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STATEMENT OF OCCUPATIONAL
SAFETY AND HEALTH STANDARDS GROUP OF
ORGANIZATION RESOURCES COUNSELORS, INC.

Presented At Hearing Begun June 25, 197
By: Wayne T. Brooks

Before Administrative Law Judge
Gordon J. Myatt

In The Matter Of:

Proposed Amendments of 29 CFR Part 1910
By Revising Section 1910.93q
Vinyl Chloride

OLI 4865

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My name is Wayne T. Brooks; I am Director, Occupational Safety and Health Services, Organization Resources Counselors, with me is

We appear to present in behalf of the Occupational Safety and Health Standards Group of Organization Resources Counselors, Inc., oral data, views, and arguments with respect of the proposed amendments of 29CFR Part 1910 by revising "Section 1910.93q Vinyl Chloride" which appeared in Federal Register of Friday, May 10, 1974 commencing at page 16895.

Occupational Safety and Health Standards Group of Organization Resources Counselors is composed of forty companies in different industries with employment size ranging from medium to large. The group is concerned with improving the process of preparing occupational safety and health standards and with the quality of standards. Within this group are companies to which the Emergency Temporary Standard - is applicable, as would be the proposed permanent standard.

The initial impetus for this rulemaking proceeding was the January 22, 1974 report by B. F. Goodrich Chemical Company to OSHA and NIOSH that the death of several employees from a rare liver disease may have been occupationally related.

OLI 4866

The prefatory paragraphs accompanying the May 10, 1974 Federal Register publication record two important characteristics of this rulemaking proceeding; these are: the open, forthcoming, cooperation of the companies to which the standard applies, and the number of ongoing scientific research projects importantly relevant to the text of the permanent standard.

The judgment of the Assistant Secretary of Labor to invoke the Emergency Temporary Standard procedure cannot be gainsaid, yet the beneficial promise of new and further information from the workplace, and from scientific research must not be foreclosed. The formal, statutorily prescribed, rulemaking procedure, and the numerous, immediate and long range research projects, guided by the protocols of scientific research must each serve and be served by the other.

Worker health, the immediate and dominant concern of this rule-making, is not however a subject isolated from other concerns of employment. Intimately involved here are: jobs, employee wages, company and stockholders earnings, product availability for further manufacturing application - which in turn spells jobs and earnings - product market availability and its cost, company and union agreements, workplace technology and design, product specifications, advertising claims, Workmen's compensation and group insurance, to point to some of the more obvious.

* * * *

This presentation of oral data, views and arguments is in two parts. The first -- a discussion of the standards provisions and the circumstances surrounding its proposal, as they provide a base from which to argue for the inclusion or exclusion of certain provisions in the ultimate standard; the second, a section by section comment and analysis of the proposed permanent standard.

In the first part the following points of view are presented --

1. There should be at least three standards -- or three applications of one standard -- namely:
 - (a) production of vinyl chloride monomer
 - (b) production of polyvinyl chloride resin
 - (c) processing and fabricating polyvinyl resin

2. The standard for employee exposure set at no detectable level is not valid.
3. The rulemaking procedure and the concurrent scientific research relevant to rulemaking should be harmonized to serve each the other.
4. A delayed effective date, and a phased in application of various provisions of the permanent standard is indicated.
5. Critical comment as to specific provisions, not discussed with other points of view.

The omission of other points of view from this statement permits no inference other than that, as is apparent, there will be a full discussion of the many serious issues.

* * * *

There should be at least three standards - or three applications of one standard.

There are three distinct and different manufacturing processes in which the substance vinyl chloride may be present. To an extent they are sequential, the third is dependent on the second and inturn dependent on the first. Vinyl Chloride in different concentrations is common to all three - and, is the sine-qua-non of all three; these are:

- (a) production of vinyl chloride monomer;
- (b) production of polyvinyl chloride resin;
- (c) processing and fabricating polyvinyl resin.

It is recognized that the (c) category has an ending provided by paragraph (a)(2) of the proposed standard which excludes from application of the standard handling or use of fabricated products made entirely or in part of polyvinyl chloride.

The establishments involved in the three distinct manufacturing processes might be likened to the trunk, the branches, limbs, and twigs of a large tree. The production of the sine-qua-non vinyl chloride monomer is the trunk, the production of polyvinyl chloride resin is the branches system, and from these, limbs and twigs comprise the processing and fabricating to the point of the (a)(2) exclusion.

Polyvinyl resin has proven to be a substance whose usefulness appears to be almost limitless, hence there is an extensive system of limbs, branches and twigs. There is a vast heterogenous industry which uses polyvinyl resin as a raw material. Very many jobs are involved. The economic availability of polyvinyl resin is the essential go-no go of this industry and these jobs. If the trunk is severed or no longer able to provide for the branches limbs and twigs, the industry and jobs will be seriously reduced.

The production of vinyl chloride monomer is essentially a closed system, in plants typical of a large scale producing chemical plant. There is every effort made to maintain system integrity, not only because of employee health but because of fire and explosion hazard. Protection of employees during maintenance work, and from any hazardous large scale release are normal aspects of operating procedures. There are very few employees involved, their work stations do not normally locate them where vinyl chloride is present, although this may be otherwise during a patrolling inspection of the plant. The work routine is such that level of exposure and period of time, hence time weighted average are important. The plant layouts among plants producing vinyl chloride monomer have many common features, but they have no features in common with plants producing polyvinyl resin or plants processing and fabricating polyvinyl resin.

The endeavor to prepare a standard based on a substance - vinyl chloride, per se, as such, wherever found, without considering the processes, work methods, conditions, practices, now in place, leads into a logic cul-de-sac. If the total industrial exposure of employees to vinyl chloride were only in the production of the monomer the Assistant Secretary could not have found any basis for the pre-requisite judgment for an emergency standard - that employees are exposed to grave danger from toxic or physically harmful substances and that an emergency standard is necessary to protect them.

It is therefore respectfully urged that the production of vinyl chloride monomer be removed completely from the proposed standard. And, it is further urged that the Assistant Secretary of Labor request American National Standards Institute to draw together, through and from the Standards making organizations of the nation, a consensus standards making committee for the purpose of preparing and reporting to the Assistant Secretary of Labor on or before September 5, 1974 a recommended standard for the protection of the health and safety of employees involved in the production of vinyl chloride monomer. The Committee should include the best qualified people available from the several scientific disciplines involved, workplace experienced operating managers, representatives of employees, representatives of NIOSH and OSHA and State Government and people who can contribute skills in drafting and composition. The report should include a full "legislative history" of the committee's deliberations including all documents and reports relied on.

Because no emergency situations exist in this production, regular 6(b) rulemaking proceedings could be commenced according to the Secretary's judgement.

* * * *

A similar recommendation, but for dissimilar reasons, is made as to processing and fabricating polyvinyl resin. There is a large number of employees involved, in very many workplaces. There is a great diversity among these workplaces: as to numbers of employees; quantity, quality, and kind of resin; how such resin is received at the plant - opened - and introduced into the process; the design of the employees' work stations; the equipment used; the design and layout of the plant.

The factory type layout and characteristic of product variety and run duration would make paragraph (4) Regulated Areas an almost impossible - ever changing succession of areas.

Because the only source of vinyl chloride in a fabricating operation would be from the polyvinyl resin raw material, the provisions of the proposal, which contemplate a high level - high volume exposure, are of little relevance in the form proposed. Included among such non-relevant category are (4) Regulated Areas, (c) Monitoring, (g) Respiratory protection, (h) Protective clothing, (j) Emergency situations (k) Signs and labels (as they are identified with Regulated areas), (o) Medical surveillance (g) Reports.

Paragraph (n) Polymer handling operations in its subparagraphs (1) and (2) clearly indicate a recognition of the essential differences which pertain in the polymer using as distinguished from the vinyl monomer production, and production of polyvinyl resin.

The employee exposure in "polymer handling operations", as the proposed standard expresses it, or in the many diverse operations which this statement identifies as (c) processing and fabricating polyvinyl resin, is not such as would have justified the Assistant Secretary making the pre-requisite judgement for an emergency standard - that employees are exposed to grave danger from toxic or physically harmful substances, and that an emergency standard is necessary to protect them.

It is therefore respectfully urged that the - Polymer handling operations - processing and fabricating polyvinyl resin be removed completely from the proposed standard. And, it is further urged that the Assistant Secretary of Labor request American National Standards Institute to draw together, through and from the Standards making organizations of the nation, a consensus standards making committee for the purpose of preparing and reporting to the Assistant Secretary of Labor on or before September 5, 1974 a recommended standard for the protection of the health and safety of employees involved in Polymer handling - operations - processing and fabricating polyvinyl resin. The Committee should include the best qualified people available from the several scientific disciplines involved, workplace experienced operating managers, representatives of employees, representatives of NIOSH, OSHA and State governments, and people who can contribute skills in drafting and composition. The broad and diverse application of such standard should be given careful attention in selecting the people and their number for the Committee. The report should include a full "legislative history" of the Committee's deliberations, including all documents and reports relied on.

Because no emergency situation exists in these fabricating operations, regular 6(b) rulemaking proceedings could be commenced according to the Secretary's judgment.

There is totally persuasive logic in the departure, which is here urged. Paragraph (n) of the proposed permanent standard strongly points in this direction. Although there be the large and diverse number of plants alluded to herein the subparagraph (1) and (2) of paragraph (n) would encompass the major sources of employee exposure. Both sub-paragraphs would require, alike - "local exhaust ventilation which reduces the concentration of vinyl chloride below the detectable level". When such ventilation has reduced the concentration of vinyl chloride in the breathing zone of employees in the workplace to below detectable level - there would be no employee exposure. It also appears to be reasonably foreseeable that the production of polyvinyl resin will be refined and improved to such extent, that in the near future, the amount of vinyl chloride in the PVC resin will be below any significant level. The procedures and requirements of the other paragraphs of the proposed standard would not be useful or relevant to either resulting situation. However, a standard - should be prepared, by a consensus committee, recommended, and considered by the Assistant Secretary for proposing - which would take (n) into consideration. The standard might be built around maintaining the integrity of the ventilating systems, a monitoring system to observe this integrity, and a procedure to be involved in case of failure; as well as including the other requirements of the Act.

* * * * *

When these two important areas, the production of vinyl chloride monomer, and the processing and fabricating polyvinyl resin, of application of the proposed permanent standard are permitted to assume their full, non-subordinated, separate postures, then the health and safety of the workers involved in the production of polyvinyl chloride resin will receive what it urgently requires: the full focus of effort and attention in this rulemaking procedure. There is valid reason in this context to give greater consideration to vinyl chloride - per se - as such and lesser consideration to the process in which it is involved.

Vinyl Chloride monomer, and its presence in the production process by which polyvinyl resin is produced has been under intense consideration since January of 1974.

This has been the substance considered in the preliminary fact-disclosure meeting which NIOSH conducted at Hopkins Airport in Cleveland on February 12, 1974, the fact-finding hearing held on February 15, 1974, and The New York Academy of Sciences meeting of May 10, 11, 1974.

Vinyl chloride monomer exposure, in circumstances designed to provide information regarding relatively higher levels of employee exposure, has been the procedure followed in the numerous animal experiments, which have become significant features of this rulemaking.

The Assistant Secretary's April 3, 1974 finding that - "employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful ..., and that such emergency standard is necessary to protect employees from such danger" was based on facts and circumstances which have appeared in the production of polyvinyl chloride resin. The prompt action of lowering the level from a ceiling of 500 ppm to 50 ppm had substantial fact bases to justify that judgment.

The Emergency Temporary Standard of April 5, 1974 was promulgated according to a wise design, - "intended to be in effect no longer than six months, during which time the whole question of possible safe exposure to vinyl chloride would be reconsidered more fully and in the light of more information, especially results of experiments which were known to be underway at that time". (Paragraph 3 of preface May 10, F.R. 16895).

This statement now presents its second and third points of view -

The standard for employee exposure set at no detectable level is not valid. And -

the rulemaking procedure and the concurrent scientific research relevant to rulemaking should be harmonized to serve each the other.

Paragraph 4 of the preface to the May 10 promulgation clearly states the facts, the reasoning, and the conclusion involved - based on these the proposed standard includes changing "the 50 ppm to as low a level as can be detected, using methodologies outlined in this proposal".

Paragraph 4 therefore becomes central to these deliberations. It is the pivot on which this rulemaking process made a radical change of direction.

On April 5 an Emergency Temporary Standard was promulgated, (Preface paragraph 3) "it reduced the level from a ceiling of 500 ppm to a 50 ppm ceiling", "on the basis of all information available at that time". There was substantial, reliable information available. Paragraph 2 identifies scientific experiments of highest quality and integrity, some of which had been reported and others still underway. Paragraph 3 wisely stated that 50 ppm level was intended to be a tentative, interim standard, to be in effect no longer than six months, during which time the whole question of possible safe exposure to vinyl chloride would be reconsidered more fully and in the light of more information, especially results of experiments known to be underway at that time.

The 50 ppm ceiling of April 5 was far below the concentration levels which common knowledge would assert could have been measured in poly-vinyl production back through the years preceeding January 1974. During much of the period of Vinyl Chloride's use, its hazard was thought to be fire and explosion, generally, the levels were controlled with avoiding those hazards as the objective. Of the employees of B. F. Goodrich Chemical Company who died from angiosarcoma of the liver, paragraph 2 of the preface describes the exposure as "at unknown concentrations".

It must be accepted as established that the currently identified angiosarcoma deaths which "may have been occupationally related" were of some of those employees whose work exposure was to concentrations far in excess of 50 ppm.

During the period preceeding May 10 extensive work had been done by many different kinds of establishments to identify the source and level of vinyl chloride exposure and the steps necessary to reduce such exposure. The change from 500ppm to 50 ppm to "no detectable level" while not measurements of the dimensions of the problem involved, or an enumeration of many categories within the problem, these figures do give perspective to this rulemaking.

The May 10 proposal would change the 50 ppm ceiling to "no detectable level, as determined by a sampling and analytical method capable of detecting vinyl chloride at concentrations of 1ppm within an accuracy of 1ppm plus or minus 50 percent". This proposal is an abandonment of the reasoned action of April 5, and in substance amounts to a change from a ceiling level, on and prior to April 4, of 500 ppm to a defined "no detectable level on May 10, based on the information and conclusions reported in preface paragraph 4. Not only is the drastic change in levels proposed, but an entirely different concept is contained in the proposed - "(a) Scope and application", "(4) Regulated areas", and "(n) Polymer handling operations".

The 500ppm and the 50ppm were ceiling level values. Such designation is with regard to employee exposure; the following quotation appears in F.R. October 18, 1972 page 22139, Part 1910.93 "(a)(1) Materials With Names Preceded by "C" - Ceiling Values". "An employee's exposure to any material in table G-1, the name of which is preceded by a "C" ... shall at no time exceed the ceiling value given for that material in the table". Although preface paragraph 5(A) uses the words - "the proposed standard for employee exposure..." the language of "(a) Scope and application", "(4) regulated areas", and "(n) Polymer handling operations" states requirements and restrictions with regard to "any area or operation" "a regulated area", "polymer handling operations", "hot operations" with no reference to the presence of employees, or to exposures of such employees at their breathing zones. Admittedly the OSHA '70 rulemaking authority is related exclusively to employee safety and health. A standard with a Scope and application section which does not include application to employees - does not have the basic characteristic of an occupational safety and health standard. Not only is the proposed standard fatally deficient for this omission,

its scope would require work be done and expenditures made which, because of no employee presence, would not be for the benefit of employee health. There are workplaces at which vinyl chloride is manufactured, reacted, released, repackaged, stored, or used - some one or all of these - where there is today, no employee exposure, or where by operational changes employee exposure will be eliminated. Such work places should be excluded from the application of this proposed standard. When employee health is not in jeopardy a serious question of rule-making authority is raised, and a parallel question arises as to the wisdom of requiring or restraining actions which have no apparent return in employee health.

The language of "(a) Scope and application" and "(4) Regulated areas" is likewise deficient with regard to what (a) designates -- "areas and operations involving polyvinyl chloride where detectable levels of vinyl chloride are released" and in (4) where " polyvinyl chloride capable of releasing detectable levels of vinyl chloride is manufactured reacted, released repackaged, stored or used." In each there is no employee protection within the requirement or restriction, and (4) capable of releasing is such a totally limitless concept, as to be totally invalid. There is nothing in human ken which under some circumstances would not be capable of human harm.

Preface paragraph "(4) Additional information" has the burden of persuasion that this drastic departure from the April 5 conclusions was required.

Preface paragraph 3 with regard to the April 5 conclusions stated:

"would be reconsidered more fully and in the light of more information, especially results of experiments which were known to be underway at the time".

These experiments of scientific research had not been completed on April 15. The report of the Bio-Test Laboratories was, paragraph 4 acknowledges - "Although only preliminary in nature..." Professor Maltoni, Bio-Test Laboratories and several other responsible and capable researchers have projects underway which will be completed

during the next three years, with interim reports of information available from time to time. Nothing has been disclosed to reflect unfavorably on paragraph (3) conclusion"... to reconsider more fully and in the light of more information...". It must be assumed that even the preemptory character of the May 10 proposal does not signal an intention to disregard the "results of experiments which were known to be underway at the time".

The Organization I represent here today began an epidemiological study on May 3, 1974 of mortality of workers in employment and places of employment where there were exposures to low levels of vinyl chloride. This study will be completed during 1974.

Paragraph (4) discloses a puzzling hindsight as to a statement in paragraph (3). In paragraph (3) it was stated that during the interim -- "the whole question of possible safe exposure to vinyl chloride would be reconsidered...". In paragraph (4) it is stated "Also, the question of a safe level of exposure for humans cannot be determined at this time, and may continue as a matter for scientific deliberation for many years". These two conclusions are centrally critical to this rulemaking. The use of the word "safe", as an absolute, in both quotations, is illusory and The Act itself speaks of "to assure so far as possible ... safe and healthful working conditions". In 6(b)(5) the Act requires a standard "which most adequately assures" -- "to the extent feasible" -- "on the basis of the best available evidence" -- "that no employee will suffer material impairment of health or functional capacity". These are not absolutes, nor is the concept "safe" included expressly or by implication in the basic statute OSHA '70.

The record in this rulemaking will be the most extensive to have been assembled in an OSHA standards promulgating procedure. There is an abundance of facts, and, as to most of these facts, themselves, - as distinguished from their interpretation - there is little significant dispute. These facts do not lead to a comfortable, indisputable finality. The nature of the problem makes it incapable of solution to a mathematical certainty. The interpretation of these facts by the application of reasoning, not emotional absolutes is the important sequel.

In full recognition of the givens, the knowns, and the unknowns: the process of reasoning, conclusion, judgment and action is the most important aspect of this rulemaking. And, it is all involved in the change of the April 5 direction to the May 10 direction as explained in preface paragraph (4).

It appears that sometime between April 15 and May 10 an extrapolation of the results of experiments with mice "Although only preliminary in nature..." was found sufficiently compelling that "We therefore conclude that it is now necessary to propose to change the 50 ppm level established in the ETS to as low a level as can be detected using methodologies outlined in this proposal". Speaking at the "Working Group Toxicity of Vinyl Chloride - Polyvinyl Chloride", May 11, on the subject "Mouse to Man - Extrapolation of Laboratory, Results to Human Disease", Dr. Schneiderman of National Cancer Institute characterized his entire learned treatise by an opening question and answer. "How do you extrapolate from mouse to man? Very carefully". The proposal to change the 50ppm level downward must be found faulty. There is no support for it, nor is there any information of hazard to suggest in the language of "IUD v Hodgson" that the rulemaking is at a frontier of science. There is present substantial fact and reasoned conclusion which validate the 50 ppm ceiling, subject to its application within the provisions of "(f) Engineering controls and Workpractice Methods" later commented on.

The use of the expression "permanent" at this time, in light of the disclosures of January, and the frequently recurring disclosures which have followed is just to disregard the realities. Not only is there a vast amount of scientific research going forward, there is what might be called applied and very practical research being carried on in a great many workplaces. The remark is heard frequently: "until this came up, we did not know we had a problem" and among companies who were long alert to the problem the remark is: "our more frequent and more sensitive monitoring has pointed out the problem". A "permanent" standard would appear to be a conclusion that all reports are in, all conclusions are final, valid, and unquestionable, judgments can now be made. There are just not tenable hypothesis.

A workplace standard, enforceable by citations and penalties which lowers the standard level from 500 ppm to a proposed no detectable level in a period of about 6 weeks has a terrific economic impact potential. It is to be borne in mind that workplace procedures prior to January 1974 viewed vinyl chloride as a fire and explosion hazard and levels were set in that regard. This reduction is intended to serve employee health, in the reduction of levels from 500 to 250 to 50 to "no detectable" capital costs are involved, product costs are increased, marginal plants may close and jobs be lost. These economic factors are more stringent as the level goes closer to non-detectable. In the light of the information gap - and the ongoing research projects - it is respectfully suggested that a sensitive balanced evaluation of all factors does not compel an acceptance of the obvious economic and jobs loss against the nebulously proven employee health gain -- at this time. Perhaps, all relevant facts will be seen more clearly next week, or when some of the research projects make interim reports or final reports, but now only tentative conclusions have validity. These considerations have lead to the fourth point of view which this statement presents:

A delayed effective date, and a phased in application of various provisions of the permanent standard would be clearly appropriate -

Although "(f) Engineering controls and workplace methods" uses such expressions as "immediate protection", "shall immediately be used", "instituted immediately", subparagraph (iii) and (iv) seems to moderate the precipitous, and impossible - at once - now - instantaneousness of (i), (ii). Subparagraph (iv) is addressed to the judgment of the employer, and the employer would be responsible for the soundness of his judgment --

"the employer shall also undertake as soon as practicable a program to reduce airborne concentrations of vinyl chloride below the detectable level --"

interrupting the quotation, it is noted that there is a failure to direct to the workplace and the breathing zone of employees in the workplace the "program to reduce airborne concentrations of vinyl chloride", such concept should be added to (iv). And, further (iv) uses the language "below the detectable level" consistent with the

leading sentence of (f) ... "Where detectable levels of vinyl chloride are measured. This statement elsewhere takes exception to this idea of level, and comments on its inutility at great length. Continuing the quotation -

"or to the greatest extent feasible, solely by means of engineering controls and workplace methods as soon as feasible".

This subparagraph reflects a reasonable understanding of the practical steps which have to be taken. Engineering controls and workplace methods will have to be programmed. Methods studies, and workplace and equipment design changes will have to be instituted. Equipment availability and delivery time is involved.

While there is an acceptable reasonableness in subparagraph (iv), and a performance standard inclination of stating goals and leaving methods and techniques to the employer's accountable judgment there is a specification inclination and an abridgement of employer judgment in the language "solely by means of engineering controls and workplace methods..." the arbitrary character of which is not softened by words "as soon as possible".

Given that there are three available techniques which individually or in combination result in reducing the hazard in the breathing zone of employees in the workplace. The degree of reliance upon or the other in the combination, and when to adjust and vary the combination in "a program to reduce airborne concentrations" - is in every instance a judgment to be based on a whole galaxy of influencing factors.

From January to midyear there has been an unprecedented concentration of effort on this workplace hazard. Government, companies, unions, research institutions, experimental laboratories in this country and world wide have focused the very best talent and technique on a definition of this hazard, its human implications and the required solutions. This rulemaking process must move forward apace with this expanding intellectual technology. Rule-making should not make arbitrary decisions; it should employ the intellectual methodology which regards the presently available facts, and the inferences, including predictions, which may with reason be predicated on such facts.

The whole, widely encompassing, fast moving circumstances of this rulemaking, justify flexibility; a rule which does not foreclose prompt regard for and use of new facts which inevitably are going to be forthcoming.

A summary of this whole statement is a plea for an intellectual technology regarding the current state of facts and an intellectual methodology which can cope with emerging facts. These facts are obviously not academic they are - applied; they speak in workplace requirements and workplace restrictions. The highest quality of balanced judgment is required.

A delayed effective date and a phased in application are absolutely compatible with this rulemaking.

The structure of a standard includes a recognition and definition of the hazardous condition, and, the requirements and restrictions to be applied for employee protection. So far this statement has dealt with the former and some few of the latter, the following is confined to the latter.

The final point of view to be presented is:

Critical comment as to specific provisions, not discussed with other points of view.

Comment, which comparatively may seem to be cacanny, need nonetheless be made on the (b) Definitions. There are 15 definitions and that is about 15 too many, yet there are standards with more than 50 definitions. Definitions only confound confusion and are antithetical to lucid, simple, grammatical exposition.

"(4) Regulated areas" - Although not in precisely the same language, it appears that "(a) Scope and application", "(4) Regulated areas", the area to be monitored in (e), and the places for application of Engineering controls and work practice methods in (f) are all the same. In this context - because a regulated area is not distinguishable from any other area within the standard's scope and application it has no practical significance. The hazardous substance is a gas, not so stationary or confinable as a liquid or a solid. The standard is to apply wherever vinyl chloride is detected its requirements arise from the fact of detection. In this context the "Regulated area" is redundant.

"(e) Monitoring" to a degree this requirement is performance in nature and to that degree it is acceptable. "Shall be monitored" permits the employers' accountable judgment for technical accuracy, the frequency and the analytical methods applied to the sample. An objection is made here, as elsewhere in the statement to the requirement of (1) "Every regulated area shall be monitored..." which omits to say - workplace, and monitoring shall be carried on as to the breathing zone of employees in that workplace. However, this objection is somewhat softened to the extent that (2) which speaks of exposure determined for each employee modifies the basis for the objection. Subparagraph (3) of (e) Monitoring and its further sub-divisions is an unwarranted, unwise intrusion into the field of employee relations. Where there is a certified or recognized collective bargaining agent for the employees the entire substance of (3) is subject to collective bargaining, and it should be left to the wisdom of these informed parties.

The subject is even more delicate where there is no certified or recognized collective bargaining agent. This standard should not intrude "designated representative" into a workplace where other relational practices are in effect. There is no statutory authority for the inclusion of (3) in an Occupational Safety and Health Standard. Section 6(b) contains provisions with respect of the contents of standards as such. In Section 8 the Secretary is given authority to prescribe regulations. Section 8(c) (3) is a part of an extensive provision authorizing the Secretary to issue regulations for recordkeeping. The following sentence appears therein:

"Such regulations shall provide employees or their representative with an opportunity to observe such monitoring or measuring and to have access to the records thereof".

So the position is asserted that even if (3) did not contain objectionable matters of substance, there is no authority for its inclusion in a standard.

- "(g) Respiratory protection
- (h) Protective clothing
- (i) Hygiene facilities and practices

reflect some rather modest effort of accommodation to the

existence of "Subpart I Personal Protective Equipment", "Subpart J General Environmental Controls" of the basic Occupational Safety and Health Standards of October 18, 1972 as subsequently amended. Subparts I & J in turn reference and cite other standards. There is possible an intolerable burden of contradiction, lack of clarity, administrative difficulties and questions of - what is required to be done, which applied? It is not adequately clear what is meant to guide preparation of this statement. It should not be presumed that these Subparts are found acceptable, but a detailed analysis would be to prolong this statement beyond utility.

(J) Emergency situations

There are a number of provisions in Subparts I and J which cover emergency situations in an adequate fashion, assuming these provisions are applicable. It is suggested that the paragraph (3) of (j) is the important part, and that the head might usefully be changed to "Training", the provision might be expressed

"Each employee, before commencing work where this standard is applicable, or as promptly thereafter as is possible shall be given a program of training regarding the hazards of vinyl chloride to be encountered in the workplace during normal operating conditions and during emergency situations."

All of the remainder of (j) is unduly specific and restrictive to workplace creativity and imagination. It is contemplated that such training would be adequate to convey to each employee the contents of the signs and labels contemplated by "(k) Signs and labels", and more effectively assure the employee's respect for and care with vinyl chloride than would be provided by such signs and labels. Appropriate labels for containers would be acceptable but the proposed text herein is too lurid.

(l) Maintenance and decontamination

this provision includes text subject matter that is dealt with in Subparts (I) and (J). Maintenance, decontamination and vessel entry would be covered in a training program. Attention is called to the fact that a new standard on vessel entry has just been completed through ANSI - America's Federated National Standards System. The June 21, 1974 issue of Standards Action carries the following notation on page 5 :

BSR Z117.1 Working in Tanks and Other Confined Spaces, Safety Requirements for (new standard)
Sets forth minimum requirements for safe entry into, continued work in and exit from tanks and other confined spaces at normal atmospheric pressure:.

This is a standard prepared by consensus method and worthy of being consulted in this rulemaking.

Maintenance and decontamination, and vessel entry as well as -
"(m) Transportation loading and unloading, and "(n) Polymer handling operations are all within the purview of "(f) Engineering controls and workpractice methods" and would be in an employers' program to reduce airborne concentrations of vinyl chloride..."

(o) Medical surveillance

this provision is so broad, extensive and specific as to lose its usefulness. Given that the precise indicator, or precursor has not been identified, it is suggested that the purpose will be better served by stimulating medical ingenuity rather than oppressing science with details which might not make sense to the responsible physician. The comparable provisions of the Carcinogen standards 1910.93c thru 1910.93p had similar goals and objectives but permitted professional judgment as to method and techniques.

Serious objection is made to (5) restricting laboratory analyses to laboratories accredited by the College of American Pathologists or licensed under 42 CFR Part 74. This is again a restriction on professional judgment and involvement with yet another collateral governmental and or non-governmental regulation. If in this present rulemaking regarding Vinyl Chloride the Assistant Secretary feels his Section 6(b)(7) authority which must be found in the following quotation -

"In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure"

includes the requirements of (5), which we strongly contend and assert it does not, legally or in good judgment, the Assistant Secretary must make here - in this rulemaking procedure and subject to these submissions of data, views and arguments a proposal of the substance of the criteria for accreditation now being used by the College of American Pathologists, and a proposal of the substance of the licensing procedures under 42 CFR Part 74. The procedures of this rulemaking can not solely by reference, make binding on these employers to whom this proposed standard will apply, provisions of a non-governmental private organization for accrediting laboratories or a CFR published procedure. Those employers can only be bound to that which has been promulgated according to a 6(a) or 6(b) procedure which obviously has not occurred as to the procedures of College of American Pathologists, nor as to 42 CFR Part 74. Earlier in this statement there was comment on the inclusion of Subpart I and J and the problems of confusion, redundancy and contradiction, but these Subparts are in the literature and bibliography of OSHA, they were promulgated under 6(a) procedures and published in the October 18, 1972 issue of Federal Register, Paragraph (5) is without foundation in law, logic or good judgment in this rulemaking procedure, although it may be precisely what any physician in his judgment might choose to do.

(p) Records

(q) Reports

there is an abundance of wisdom in these proposed provisions. We have got to establish procedures which will provide some early warnings of hazards and some sensible method of contemporaneous epidemiology. But as is evidenced at a number of places in this standard proposal it is looked upon as though it were the beginning and the end. It is not a monograph, it is a paragraph among many other paragraphs of workplace hazard protection. A Records and Reporting system applicable to many workplace hazardous materials and toxic substances should be studied and introduced. It should

VC Statement
6/25/74

Page 21

be keyed to the workplace exposure data reflected by monitoring sampling and analysis and medical surveillance. We have got to learn better and more effective techniques, an annual Emergency Standard procedure is a wasteful procedure. It would be useful, perhaps through American National Standards Institute, to undertake studying such records and reporting procedures.

Respectfully submitted,

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