



INDUSTRIES

To: Mr. J. A. Clapperton

INTER-OFFICE CORRESPONDENCE

Date: October 8, 1974

From: Zeb G. Bell, Jr.

Location: 19 East

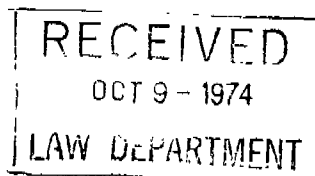
Subject: Vinylidene Chloride

With reference to Mr. Raetzsch's memo of October 4, 1974, I have a few comments.

- 1) I feel that transmittal of information to employees of the potential carcinogenic properties of vinylidene chloride should not be done on a low key basis if we expect them to respect and avoid breathing vapors as specified in your memo dated March 8, 1974.
- 2) I would like to receive copies of all VDCM monitoring records to date and any monitoring done in the future on a form similar to that being collected for VCM.
- 3) Area and personal monitoring are indicated and the prompt collection of this data is necessary. Whatever equipment required should be ordered.
- 4) The plants should review the operating manuals to determine which procedures may result in inherent exposures. Where these exposures may occur, a note should be made in the operating manual of this fact. In the interim period, respiratory protection should be required for operating procedures which may result in VDCM exposures.
- 5) Since VDCM is a liquid at room temperature, protection of the skin is required during operations where skin contact can occur.
- 6) It should be emphasized that the odor threshold for VDCM is grossly inadequate in warning employees of the presence of VDCM. The chronic toxicity of VDCM is substantially greater than for VCM.
- 7) The plants should as expeditiously as possible outline corrective measures through engineering design changes and submit these to management for their approval.

I plan to visit Lake Charles and Natrium to review their VDCM program in the near future.

ZGB:mal
Zeb G. Bell, Jr.



SL 092816

ZGB:mal

cc: R. E. Widing
F. C. Dehn

L. B. Grant, M.D.

L. F. Sargent

F. J. Trunzo

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On Tuesday word was received here early in the morning that the Stender Press Conference would be held in Chicago at 2:30 p.m. (Washington time) and, simultaneously, the enclosed OSHA press release and "fact sheet" would be made available at the Department of Labor here. We immediately arranged for coverage in both places. Further, in anticipation of the likelihood that at least some parts of the Standard would be unacceptable to industry, we alerted our New York associate counsel, Shea, Gould, Climenko and Kramer so that a member of the firm could be in the Clerk's office of the United States Court of Appeals for the Second Circuit to file a Petition for Review immediately upon our giving instructions that such action should be taken. The timing factor was expected to be most critical because, under the Occupational Safety Health Act and related jurisdictional laws, the forum for an appellate proceeding can depend entirely on where the first Petition for Review is filed. To put the matter another way, in consultation with other counsel, and on the basis of a review of decisions in most of the major jurisdictions, we had made a decision that if court action were necessary, the court we would prefer to litigate in was the United States Court of Appeals for the Second Circuit. This being the case, it was important to file our Petition for Review as immediately as possible after an announcement was made since there was every possibility that other interests might similarly be watching the situation closely and planning to file in such a way as to assure that the case would be heard in some other Circuit that might seem more acceptable to them.

To the best of our knowledge, the SPI Petition for Review having been filed at 2:32 p.m. Eastern Daylight Saving Time (approximately seven minutes after the announcement documents were made public at the Department of Labor), and Hooker Chemical Corporation Petition for Review having been filed at 2:36 p.m. Eastern Daylight Saving Time, we believe that the appellate proceedings will take place in the Second Circuit. Tenneco and Air Products filed similar Petitions for Review with the United States Court of Appeals for the Third Circuit on October 2. We are anticipating that counsel for these companies will move to have their cases consolidated with ours in the Second Circuit, this

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same step being anticipated with respect to a Petition for Review filed by Firestone in the Sixth Circuit, we believe on October 1. Also, counsel for Union Carbide has indicated that a Petition for Review will be filed in the Second Circuit on its behalf this week. Firestone, incidentally, also filed to intervene in our case in the Second Circuit on October 1, and, again we believe, at the same time filed some type of Motion for a Stay of the OSHA Order.

As of this writing, we do not know whether any of the Labor Unions or consumer interests plan to appeal in light of the nature of the OSHA decision. If they do, or if a Petition by any of them has been filed, we probably will not know about this for several days. In the meantime, for your general information, in addition to the OSHA releases and fact sheet made available on Tuesday, we are enclosing copies of the two Petitions for Review filed on behalf of SPI and Hooker. Also enclosed are reprints of articles from the Wall Street Journal, the Washington Post and the New York Times. The Wall Street Journal article is a general one on the subject while the Post and Times stories cover some of the features of the new Permanent Standard.

Before attempting to highlight the provisions of the Standard for you in the hope that this will be somewhat helpful, we thought it might be best to try to answer in an anticipatory way (as we have been doing for any number of callers in the past few days) some of the questions you might have concerning the appellate procedure.

Briefly, now that our Petition for Review has been filed, the next move must be made by the Department of Labor. It is required to supply the Court with a certified compilation of the Record in its proceedings within 40 days from the date of service by the Court on the Government. Thereafter, Briefs on behalf of Petitioners are due within 40 days, Answering Briefs must be filed by Respondents within 30 days, and Reply Briefs may be filed by Petitioners within a final 14 days. Once the Briefs are in hand, a date for Oral Argument is set by the Clerk of the Court.

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All of you should understand that it is not unusual for the parties to such proceedings to ask for, or even agree on, extensions of the times for filing the various briefs necessary. It might also be noted that the briefs of any parties permitted to participate as Amicus Curiae or Intervenor are normally due at the same time as the briefs of the principal parties on whose side they are aligned.

There is one other aspect of the appellate procedure about which we are receiving questions. As the Standard has been promulgated, it will not really become effective until January 1, 1975. This amounts to something of a "de facto" Stay but there is at least a good possibility that the industry will want to file a Petition for a Stay in an attempt to preclude the Standard's becoming effective until some later date. Nothing definite has been decided yet but the likelihood is that a meeting of the VCM and PVC Producers Committee, including counsel for the members of this Committee, will be held next week to determine what action should be taken along these lines, as well as in general. As indicated above, we have been advised that Firestone has already petitioned for a Stay of the entire OSHA decision. Other companies may well follow suit and, as noted, such action will at least be considered on behalf of the Society.

Turning finally to the Standard itself, we apologize for delaying this letter until today but one of the main reasons for doing so was because it was deemed imprudent to reproduce the 55 page type-written version of the OSHA Order (which we had on Tuesday) for such wide distribution. Having been informed that the material would be published in today's Federal Register, it was decided that the wiser course of action would be to delay distribution until the more compact Federal Register publication could be transmitted. In any event, the Federal Register pages containing the preamble and Standard are enclosed herewith.

As we see it, the salient features to be noted are as follows:

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1. The Standard does not directly distinguish between its application to any particular segment of the industry. By indirection, its impact is likely to be much greater on PVC and VC^M producers than fabricators because of the capabilities of each group to meet the exposure limitations which have been used as the basis for triggering other requirements.

2. The Emergency Temporary Standard has been extended until January 1, 1975 which means, of course, that the current 50 ppm exposure level and work practices will remain in effect until that time. On January 1, 1975, the Permanent Standard will, unless stayed by the Court, take effect. Under its provisions, the maximum permitted exposure levels below which respiratory protection will not be required will be one part per million on a time weighted 8 hour average and 5 parts per million as a maximum based on a 15 minute average. Where employees may be exposed to levels higher than these, respiratory protection will be required except that, during the period between January 1, 1975 and January 1, 1976, the use of respirators will be discretionary with employees when the level does not exceed 25 parts per million. After January 1, 1976, exposures above the 1 ppm-5 ppm criterion will make the use of respirators mandatory.

3. Where appropriate monitoring shows that exposure levels are below 0.5 ppm (the so-called "action level" in the Standard) for an employee, a plant area, or perhaps in an entire plant, such employees, areas or plants are effectively exempted from the requirements for compliance with essentially all provisions of the Standard.

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4. In accordance with some of the positions advanced by the industry during the Hearings, cannister and cartridge-type respirators will be acceptable for employee use depending on the levels of exposure involved. Reference should be made to the "respiratory protection" section of the Standard for the criteria which will govern such use.

5. Our strong objections to the sign posting and labeling originally proposed have been rejected, as has the concept of tying sign and label requirements to residual monomer levels.

It seems to us that the above are some of the most critical features of the Standard but all of it is important, and of varying importance depending on the nature of your particular operation. In short, you are urged to read and re-read the Standard so that you will understand it as fully as possible.

As of this writing, we would prefer not to express any conjectures whatsoever regarding the possibilities of obtaining relief through the appellate procedures, nor are we in any position to estimate practical impact on the industry. A great deal of public and private speculation is going on in both of these areas, obviously.

The only comments we might make are that we do consider the OSHA "decision" very well written from the point of view of "lawyering" technique. Nevertheless, it would appear that the Administration, undoubtedly influenced by political and image considerations, virtually ignored the lack of any substantial evidence in the Record to indicate that the levels it has set are technologically feasible and will require the imposition of a tremendous burden on those whom the Act is designed to protect, i.e. employees, by compelling a great many of them to wear respirators for extended periods of time. Imposing such a burden on

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employees is contrary to the spirit of the Act, as is the promulgation of a Standard which sets limits that are technologically infeasible to achieve.

Undoubtedly, we will have more to report to you on plans for further action in the near future. Meanwhile, we hope this report will provide you with background and basic information which will be of help.

Cordially yours,

A handwritten signature in cursive script, reading "Jerome A. Heckman". The signature is written in dark ink and is positioned below the typed name "Jerome A. Heckman".

Enclosures

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