

VEDDER, PRICE, KAUFMAN, KAMMHOLZ & DAY

1750 PENNSYLVANIA AVENUE, N. W.

WASHINGTON, D. C. 20006

202 298-6445

IN CHICAGO
VEDDER, PRICE, KAUFMAN & KAMMHOLZ
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
312 781-2200

CHARLES R. KAUFMAN* ROY S. KULLBY
THEOPHIL C. KAMMHOLZ* RICHARD M. SANDERS
JOHN H. THOMSON CHRISTOPHER J. HORSCH
WILLIAM W. MCKITTRICK ALLAN E. LAPIOUS
HENRY M. THULLEN CHARLES E. MURPHY
BRINERD CHAPMAN LEE T. POLK
VICTOR L. LEWIS ROBERT J. STUCKER
BERNARD J. ECHLIN THOMAS L. O'BRIEN
WILLIAM O. PETERSEN E. ROBERT GORDON
PAUL G. GEBHARD* NELSON C. SCHMIDT
ROBERT C. CLAUS JAMES C. FRANCZEK
STANLEY B. BLOCK RICHARD C. ROBIN
VAN H. VIOT DONALD W. JENKINS
JOHN J. CASSIDY, JR. MARTIN P. MARTA
ROBERT L. ELLIOTT, JR. JOHN A. RELIAS
JAMES S. PETRIE WILLIAM F. WALSH
GEORGE P. BLAKE HINA G. STILLMAN
FRANK G. REEDER THOMAS G. ABRAHAM
MICHAEL G. BEEMER JOHN W. GERSTNER
JOHN R. JACOBY CHRISTINE M. RHODE
PAUL F. GLEESON PAUL F. RUSSELL
CHARLES H. WIGGINS, JR. LAWRENCE L. SUMMERS
THEODORE J. TIERNEY THOMAS A. BAKER
KARL M. BECKER ROBERT C. CHRISTENSON
MICHAEL E. REED MICHAEL G. CLEVELAND
HENRY S. ALLEN, JR.
ALAN M. KORAL

OF COUNSEL
NORMAN H. PRITCHARD
WILLIAM G. CAPLES

* D. C. BAR

VIRGIL B. DAY
MILTON C. DENBO*
STANLEY R. STRAUSS*
PETER G. NASH
VAN H. VIOT
JOSEPH D. LUKSCH
JAMES R. DENBO
GEORGE J. PANTOS
MICHAEL J. BARTLETT
RONALD H. GREEN

IN NEW YORK
VIRGIL B. DAY
PETER G. NASH
JOSEPH D. LUKSCH
RONALD H. GREEN
800 THIRD AVENUE
NEW YORK, N. Y. 10022
212 838-5544

* N. Y. BAR

May 14, 1976

The Honorable Lowell W. Perry
Chairman, Equal Employment
Opportunity Commission
2401 E Street, N. W.
Washington, D. C. 20506

Re: Request For An "Opinion Letter" As To
Whether The Exclusion of Women of
Childbearing Age From Jobs Resulting In
Exposure to Vinyl Chloride Monomer Con-
stitutes An Unlawful Employment Practice
Within The Meaning of Title VII Of The
Civil Rights Act of 1964

Dear Mr. Perry:

Pursuant to Section 713 of the Civil Rights Act of 1964
(42 U.S.C. §2000e-12) and Sections 1601.28-1601.30 of the
Commission's Procedural Regulations (29 C.F.R. §§1601.28-1601.30),
the undersigned counsel, on behalf of the Firestone Plastics Com-
pany, a Division of the Firestone Tire and Rubber Company,
P. O. Box 699, Pottstown, Pennsylvania, 19464, hereby requests an
"opinion letter" from the Commission as to whether the exclusion
of women of childbearing age from jobs entailing exposure to vinyl
chloride monomer constitutes an unlawful employment practice with-
in the meaning of the Act. For the reasons set forth below, and
particularly in view of recent clinical evidence suggesting
that vinyl chloride--a known cancer causing agent--has a trans-
placental effect following exposure of the mother to vinyl chloride,
and that the fetus is more sensitive to such exposure than an adult,
Firestone strongly urges the Commission to issue an opinion express-
ing its view that a proposed policy which would exclude women of
childbearing age from jobs which expose them to vinyl chloride would
not, in the circumstances presented, constitute an unlawful employ-
ment practice.

EXHIBIT A

BFS

007546

The Honorable Lowell W. Perry

May 14, 1976

Pag Two

Firestone Plastics Company is engaged in the manufacture of polyvinyl chloride resins (PVC), a vital component of widely used and essential plastics, at two facilities. One facility is located in Pottstown, Pennsylvania, and the other in Perryville, Maryland.

Vinyl chloride monomer (VC) is a primary and essential ingredient in the manufacture of PVC. VC is also a carcinogen or cancer-causing agent. Society of Plastics Industries, Inc., v. OSHA, 509 F. 2d 1301, 1306 (2nd Cir. 1975). Employees working in various production and maintenance jobs at Firestone's PVC facilities are exposed to VC in the course of their work.

In recognition of the hazards posed by employee exposure to VC, the Occupational Safety and Health Administration of the Department of Labor (OSHA) has promulgated and implemented stringent standards governing maximum employee exposure to VC. See 29 C.F.R. 1910.1017. To Firestone's knowledge, OSHA has made no determination as to whether its vinyl chloride standards--deemed adequate to protect adult employees from the hazards of VC exposure--are also adequate to protect the fetuses of pregnant female workers exposed to VC.

Recent scientific data, while not conclusive, seems to indicate that VC could produce both mutagenic and teratogenic effects in humans. See e.g., Ducatman, A., et al., "Vinyl Chloride Exposure and Human Chromosome Aberrations," *Mutation Res.* 31:163-168 (1975); Funes-Cravioto, F., et al., "Chromosome Aberrations in Workers Exposed to Vinyl Chloride," *Lancet* i:459 (1975); Infante, P. F., et al., "Oncogenic and Mutagenic Risks in Communities with Polyvinyl Chloride Facilities," *N. Y. Acad. Sci.* (In Press). Thus, female exposure to VC may lead to chromosomal damage which, in turn, may adversely affect the fetuses of such females who subsequently become pregnant. Alternatively, the fetus of a currently pregnant female exposed to VC may be directly and adversely affected. The data suggests that adverse effects may manifest themselves in a variety of ways, such as cancerous tumors, miscarriages, stillbirths and various birth defects. Infante, P. F., *supra.*, Maltoni, C. and Lafemine, G., "Carcinogenicity Bio-Assays of Vinyl Chloride: Current Results," (August 1974).

With regard to the exposure of currently pregnant females, the recent experiments conducted by Drs. Maltoni and Lafemine, which are cited above, strongly suggest that VC passes through the placenta of a pregnant female and, thus, subjects her fetus to

The Honorable Lowell W. Perry
May 14, 1976
Page Three

direct VC exposure. See Appendix I hereto.* Moreover, the results of the Maltoni-Lafemine experiments indicate that fetuses are more sensitive to VC exposure than are adults. See Appendix I hereto. Consequently, even where a pregnant female is exposed to VC at levels and for time periods deemed safe for adult workers in accordance with OSHA's health standards, it is entirely possible that the transplacental exposure of the more sensitive fetus may result in tumors, stillbirth, miscarriage, or birth defects. In this regard, it should be emphasized that any plan to remove pregnant females from jobs which entail VC exposure is particularly unsatisfactory because females frequently are unaware of their pregnancy until several weeks after conception. Hence, by the time a female discovers she is pregnant, the damage to her fetus may have already been sustained.

In view of this medical data, and particularly the data indicating both the transplacental effect of VC exposure and the more acute sensitivity of fetuses to VC exposure, Drs. Mallov and Falk of the Center for Disease Control, Public Health Service, Department of Health, Education and Welfare, have recommended to Firestone that women of childbearing age should not be exposed to VC in the course of their employment. Appendices I and II.

In conclusion, it should be emphasized that Firestone has maintained a long standing policy of nondiscrimination based inter alia upon sex, and that Firestone has implemented this policy through various upward mobility and affirmative action plans and programs. Moreover, Firestone recognizes, as it must, that the

* In response to an inquiry by Dr. Lawrence H. Ballou, Medical Director for the Firestone Tire and Rubber Company, Dr. Joseph Mallov of HEW's Public Health Service, Center for Disease Control, sent a letter to Dr. Ballou on February 14, 1975, in which Dr. Mallov discussed the results of Maltoni's experiment and expressed his medical opinion "that women of childbearing age should not be exposed to vinyl chloride." Dr. Mallov's letter is attached hereto as Appendix I. Pursuant to a similar inquiry by Dr. Ballou, Dr. Henry Falk, also of HEW's Center for Disease Control, sent a letter to Dr. Ballou on March 5, 1975, in which he concurred in the analysis and views expressed by Dr. Mallov. Dr. Falk's letter is attached hereto as Appendix II.

The Honorable Lowell W. Perry
May 14, 1976
Page Four

opinion letter requested herein will necessarily preclude a small segment of the female work force from consideration for a limited number of production and maintenance jobs. Nevertheless, the Commission itself has perceptively recognized "the need to consider particular problems related to sex discrimination on a case-by-case basis." 29 C.F.R. §1604.1(c). And, in the circumstances of this case, Firestone is firmly convinced that the medical data tending to indicate the mutagenic and teratogenic effects of VC exposure requires an accommodation of Title VII's nondiscrimination policies to the health and safety needs and considerations of its female employees and their future offspring. Until such time as the medical community conclusively establishes whether or not VC, in fact, is either mutagenic or teratogenic or both, Firestone believes that the only safe and prudent course for the Company to follow is to preclude females from jobs entailing VC exposure.

Accordingly, and for all the foregoing reasons, Firestone respectfully requests that the Commission issue an opinion letter expressing its view that a policy which would exclude women of childbearing age from jobs which expose them to VC would not constitute a violation of Title VII of the Civil Rights Act of 1964.

Respectfully submitted,

Virgil B. Day

Virgil B. Day
Counsel for the Firestone Plastics
Company, a Division of the
Firestone Tire and Rubber Company

Attachments

cc: Abner Sibal, Esq.
General Counsel



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
CENTER FOR DISEASE CONTROL

NATIONAL INSTITUTE FOR OCCUPATIONAL
SAFETY AND HEALTH
U.S. POST OFFICE AND COURTHOUSE
CINCINNATI, OHIO 45202

RECEIVED

FEB 17 1975

DR. L.H. BALLOU

February 14, 1975

Dr. Lawrence H. Ballou
Medical Director
Firestone Tire and Rubber Company
Akron, Ohio 44317

Dear Dr. Ballou:

In answer to your questions, I can cite a 1974 experiment by Maltoni (experiment BT5)* in which two groups of 30 female Sprague-Dawley rats were treated with 6000 and 10,000 ppm vinyl chloride monomer respectively for 4 hours daily between the 12th and 18th day of pregnancy (i.e. for only one week). Both the adult animals and their offspring were followed for 75 weeks. As of August 1974 no tumors developed in the adults but 2 subcutaneous angiosarcomas developed in a total of 86 offspring: one developed in a 24 week old male whose mother was exposed to 10,000 ppm for 1 week, and the other developed in a 22 week old female whose mother was exposed to 6000 ppm for 1 week. These results, though not conclusive, do suggest that vinyl chloride does have a transplacental effect, and that fetuses may be more sensitive to it than are adults.

Therefore I would agree that women of child bearing age should not be exposed to vinyl chloride.

Sincerely,

Joseph S. Mallov, M.D.

Joseph S. Mallov, M.D.
Division of Field Studies and
Clinical Investigations

*Reference: Maltoni, Cesare and Lefemine, Giuseppe, "Carcinogenicity Bio-Assays of Vinyl Chloride: Current Results" Aug.31,1974.

cc:
J.Stender
P.Falk
J.Wagoner
H.Blejer

PUBLIC HEALTH SERVICE
CENTER FOR DISEASE CONTROL
ATLANTA, GEORGIA 30333

TELEPHONE: (404) 632-3311

DR. L. H. RATION

March 5, 1975

Laurence H. Ballou, M.D.
Medical Director
Firestone Tire and Rubber Company
1200 Firestone Parkway
Akron, Ohio 44317

Dear Dr. Ballou:

I have received your letter concerning the exposure of women of reproductive age to vinyl chloride, and I have also received a copy from Dr. Mallov of a reply to a similar letter. In general, I am in full agreement with Dr. Mallov. I think that Maltoni's data is still the strongest evidence we have at this point. There is, in addition, some experimental data from both Scandinavia and this country suggesting that vinyl chloride is mutagenic in bacterial test systems, but as I understand the data (and I am not an expert in this field) vinyl chloride seems to be mildly or moderately mutagenic in the systems. Although there has been considerable publicity surrounding a preliminary study done by Dr. Infante of the Ohio State Department of Health concerning VC mutagenicity in humans, I don't think that the data are far enough along at this point to be conclusive in either direction.

I am not sure why OSHA changed their recommendations between the temporary and permanent standards. No new scientific evidence has come to light which would make me change my opinion that the initial recommendation was appropriate.

Sincerely yours,

Henry Falk, M.D.
Medical Epidemiologist
Cancer and Birth Defects Division
Bureau of Epidemiology

HFalk:vj