



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 18 1978

OFFICE OF ENFORCEMENT

MEMORANDUM

Subject: Enforcement of NESHAPs Vinyl Chloride Standard
Against Sources That Will Not Meet October 21,
1978, Waiver Deadline

From: Director
Division of Stationary Source Enforcement

To: Enforcement Division Directors
Regions I-VI, IX

Several Regions have asked for guidance regarding enforcement options for vinyl chloride sources under waivers of compliance which fail to achieve compliance with any vinyl chloride standard (40 CFR §61.60 et seq.) by the waiver deadline, October 21, 1978. A number of sources have indicated that they will not achieve compliance by that date. The reasons that are given for the inability to come into timely compliance include labor shortages, equipment delivery delays and engineering errors.

Each Regional office should immediately identify those vinyl chloride sources that will or may not meet the deadline for compliance. As necessary, requests for information should be sent and/or inspections performed pursuant to Section 114 for every facility currently on a waiver to determine which sources will not meet the October 21, 1978, deadline.

Section 112(c)(1)(B)(ii) of the Act authorizes the Administrator to permit an existing source a period of up to two years after the effective date of a standard to comply with that standard. In the case of vinyl chloride sources, the standards were promulgated on October 21, 1976, and most existing sources sought and were granted waivers which expire on or before October 21, 1978. Administrative extensions of the period are not permitted by either the Act or Agency policy (subject to option 2 below).

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There are three available options for enforcement of the vinyl chloride standards against sources which fail to meet standards by the waiver deadline:

(1) Initiation of a criminal action pursuant to Section 113(c) of the Act for a knowing violation of the standards and waiver. Pursuit of a criminal conviction is particularly appropriate in the instance of failure to comply with a NESHAP waiver of compliance because the source has actual knowledge of both the standards and the prohibition against operation unless in compliance. Violation of requirements designed to protect against serious human health effects (increases in mortality, or serious irreversible or incapacitating reversible illness), is a significant matter, and regional offices are expected to fully consider this option in all cases.

(2) Issuance of a Section 113(d) administrative order requiring immediate compliance (within 30 days of issuance but no later than November 20, 1978). Such orders should only be issued where the regional office is assured that the source can, and will, comply within the order's time frame. Violations of such orders will be held to the highest scrutiny for appropriate pursuit of criminal convictions, and in any case where a criminal case is not deemed appropriate, a request for initiation of a civil action will be required.

(3) Referral of a request for initiation of a civil action pursuant to Section 113(b) of the Act seeking immediate compliance at the violating emission point(s) through a temporary restraining order and preliminary injunction, and maximum penalties. Due to the time frame involved, referral processing within the Office of Enforcement will be expedited. Please contact Doug Farnsworth (FTS 755-2570) to discuss the details of any cases in preparation.

This Division will assist in any manner necessary to assure that timely, appropriate, and adequate action will be taken with regard to these violations.


Edward E. Reich

cc: Angus MacBeth, Chief
Pollution Control Section
Department of Justice