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To: SPI Vinyl Institute

Legal Committee
Health, Safety and Environmental Committee
EDC OSHA Working Group

Re: SPI v. OSHA (Case No. 89-7249)
AFL-CIO v. OSHA (Case No. 89-7185)

Ladies and Gentlemen:

Following up on our previous correspondence in this matter, we wanted to provide you with a synopsis of the arguments raised by the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO) in its brief. The AFL-CIO's 94 page brief argues generally for lower permissible exposure limits (PELs) on the substances in the air contaminants rulemaking. We have summarized the federation's brief below and have attached a copy of its table of contents for your review.

The union charges that the Occupational Safety and Health Administration (OSHA) violated Section 6(b)(5) of the Occupational Safety and Health Act, by failing to establish the most protective rule that industry is capable of achieving. In addition, the AFL-CIO urges the court to direct OSHA to establish PELs for those substances for which the National Institute of Occupational Safety and Health (NIOSH) has documented a high risk of health effects, and for which recommended exposure limits (RELs) have been adopted. Finally, the union argues that OSHA's decision to allow employers to use respirators to meet the air contaminant standards for four more years is arbitrary and capricious and, therefore, cannot stand.

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Obviously, we do not support the routine adoption of NIOSH RELs as OSHA PELs. However, because the AFL-CIO did not specifically challenge OSHA's PEL for ethylene dichloride (EDC), we do not feel that it will be necessary for the Vinyl Institute to respond to this brief. The general issues raised by the union will be adequately addressed by OSHA or are not germane to the Institute's interests. We are also aware of responses being prepared by other industry groups. Further, the federation's attack upon the revised air contaminant standard does raise similar concerns to those voiced in SPI's brief viz., that the agency did not actually review the references which it relied upon in establishing the revised PELs.

The AFL-CIO's primary attack on OSHA's revised Air Contaminant Standard is aimed at OSHA's decision to adopt PELs for the revised Standard based upon the threshold limit values (TLVs) developed by the American Conference of Governmental Industrial Hygienists (ACGIH). AFL-CIO argues that this action is "utterly irrational -- and totally inconsistent with OSHA's statutory mandate" for several reasons viz.: (1) on a number of occasions OSHA has found that exposure limits should be set substantially below ACGIH's TLVs; (2) ACGIH concedes that its TLVs are not developed for use as legal standards, but are merely guidelines or recommendations; (3) ACGIH does not apply the Section 6(b)(5) standard that "no employee will suffer material impairment" in setting TLVs; (4) the ACGIH's TLV Committee is improperly biased towards industry and some TLVs have been developed in a "suspect manner"; and (5) the TLVs are "hopelessly outdated" having been based on studies or publications from the 1950s, 60s and 70s.

AFL-CIO repeatedly charges that the revised rule must be overturned because OSHA has failed to live up to its statutory obligation to "set the lowest feasible PEL." In support of these claims, the federation points to numerous studies which found evidence of adverse health effects at exposure levels below those adopted by OSHA. AFL-CIO's brief is weak, however, in that the federation does not attempt to explain why the referenced studies are any more credible than the supporting data used by OSHA. Instead, it seems to assume that OSHA should set PELs at the lowest level at which adverse health effects have been observed in any study without regard to the technologic and economic feasibility of attaining that level of protection in the work place.

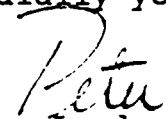
In its final argument, AFL-CIO challenges OSHA's decision to allow industry to continue to use respirators to

meet the Air Contaminant Standards for an additional four years. The federation claims that it was "arbitrary and contrary to the act" to allow a four-year lag time. AFL-CIO's principal argument in support of a shorter lag time is that the agency has stated that its "feasibility analysis was based on what industry is already achieving or what could be achieved with standard 'off-the-shelf' technology." 54 Fed. Reg. 2366. AFL-CIO argues that there is "no reason why employers should need four years to implement standard 'off-the-shelf-technology'". The federation, therefore, urges that OSHA be directed to shorten this lag-time to one or two years, and that those "unusual situations in which a feasibility problem would actually be presented" be handled under the act's temporary variance provision. 29 U.S.C. § 655(b)(6)(A). AFL-CIO argues that, if necessary, OSHA may grant variances to specific industries which need an extended period of time in which to comply, and that permanent variances may be given in individual instances where it is shown that it is not feasible to achieve the exposure limits through the use of engineering controls.

* * *

We welcome any comments you may have on the AFL-CIO's position. If anyone would like to receive a copy of the federation's brief, we will be happy to provide you with one.

Cordially yours,


Peter L. de la Cruz

Enclosure

cc: Larry Thomas
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 89-7185

AMERICAN FEDERATION OF LABOR and
CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioner,

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
U.S. Department of Labor,

Respondent.

On Petition for Review of a Final Rule of the
Occupational Safety and Health Administration

BRIEF OF PETITIONER AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

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