



TANKER COLLISION: Fireboat moves in close to fight fire on board an oil tanker that collided with a phenol-carrying ship on the Delaware River in Marcus Hook, Pa., on January 31. Two persons are known dead; another twenty or more are injured. Compania Naviera V.I. lanueva SA, owner of the tanker, "Corinthos," has brought suit for \$35 million in damages against Keystone Shipping Company, Philadelphia; Bankers Trust Company, and Monsanto Company. The chemical ship, the "Edgar M. Queeny," is owned by Bankers Trust and chartered by Monsanto.

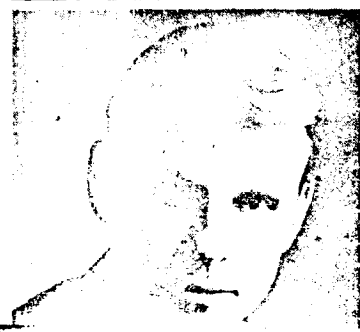
Energy R&D, Health Programs Get More Funds in Fiscal '76

The Ford Administration is proposing increases in money outlays for energy research and development programs of 39 percent in fiscal 1976—from a dollar amount of \$1,131 million in 1975 to \$1,577 million in the next fiscal year. Included in the President's budget message sent to Congress last week, this increase is being spread among all major program areas and reflects further growth in programs that increased by nearly 53 percent from 1974 to 1975.

Altogether, the cost of the Federal energy programs for fiscal 1976 is placed at \$1.2 billion and covers general operating programs such as development of energy policy, management and leasing of Federally owned oil, gas and coal resources, uranium enrichment, and the Federal regulatory programs, as well as the research and development programs.

The uranium enrichment operations, which primarily provide fuel for civilian nuclear power plants and must increase significantly in order to meet future demand, the budget said, will entail an expenditure of \$738 million next year.

In the area of energy regulation, the



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PVC, Vinyl Chloride Makers Weigh Meager Legal Options After Appeals Court Rebuff

By PETER B. GRIFFIN
Market Editor

Leading polyvinyl chloride producers gathered in New York late last week, under the auspices of the Society of the Plastics Industry, to determine what if any further legal action to take in an attempt to alter or forestall the implementation of Department of Labor's orders governing worker exposure to vinyl chloride. Those orders were upheld by a special Federal Appeals Court ten days ago when it rejected on all counts a five-part industry challenge to them.

Informed legal sources both within and without the industry, however, said last week, that the options available to the industry are few now, with none offering realistic hopes of success. According to one source close to the industry court effort: "There are no real options. The case is worse now than before, and it was bad then."

By presstime Friday (February 7) no decision on whether to appeal had been made.

There is still one VCM-related suit out-

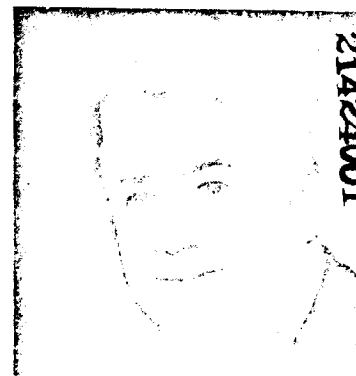
standing in the Court of Appeals. It is a separate petition for judicial review brought by the Oil, Chemical & Atomic Workers Union (OCAW Vs. Brennan). In its legal challenge, OCAW seeks the tightening of certain health and work safety procedures and the inclusion of some others which were omitted from the original OSHA regulation. Disposition is not expected for several weeks.

The denial of the industry's petitions for judicial review of the standards and rules restricting employee exposure to VCM promulgated last October by Occupational Safety & Health Administration (OSHA), was a unanimous decision of a special three-judge Federal panel of the US Court

Continued on Page 40

NIOSH Urges OSHA To Reduce Its Standard On Chloroform Exposure

A new Federal standard for occupational exposure to chloroform, reduc-



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PVC, Vinyl Chloride

if Appeals for the Second Circuit (New York). The court's decision, filed January 31, came approximately four months after SPI and nine PVC and VCM manufacturers brought a series of individual and combined suits seeking court review, and remand, of the OSHA VCM standard, and about six weeks after expedited hearings on the case were held.

The effective date of the standard, originally set for January 1, was stayed by the court pending disposition of the case. The petitioners sought in their initial affidavits to have the original ninety-day lead time reinstated after court proceedings were completed. In the event the decision was against them, in the opinion delivered by the court it was agreed that "a reasonable lead time is appropriate" and it ordered the regulations to become effective in sixty days, or April 1. Until that date, the current emergency standard of fifty ppm will prevail.

In addition, the court said that "the time requirement as to respiratory protection is rescheduled accordingly." Thus, use of respirators in atmospheres containing less than twenty-five ppm of VCM will be at the discretion of employees until April 1, 1976, after which such use will be mandatory for all exposures over one ppm on a time-weighted average basis over an eight-hour period.)

According to legal authorities, the industry has essentially three options should it decide to take further court action: 1) they may petition the same three-judge panel for reconsideration, or 2) they may request such consideration by the entire Second Circuit Court body, sitting en banc, or 3) they may file a writ of certiorari with the Supreme Court, asking that body to review the action of the Appellate Court.

RE-HEARINGS UNLIKELY

Because the decision of the Appeals Court was unanimous, it is considered highly unlikely that "the industry could obtain re-hearings within the Second Circuit court, even though none of the three judges—Tonn C. Clark, retired, of the US Supreme Court; Frederick Van Pelt Bryan, retired, of the US District Court (N.Y.), and Kevin T. Duffy, also of the US District Court (N.Y.)—is a regular member of the circuit court. All were sitting by designation. Nor, under the circumstances, is the Supreme Court considered likely to accept the case, although if the industry decides to pursue further legal action this is believed to be the course they will most likely seek.

The petitioners have fourteen days (excluding Sundays) to petition the Appeals Court for reconsideration from the date of the original decision. They have ninety days to petition the Supreme Court for a hearing. If either petition is accepted, the industry would probably obtain a further stay of the effective date of the OSHA standard pending further disposition. (OSHA legal spokesmen said last week they would oppose such a further stay.)

In their nineteen-page opinion, written by Justice Clark, the court rejected each of the petitioners' five principal claims: 1) that available scientific and medical evidence does not require the adoption of the one-ppm exposure level in order to protect workers; the court ruled "that the evidence is quite sufficient to warrant the Secretary's John Stander, director of OSHA, action"; adding that "the ultimate facts here in dispute are, in the absence of scientific knowledge," and though the factual finger points, it does not conclude. Under the command of OSHA, it remains the duty of the secretary to act to protect the workman, and to act even in circumstances where existing methodology or research is deficient."

2) The petitioners argued that the rules were technologically and economically infeasible, and thus violated OSHA's charter; the court opined that the standard is not "so clearly impossible of attainment. It appears that they simply need more faith in their own technological potentialities," and the court cited the industry's own achievement in meeting the current fifty-ppm emergency temporary standard. The court added here that "in the area of safety, we wish to emphasize, the secretary is not restricted by the status quo. He may raise

standards which require improvements in existing technologies or which require the development of new technology, and he is not limited by issuing standards based solely on devices already fully developed."

3) The petitioners claimed the standard was vague and hence unenforceable without violations of due process; the court said: "We find the secretary's directions are clear, definite, and certain."

4) The petitioners argued that fabricators ought not to be subject to the same requirements as VCM and PVC producers

THE WEEK'S PRICE CHANGES				
Ending February 7, 1975				
Name	ADVANCED		REDUCED	
	Metric Swaps, 2¢ per lb			
COMPARATIVE PRICE INDEXES				
(100 average)				
Last	Prev.	Last	Prev.	Feb. 8
Week	Month	Month	Month	1974
161.65	161.67	161.70	161.70	118.50

For Current Prices See Page 42

For Current Prices See Page 42

Citing two cancer deaths among PVC fabricators in this country (there have been six world-wide, see CMR 2-3-75, Pg. 15), the court said the fabrication industry has been properly included because of the presence of residual quantities of VCM in finished resin. The court added that the secretary has discretion to exempt of condition compliance by fabricators should further evidence warrant this.

5) The petitioners finally argued that the required "cancer suspect agent" label on all PVC resin containers is unjustified and unnecessarily alarming; the court disagreed, saying: "We think the secretary is simply 'fighting fire with fire' and using the labels to bring the danger of vinyl chloride to the attention of workers."

The reasoning of the court's decision is said by legal observers to have reinforced the authority of OSHA and further delimited the function of the court in adjudicating matters of scientific or medical uncertainty. Justice Clark noted that in such areas, the secretary's decision-making is "essentially legislative" (judgmental), and that the court's role can only be to check "arbitrariness and irrationality" in such decision-making.

The vinyl chloride decision is said to have contributed to a growing body of recent judicial precedents, some cited in Justice Clark's opinion, which have limited the court's role in passing on the legislative authority of governmental agencies, particularly in areas of public health and safety.

In this regard, the court's decision is believed significant in affirming protection over feasibility in agency decision-making—requiring safety measures even where a hazard cannot be proven nor disproven, or where "research is deficient," and establishing a performance standard even where that requires "the development of new technology." "The secretary is not restricted by the status quo," the court said.

SPI expressed "shock" over the court's decision, and individual companies expressed disappointment, though most agreed that with the use of gas masks they would be able to comply with the requirements which became effective on April 1. Because of the depressed business suffered in the PVC industry currently, demand and operating rates are down about 30 percent; it is not expected that the impact on operations, if any, will be felt this year.

Firstone, one of the leaders of the industry court fight, said last week: "We shall continue to reduce levels of vinyl chloride exposure as we have been doing, but it is unrealistic to expect that this can be done by regulatory words alone when technology to back them up has not been discovered or invented."

One of the immediate concerns of the industry when the appeals process was begun, its representatives said, was difficulty in acquiring sufficient numbers of respirators to comply with the first phase of the OSHA regulations (that employer's

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PERFUMES & FLAVORS

Continued from Page 37

white pepper was being offered at 98c., down a cent, while Ceylon black and Sarawak pepper, also down a cent each, were being offered at 90c. and 86c., respectively.

Cochin ginger prices took a turn down after a couple of weeks of inactivity and were being quoted at about 56c. a pound, down 2c.

Both West Indian whole nutmegs and Dutch poppy seed took a cent dip and were selling for about \$1.52 and 79c., respectively. The largest decline posted last week was the one for East Indian mace. Broken No. 2 material dropped 10c. and was being offered at \$3 a pound.

COATINGS & PLASTICS

Continued from Page 40

offer respirators to all employees in affected areas, to be used at the employees discretion when VCM levels remain beneath twenty-five-ppm. These concerns were raised again last week.

However, since the original court affidavits were filed, the National Institute of Occupational Safety & Health (NIOSH) has approved for use three makes of cannister-type air-filtration respirators. Approval

was granted for prototypes submitted by Mine Safety Appliance Company (MSA), Welsh Manufacturing Company and the Acme Division of Scott Aviation, by mid-January (within a month of submission for approval; normal delays range up to ten months, a respirator industry source said last week).

These cannister types are expected to be the work-horse units in atmospheres containing no more than twenty-five ppm of VCM. The manufacturer's have geared up to meet the VCM demand, spokesmen say. Secretary Stender of OSHA has said he believes there will be sufficient quantities available by compliance date, and Justice Clark put aside the industry claim by saying these types "are now available and acceptable."

However, a spokesman in the gas mask and respirator division of MSA said last week that that firm, which controls over 50 percent of the industry capacity for the specified respirator types, has received considerably fewer orders than anticipated and had in fact already filled all orders received to date. Demand has been so slow, the spokesman said, that the company is considering closing down its expanded production facilities for the VCM units.

PRIME PIGMENTS

ANTIMONY OXIDE—Prices for antimony oxide have consolidated at the lower end

of the industry range. Both M&T and NL Industries reduced prices in the last days of January to \$1.85 per pound.

Effective January 28, M&T cut its price for standard grade material by 60c. per pound (or almost 25 percent) from the \$2.45-per-pound level it established early last Fall.

NL reduced its price by 31c. (or almost 15 percent) from its former price of \$2.16 per pound, effective January 30.

All other producers have been at the \$1.85-per-pound level since October (Chem-etron is at \$1.84 per pound). Competitive reasons were given by NL and M&T for their actions.

One importer quotes a price of \$1.80 per pound for foreign-produced material (down by almost \$1 from prices in September).

LEAD OXIDES—Hammond Lead Products has implemented new price differentials on less-than-truckload quantities of all its lead oxide products. Effective February 1, these differentials were increased by 1c. to a new level of 2c. per pound. The 2c.-differential has been in effect for other producers for some time.

MISCELLANEOUS

METALLIC STEARATES—Every producer has responded to Witco Chemical's February 1 price reduction on metallic ste-

arates by implementing corresponding increases of 2c. per pound on their own products.

As reported in this space last week, Tenneco and Mallinckrodt took moves to be competitive with Witco at about the same time. Mallinckrodt also cut the price of its dispersion types by 1c. per pound.

Last week both Penick and Synthetic Products revealed similar price changes, and Nopco division of Diamond Shamrock wound up the industry round by reducing its prices by 2c. effective February 5. Nopco, like Mallinckrodt, included a 1c. reduction on its dispersion types.

Metallic stearates are primarily used as vinyl stabilizers, but there have been growing applications in other plastics, and in paper. Business currently, according to an industry source, is "terrible."

Dutch Oxirane Fined

The City Council of Rotterdam plans to fine Oxirane Corporation's Dutch affiliate \$1.8 million for "causing danger" due to a short circuit at the firm's plant on December 1. It's claimed the company was negligent in failing to report the mishap promptly and that a potential danger of explosion existed by reason of a cloud of gas from the plant, which remained in the harbor area for some time.

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