on the health and environmental aspects of our raw materials and finished products.

2. We must take a stronger lead in recognizing and correcting potential health, safety and environmental hazards wherever they arise. This applies to all segments of our industry -- to suppliers of raw materials, to coatings manufacturers in our own plants, and to users of coatings in customer plants.

3. We must assume responsibility for sharing this knowledge with others in the manufacturer/user chain, with government and with the public. Ingredient suppliers must be prepared to give

adequate toxicity data to paint manufacturers, and paint manufacturers must do the same for their customers.

4. We will need to know whether or not there is a difference in hazard between exposure to individual paint ingredients as handled in a coatings plant and exposure to a paint containing the same ingredients after mixing.

5. We will need simple, precise, accurate analytical techniques and instruments to measure very small quantities of hazardous materials in air so that the atmosphere in and effluents from our plants and our customers' plants can be monitored.

6. We must encourage development of closed processing systems, better material handling, improved personal protective equipment and better ventilation techniques for use in our facilities so as to further minimize the risks of handling hazardous materials.

7. We must recognize that legal requirements represent minimum standards of performance. Therefore, we must impose higher standards on ourselves than the law requires -- provided they are practical and feasible.

8. When regulations governing health, safety and environmental questions are proposed, we must have the courage and foresight to provide expert testimony early in the legislative process. We should not obstruct needed regulations, but should provide sensible and constructive inputs designed to help policymakers promulgate rules that will accomplish worthwhile public objectives within a logical cost/benefit framework.

These are real challenges. Not everyone in this room may subscribe to these ideas, and I suggest that we debate them in the

panel discussion that follows. However, I do submit that the need for integrity and courage on the issue of Product Responsibility cannot be questioned in today's climate of public opinion. The alternatives for the coatings industry, or any other industry, are unthinkable.

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