

JOSEPH E. KELLER
JEROME H. HECKMAN
CHARLES M. MEEHAN
WILLIAM H. BORGHESE, JR.
ROBERT R. TIERNAN
WAYNE V. BLACK
DAVID L. HILL
MARTIN W. BERCOVICI
PETER M. NEMKOV
JOSEPH E. HADLEY
CAROLE C. HARRIS
WILLIAM W. PUGH
PETER THOMAS SMITH

LAW OFFICES
KELLER AND HECKMAN
1150 17TH STREET, N.W.
SUITE 1000
WASHINGTON, D. C. 20036

January 9, 1975

RECEIVED BY
JAN 14 1975

C. LANE
TELEPHONE
202 206-2200
CABLE ADDRESS "KELMAN"

TO: All Members of:

SPI Food, Drug and Cosmetic
Packaging Materials Committee;
General Polyvinyl Chloride Interest
Mailing List;
Ad Hoc Liquor Bottle Committee;
Plastic Pipe Institute
(Executive Board);
Plastic Bottle Division
(Voting Representatives);
SPI Executive Committee;
SPI Public Affairs Committee;
VC and PVC Producers Committee

Ladies and Gentlemen:

The purpose of this letter is to update you once again on the status of the pending Petitions for Review of the Occupational Safety and Health Administration's (OSHA) October 4, 1974 Vinyl Chloride Standard, and to inform you about the latest activity with respect to prospective or anticipated rulemaking proceedings by the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Coast Guard.

OSHA

By way of keeping you as fully but succinctly apprised as is reasonably possible about the substantive aspects of the legal proceedings related to OSHA's Vinyl Chloride Standard, the following is a brief outline of what has occurred since our December 17, 1974 report:

1. As previously promised, a copy of the Order of the United States Court of Appeals for the Second Circuit granting the Petitioners' Motions for a Stay of the Vinyl Chloride Standard is attached.

BFG52120

21373001

January 9, 1975
Page Two

Because the terms of the Court's Stay Order are so general, Government Counsel filed a "Motion for Clarification" of the Stay Order on December 24, 1974 in an effort to determine: (1) whether by its Order the Court intended, with the permanent Standard for Occupational Exposure to Vinyl Chloride being the subject of the Stay Order by the Court, all provisions of the Emergency Temporary Standard (ETS) to be continued in effect, and (2) whether the Court's Order is intended to grant the SPI and Tenneco, Air Products and Hooker requests that, in view of the practical lead time problems created by the terms of the Standard itself, such part(s) of the Standard as may be held lawful would not go into effect until 90 days after the Court's decision, that is, as though the date of the Court's decision were the date that the Standard was first promulgated.

Because of some concern on our part that the Court might act on the Government's Motion with undue haste, perhaps on the basis of a misconception that on January 1, 1975 companies might feel free to ignore the Emergency Temporary Standard unless action were taken promptly, the various Petitioners filed prompt Replies to the Government's Motion for Clarification. Each of these supported the concept that the ETS should remain in effect pending the Court's decision on the Petitions for Review. The SPI and Tenneco, et al. statements in opposition also reemphasized the industry's need for 90 days of lead time to enable the various companies to comply with any portion of the Standard held lawful by the Court.

BFG52121

21378002

January 9, 1975

Page Three

Inasmuch as the Court did not respond to the Government's Motion, nor to our statements in opposition by January 1, it would seem unlikely that it will make any special effort to rule on the motion in the near future. Since all parties agree that the ETS remains in effect, the only issue in question is the matter of the 90 days lead time following the Court's decision.

On this matter, the Court could wait until the very last minute to issue a ruling on the Motion, or it could merely state its decision with respect to the 90 days in its opinion rendered on the merits of the case; we would suspect the latter is what will occur.

2. You may recall that the Government, in its Brief and at Oral Argument, stated that the Assistant Secretary of Labor for Occupational Safety and Health had "offered" to consider timely requests for temporary variances in lieu of a Stay. With the granting of our Motions for Stay, however, we advised you in our December 17 report that the letter to the undersigned from Assistant Secretary Stender and Government Counsel's representations were effectively made inoperative. The fact that a Federal Register Notice, scheduled to issue concerning the interim variance procedure, was never published would seem to indicate that the Department of Labor silently agrees that the matter of temporary variances is now moot.

3. In the meantime, the previously reported upon December 3, 1974 Petition for Review of the OSHA Standard filed in the United States Court of Appeals for the District of Columbia Circuit by the Oil, Chemical and Atomic Workers International Union (OCAW) has led to the

21373003

BFG52122

January 9, 1975
Page Four

need for some further activity which, frankly, we consider to be of little more than procedural significance.

On December 19, 1974, OCAW notified the Court of the name of counsel who would represent it in the Appeal. On December 30, Stephen F. Eilperin indicated to the Court that he would appear as Counsel for the Government in the OCAW case, as he had in our Second Circuit cases already argued in New York.

Although OCAW may ultimately withdraw its case or be forced to consolidate with the Second Circuit cases, if it does not move promptly we anticipate that the Government will move that the D.C. Circuit transfer the case for consolidation into the Second Circuit. Since the Government has only until the middle of January to file a certified copy of the Record with the D.C. Circuit if it intends to defend the OCAW case here, we will know very soon exactly how the Government intends to proceed.

Since, as far as we are concerned, the OCAW Petition is really the Government's problem, we decided not to seek a transfer of the case to New York. Nevertheless, Motions to Intervene in that case were filed by SPI, Tenneco, Air Products and Hooker. These Motions fully protect industry's right to participate should the OCAW case be heard in the District of Columbia for some peculiar reason we are presently unable to foresee. In these Motions the facts that the same case has been briefed and argued in the Second Circuit and a Stay has been granted with regard to the Standard were recited for the D.C. Circuit. If, for some reason,

BFG52123

21379004

January 9, 1975
Page Five

the OCAW Petition is not transferred by the D.C. Circuit, as pointed out above; we are still in a position to represent industry interests.

Because the documents generated with respect to all the foregoing matters are more procedural than substantive, copies are not supplied herewith. If any of you feel you have a real need for any of them, please let us know.

EPA

As indicated some time ago, the United States Environmental Protection Agency (EPA) is conducting an on-going investigation into the ramifications of vinyl chloride emissions into the atmosphere. From the beginning there was no doubt that EPA would propose emission controls but it has been gathering facts and information about the industry prior to proceeding definitively. EPA has now established a data base and is in a position where certain policy decisions must be resolved before the ultimate regulatory strategy can be set.

EPA must, at some point commit itself to utilize one or another of the various provisions in the statutes which give it authority to regulate. In this case, the choice appears to have narrowed to either Section 111 or Section 112 of the Clean Air Act as potential authority for regulating ambient emissions of vinyl chloride. Consideration is now being given to how industry can best provide input regarding the policy decisions facing EPA. As soon as the discussions now taking place with a view towards setting the stage for providing input effectively result in a crystallization of industry thinking, we shall inform you further about any actions taken.

It is our feeling that the threshold questions to be dealt with now are primarily policy and legal. It is expected, of course, that once the policy and legal parameters are drawn, the VCM and PVC Producers EPA

BFG52124

213750005

January 9, 1975
Page Six

Subcommittee will be better able to address the technical aspects within the context of the regulatory approach EPA decides to employ.

FDA

The long delayed, but still anticipated Proposed Interim Food Additive Regulation which will bear on the overall FDA status of PVC has still not been published in the Federal Register, nor is publication now anticipated within the next two weeks. We can confirm that, with respect to food contact uses, FDA is now leaning toward a return to a proposed regulation that would limit migration of VC into foods and food-simulating solvents to a maximum of 50 ppb without regard to thickness of the food contact polymer or the residual monomer level of the plastic. It is now expected that separate regulations or policy statements may be proposed to deal with cosmetics, drugs and medical devices although we have no indication as to what form such proposals might take and doubt that FDA thought in this area is at all firm.

The SPI Ad Hoc PVC Toxicology Committee has recommended feeding levels for a 90 day pilot feeding study; and a final protocol is being drafted. It is intended that the pilot study will provide experience with the special problems involved in feeding VC, and will provide a basis for selecting feeding levels for the long term study which is expected to be required by FDA in any interim regulations ultimately promulgated.

Coast Guard

Relative to the matter of the Coast Guard promulgating regulations pertaining to shipment of vinyl chloride, you were previously advised that we had informed the Coast Guard of the Second Circuit's Stay Order so that the Coast Guard would be aware that there was no need for undue haste in following up on its regulatory proposal published in the Federal Register Notice of July 23, 1974.

BFG52125

213700003

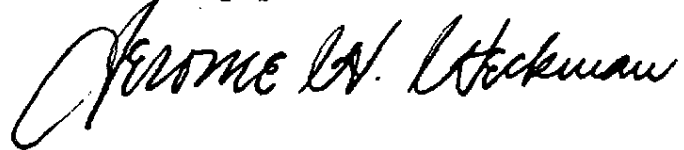
January 9, 1975
Page Seven

Nevertheless, our latest check with the Office of Merchant Marine Safety revealed that its engineering and safety personnel have redrafted the proposal so that it approximates the regulatory scheme adopted by OSHA. In its current form the Coast Guard regulation would reduce the exposure limitation from a proposed maximum level of 50 ppm to the 1 ppm--5 ppm limit set by OSHA and would add further requirements for warning signs, protective clothing and the like.

Prior to finalization the Regulation must be approved by the Chief of the Office of Merchant Marine Safety and then by the Marine Safety Council. From the sketchy details available, we cannot predict exactly how the Coast Guard intends to handle this matter but, even though we do regard it unlikely that it will act precipitously while the Stay Order is in effect, we will continue to monitor this matter closely.

We hope this lengthy tome will bring you up-to-date concerning the various aspects of the VC/PVC activities. As in the past, we shall continue to keep you as fully informed as we can.

Cordially yours,



Enclosure

BFG52126

21375007