

MINUTES

VINYL INSTITUTE LEGAL COMMITTEE

Princess Resort Hotel
Scottsdale, Arizona

May 12, 1988

Attendees:

Robert Luss, Chairman, Occidental Chemical Corporation
Bill Carroll, Occidental Chemical Corporation
Peter L. de la Cruz, Keller and Heckman
Fred Fisher, Air Products
Beverly Gholson, Georgia Gulf Corporation
Don Goodman, Occidental Chemical Corporation
Roy T. Gottesman, Vinyl Institute
Chris Lunn, Borden Chemicals & Plastics
William L. McClain, Vista Chemical Company
E. S. Schiffer, Georgia Gulf Corporation
E. E. Schroeder, Shintech
Paul J. Usinowicz, Air Products and Chemicals, Inc.

1. Chairman Luss opened the meeting at 9:00 a.m. Self introductions were made, and the minutes of the December 10, 1987, meeting were approved.

2. Peter de la Cruz reported on the status of settlement discussions with the Environmental Protection Agency (EPA) concerning its 1986 rule amending the vinyl chloride standard under the Clean Air Act. Settlement discussions had been delayed while the Agency considered the impact of the decision in NRDC v. EPA, another case involving EPA's vinyl chloride standard and the Agency's authority to consider economic and technologic feasibility in establishing hazardous air pollutant standards. A draft settlement agreement was forwarded by the Justice Department in November 1987, and the Vinyl Institute responded three weeks later. During February, March and April, 1988, discussions continued, particularly concerning revisions to the definition of the term "leak." Agreement was reached on a settlement package. A final sign-off by the Justice Department and EPA officials is expected in the near future. (A settlement agreement and joint motion for stay was subsequently filed on June 30, 1988.)

3. Mr. de la Cruz reported on the status of the Occupational Safety and Health Administration's (OSHA) position on labeling PVC resin. Occidental's Addis, Louisiana, facility was cited in February 1988 for not having cancer warnings on bags of PVC resin as allegedly required under the OSHA vinyl chloride standard. Occidental contested the citation. Since

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the issue involved was generic and potentially affected all PVC manufacturers, at its March 10, 1988, Executive Board Meeting, the Vinyl Institute decided to participate in this proceeding. Mr. de la Cruz contacted counsel for OSHA and provided a letter and documentary material explaining the Vinyl Institute's position that no cancer warning is required for PVC resin with suitably low residual vinyl chloride levels. Counsel for OSHA requested an extension of time from the Occupational Safety and Health Review Commission so that OSHA could further evaluate what course of action it wished to take. (Subsequently, this complaint was dismissed by a joint motion executed in October 1988.)

4. Mr. Luss opened a discussion and presentation on OSHA's Hazard Communication Standard, labeling and material safety data sheet (MSDS) preparation. Mr. Luss stated that, under Occidental's corporate policy, the company prepared MSDSs on all its products regardless of whether they were technically subject to the OSHA Hazard Communication Standard but that all MSDSs were intended to meet the spirit of the OSHA regulations. Don Goodman reviewed the status of an Occidental project to review product labels and MSDSs. The company was considering treating a label as a mini-MSDS that would identify all well-defined hazards associated with commercial use of the product. Mr. Goodman presented several hypothetical examples or early drafts highlighting the issues that this project raised.

5. Mr. Schiffer asked whether it would be possible to develop a model or a typical label and MSDS for PVC resin in light of existing statutory and regulatory requirements. Mr. Luss suggested that after Occidental finished its current review project, he would organize a meeting of both the legal and technical staffs of member companies with responsibility for product labeling and hazard communication. At that meeting, the members could discuss their individual company policies and systems for developing labels and MSDSs.

6. Mr. Schroeder asked how label or MSDS information was being handled for railroad cars. Attendees discussed various ways that rail cars were tagged or otherwise identified. Some companies send a label with the bill of lading.

7. Pending amendments to the OSHA Hazard Communications Standard were mentioned, as well as OSHA's aggressive enforcement and litigation position regarding target organ labeling and health hazard listings as reflected in the St. Mary's Carbon case.

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8. Mr. Luss reported that Occidental and BFGoodrich considered it important to spur the Food and Drug Administration (FDA) to decide whether it would be preparing an Environmental Impact Statement (EIS) in conjunction with the FDA proposed rule for PVC used in food contact applications. To this end, Occidental and BFGoodrich retained Taylor Quinn, formerly FDA's Director of Compliance. Tim Moore, a Washington, D.C. lobbyist, had also been retained because of his contacts with the Senate and House staff on FDA and EPA matters. These consultants would work together with Keller and Heckman in a coordinated effort to obtain FDA action.

9. Mr. Luss proposed that the Vinyl Institute wait until EPA responds to FDA's inquiry on the environmental issue. After EPA responds, the Vinyl Institute could then prepare a response with the assistance of Keller and Heckman and Taylor Quinn. A meeting would be held with FDA to review the Vinyl Institute's position. If no FDA action was forthcoming in a reasonable amount of time, Mr. Moore would be asked to generate Congressional interest and requests for FDA action. There was no suggestion that any Congressman would promote a particular answer from FDA, but, rather, that any political pressure would be solely that FDA take action and not continue to delay this proceeding on as in the past.

10. Mr. Luss reported on the status of the DuPont Plaza fire in San Juan, Puerto Rico. May 11 was the last day for filing third-party complaints, and it does not appear that PVC will be involved. Mr. Luss observed that the handling of the DuPont Plaza fire on behalf of the vinyl manufacturers was a classic example of a well-coordinated defense. He was pleased that the insurance carriers were recognizing what a coordinated approach could accomplish. Since they were no longer being threatened by involvement in this litigation, Tenneco and Occidental were resigning from the Joint Defense Group. It was noted that Georgia Pacific was being sued for supplying wood to Drexel who made furniture that was involved in the San Juan fire.

11. Mr. Gottesman and Mr. Luss briefly described the Cathedral Hill Hotel, Inc. v. Shelby Williams fire litigation. SPI had been served with a discovery request. It appears that PVC is probably not targeted by the plaintiffs in this litigation.

12. Mr. de la Cruz reported briefly on contacts with the Toledo law firm of Fuller and Henry, which is handling a personal injury lawsuit involving workers at a Chrysler Sandusky facility. One of the allegations involved exposure to vinyl chloride. The trial date had been delayed and expert discovery was under way. Mr. Luss noted that the case probably will be settled.

13. Mr. Gottesman and Mr. Luss reported on the Chicago plastic pipe action, Garibaldi Square Associates v. City of Chicago. The plumbers appealed an order denying their motion to intervene in the trial. Mayor Sawyer was moving to clear pipe, but elections scheduled for February 1989 may sidetrack city council attention to this issue.

14. Mr. Luss opened the discussion concerning the statutory caveat on the use of data submitted for the New York State Toxicity Data Bank. There was some sentiment that it would be difficult to get New York State to modify the disclaimer language.

15. Mr. Luss noted that the new business item of developing a Vinyl Institute recommended policy on labeling had been discussed earlier. No meeting on this issue was being scheduled at present but one would be initiated in keeping with the prior discussion. He also observed that there were no current issues requiring the scheduling of a future meeting of the Legal Committee. He would prefer to schedule the next Legal Committee meeting at the Vinyl Institute Annual Meeting and to schedule other Committee meetings on an as-needed basis. General agreement with this position was expressed.

16. Mr. Gottesman made a presentation on a Vinyl Institute strategic plan. He carefully noted at the outset that this was a proposal that would be presented to the VI Board for approval. Much of the discussion on the strategic plan focused on the handling of market-driven activities, either protecting existing markets or developing marketplace opportunities. It was suggested that four market teams be established for pipe, wire and cable/conduit, construction, and packaging (Vinyl Packaging Council). The Legal, Health, Safety and Environment, and World Affairs Committees would continue to operate as issue-oriented groups. In addition, a Solid Waste Committee might be formed. The Technical and Communications Committees would be formally discontinued, but Committee members would be integrated into the other groups.

17. Mr. Luss opened the floor for discussion of general issues of concern and, in particular, noted developments under California Proposition 65 and encouraged sharing information on pending litigation of interest to the industry. Ms. Cudak discussed the difficulty in determining reportable quantity issues under Superfund for newly-discovered "old" contamination. EPA's use of letters under Section 114 of the Clean Air Act to investigate releases reported under Superfund was also raised. The impact of environmental liabilities on land sale and facility transactions was mentioned.

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18. The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Peter L. de la Cruz
Peter L. de la Cruz
Associate General Counsel

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