

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION,

Petitioners,

v.

No. 74-2071

PETER J. ERENNAN, SECRETARY,
UNITED STATES DEPARTMENT OF LABOR,
and JOHN H. STENDER, ASSISTANT
SECRETARY OF LABOR FOR OCCUPATIONAL
SAFETY AND HEALTH,

Respondents.

RESPONSE TO MOTION TO DISMISS
PETITION FOR REVIEW

The Secretary of Labor files this response to Firestone Plastic's motion to dismiss this petition for review.

As noted in Tenneco Chemical's January 2, 1975, motion to transfer, this petition for review involves a challenge to the vinyl chloride standard. Earlier petitions for review of that same standard were filed in the Second Circuit, the certified record has been filed there, and the case has been argued and is awaiting decision. Consequently, this petition for review should be transferred to the Second Circuit pursuant to 28 U.S.C. 2112(a), and that Court should rule upon Firestone's motion to dismiss.

Respectfully submitted,

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NRD 6662666566

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION,

Petitioners,

v.

PETER J. BRENNAN, SECRETARY,
UNITED STATES DEPARTMENT OF LABOR,
and JOHN H. STENDER, ASSISTANT
SECRETARY OF LABOR FOR OCCUPATIONAL
SAFETY AND HEALTH,

Respondents.

No. 74-2071

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 1975,
I caused the foregoing Response to Motion to Dismiss Petition
for Review to be served upon opposing counsel by mailing,
postage prepaid, a copy to:

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MD 00020006567

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-2071

September Term, 19 74

Oil, Chemical and Atomic Workers
International Union,
Petitioner

v.

Peter J. Brennan, Secretary,
United States Department of Labor

and

John H. Stender, Asst. Secretary of
Labor for Occupational Safety and Health,
Respondent

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 9 1975

HUGH E. KLINE

O R D E R

On consideration of the motions of Tenneco Chemicals, Inc. and Air Products and Chemicals Inc. and The Society of the Plastics Industry, Inc. for leave to intervene herein, it is

ORDERED that the aforesaid motions are granted and Tenneco Chemicals, Inc. and Air Products and Chemicals Inc. and The Society of the Plastics Industry, Inc. are granted leave to intervene in the above case.

Counsel for the aforesaid intervenors are encouraged to file joint briefs wherever practicable and may participate in oral argument only to the extent allowable under Rule 12 of the General Rules of this Court.

FOR THE COURT:

HUGH E. KLINE, Clerk

By:

Daniel M. Cathey
Daniel M. Cathey
Deputy Clerk

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74-2486 74-2449
74-2345 74-2535
74-2308 74-2491 74-2609
74-2204 74-2450

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UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the thirtieth day of December, one thousand nine hundred and seventy-four.

Union Carbide Corporation,

v. Petitioner,

United States Department of Labor, and
Peter J. Brennan, Secretary, United
States Department of Labor, and John H.
Stender, Assistant Secretary of Labor
for Occupational Safety and Health,

Respondents.
and the consolidated petitions for review

upon consideration of

It is hereby ordered that the motion made herein by counsel for the
petitioners: Firestone Plastics Company; Tenneco Chemicals, Air
Products & Chemical and Hooker Chemicals Plastics Corporation
The Society of the Plastics Industry; Union Carbide Corporation
appellant: appellee: petitioner: respondent:

dated December 2, December 3 and
by notice of motion dated December 4, 1974 for a stay pending decision of the
petition for review and for other and further relief, that the motion
for a stay pending decision of the petitions for review

be and it hereby is granted. denied.

~~It is further ordered that:~~

It is further ordered that said stay be and it hereby is granted
as to all petitions for review as consolidated herein.

Frederick B. Bryant
John Thomas Duffy
Chief Judges

VRD 0002000501

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

TENNECO CHEMICALS, INC.,

and

AIR PRODUCTS AND CHEMICALS, INC.,

and

HOOVER CHEMICALS & PLASTICS CORP.,

Petitioners,

v.

OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION, UNITED STATES
DEPARTMENT OF LABOR, ET AL.,

Respondents,

FIRESTONE PLASTICS COMPANY, a Division
of THE FIRESTONE TIRE & RUBBER COMPANY,

and

INDUSTRIAL UNION DEPARTMENT, AFL-CIO,

and

AMERICAN FEDERATION OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS,

Intervenors in
No. 74-2286.

Nos. 74-2450,
74-2449 and
74-2286

RESPONSE TO THE SECRETARY'S MOTION
FOR CLARIFICATION OF STAY ORDER

In his motion for clarification, the Secretary asks for clarification as to two points, the first being whether the emergency temporary standard remains in effect during the period of the stay, and the second whether in the event of a decision in favor of the Secretary any lead time would be provided to petitioners to comply with the terms of the permanent standard.

Both of these issues were specifically dealt with in the stay motion filed on behalf of these petitioners. That motion stated:

"For the foregoing reasons, petitioners respectfully request that the Court enter an order staying the provisions of the permanent standard, and leaving the terms of the emergency temporary standard in effect, until such time as the judicial review proceedings have been concluded. In view of lead time problems, it is requested that the terms of the stay provide that in the event petitioners are not successful in the judicial review proceedings, the standard as promulgated, or such parts of it as shall be held lawful by the Court, will go into effect on the date of judicial determination as originally issued, which means that the emergency standard will be continued for ninety additional days after that date, and there will be an additional twelve-month period during which the use of respirators for levels of exposure below 25 ppm will be optional with employees."

In view of the fact that the Court entered an order stating that the stay motion was granted, we think it clear that the Court intended both that the emergency temporary standard should stay in effect during the period of the stay and that the lead time provisions requested, including the ninety-day period, would be in effect in the event that petitioners should be unsuccessful in their petition for review. Accordingly, we see no need for any further clarification of the type requested by the Secretary.

If the Court should decide additionally to clarify its order, we submit that it should do so in terms which achieve the result suggested by petitioners in their motion

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and quoted above. No one has intended that the emergency temporary standard should not remain in effect during the period of the stay. So far as lead time is concerned, a reasonable lead time in the event of a decision in favor of the Secretary would be essential, in order to permit compliance with numerous provisions in the standard such as those relating to monitoring, respirators, engineering changes, and signs and labels. Petitioners' motion proposed precisely the same lead time provision which had been included by the Secretary in the permanent standard as promulgated.^{1/}

For the foregoing reasons, we respectfully request that the Court deny the motion for clarification or issue an order of clarification in the terms urged herein.^{2/}

Respectfully submitted,

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December 27, 1974

Attorneys for Petitioners

1/ The variance provision (29 U.S.C. § 655(b)(6)(A)) is not an effective remedy for the reasons set forth in petitioners' reply memorandum in support of their motion for stay.

2/ The Court may alternatively wish to consider adoption of the suggestion made in the Secretary's Motion for Clarification, i.e., to address the question of lead time in its decision on the merits.

VRD 0002006584

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of
the Response to the Secretary's Motion for Clarification of
Stay Order was served, by first-class mail, postage prepaid,
this 27th day of December, 1974, to:

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VRD 00002000505