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Interoffice Communication

THIRD DRAFT

To Distribution to be Determined

From David A. Kuhn

Date May 1, 1978

Subject Policy and Procedure for Notification of Substantial Risk

Section 8(e) of the Toxic Substances Control Act requires that employees of Conoco Chemicals who learn from any source, including their own experience, that chemicals we manufacture, process or distribute present a serious risk of injury to human health or the environment, must immediately inform the Administrator of the Environmental Protection Agency about this information unless he knows the Administrator is already sufficiently informed. In my IOC of March 16, 1977 on the Toxic Substances Control Act, I recommended a very simple procedure to comply with the notification requirements and said I would follow it up with details when the regulations have been established.

The EPA on September 9, 1977, proposed "guidance" on how to respond to our "notification of substantial risk" responsibilities which they then modified on March 16, 1978. Using this guidance, I propose the following program be implemented in Conoco Chemicals to assure that we are complying with this provision of the Toxic Substances Control Act.

First, some background. Section 8(e) states that "any person who manufactures, processes or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment, shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information." To implement this section, EPA has published the above-mentioned guidance. Broadly, it says that companies, their officers and employees have properly discharged their 8(e) responsibilities if the company establishes procedures governing these notifications and well publicizes them internally. The procedures must:

- (1) Specify the information to be reported.
- (2) Explain how the notifications must be prepared and submitted.
- (3) Note the federal penalties for failing to report.
- (4) Provide a plan to promptly advise officers and employees in writing of how the company handled the report.

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If Conoco Chemicals establishes the policy and procedure in the attached pamphlet to satisfy the EPA requirements, we will be able to direct our own program and designate who will be responsible in Conoco and what they must do. This will avoid placing the burden on all employees, many of whom may not have sufficient knowledge or contact with chemicals to be able to adequately respond. With our program we can choose qualified people and assure that all other employees will be exempt from any penalties for non-reporting. In addition, employees who originally supplied notifications of substantial risk will have fully discharged their obligations once they have notified the response team, and so will not be subject to penalties for not reporting. The policy requires rapid reaction based on a potentially complicated judgement. For instance, "immediately"

means that the information must be received by EPA less than 15 working days after it is first obtained by anyone in Conoco Chemicals who can appreciate the importance and relevance of the circumstances which could present a substantial risk. Briefly, substantial risk means any serious human health hazard which may cause grave diseases such as cancer or birth defects and any serious environmental impact such as extreme persistence, accumulation in an organism, or toxicity to a key organism in an important biological cycle.

Since each local manager is likely to know best who in his organization is capable of understanding and appreciating information on hazards from chemicals pertinent to this program, it will be his responsibility to designate, inform and instruct those working for him who will be given the responsibility to report "substantial risks". Local managers must give careful thought to whom they identify to have responsibility for this program. It's likely that all supervisors down to the first-line supervisor should be considered. There might also be some operators who are sufficiently knowledgeable. The intent of this policy is to insure that all employees able to comprehend substantial risk participate in the reporting program.

The designated employees will constitute Conoco Chemicals response team to the "notification of substantial risk" procedures. Each plant manager will have a response team coordinator (possibly the safety director) who will report the information to the Director of Biomedical and Environmental Affairs. When the Director has received this information he will evaluate it in consultation with any experts he believes are needed and a decision will be made whether or not to report the information to EPA. The Director will determine the contents of the notification and inform the members of the response team who provided the information what action he took.

Here's the way we will implement the program.

- (1) Each local manager determines within his workforce who will participate.
- (2) At a meeting of these designees, explain the program and the reasons for it. Pass out the attached pamphlet and discuss it with the group. (The Director of Biomedical and Environmental Affairs will gladly assist this activity.)
- (3) Designate one coordinator (the Safety Director might be a good choice) and several alternates to receive the information and report it to Chemical Headquarters (Director of Biomedical & Environmental Affairs) at once.
- (4) Periodically (annually at least) reassemble the group and remind them again of their responsibility.
- (5) Information submitted to Headquarters will be evaluated for significance and action taken. The results of this action will be transmitted back to the local coordinator who will inform all those involved of its disposition.

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DRAFT PAMPHLET

CONOCO CHEMICALS DIVISION

CONTINENTAL OIL COMPANY

NOTIFICATION OF SUBSTANTIAL RISK

EMPLOYEE RESPONSIBILITY UNDER SECTION 8(e)
OF THE TOXIC SUBSTANCES CONTROL ACT

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NAME _____

You have been appointed to participate in CONOCO Chemicals' Response Team to the "notification of substantial risk" requirements of the Toxic Substances Control Act. Section 8(e) states that "any person who manufactures, processes or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment, shall immediately inform the Administrator of EPA of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information". This requirement of the Act was effective January 1, 1977. On September 9, 1977 EPA published proposed guidance on how to comply with this section of the Act which was further modified on March 16, 1978. CONOCO Chemicals intends to comply fully with the provisions of the law and its regulations to make sure that any substantial risks arising from use of chemicals in our operations are promptly reported. CONOCO Chemicals' policy and procedure is therefore based on our understanding of the law and the aforementioned guidance.

This pamphlet is designed to help those who will participate on our Response Team understand their responsibilities. The questions and answers below explain what kind of information should be reported, how to report it and to whom, and what will happen after the report has been made. Should other questions arise about the conduct of the program, ask your supervisor. If you follow the procedure you will have properly discharged your responsibility under the law.

Q - Who is subject to the requirements?

A - All employees capable of recognizing and appreciating information pertinent to evaluating substantial risks to health and the environment. Each employee designated for the Response Team has been determined capable to do this.

Q - What kind of information should I report?

A - Information that leads you to believe that a chemical poses a serious risk. Here are some examples:

Emergencies

Any of the following effects that immediately and/or critically imperil human health or the environment with disastrous consequences.

Human Health Effects

Any instance linking a chemical to cancer, gene mutations or birth defects, toxicity that results in death or serious or prolonged incapacitations (other than due to gross misuse). This applies to the community as well as CONOCO employees.

Scientific Studies

Any evidence resulting from epidemiological studies, bioassays or other experiments could show potential for injury to human health or significant ecological damage.

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Environmental Effects

Any widespread and previously unsuspected distribution in the environment. If a chemical not found in nature is extremely persistent in the environment it is a substantial risk and should be reported. Examples are polychlorinated biphenyls (PCBs). Pronounced bioaccumulation, interference with critical biogeochemical cycles, eutrophication (stimulation of plant growth in aquatic systems) and all significant effects on non-human organisms due to acute and chronic toxicity are also reportable. These effects need not be conclusively demonstrated.

Q - When will I be regarded as having obtained information?

A - As soon as you are aware of any information that may suggest a substantial risk--not after lengthy analysis or evaluations have been conducted to confirm or reject that risk.

Q - What do I do with the information?

A - Inform your supervisor at once. He is to inform the Response Team coordinator or his alternate (give names).

Q - What happens then?

A - The Response Team coordinator will inform Chemicals Headquarters (Director of Biomedical and Environmental Affairs) immediately for further action.

Q - What kind of action?

A - He will determine in consultation with others, whether or not the report represents a substantial risk. If it is the EPA Administrator will be immediately notified through the EPA Regional Office emergency numbers. If the report is determined not to be a substantial risk, the decision and documentation for it will be written up and retained by CONOCO Chemicals.

Q - What if CONOCO Chemicals does not report my notification to EPA and I still believe a "substantial risk" exists?

A - You still have the right to report what you believe is a "substantial risk" directly to EPA and be protected by Section 23 of the Toxic Substances Control Act. Information may be reported to EPA by calling the 24-hour emergency telephone numbers listed below:

Region I (Maine, Rhode Island, Connecticut, Vermont, Massachusetts, New Hampshire), 617/223-7265

Region II (New York, New Jersey, Puerto Rico, Virgin Islands), 201/548-8730

Region III (Pennsylvania, West Virginia, Virginia, Maryland, Delaware, District of Columbia), 215/597-9898

Region IV (Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida), 404/881-4062

Region V (Wisconsin, Illinois, Indiana, Michigan, Ohio, Minnesota), 312/353-2318

Region VI (New Mexico, Texas, Oklahoma, Arkansas, Louisiana), 214/749-3840

Region VII (Nebraska, Iowa, Missouri, Kansas), 816/374-3778

Region VIII (Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota),
303/837-3880

Region IX (California, Nevada, Arizona, Hawaii, Guam), 415/556-6254

Region X (Washington, Oregon, Idaho, Alaska), 206/442-1200

In addition, a written report is to be submitted within 15 days to the Document Control Officer, Chemical Information Division, Office of Toxic Substances (WH-557), 401 M Street SW., Washington, D.C. 20460.

Q - How will I know what happened?

A - The action of CONOCO Chemicals will be reported back to all members of the Response Team who have participated in the report.

Q - How long do we have to report the information?

A - The law says the EPA Administrator must be informed "immediately". An emergency incident must be reported at once to EPA. It's anticipated that the peril of an emergency will be so obvious that no time need be taken to judge whether a substantial risk exists. When there is no emergency, "immediately" has been interpreted to mean that the report must be made to EPA within 15 working days after the first member of the Response Team first obtains the information of substantial risk. There must be great emphasis on quickly transmitting information through the company.

Q - What chemicals are to be assessed for substantial risk?

A - All chemicals in the plant, whether they are feedstocks, intermediates, by-products or finished products.

Q - What should my report include?

A - The report should include:

- (1) A statement that it is being submitted in accordance with Section 8(e).
- (2) The job title, name, address, telephone number and signature of the person reporting.
- (3) The name and address of the plant where the reporter works.
- (4) Identity of the chemical.
- (5) Summary of the effects.
- (6) Where the information was obtained and any summary of supporting technical data.

Q - What if I don't have all the data?

A - Report what you have immediately. If all the information cannot be submitted within 15 working days, a notification of the substantial risk will be made which includes a timetable for submitting to EPA the rest of the pertinent information.

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Q - What if I fail to report "substantial risk" information through the company procedures or to EPA?

A - The Toxic Substances Control Act makes it unlawful for any person to fail or refuse to submit information required under Section 8(e). Violation makes a person liable to the United States for a civil penalty and possible criminal prosecution. The government may seek judicial relief to compel submission of Section 8(e) information and to otherwise restrain any violation of this section.

ATTACHMENT TO PAMPHLET

I, _____ certify that I have read the pamphlet entitled "Toxic Substances Control Act", Section 8(e) "Notice to Administrator of Substantial Risks" and that I understand that I am being appointed to the Response Team. I am now responsible to report information described in the pamphlet to my supervisor.

(Signature)

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