

JOSEPH E. KELLER
JEROME E. HECKMAN
CHARLES M. MEEHAN
WILLIAM E. BORGHESE, JR.
ROBERT E. TIERNAN
WAYNE V. BLACK
DAVID L. HILL
MARTIN W. BERCOVICI
EDWIN B. SPIEVACK
PETER M. NEMKOV
JOSEPH E. HADLEY
CAROLE C. HARRIS
WILLIAM W. PUGH

LAW OFFICES
KELLER AND HECKMAN
1150 17TH STREET, N.W.
SUITE 1000
WASHINGTON, D. C. 20036

July 17, 1974

Wilcox

Copies for

Nelson

Scott

Zwicker

Wesley

TELEPHONE

202 206-2700

CABLE ADDRESS "KELMAN"

[Signature]

Dr. Johnson

Dr. Strassburg

Bell

Honey

Mr. David R. Bell
Office of Standards Development
Occupational Safety and
Health Administration
U.S. Department of Labor
Room 500
1726 M Street, N.W.
Washington, D. C. 20210

Re: Draft Environmental Impact
Statement on Proposed Action
to Limit Exposure of Workers
to Vinyl Chloride

Dear Mr. Bell:

Responsive to Assistant Secretary John H. Stender's June 17, 1974 "Memorandum for Recipients of the Draft Environmental Impact Statement on Proposed Regulation--Vinyl Chloride", the following Comments are hereby submitted to the Office of Standards Development of the Occupational Safety and Health Administration (OSHA) on behalf of our client, The Society of the Plastics Industry, Inc. (SPI) and its Vinyl Chloride and Polyvinyl Chloride Resin Producers Committee. 1/

1/ The Society of the Plastics Industry, Inc. (SPI) is a Corporation organized under the Not-For-Profit Corporation Law of the State of New York. It is composed of approximately 1400 member companies and individuals who supply raw materials; process or manufacture plastics or plastics products, engineer or construct molds or similar accessory equipment for the plastics industry; and engage in the manufacture of machinery used to make plastics products or materials of all types. SPI is the major national trade association of the plastics industry, its membership being responsible for an estimated 75% of the total dollar volume of sales of plastics in this country. A more complete (cont'd)

20183001

It should be noted at the outset that the following Comments are being submitted for your consideration with full recognition of the fact that Dr. Daniel P. Boyd, Director of the Office of Standards Development, clearly stated on the record at the recent OSHA Hearings on the proposed permanent standard for occupational exposure to vinyl chloride that, to the extent any interested party testified regarding the proposed permanent standard, such testimony will be considered as that party's comments on the Draft Environmental Impact Statement referenced above. 2/ In light of Dr. Boyd's statement, in the following paragraphs we have simply summarized the basic SPI positions on the proposed standard and are requesting that the views expressed be considered along with the entire record as a statement of SPI's Comments on the Draft Environmental Impact Statement.

I. STATEMENT OF POSITION

1. The positions of the Society and the members of its Vinyl Chloride and Polyvinyl Chloride Resin Producers Committee on the technological feasibility and economic impact issues relative to the proposed standard were presented in depth at the recently concluded OSHA Hearings, and, in our view, stand generally uncontroverted by factual evidence. We respectfully submit that a "no detectable" level of vinyl chloride in the workplace is (a) infeasible, (b) unwarranted, and (c) therefore, beyond the intent and scope of the Occupational Safety and Health Act and the case law developed to date.

2. More specifically, SPI and many other parties participating in the referenced Hearing repeatedly provided hard data showing that the proposed "no detectable" level of vinyl chloride is technologically infeasible to

1/ (cont'd) discussion of the interest of the Society in this entire matter is set forth in the Occupational Safety and Health Administration Hearings, In the Matter Of: PROPOSED PERMANENT STANDARD FOR OCCUPATIONAL EXPOSURE TO VINYL CHLORIDE, Transcript at 330 et seq., June 26, 1974. (Hereinafter cited as: Transcript at _____, (date)).

2/ Transcript at 1110, 1111, July 8, 1974.

20183002

achieve because the vinyl chloride monomer and polyvinyl chloride producers, in the present state of the art, cannot completely eliminate vinyl chloride exposure in their manufacturing operations. This most vital element of the Society's position was not countered by even a scintilla of evidence showing that a "no detectable" exposure limitation is technologically feasible. Furthermore, no evidence was adduced at the Hearings that would controvert the Society's position that the imposition of an infeasible exposure level would result in a shut-down of the vinyl chloride and polyvinyl chloride industries.

3. It is also SPI's position with respect to the proposed standard that the medical and scientific evidence alleged as the basis for proposing the complete insulation of the work force from minimal vinyl chloride exposure is not sufficient to warrant the conclusion that more reasonable exposure limitations would cause an undue hazard to employees. The Society's view is that the toxicity of vinyl chloride does justify limiting exposure levels but that the industry's alternative proposals to a "non-detectable" level give reasonable assurance that any hazard will be reasonably delimited and that employees will be protected from exposure to dangerous levels of vinyl chloride in the breathing zone.

4. Furthermore, medical experts testifying on behalf of the Society and others urged that the human experience data assembled is entitled, on toxicological grounds, to far greater weight than the inconclusive animal test data presented. Additionally, the human experience data justifies those exposure limitations which the industry considers feasible now and in the future. Considering all the testimony given at the Hearings, it is submitted that the tenor of the composite medical opinion was that the human experience data indicates that human toxicity problems associated with vinyl chloride stem from a time period when occupational exposure to vinyl chloride was at a considerably higher level than currently exists under the Emergency Temporary Standard.

II. COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

5. OSHA's Draft Environmental Impact Statement is premised on the finalization of the current proposal without

20183003

change, the conclusion that the proposed standard is technologically feasible, and a presumption that the animal toxicology data mitigates against human exposure at levels above "non-detectable". SPI takes exception to these general propositions and urges that they be revised in the final Environmental Impact Statement insofar as evidence adduced during the Hearing and otherwise contained in the record illustrates that these premises are invalid.

6. With regard to the outline of the proposed standard at Pages 53-60 in the Draft Environmental Impact Statement, the Society's specific comments on the details of the proposed standard are a matter of record and can be found in the transcript of the Hearing. 3/

7. The Society, herein addressing the Draft Environmental Impact Statement rather than the proposed standard, takes strong exception, as enumerated below, to the sections in the Draft Environmental Impact Statement dealing with: "VI. Probable Impact of the Proposed Standard" at Pages 60-65 and "VIII. Alternatives" at Pages 73-75.

8. The Probable Impact section begins with the conclusion that adoption of the proposed standard will result in a workplace free of vinyl chloride exposure and result in less vinyl chloride escaping into the ambient air. It is stated also that compliance costs will threaten marginal firms, raise the price for PVC, and encourage the substitution of other materials but that high reliance on PVC will reduce demand elasticity despite these price changes. The Draft likewise postulates that other costs associated with compliance are deemed capable of internalization.

9. While understanding that the Draft Environmental Impact Statement was prepared prior to the conduct of the above-referenced Hearings and that the evidence adduced at those Hearings consolidated considerable background and expertise upon which OSHA's ultimate decision will be reached, the Society is compelled to note that, in its view, the Draft Statement itself offers no documentation

3/ Transcript at 300-685, June 26-27, 1974 (and elsewhere throughout the record).

20183004

or supporting evidence for the conclusions reached. In fact, it is respectfully submitted that the evidence gathered through the hearing process just completed indicates that it is technologically infeasible to achieve the proposed "no detectable" level of exposure in the workplace, that this technological infeasibility is not primarily economically related, and that substitutes for PVC are not in adequate supply. 4/

10. At Page 62 in the Draft Statement it is indicated that the proposed standard favors engineering and work practice methods that would reduce the exposure level and, at Page 64 and elsewhere, it is indicated that these engineering and work practice methods should include improved ventilation, air filtration, and housekeeping. Testimony at the Hearing indicates that engineering and work practice methods could reduce but not eliminate exposure to vinyl chloride in the workplace. It is submitted that the record is replete with information on these points and that such should be reviewed in great detail prior to the finalization of this Statement so that the environmental analysis will be based on a more accurate assessment of the state of the technology.

11. On the same page the Draft addresses supply problems, specifically with regard to personal protective equipment, that should be expected to occur with the implementation of a regulation such as is now proposed. Supply shortages, and lead-time for ordering and installing various types of equipment to reduce vinyl chloride concentrations in the workplace were addressed at length throughout the course of the Hearings. SPI submits that, since indications were that order placement and installation lead-time are currently running in excess of 20 months, this factor must be addressed in more detail in the final Statement.

12. Again on Page 62, the Draft states that preliminary assessments of the cost of compliance indicate that the expenditures to achieve such compliance will not be prohibitive. Without addressing the economics involved in detail here, reference should again be made to the statements in the record concerning ability to comply

4/ Transcript at 350 et seq., June 26, 1974 and at 455 et seq., June 26, 1974.

with the proposed standard; the testimony simply does not support the conclusion that economic consequences may not be prohibitive. Moreover, review of the Draft does not indicate that the preliminary assessment of cost of compliance is supported by the data in Appendix C. This Appendix indicates, at Page 6, that control technology is available, and in some cases installed, for limiting vinyl chloride exposure. However, we have found nothing in Appendix C to indicate that technology which would eliminate exposure to vinyl chloride is either available or installed.

13. We hasten to emphasize this point because, on Page 63 of the Draft, it is stated that since the technology appears to be readily available and existing practices already result in low exposure levels, some hazardous function operations, housecleaning and maintenance improvements required notwithstanding, the conclusion is that substantial development costs for vinyl chloride control technology will not be incurred. Continuing on the same page, there is a statement that no evidence exists to date indicating that the promulgation of the proposed standard will stop vinyl chloride production and use. Again, Appendix C does not support this conclusion and the evidence now in the hearing record as a minimum tends to controvert it almost completely. As a conclusion, its only support seems to stem from the statement on Page 64 indicating that PVC-reliant customers can be expected to sustain the industry despite the increased costs of polyvinyl chloride end products.

14. However, as pointed out above, industry members repeatedly pointed out during the course of the Hearings that the technology required to achieve a "no detectable" level of occupational exposure to vinyl chloride simply does not exist. Consequently, it is respectfully submitted that the final Statement should address the question of available technology in depth and in a more realistic light. Since compliance with the proposed standard would be absolutely predicated upon the existence of technical know-how, SPI submits that it is essential that the final Statement address and resolve these questions and the probable effects of such a standard on an industry unable to achieve compliance.

•

•

