



CHEMICAL MANUFACTURERS ASSOCIATION

August 9, 1995

Mr. Alan Roberts
Associate Administrator
Research and Special Programs Administration
The Department of Transportation
400 7th Street, N.W.
Washington, D.C.

Re: Petition for Rulemaking to Add Provision Regarding
Marking of Rail Tank Cars in VCM Service

Dear Mr. Roberts:

The Chemical Manufacturers Association's Vinyl Chloride Transportation Committee (Committee) respectfully requests that the Research and Special Programs Administration (RSPA) of the Department of Transportation (DOT) institute a rulemaking to adopt a provision in its Hazardous Materials Regulations that exempts rail cars used to transport vinyl chloride monomer, marked between October 1, 1991 and October 1, 1996, from the tank car marking requirement of Section 173.314(b)(5).^{1/} This provision, if adopted, would allow cars marked with the proper shipping name "vinyl chloride" on or after October 1, 1991 but prior to October 1, 1996, to continue to be used after October 1, 1996 without having to be remarked with the proper shipping name adopted in RSPA's Docket HM-215A -- "vinyl chloride, stabilized," -- until the cars are re-marked in the normal course of business.

This rulemaking is necessary because HM-215A revised the proper shipping name for vinyl chloride from "vinyl chloride," the proper shipping name adopted under HM-181, to "vinyl

^{1/} The Vinyl Chloride Transportation Committee consists of the following companies: Borden Chemicals and Plastics; Dow Chemical Company; Formosa Plastics; The Geon Company; Georgia Gulf Corporation; Occidental Chemical Corporation; PPG Industries, Inc.; and Vista Chemical Company.

chloride, stabilized."^{2/} This change becomes mandatory as of October 1, 1996. While cars marked prior to October 1, 1991 are exempted from the marking requirement of Section 173.314(b)(5) provided they are marked with the "key words of the proper shipping name," see 49 C.F.R. § 172.302(f), there is no such exemption for cars marked on or after October 1, 1991. Cars marked prior to October 1, 1991 will be brought into compliance when they are remarked in the normal course of business.

I. Regulatory Provision at Issue

Vinyl chloride is classified under DOT's Hazardous Materials Table as a Division 2.1 flammable gas. It is transported domestically in DOT 105, 112 and 114 pressure tank car tanks. Section 173.314(b)(5) (of Part 173) provides that "each single unit tank car tank, which contains, . . . a Division 2.1 material . . . must be marked with the name of the contents in accordance with the requirements of Section 172.330." Under Section 172.330(a)(1)(i), no person may offer for transport a hazardous material in a tank car unless the tank car is "marked on each side when required by . . . Part 173 of this subchapter with the proper shipping name specified for the material in the § 172.101 Table."

An exception to these tank car marking requirements is provided under Section 172.302(f) which provides as follows:

A bulk packaging marked prior to October 1, 1991, in conformance to the regulations of this subchapter in effect on September 30, 1991, need not be remarked if the key words of the proper shipping name are identical to those currently specified in the [Hazardous Materials Table]. For example, a tank car marked "anhydrous ammonia" need not be remarked "anhydrous ammonia, liquefied."

II. Proper Shipping Name Change

In 1991, the proper shipping name for this material was "vinyl chloride." This proper shipping name was retained when DOT's Hazardous Materials Regulations were amended by HM-181.^{3/} Shippers of vinyl chloride, therefore, had their new rail tank cars marked with the proper shipping name "vinyl chloride." (Since there was no change in the proper shipping name with the

^{2/} The proper shipping name adopted in HM-181 was consistent with that used prior to HM-181's adoption.

^{3/} Additionally a listing was added to the Hazardous Materials Table under HM-181 for "vinyl chloride inhibited." Domestic shipments of vinyl chloride do not satisfy the definition of an inhibited material, and therefore, do not use this proper shipping name.

adoption of HM-181, the older cars already were marked with the proper shipping name "vinyl chloride.") HM-215A, however, changed the proper shipping name for this material to "vinyl chloride, stabilized," effective October 1, 1996.

III. The Committee's Petition for Rulemaking

The Committee requests that rail cars marked on or after October 1, 1991 with the proper shipping name adopted in HM-181, be exempted from the marking requirement of Section 173.314(b)(5), which would require cars to be remarked as "vinyl chloride stabilized." Accordingly, the panel suggests that Section 172.302 be amended to add a new subsection:

- (g) A bulk packaging marked on or after October 1, 1991 but prior to October 1, 1996 in conformance with the regulations of this subchapter adopted under HM-181, which is in service for a material whose proper shipping name was amended under HM-215A, need not be remarked if it is marked with the key words of the new proper shipping name. For example, a tank car marked "vinyl chloride" need not be remarked "vinyl chloride, stabilized."

The Committee maintains that strict adherence to Section 173.314(b)(5) is not necessary to ensure the safe transport of vinyl chloride. The rail tank cars at issue are all marked with the words "vinyl chloride," and these markings are the key words of the new proper shipping name "vinyl chloride, stabilized," and adequately convey the hazards posed by the material.

While there is a proper shipping name in the table for "vinyl chloride, inhibited," there is no difference between inhibited vinyl chloride and stabilized vinyl chloride in terms of the material's hazards. The terms "stabilized" and "inhibited" merely convey the way in which the material is treated to prevent self-polymerization.

Furthermore, requiring all vinyl chloride shippers to embark on a campaign to remark their existing rail cars by October 1, 1996 is expensive both in terms of the cost of remarking and the lost use of the car. If an exception is not adopted to cover rail cars marked prior to October 1, 1996, approximately 25% of the VCM rail fleet will have to be removed from service within a short period of time for remarking. In addition to the costs of remarking the car, shippers must absorb the opportunity costs when the car is removed from service. Obviously, if a large quantity of rail cars have to be removed from service within a short time span, the opportunity costs increase dramatically. In contrast, if the rail cars are allowed to be remarked on a normal repainting schedule, the shippers will be able to spread out the opportunity costs over a number of years.

Additionally, requiring rail cars marked on or after October 1, 1991 to be remarked would be confusing since cars marked prior

to October 1, 1991 are covered by the marking exemption of Section 172.302(f) and, therefore, do not have to be remarked by October 1, 1996. Consequently, it is more efficient to allow shippers to remark their existing cars as the cars require repainting under a normal service schedule, rather than embarking on a massive remarking campaign that must be completed next year.

IV. Request for Stay of Effective Date of Section 173.314(b)(5)

If RSPA is unable to rule on this Petition by October 1, 1996, then the Vinyl Chloride Transportation Committee respectfully requests a stay of the marking requirements of Section 173.314(b)(5), as it pertains to rail tank cars in VCM service. Such a stay will allow this rulemaking to be completed, before unnecessarily subjecting VCM shippers to the marking requirements of DOT's regulations.

V. Conclusion

For the reasons set forth above, The Vinyl Chloride Transportation Committee of the Chemical Manufacturers Association respectfully requests that RSPA institute a rulemaking to add 49 C.F.R § 173.302(g) as recommended herein.

Sincerely,



Hasmukh Shah, Ph.D.
Manager, Vinyl Chloride
Transportation Committee

cc: John Gale