

April 24, 1974

MEMORANDUM TO: Ralph L. Harding
Society of the Plastics Industry

SUBJECT: OSHA and Vinyl Chloride

At the SPI vinyl chloride meeting in Washington on April 16, considerable discussion was held on the best approach the industry could take with regard to OSHA and the development of final VC standards. Numerous comparisons were drawn between the current situation and that faced by the asbestos industry two years ago. Since at that time I was director of the trade association which served as the umbrella organization for the industry effort re the OSHA asbestos standards, Jerry Blizin and I agreed that I should prepare for SPI a series of recommendations, based on my personal experiences in dealing with OSHA, that might be of value re vinyl chloride. The following are not presented in any particular order of importance.

1. Public Hearings: One of the major problems facing the VC industry at this time is the paucity of hard data on the relationship between VC exposure and angiosarcoma of the liver. The more time the industry has available to it, the more data can be collected. Unfortunately, the time restrictions imposed by the issuing of the emergency standard severely limit the amount and even the type of data that can be collected in time for presentation to OSHA for consideration in the development of final standards. When the proposed final standard is printed in the Federal Register sometime within the next few weeks, the industry will have a mere 30 days to submit its comments. However, if the industry requests a public hearing and one is granted -- which would seem likely -- considerable additional time would be gained for the collection of data, perhaps as much as six or seven weeks.

While a public hearing would give organized labor and the various interested activist groups an excellent forum for attacking the industry, the advantages to be gained would certainly appear to outweigh the disadvantages, especially in light of the fact that OSHA has, in the past, paid little or no attention to the rantings and ravings of far-out anti-industry spokesmen.

With regard to the asbestos situation, practically no one submitted written comments within the 30 day time period, primarily because it was common knowledge that a public hearing was going to be held. OSHA should, therefore, not only be requested to hold a hearing, but should also be personally contacted as many times as are necessary to assure that one will be held. In addition, the industry should not hesitate to tell OSHA directly that the more time it is given before the public hearing, the more data of such-and-such a nature it will be able to collect and present.

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As far as timing is concerned, the emergency asbestos standard was published in the Federal Register the first week of December, 1971. The proposed final standard was published the second week of January and the hearings began the second week of March. The hearing examiner furthermore kept the hearing record open for an additional ten days after the hearing ended for the submission of additional comments and material. By having a public hearing, the asbestos industry therefore gained more than six weeks of time for the development and presentation of its position.

2. Epidemiological Data: One of the most pressing, still unanswered questions concerning this entire problem is: How serious a hazard is angiosarcoma within the industry in terms of the numbers of employees who contract the disease? Thus far, only a dozen or so cases have been identified. Nonetheless, Selikoff has already predicted that 5 percent of all VC workers will eventually die of angiosarcoma. It would be interesting to discover the statistical basis, if any, for his prediction.

Without precisely knowing the status of the Tabershaw-Cooper study, it would seem to me that the individual VC manufacturers may themselves be able to produce some useful epidemiological data in time for the hearings. Each manufacturer with a plant at least 20 years old could assign a team of men to discover, using old employment records to compile the proper list of names, the cause of death of all workers with 15 or more years of exposure and/or the cause of death of all workers with one year or more of exposure, but for whom at least 15 years have passed since first exposure.

While the data would probably be sketchy at best, it would at least give the industry some idea of where it stands, and might also tell us whether an employee needs continuous exposure over a long period of time to contract the disease or whether a relatively short though probably heavy exposure followed by a long latent period is equally as hazardous. For purposes of the study, all liver cancers and perhaps even deaths from cirrhosis ought to be considered possible undiagnosed angiosarcomas.

Examining current employees to determine the extent and type of other possible VC induced liver abnormalities is also useful, though not as much as the type of quickie study suggested above.

3. Past Exposure Data: Since angiosarcoma quite obviously occurs only after a rather lengthy latent period, and since it is probably also dose related, the industry's ability to produce or at least estimate exposures dating back 15 or 20 years is of considerable importance. All VC producers should be polled to determine the earliest exposure data available. Even if it is only five or ten years old, it can logically be assumed that conditions 20 years ago were no better than they were 10 years ago and were probably worse.

Another possibility for determining past exposures would be to reproduce, on a small scale basis, a section of a production line as it might have existed 15 or 20 years ago. This was done in the asbestos mining industry for some types of operations, and provided some very useful data for submission to OSHA.

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4. Current Exposure Data: In preparing for the OSHA hearings, current exposure data should be viewed in a number of contexts: (1) as an indication of the industry's accomplishments to date in reducing exposure levels from what they were five or ten years ago, (2) as an expression of the industry's sense of responsibility and willingness to reduce levels below those previously required under the law, and (3) as an opportunity to develop and present economic data showing the cost and time involved in reducing exposures to their current levels.

Certain pitfalls should also be recognized. There is a tendency on OSHA and nearly everybody else's part as well to assume that if an industry has willingly reduced exposures to a certain level, with a little bit of prodding it could do much better. Secondly, even if the industry can convince OSHA not to establish a zero exposure level, it will, as a minimum, expect the entire industry to match the performance of the best plant or company in the business. In short, if one plant has already achieved a 5 ppm TWA throughout its operations, not only will OSHA expect it to do somewhat better, but it will also expect the rest of the industry to match that plant's accomplishments.

5. Technical Feasibility: The OSHA Act clearly states that "feasibility" shall be taken into consideration in the development of any health standard. Debate still rages over whether economic impact is to be considered under feasibility (OSHA acts as if this were the case and the courts have, in fact, recently agreed). However, no one argues that "technical feasibility" is not a part of the definition. Thus, whether or not the standard proposed by OSHA is feasible from the engineering standpoint is a consideration which OSHA must honor in developing its final regulations. The asbestos industry was able to convince OSHA to delay the implementation of the two fiber TWA standard till 1976 primarily by proving that it was technically infeasible to do it any sooner. While economic impact played a part, technical feasibility was the prime factor.

The VC manufacturers should, therefore, develop data showing that zero is infeasible from the technical standpoint, but that, with the "state of the art" as it exists today, such-and-such a standard (10 ppm as a TWA?) is feasible, and can be reached in six months or a year or whatever.

The essential point is: the industry cannot simply tell OSHA what it doesn't like; it must also provide information on what it can accomplish, and by what date.

6. Economic Feasibility: The final element to be developed for any presentation to OSHA on a proposed standard is simply: how much is it going to cost? Economic impact should be viewed in two contexts: (1) the cost to achieve compliance with the proposed standard, and (2) the impact on the industry and the nation in terms of lost jobs, reduction in GNP, etc. if the standard is made too tight and companies are forced to close their doors.

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In an April 15 ruling by the D. C. Court of Appeals on a suit brought by the AFL-CIO against OSHA on the 1972 asbestos standards, the principle of economic feasibility as a proper consideration by OSHA in the development of standards was upheld. The court stated: "It would comport with common usage to say that a standard that is prohibitively expensive is not feasible."

This can be interpreted to mean that any standard which shuts down an entire industry is, by definition, infeasible and hence contrary to the intent of the OSHAct. By this interpretation, a zero VC standard would be infeasible. However, the industry must point this out in strong economic terms, which it is, of course, planning to do. It should not stop there, however. The industry should also prepare data indicating what is feasible from the economic standpoint. In other words, if the industry and the nation cannot afford zero, what can they afford?

From the non-medical point of view, it adds up to a simple three part presentation:

- a. What is feasible in terms of engineering and other controls with today's technology, i. e. how low can we go with the "state of the art" as it exists today?
- b. How long will it take us to get there?
- c. How much will it cost?

It is somewhat of a delicate balancing act to find the proper combination of proposals that will be acceptable to both the industry and OSHA. For example, it is likely that the more money the industry is willing or able to spend, the lower it can go in the exposure level. In addition, the more time it is given, the more money it can afford. Perhaps a gradual stepped reduction is the answer.

7. Impact Studies: The industry would probably be very wise to cooperate fully with the National Bureau of Standards or whatever organization has been assigned to do the economic-environmental impact study on VC. Most economic impact studies with which I am familiar have been favorable to the industry being regulated, and it is generally recognized that the OSHA sponsored A. D. Little study of the asbestos industry helped convince the government to give the industry the additional time it requested in order to comply with the proposed stricter standard.

The argument was advanced at the April 16 meeting that by cooperating in the NBS study, the industry would find it difficult to attack the study later if the results proved unfavorable. As long as the industry does not place itself in the position of requesting the study, as NBS has apparently suggested, its freedom of action should not be unduly restricted by an attitude of cooperation. After all, the industry cooperated with both NIOSH and OSHA in the gathering of data on the medical and exposure aspects of the problem, yet by doing so did not injure its ability to contest the proposed standards if they prove unlivable. In short, the simple fact that an industry or a company provides data to a government agency does not mean that it is bound to accept that agency's interpretation of the data.

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The A. D. Little mathematical model for evaluating the economic impact of environmental and occupational health standards has been well tested in practice. The industry would be well advised to fund the study, if it can be assured that the results will be available in time for the public hearings or shortly thereafter. Another advantage in funding its own study is that the industry can then establish the parameters under which the study will be undertaken -- an advantage which it would not have in dealing with NBS.

8. Eliminating the Numbers Game: There is one other approach to the OSHA problem which the industry might consider in developing its position. In recent months, OSHA has shown a preference in some standard setting situations for doing away completely with the need for numerical standards of any type. This is the approach OSHA is currently taking with its rewrite of the 1972 asbestos standards, for example.

Commonly referred to as "work practices" standards, regulations of this type generally call for the use of "best available control technology" to reduce exposures to as low a level as is technically feasible, and then spell out in considerable detail the types of technology and work practices to be implemented. While standards of this nature generally take much longer to develop than simple numerical standards, they do have a number of advantages, such as: (1) there is no longer a need to go through the tedious and often impossible task of working out a "safe" exposure level, (2) the need for monitoring by both industry and OSHA is cut back drastically, and (3) enforcement problems are eased considerably, since it is always more simple to see whether a particular piece of equipment for controlling exposure is in operation than it is to monitor the air and use that as the basis for issuing citations.

9. Other Aspects of Standards: Traditionally, industries faced with an OSHA rulemaking have expended 95 percent of their effort on dealing with the basic numerical standard proposed by the government, and have paid scant attention to the other provisions of the standards "package." Often, these ancillary regulations on monitoring, medical surveillance, record keeping, protective clothing and equipment, labeling, etc. contain unrecognized time bombs which go off with devastating effect only after the standards are promulgated.

It is advisable, therefore, that the entire "package" be examined and commented upon with the same degree of thoroughness as is devoted to the numerical standard itself.

I hope these few comments will be of some assistance to the SPI OSHA committee in its work. If we can be of any further help, or if you have any questions on this memo, please let me know.

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