

UNION CARBIDE CORPORATION

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LAW DEPARTMENT

November 15, 1974

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Re: OSHA Regulations - Exposure to Vinyl Chloride; 29 CFR
Section 1910.93Q (39FR35890)

Dear Stan:

This is in response to your November 13th memorandum pertaining to certain distribution problems which have been created by the vinyl chloride standard and in which you suggest certain courses of action pending the availability of more authoritative information or the success of our petition in the Second Circuit Court of Appeals to have the standard revoked. I certainly agree that the provisions of the standard are most difficult to apply in transportation operations. The difficulties in interpretation which you raise are applicable to nearly every section of the standard and are attributable to the Department of Labor's stated intent to develop a so-called "performance" standard. A significant argument, which has been presented to the Second Circuit is the difficulty in interpretation and therefore, in complying with the provisions of the standard. Such vagueness raises obvious due process problems, particularly where there are penalties possible for noncompliance with OSHA standards and, where there is a "willful violation" resulting in death, criminal prosecution.

With respect to your "assumptions" I would remark, with respect to number 2, that whether there is exposure to VCM above the action level upon opening a particular rail car, etc., would depend upon the type of resin being carried therein and the manner in which it is packaged or containerized.

I must disagree with assumption number 3, which states that "to the extent that any carrier employee (including a private carrier driver) is or may be authorized by the operator of the "regulated area" to enter such regulated area, such carrier employee becomes an employee of the operator for the purposes of the regulations." Conceding that the standard is hardly a model of clarity, I do not believe that it requires the operator of a "regulated area" to undertake all the obligations of an employer for someone who is not his employee ,

November 15, 1974

even if such person enters a particular regulated area. Such interpretation would contravene the intent of the Act. This hardly solves the problem, however, of a carrier refusing to put himself in the position of having to undertake all of the obligations which the vinyl chloride standard would impose upon him by permitting his employee driver to enter the regulated area. Consequently, I would agree that the apparently simple solution is to preclude carrier drivers from entering the regulated area and that we undertake with our own employees, to accomplish the loading and unloading of the particular mode of conveyance. I agree also that our own drivers should also be instructed not to load and unload at other facilities, where we are unable to monitor, and have no control whatever over the extent if any, to which another employer undertakes compliance with the vinyl chloride standards.

Your comment concerning "less than truckload shipments of PVC" raises a question in my mind as to what extent such shipments occur and to the extent that they do occur, whether the PVC is separately containerized within the conveyance so as to preclude emissions into the interior of the truck, or is of a type which does not release VCM under those conditions. Such shipments obviously create serious compliance problems for carriers and the only solution which I can conceive of is containerization within the truck, etc., adequate to prevent emissions or limiting such shipments to PVC which does not release VCM above the action level.

With respect to warehousemen, the standard, as you note does not distinguish warehouse operations from production facilities for purposes of compliance. While I agree that warehousemen employers will likely not have the resources or expertise for adequate compliance, and that it may be necessary for carbide to assist them, such assistance would, as a practical matter, be quite limited. I can foresee serious difficulties in this regard, particularly as it pertains to the matter of medical surveillance, record keeping, and monitoring.

I would note that the acute problem of compliance where employees may receive very low, short term and sporadic exposures, perhaps as little as once a month, or even less, has been raised with OSHA and they indicate that they will give consideration to these problems in their forthcoming program directive.

November 15, 1974

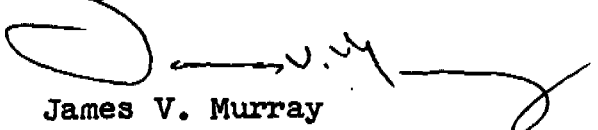
I agree that paragraphs (h) and (i) of the standard pertaining to "hazardous operations" and "emergency situations" do not appear to contemplate situations or emergencies in transit. Further, it would be most difficult to apply the emergency reports provision, n(2) to transit emergencies, particularly where the driver is not our employee. With respect to our own employee-drivers, we should comply with the reporting requirement as much as possible. However, I can conceive of no way to constantly monitor shipments while in transit, thereby determining the exposure level that may occur in the event of an accident.

As you note, one of the most pressing problems of compliance on January 1st is the matter of obtaining required signs and labels. The Standard is not, for the most part, specific as to the placement of signs and labels or as to the size of the lettering, requiring merely that they be "legible". Consequently, we must balance the need to be in a "good faith" compliance posture on January 1st, against the distinct possibility that OSHA may be "stayed" from placing the standard into effect and that our court action may result in substantial revision. This dictates minimal expenditures of money and effort consistent with "good faith" compliance. In the case of the placement and size of signs and labels, a reasonable interpretation is that they must be sufficiently legible and placed in such a manner as to provide adequate warning to employees who will handle the container. Consequently, I concur in your suggestions as to placement and size as they would appear to accomplish this purpose. This should not preclude, however, the use of smaller size letters or different placement, so long as the objective of providing a legible warning is accomplished.

As you note, the standard permits the use of either the term "polyvinyl chloride" or the trade name of the product on pvc container labels. On such labels, "vinyl chloride is a cancer-suspect agent" should not be in smaller lettering, although, you state, "contains" may be. With respect to your suggestion that an appropriate statement be placed on the bill of lading, while that is certainly not required by the standard, I have no objection to doing so and it would enhance our "good faith" posture by doing even more than the standard requires.

Please let me know if you desire further discussion on this subject.

Very truly yours,



James V. Murray

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