

SUPPLEMENTAL COMMENTS OF
THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S
VINYL INSTITUTE
CONCERNING IMPLEMENTATION OF LABELING
REQUIREMENTS FOR PRODUCTS CONTAINING OR
MANUFACTURED WITH CLASS I SUBSTANCES

Docket A-91-60

Introduction

The Society of the Plastics Industry, Inc. (SPI), on behalf of its Vinyl Institute (VI), submits the following Supplemental Comments on proposed regulations to implement the labeling requirements of Section 611 of the Clean Air Act Amendments of 1990 for products containing or manufactured with certain listed ozone-depleting chemicals. 57 *Fed. Reg.* 19166 (May 4, 1992). Specifically, SPI/VI asks the Agency to consider issues raised by the labeling requirements as applied to carbon tetrachloride, an ozone-depleting chemical that may be used, transformed, and/or incidentally generated in the ethylene dichloride/vinyl chloride monomer/polyvinyl chloride (EDC/VCM/PVC) process. Methyl chloroform may also be incidentally generated in the EDC/VCM/PVC process; our comments apply equally to both situations.

SPI, the major national trade association of the plastics industry, is a corporation organized under the Not-for-Profit Corporation Law of the State of New York. SPI's 49 operating units have over 2,000 individual and corporate members which represent virtually every phase of the plastics industry including those who: supply raw materials; process or manufacture plastics, or plastics products; and, engineer or construct molds and accessory equipment for the plastics industry. The majority of SPI's members process and convert plastic resins into end products. These operations represent 75% of the dollar volume sales of plastics in this country.

The VI, a division of SPI, was formed to represent the particular interests of the domestic producers of vinyl chloride and polyvinyl chloride. The current members of the VI include The BFGoodrich Company, Borden Chemical and Plastics, CertainTeed Corporation, The Dow Chemical Company, Georgia Gulf Corporation, Occidental Chemical Corporation, PPG Industries, Inc., Shintech Inc., Union Carbide Chemicals and Plastics, Inc., Vista Chemical Company, and Westlake Monomer Corp. VI member companies are responsible for approximately 82 percent of the domestic production of vinyl chloride and 63 percent of the domestic production of polyvinyl chloride.

SPI previously filed comments in this rulemaking proceeding addressing its member's concerns with regard to: (1) the value of this rule given the anticipated, accelerated phase-out of ozone-depleting compounds; (2) the need to narrowly define the term "introduced in commerce"; and, (3) the need to avoid burdensome downstream labeling. Our earlier comments cautioned in particular against creating a nightmare of paperwork for industry with no net environmental benefit because of ubiquitous labeling. These Supplemental Comments address specific concerns with regard to these labeling requirements as applied to the EDC/VCM/PVC process.

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Summary of the EPA Proposal

Briefly, the labeling proposal would require that all products containing a Class I substance (chlorofluorocarbons (CFCs), halons, carbon tetrachloride (CTC), and methyl chloroform), and all products manufactured with a Class I substance, carry a warning label starting May 15, 1993. The warning requirement is triggered when the product is "introduced into interstate commerce." The EPA has proposed to define a "product containing" an ozone-depleting substance to mean a product that "physically holds a controlled substance within its structure." See Proposed Rule, § 82.104(d), 57 *Fed. Reg.* at 19197.

The Agency has proposed that the term "manufactured with" means that a controlled substance is used in the manufacturing process, but the product does not contain the substance at the point of sale to the ultimate consumer. Two significant exemptions to the "manufactured with" definition have been suggested by EPA which SPI/VI believes are significant in the vinyl process. The first is for incidental uses, and the second is for those products which result from the transformation of a controlled substance. See Proposed Rule, § 82.104(f), 57 *Fed. Reg.* at 19197. Our Supplemental Comments analyze these definitions relative to the EDC/VCM/PVC process.

Ozone Depleting Substances Are Transformed in the EDC/VCM Process

The EPA itself has noted that the manufacture of vinyl chloride involves the transformation of a Class I substance and that the labeling requirements should, therefore, not apply. See 57 *Fed. Reg.* at 19168. SPI/VI agrees. We also believe that the Agency intended to, and should, interpret this transformation exclusion broadly to encompass "transformations" in which trace amounts of ozone-depleting chemicals remain. For example, a product manufactured in a process which involves the "transformation" of all but trace amounts of an ozone-depleting chemical should not have to be labeled as "containing" a Class I substance. To clarify this point, SPI/VI recommends that the definition of "manufactured with" to be codified at 40 C.F.R. § 82.104(f)(2) read: "Where the controlled substance has been transformed (*except for trace amounts*).". This clarification would also assure consistency with other rules. See, e.g., Protection of Stratospheric Ozone, Final Rule, 57 *Fed. Reg.* 33754 (July 30, 1992).

CTC Used for Purposes Such as Explosion Prevention And Sniff Gas Recovery Are Incidental Uses Which Should Not Trigger Labeling Requirements

Carbon tetrachloride is used to prevent the dangerous accumulation of nitrogen trichloride in the chlorine production process. Without carbon tetrachloride, an explosion would result. It is the SPI/VI position that this use should be considered an "incidental" use within the meaning of the proposal and exempt from the labeling requirements.

Carbon tetrachloride is also used in the sniff gas recovery phase of chlorine production to separate chlorine from other inert gases. This is also an "incidental" use which should not require labeling. Simply because there is "physical contact" between molecules of a controlled substance and a product should not universally require labeling; the Agency should revise the exemption proposed in § 82.104(f)(1) to read "Where the use of the controlled substance is incidental to the manufacture of the product."

EPA Should Retain a *De Minimis* Exemption
For Uses of Class I Substances

If the use of CTC for explosion prevention and sniff gas recovery is not to be treated as an "incidental" use, SPI/VI believes that EPA should adopt a *de minimis* exception to the labeling requirements. To rule otherwise could require the labeling of all downstream products which are manufactured with a Class I substance (no matter how slight the amount). Because CTC is used for sniff gas recovery in some chlorine production processes, a strict interpretation of the proposed labeling rules could require the labeling of all products manufactured with chlorine as "manufactured with" ozone-depleting substances -- an unduly burdensome and meaningless requirement which would impose an unreasonable burden on industry and would undermine the effectiveness of the labeling program.

Ozone Depleting Compounds Generated
Unintentionally In "Trace" Amounts Should Be Exempt

Carbon tetrachloride and methyl chloroform are unintended participants in the EDC/VCM/PVC manufacturing process. Proposed Section 82.102(a)(3), 57 *Fed. Reg.* at 19197, provides that "all products manufactured with a process that use a Class I substance" are subject to the labeling requirements. The term "manufactured with" is further defined in proposed § 82.104(f) to mean that "a controlled substance is used in the product's manufacturing process."

SPI/VI's interpretation of these provisions is that the unintentional generation of trace amounts of Class I substances as part of a manufacturing process does not trigger labeling requirements. Read in conjunction with the exemption for "transformation," these provisions should be interpreted to mean that labeling requirements are triggered if the product was intentionally manufactured using a controlled substance and contains the controlled substance at the point of sale to the consumer. See 57 *Fed. Reg.* at 19168. By definition, unintended byproducts are unavoidably generated in the manufacturing process and, thus, should be exempt from labeling. Further, the fact that unavoidably generated, controlled substances may remain in the product in trace amounts (less than 1%) should not trigger a requirement that the product be labeled "contains" an ozone-depleting chemical.

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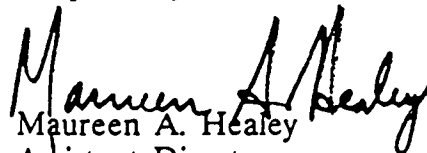
The Term "Introduced in Commerce"
Should be Narrowly Construed

SPI reiterates the position stated in its earlier Comments that the term "introduced in commerce" should be narrowly construed. SPI/VI believes that labeling requirements should only apply to products manufactured after May 15, 1993, and that they should only apply to products destined for the ultimate consumer. EPA should not require the labeling of chemical feedstocks, intermediates, additives, *etc.* which are consumed in the EDC/VCM/PVC production process. Furthermore, products manufactured prior to May 15, 1993 -- whether they are on the shelf, in a customer's warehouse, or in the manufacturer's warehouse -- should not be subject to EPA's proposed labeling requirements. A contrary interpretation would require unduly burdensome relabeling which would impose extreme costs with little, if any, net environmental benefit.

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SPI/VI appreciates this opportunity to present supplemental comments on these issues. We hope that the Agency will favorably consider these comments, and that appropriate action will be taken to clarify the applicability of this proposal to the EDC/VCM/PVC process.

Respectfully submitted,


Maureen A. Healey

Assistant Director

Federal Government Affairs
The Society of the Plastics Industry, Inc.
1275 K Street, N.W., Suite 400
Washington, D.C. 20005

Sheila A. Millar
S. Craig Tautfest
of Counsel
Keller and Heckman
1001 G Street, N.W.
Suite 500-W
Washington, D.C. 20001

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