

12/17/86
XP: no

Thomas G. Grumbles

VISTA

To Alan Nielsen

Date 12/17/86

Except for the general comment of
"what do we pay taxes for" - do you have
any comments on this?

Should VISTA comment?

TGS

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1162

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[OPP-36101; FRL 3040-6]

Regulations for the Imposition of Fees for Certain Activities Conducted Under the Federal Insecticide, Fungicide, and Rodenticide Act, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR Part 152 be amended to add provisions which will authorize the Environmental Protection Agency to collect fees in advance for certain activities required of the Agency by request of private parties pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., and the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 321 et seq., as amended. The authority for this rulemaking is 31 U.S.C. 9701. The document also solicits comments on possible future elaborations of such a fee system, including annual fees to recover post-registration Agency costs; and differential fees based on Agency costs which relate to the risks of each pesticide or the completeness of the data supporting its registration, or both. The principal differences between the proposed fee system and the possible future elaborations are that the latter would (a) recover more of the costs incurred by EPA to operate the pesticide program and (b) allocate and recover those incremental costs by somewhat different means.

DATE: Comments must be received on or before January 26, 1987.

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP-36101," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Joseph F. Powers, Jr., Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1002-C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1485).

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I. Background

The Independent Offices Appropriation Act of 1952 (IOAA) contained a provision providing for recoupment by Federal agencies of costs incurred by them in performing certain services for certain beneficiaries. This provision, originally designated as 31 U.S.C. 483(a), was codified into positive law on September 13, 1982, at 31 U.S.C. 9701. This provision, commonly referred to as the "User Charge Statute," authorizes and encourages Federal regulatory agencies to recover, to the fullest extent possible, costs attributable to services provided to identifiable recipients. The relevant text states:

Fees and charges for Government services and things of value:

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

- (1) fair; and
- (2) based on:
 - (A) the costs to the Government;
 - (B) the value of the service or thing to the recipient;
 - (C) public policy or interest served; and
 - (D) other relevant facts.
- (c) This section does not affect a law of the United States:

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.

In 1959, the Bureau of the Budget issued Circular No. A-25. This circular was updated in 1963 and 1974. It states in pertinent part:

3. *General Policy.* A reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government Service or property from which he derives a special benefit.

The Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA) (7 U.S.C. 136 et seq.) authorizes EPA to regulate pesticide products. The regulation of pesticides includes registering products for sale and/or use

*Just pass
of att. only
for R.F.*

9. Details of customer's operations are not usually known to seller. It is anticipated that purchasers of VCM are sophisticated users and aware of the need to eliminate or prevent emissions of the product during use. It is anticipated that the "potential" for exposure exists during the transportation, handling, and use of the product.

a. The respondent does not understand the question. As written the answer is no.

10. & 10(a) After 1974 the warning labels regarding the cancer hazard of VCM were affixed to product containers. Material Safety Data Sheets were sent upon request. (No records available for transmission of such.)

Prior to 1974 no cancer warning.

Hazard warning placards and labeling as required by the Department of Transportation were affixed to containers.

(b) MSDS, TECH DATA SHEET

(c) Warnings were affixed to containers VCM Cancer warning -
Since at least July of 1974.

DOT Placards - ?

14. (a - e) No product warnings or cautionary labels were affixed to "purchasers" of VCM.

(b) No

(f) DOT placards were affixed per regulations in effect at the time. Generally included a placard on each side and each end of the railcar or transport trailer used for product shipment.

The VCM OSHA cancer warning label appeared on the railcars used to transport product in the car dome area and other outlet openings.

(g) Business area question.

(h) Business area.

15. The OSHA warning labels were required as of April 5, 1974.

DOT labeling requirements were in effect in _____.

(a) Conoco Ground Transportation (DOT)

Conoco Medical (OSHA)

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(b) The U. S. Department of Transportation required placarding.

The U.S. DOL, OSHA, required cancer warning label.

16. Plants - VCM, OKC, Aberdeen

(a) Specifications for labeling and placarding are currently contained in 29 CFR 1910.1017, and 49 CFR Part 172.

(b) See answer for questions 10.

17. Yes

(a) All containers of vinyl chloride monomer

(b) Plant - in dome area of car

(c) Vinyl chloride - cancer-suspect agent

(d) April 5, 1974 (OSHA ETS promulgated)

(e) Requirement of 49 CFR 1910.1017

20. No record of customer visits. Tech Data Sheets and MSDS were available to customers.

(a) Yes.

(b) Yes.

22. Copies of MSDS and Tech Data Sheets

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23. No such action was ever taken

25. Yes, the defendant warned its employees of the hazards of VCM and offered respirators and other protective equipment to prevent bodily exposure.

(a) Plant response.

(b) Training program since 1974 included all of the requirements of 29 CFR 1910.1017. These include:

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(c) Plant response.

28. Conoco Chemicals participated with other industry companies in a VCM worker epidemiological study and subsequent study update.

(a) The study was conducted by a consultant and included data gathering from _____ to _____.

(b) The study included workers at Conoco's LCVCM and Aberdeen plants.

Consultant

(c) Original Study -
Update

(d) See answer to 28 above.

(e) 26,220 according to records available to us (phone call to CMA)

(f) To investigate the potential health effects of VCM.

(g) A copy of the studies is attached.

(h) See (g).

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(j) Study results were generally available. Sent to appropriate government agencies and companies participating in the study.

30. No answer.

31. CMA-VCM Panel study minutes

No answer - object.

32. Yes.

(a) In early 1974 when BF Goodrich reported events to OSHA.

(b) Published scientific literature.

(c) VCM is a recognized physical and health hazard.

General Response

33. Yes.

(a) See 32.

(b) See 37.

(c) (JRD)

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(d) Defendant must rely on published scientific literature and regulatory agencies to determine the safest exposure levels, or levels at which no effect will occur, for human beings. The current OSHA limit is 1.0 ppm and the current ACGIH TLV is 5.0 ppm. Both of these limits assume 8-hour a day, 40 year working lifetime exposure. It is felt no effect will occur if exposures are below these limits. These limits contain theoretical and scientific safety factors and are appropriately conservative. Conoco concurred with these limits.

Conoco is aware of only one type of VCM and therefore feels there is no significance in different types of VCM regarding the effects of exposure.

34. Yes

(a) Conoco Medical

Conoco Chemicals Environmental

(b) Conoco - Whetstone, Lemke, -

c.c. - Dave Kuhn, Jim Hall,

(i) No department exists at this time. Conoco Chemicals no longer exists.

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35. File search.

(a) List

(b) No such records are kept.

36. Object - not relevant to VCM specifically.

37. JRD - Conoco Medical

38. Conoco Medical, R&D

(a), (b)

(c) Refer to 25

39. VCM plant Eng. Compliance Plans?

40. R&D, Conoco Medical

Thomas G. Grumbles

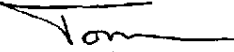
VISTA

~~RE: Asset Purchase Agreement~~
APA

To R. E. Lehmkuhl

Date 12-19-86

It is our understanding that various questions and comments have been raised by members of the Board regarding the environmental liability aspects of the Asset Purchase Agreement. Perhaps the attached summary will be of assistance in responding to any such future questions.


TGG/dco

Attachment

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