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REGISTERED MAIL
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July 15, 1974

Mr. David R. Bell
Office of Standards Development
Room 500
1726 M. Street, N.W.
Washington, D.C. 20210

Re: Draft Environmental Impact Statement on
Proposed Regulation - Vinyl Chloride

Dear Mr. Bell:

In accordance with Secretary Stender's letter of June 17, 1974 and the invitation therein to submit comments on the Draft Environmental Impact Statement on Proposed Regulation - Vinyl Chloride, I am making the following response, as Counsel to Union Carbide Corporation.

It seems perfectly clear that the entire draft Environmental Impact Statement should either be rejected or that its conclusions which are wholly without substantial support, should be thoroughly reviewed and revised. No document of this nature, on a subject so important as the production and manufacture of vinyl chloride monomer; resins; and of fabricated products containing such resins, should be accepted or utilized on the basis of what this statement purports to contain.

There is here no need to review the lengthy and extensive hearings that have just been held as Docket OSH-36 before Judge Gordon Myatt. It was plain from personally hearing the evidence presented by NIOSH and OSHA, together with the various unions that appeared, that no evidence of any kind or description whatsoever was presented that would warrant adoption of OSHA's wholly preposterous proposal to limit employee exposure to vinyl chloride monomer to "no detectable level." All the evidence presented, in fact, contravenes the need of such a drastic standard. The OSHA proposal is especially unrealistic in the light of the massive contrary evidence presented by various industry spokesmen (including Union Carbide) that:

1. Not even continuous exposure to vinyl chloride monomer in high concentrations over a period of time will necessarily result in any deleterious effects in humans. No evidence of any such effects at levels below 200 parts per million exposure were shown.

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2. The animal data on vinyl chloride monomer exposure which is the only possible basis cited for imposing any exposure limits, is not only self-contradictory, inconclusive and non-probative in itself, but also cannot be and has not been related or translated into human experience. The testimony on the human experience, as for example, that of Dr. Dernehl, shows that little if any harm has in fact come from employee exposure to vinyl chloride monomer, even over extended periods at high concentrations; see also the Dow Chemical Company testimony that no ill effects on humans at less than 200 parts per million exposure levels were ascertainable from their extensive studies.

Indeed, the only allegations in the entire EI statement tending to endorse the proposed OSHA standard as appropriate do not state it is presently necessary to curtail exposure to no detectable levels. They merely say (p. 3, for example) that "vinyl chloride concentrations of 50 parts per million may yet pose a hazard." Such statements are clearly the antitheses of factual support for the proposed permanent OSHA standard, and are unquestionably admissions that the standard has in fact no evidentiary backing whatever. It has destroyed any vestige of justification for issuance of an OSHA proposal which takes account of a mere speculation and not a reality or a present danger.

The fact is, that the only basis cited for setting the proposed vinyl chloride monomer exposure level below 50 parts per million is the extrapolation of a supposition and not the hard proof required in law to buttress adopting any permanent standard.

3. The claim on page 5 of the statement that the "standard for the most part will likely cause a slight decrease in productivity and small increase in costs for the products made from vinyl chloride" is wholly without justification of any sort whatever. A review of the entire EI Statement to ascertain the basis for it is not only unrewarding but shows clearly that it is based on speculation and not solid fact. It is moreover, clearly reliant even for such a slender thread on non-management sources who have neither had nor sought access to the facts. The resort to respirators is universally accepted, for example, as raising labor costs of production by up to 50%, hardly a minor figure. Also, the only authority for the

claim (p. 4, 61) that "700,000 workers are exposed to vinyl chloride monomer" is an estimate from the AFL-CIO, which plainly does not take into account that all but a fraction of that number are engaged in operations which could not possibly result in any exposure at all. This is a blind stab masquerading as fact.

The critical facts are, as the hearing testimony clearly showed without meaningful rebuttal, that there is no way for the industry, with existing technology, to meet the standard proposed by OSHA. The fact that many companies, including Union Carbide, are able to meet an employee exposure level for vinyl chloride monomer lower than 50 parts per million does not mean that they can achieve levels below 25-30 parts per million and achieve a no detectable level. The companies are the only ones that have the facts on this phase of the problem, and are the only ones in any position to make this sort of assessment. They conclude, unanimously, as all have emphatically stated, achieving a no detectable level is simply not possible at the present time, even though they are all willing to make the attempt. Statements that the OSHA proposal can be met arise wholly out of ignorance or a self-serving desire to justify a position otherwise unsupportable. The allegation in the EI Statement (p. 5) of "minimal economic impact," resulting from the standard proposed indeed, is wholly at variance with the statement admitting, in the very next sentence, that "some firms may incur substantial capital costs in meeting the requirements of the standard." The allegations on page 62-63 is so completely erroneous as to "readily available" technology that it is difficult to see how they could have been made with any degree of confidence in their accuracy on the basis of a 5-plant walkaround alone.

How substantial the compliance costs will be may be judged from a survey of just one of the many Union Carbide polyvinyl chloride product lines that will have to be changed if the standard goes into effect as proposed. It will have cost the Corporation some \$430,000 just to meet the requirements of the temporary emergency standard. To attempt even to meet the level of exposure in the proposed permanent standard will require, it is estimated, an expenditure of some \$12-14,000,000, without any assurance that the necessary results will be attainable in fact. The prospect of this amount of expenditure for what may easily turn out to be a futility has

led many companies to say they may well have to shut down rather than face it. And the above figure was an estimate for only a portion of this Corporation's production of polyvinyl chloride resin.

The most disturbing feature of this whole procedure is the type of thinking that it exhibits. This may be described as a willingness to plunge ahead with issuance of a proposal, regardless of the economic and social consequences, solely on the basis of fear-inspired assumptions that lack solid proof and whose major thrust is to place their targets on the defensive. American jurisprudence has been founded on the principle that one who asserts a proposition has the burden of supporting it with proof. This wholly salutary principle has been cast aside in this standard-making procedure. The proposed OSHA standard is promulgated as the answer to a possible, ("potential" in the language of the Statement), not a proven, or an actual hazard. Those affected are asked once the unsupported assertion is made, to undertake a massive effort to prove that a hazard does not exist in order to avoid costly, burdensome, dangerous and wholly unnecessary regulation. The proof of the negative of a proposition, of course, is a legal impossibility in most cases, including this one, particularly where nothing of evidentiary support is offered for the positive of the proposition.

This is a principle that the courts well recognize, and it is why they do not require indulgence in such absurdities, which they have repeatedly cited as untenable at law see Dry Color Mfrs. Ass'n. v. Labor Department (CCA 3, 1973), 486 Fed. 2d 98. Certainly, OSHA should recognize the force of such judicial logic is valid after its previous experiences in the courts, and should proceed to set standards based, as the statute requires on substantial evidence on the record as a whole.

Yet, despite its past record, OSHA has apparently headed down the same road as before, of making non-factual and conclusionary assertions which almost seem to invite court action. This vinyl chloride monomer environmental impact statement is no exception; its conclusions have already been rendered nugatory by the hearing record.

What OSHA should have concluded; what the hearing record shows; and what OSHA could validly have previously ascertained for itself had it (or NIOSH) been willing to listen; is that the environmental impact of the proposed regulation of vinyl chloride monomer stemming from the severe economic impact of the regulation would be substantial; but, on the other hand, (as EPA has already concluded) the environmental impact of current vinyl chloride monomer permissible limits was negligible, indeed, not even discernable; and that no environmental considerations whatsoever would dictate any vinyl chloride monomer regulation, even at the level of the current OSHA emergency standard. The actual economic disaster the permanent standard proposal portends is hardly justified by the minimal number of individuals that could potentially (not actually) benefit.

The evidence OSHA possesses merely shows that a statistically insignificant number of employees, exposed continuously for prolonged periods of time to high vinyl chloride monomer concentration, could possibly get angiosarcoma; even that result is not a proven certainty. The evidence showed nothing else, nor will a review of the OSHA and NIOSH presentations at the hearing show any warrant for any such stringent regulations as is proposed. If there is truly a hazard, even from unregulated vinyl chloride monomer exposures, it at best is slight; limited to a workplace producing or making vinyl chloride monomer and, indeed, to a very few areas in any such workplace, without any impact on the environment outside; and a hazard in the workplace only at continuous exposure levels far beyond those OSHA limits either in effect at any time or proposed. OSHA's findings should also include a statement that there will be a severe environmental impact resulting from the economic consequences of adopting the proposed standard, wholly unwarranted by the hazard sought to be met, and which ought not to be imposed either on employers; on the employees affected by job loss; or on the consumers who use vinyl chloride monomer-related products in many harmless forms.

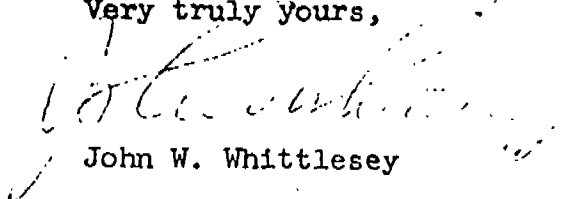
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I urge that such a conclusion is far more warranted even under OSHA's own factual assertions that the ones reached in fact, and that OSHA should substitute such conclusions for those in the statements. If not, the only alternative would appear to be a complete rejection of the statement, and its issuance in revised form, as above recommended.

Very truly yours,


John W. Whittlesey

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