

Robert D. Luss, Esq.  
June 24, 1987  
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labeling language that differs somewhat from that specified in the OSHA vinyl chloride standard.

Even more disturbing than the labeling and training citations are those that allege violation of the Hazard Communication Standard (HCS). Based on discussions with representatives of Vista, OSHA apparently has taken the position that a product known to contain any amount of residual vinyl chloride monomer or any other carcinogen must be treated as a hazardous substance under the HCS. Although the HCS is generally recognized as excluding materials that contain less than 0.1% of a carcinogen, the field office now maintains that this is only a minimal testing criteria and if a manufacturer is aware of the presence of any carcinogen the material is hazardous because, in the agent's view, potential exposure to any level of carcinogen presents a hazard. If allowed to stand, such a policy would have a far reaching impact and would eventually undermine the HCS since most food, petro-chemicals and other products are known to contain some carcinogenic constituent.

I recommend that the Vinyl Institute contact the OSHA headquarters staff and request a formal clarification of its HCS policy, emphasizing the practical infeasibility of its position as reflected in the enclosed citation notice. This could be combined with our plan to contact OSHA on the vinyl chloride labeling issue based on the recent change in the RTECS listing. I look forward to hearing your thoughts on this matter.

Cordially yours,

  
Peter L. de la Cruz

Enclosure

cc: W. C. Holbrook  
William L. McClain, Esq.  
Charles E. O'Connell  
Lewis R. Freeman, Jr.  
Robert W. Sherman  
Roy T. Gottesman, Ph.D.

SPI-08130

JOSEPH E. KELLER  
JEROME H. HECKMAN  
CHARLES M. MEEHAN  
WILLIAM H. BORGHESE, JR.  
ROBERT R. TIERNAN  
WAYNE V. BLACK  
DAVID L. HILL  
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CAROLE C. HARRIS  
MICHAEL F. MORRONE  
LARRY S. SOLOMON  
JOHN B. DUBECK  
CHRISTINE A. MEAGHER  
SHIRLEY S. FUJIMOTO  
PETER L. DE LA CRUZ \*  
LAWRENCE P. HALPRIN  
DEBORAH SHUR TRINKER  
C. DOUGLAS JARRETT  
EDWARD L. KORWEK  
ROBERT L. FLESHNER  
JONATHAN P. LEVINE  
SHEILA A. MILLAR

LAW OFFICES  
**KELLER AND HECKMAN**  
1150 17<sup>TH</sup> STREET, N. W.  
SUITE 1000  
WASHINGTON, D. C. 20036

TELEPHONE  
202-457-1100  
CABLE ADDRESS "KELMAN"  
WRITER'S DIRECT DIAL NUMBER

202/457-1116

May 11, 1981

\* OHIO BAR ONLY

Mr. John R. Lawrence  
The Society of the Plastics  
Industry, Inc.  
355 Lexington Avenue  
New York, New York 10017

Re: Employee Training Under OSHA Vinyl Chloride  
Standard

Dear John:

The purpose of this letter is to inform you of the recent completion of a case involving the employee training provisions of the Occupational Safety and Health Administration (OSHA) vinyl chloride standard. As you may recall, in September, 1978, an OSHA inspector issued a citation to Hooker Chemical Corporation. The citation noted Hooker's alleged failure to provide training on vinyl chloride for employees who worked in the calendering, compounding and warehouse areas.

Hooker contested the citation for its Burlington, New Jersey facility on the basis that employees working in these areas were not required to be trained on the hazards of vinyl chloride. Both Hooker and OSHA's monitoring of vinyl chloride in the calender and compound facilities indicated concentrations significantly below the 0.5 parts per million (ppm) action level.

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In May, 1979, the administrative law judge issued a decision that adopted Hooker's position and vacated the OSHA citation. The judge held that the training provisions of the standard do not apply to areas where the vinyl chloride level in the ambient air is below the action level of 0.5 ppm.

Although not requested to do so by any party, a commissioner on 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, OSHA stated that the training requirements were not applicable in this case because Hooker's compounding and calendering operations simply were not processes that could result in hazardous exposure to vinyl chloride.

Because no party sought review by the Commission, and the Commission did not consider the issue one of compelling public interest, it chose not to review the case. Thus, under the Commission's order of March 31, 1981, the judge's decision remains intact.

While the case has limited precedential value, it does clarify what is a regulated area and when training requirements must be met. In addition, the proceedings indicate that OSHA is unlikely to issue citations in circumstances similar to that which existed at Hooker's Burlington facility.

Because the conclusion of this litigation may be of general interest, you may wish to further distribute this letter to the PVC Safety Group. As always, if you have any comments or questions, please feel free to contact me.

Cordially yours,



Peter L. de la Cruz

cc: Mr. Jerome P. Carroll  
Ms. Fran Lichtenberg  
Mr. Thomas R. McGrath

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