



CHEMICAL MANUFACTURERS ASSOCIATION

LANGLEY A. SPURLOCK, PH.D., CAE
VICE PRESIDENT
CHEMSTAR

July 3, 1996

Mr. Dharmendra Sharma
Administrator for Hazardous Material Safety
Research and Special Programs Administration
The Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Re: Petition for Reconsideration of Transportation of Hazardous Materials by
Rail; Miscellaneous Amendments; Docket HM-216.

Dear Mr. Sharma:

Under 49 C.F.R. § 106.35, the Chemical Manufacturers Association's Vinyl Chloride Panel Transportation Committee submits this Petition for Reconsideration of the Research and Special Programs Administration's (RSPA's) final rule amending the Department of Transportation's (DOT's) Hazardous Materials Regulations, Docket HM-216.^{1/} Specifically, the Committee requests that RSPA reconsider its amendment to the rail car marking requirements promulgated at 49 C.F.R. § 172.330.^{2/} The Committee Members on whose behalf this request for reconsideration of the amendment is filed include Borden Packaging & Industrial, The Dow Chemical Company, Formosa Plastics, The GEON Company, Georgia Gulf Corporation, JTS Enterprises, Inc., Occidental Chemical Corporation, PPG Industries, Inc., Shintech, Inc., and Vista Chemical Company.

The Committee maintains that the marking requirements as adopted are unnecessarily strict in that they require use of the word "stabilized" or "inhibited" in the marking of the proper shipping name. There is no safety reason for the inclusion of these words. If, however, DOT decides to maintain the marking requirement as adopted, the Committee requests that DOT extend the effective date of the marking requirement to coincide with the regular service schedule for these cars, but not to exceed five years (October 1, 2001).

^{1/} 61 Fed. Reg. 28,666 (June 5, 1996).

^{2/} 61 Fed. Reg. at 26,676.

CMA 111081

I. Regulatory Provision at Issue

DOT's Hazardous Materials Table classifies vinyl chloride as a Division 2.1 flammable gas. It is transported domestically in DOT 105, 112 and 114 pressure tank cars. As amended, Section 172.330 requires that

a tank car containing any of the following materials must be marked on each side with the key words (including words such as "stabilized", "inhibited", "compressed", or "liquefied") of the proper shipping name specified for the material in the § 172.101 table.^{3/}

This marking requirement specifically applies to Division 2.1 materials. The rule, as adopted, differs from the proposed rule which would have required the marking of the "key words of the proper shipping name." The proposed rule did not specifically require the use of the words "stabilized" or "inhibited." In fact, the Committee was verbally informed in December 1995 and March 1996 that the term "key words" would not require use of these adjectives and that the marking "vinyl chloride" would be adequate for tank car markings.

II. Development of Vinyl Chloride's Proper Shipping Name

Prior to 1991, the proper shipping name for this material was "vinyl chloride." In 1991, HM-181 amended DOT's Hazardous Materials Regulations but retained this proper shipping name. HM-181 also added a listing for the material "vinyl chloride, inhibited" to the Hazardous Materials Table. However, the addition of the inhibited substance is of no consequence to domestic shippers, because to the Committee's knowledge, vinyl chloride is not shipped in a chemically inhibited state domestically. Domestic shippers of vinyl chloride, therefore, have to date marked all of their rail tank cars with the proper shipping name "vinyl chloride."

In 1994, HM-215A changed the proper shipping name of "vinyl chloride" to "vinyl chloride, stabilized," effective October 1, 1996.^{4/} The Committee recognized that this proper shipping name change could pose a problem for rail shippers of vinyl chloride. Consequently, on August 9, 1995, the Committee filed a Petition for Rulemaking seeking to add a provision that excepted rail cars put in service prior to the issuance of HM-215A from the requirement to mark rail cars containing Division 2.1 materials with the proper shipping name "vinyl chloride, stabilized".

^{3/} Id.

^{4/} 59 Fed. Reg. 67,390 (December 29, 1994). Domestically vinyl chloride is stabilized by purging oxygen from the container.

Mr. Dharmendra Sharma

July 3, 1996

Page -3-

Then, on December 19, 1995, RSPA issued a Notice of Proposed Rulemaking which required, in part, that only the key words to the proper shipping name or the common name be marked on the rail tank car containing Division 2.1 materials. The Committee was verbally informed by DOT officials in March 1996 that the key words for the proper shipping name "vinyl chloride, stabilized" were "vinyl chloride." Given this verbal indication as to the intention behind the rule, the Committee submitted comments to the Notice of Proposed Rulemaking supporting the marking requirements as proposed.

III. The Name "Vinyl Chloride" Adequately Identifies the Material.

The Committee's Petition for Reconsideration, if granted, would permit rail cars containing vinyl chloride to satisfy the tank car marking requirements by maintaining the current marking "vinyl chloride." The Committee maintains that there is no safety reason that warrants changing the vinyl chloride marking from "vinyl chloride" to "vinyl chloride, stabilized." Marking requirements are designed to inform shippers, carriers, and emergency responders about the hazards of a tank car's contents. However, the terms "inhibited" and "stabilized" do not convey levels of hazard, but merely indicate the method by which the material is treated to prevent self-polymerization. In fact, vinyl chloride inhibited has the same hazards as vinyl chloride, stabilized. Thus, the requirement that the terms "stabilized" or "inhibited" be included in the tank car marking does not provide carriers or emergency responders with any additional hazard information.

In fact, the Committee is concerned that the requirement to use the word stabilized could be misleading to emergency responders who may interpret incorrectly that stabilized vinyl chloride is not as hazardous as vinyl chloride. This is important because it may affect the safety of response personnel. It also can lead to inappropriate actions by the response community, which can make matters worse. The addition of the word "stabilized" on the tank car is an administrative regulatory requirement only; it does not change the nature or hazards of the actual product. Moreover, the term "vinyl chloride" corresponds to the listing that appears in the 1996 North American Emergency Response Guidebook.

The proposed rule required that a tank car be marked with the "key words of the proper shipping name."^{5/} This language, together with DOT's verbal interpretations, indicated that rail cars marked with the words "vinyl chloride" would comply with DOT's proposed rule, as such a marking contained the "key words of the proper shipping name." The interpretation adopted in the final rule, however, puts vinyl chloride manufacturers in the difficult position of having to mark over 500 railcars within the next three months.

Furthermore, as currently written, the rule is confusing because the terms "stabilized" or "inhibited" are now required together with the "key words of the proper shipping name." Once these adjectives are added to the key words marking, the term "key words" (as used in Section

^{5/} 60 Fed. Reg. 65,492 (December 19, 1995).

172.330) becomes meaningless because the shipper is required to mark the tank car with the entire proper shipping name.

The Committee believes that DOT does not fully appreciate the cost and service disruption ramifications of its decision to require the use of the word "stabilized" in the tank car marking. Commentors indicate that "very little cost or effort is involved to stencil the product or proper shipping name on the car." However, the remarking process is costly primarily because the cars must be removed from service to be remarked. In some cases, entire fleets will have to be removed from service over the next three months in order to achieve compliance. This is an especially difficult task because a number of tank cars in vinyl chloride service are in leasing agreements with shippers other than the tank car owners and cannot be retrieved from service immediately due to service demands.

While the exception to the tank car marking requirements at Section 172.302 (f) appears to provide some relief, in reality any relief is minimal at best. That exception provides:

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."

This exception also does not cover the majority of railcars affected by the remarking requirement. Even if it were applicable, the manufacturers are concerned that having cars marked in two different ways (i.e. "vinyl chloride" and "vinyl chloride, stabilized") over the long term may be confusing to emergency responders who may believe that the stabilized material is not as flammable as the material marked "vinyl chloride." Additionally, this provision is not compatible with the new requirement in Section 172.330 that requires the word "liquefied" to be identified in the proper shipping name marking.

IV. Request for Extension of Effective Date of Section 172.330

If DOT decides to maintain its tank car marking requirement as amended, the Committee requests that RSPA extend the effective date for the required markings to coincide with the normal service schedule for vinyl chloride tank cars, not to exceed a five year period. Such an extension would allow rail cars to be marked on a schedule that is less disruptive and costly.

The vinyl chloride manufacturers take great pride in their efforts to ensure the safe transport of vinyl chloride and comply with the various applicable state and federal regulations. As of October 1, 1996, however, these manufacturers could find themselves out of compliance with DOT's Hazardous Materials Regulations because they relied on DOT's verbal indications that the marking "vinyl chloride" would satisfy the tank car marking requirement.

Mr. Dharmendra Sharma

July 3, 1996

Page -5-

Because there are fewer than four months to mark almost 500 cars, the Committee is worried that manufacturers will not be able to remark all rail cars with the word "stabilized" by October 1, 1996. Allowing the manufacturers a five year time period to come into compliance would reduce the compliance burdens on industry without posing any safety issues because the tank cars currently are marked "vinyl chloride." Therefore, if RSPA continues to require the words "inhibited" or "stabilized," the Committee requests that the time period for remarking rail cars under Section 172.330 be extended to coincide with the normal five-year service schedule for the tank cars.

V. Conclusion

For the reasons set forth above, the Vinyl Chloride Panel Transportation Committee requests that RSPA reconsider its final rule in HM-216 amending 49 C.F.R. § 172.330 and not require the use of the words "stabilized" or "inhibited" in the tank car marking. In the alternative, the Committee requests an extension of the effective date of the amendment of Section 172.330 until October 1, 2001.

If you have any questions about this petition, or need additional information, please call Has Shah of my staff at 703/741-5637.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Spurlock', with a stylized flourish at the end.

Langley A. Spurlock, Ph.D., CAE
Vice President, CHEMSTAR

CMA 111085