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March 14, 1988

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Mr. Paul J. Hansen, Jr.
Area Director
U.S. Department of Labor
Occupational Safety and
Health Administration
2156 Wooddale Boulevard, Suite 200
Baton Rouge, Louisiana 70806-1486

Dear Mr. Hansen:

On behalf of Occidental Chemical Corporation, this letter responds to your letter of February 19, 1988 which notified Occidental of a citation resulting from OSHA's Inspection, No. 101620532-H9117, for failure to place a cancer warning statement on bags of polyvinyl chloride (PVC) resin. On March 2, 1988, I spoke with Daryl Cambre of your office and informed him that Occidental would be contesting the citation. My letter of March 10, 1988, confirmed this.

The issue presented here has significant implications for PVC producers and users. In this regard, please note that we also represent the Vinyl Institute, a division of The Society of the Plastics Industry, Inc.,*/ which has an interest in this proceeding.

*/ SPI, the major national trade association of the plastics industry, is a corporation organized under the Not-For-Profit corporation law of the State of New York. Its 1,600 member companies and individuals and 49 operating units (continued on next page)

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Occidental Chemical was issued a citation for an alleged violation of 29 C.F.R. § 1910.1017(1)(4), that is, failure to label containers of polyvinyl chloride with a suspect carcinogen warning. As detailed below, containers holding polyvinyl chloride resin need not carry the OSHA warning label when the handling, transport or further processing of the PVC resin is not expected to result in the exposure of workers to vinyl chloride above the action level of 0.5 parts per million (ppm) averaged over an eight-hour period. Since no violation of the regulation existed, Occidental's citation should be withdrawn.

A. Current Status of PVC

PVC (Chemical Abstract Services Registry No. 9002-86-2) is the second most widely used plastic resin in the United States. It is produced from vinyl chloride monomer (CAS No. 75-01-4) by a process called polymerization. While there is concern about possible adverse health effects relating to exposure to vinyl chloride, PVC itself is quite inert from a toxicity perspective. For example, Environmental Protection Agency (EPA) regulations under a variety of statutes minimize the release of VCM into the environment, while PVC itself is not deemed hazardous and is not regulated per se. See, e.g., 40 C.F.R. §§ 60.61 et seq. PVC is cleared for use in food packaging under the Federal Food, Drug, and Cosmetic Act and the applicable Food and Drug Administration (FDA) regulations.

include those who supply raw materials; process or manufacture plastics or plastics products; and engineer or construct molds or similar accessory equipment for the plastics industry. The majority of SPI members are the processors and converters of plastic resins into end products which represent 75 percent of the dollar volume sale of plastics in this country.

Members of the Vinyl Institute include: Air Products and Chemicals, the BFGoodrich Company, Borden Chemical and Plastics, M.L.P., CertainTeed Corp., Dow Chemical Co., Occidental Chemical Corp., PPG Industries, and Vista Chemical Co. Members of the Vinyl Institute account for approximately 82 per cent of the domestic production of vinyl chloride and 63 percent of the domestic production of polyvinyl chloride.

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B. Status of PVC Resin and Compound under the OSHA Vinyl Chloride Standard

The OSHA vinyl chloride standard sets a permissible exposure limit (PEL) of 1 ppm averaged over an eight-hour period and an action level of 0.5 ppm averaged over an eight-hour work day. Other provisions establish monitoring, medical surveillance, sign and label, and reporting requirements.

The standard applies to the "manufacture, reaction, packaging, repackaging, storage, handling or use of vinyl chloride or polyvinyl chloride, but does not apply to the handling or use of fabricated products made of polyvinyl chloride." 29 C.F.R. § 1910.1017(a)(2). Because "fabricated products" are exempt, their definition is of particular significance to the regulatory community.

Under § 1910.1017(b)(6), a fabricated product is defined as "a product made wholly or partially from polyvinyl chloride, and which does not require further processing at temperatures, and for times significant to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride." Slightly restated, PVC is a fabricated product not subject to the standard unless it is mass melted and that melting results in the release of vinyl chloride.

Although the concept of mass melting is easily understood, at the time the standard was issued it was unclear what the phrase "resulting in the release of vinyl chloride" meant. In 1975, OSHA stated that "release of vinyl chloride" means the release of an amount of vinyl chloride which would be likely to result in employee exposure at or above the action level without regard to the use of engineering controls. See attached 1975 OSHA opinion letters. Thus, low residual monomer resins which would not release vinyl chloride in excess of the action level during further processing, such as mass melting, are fabricated products not subject to the regulation.

As FDA observed in a February 1986 notice, residual vinyl chloride levels have been reduced by a factor of nearly 1 million from levels found in 1975. 51 Fed. Reg. 4,173 (Feb. 3, 1986). For PVC resin with sufficiently low residual vinyl chloride monomer levels, manufacturers of PVC resin and compound can conclude that exposure at or above the action level is not

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likely. Thus, the training, labeling, and similar provisions of the standard are not applicable. The Occidental facility in Addis, Louisiana, places the cancer warning statement on resin with residual vinyl chloride monomer levels greater than 1 ppm. The resin in questions had less than 1 ppm residual monomer, and no warning statement was needed.

The continuing validity of the 1975 opinion letters was confirmed in a letter from the Secretary of Labor, filed with the Occupational Safety and Health Review Commission (OSHRC). In Secretary of Labor v. Hooker Chemical Company, (OSHRC) Docket No. 78-4862 (decision enclosed), an OSHA inspector issued a citation to Hooker Chemical Company for allegedly failing to provide training under the vinyl chloride standard for employees who worked in the calendaring, compounding and warehouse areas of a Hooker facility. Hooker contested the citation on the basis that employees working in these areas were not subject to OSHA's vinyl chloride standard because they were not exposed to VCM above the action level. Both Hooker's and OSHA's monitoring for vinyl chloride in the calendaring and compounding facilities indicated concentrations below the 0.5 action level. Judge Charles K. Chaplain adopted Hooker's position and vacated the OSHA citation, holding that the training provisions of the standard do not apply to areas where the vinyl chloride level and the ambient air is below the action level.

Although not requested to do so by any party, a Commissioner and the Occupational Safety and Health Review Commission directed that the case be reviewed. In responding to the review proceedings, OSHA changed its position and filed a letter stating that the judge's decision should be affirmed. Significantly, the Secretary of Labor's letter stated that: "Training requirements are not applicable in this case because respondent's cited compounding and calendaring operations simply are not processes which could result in hazardous exposure to vinyl chloride by the nature of the operations themselves." Because OSHA indicated that it did not wish to pursue this case, the Review Commission left the judge's decision intact.

The training provisions of the vinyl chloride standard provide that "each employee engaged in vinyl chloride or polyvinyl chloride operations shall be provided training in a program relating to the hazards of vinyl chloride and

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Page 5

precautions for its safe use." Section 1910.1017(j). Literally interpreted, any "polyvinyl chloride operation" would require training. However, as reflected in this case and the attached letters, OSHA's consistent position has been that when exposure is below the action level, the standard is largely inapplicable.

A similar conclusion pertains to labeling. For example, PVC is literally required to be labeled with an indication that it contains vinyl chloride, a cancer suspect agent. However, where exposure to vinyl chloride will not reach or exceed the action level, labeling is not required. We note that a May 12, 1987 letter from Frank A. White, OSHA Deputy Assistant Secretary, takes a different position. However, we consider this inconsistent with prior regulatory guidance and disagree with its conclusions.

C. Status of PVC as a Hazardous Chemical Under the Hazard Communication Standard

OSHA has an interest in minimizing worker exposure to vinyl chloride monomer. We recognize that the citation is based on the vinyl chloride standard. 29 C.F.R. § 1910.1017. Nonetheless, in demonstrating that a cancer warning is not required, it is instructive that PVC is not a hazardous chemical as that term is defined under the Hazard Communication Standard (HCS). 29 C.F.R. § 1910.1200.

Section (d) of the Hazard Communication Standard requires chemical manufacturers and importers to evaluate the hazards of their chemical products. Those evaluating chemicals must treat the following sources as establishing that a given chemical is a carcinogen or potential carcinogen for purposes of the standard:

- (i) the National Toxicology Program (NTP), Annual Report on Carcinogens (latest edition);
- (ii) International Agency for Research on Cancer (IARC), monograph (latest editions); or
- (iii) 29 C.F.R. Part 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

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The standard notes that the Registry of Toxic Effects of Chemical Substances, published by the National Institute for Occupational Safety and Health (NIOSH), indicates whether a chemical has been found to be a carcinogen or potential carcinogen by NTP or IARC.

While vinyl chloride monomer is a regulated hazardous material, it is transformed through polymerization into a white granular powder, PVC, which is non-hazardous. Polymerization is a "one-way reaction"; thus, PVC does not revert back to vinyl chloride. PVC is not listed as a carcinogen or potential carcinogen by NTP in its most recent Annual Report on Carcinogens. Similarly, PVC is not included among those substances regulated by OSHA and listed in 29 C.F.R. Subpart Z. No monograph by IARC concludes that PVC is a carcinogen or potential carcinogen. IARC's summary classification of the carcinogenic risk of chemicals does not include PVC under Category 1 or 2. In fact, in a letter to our office dated June 3, 1987, the Department of Health and Human Services (HHS) stated that as a result of correspondence between the HHS and IARC, HHS had changed the listing in the Registry of Toxic Effects of Chemical Substances (RTECS) to characterize PVC in the following manner:

IARC Cancer Review: Animal inadequate evidence.

IARC Cancer Review: Human inadequate evidence.

Thus, consistent with OSHA instructions CPL-2-2.38A (May 16, 1986), PVC is not a carcinogen and not subject to the labeling requirements of the Hazardous Communication Standard. This further demonstrates that no cancer warning can reasonably be demanded here.

D. Conclusion

For the reasons stated above, since the PVC resin at issue here will not result in exposure to vinyl chloride monomer at or above the action level of 0.5, the labeling requirements of the vinyl chloride do not apply and the citation should be dismissed.

We trust that this provides adequate information so that OSHA can dismiss the above-referenced citation against

KELLER AND HECKMAN

Mr. Paul J. Hansen, Jr.
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Page 7

Occidental Chemical Company. If you should have any further questions or comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Peter L. de la Cruz". The signature is written in dark ink and is positioned above the printed name.

Peter L. de la Cruz

Enclosures

CTL017743



Centers for Disease Control
National Institute for
Occupational Safety & Health
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati OH 45226-1998

June 3, 1987

Mr. Peter L. de la Cruz
Law Offices of Keller and Heckman
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036

Dear Mr. de la Cruz:

We wrote to IARC in Lyon, as we had indicated, and received a response from Dr. A. Aitio, Officer in Charge, Unit of Carcinogen Identification and Evaluation. A copy of his letter is enclosed.

In response to this letter, we have changed our listings in the Registry of Toxic Effects of Chemical Substances (RTECS) to conform with IARC criteria. In fact, we have reviewed all IARC citations to bring them into conformity with the IARC criteria defined in Supplement 4 and subsequent monographs. We now use the IARC terminology of "Sufficient Evidence," "Limited Evidence," "Inadequate Evidence," and "No Evidence" of carcinogenicity.

In view of the IARC letter, and also applying the criteria, the RTECS record for polyvinyl chloride now carries the following citations:

IARC Cancer Review:Animal Inadequate Evidence
IARC Cancer Review:Human Inadequate Evidence

I regret that this whole process was slow in reaching a resolution, but it did raise an issue of importance for us. Your inquiries helped us to focus on our need for reviewing older citations. The criteria that IARC now uses simplify our task in reporting the conclusions of the IARC working groups more accurately.

Sincerely yours,

Doris V. Sweet
Editor, RTECS
Priorities and Research Analysis Branch
Division of Standards Development
and Technology Transfer

Enclosure

CTL017744



CENTRE INTERNATIONAL DE RECHERCHE SUR LE CANCER
INTERNATIONAL AGENCY FOR RESEARCH ON CANCER

150 COURS ALBERT-THOMAS 69372 LYON CEDEX 08 FRANCE

Tél. 72.73.84.85 Télégr. Unicancer Lyon Télex 380023

In reply please refer to: CI/75/2
Prière de rappeler la référence :

7 April 1987

Dear Mrs Sweet,

We thank you for your letter dated 25 March.

Polyvinyl chloride - like a number of other chemicals - was, for the first time, evaluated using the formal classification 'sufficient', 'limited', or 'inadequate' evidence of carcinogenicity in Supplement 4 to the IARC Monographs. In volume 19, where polyvinyl chloride was first evaluated, this scheme had not yet been adopted. Thus volume 19 simply states that only local sarcomas were detected in rats - the only species studied - after implantation of PVC-sheets subcutaneously, intraperitoneally; the incidence of the tumours varied with the form of the implant. These data were considered not to provide 'sufficient evidence of carcinogenicity', as defined in the Preamble to Supplement 4. Appendix 2 in Supplement 4 contains the list of chemicals considered to have sufficient evidence of carcinogenicity in experimental animals.

Although the absence of a chemical from Appendix 2 of the Supplement 4 in no way 'negates' the assessments done earlier, for several chemicals Supplement 4 provides the first formal assessment of the degree of evidence on the IARC scale. Therefore, assessments done in Supplement 4 will represent the IARC views until a re-evaluation is made.

Incidentally, IARC has quite recently held a working group meeting, to re-evaluate the evidence of carcinogenicity of all chemicals and exposures previously evaluated in Monographs volumes 1-42. The result of these evaluations, Supplement 7 of the Monograph series, is expected to be published early in 1988. For the case of most such polymers it was considered that there is inadequate evidence of carcinogenicity in experimental animals.

Yours sincerely

A. Altio
A. Altio, M.D.
Officer in charge,
Unit of Carcinogen Identification
and Evaluation

Mrs D.V. Sweet
Editor, RTECS
Centers for Disease Control
National Institute for
Occupational Safety & Health
4676 Columbia Parkway
Cincinnati OH 45226-1998

CTL017745

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



MAY 12 1987

Mr. Peter L. de la Cruz
Keller and Heckman
Law Offices
Suite 1000
1150 17th Street, N.W.
Washington, D.C. 20036

Dear Mr. de la Cruz:

This is in response to your letter of December 29, 1986, regarding the regulation of vinyl chloride polymers and copolymers. Please accept my apology for the delayed response.

Thank you for the copy of the citation you sent to illustrate the type of Agency enforcement actions that some Vinyl Institute members have experienced and believe to be inappropriate. As you may be aware, this citation has been modified by Settlement Agreement.

I would like to clarify the Occupational Safety and Health Administration's requirements for labelling vinyl chloride polymers and copolymers and for providing material safety data sheets for these substances.

According to the definition at 29 CFR 1910.1017(b)(9) in the vinyl chloride standard, vinyl chloride polymers and copolymers that have never been mass melted, or have only undergone an intermediate mass melting process such as when processed into pellets, are polyvinyl chloride. Such substances must bear labels containing the information specified in 29 CFR 1910.1017(1)(3) or (1)(4), depending upon whether they are waste material or products. Any additional labeling specified in the hazard communication standard, 29 CFR 1910.1200, does not apply to these substances. The material safety data sheet provisions of the hazard communication standard do apply to them, however.

Vinyl chloride monomers and copolymers that have been formed into a product by molding, calendaring, extrusion or other similar process, and which do not require further processing at temperatures and for times sufficient to cause mass melting resulting in the release of vinyl chloride, are "fabricated products" and exempt from the vinyl chloride standard. These fabricated products would be covered by the labelling and material safety data sheet requirements of the hazard communication standard, however, if the hazard determination required by the standard indicates that further operations done on the products such as sanding, heat sealing, etc., present a potential hazard to employees.

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As regards the Field Information Memorandum dated October 23, 1975, Subject: Enforcement of Vinyl Chloride Standard with Respect to Low Residual Monomer Resins, which you presented in our October meeting, the document is no longer in effect.

Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Frank A. White', with a large, stylized loop in the middle.

Frank A. White
Deputy Assistant Secretary

CTL017747

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210

DEC 17 1975



JAN 02 1975
R N WHEELER JR.

Mr. R. ^{N.} Wheeler, Jr.
Vinyl Chloride Resins Manager
Union Carbide Corporation
270 Park Avenue
New York, New York 10017

Dear Mr. Wheeler:

This is in response to your joint letter with Mr. John Whittlesey dated June 17, 1975, petitioning for modifications of the Exposure to Vinyl Chloride Standard, 29 CFR 1910.1017 (formerly 1910.93 recodified May 28, 1975).

There are no plans presently to amend the Vinyl Chloride Standard. A revised program directive is contemplated, although we are not certain as to the date it will be available. Please be assured that your comments and suggestions are greatly appreciated and they will be considered fully in the revision of the program directive. In the meantime, the following administrative decisions have been made:

1. 29 CFR 1910.1017(a) and (b)(6) Scope and application (2), (3) and (b) Definitions (6)

The standard defines a fabricated product as being one which is "made wholly or partly from polyvinyl chloride, and which does not require further processing at temperatures, and for times, sufficient to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride."

"Release of vinyl chloride" means the release of an amount of vinyl chloride which would likely result in employee exposure at or above the action level without regard to the use of engineering controls. Products which can be classified as fabricated products are exempt from the provisions of the vinyl chloride standard. All other products are subject to the requirements of the standard. If the employer uses or manufactures a product which is not a fabricated product, he must initiate monitoring procedures. If the monitoring reveals that the employees are not exposed to vinyl chloride at or above the action level, the employer's operations will be exempt from the

CTL017748

2.

provisions of the standard. However, if the monitoring reveals exposure at or above the action level, the employer must implement the procedures specified in the standard.

2. 29 CFR 1910.1017(b) Definitions (5).

The petition requests that the definition of "emergency" be revised to include specific examples, such as fire and explosion. We agree that the definition might well be expanded to include examples. Again, this matter will be addressed in a program directive and not as an amendment to the standard.

The definition of a "massive release" as being "greater than 100 parts per million (ppm)" found in the current Program Directive #200-35, will also be addressed in a revised directive. We agree that the 100 ppm should be changed.

3. 29 CFR 1910.1017(d) Monitoring (4)

The intent of paragraph (d)(4) is that the employer shall be 95% confident that his monitoring result is within 25%, 35% or 50% of the actual value depending on the concentration. Therefore, an employer using a method which has proven vinyl chloride detection accuracy of 25% or less need take only one measurement regardless of the actual vinyl chloride monomer concentration. In concentration ranges where accuracies of 35% or 50% are required, the employer need take only one measurement if the method accuracy is less than the specified accuracy. With methods of unknown accuracy or having errors greater than the specified accuracy requirements, repeated measurements are necessary. In these cases, one may use the coefficient of variation (CV) as a parameter to judge whether or not a sampling procedure is adequate to meet the standard. The CV in percentage units is defined as the standard deviation of the method, times 100, divided by permissible exposure limit. The required CV of the procedure is obtained by dividing the required accuracy by 1.96 (Z value for 95% confidence). Thus, for accuracies of 25%, 35% and 50%, method CV values should be less than 12.6%, 17.0%, and 25.0% respectively.

3.

To repeat, there are no plans presently to amend the standard but your comments on monitoring will be considered in the program directive revision and also in future rulemaking where monitoring is a requirement.

4. 29 CFR 1910.1017(j) Training.

The standard does not specify a level of exposure to trigger training activities. Section 6(b)(7) of the Occupational Safety and Health Act of 1970 provides that employees shall be apprised of the nature of the hazardous substances with which they come in contact.

The evidence we have compiled on vinyl chloride has indicated that it is sufficiently hazardous to warrant training for all personnel who have any possibility of coming in contact with vinyl chloride. There is always the opportunity for accidents to occur and employees should be aware of the possible consequences. There has also been some indication that storage containers may yield high concentrations of vinyl chloride when opened after transporting.

Therefore, it is not likely that the training provisions will be amended. For those operations covered by the standard, training is a requirement.

5. 29 CFR 1910.1017(e), Signs and labels (4)

If there are situations where the blended polyvinyl chloride must be labeled yet contains less than 0.5 ppm residual vinyl chloride monomer, the following wording may be used:

BLENDDED POLYVINYL CHLORIDE (PVC)
CONTAINS TRACE AMOUNTS (0.5 ppm)
OF VINYL CHLORIDE.

VINYL CHLORIDE IS A CANCER-SUSPECT AGENT.

CTL017750

We hope that the above clarifications will satisfy your petition for modification and amendment of the vinyl chloride standard. As previously stated, there are no plans presently to formally amend the standard. There will be an addendum or modification of the Program Directive #200-35. Should you wish to discuss any matter further do not hesitate to contact me or members of my staff.

Sincerely,



Barry J. White
Associate Assistant Secretary
for Regional Programs

CTL017751

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210



DEC 17 1975

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DEC 22 1975

APCI CHEM. ENG. CO.
LAW DEPT.

Mr. Raymond H. Schenck
Attorney
Air Products and Chemicals, Inc.
Five Executive Mall
Swedesford Road
Wayne, Pennsylvania 19087

Dear Mr. Schenck:

This is in response to your letter of June 30, 1975 to Assistant Secretary John H. Stender petitioning for the modification of 29 CFR 1910.1017(b)(6), (formerly 29 CFR 1910.93q(b)(6) recodified May 28, 1975), Exposure to Vinyl Chloride, Occupational Safety and Health Standards.

29 CFR 1910.1017(b)(6) defines a fabricated product as being one which is "made wholly or partly from polyvinyl chloride, and which does not require further processing at temperatures, and for times, sufficient to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride."

"Release of vinyl chloride" means the release of an amount of vinyl chloride which would likely result in employee exposure at or above the action level without regard to the use of engineering controls. Products which can be classified as fabricated products are exempt from the provisions of the vinyl chloride standard. All other products are subject to the requirements of the standard.

There are no plans presently to formally modify the vinyl chloride standard. Therefore, we hope that the the above clarification of the regulation will satisfy your petition request.

Should you have further questions, please contact me or members of my staff.

Sincerely,

Barry White
Associate Assistant Secretary
For Regional Programs

CTL017752

CLOSURE

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210

DEC 17 1975

Mr. R. S. Brookman, Manager
Research, Development and Technical Services
Firestone Plastics Company
Pottstown, Pennsylvania 19464

RECEIVED
DEC 20 1975
U.S. DEPT. OF LABOR

Dear Mr. Brookman:

In response to your letter of July 14, 1975, petitioning for modification of the Vinyl Chloride Standard, the following determinations have been made:

1. 29 CFR 1910.1017(b)(5) Definitions

In regards to the definition of "massive release" in Program Directive #200-35, we agree that the definition should be modified. This will be addressed in a future program directive. In all probability the stipulation of 100 ppm will be removed.

2. 29 CFR 1910.1017(b)(6) Definitions

The standard defines a fabricated product as being one which is "made wholly or partly from polyvinyl chloride, and which does not require further processing at temperatures, and for times, sufficient to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride."

"Release of vinyl chloride" means the release of an amount of vinyl chloride which would likely result in employee exposure at or above the action level without regard to the use of engineering controls. Products which can be classified as fabricated products are exempt from the provisions of the vinyl chloride standard. All other products are subject to the requirements of the standard. If the employer uses or manufactures a product which is not a fabricated product, he must initiate monitoring procedures. If the monitoring reveals that the employees are not exposed to vinyl chloride at or above the action level, the employers' operations will be exempt from the provisions of the standard.

CTL017753

However, if the monitoring reveals exposure at or above the action level, the employer must implement the procedures specified in the standard.

3. 29 CFR 19101.1017(g)(4)(iii) Respiratory protection

Regarding your suggestion to add a Type C, Supplied Air Respirator, Pressure Demand type, with full or half face-piece to this section:

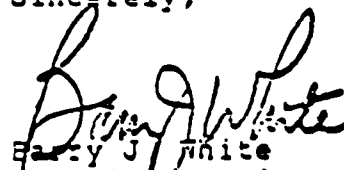
If an employer can show that a respirator provides equal or greater protection than those specified in the standard, he may be granted an interim order or a variance from the standard. Your company received such an interim order, dated May 30, 1975.

4. 29 CFR 1910.1017(k) Medical surveillance

There is no OSHA regulation requiring an employee to submit to a medical examination. If the employee refuses any medical examination required to be provided by the employer, the employer shall inform the employee of the possible health consequences of such refusal and obtain a signed statement from the employee indicating that the employee understands the risk involved by refusal to be examined.

We greatly appreciate your sharing data, experience and knowledge with us. At the present time there are no plans to formally amend or modify the vinyl chloride standard. We hope that the above clarification of the regulation will satisfy the request in your petition. Should you have further questions please do not hesitate to contact us.

Sincerely,


Barry J. White
Associate Assistant Secretary
for Regional Programs

Copy to T. C. Walker 12/26/75

Copies to: Mr. W. B. Connolly, Jr.
Mr. J. J. Cassidy, Jr.
Mr. C. J. Kleinert
Mr. F. F. Woy
Mr. R. W. Arnold
Mr. H. N. West
Mr. G. D. Lloyd
Mr. R. A. Park

CTL017754

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 2010



JAN 27 1975

Mr. Michael F. Saggese
Business Manager
Tenneco Chemicals, Inc.
Foam and Plastics Division
Nixon, New Jersey 08818

Dear Mr. Saggese:

This is to confirm information I gave you verbally that the Occupational Safety and Health Administration's vinyl chloride standard does not apply to the handling or use of fabricated products, so long as no mass melting of the material is involved.

Mass melting is considered to occur when the physical identity of the particles of PVC and/or the structural form or identity of the material is lost. The following operations do not involve mass melting: hot wire cutting of film or sheet, thermoforming, blister packaging, heat sealing, lamination, vacuum forming, heat shrinking, and thermal welding of structural components. This lists the operations we currently know about; there may be others that would be included.

Sincerely,

A handwritten signature in dark ink, appearing to read "Grover C. Wrenn", is written over a horizontal line.

Grover C. Wrenn
Chief
Division of Health Standards
Development

X/C - G.S. Flint ✓
2/3 G. L. Lotz
G. Munyer
A.J. Quast

RECORDED AND INDEXED JAN 27 1975

CTL017755

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210



MAR 25 1975

Mr. R. N. Wheeler, Jr.
Union Carbide Corporation
Chemicals and Plastics
P.O. Box 8004
South Charleston, West Virginia 25303

RECEIVED

MAR 31 1975

D N WHEELER, JR.

Dear Mr. Wheeler:

Your letter dated February 14 suggests that certain of Union Carbide Corporation's vinyl coating resins from its dispersion and solution vinyl resin processes should be considered "fabricated products." In support of that position, you state that the particular resins described are "fabricated" for use and application via coating technology; and further that the dispersion and solution vinyl resins contain less than one part per million by weight of residual vinyl chloride monomer which effectively precludes the possibility of employee exposures in excess of the action level in the subsequent transportation, handling or use of these resins.

The Occupational Safety and Health Administration standard for vinyl chloride defines a fabricated product as a "product made wholly or partly from polyvinyl chloride, which does not require further processing at temperatures, and for times sufficient to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride." In reviewing the materials which you submitted, it is agreed that the term "fabricated products" includes those solution and dispersion polyvinyl chloride resins described as having application in the formulation of paints and coatings which do not undergo further processing involving mass melting.

It should be noted that the vinyl chloride standard would apply in all respects during the manufacturing of the solution and dispersion resins within Union Carbide Corporation facilities. Additionally, employers who used these resins in applications which would require further processing at temperatures sufficient to cause mass melting of the polyvinyl chloride, would be subject to the provisions of the standard.

Sincerely,

Grover C. Wrenn
Chief, Division of Health
Standards Development

CTL017756

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, :

Complainant, :

v. : OSHRC Docket No. 78-4862

HOOVER CHEMICAL CO., :

Respondent. :

DECISION

Before BARNAKO, Acting Chairman; CLEARY and COTTINE, Commissioners.

BY THE COMMISSION:

A decision of Administrative Law Judge Charles K. Chaplin is before the Commission for review pursuant to section 12(j), 29 U.S.C. § 661(i), of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678. Judge Chaplin vacated a citation alleging an other than serious violation of the standard at 29 C.F.R. § 1910.1017(j).^{1/}

1/ The standard provides, in pertinent part:

§ 1910.1017 Vinyl Chloride

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(j) Training. Each employee engaged in vinyl chloride or polyvinyl chloride operations shall be provided training in a program relating to the hazards of vinyl chloride and precautions for its safe use.

The standard sets out the requirements for training programs.

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The Secretary of Labor ("Secretary") filed a letter stating that the judge's decision should be affirmed. The Secretary stated that "Training requirements are not applicable in this case because respondent's cited compounding and calendeting operations simply are not processes which could result in hazardous exposure to vinyl chloride by the nature of the operations themselves." He thereby indicated that he did not wish to pursue the case. Respondent, Hooker Chemical Company, filed a brief urging affirmance of the decision. Therefore, there is no expression of interest in Commission review by an aggrieved party. Moreover, the judge's decision raises no issue of compelling public interest. Accordingly, the case will not be reviewed, and the judge's decision is affirmed. See PPG Industries (Caribe), 80 OSAHRC ___, 8 BNA OSHC 2003, 1980 CCH OSHD ¶ 24,733 (No. 77-2235, 1980); Abbott-Sommer, Inc., 76 OSAHRC 21/A2, 3 BNA OSHC 2032, 1975-76 CCH OSHD ¶ 20,428 (No. 9507, 1976). The decision is accorded the precedential value of an unreviewed judge's decision. See Leone Construction Co., 76 OSAHRC 12/E6, 3 BNA OSHC 1979, 1975-76 CCH OSHD ¶ 20,387 (No. 4090, 1976), appeal withdrawn, No. 76-4070 (2d Cir. May 17, 1976).

SO ORDERED.

FOR THE COMMISSION


RAY H. DARLING, JR.
Executive Secretary

DATED: MAR 31 1981

^{2/} In his direction for review, Commissioner Cottine specified the following issue:

Whether the Administrative Law Judge erred in concluding that 29 C.F.R. § 1910.1017(j) has no application to places of employment where the levels of vinyl chloride in the ambient air are below 0.5 ppm.

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COTTINE, Commissioner, dissenting:

The interpretation of the employee training provision of the vinyl chloride standard is a matter of compelling public interest.^{1/} The Commission is obligated to exercise its responsibility to interpret the standard in this case because the revised enforcement policy of the Secretary of Labor amounts to a modification of the vinyl chloride standard without the rulemaking proceedings required by the Act, specifically 29 U.S.C. §655(b).^{2/}

The Respondent was cited for noncompliance with 29 C.F.R. §1910.1017(j)^{3/} for failing to provide employee training regarding vinyl chloride

^{1/} For my individual views on the assessment of compelling public interest as a basis for Commission review in the absence of party interest, see my separate opinions in PPG Indus. (Caribe), 1980 OSAHRC , 8 BNA OSHC 2003, 1980 CCH OSHD ¶24,733 (No. 77-2235, 1980); Cargill, Inc., 80 OSAHRC 28/D8, 8 BNA OSHC , 1980 CCH OSHD ¶24,359 (No. 78-3006, 1980); Keco Indus., Inc., 78 OSAHRC 105/D9, 7 BNA OSHC 2048, 1979 CCH OSHD ¶24,117 (No. 78-661, 1979); Cargill, Inc., 79 OSAHRC 90/A2, 7 BNA OSHC 2045, 1979 CCH OSHD ¶23,981 (Nos. 78-2862 & 78-3864, 1979).

^{2/} Section 6(b) of the Act, 29 U.S.C. §655(b), sets forth the procedures by which "[t]he Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard."

^{3/} 29 C.F.R. §1910.1017(j) provides:

(j) Training. Each employee engaged in vinyl chloride or polyvinyl chloride operations shall be provided training in a program relating to the hazards of vinyl chloride and precautions for its safe use.

(1) The program shall include:

(i) The nature of the health hazard from chronic exposure to vinyl chloride including specifically the carcinogenic hazard;

(ii) The specific nature of operations which could result in exposure to vinyl chloride in excess of the permissible limit and necessary protective steps;

(iii) The purpose for, proper use, and limitations of respiratory protective devices;

(Continued)

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for employees working in certain areas of its resin facility that are not "regulated areas" as defined in §1910.1017(e)^{4/} and where vinyl chloride concentrations do not exceed the "action level" of §1910.1017(b)(1).^{5/} The administrative law judge concluded that the cited standard is not applicable "to places of employment where VC levels in the ambient air are below 0.5 ppm", and the citation was vacated. For the reasons that follow, the judge's decision is inconsistent with the specific terms of the cited provision and should not be affirmed.

3/ (Continued)

- (iv) The fire hazard and acute toxicity of vinyl chloride and the necessary protective steps;
 - (v) The purpose for and a description of the monitoring program;
 - (vi) The purpose for, and a description of, the medical surveillance program;
 - (vii) Emergency procedures;
 - (viii) Specific information to aid the employee in recognition of conditions which may result in the release of vinyl chloride; and
 - (xi) A review of this standard at the employee's first training and indoctrination program, and annually thereafter.
- (2) All materials relating to the program shall be provided upon request to the Assistant Secretary and the Director.

4/ 29 C.F.R. §1910.1017(e) provides:

- (e) Regulated area. (1) A regulated area shall be established where:
- (i) Vinyl chloride or polyvinyl chloride is manufactured, reacted, repackaged, stored, handled or used; and
 - (ii) Vinyl chloride concentrations are in excess of the permissible exposure limit.
- (2) Access to regulated areas shall be limited to authorized persons.

5/ 29 C.F.R. §1910.1017(b)(1) provides:

- (b) Definitions. (1) "Action level" means a concentration of vinyl chloride of 0.5 ppm averaged over an 8-hour work day.

Arguing to the judge for affirmance of the citation, the Secretary cited the preamble accompanying publication of the permanent vinyl chloride standard at 39 Fed. Reg 35890 (1974) and stated, "since any VC exposure may be harmful, each employee engaged in PVC operations, regardless of how minimal the monitoring results, must be trained, and we recognize no exceptions to the training requirement." (Letter to judge in lieu of brief (March 19, 1979)). Although the cited conditions clearly involve work areas where employees are engaged in polyvinyl chloride operations, the Secretary now claims on review that training requirements are not applicable and that this view "is the enforcement policy now adopted by the OSHA National Office in identical situations." (Letter to Commission in lieu of brief (July 6, 1979)). In contrast to the letter submitted to the administrative law judge, the representation on review provides no citation to the standard, the accompanying preamble, or any subsequent revision in support of its new interpretation.

This new interpretation is inconsistent with the provisions and structure of the vinyl chloride standard as discussed in the preamble accompanying publication of the permanent standard. The "action level" of one-half of the permissible exposure limit was included in the permanent standard to "minimize the impact of the standard on the employers who have attained exposure levels well below the permissible limit," 39 Fed. Reg. at 35893, by exempting those low level exposure areas from "some provisions of the standard." Id. (emphasis supplied). Examples of provisions that do not apply when the action level is not exceeded are

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medical surveillance (§1910.1017(k))^{6/} and periodic monitoring (§1910.1017(d)). The Secretary stated, "[i]n our judgment, exposures below the action level do not present a sufficient hazard to warrant application of the entire standard to the many employers who are or will be below that level." Id. (emphasis supplied). However, those provisions that exempt areas not in excess of the action level specifically include the action level requirement. Furthermore, the action level requirement for these provisions was expressly described in the preamble to the promulgating document. 39 Fed. Reg. at 35893, 35895.

In contrast, the employee training provision at issue in this case is limited neither by its terms nor by the accompanying explanation in the preamble. 39 Fed. Reg. at 35895. The standard specifically applies to "[e]ach employee engaged in vinyl chloride or polyvinyl chloride operations." §1910.1017(j) (emphasis supplied). There is no reference to the action level and no exemption from the clearly stated application of the training provisions. The proper interpretation of the standard is that stated by the Secretary in his letter to the judge: "[E]ach employee engaged in PVC operations, regardless of how minimal the monitoring results, must be trained, and we recognize no exceptions to the training

6/ Section 1910.1017(d) states, in pertinent part,

(d) Monitoring.

(2) Where a determination . . . shows any employee exposures, without regard to the use of respirators in excess of the action level, a program for determining exposures for each such employee shall be established.

7/ Section 1910.1017(k) states, in pertinent part,

(k) Medical surveillance. A program of medical surveillance shall be instituted for each employee exposed, without regard to the use of respirators, to vinyl chloride in excess of the action level.

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requirement." Any variation from this requirement must be pursuant to rulemaking consistent with the provisions of section 6(b)(5) of the Act, 29 U.S.C. §655(b)(5). See Florida Peach Growers Ass'n v. Brennan, 489 F.2d 120 (5th Cir. 1974); United States Steel Corp., 77 OSAHRC 12/C3, 2 BNA OSHC 1343, 1974-75 CCH OSHD ¶19,047 (Nos. 2975 & 4349, 1974) (lead & concurring opins.), appeal dismissed, 517 F.2d 1400 (3d Cir. 1975).

CTL017763

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, :
Complainant, :
v. : OSHRC Docket No. 78-4862
HOOKER CHEMICAL CO., :
Respondent. :

APPEARANCES

Barnett Silverstein, Esq.
for the Secretary

Bruce L. Harrison, Esq.
for the respondent.

DECISION AND ORDER

Chaplin, Judge

In September 1978, the Secretary of Labor (Secretary) inspected the worksite of Hooker Chemical Co. (Hooker) and issued a citation for an other (than serious) violation containing two separately stated violations. Hooker contested item 2 which alleged that:

Employee(s) engaged in vinyl chloride or polyvinyl chloride operations were not provided training in a program relating to the hazards of vinyl chloride and precautions for its safe use:

- a) Calendar [sic], Compound, and Warehouse Areas.

1/ At the hearing the Secretary moved to amend the complaint to drop the warehouse area from the citation. This amendment was granted (Tr. 12).

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This was alleged to be a violation of the standard at 29 C.F.R. 1910.1017(j) which provides:

Each employee engaged in vinyl chloride or polyvinyl chloride operations shall be provided training in a program relating to the hazards of vinyl chloride and precautions for its safe use.

Subparagraphs of this standard delineate the content of such a program. No penalty was proposed but abatement was directed by November 28, 1978.

In its answer, Hooker admitted the Review Commission had jurisdiction of the parties and this matter. A hearing was held February 9, 1979, at which time the parties stipulated (Ex. J-1) that Hooker is engaged in the polymerization of raw vinyl chloride (VC) in its resin facility, takes the resin, adds stabilizers, inhibitors, plasticizers, and colors, mixes and extrudes the product into food grade quality polyvinyl chloride (PVC) pellets in its compound facility; sends the resin through blender, mill, extruder and calender machines to produce vinyl film and sheets, and ships the finished product from its warehouse. The resin facility is a regulated area as defined in 29 C.F.R. 1910.1017(e)^{2/} and the calender and compound areas are not and are below the action level (Tr. 170). The inspection of Hooker's facilities on September 22, 1978, was based on a complaint of inadequate medical testing and training of employees operating the resin facility. The employees working in the resin area are fully trained under section 1910.1017(j) and employees in the compound and calender areas are not. The untrained employees at Hooker's two plant sites number 275 (Tr. 141, 142).

2/ (e) Regulated area.

(1) A regulated area shall be established where:

- (i) Vinyl chloride or polyvinyl chloride is manufactured, reacted, repackaged, stored, handled or used; and
- (ii) Vinyl chloride concentrations are in excess of the permissible exposure limits.

THE EVIDENCE

Mr. Martin Dubin, an industrial hygienist (CO) with a Master's degree in science and occupational health employed by the Secretary, testified that he conducted the inspection of Hooker's plant and at the opening conference ascertained that employees in the resin facility routinely received training and medical examinations; however, employees outside the resin facility were not trained (Tr. 17). After inspecting the resin facility he briefly stopped in the compound and calender areas where he looked at the operations (Tr. 18). The citation involved in this case was issued because the compound and calender areas were engaged in PVC operations (Tr. 20). Since compliance with the standard turned on the definition of the words "... engaged in vinyl chloride or polyvinyl chloride operations. . .", as used in the standard, Mr. Harrison asked him how this phrase was defined and he responded that he looked to the standard at section 1910.1017(a)(2) which states:

This section applies to the manufacture, reaction, packaging, repackaging, storage, handling or use of vinyl chloride or polyvinyl chloride, but does not apply to the handling or use of fabricated products made of polyvinyl chloride.

Other than this, there was no definition (Tr. 21). In answer to my question he stated that "... regulated areas. . ." were all plant areas where the ambient air contained high levels of VC and that VC operations were all those other areas where VC may be in the air but not in the high ranges (Tr. 37). On redirect examination he stated that Hooker's records showed VC monomer in the compound area, but below the action level, 0.5 ppm over an 8-hour period. (Tr. 45, 51). He expressed his opinion that every employee involved

in VC operations must be trained, no matter how minimal their exposure (Tr. 46). In the calender area he observed employees calendering, milling and blending PVC to form sheet and roll which he interpreted as PVC operations (Tr. 52). In the compound area the employees were extruding and blending PVC pellets which he considered being engaged in PVC operations (Tr. 53).

Mr. Charles W. Kiefert, Division Manager of Safety for Hooker, testified that one of his responsibilities was training employees with respect to VC (Tr. 61). As an offer of proof, after Mr. Silverstein's objection was sustained, Mr. Harrison developed, through questioning of Mr. Kiefert, data respecting industry accident rates compared to Hooker's to reflect where Hooker was applying its assets to improve health conditions. (In its Answer, Hooker had alleged that "Abatement of the alleged violation is economically infeasible." Counsel argues that economic feasibility was an affirmative defense to complying with all standards (Tr. 64-71)). Kiefert also indicated that he spent two days a week in employee safety meetings. In response to Mr. Silverstein's questions he stated the division of Hooker of which the cited plant was a part had a gross profit in 1978 of approximately \$750,000. In reply to my question he estimated his safety budget as being in excess of \$100,000 a year.

Kiefert stated further that during a strike period, beginning in August 1978, 37 replacement employees received some training requiring six instructor hours per week (Tr. 82). Each regular employee went to one training session each month so that a weekly meeting was held to accommodate four shifts (Tr. 84). These meetings lasted from 45 minutes to 2 hours. A corporate decision was made that for employees in nonregulated

areas, VC training would reduce time available for training in higher priority safety areas (Tr. 85). The standard alleged to have been violated requires that the training program for employees include:

- (i) The nature of the health hazard from chronic exposure to vinyl chloride including specifically the carcinogenic hazard.
- (ii) The specific nature of operations which could result in exposure to vinyl chloride in excess of the permissible limit and necessary protective steps;
- (iii) The purpose for, proper use, and limitations of respiratory protective devices;
- (iv) The fire hazard and acute toxicity of vinyl chloride, and the necessary protective steps;
- (v) The purpose for and a description of the monitoring program;
- (vi) The purpose for, and a description of, the medical surveillance program;
- (vii) Emergency procedures;
- (viii) Specific information to aid the employee in recognition of conditions which may result in the release of vinyl chloride; and
- (ix) A review of this standard at the employee's first training and indoctrination program, and annually thereafter.

Mr. Kiefert was asked to estimate the cost of establishing such a program for the employees in the compound and calendering areas (Tr. 98). He replied that this could be accomplished in one separate safety meeting.

With respect to Hooker's defense that the Secretary had become actively involved in a labor-management dispute (Tr. 22), I ruled that such matter was not germane to the issue before me. However, Mr. Harrison was

permitted to make an offer of proof (Tr. 100). Mr. Kiefert testified that Hooker's cited plant was struck at midnight, August 20, 1978, and the strike lasted seven weeks, generating a lot of hostility. The inspection took place during the strike as a result of an employee complaint.

Mr. Harold F. Dubec, Jr., Hooker's Manager of Environmental Compliance, responsible for coordination of all regulatory compliance efforts in the Division here being cited and who had formerly been Division Manager of Safety and Security, testified that his education included a degree in Chemical Engineering and previous work experience with American Cyanamid for five years as plant safety engineer (Tr. 109). He was a certified safety professional. When asked to whom the standard at 1910.1017(j) applied he expressed the opinion that it only applied to the regulated areas, i.e., areas at or above the action level (Tr. 118, 120). With respect to the nine subjects required to be included in a training program, he stated that monitoring had shown VC levels below the action level, therefore the employees in these nonregulated areas had no need for the specified training (Tr. 111). On cross-examination he stated that Hooker was continuing to monitor for VC and that in the compounding and calendering areas VC was present "In hundredths of parts per million ranges. . ." The basis for his opinion regarding the inapplicability of the standard was that the entire standard only applied to regulated areas (Tr. 121).

In an offer of proof, Hooker's counsel took Mr. Dubec through additional incidents occurring during the strike and the training given employees. He said each retraining session took one man-day of the trainer's time and the employees were trained on an overtime basis (Tr. 136). The cost of each training session was the salary for the trainer, publications

issued (Ex. R-1 & 2), clerical support time and participating employee wages. He estimated 18 additional training sessions would be required to train employees in nonregulated areas and such additional training might require hiring a consultant to do the training.

On redirect examination, the CO stated that based on office files and conversations with other employees in his office and of other chemical employers, he believed retraining was given to all employees. In rebuttal, Mr. Kiefert took the stand to testify that he had contacted the three employers mentioned by the CO as retraining its employees and determined that Stauffer Chemical and Tenneco trained the same as Hooker and B. F. Goodrich trained new hires only (Tr. 163).

Complainant's exhibit C-1, a pamphlet titled "Vinyl Chloride", published by the U. S. Department of Labor, Occupational Safety and Health Administration, June 1975, discusses the hazard of VC and points out that "If a fabricating plant tests its air and finds that VC levels are less than 0.5 ppm ('action level'), the plant is effectively exempted from much of the rest of the standard." (Underscoring supplied).

THE ISSUE

While the Secretary did not file a post hearing brief, he did submit a letter which rather succinctly states the issue.

...since any VC exposure may be harmful, each employee engaged in PVC operations, regardless of how minimal the monitoring results, must be trained, and we recognize no exceptions to the training requirement...

Hooker, in its excellent brief, stated the issue in a different cast, i.e., that "...the training requirement applies only to employees working in regulated areas, as that term is defined at [1910] .1017(e)."

DISCUSSION

The initial standard governing employee exposure to VC was contained in 1910.93 and established a ceiling value of 500 ppm of air. In April 1974, an emergency temporary standard was promulgated (39 FR 12341) reducing the permissible exposure level to 50 ppm and other requirements including monitoring and respiratory protection (1910.93q). On May 10, 1974, the Secretary proposed a permanent standard that limited employee exposure to "no detectable level" and added, for the first time, a provision respecting a "regulated area". In the proposal there was a section (1910.93a(j)(3)) which came under the hearing of emergency situations:

(3) Each authorized employee shall be trained in a program relating to the hazards of vinyl chloride and the precautions for safe use.

(1) The program shall include:

(A) The nature of the fire hazard, and the necessary protective steps;

(B) The nature of the toxic hazard, including local and systemic effects, acute and chronic effects including specifically the carcinogenic hazard;

(C) The specific nature of operations which could result in exposure to vinyl chloride, and necessary protective steps;

(D) The purpose for and application of the medical surveillance program;

(E) The purpose for and application of decontamination practices;

(F) The purpose for and significance of emergency practices and procedures;

(G) The employee's specific role under normal operating or emergency conditions;

(H) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of vinyl chloride;

(I) The purpose for and application of specific first aid procedures and practices;

(J) A review of this standard at the employee's first training and indoctrination program and annually thereafter.

(A separate provision for employee training was added to the final standard rather than including it within the section on emergency situations as in the proposal (39 FR 168970.)) An "authorized employee" was defined (1910.93q(b)(2)) as an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer. Thus we see that initially the Secretary proposed that employees required to work in the regulated area were to be trained for emergency situations in a program relating to the hazards of VC. However, in the permanent standard adopted, and in issue here, these training requirements were imposed on employees engaged in VC or PVC operations. The Secretary now desires to interpret this to require that virtually everyone employed where VC or PVC is handled be trained. In response to my query he replied that somewhere between the person who delivered raw materials and the president of the employer there was an area where VC operations occurred and clearly the compound and calender areas fit that description (Tr. 56).

In publishing the permanent standard the Secretary established the concept of an "action level" and he said:

Employers who, in fact, are substantially below the exposure limit will be subjected to only minimal burdens by virtue of the 'action level'...

...The purpose of the action level is to minimize the impact of the standard on the employers who have attained exposure levels well below the permissible limit. Thus, where the results of monitoring under paragraphs (d)(1) or (d)(2) demonstrate that no employee is exposed in excess of 0.5 ppm TWA, employers may, in effect, be exempted from some provisions of the standard... In our judgment, exposures below the action level do not present a sufficient hazard to warrant application of the entire standard to the many employers who are or will be below that level.

From this it may be inferred that even exposure below the action level requires compliance with some part of the standard. The Secretary cites a Commission decision, Travenol Alaska Laboratories, Inc. ___ OSAHRC ___ (Docket No. 13693, 1975) (Judge's Decision) in support of its position that employers such as Hooker may not decide what is required of them. However, Travenol dealt with a requirement that monitoring records contain certain data and Judge Burroughs ruled that this was required of all employers required to conduct initial monitoring. Such a holding is in accord with the Secretary's statement by inference that even an employer with exposure levels below the action level had to comply with a part of the standard. But such a holding is of no assistance in resolving the issue before me. Further, the Secretary said:

...Employers who, in fact, are substantially below the exposure limit will be subjected to only minimal burdens by virtue of the 'action level' to be discussed below.

This accords with the conclusion I have reached.

In further amplification of the standard he explained that certain programs could be discontinued where exposure was below the action level.

When he discussed the "Signs and labels" required he considered it:

...imperative that a worker be fully informed and that he realize the possible risks involved in his occupation. Coupled with the training requirement in the standard, we believe that the signs and labels required will adequately inform employees of the hazard.

Who has to be informed and trained? Quite obviously employees in the regulated areas since "... such signs will warn unauthorized personnel to keep out..." He also said:

...The proper application of most protective measures requires an amount of training and indoctrination of employees that cannot easily be conveyed on a sign or label. . .

Since the signs and labels were to warn personnel entering the regulated areas, the training was intended for regulated area employees.

The sole explanation for the new training requirement was:

(12) Training. A separate provision for employee training has been added to the final standard rather than including it within the section on emergency situations as in the proposal. The new paragraph provides for training of employees concerning the carcinogenic hazard of VC, emergency procedures, the need for monitoring and an annual review of the standard. It also provides for training of employees concerning the purpose for, proper use of, and limitations connected with respiratory protection.

Quite obviously the training requirement continues to be an answer to emergency situations as it was in the proposal. When we look to the nature of the training the Secretary requires, it is apparent that they are directed to employees who will be responding to an emergency. Who will respond to an emergency? Fire fighters, first aiders and employees working where the emergency exists logically need to be trained. Is it the Secretary's position that the amount of VC in the air may increase because of the inadvertent release of trapped VC in food grade quality products of the resin facility? If so, monitoring will show this, and as soon as the "action level" is reached a set of requirements is activated.

It is my decision that if the Secretary intended the standard to require what is contended in this case, the standard is inartfully drawn and can only be considered vague, insofar as that intent is seen. It behooves the Secretary to define the term "VC operations" since he has been so careful to define other trigger terms.

FINDINGS OF FACT

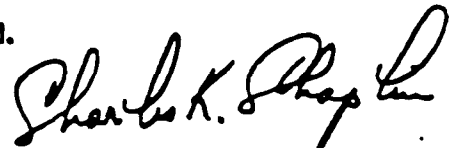
1. Hooker is an employer who processes raw VC into finished products.
2. Some of its manufacturing facility is "regulated" with respect to VC exposure.
3. The raw VC processes through a resin facility (regulated), where it is chemically changed, to a compound area where substances are added to give it permanence and create "food grade" quality PVC (unregulated) to a calender area where finished products are created (unregulated).
4. The amount of VC in the ambient air in the compound and calender areas approaches the nondetectable levels, as low as hundredths of parts per million.
5. Employees in regulated areas are trained but those in nonregulated areas are not.

CONCLUSIONS OF LAW

1. The Review Commission has jurisdiction over the parties and the issue in this case.
2. The standard at 29 C.F.R. 1910.1017(j) has no application to places of employment where VC levels in the ambient air are below 0.5 ppm.
3. Hooker did not violate Sec. 5(a)(2) of the Act (29 U.S.C. 654(a)(2)).

ORDER

It is hereby ORDERED that item number 2 of the citation for an alleged other than serious violation is vacated.


CHARLES K. CHAPLIN
Judge, OSHRC

Dated: May 7, 1979
Hyattsville, Maryland

U. S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
2156 Wooddale Boulevard Suite 200
Baton Rouge, Louisiana 70806-1486

Februaury 19, 1988

Occidental Chemical Corporation
Hwy 1 & Richardson Rd.
Addis, LA. 70710

Re: Worksite - Hwy 1 & Richardson Rd., Addis, LA 70710
OSHA Inspection 101620532 - H9117-

Dear Sir:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (the Act) which may have accompanying proposed penalties. Also enclosed is a booklet which explains your rights and responsibilities under the Act. If you have any questions about the enclosed citations and penalties, I would welcome further discussion in person or by telephone.

You will note on page 9 of the booklet that, for violations which you do not contest, you must (1) notify this office promptly by letter that you have taken appropriate corrective action within the time set forth on the citation; and (2) pay any penalties assessed. Please inform me of the abatement steps you have taken and of their dates together with adequate supporting documentation; e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results. This information will allow us to close the case.

As indicated on page 10 of the booklet, you may request an informal conference with me during the 15-working-day notice of contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation or the penalty.

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of the citation. The running of this contest period is not interrupted by an informal conference. Therefore, you must take care to schedule the informal conference early enough in the 15-day period to allow time to contest subsequent to the informal conference, should you decide to do so.

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If you decide to request an informal conference, please complete the attached notice at the bottom of this letter and post it next to the citations as soon as the time, date, and place of the informal conference have been determined.

Be sure to bring to the conference with you any and all supporting documentation of existing conditions as well as of any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Sincerely,



Paul J. Hansen, Jr.
Area Director

Enclosures

NOTICE TO EMPLOYEES

An informal conference has been scheduled with OSHA to discuss the citations issued on 2/19/88. The conference will be held at the OSHA office located at 2156 Wooddale Boulevard, Hoover Annex, Suite 200, Baton Rouge, Louisiana 70806 on _____ at _____.

U.S. Department of Labor
Occupational Safety and Health Administration

Citation and Notification of Penalty
U.S. Department of Labor - OSHA

Hoover Annex Suite 200
2156 Wooddale Boulevard
Baton Rouge, LA 70806

3. Issuance Date 02/19/88	4. Inspection Number 101620532
5. Reporting ID 0625700	6. CSHO ID H9117
7. Optional Report No.	8. Page No. 1 of 1

10. Inspection Date(s):

2/9/88 - 2/10/88

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

11. Inspection Site:

Hwy 1 & Richardson Rd.
Addis, LA 70710

9. To:

Occidental Chemical Corporation
and its successors
Hwy 1 & Richardson Rd.
Addis, LA 70710

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of violation(s) cited below. The Citation must remain posted until the violations cited below have been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

This Citation describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed below are based on these violations. You must abate the violations referred to in this Citation by the dates listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. (See the enclosed booklet which outlines your rights and responsibilities and should be read in conjunction with this form.) You are further notified that unless you inform the Area Director in writing that you intend to contest the Citation or proposed penalties within 15 working days after receipt, this Citation and the proposed penalties will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the Citation is affirmed by the Review Commission.

12. Item Number

13. Standard, Regulation or
Section of the Act Violated

14. Description

15. Date by Which
Violation Must
Be Abated

16. Penalties

1
29 CFR 1910.1017(1)(4): Containers of polyvinyl chloride were not legibly labeled: "Polyvinyl Chloride (Or Trade Name) Contains Vinyl Chloride- Vinyl Chloride is A Cancer-Suspect Agent";

(a) Warehouse, bags of polyvinyl chloride resin intended for shipment.

03/23/88

0.00

CTL017778

17. Area Director

for Paul J. Hansen, Jr.

C.B. Gross

18.

0.00

NOTICE TO EMPLOYEES — The law gives an employee or his representative the opportunity to object to any abatement date set for a violation if he believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and penalty.

EMPLOYER DISCRIMINATION UNLAWFUL — The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the U.S. Department of Labor Area Office at the address shown above.

EMPLOYER RIGHTS AND RESPONSIBILITIES — The enclosed booklet outlines employer rights and responsibilities and should be read in conjunction with this notification.

CITATION AND NOTIFICATION OF PENALTY

ORIGINAL

OSHA-2 (Rev. 1/84)

Total
Penalty
for This
Citation

Make Check
Money Order
Payable to
DOL-OSHA

Indicate
Inspection
Number
on
Remittance

Penalties
Are Due
Within 15
Days of
Receipt
of This
Notification
Unless
Contested
(See
enclosed
Booklet)

This Section
May Be
Detached
Before
Posting