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July 28, 1978

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R. N. WHEELER, JR.

To: SPI-PVC Safety Group
SPI-PVC Manufacturing Technology Committee
SPI-PVC Communications Committee
SPI-PVC Health Committee
SPI-PVC Lawyers Subcommittee

Re: SPI-VCM/PVC -- California, EPA and Other Matters

Ladies and Gentlemen:

Following up on the May 1978 passage by the State of California Air Resources Board (CARB) of an ambient air standard for vinyl chloride there has been a formal request that the PVC Safety Group assist the companies situated in California to challenge the CARB Standard. A July 11, 1978 letter from Dick Savage of BFGoodrich to PVC Safety Group Chairman Nuechterlein and a July 18, 1978 letter with enclosure from Stauffer attorney Gary Ford to SPI President Ralph Harding are enclosed. In reviewing the enclosures you will note that attached to Gary Ford's letter is a draft Complaint drawn to challenge the new Standard. Firstly, this document should be regarded as confidential and, secondly, it should also be recognized as an early working draft designed to address as many issues as possible.

As has been evident from our earlier correspondence about the developing situation in California, BFGoodrich and Stauffer have been working together and worked also with the PVC Safety Group through the CARB Hearings preceding that agency's adoption of the new Standard. In that effort, BFGoodrich and Stauffer had employed counsel who came East for a meeting in late June. Being unable to attend that meeting to which we were invited, Scott Bowen was asked to represent SPI. His report to us on what occurred

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at that meeting is also enclosed, particularly because it itemizes a number of the issues raised by the California action.

The questions which must now be addressed by the PVC Safety Group at the Steering Committee's next meeting are whether to join Goodrich and Stauffer in the challenge of the CARB Standard and, if so, what position should be taken and what form of assistance should be rendered.

As to whether to join those committed to challenging the Standard, the balance which must be struck falls between avoiding Group involvement in isolated state matters and that effect which the California Standard might have on other states or at the federal level. There is some expectation that, if left unchallenged, the California Standard could provide dangerous precedent for other states such as Texas and New Jersey and, perhaps, lead to a rekindled interest in amendment of the federal standard. The problem is that the California action is required to be based on adverse health effects directly related to the intensity and composition of the pollutant regulated.

While California is not considered a bellwether state relative to Texas, there is some evidence of a spill-over based on California action. Although the details are not entirely clear to us, the Texas Air Control Board (TACB) staff has conducted a telephone survey regarding ambient measurements for emissions. Since the results obtained by the Board were reportedly less than complete, it is said that the staff will resurvey the industry after the October 21, 1978 deadline for coming into compliance with the federal Standard.

While there is no similar activity reported in New Jersey, both Texas and New Jersey are viewed as fertile ground for the California-type approach. Similarly, the Environmental Defense Fund (EDF) will undoubtedly watch the California experience to see if it provides any new ammunition.

As to the question of how much and what type of help SPI could provide, this would vary depending on the position the PVC Safety Group would take and the form in which that position were cast.

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To begin with, since both Goodrich and Stauffer have local counsel it would seem redundant for the Group to increase its present California legal activity. Were local counsel to address the matters unique to California, the PVC Group could address those issues which are common to all states and the federal level (for example, the health effects comments previously submitted to the Environmental Protection Agency (EPA)).

As to the form of the assistance, the PVC Group could participate as a party proper, an intervenor, or an amicus curiae (a friend of the court). Our initial reaction is that the individual companies should handle the state matters and that the PVC Group could accomplish its objectives by taking an amicus-type position.

By the "amicus approach" we mean taking a position on the broad issues without becoming directly involved in arguing the issues distinctly associated with the case proper. Those issues could probably be more persuasively argued by those familiar with local law, procedure, and politics.

With all the foregoing, it is our opinion that the PVC Group should adopt a friend of the court-type approach to obviate the problems which might arise were the PVC industry perceived to have ignored or given in on a case involving issues central to the position the industry has heretofore staunchly defended. Although we view this case as a tough one legally, our recommendation is that the risk of spill-over should be minimized by preparing a good brief. Win or lose, if challenged vigorously, any state entity or EDF would be on notice it might have to commit or divert substantial resources from other projects to defend any action it might initiate along the same lines.

Although we recommend that the PVC Group help fight the CARB Standard, there is no legal or other commitment which would require SPI or the PVC Safety Group to participate. Our recommendation to participate, therefore, involves weighing the costs and probabilities attendant on the alternative courses of action.

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We encourage the members of the Lawyers Committee especially to review this situation in detail, to discuss the matter thoroughly with their clients, and to be in touch with us for any further discussion which might be desirable.

* * *

Changing topics, the next enclosures are two letters from Beveridge, Fairbanks & Diamond. The first, dated July 6, 1978, covers an EDF Memorandum addressing "The 'ample margin of safety' requirement for carcinogens under §112 of the Clean Air Act." EDF sent these materials to David Hawkins at EPA in support of its petition to EPA to establish a generic cancer policy.

The second letter, dated July 7, 1978, continues the latter part of the previous letter relative to the EPA schedule for promulgating a cancer policy. In short, these letters indicate EPA plans to propose in the Federal Register some type of comprehensive scheme relative to the identification and regulation of carcinogens.

Related to this is the fact that the Occupational Safety and Health Administration Hearings on its Cancer Policy Proposal have just concluded. With the Record being open until October 10, 1978 to accommodate post-hearing matters, we had been predicting that OSHA would not be able to promulgate its final policy until late spring 1979 at the earliest. Now, however, the Office of Management and Budget has revealed that due to the prodding of the parties and its discussions with agency staff, OSHA has agreed to perform a regulatory analysis of its cancer policy in accordance with Executive Order 12044. A copy of OMB's July 25, 1978 letter on this matter to Mr. J. W. Miller is enclosed.

The next item relates to emergency discharges. We and Beveridge, Fairbanks & Diamond have received inquiries about EPA Region VI interpretation of the emergency discharge provision of the Vinyl Chloride Standard. Since the situation was not clear we agreed that Scott Bowen would delve into the issue. His initial report, transmitting a copy of the Region VI form letter, is enclosed but, although we know that the national Enforcement Office is involved, we do not as yet have the details. As soon as we determine

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what the agency or the region is really up to, we will let you know.

Next is a memo from Jerry Blizin of Hill & Knowlton and a clipping from Food Chemical News, both about the newly-formed American Council on Science and Health. That group has announced plans to combat "chemical phobia." The Council's news release, pamphlet and a statement you might find interesting accompany Jerry Blizin's memo.

Finally, there are two items on which we have nothing new to report. The first is that since our June 29, 1978 letter there has been no activity on the EDF Motion to reopen EDF v. Train. As soon as we have some information about the scheduling of any court action on that matter we will let you know. Regarding the Gideon paper on Engineering Control Technology in Polyvinyl Chloride Polymerization Plants which we sent you on July 7, 1978, page 19 was missing. We have as yet been unable to obtain a copy of the missing page but will forward it to you when we do.

As always, should you have any questions, comments, or suggestions relative to any aspect of any of these matters, please do not hesitate to let us know.

Cordially yours,



Enclosures

cc: John B. Stohlton, Esq.

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