

Monsanto

FROM (NAME & LOCATION)

Medical, A2SC

DATE

June 25, 1974

SUBJECT

SPI Testimony re the Proposed
OSHA VC Standard

REFERENCE

TO

H. J. Corbett E3SH
P. R. Graham B3NB
G. D. Ingenthron E2SD
W. B. Papageorge B1ND
P. S. Park A3SA
~~_____~~
J. J. Spano E2SE
E. P. Wheeler A2SC

Attached are several pieces of information obtained from the SPI and pertaining to the OSHA VC hearings. Included are:

- 1) Tentative schedule for appearance of organizations testifying beginning June 25, 1974.
- 2) Statement of J. H. Heckman defining the SPI position, including the detailed recommended changes for the proposed standard.
- 3) Statement of J. E. Ertel presenting the characterization of the 13 angiosarcoma cases that have been detected among workers in the VC industry and the conclusions reached during this characterization.
- 4) Miscellaneous information being distributed by SPI to interested parties and the press:
 - a. Summary of economic impact of VC standards (A. D. Little summary)
 - b. Vinyl Chloride Chronology, prepared by MCA
 - c. Transcript of British Chemical Industries Association, paper released May 16, 1974
 - d. Memorandum (March 11, 1974) from M. M. Key (HEW) to Assistant Secretary of Labor defining the need for the proposed standard.

P. L. W.
Paul L. Wright

/bcp

att.

RSV 0002519

STATEMENT OF JEROME H. HECKMAN
KELLER AND HECKMAN
GENERAL COUNSEL OF THE SOCIETY OF THE
PLASTICS INDUSTRY, INC.
PREPARED FOR PRESENTATION AT
DEPARTMENT OF LABOR HEARINGS ON
VINYL CHLORIDE;
OCCUPATIONAL EXPOSURE STANDARD
JUNE 25, 1974

JUDGE MYATT:

MY NAME IS JEROME H. HECKMAN. I AM A PARTNER IN THE WASHINGTON LAW FIRM OF KELLER AND HECKMAN AND HAVE SERVED AS COUNSEL TO THE SOCIETY OF THE PLASTICS INDUSTRY FOR THE PAST TWENTY YEARS. I AM HERE TODAY TO PROVIDE AN OVERVIEW OF THE PLASTICS INDUSTRY'S POSITION WITH RESPECT TO THE VINYL CHLORIDE PROBLEM AT HAND. SPEAKING FOR THE SOCIETY OF THE PLASTICS INDUSTRY, WE ARE ANXIOUS THAT THE TESTIMONY TO FOLLOW BE VIEWED IN ITS PROPER AND TOTAL PERSPECTIVE. THIS IS BECAUSE WE BELIEVE IT ESSENTIAL THAT ANY FINAL STANDARD ADOPTED BY THE GOVERNMENT TAKE INTO BALANCED ACCOUNT THE FULL SPECTRUM OF PUBLIC AND EMPLOYEE HEALTH CONSIDERATIONS, SOCIAL AND ECONOMIC IMPACT, AS WELL AS OTHER PUBLIC INTEREST FACTORS.

THE TASK OF THE DEPARTMENT IN THIS CASE IS ANYTHING BUT A SIMPLE ONE. IT MUST BALANCE THE INTERESTS INVOLVED AND REACH WELL-REASONED DECISIONS, BUT A MAJOR DIFFICULTY IS THAT MANY OF THESE DECISIONS WILL NECESSARILY HAVE TO BE BASED ON THE RULES OF PROBABILITY RATHER THAN IRREFUTABLE FACT. MUCH OF THE SCIENTIFIC DATA OBTAINED BY RESEARCHERS TO DATE IS QUITE INCONCLUSIVE. A GREAT DEAL OF ADDITIONAL DATA REMAINS TO BE ACQUIRED AND EVALUATED. AT THIS PRECARIOUS STATE OF OUR KNOWLEDGE WE BELIEVE THAT MISPLACED RELIANCE ON MERE SUSPICIONS RATHER THAN PROVEN DATA, OR PRECIPITOUS AND EMOTIONAL REACTION TO SUCH INCOMPLETE INFORMATION, TOGETHER WITH A NARROWLY CONSTRUED INTERPRETATION OF INTERESTS, COULD LEAD TO MAJOR ECONOMIC CONSEQUENCES. SUCH RESULTS FREQUENTLY FLOW FROM UNDULY HARSH MEASURES.

AS MR. HARDING HAS ALREADY NOTED, WE BELIEVE THAT THE PLASTICS INDUSTRY HAS MOVED RESPONSIBLY IN ALL RESPECTS TO OBTAIN HARD DATA AND TO PLAN TO DEAL PROMPTLY AND EFFECTIVELY WITH THE VINYL CHLORIDE QUESTION. WE INTEND TO SHOW, THROUGH THE WITNESSES WHO FOLLOW ME, THAT WE HAVE WITHIN THE TIME CONSTRAINTS PLACED UPON GOVERNMENT AND INDUSTRY ALIKE, ATTEMPTED TO MAKE THE RECORD HERE AS OBJECTIVE, COMPREHENSIVE AND COMPLETE AS IS POSSIBLE. YOU MAY ALSO RELY ON THIS INDUSTRY TO RECOGNIZE THAT SO LONG AS ANY DOUBT REMAINS AS TO

SAFETY LEVELS AND EMPLOYEE OR OTHER EXPOSURE, IT IS INCUMBENT UPON MANUFACTURERS TO MAKE THE WORKPLACE AND GENERAL ENVIRONMENT AS RISK-FREE AS FEASIBLE.

IT IS CLEAR THAT CONGRESS, IN ENACTING PUBLIC LAW 91-596, AND THE COURTS WHICH HAVE THUS FAR INTERPRETED IT AUTHORITATIVELY, RECOGNIZED THAT THE SECRETARY OF LABOR MUST, IN ESTABLISHING PROTECTIVE STANDARDS, CONSIDER THE FEASIBILITY OF MEETING THEM. THE TERM "FEASIBILITY" HERE ENCOMPASSES HEALTH, TECHNOLOGICAL, AND ECONOMIC CONSIDERATIONS. THE TASK OF THE SECRETARY HAS BEEN VERY APTLY STATED IN THE APRIL 15, 1974 DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT IN INDUSTRIAL UNION DEPARTMENT, AFL-CIO, ET AL. V. HODGSON (NO. 72-1713). ON PAGES 19 AND 20 OF THAT DECISION, THE FOLLOWING LANGUAGE PROVIDES A REASONABLE GUIDELINE FOR DECISION-MAKING IN CASES SUCH AS THE INSTANT ONE:

There can be no question that OSHA represents a decision to require safeguards for the health of employees even if such measures substantially increase production costs. This is not, however, the same thing as saying that Congress intended to require immediate implementation of all protective measures technologically achievable without regard for their economic impact. To the contrary, it would comport with common usage to say that a standard that is prohibitively expensive is not 'feasible' (footnote omitted). Senator Javits, author of the amendment that added the phrase in question to the Act, explained it in these terms:

As a result of this amendment the Secretary, in setting standards, is expressly required to consider feasibility of proposed standards. This is an improvement over the Daniels bill, which might be interpreted to require absolute health and safety in all cases, regardless of feasibility, and the Administration bill, which contains no criteria for standards at all.

S. Rep. No. 91-1282, 91st Cong., 2d Sess., p. 58;
Legis. Hist. at 197.

The thrust of these remarks would seem to be that practical considerations can temper protective requirements. Congress does not appear to have intended to protect employees by putting their employers out of business--either by requiring protective devices unavailable under existing technology or by making financial viability generally impossible. (Emphasis supplied.)

MANY OTHER PARTS OF THIS DECISION ARE ALSO DIRECTLY IN POINT. THUS, ON PAGES 12 AND 13 OF THE COURT'S OPINION, IT IS NOTED THAT WHERE EXPLICIT FACT-FINDING IS IMPOSSIBLE, AND DETERMINATIONS MUST BE MADE "ON THE FRONTIERS OF SCIENTIFIC KNOWLEDGE," POLICY JUDGMENTS MUST BE MADE AND ESOTERIC ABSOLUTISM FORSAKEN. LIKEWISE, ON PAGE 23 OF THE OPINION IT IS WELL NOTED THAT, ALTHOUGH EMPLOYEES OBVIOUSLY SHOULD NOT BE NEEDLESSLY EXPOSED TO RISK, WHERE THE DEGREE OF RISK IS INDETERMINATE, SOME ELEMENT OF IT MAY HAVE TO BE COUNTERNANCED FOR A TIME WHEN IT IS INFEASIBLE TO ELIMINATE IT TOTALLY, AND A TRANSITION PERIOD IS REQUIRED FOR STUDY AND IMPROVEMENTS.

IT IS OUR POSITION THAT THE RECOMMENDATIONS TO BE MADE HEREAFTER RECOGNIZE THESE CRITERIA, BUT ALSO BESPEAK A TOTAL INDUSTRY COMMITMENT TO INSTITUTE APPROPRIATE SAFEGUARDS WHILE CONCURRENTLY MOVING FORWARD TO DETERMINE WHAT DATA IS ADDITIONALLY REQUIRED TO MAKE EVEN SOUNDER JUDGMENTS. THE INDUSTRY IS MOVING DECISIVELY TO PROVIDE IMMEDIATE PROTECTIVE ACTION. FURTHER, SCIENTIFIC STUDIES YET TO BE COMPLETED MAY WELL PROVE THAT THE HAZARD HAS BEEN OVERESTIMATED. NEVERTHELESS, WHILE DOUBTS REMAIN, OUR AIM IS TO ASSURE THE PUBLIC AT LARGE, THE INDUSTRY'S EMPLOYEES, AND THE GOVERNMENT THAT THE PLASTICS INDUSTRY HAS BEEN AND WILL CONTINUE TO BE DILIGENT IN TAKING PROMPT AND FEASIBLE STEPS TO MINIMIZE ANY POTENTIAL HEALTH HAZARD.

THE WITNESSES TO FOLLOW WILL DISCUSS IN DETAIL THE FEASIBILITY OF MEETING REASONABLE VINYL MONOMER EXPOSURE LIMITATIONS; HOW PROTECTION CAN BE AND WILL BE AFFORDED EMPLOYEES WHERE SHORT-TERM EXCURSIONS OCCUR ABOVE THE LIMITATIONS WE WILL RECOMMEND; WHY THE EXPOSURE LIMITATIONS IN THE PROPOSED PERMANENT STANDARD PUBLISHED ON MAY 10 ARE NOT REASONABLE, WOULD LIKELY ELIMINATE THE INDUSTRY TO THE GREAT DETRIMENT OF THE COUNTRY, AND SHOULD NOT BE IMPOSED ON THE BASIS OF THE TOXICOLOGICAL DATA PRESENTLY AT HAND; AND WHY THE BREADTH OF COVERAGE OF THE PROPOSED STANDARD MAY SAFELY

BE REDUCED SO AS TO ELIMINATE APPLICATION OF MANY OF THE BURDENSOME REQUIREMENTS IN THE DRAFT STANDARD TO CERTAIN MANUFACTURERS AT THE END OF THE PROCESSING LINE. THESE FIRMS, IT WILL BE SHOWN, HAVE NO REAL VINYL MONOMER EXPOSURE PROBLEM, EVEN THOUGH THEY MANUFACTURE PRODUCTS THEORETICALLY "CAPABLE OF RELEASING DETECTABLE LEVELS" OF MONOMER.

IN TESTIMONY TO BE PRESENTED NEXT BY MR. ANTON VITTONI OF B. F. GOODRICH HE WILL FULLY COVER THE CURRENT STATE OF THE ART AND THE CAPABILITY OF THE INDUSTRY TO MEET AND ULTIMATELY IMPROVE UPON THE EXPOSURE LIMITATIONS WE RECOMMEND. IT SHOULD BE NOTED THAT THE SOCIETY IS AWARE OF ADDED TESTIMONY THAT WILL BE PRESENTED ON THIS SUBJECT IN THE CASES PREPARED BY VARIOUS INDIVIDUAL COMPANIES WHICH ARE APPEARING HERE.

IT WILL SUBSEQUENTLY BE DEMONSTRATED BY OUR SUCCEEDING WITNESSES THAT THE EXPOSURE LIMITATIONS, TIMETABLE FOR REDUCTIONS, AND REVISED WORK PRACTICE RULES WHICH WE ADVOCATE WILL PREVENT THE VIRTUAL ECONOMIC CHAOS THAT COULD RESULT IF THE PRESENTLY PROPOSED STANDARD WERE ADOPTED. WE SUBMIT THAT OUR ALTERNATIVE PROPOSALS CAN BE ACHIEVED WITH REASONABLE ASSURANCE THAT NO UNDUE HAZARD WILL ARISE OR BE ALLOWED TO CONTINUE WITH REGARD TO EMPLOYEE SAFETY. OUR MEDICAL EXPERTS WILL URGE UPON THE DEPARTMENT THAT THE HUMAN

EXPERIENCE DATA WE HAVE ASSEMBLED--AND WHICH WE BELIEVE IS ENTITLED ON TOXICOLOGICAL GROUNDS TO GREATER WEIGHT THAN INCONCLUSIVE ANIMAL TEST DATA IN CIRCUMSTANCES LIKE THOSE PRESENTED HERE--JUSTIFIES THOSE EXPOSURE LIMITATIONS THE INDUSTRY CONSIDERS FEASIBLE NOW AND IN THE FUTURE. AGAIN, WE RESPECTFULLY SUBMIT THAT THIS EVIDENCE, TAKEN IN CONTEXT, MUST OVERRIDE AND OBIATE THE IMPOSITION OF EXCESSIVELY RESTRICTIVE EXPOSURE LIMITS OR WORK PRACTICES (SUCH AS A REQUIREMENT FOR FULL-TIME USE OF RESPIRATORS) WHICH WOULD LIKELY SHUT THE INDUSTRY DOWN WITH THE RESULTANT DISRUPTIVE CONSEQUENCES WHICH WILL BE PROJECTED AND EXPLAINED BY MR. VINCENT FICCAGLIA OF ARTHUR D. LITTLE COMPANY.

TESTIMONY AS TO APPROPRIATE MEASUREMENT TECHNIQUES AND POLICIES WILL BE SUPPLIED BY DR. RUDOLPH STEHL OF THE DOW CHEMICAL COMPANY AND WILL LEAD TO OUR MAKING SPECIFIC RECOMMENDATIONS IN THIS AREA. THE PURPOSE HERE WILL BE TO ADD CLARITY AND SPECIFICITY TO THE FINAL STANDARD. SIMILARLY, DRs. JOSEPH TOMASHEFSKI AND ROBERT SOULE WILL EXPLAIN WHY FULL-TIME USE OF RESPIRATORS WOULD BE LIKELY TO HAVE BOTH SIGNIFICANT AND IMMEDIATE ADVERSE IMPACT ON WORKER HEALTH AND SAFETY. DR. ROGER STRASSBURG WILL INFORM YOU AS TO HOW SO-CALLED CANISTER-TYPE RESPIRATORS CAN BE EMPLOYED AND RELIED UPON FOR SHORT PERIODS OF TIME UNDER THE TYPE OF PERMANENT STANDARD THE INDUSTRY CAN SUPPORT.

OTHER TESTIMONY FROM A SERIES OF WITNESSES WHO HAVE BOTH OBJECTIVE TEST DATA AND PERSONAL EXPERTISE PERTAINING TO THE HANDLING AND USE OF PVC FOR FABRICATION WILL, WE BELIEVE, CONVINCE THE DEPARTMENT OF THE ADVISABILITY AND REASONABLENESS OF MAKING CLARIFYING CHANGES IN THE STANDARD SO THAT ITS APPLICATION WILL, WITH PERHAPS MINOR EXCEPTIONS, BE LIMITED TO THOSE WHO MAKE AND SELL ONLY MONOMER AND POLYMERS.

THIS WILL BE THE THRUST OF OUR CASE. IT IS ONE IN WHICH WE HAVE FAITH; ONE THAT WE BELIEVE THE INDUSTRY'S WORKERS SHOULD SUPPORT; AND ONE THAT, IF APPROPRIATELY REFLECTED IN THE STANDARD ADOPTED, WOULD ALLOW THE INDUSTRY TO CONTINUE TO SERVE THE PUBLIC INTEREST.

WHILE OUR MAJOR PLEA IS FOR A CHANGE IN THE "NO DETECTABLE LIMITS" CONCEPT IN FAVOR OF WHAT IS TRULY FEASIBLE AND, THEREFORE, TECHNICALLY AND LEGALLY SOUND, WE ALSO STRONGLY URGE THAT CERTAIN OTHER ELEMENTS IN THE STANDARD BE CHANGED. SOME OF THESE CHANGES WE BELIEVE ARE NECESSARY TO AID IN SIMPLE UNDERSTANDING OF WHAT IS REQUIRED; OTHERS ARE URGED TO ALLOW A MORE REASONABLE HANDLING OF DAY-TO-DAY PROBLEMS IN A WAY THAT IS CONSISTENT WITH PRACTICABILITY, AND CONTINUED INDUSTRY VIABILITY.

THE CHANGES RECOMMENDED ARE IN ALL CASES SUBSTANTIVE AND NECESSARY AS WE SEE THEM. AS TO ALL OF THESE, I WOULD ASK YOUR HONOR TO RECEIVE FOR THE RECORD THE SET OF STANDARD REVISION RECOMMENDATIONS ATTACHED TO MY STATEMENT. OUR HOPE IS THAT THIS WRITTEN TABULATION WILL FACILITATE RECOGNITION OF SUCH LANGUAGE IN THE PROPOSED STANDARD WHICH WE DEEM UNDULY BURDENSOME, UNNECESSARY, OR UNCLEAR, AND WILL AID THE DEPARTMENT IN CONSIDERING OUR SPECIFIC RECOMMENDATIONS FOR CHANGES.

FOR THE MOST PART, THE RECOMMENDED REVISIONS WILL BE SELF-EXPLANATORY IN LIGHT OF THE EVIDENCE TO BE PRESENTED VERY SHORTLY. HOWEVER, THERE ARE A FEW AREAS WHICH I WILL DISCUSS NOW SINCE THEY ARE IMPORTANT TO THE INDUSTRY AND ARE NOT BEING DEALT WITH DIRECTLY IN THE STATEMENTS OF OUR OTHER WITNESSES. I BELIEVE I CAN SUMMARILY ALLUDE TO THESE SITUATIONS AND ASK THAT YOU BEAR WITH ME WHILE I ATTEMPT TO DO SO:

1. WITH RESPECT TO THE PROPOSED PARAGRAPH 1910.93Q(A)(1), DEALING WITH THE SCOPE OF THE STANDARD, SUBSEQUENT TESTIMONY WILL INDICATE WHY IT IS BELIEVED EXCESSIVELY AND INFEASIBLY BROAD. IT SHOULD ENCOMPASS ONLY THOSE AREAS AND

OPERATIONS THAT POSE OR MAY REASONABLY BE EXPECTED TO POSE PROBLEMS, AND BE MADE INAPPLICABLE TO CERTAIN TYPES OF OPERATIONS, PRIMARILY PROCESSING AND FABRICATION PLANTS.

2. WITH RESPECT TO PARAGRAPH (B)(2), IT SHOULD BE REVISED TO ALLOW FOR THE RELATIVELY INFREQUENT BUT NECESSARY ENTRY OF CONTRACTORS, TRUCK DRIVERS AND SERVICE PERSONNEL, WHOSE SERVICES ARE REQUIRED FROM TIME TO TIME IN NORMAL OPERATIONS.

3. PARAGRAPH (B)(4) CONTAINS PARTICULARLY VEXATIOUS LANGUAGE AND WHAT AMOUNTS TO A WHOLLY AMBIGUOUS AND UNWORKABLE DEFINITION OF "CONTAMINATED" BY EMPLOYING THE OPEN-ENDED CONCEPT THAT AN AREA OR PRODUCT COULD BE CONSIDERED CONTAMINATED IF IT IS "CAPABLE OF RELEASING A DETECTABLE LEVEL OF VINYL CHLORIDE." THIS NOTION IS INCONSISTENT WITH OTHER OSHA STANDARDS IN ITS LACK OF FINITENESS.

THERE ARE SITUATIONS WHERE SUBSTANCES BELIEVED TO BE 100 TO 1000 TIMES

AS CARCINOGENIC AS VINYL CHLORIDE MAY ULTIMATELY BE SHOWN TO BE ARE TREATED MUCH MORE SENSIBLY. FOR THIS REASON, WE URGE THAT THIS DEFINITION BE ALTERED SO THAT IT REFLECTS THE AVERAGE EXPOSURE LIMIT TO BE ADVANCED BY MR. VITTONI AS TO VINYL MONOMER, AND THAT NO AREA BE CONSIDERED CONTAMINATED WHERE THE POLYVINYL CHLORIDE RECEIVED OR USED THEREIN CONTAINS LESS THAN 0.1% RESIDUAL MONOMER NOW, OR LESS THAN 0.01% RESIDUAL MONOMER BY OCTOBER 5, 1977. THE LIMITATIONS SUGGESTED BY THIS TYPE OF DEFINITION WOULD BE AS STRINGENT IMMEDIATELY AS THOSE IMPOSED ON SUCH KNOWN CARCINOGENS AS 4-AMINODIPHENYL--"THE MOST HAZARDOUS AROMATIC AMINE REGARDING CARCINOGENIC POTENTIAL," (SEE SECTION 1910.93(K)) AND BIS-CHLOROMETHYL ETHER, (SEE SECTION 1910.93(H)). BY 1977 IT WOULD BE TEN TIMES MORE STRINGENT BARRING THE ACQUISITION OF NEW DATA WHICH MAY WELL PROVE THAT THE 0.1% LIMITATION IS UNDULY HARSH.

4. THE DEFINITION OF "EMERGENCY" IN PARAGRAPH (B)(8) SHOULD BE ALTERED FURTHER,

EVEN ASSUMING THAT OTHER PROVISIONS IN THE STANDARD ARE CHANGED SO AS TO REFLECT FEASIBLE EXPOSURE LIMITS INSTEAD OF THE "NO DETECTABLE" CONCEPT PRESENTLY CONTEMPLATED. AS THE DEFINITION NOW READS, A MINOR SPILL OR LEAK WOULD CONSTITUTE AN "EMERGENCY" AND COULD TRIGGER MAJOR ACTION UNNECESSARILY. IN LIEU OF THIS DEFINITION, IT IS RESPECTFULLY URGED THAT THE STANDARD BE CHANGED SO THAT IT WILL FOLLOW THE NIOSH RECOMMENDATIONS OF MARCH 11, 1974 WHEREIN AN EMERGENCY WAS DEFINED AS "... AN UNFORESEEN CIRCUMSTANCE OR SET OF CIRCUMSTANCES, SUCH AS A RUPTURED TRANSFER LINE, RESULTING IN THE RELEASE OF VINYL CHLORIDE SUFFICIENT TO PRODUCE ACUTE SYMPTOMS AMONG WORKERS EXPOSED OR HAVING CONTACT WITH VINYL CHLORIDE."

5. WITH RESPECT TO PARAGRAPH (B)(10), AN IMPORTANT CLARIFICATION SHOULD BE MADE TO REFLECT ACTUAL INDUSTRY PRACTICES. THE DEFINITION AS WRITTEN WOULD DEFINE AS FABRICATED PRODUCTS "FILM, SHEET, BLOCK, BAR, OR EXTRUSION STOCK." SO THAT THIS DEFINITION

WILL COMPORT WITH INDUSTRY TERMINOLOGY, AND THEREBY AVOID UNINTENTIONAL CONFUSION, THE SECTION SHOULD BE REVISED IN PERTINENT PART TO COVER AS FABRICATED PRODUCTS "FILM, SHEET, BLOCK, BAR, EXTRUDED STOCK, AND DICED OR PELLETIZED COMPOUNDS."

6. REGARDING ALL OF SECTION (E), THE TABLE ATTACHED TO THIS TESTIMONY REFLECTS RECOMMENDED CHANGES DEEMED ESSENTIAL, AS WILL BE INDICATED BY DR. STEHL OF THE DOW CHEMICAL COMPANY, THIS BEING THE THRUST OF HIS PRESENTATION. IN ADDITION, OF COURSE, THE RECOMMENDATION SET FORTH IN THE ATTACHMENT TO MY TESTIMONY REFLECTS THE INDUSTRY POSITION FAVORING CONSTANT SEQUENTIAL MONITORING, WITH SPECIFIED PROCEDURES, IN LIEU OF THE PRESENTLY PROPOSED 95% CONFIDENCE LEVEL REQUIREMENT WHICH WE CONSIDER TO BE VAGUE AND, PRACTICALLY SPEAKING, MEANINGLESS.

7. PARTICULAR MENTION MUST BE MADE HERE RELATIVE TO THE SUBJECT OF EMPLOYEE OBSERVATION OF MONITORING AND MEASURING. CERTAINLY THE INDUSTRY DOES NOT TAKE ISSUE

WITH THE STATUTORY RIGHT OF EMPLOYEES TO BE ADEQUATELY ASSURED ABOUT MONITORING PROCEDURES USED FOR THEIR PROTECTION, AND TO OBSERVE THE SAME IN A REASONABLE FASHION. IT IS INTERESTING TO NOTE, HOWEVER, THAT THE PROPOSED STANDARD HERE DOES NOT EVEN INCLUDE THE WORD "REASONABLE" IN CONNECTION WITH THE PHRASE "OPPORTUNITY TO OBSERVE" EVEN THOUGH ONE OF THE MOST IMMEDIATE PRECEDENTS FOR THIS STANDARD--THE ASBESTOS STANDARD--DOES USE THE WORD.

IN LIGHT OF THE INDUSTRY'S PROPOSAL FOR A COMPLETELY DIFFERENT AND MORE DEFINITIVE MONITORING AND MEASURING SYSTEM, AND SO AS TO AVOID UNNECESSARILY DISRUPTIVE ABUSES WHICH COULD EASILY OCCUR IF THE PRESENT LANGUAGE IS LEFT UNCHANGED, THE SECRETARY IS URGED TO REVISE PARAGRAPH (E) (3) SO THAT THE OBSERVATION OF THE MONITORING WILL BE HANDLED BY AN ELECTED EMPLOYEE. IN OTHER RESPECTS, IT IS SUBMITTED THAT THE LANGUAGE SUGGESTED IN THE ATTACHED TABLE WILL BE MORE APPROPRIATE AND SUFFICE FOR EMPLOYEE PROTECTION WITHIN THE CONTEMPLATION OF THE STATUTE AND APPLICABLE REGULATIONS.

8. THE MATTER OF SIGNS AND LABELS COVERED IN SECTION (K) OF THE PROPOSED PERMANENT STANDARD IS OF ENORMOUS CONCERN TO THE INDUSTRY. IN AN ERA WHEN THE PUBLIC, INCLUDING THE WORK POPULATION, HAS BEEN SO BOMBARDED BY PEREMPTORY WARNINGS AND CAUTIONARY LABELS TO THE POINT WHERE ALL CHARACTERIZING LANGUAGE TENDS TO BECOME MEANINGLESS (EXCEPT TO REGULATORS IN OTHER FIELDS AND TO PRODUCT LIABILITY ATTORNEYS), WE ARE UNABLE TO SEE HOW THE PUBLIC INTEREST WOULD BE SERVED BY THE TYPE OF SIGN AND LABELING LANGUAGE THUS FAR RECOMMENDED.

WHILE THIS LANGUAGE MAY BE DEEMED CONSISTENT WITH REQUIREMENTS FOR PROVEN AND HIGHLY POTENT CARCINOGENS, IT IS CERTAINLY NOT CONSISTENT WITH THE TYPE OF SIGN AND LABELING REQUIREMENTS DEEMED ACCEPTABLE BY OSHA IN CASES WHERE LESS INFORMED PARTIES ARE APT TO BE VIEWING SUCH SIGNS AND LABELS REGULARLY. THUS, FOR EXAMPLE, IN THE CASE OF ASBESTOS WHERE IT WAS RECOGNIZED THAT CONTAINERS, SHIPPING VEHICLES, AND OTHER MEDIA WITH PUBLIC

VISIBILITY WOULD BE INVOLVED, THE DEPARTMENT ACCEPTED AND THE U. S. COURT OF APPEALS APPROVED LANGUAGE WHERE THE EMPHASIS WAS UPON THE PRECAUTIONARY STEPS TO BE TAKEN, NOT THE NATURE OF THE SUBSTANCE. COMMON SENSE WOULD APPEAR TO DICTATE THAT EXPLICIT INSTRUCTIONS ON HOW TO DEAL WITH A SUBSTANCE OR PRODUCT WILL BE MORE HELPFUL TO THOSE WHO MIGHT BE EXPOSED THAN WILL SCARE LABELS WHICH INDICATE ONLY THAT SOMETHING IS TO BE FEARED, RATHER THAN DEALT WITH REASONABLY.

FOR THIS REASON, AND ON THE BASIS OF THE PRACTICES WHICH EXIST WHERE OTHER HAZARDOUS SUBSTANCES MAY HAVE TO BE ENCOUNTERED BY EMPLOYEES OF VARYING DEGREES OF TECHNICAL EXPERTISE, AND SUSCEPTIBILITY TO ANXIETY, IT IS RECOMMENDED THAT THE CONCEPT OF EMPHASIZING THE IDEA OF "CANCER SUSPECT AGENT" BE REPLACED SO THAT ANY REGULATED AREA SIGNS REQUIRED BY THE STANDARDS WOULD READ:

Vinyl Chloride Vapor Hazard.
~~Carry Respirator And~~ Wear Assigned Protective Equipment
When Alarm Signal Is Activated.
When Signal Is Activated, Do Not Remain In Alarm Area
Unless Your Work Requires It.
Breathing Excessive Quantities of Vinyl Chloride Vapor
May Be Hazardous To Your Health.

WITH RESPECT TO WARNING LABELS OR
SIGNS TO BE PLACED ON SHIPPING CONTAINERS
OF ANY TYPE FOR VINYL CHLORIDE MONOMER, THE
FOLLOWING LANGUAGE IS SUGGESTED:

Vinyl Chloride
Danger
Extremely Flammable Gas Under Pressure
May Polymerize with Explosive Force
~~Poison~~
Avoid Contact With Liquid Or Vapor Unless Fully
Protected By Authorized Equipment.
In The Event Of Acute Exposure Seek Medical
Assistance Immediately.

WITH RESPECT TO WARNING LABELS OR
SIGNS TO BE PLACED ON SHIPPING CONTAINERS
OF ANY TYPE FOR POLYVINYL CHLORIDE, THE
FOLLOWING LANGUAGE IS SUGGESTED:

Caution
Polyvinyl Chloride
Contains Vinyl Chloride
Avoid Breathing Vapor Or Dust
Closed Containers Of Polyvinyl Chloride May Contain
Vapor Levels Of Vinyl Chloride Which May
Be Hazardous To Your Health.
Open Only In Well-Ventilated Areas Or Wear Respiratory
Protection.

THE IMPORTANCE OF THE LABELING REQUIREMENTS IS DIFFICULT TO OVER-EMPHASIZE FOR A VARIETY OF REASONS. CERTAINLY THE MOST IMPORTANT ONE HAS BEEN STATED ABOVE, I.E. LABELING SHOULD BE DESIGNED TO PROVIDE THOSE WHO NEED THE INFORMATION WITH METHODS FOR DEALING WITH THE PROBLEM, RATHER THAN A BASIS UPON WHICH TO PANIC BECAUSE OF A DISEASE CHARACTERIZATION.

IN LIGHT OF THE ECONOMIC IMPORTANCE OF ASSURING CONTINUED PRODUCTION AND SUPPLY OF POLYVINYL CHLORIDE RESINS WITHOUT ADDING UNNECESSARILY TO THE COSTS THEREOF, IT MUST ALSO BE BORNE IN MIND THAT CHARACTERIZING THE MATERIAL AS PRESENTLY PROPOSED COULD LEAD TO THE IMPOSITION OF TRANSPORTATION BANS BY SOME STATES--PROPOSALS TO DO PRECISELY THIS HAVING ALREADY BEEN ADVANCED IN THE STATE OF NEW JERSEY--AND WOULD UNDOUBTEDLY ARM THE OVERZEALOUS WITH WHAT THEY MIGHT CONSIDER A PRIMA FACIE CASE IN SOME SPECIOUS PRODUCTS LIABILITY PROCEEDINGS. IT IS IMPOSSIBLE FOR US TO SEE HOW THIS WOULD SERVE THE OBJECTIVES OF THE OCCUPATIONAL

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SAFETY AND HEALTH ACT OR ANY ASPECT OF
THE PUBLIC INTEREST.

WE NOW ASK THAT CAREFUL ATTENTION BE GIVEN TO THE
PRESENTATIONS OF THE REMAINDER OF OUR PANEL AND URGE THAT
ANY PERMANENT STANDARD ADOPTED TAKE INTO CAREFUL ACCOUNT ALL
OF THE INFORMATION SO PROVIDED.

RSV 0002538