

CPSC Members	FIELD POINT OR DEPT. & BLDG. NO.	DATE YOUR LETTER
FROM Marie Schmiederer	FIELD POINT OR DEPT. & BLDG. NO. D/5428	DATE THIS LETTER 11/14/77
SUBJECT		

MINUTES OF CPSC MEETING, NOVEMBER 14, 1977

1. OSHA Cancer Policy -- BFG will comment both as a member of the SOCMA ad hoc effort and as an individual company. The deadline for comments appears to have been extended to January 9, 1978. W. C. Becker and R. W. Strassburg will be responsible for the BFG position, which will rely heavily on Chemical Division input.
2. Grassroots campaigns -- Ralph Harding of SPI has distributed an open letter which urges communication between convertors and raw materials suppliers on forthcoming carcinogen regulations. This type of effort has been successful in other industries, such as the forest products industry.
3. EPA Vinyl Chloride Standard -- On Tuesday industry representatives from Dow, Air Products and BFGoodrich will meet with Douglas Costle of EPA. O. Pendleton Thomas will represent BFG. The primary discussion topics will be the vinyl chloride offset policy and the zero goal. In the meantime, the technical arm of EPA is writing definitions and has contacted W. C. Holbrook for clarification of "new resins."
4. FDA/PVC -- In light of the ban on acrylonitrile use for food-contact bottle compound, similar restrictive action on PVC use is being prepared for. However, it is possible that FDA will wait until after final legal resolution. Monsanto has until November 18 to file an appeal on the FDA decision. In the meantime, there is a threat of loss of BFG business for acrylonitrile based compounds, in the elastomers area.
5. Michigan Critical Materials Register (MCMR) -- The Michigan Department of Natural Resources has requested out-of-state vendors to report all compounding ingredients, which appear on the MCMR listing, if present in greater than 1% by weight. This information is to be reported to the customer, who then files a description with the agency. Some members of CPSC feel that a general materials safety data sheet should be devised to handle such requests.

* NEXT CPSC MEETING: THURSDAY, DECEMBER 1, 1977, AT 3:30 P.M. IN LOWER LEVEL A. *

MES/tp

cc: W. C. Becker/C. Blackfan/R. B. Downey/N. G. Duke/D. L. Kent/F. E. Krause/
J. F. Malone/J. P. Morrill/R. D. Savage/R. L. Steller/G. Albers

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Current Report

11/17/77

Litigation

EMERGENCY STANDARD REQUIRES MONITORING WHEREVER VC IS RELEASED, COURT DECLARES

Monitoring of every operation in which any vinyl chloride was released was required by the emergency temporary standard for vinyl chloride, regardless of an employer's ability reliably to predict the concentration of this gas in the air, a federal appeals court ruled November 4.

This decision of the U.S. Court of Appeals for the Second Circuit in *Marshall v. Western Electric, Inc. and OSAHRC* (No. 77-4076) reversed a ruling of the Occupational Safety and Health Review Commission reported at 4 OSHC 2021. The court specifically rejected the commission's "reliable prediction" exception to the monitoring requirement.

Western Electric was cited for violating 29 CFR 1910.93-q(c) (1) following an inspection of the firm's electrical components producing plant in Lee's Summit, Mo. As a part of the process for insulating these components, heated metal rings are dipped into a compound known as "Hysol," a plastisol containing polyvinyl chloride suspended in a liquid plasticizer. When Hysol is heated to a temperature of 360 degrees Fahrenheit by the metal rings, the polyvinyl chloride fuses with the plasticizer and coats the rings. At the same time, the polyvinyl chloride releases vinyl chloride into the air in the form of a gas.

An industrial hygienist for Western Electric decided that because the Lee's Summit plant used neither vinyl chloride nor polyvinyl chloride resin as a raw material, its operations were not subject to the monitoring requirements of the emergency standard. However, he did monitor the operation which he concluded would release the most vinyl chloride. After determining that the ambient air in the area monitored contained nonhazardous concentrations of vinyl chloride, he assumed that workers in other areas of the plant would be safe and, therefore, did not monitor any other plant operations.

The compliance officer who conducted the inspection of Western Electric's plant took three samples of the air in the Hysol-dipping tank, one of which revealed vinyl chloride in the air at a concentration of 1.7 parts per million.

Review Commission Judge Paul Dixon rejected the company's argument that Hysol was a fabricated product and, therefore, exempt from the standard, concluding that the operation was a form of fabrication to which the standard applied. He also rejected the firm's claim that in order to constitute "release of vinyl chloride," readings of the ambient air must exceed 5 ppm. Relying on the plain language of the standard, which requires physical monitoring of any operation releasing vinyl chloride gas, Dixon held that the employer violated the standard by failing to monitor the ring-coating process.

The commission, setting aside Dixon's decision, held that the employer could reliably predict from the physical circumstances that the concentration of vinyl chloride in the air resulting from the coating operation would be well below the danger level set by the secretary. Formal physical monitoring was not required, the commission said.

Senior Circuit Judge Robert P. Anderson, writing for the court, concluded that the commission's interpretation of the emergency standard was "unreasonable." Anderson noted

that the mandatory language of the standard was clear and there was no indication in the secretary's introductory comments that any covered employers would be exempt from the duty of monitoring for vinyl chloride gas.

In the court's opinion, the secretary's interpretation of the standard as requiring monitoring of every operation in which any vinyl chloride was released was better calculated than the commission's to achieve the congressional goal of accident prevention and protection against potential danger.

"Although Western Electric's efforts to predict the amount of vinyl chloride in the air breathed by its employees were sound and sensible, it should not be permitted to substitute its monitoring method for that prescribed by the secretary," the court declared. The court also described as "unfortunate" the commission's characterization of monitoring as a "useless act" in situations in which it could be reliably predicted from the physical circumstances that vinyl chloride concentrations would be below the permissible maximum. The unequivocal language of the standard does not support a "reliable prediction" limitation on the duty to monitor, the court ruled. Accordingly, the secretary's interpretation of the standard is the only reasonable one, in the court's opinion.

The case was remanded to the commission for the sole purpose of entering a final order enforcing Judge Dixon's decision.

This decision, in which Senior Judge Sterry R. Waterman and Circuit Judge Walter R. Mansfield joined Anderson, will appear in a future Decisions supplement.

Ethylene Dibromide

INSTITUTE RECOMMENDS CEILING LIMIT OF ONE MILLIGRAM, ENGINEERING CONTROLS

Workplace concentrations of ethylene dibromide (EDB) should be limited to a ceiling level of one milligram per cubic meter of air as determined by a sampling period of 15 minutes, according to a criteria document prepared by the National Institute for Occupational Safety and Health.

The NIOSH recommendations for an EDB standard were transmitted to the Occupational Safety and Health Administration, which announced earlier this year that it planned to issue employer guidelines on the substances (Current Report, September 8, p. 443).

EDB, which is used as a gasoline additive and a pesticide, is chemically related to the pesticide dibromochloropropane (DBCP), linked earlier this year to cases of worker sterility at chemical plants in Lathrop, Calif., and Magnolia, Ark. (See related article in this issue.)

According to NIOSH, human and experimental studies indicate that EDB exposure may lead to ocular, dermal, and respiratory irritation, in addition to systemic effects on the liver, kidneys, spleen, cardiovascular system, and nervous system.

Animal data, according to the institute, indicate that EDB exposure may produce in animals sterility, cancer of the reproductive system, and malformations and heritable damage in offspring.

The relevancy of these findings to human exposure "has not yet been established," NIOSH reported. However, it add-

CPSC Members

Marie Schmiederer

11/28/77

Consumer Product Safety Committee
Thursday, December 1, 1977
Lower Level A - 3:30 p.m.

AGENDA

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| 1. NBS Combustibility Protocol | D. L. Kent |
| 2. OSHA Cancer Policy | W. C. Becker |
| 3. EPA Vinyl Chloride Standard | W. C. Becker |
| 4. Acrylonitrile | R. D. Savage |
| 5. National Symposium on Chronic Hazards | M. Schmiederer |

cc: W. C. Becker ✓
C. Blackfan
R. B. Downey ✓
N. G. Duke ✓
D. L. Kent ✓
F. E. Krause ✓
J. F. Malone ✓
J. P. Morrill ✓
R. D. Savage ✓
R. L. Stallar ✓
G. Albers ✓

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