

(Air Products)

Date May 24, 1977

INTEROFFICE
MEMORANDUM

Subject TOXIC SUBSTANCES MANAGEMENT MEMO

To Distribution

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Enclosed for your information is the May 20, 1977 issue of RECORD
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MAY 23 '77 - CEB

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MCA RESPONDS TO EPA'S PROPOSALS ON INVENTORY REPORTING REQUIREMENTS

MCA has sent to the Environmental Protection Agency its views on issues posed in the March 9 Federal Register concerning proposed rules for general provisions and inventory reporting requirements under the Toxic Substances Control Act. They include:

Confidentiality

MCA requests that special measures be taken to insure that any person having access to confidential material understands his responsibility.

Noting EPA's proposal to list the generic name supplied by the company or some modification (presumably supplied by EPA) on the inventory to give the public some indication of the undisclosed substance, MCA says such practice will lead to confusion and contention and might disclose valid trade secrets. The Association recommends that either the "some modification" be dropped or be supplied by industry on request from EPA.

MCA also asks EPA to drop a requirement for a bibliography identifying any published literature and summaries of unpublished information concerning the health and ecological effects and environmental behavior of a chemical substance. MCA reasons that publication of such a bibliography could reveal trade secrets and would be of little use to the agency. When information is needed to assess the environmental acceptability of chemical substances, MCA recommends that it be submitted in coded or summary fashion to conceal their full identities. As with safety and health information, MCA recommends that EPA ask for information to support a claim of confidentiality only when it is needed and not on a routine basis.

For additional information about subjects mentioned in this memo, contact Jim Turner at MCA. His number is (202) 483-6126.

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Exclusions

MCA points out a need to clarify that part of the proposal which reads: "A chemical substance is not a 'pesticide' within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act until its value for pesticide purposes has been established." If a company believes from available data that a material is a pesticide and is moving to register it under FIFRA, MCA says that EPA shouldn't, without substantial and good cause, second guess the manufacturer's perception of the product as subject to regulation under FIFRA.

The same problem exists, MCA notes, for intermediates or precursors destined solely for use in making a food, food additive, drug or cosmetic which will at some time be regulated under the Food, Drug and Cosmetic Act.

By-Products

To include more materials which belong in this category, MCA favors inserting the words "materials such as" and "curable rubber compositions" in EPA's proposal. The revised definition would read: "On the other hand, materials such as adhesives, paints, inks, drying oils, curable plastic molding compounds and curable rubber compositions may undergo certain chemical reactions which produce a different substance or mixture during their storage or upon end use." This would include materials such as cured or vulcanized rubber.

Definitions

●Polymers

Commenting on EPA's proposal to identify polymers on the inventory list by listing monomers present in an amount greater than two percent, MCA favors the principle but recommends raising the limit to five percent to achieve greater simplicity, with no increase in risk to health or the environment.

EPA also is considering requiring separate terms for polymers containing more or less than five to 10 percent of a given monomer. MCA believes this will complicate the system unnecessarily and recommends that it be dropped. If some now unknown hazard evolves, the Association points out, EPA has the authority to regulate the system.

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●Test Marketing

MCA contends that the test marketing exemption should be clearly distinguished from the product development phase of research, which is justifiably covered by the "small quantity" exemption. The Association emphasizes the importance of the definition of "test marketing" and of "technically qualified individual."

MCA proposes the following alternative (original language lined through and new language underlined):

TEST MARKETING

"The distribution in commerce of a predetermined amount of a chemical substance or article containing such chemical substance by a manufacturer or processor to a defined number of potential customers ~~for purposes of evaluating that substance or article for a particular use or uses or for assessing the potential demand for the product to explore the market capability of the product in a competitive situation during a predetermined testing period prior to the broader distribution of such chemical substance or article in commerce.~~"

Applicability

MCA notes that proposed rules for sections 8(a) and 8(b) have wisely recognized the widespread industry practice of batch manufacture or import to provide several years' stock of material to be held for sales. To make the wording consistent with practice, however, MCA recommends that the first sentence of section 710.3(c) be changed (new language underlined) to read: "Further, if a chemical substance was manufactured or imported prior to July 1974 but was processed or distributed in commerce after that date, a manufacturer or importer may report such substance for the inventory if he certifies that the substance was processed or distributed in commerce after July 1, 1974."

Definition of the term "distribute in commerce" in the Act includes "hold, or the holding of, the substance, mixtures, or articles after its introduction into commerce."

Requirements for Imported Chemical Substances

Establishing that reporting obligations of the importer extend only to reporting chemical substances "known or reasonably ascertainable" isn't a suitable solution, MCA says. This leaves uncertain the section 5 status of unlisted chemical substances that might result from such lack of knowledge on the part of the importer.

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MCA believes that the time limitations for reporting placed on importers under the proposed regulations create severe and unjustified burdens. Frequently, importers will not have information on all constituents, and such data often will be regarded by the supplier as proprietary. Delays and frequent confusion will occur in dealing with foreign suppliers. The importer may be unable to respond to EPA through no fault of his own. Accordingly, MCA recommends that the proposed regulations should provide suitable alternatives for reporting by the foreign manufacturers and for absolving importers of responsibility when they rely on such reports and certificates.

AP00049795