

THE SOCIETY OF PLASTICS INDUSTRY, INC.

C O N F I D E N T I A L

PVC Alternatives Committee

CONTINGENCY PLANNING FOR EPA

Draft

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PURPOSE: To identify some responses to potential
EPA regulatory activity.

SITUATION:

1. EPA promulgates and enforces regulations addressing chemical substances pursuant to five acts:
 - a. The Resource Conservation and Recovery Act (RCRA);
 - b. The Federal Water Pollution Control Act (CWA);
 - c. The Clean Air Act (CAA);
 - d. The Toxic Substances Control Act (TSCA); and
 - e. The Safe Drinking Water Act (SDWA).
2. EPA is intensifying its regulatory attention to toxic substances (i.e., primarily those that evidence chronic rather than acute toxicity) under all of these acts. This contingency plan will be limited to a discussion of probable further regulation of PVC and VCM under RCRA.
3. Resource Conservation and Recovery Act Hazardous waste regulations have been promulgated pursuant to RCRA, on May 19, 1980. Certain PVC or VCM containing wastes are regulated under the May 19 regulations. In addition, the Agency plans to list additional VCM containing wastes as hazardous wastes;
 - a. May 19, listings--Section 261.32
lists heavy ends from the distillation of vinyl chloride in vinyl chloride

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monomer production (K020) as a toxic hazardous waste (T). In addition, VCM is listed in Section 261.33(f) as a commercial chemical product or manufacturing chemical intermediate (U238) which, if discarded or intended to be discarded in its pure or off-spec form, would be a toxic hazardous waste (T). Finally, VCM is included in Appendix VIII to the Part 261 regulations as a hazardous constituent which could form the basis for listing certain additional wastes as hazardous, if the Agency concludes that any such waste which contains VCM is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. Appendix VIII includes constituents which have toxic, carcinogenic, mutagenic or teratogenic effects.

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b. Potential listings--the inclusion of VCM in Appendix VIII means that additional listings of wastes containing VCM is not only possible, but probable. Appendix B to the preamble to Part 261, contained

in the May 19 regulations, sets forth numerous additional listings of wastes which contain VCM. Appendix B is attached to this document. Appendix B represents a generic listing of chlorinated hydrocarbon wastes. EPA's present plan is to promulgate the Appendix B listings (perhaps the first five only) by the end of 1980, in interim final form, although the listing descriptions will be somewhat changed.

The impact of some of these potential listings on the PVC/VCM industry is as follows (numbered as in Appendix B):

1. Impact on the production of ethyl chloride, ethylene dichloride and VCM.
2. Same.
3. Same.
10. Impact on the manufacture of EDC by oxychlorination.
11. Impact on the manufacture of PVC.
12. Same.

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C. Earlier proposed listings--Virtually the same list contained in Appendix B was proposed for listing in August 1979. At that time, the bases for listing (O,M) were (1) the waste contains toxic

organic substances and (2) the waste contains mutagenic, carcinogenic, or teratogenic substances. Appendix B does not contain a basis for listing, but the inclusion of VCM in Appendix VIII suggests the basis will be "T" (i.e. the carcinogenicity of VCM). In August 1979 EPA also proposed to list (1) waste polyvinyl chloride (PVC) from the manufacture of coated fabrics (T), and (2) polyvinyl chloride sludge from the manufacture of polyvinyl chloride (O,M). SPI submitted extensive comments on the August 1979 proposed listings.

EPA did not re-propose these two listings in May 1980. Waste (1) could, nonetheless, be captured by the EP toxicity test as a characteristic hazardous waste. EPA also intends to list certain wastes for "T" which have extract concentrations of less than 100 times drinking water standards, which means that waste (1) could still be listed as a hazardous waste. Waste (2) could be captured by virtue of the "mixture rule" of Section 261.3(a)(2)(ii) or, if batch residues are handled in your wastewater treatment system, by virtue of Section 261.3(c).

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WHAT IF:

What if EPA promulgates the Appendix B list of hazardous wastes? Impact: (See item "b" above under SITUATION). The impact on the PVC/VCM industry would be very high. The Section 261.3(a)(2)(ii) "mixture rule", and Section 261.3(c), could potentially drag a plant's entire wastewater treatment system into the hazardous waste requirements. Section 260.22 would require a formal rulemaking petition to delist one or all of these wastes. If the Appendix B wastes are listed for "T", Section 260.22(c) allows you to delist only if you can demonstrate that:

(1) The waste does not contain VCM; or (2) The waste should not be listed because of the following 11 factors (nature of toxicity, concentration of VCM in the waste, potential of VCM to migrate into the environment, the persistence of VCM, the potential of VCM to degrade, the degree to which VCM bioaccumulates, plausible types of improper management of the waste, the quantities of the waste generated on a local or national basis, the nature and severity of damage cases, action taken by other regulatory agencies, and other factors).

INFLUENCE:

High.

TRACKING:

Federal register (listing to appear in federal register end of 1980), other trade associations such as the Chemical Manufacturers Association (CMA), direct Agency contacts, Trade press and other industry sources.

TRIGGERS:

1. Under Section 261.11(a)(3), the Administrator of EPA may list a solid waste as a hazardous waste if it contains VCM unless, after considering the 11 factors mentioned above, he concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

2. The Administrator could also list the Appendix B wastes under its claimed Section 261.11(b) authority to list classes or types of solid waste as hazardous waste, if he has reason to believe that individual wastes, within the class or type of waste, typically

or frequently are hazardous under the definition of hazardous waste found in Section 1004(5) of the RCRA Act, itself. The Agency's original August 1979 proposal was a generic listing.

3. Citizen petition to EPA for rule making of concern.

CONTINGENCY PLANS:

Trigger 1: In the event the Agency lists the Appendix B wastes under authority of Section 261.11(a)(3), the listing will be interim final. The listing will be effective in six months, but interested parties will be given 60 days to comment before the listing is promulgated in final, final form. We should mobilize the SPI membership for compilation of relevant data to contest the listing. In this regard, CMA has commented on the May 19 regulations and criticized the Section 261.11(a)(3) criteria for listing. CMA has asked the Agency to make it clear that more than the simple presence in any quantity or any form of an Appendix VIII substance (e.g. VCM) will be required before a waste can be listed under Section 261.11(a)(3).

In the event the Agency eventually promulgates the listing in final, final form without considering our comments, we are entitled to petition for review of the listing under RCRA Section 7006. Such a petition must be filed within 90 days from the date of promulgation of the list, in the Court of Appeals for the D.C. Circuit. If we do not file such a petition to review, Section 7006 says we shall not be entitled to judicial review of the matter in civil or criminal proceedings for enforcement.

We are also entitled to petition the Administrator under RCRA Section 7004 for amendment or repeal of the listing. This may be done at any time.

Trigger 2: In the event the Agency lists the Appendix B wastes under authority of Section 261.11(b) (generic listings), we would also be entitled to a 60 day comment period, and

the same rights to petition to review, or petition for reconsideration. Once again, we should mobilize the SPI membership for compilation of relevant data. In this regard, the SPI and CMA comments attacking the August 1979 generic listings on statutory and other grounds should be reviewed.

The right of EPA to generically list wastes under Section 261.11(b) has been challenged by several industry groups. Intervention, or an amicus brief, should be considered. Since Appendix B goes beyond PVC/VCM wastes, we should have many allies in this effort.

A new provision has been added to RCRA Section 7001 requiring the EPA to assist the Department of Labor and the National Institute for Occupational Safety and Health to develop data as to the nature and extent of exposure to hazardous waste for purposes of establishing safety standards for personnel working at hazardous waste sites.

Trigger 3: The same arguments, above, can be made in the context of a citizen petition to EPA for rulemaking.

According to the Battelle Report, which was EPA's justification for the August 1979 proposed listing of PVC sludge, most of the sludge is landfilled on-site or at municipal landfills. Obviously, both air emissions of VCM and ground water contamination by VCM are concerns. In the area of possible ground water contamination, recent Maltoni animal testing using VCM indicates the induction of cancer tumors at relatively low levels, using ingestion as the route of exposure. These recent Maltoni tests should be reviewed by the PVC Health Committee.

SPI membership should also review and comment on EPA's emerging nationwide ground water strategy, which will have an important impact on present disposal methods for VCM containing wastes.

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Appendix B*—Scheduled Fall Promulgation

Generic

1. Reactor clean-up wastes from the chlorination, dehydrochlorination, or oxychlorination of aliphatic hydrocarbons
2. Fractionation bottoms from the separation of chlorination hydrocarbons
3. Distillation bottoms from the separation of chlorinated aliphatic hydrocarbons
4. Washer wastes from the production of chlorinated aliphatic hydrocarbons
5. Spent catalyst from the production of chlorinated aliphatic hydrocarbons
6. Reactor clean-up wastes from the chlorination of cyclic aliphatic hydrocarbons
7. Fractionation bottoms from the separation of chlorinated cyclic aliphatic hydrocarbons
8. Distillation bottoms from the separation of chlorinated cyclic aliphatic hydrocarbons
9. Washer wastes from the production of chlorinated cyclic aliphatic hydrocarbons
10. Spent catalyst from the production of chlorinated cyclic aliphatic hydrocarbons
11. Batch residues from the batch production of chlorinated polymers
12. Solution residues from the production of chlorinated polymers
13. Reactor clean-up wastes from the chlorination of aromatic hydrocarbons
14. Fractionation bottoms from the separation of chlorinated aromatic hydrocarbons
15. Distillation bottoms from the separation of chlorinated aromatic hydrocarbons
16. Washer wastes from the production of chlorinated aromatic hydrocarbons
17. Waste Oil [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58957) as: Waste lubricating oil and Waste hydraulic or cutting oil.]

*Since these wastes will not be promulgated until the fall, the listing descriptions for some of these wastes may change as additional information is gathered.

18. Polychlorinated biphenyls (PCB) and PCB items as defined in 40 CFR Part 761 [Comment: The Agency indicated in the preamble to the Section 3004 regulations (43 FR 58993), their intention to integrate the TSCA regulations for the disposal of PCB's with the RCRA hazardous waste regulations.]

Process Wastes

1. Sub-ore from underground and surface mining of uranium, overburden from surface mining of uranium and waste rock from underground mining of uranium with a radium-226 activity in excess of 5pCi/gm [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Waste rock and overburden from uranium mining.]
2. Leach zone overburden and discarded phosphate ore from phosphate surface mining and slimes from phosphate ore beneficiation [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Overburden and slimes from phosphate surface mining.]
3. Waste gypsum from processing phosphate ore to produce phosphoric acid [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Waste gypsum from phosphoric acid production.]
4. Slag and fluid bed prills from processing phosphate ore to produce elemental phosphorous [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Slag and fluid bed prills from elemental phosphorous production.]
5. Washwater/sludges from ink printing equipment clean-up [Comment: This listing description includes three wastes which were originally proposed on August 22, 1979 (44 FR 49403 and 49404) as: Waste from equipment cleaning from flexoprinting in the manufacture of paperboard boxes; Waste from press clean-up in newspaper printing and Wash water from printing ink equipment cleaning.]
6. Wastes from photographic processing [Comment: This listing was originally proposed on August 22, 1979 (44 FR 49404) as: Waste Ferricyanide bleach, dichromate bleach, color developer (Agfa), bleach fix (Agfa) and acid solution from photographic processing.]
7. Lead acid storage battery production wastewater treatment sludges
8. Lead acid storage battery production clean-up wastes from cathode and anode paste production

9. Nickel cadmium battery production wastewater treatment sludges
10. Lead slag from lead alkyl production
11. Emission control dust/sludge from reverberatory furnace and converters from primary copper production [Comment: This listing description was included in the listing description originally proposed on December 18, 1978 (43 FR 58959) as: Primary copper smelting and refining electric furnace slag, converter dust, acid plant sludge and reverberatory dust.]

Dated: May 2, 1980.

Douglas M. Costle,
Administrator.