

LAW OFFICES
KELLER AND HECKMAN

1001 G STREET, N.W.
SUITE 500 WEST
WASHINGTON, D.C. 20001
TELEPHONE (202) 434-4100
TELEX 49 95551 "KELMAN"
TELECOPIER (202) 434-4646

BOULEVARD LOUIS SCHMIDT 87
B-1040 BRUSSELS
TELEPHONE 02(2) 732 52 80
TELECOPIER 02(2) 732 53 92

JOSEPH E. KELLER
JEROME H. HECKMAN
WILLIAM W. BORGHESANI, JR.
MALCOLM D. MABARTHUS
WAYNE BLACK
TERRENCE JONES
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LESTER BORODINSKY, Ph.D.

TELECOMMUNICATIONS
ENGINEER
CHARLES F. TURNER

WRITER'S DIRECT DIAL NUMBER

October 4, 1993

(202) 434-4141

VIA FACSIMILE

Ms. Meredith Scheck
The Vinyl Institute
Wayne Interchange Plaza II
155 Route 46 West
Wayne, New Jersey 07470

Re: CertainTeed EPCRA Matter

Dear Meredith:

This letter follows our discussion on October 1 concerning an update for the Vinyl Institute's Health Safety and Environment Committee on matters involving the Emergency Planning and Community Right to Know Act (EPCRA), particularly Sections 311 and 312. This topic has been a subject of discussion at prior Committee meetings.

Earlier this year, we received a copy of a July 30, 1992, letter from the U.S. Environmental Protection Agency (EPA) to Wolverine Technologies, a CertainTeed subsidiary (copy enclosed). The letter reflects the inspector's view that polyvinyl chloride (PVC) resin should be considered hazardous material requiring a materials safety data sheet (MSDS) because it creates hazardous emissions when processed. Therefore, PVC resin would be subject to state and local notification requirements under EPCRA Sections 311 and 312.

Since we received the EPA letter over a year after it was written, we initially determined the current status of this matter. CertainTeed has been negotiating with EPA. Initially, Geon supplied a letter indicating that it did not view the PVC resin as hazardous and did not read its material safety data sheet as supporting that conclusion. Apparently, EPA then contacted OSHA and unearthed a 1986 letter stating that PVC resin must be labeled under the OSHA vinyl chloride standard as a carcinogen.

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Ms. Meredith Scheck
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Over the Labor Day weekend, the person handling this matter for CertainTeed died unexpectedly. CertainTeed then asked Bruce Campbell and Doug McLeod of Blackwell and Sanders, a Kansas City law firm, to handle this matter. I spoke with these attorneys and reviewed the Vinyl Institute's efforts to educate OSHA on this matter. We provided background information concerning OSHA letters in the 1970s indicating that PVC resin need not be labeled. We also discussed OSHA's changing interpretation and the VI's efforts in the late 1980s to reverse this OSHA interpretation.

As you may recall, Occidental's Addis Louisiana facility received a citation for failure to label PVC resin. The Vinyl Institute, acting through Occidental, contested OSHA position. However, OSHA withdrew its citation rather than litigate the matter. Thus, we are left with some troublesome OSHA letters and an Agency that has been unresponsive to our request to change that position.

CertainTeed has now suggested that the Vinyl Institute become involved in this EPA administrative proceedings. Certainly the VI's participation would signal that this is a broader issue of interest to the industry as opposed to an isolated company question. My initial reaction is that it may be beneficial, assuming the Institute is agreeable on a policy basis, to prepare a short submission supporting the view that low residual monomer resin is not hazardous and does not trigger EPCRA reporting requirements.

As you are aware, Keller and Heckman is also counsel for the Vinyl Chloride Panel of the Chemical Manufacturers Association (CMA). CMA is in the process of scheduling a meeting with Ruth McCully, the Director of the Office of Health Compliance Assistance within OSHA's Directorate of Compliance Programs. While CMA is interested in an interpretation of language addressing entry into an area of unknown vinyl chloride concentration, if you have no objections, I would also like to raise the PVC labeling issue in a generic way to determine if we might make some head-way with Ms. McCully's office.

If you have any questions, please feel free to call. I should be in my office most of Monday, Tuesday, and Wednesday.

Cordially yours,


Peter L. de la Cruz

Enclosures

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
728 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

JUL 20 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John S. Oleson
Plant Manager
Wolverine Technologies
Industrial Avenue
Grinnell, Iowa 50112-0685

Dear Mr. Oleson:

EPCRA Docket No. VII-92-T-6752

This letter is a follow up to the June 24, 1992, inspection, conducted pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §1101, et seq. The purpose of the inspection was to assess the company's efforts to comply with EPCRA and regulations promulgated thereto.

The inspection revealed that your company has cooperated with the Iowa Emergency Response Commission (IERC), the Local Emergency Planning Committee (LEPC), and the local fire department, in your efforts to comply with EPCRA §§111 and 112. However as the EPA representative discussed with you during the inspection, it appears that your company might be required to include chemical product "Geon Resin 27" polyvinyl chloride on the Tier II forms which you submit to the IERC and LEPC.

Under EPCRA §§111 and 112, if a facility is required to prepare or have a material safety data sheet (MSDS) pursuant to OSHA, then that facility must submit an MSDS for EPCRA §111, and a Tier II inventory form for EPCRA §112, to the authorities referenced above. The threshold amounts for which such reporting must occur are 10,000 pounds of hazardous chemicals, and 500 pounds of extremely hazardous substances or the threshold planning quantity, whichever is lower.

Collected during the inspection were MSDS and processing information concerning polyvinyl chloride at your facility. The MSDS contains information to the effect that the products can emit hazardous fumes and vapors when processed at elevated temperatures. If your company processes polyvinyl chloride in such a manner as to create hazardous emissions, then you would be required to maintain MSDSs pursuant to OSHA, thereby requiring that you notify state and local officials in accordance with EPCRA §§111 and 112.

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RECYCLE A recycling symbol consisting of three chasing arrows forming a triangle.

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Within thirty (30) days of your receipt of this letter, please undertake the following actions and supply this office with the following documentation:

- 1) if you disagree with the assessment of your responsibility to prepare or maintain an MSDS for the polymers referenced above pursuant to OSHA, request from OSHA a determination whether your company is required to prepare or maintain an MSDS pursuant to the Hazard Communication Standard, 40 C.F.R. §1910.1200, for the forms of polymers which your company stores and processes; and
- 2) if your company is required to prepare or maintain an MSDS for the polymers, provide EPCRA §§111 and 312 notifications and forms to the MIRC, LEPC and local fire department in accordance with the regulation at 40 C.F.R. §170.20(b). Provide copies to me at the above address. Otherwise provide a copy of OSHA's written determination that you are not required to prepare or maintain an MSDS for the polymers.

Please be aware that this letter does not limit EPA from taking further action on this matter. Any such action depends up n your timely and complete response to this matter.

If you have any question concerning this letter or your responsibilities under EPCRA, contact me at (913) 881-7020.

Sincerely,

Doug F. Elders

Doug F. Elders
Environmental Engineer
Toxic Substances Control Section

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