

October 7, 1977

Executive Summary of Industry
Position on Implications of Proposed
Vinyl Chloride Amendments

- I. EPA's achieving its overall environmental goals depends in substantial part on gaining industry confidence in the Agency's fairness, openness and consistency.

A. Industry supports the Agency's stated goals:

1. EPA's Deputy Administrator, in her remarks to the Chamber of Commerce of the United States on May 3, 1977, pledged that EPA would embrace "the following simple procedures":

"First, we will sincerely take a long, hard look at every potential regulatory move and ask ourselves whether it is really needed. Second, if we conclude that it is, we will do our best to write it in clear and concise English. Third, we will see to it that public participation and involvement take place from the very start of the regulatory development process. No surprises. Fourth, we will consider economic and social impacts. Fifth, we will favor economic approaches whenever these would seem to work as well or better than regulatory approaches."

- B. Industry is seriously concerned that the Agency as a whole may not be applying these established goals.

- II. The entire chemical industry is aware of EPA's proposals for further regulating vinyl chloride. The industry is concerned with the implications of EPA's actions.

A. The regulatory process - background:

1. After 32 months of consideration and extensive public participation, EPA promulgated a standard. Industry pledged to do its best to meet it.
2. After a court challenge was filed, EPA failed to support its own action. Industry was excluded from the settlement negotiations in which a private group suggested particular amendments for EPA to propose. EPA agreed to propose amendments because it thought a court would overturn its actions.

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"It was a very difficult evaluation, but the Agency, our office and the people in the office of Air and Waste Management, decided the risks of losing this case were serious enough that we had to consider means of avoiding such a loss. If we had lost the case and it had been determined the industry, for example, had to meet a zero emission goal and a zero emission standard, or that there should be no emissions visible or otherwise, the industry would be faced with the horrible problem but there would also be a domino effect covering the asbestos standard and any other standard the Agency would propose under this area." (EPA Staff attorney, Transcript of September 8, 1977 meeting)

3. The industry believes the existing Standard is totally defensible, and objected to the settlement. The proposed amendments were not well thought out and not adequately explained; the circumstances had not changed and no new health data exists on which to base the amendments. EPA agreed to formally propose them before discussing them with the industry. These proposals do not represent the informed and considered judgment of the Agency.
 4. Industry is very concerned with the entire process that led to the proposals, and the absence of procedural and substantive due process.
- B. The proposed amendments to the Vinyl Chloride Standard contain two major new policy aspects that are far-reaching.
1. Zero emission goal - EPA has caused uncertainty by proposing this goal.
 - a. "In order to insure that the standard continues to approach the only level of emissions which is known to be absolutely protective of health, namely zero emissions, EPA is proposing amendments...." (Preamble to proposed amendments, 42 Fed. Reg. 28154 (1977)).
 - b. EPA already stated it would continue to review the existing standard and lower it if necessary.
 - c. Industry is not opposed to periodic review and to changes shown to be necessary. Industry supports rational risk assessments and realistic approaches. Industry objects to unnecessary controls and to automatic, arbitrary and unrealistic goals.
 - d. In developing the existing Standard, EPA considered the health risks of vinyl chloride exposure. EPA expressly rejected a zero emission level. Our question is whether EPA is now proposing to abandon its policy of risk analysis and adopt automatic zero emission goals without examining actual health risks.

- e. Abandoning risk analysis in favor of zero emission goals would not properly utilize society's resources.
- f. The Clean Air Act does not require a zero emission level or a zero emission goal.
 - (1) The Clean Air Amendments of 1970 rejected the approach embodied in the Senate Bill that would have required EPA to prohibit emissions of hazardous air pollutants unless industry could demonstrate a safe level.
 - (2) Congress was aware of and did not object to EPA's approach in the existing Standard.
- g. EPA should not state a goal unless it intends to reach it
 - (1) The only way to achieve a zero emission level is to shut down the entire industry. EPA has recognized Congress did not intend this result.
 - (2) Stating an unrealistic goal misleads the public.
- h. Vinyl chloride is a health hazard at very high levels of exposure. Studies have been made, but there is no evidence that exposure to low levels of vinyl chloride is hazardous to man. The existing Standard will result in minute ambient vinyl chloride concentrations. EPA and independent studies indicate 1 ppb or less. There is no evidence that exposure to such infinitesimal concentrations has resulted in any adverse health effect.
- i. The zero emission goal implies zero risk, but we do not live in a riskless society. Meaningful comparisons must be made of the risk involved.

2. Offset requirements

- a. "EPA believes that a policy of no net increase in emissions due to new construction is justified because of the hazardous nature of vinyl chloride. However, EPA recognizes the potential difficulties in implementing such a policy and interested persons are urged to submit comments and factual information relating to this policy." (Preamble to proposed amendments, 42 Fed. Reg. 28156 (1977)).
- b. The effects of the offset requirements were not adequately considered.
 - (1) This offset requirement is different from EPA's overall offset policy. It would require vinyl chloride emissions to be offset only with vinyl chloride emissions. A company could only obtain

offset credits from its own plant or by bargaining with its competitors.

- (2) After the existing Standard is fully implemented, vinyl chloride emissions will be so small that little offset credit will be available. The offset requirement would create an impediment to growth.
- (3) The offset requirements raise serious competitive and antitrust questions.
 - (a) Could such a policy create market dominance?
 - (b) Could it create competitive inequities?
 - (c) What would be the extra costs of offset and who would bear them?
- (4) One company has cited the following anti-competitive effects:
 - (a) "Many of the [vinyl chloride] monomer producers use much or all of their production internally, with the result that the merchant business is divided between seven companies, of which three account for 86% of the total. Inability to build new plants within the logical market area will put a premium on potential offsets (whether or not they are actually realized) and allow expansion of existing large plants, while preventing the expansions or redesigning of small, older plants."
 - (b) "Older [polyvinyl chloride] plants will become obsolete and noncompetitive earlier than normal, and companies which cannot provide the capital necessary for economically-sized new plants will be forced out of the business, again resulting in concentration of an industry where the top six producers are estimated to have 56% of the market when ongoing expansions are complete."
- (5) The offset requirements would hinder expansion of existing plants and increase the number of plant locations. Energy usage and costs would increase.

III. Recommendations

A. The concepts reflected in the proposed vinyl chloride amendments affect the entire chemical industry. The Administrator should turn his personal attention to these issues.

1. The chemical industry is concerned with EPA's actions.
2. The action memorandum by which the Administrator proposed the amendments stated "Since we have already agreed to propose these amendments, there are no major decision issues." The Assistant Administrator for Enforcement stated that "circulation of this package for concurrence at this point appears to be only a pro forma exercise," and that the settlement motion was signed by counsel and filed "without formal review and concurrence at the Assistant Administrator level."
3. The Administrator should decide the case personally.
4. The industry needs to know whether EPA is seriously considering changing its regulatory approach with respect to these types of chemicals - adopting zero emission goals instead of utilizing rational risk assessments, and adopting offset requirements for specific chemicals.
5. The Administrator should meet with the executives of the vinyl chloride industry. That industry is concerned that the Administrator does not understand its views. The issues deserve the Administrator's personal attention.