GENERAL COUNSEL'S REPORT
TO THE
VINYL INSTITUTE

November 13, 1992

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INTRODUCTION

We are pleased to present this report to you on the status of matters involving our activity on issues which effect the Vinyl Institute. Recent developments on issues covered in our last report for the September Board Meeting are discussed here, as well as new issues that have come into focus subsequently.

There has been a considerable amount of activity in the environmental arena since our last report. Although a number of legislative proposals and citizens initiatives were tabled or defeated in the November elections, 1992 promises to present the plastics industry with a number of challenges and attacks. Debate over the environmental impact of plastics (particularly the impact of plastics on solid waste management) is likely to continue as the most pressing problem facing the plastics industry.

"Minimum content" legislation at the state level suffered a of setback in the November elections as the ballot initiative proposed by the Massachusetts Public Interest Research Group (Mass PIRG) was soundly defeated. Despite this defeat, we expect to see a considerable amount of state action in 1993. Indeed, a number of states are already considering enacting measures based upon the model packaging waste reduction bill drafted by the Coalition of Northeastern Governors (CONEG).

The industry is almost certain to be confronted with "minimum content" legislation at the federal level as well. Last year's House Bill to reauthorize the Resource Conservation and Recovery Act (RCRA) never made it to the floor, but there remains considerable interest in enacting similar legislation.

On air issues, SPI and the VI continue to be heavily involved in advocating the interests and concerns of the plastics industry in a number of proceedings concerning the implementation of the 1990 Amendments to the Clean Air Act. Of particular interest to VI members will be regulations phasing out the use of ozone-depleting substances and CFC labeling.

Several court decisions which may seriously affect the plastics industry have been issued in recent months. In the most notable action, the Eleventh Circuit invalidated the Occupational Safety and Health Administration's (OSHA) massive 1989 Air Contaminants Standard. In October, the court refused to rehear the case, and OSHA is presently deciding whether to challenge the ruling before the Supreme Court. The Vinyl Institute has been an active participant in this proceeding, having filed the original challenge to OSHA's ethylene dichloride (EDC) standard.

Meanwhile, California has adopted a permanent "no significant risk" level (NSRL) for vinyl chloride of 3.0 micrograms per day, and has set NSRL's for 176 other listed carcinogens. The appeal of a decision overturning the food and drug exemption is still pending; but the scope of the exemption is being diminished by the adoption of permanent NSRL's.

The question of federal preemption of Proposition 65-type legislation continues to be an issue of considerable concern to the industry. The Chemical Specialties Manufacturers Association (CSMA) recently lost an appeal of a District Court ruling that the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) and the Federal Hazardous Substances Act do not preempt Proposition 65 warnings. The Committee for Uniform Regulation and Labeling (CURL), of which SPI is a member, sought Supreme Court review that decision. *Certiorari* was denied on November 5, 1992.

Finally, we are pleased to report that the Ohio "Toxic Chemical Right-to-Know" initiative was resoundingly defeated by the voters. The proposal, which was patterned after California's Proposition 65, would have required the identification of specific chemical(s) in Proposition 65-type warnings, and authorized criminal penalties of two to four years in jail for reckless violations of its warning requirements.

REPORT

I. U.S. ENVIRONMENTAL PROTECTION AGENCY

A. VI Urges Exemption from Phase-Out for Processes In Which ODCs Are Unintentional By-Products or Incidental Participants

EPA allowed the VI to submit late-filed Comments on the proposed rules for the phase-out of ozone-depleting compounds (ODCs). Last summer, EPA issued proposed rules to govern the phase-out of the production and consumption of ODPs, including carbon tetrachloride (CTC). Because of the broad wording of that proposal, the phase-out could be interpreted to apply to processes in which ODCs are unintended byproducts, and when present as catalysts or coincidental participants. The VI submitted Comments urging EPA to exempt from the ODP phase-out, processes in which ozone-depleting substances are created as an unintentional byproduct of the manufacturing process, as well as processes in which ODCs are created as an intermediate, and either consumed or destroyed.

B. VI Comments Upon EPA's Proposed Labeling Requirements for Products Made With Ozone Depleting Chemicals

SPI submitted comments on EPA's proposed rules implementing the labeling requirements of Section 611 of the CAA. That Section requires the labeling of products containing, or made with, ozone-depleting chemicals. SPI's comments suggested that warning labels be placed upon the Principal Display Panel (PDP) of packaged consumer product. For products with no PDP, SPI suggested ways to locate the warning to ensure that the required information is conveyed to downstream users.

SPI also submitted comments which urged EPA to exempt from labeling requirements products whose only association with ODPs is via catalysts or colorants. SPI

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argued that requiring the labeling of all downstream products simply because there is "physical contact" with an ozone-depleting chemical at some point during the manufacturing process would result in a plethora of labeling with little environmental benefit.

C. SPI Files Comments on EPA's Significant New Alternatives Policies for CFC's

SPI filed comments in response to EPA's proposed Significant New Alternatives Policy (SNAP). SNAP is intended to encourage the rapid transition from the use of chlorofluorocarbons (CFC's) to substances thought to be less harmful to the stratospheric ozone layer while minimizing the hardship this transition will present to users and consumers of affected products. SNAP was developed to implement Section 612 of the CAA. That provision requires EPA to prohibit the introduction of any CFC substitutes that may have adverse effects on human health and the environment, if the Agency has determined that there are other more environmentally acceptable substitutes. SPI supports the broadest possible listing of acceptable substitutes to encourage the transition from CFC's.

President Bush announced his intention to move up the deadline for ceasing production of CFC's to December 31, 1995 in light of new, more serious estimates of damage to the stratospheric ozone layer over the Northern Hemisphere. The President has also indicated that the 2030 deadline for ending production of CFC substitutes should be reexamined, but has stopped short of calling for a change in the timetable. Under the terms of the Montreal Protocol, the United States is not required to phase out CFC's until 2000.

On a related note, there was a proposal at the July talks on ozone depletion to require the phase out of all hydrochlorofluorocarbons (HCFC's) by 2005. EPA supports the proposed 2005 phase-out deadline for most HCFCs, but is considering supporting a 2002 phase-out date for those compounds which have the highest ozone depleting potential (ODP) -- HCFC-22, -141b and -142b.

D. SPI to Urge EPA to Improve TSCA Enforcement by Simplifying Penalty Policy and Reducing Fines for Violations Involving Polymers

SPI's Occupational Health and Environmental Issues Committee (OHEIC) is proceeding with a project to urge revisions of the Toxic Substances Control Act (TSCA) Section 5 Enforcement Response Policy (ERP). The goal is to bring about simplification of the application of the penalty policy, as well as to convince EPA to amend the penalty policy to better recognize the reduced risks posed by polymers by allowing greater penalty reductions for violations involving polymers.

II. STATE ENVIRONMENTAL ACTIVITIES

A. Ohio Proposition 65 Initiative Suffers Resounding Defeat at the Polls

In early August, Ohio Citizen Action (OCA) submitted the signatures required to qualify its "Toxic Chemical Right-to-Know" proposal as an initiative on the November 3, 1992 state ballot. We are pleased to report that the initiative was resoundingly defeated by the voters.

The OCA proposal was modeled on California's Proposition 65, but was considerably tougher than the California law in many respects. Of particular concern was a provision that might have required companies with manufacturing facilities in the Ohio to conduct a costly environmental assessment of their operations to demonstrate compliance with the law. The sanctions for failure to comply with the law were also far more severe than under Proposition 65. In addition to civil fines of $2,500 per day, reckless violation of any provision of the measure, or an order issued under it, would be a felony punishable by up to four years in prison and a $25,000 fine.

Under the proposal's environmental assessment provisions, any person living or working within two miles of premises that may cause an environmental exposure could ask the Ohio Environmental Protection Agency (EPA) to require the business to conduct an elaborate environmental assessment. Moreover, the initiative would have required the State to provide grants of up to $50,000 to any group of citizens who live or work within two miles of an assessed facility so that they can obtain technical assistance to determine whether the assessment discloses an exposure violating the law. Funds for the grants, as well as for implementation and enforcement of the law, would come from an annual 1-cent per pound tax on companies producing toxic waste (with an annual cap of $3 million on revenue from the tax) and from penalties assessed in civil enforcement actions.

B. Cargill Becomes First Company Prosecuted Under California Corporate Criminal Liability Act

A unit of Cargill, Inc. has become the first company prosecuted under California's Corporate Criminal Liability Act (CCLA), which imposes criminal liability for certain workplace and product hazards. The 1990 law makes both corporations and individual managers of corporations criminally liable for failure to provide a warning of a "serious concealed danger" of which they have actual knowledge. The Act requires a corporate manager with knowledge of such a danger to warn employees and to notify the state Division of Occupational Safety and Health within 15 days (or "immediately" if the danger is "imminent"). Individuals who violate the Act are subject to imprisonment for up to 3 years or a fine of up to $25,000. A corporation can be fined up to $1,000,000.

In February, Cargill entered a "no contest" plea to a misdemeanor charge that it violated the CCLA because of a concealed danger in the workplace. The Cargill prosecution, brought by the Alameda County District Attorney, was prompted by the death last year of a laborer at the company's plant in Newark, California. Apparently, the worker caught his hand on a machine and was pulled between two conveyor belts. In this instance,

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only the company was targeted in the investigations; apparently no individual managers were implicated.

In a related note, the Los Angeles District Attorney is investigating Dow Corning Wright Corporation for possible violation of the CCLA regarding silicone-gel breast implants. Thus far, all efforts to repeal or modify the highly unusual law have been unsuccessful.

III. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

A. Court of Appeals Denies OSHA Request for Rehearing on PEL Rules; OSHA Considering Next Step

On July 7, 1992, the U.S. Court of Appeals for the Eleventh Circuit ruled that workplace exposure limits for 428 substances adopted by the Occupational Safety and Health Administration (OSHA) under its 1989 Air Contaminants Rule (54 *Fed. Reg.* 2332 (January 19, 1989)) are invalid because the Agency failed to give sufficient supporting evidence to justify the standards adopted. The Air Contaminants standards were challenged by the AFL-CIO as too lax while industry groups, including the Vinyl Institute, alleged that many of the standards were too restrictive.

The Court said that "with rare exceptions, the individual substance discussions in the Air Contaminant Standards are virtually devoid of reasons for setting those individual standards." The Court also held that OSHA had failed to demonstrate that its standards were economically feasible.

Last month, the court denied OSHA's request for a rehearing of this appeal. The Agency is presently considering whether to appeal the case to the Supreme Court. While a final resolution of this appeal is being decided, the court's order rescinding the standard is on hold. Should the decision go into effect, the permissible exposure limit (PEL) for ethylene dichloride (EDC) will revert from 1 ppm to the pre-1989 value of 50 ppm. If the Supreme Court hears an appeal of this ruling, it could be a year or more before any final decision is reached.

B. OSHA Indefinitely Postpones Maritime, Construction, and Agricultural Industry PEL Proposal

On June 12, 1992, OSHA published a proposed rule to amend the air contaminants standard as it applies to the maritime, construction and agricultural industry sectors, reducing the current construction and maritime standard from 50 ppm to 1 ppm. 57 *Fed. Reg.* 26002. In essence, OSHA proposed to apply the same PEL to these sectors that it adopted in 1989 for general industry, referring to EDC's carcinogenicity as justification for the 1 ppm PEL.

According to the June notice, comments and notices to participate in the rulemaking hearing were to have been submitted by September. However, in light of the Eleventh Circuit's recent invalidation of the 1989 Air Contaminants Rule, OSHA has indefinitely stayed this proceeding.

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C. Supreme Court Rules That Federal OSH Act Preempts Certain State Workplace Requirements

On June 18, 1992, the United States Supreme Court took an expansive view of the preemptive effect of the Occupational Safety and Health Act (OSH Act) over state regulation of workplace health and safety issues when it held that states may not regulate those issues with respect to which a federal standard has been established, unless the state regulation is part of a federally approved state plan. The Court held in *Gade v. National Solid Wastes Management Association*, __ U.S. __, 60 U.S.L.W. 4587, that the OSH Act and regulations promulgated thereunder preempt state requirements even if the state statute purports to have a dual purpose or impact, such as public safety and worker safety, unless the Secretary of Labor has approved the state law pursuant to Section 18 of the OSH Act.[1]

The decision resolves a conflict among the circuit courts, three of whom (the First, Second and Third Circuit) had ruled that state statutes with dual purposes and dual impacts are not necessarily preempted by the OSH Act. The ruling will likely affect state workplace requirements in Illinois, New Jersey, Pennsylvania and elsewhere. However, it will not preempt Proposition 65 workplace requirements, which have been made part of California's approved Occupational Safety and Health Plan.

Gade involved a challenge to an Illinois statute creating training obligations for hazardous waste crane operators stricter than the federal standard. A plurality of the Supreme Court held that the OSH Act impliedly preempts such state safety and health standards because such standards are an obstacle to accomplishing the objectives of Congress in enacting the OSH Act, which were, among other things, to ensure that employers and employees would be subject to only one set of regulations. The Court concluded that a state "may develop an occupational safety and health program tailored to its own need, but only if it is willing completely to displace the applicable federal regulations."

D. OHEIC Drafts Guidelines to Assist Members in Preparing Material Safety Data Sheets for Plastics

The Occupational Health and Environmental Issues Committee's (OHEIC) MSDS Task Force is preparing materials to guide SPI members in drafting material safety data sheets (MSDS) for plastics and plastics products. The guidelines are intended to supplement the Chemical Manufacturer Association's (CMA) MSDS American National Standards Institute (ANSI) standard. The project was also undertaken in anticipation of revisions to OSHA's Hazard Communication Standard expected to be issued late this year. That rule is expected to attempt to clarify the MSDS requirements applicable to complex mixtures and products that release hazardous chemicals during processing and use; it is also expected to clarify the definition of an "article" subject to MSDS requirements and may include a standardized MSDS form in response to comments by industry last year. Many

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[1] Section 18 of the OSH Act requires a state to submit a plan to OSHA if the state wishes to assume responsibility for the development and enforcement of standards relating to any workplace safety or health issue for which a federal standard has been issued.

aspects of the long-pending Proposed Rule are addressed by the CMA MSDS Manual, but the focus of CMA's efforts has been on chemical substances and mixtures, not plastics.

IV. TRANSPORTATION

A. Appeals Court Upholds ICC Decision to Factor Railroad Productivity Gain Adjustment into Index Used to Raise Rail Rates to Compensate for Inflation

The U.S. Court of Appeals for the District of Columbia Circuit in late July upheld an Interstate Commerce Commission (ICC) decision to incorporate a railroad productivity gain adjustment in the quarterly inflation index published by the ICC. The inflation index is intended to allow railroad rates to keep pace with increases in railroad costs due to inflation. Adjusting the index to take productivity gains into account will lower rate increases based on the index. SPI has supported the incorporation of productivity gains and was a party in the court appeal supporting productivity adjustments.

While affirming the ICC decision to take productivity into account against railroad challenge, the court also supported the ICC decision not to apply its holding retroactively as the shipper community had wanted. The court's decision to deny both railroad and shipper appeals was fully anticipated and was deemed a satisfactory outcome by SPI's Committee on Transportation and Distribution (COT&D).

B. SPI to File Comments Opposing ICC Proposal to Exempt Rail Demurrage Charges from Regulation

We will be preparing comments for the COT&D to file with the ICC opposing a proposal to exempt rail demurrage charges from regulation. Demurrage charges are applied by the railroads for the use of rail cars while they sit idle during loading, unloading or storage. The comments will focus on the impact of the exemption on privately owned covered hopper cars such as are used to ship plastic resin. The plastics industry owns or leases over 35,000 such cars and is concerned that the exemption could lead to a change in the current practice under which privately owned cars are not subject to demurrage charges while resting on shipper or customer tracks.

The Committee will file comments opposing an ICC proposal also to exempt from regulation the movement of transportation equipment.

C. SPI Files Comments with the Federal Maritime Commission Regarding Proposals to Establish a More Competitive Process for Contracting for Ocean Shipments

We prepared comments filed by the COT&D with the Federal Maritime Commission in two rounds of rulemaking regarding proposals seeking to establish a more competitive and market-oriented process for contracting for ocean shipments for export trade. In the comments, SPI urged adoption of the proposals. Unlike railroads and motor carriers, ocean carriers continue to exert substantial collective control on rate making and limit the opportunities for private shipper-ocean carrier shipping contracts.

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D. SPI Continues Involvement in Motor Carrier Undercharge Problem

The COT&D is continuing to monitor and participate, on both the ICC and legislative fronts, in the motor carrier undercharge problem. This issue concerns claims being brought by trustees of bankrupt carriers seeking additional money for freight moved up to five years in the past. The trustees are seeking to disavow discount tariffs or agreements of contract carriage and, instead, apply higher tariff rates. The ICC has estimated that the claims could amount to $27 billion, plus interest, with claims against individual shippers ranging up to several million dollars.

There has been a slow turning of the tide of judicial decisions in recent months towards denying such claims. Legislation to resolve this problem is stalled due to the Teamster Union's opposition. The Teamsters ostensibly are seeking recoveries for motor carrier estates to increase the funds available to settle employee wage or benefits claims.

V. PROPOSITION 65

A. Appeal of California Superior Court Ruling Invalidating Proposition 65 Food and Drug Safe Harbor Is Still Pending

The appeal of the California Superior Court's decision in 1990 invalidating the so-called food and drug exemption in the Proposition 65 regulations is still pending. *AFL-CIO v. Deukmejian ("Duke II")*.

On March 2, 1990, the California Superior Court invalidated the regulation (Section 12713) that exempts foods, drugs, cosmetics and medical devices from the warning requirements of Proposition 65 when they comply with specific California or federal regulations or general administrative standards. (Section 12713 is superseded by any permanent "no significant risk" level the state establishes under Section 12705 of its regulations.) The ruling was stayed pending an appeal by the state and by several industry intervenors.

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B. State Sets Exposure Limits for 177 Proposition 65 Carcinogens, Including Vinyl Chloride; Vinyl Institute Comments on Limit for Vinyl Chloride

The California Office of Environmental Health Hazard Assessment (OEHHA) has amended Section 12705 of the Proposition 65 regulations to establish permanent "no significant risk" levels (NSRL's) for 177 Proposition 65 carcinogens, including vinyl chloride (3.0 micrograms (μg)/day for all routes of exposure).[2] As part of the amendment, the state has transferred all chemicals (37) that previously had interim NSRL's under Section 12711 to Section 12705. At the same time, NSRL's have been set under Section 12705 for 140 substances based on the state's so-called expedited risk assessment procedure.[3] The effect of the amendment is to remove 177 chemicals, including vinyl chloride, from the scope of the food and drug "safe harbor" provided in Section 12713, since the safe harbor is an interim measure and does not apply to substances that have a permanent NSRL under Section 12705.

The amended Section 12705 now contains a three-tiered hierarchy of NSRL's. First, levels based on *de novo* risk assessments by California or preexisting assessments reviewed by the state are set forth in Section 12705(b). Vinyl chloride is in this category. Second, exposure levels based on previous state or federal risk assessments are listed in 12705(c). Third, exposure limits based on expedited risk assessments by California are contained in 12705(d). A level set under Section 12705(b) supersedes a subsection (c) or (d) level. A Section 12705(c) NSRL supersedes a subsection (d) level.

On July 16, 1992, the Vinyl Institute filed comments on the proposed NSRL for vinyl chloride. In the comments, the Vinyl Institute expressed concern that the state's approach to risk assessment does not afford a complete or adequate review of the toxicity of individual chemicals. The Institute argued that the 3.0 μg NSRL is far below the appropriate exposure limit needed and that California's level unduly exaggerates the cancer risk posed by vinyl chloride.

OEHHA has also announced that it might consider listing vinyl chloride and several other significant chemicals as reproductive toxins during 1993.[4]

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[2] Among other notable chemicals for which NSRL's have been set are cadmium (0.05 μg/day -- by inhalation), methylene chloride (200 μg/day -- by inhalation), arsenic (0.06 μg/day -- by inhalation), trichloroethylene (50 μg/day -- by ingestion, 80 μg/day by inhalation), 2,3,7,8-tetrachlorodibenzo-p-dioxin (0.000005 μg/day), hexavalent chromium (0.001 μg/day -- by inhalation) and butylated hydroxyanisole (BHA, 4,000 μg/day).

[3] These levels were determined through the state's application of an expedited procedure to derive cancer potency values for certain listed substances. The procedure relies on a Carcinogen Potency Database on 1050 chemicals developed by Gold et al.

[4] The other potential reproductive toxins include acrylamide, benzene, carbon tetrachloride, ethylene thiourea, methylene chloride, and trichloroethylene. Although all of these substances are regulated as carcinogens under Proposition 65, in light of the statutorily required thousand-fold safety factor for reproductive toxins there is the potential that the

C. Los Angeles District Attorney Takes Proposition 65 Enforcement Action Against Polyurethane Maker; Says Many Companies Under Investigation

The Los Angeles County District Attorney's Office has settled a Proposition 65 enforcement action concerning methylene chloride emissions from a flexible polyurethane manufacturing plant. According to Jan Chatten-Brown, special assistant to the District Attorney for Environmental and Occupational Safety and Health, the enforcement action against Hickory Springs of California, Inc., which makes flexible polyurethane foam for furniture, packaging and bedding, is but the first of many Proposition 65 enforcement actions the District Attorney intends to bring.

Ms. Chatten-Brown has told us that the District Attorney's Office will likely bring "about two dozen" Proposition 65 enforcement actions regarding environmental exposures based on its review of emissions data and risk assessments submitted by companies pursuant to California's "Air Toxics 'Hot Spots' Information and Assessment Act" (commonly referred to as the "Air Toxics Hot Spots" law or by its bill number, AB 2588). She declined to say what types of facilities or what chemicals will be the subject of these future enforcement actions except to say that a variety of chemicals are involved. The list of chemicals that may be subject to the risk assessment requirements of AB 2588 includes the entire Proposition 65 chemical list.

Ms. Chatten-Brown said that the District Attorney's Office sent letters to a number of companies about eight months ago regarding their possible violation of Proposition 65 warning requirements based on the analysis of their risk assessments by a state-hired air dispersion modeling expert and a toxicologist. She said that in many of the cases being pursued, the District Attorney's experts disagree with the potency factor or air dispersion model used in the company's risk assessment. In some other cases, such as the *Hickory Springs* settlement, the company is warning nearby residents but the District Attorney takes issue with the means of providing the warnings and the scope of the area for which the warning is given.

Ms. Chatten-Brown said the *Hickory Springs* case, which was settled for $30,000, is atypical of the enforcement actions being pursued; the others involve more substantial alleged violations and are expected to result in much higher penalties. She also said that her office is just beginning to review the increased AB 2588 data for 1991 operations, the first year for which many lower-level emitting facilities were required to submit risk assessments. She expects the review of the 1991 data to prompt additional enforcement actions.

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permissible daily exposure limit for them as reproductive toxins would be lower than their no significant risk level as carcinogens.

VI. OTHER

A. Suffolk County Places Moratorium on Plastic Packaging Ban for Small Businesses Until January 1993; Sierra Club Files Lawsuit to Overturn Moratorium

On May 7, 1992, Suffolk County issued regulations, effective August 7, 1992, to implement its plastic packaging ban, Local Law 10-1988. The law bans the sale or conveyance by Suffolk County retail food establishments of (1) food packaged at point of sale in non-biodegradable plastic grocery bags and (2) food utensils and containers composed of polystyrene or polyvinyl chloride. Although the law technically went into effect on January 1, 1992, the County has placed a moratorium on application of the packaging ban to small businesses until January 1, 1993. The scope of the moratorium is broad because "small business" is defined as fewer than 100 full-time employees. To qualify for an exemption under the moratorium, businesses must file for an exemption.

On June 24, 1992, the Sierra Club filed a petition under Article 78 of the New York Civil Practice Law and Rules (CPLR) requesting that the Suffolk County Supreme Court invalidate the Suffolk County Legislature's passage of a March 3, 1992 resolution delaying implementation of Local Law 10-1988 (the "Plastics Law".) The Sierra Club argues that the moratorium violates the New York State Environmental Quality Review Act (SEQRA) due to the failure to conduct an Environmental Impact Statement (EIS). The irony of this, of course, is that this is precisely the argument we made which was upheld by two courts but ultimately overturned by a third that did not evaluate it on its merits.

In the Sierra Club's view, the Legislature improperly issued a SEQRA determination that the Moratorium resolution constitutes a "Type II" action, which does not require the preparation of an EIS. The environmental organization also argues that delay of the Law's implementation will result in "overburdening of landfills with non-biodegradable plastics and/or contamination of the atmosphere in the event such non-biodegradable plastics are incinerated." According to the Sierra Club, the County Legislature failed to complete an Environmental Assessment Form, and failed to comply with Section 8-0109(9) of New York's Environmental Conservation Law mandating the preparation of an EIS for "any action found to have a significant impact on the special groundwater protection area."

It is our understanding that Suffolk County has filed a response to the Sierra Club's petition.

B. MassPIRG Antiplastics Packaging Initiative Defeated By Voters

The Massachusetts Public Interest Research Group (MassPIRG) has succeeded in qualifying its antiplastics packaging proposal for consideration by the voters as a ballot initiative this fall. The proposal would require all packaging used after July 1, 1996 to be (1) reusable five times, (2) composed of 25% recycled material by weight, (3) made of materials that are themselves recycled at a 25% rate, or (4) source reduced by 25%. Packaging that fails to meet one of these standards would be banned as "wasteful packaging." The required recycling rates for options (2) and (3) would increase to 35% by 1999 and 50% by 2002.