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July 14, 1983

To: SPI Vinyl Institute
SPI Vinyl Institute Manufacturing
Practices Committee
SPI Vinyl Institute Legal Committee

Re: EPA Review of the Vinyl Chloride Standard

Ladies and Gentlemen:

Enclosed is a draft letter to the Environmental Protection Agency (EPA) suggesting changes to the relief valve discharge provisions of the vinyl chloride standard. The letter follows a May 26 meeting with EPA and a June 20 meeting of the Manufacturing Practices Committee. The minutes of that meeting are also attached.

The main feature of the draft letter is the suggestion that facilities be required to submit a relief valve discharge elimination plan to EPA detailing the training, maintenance, written procedures and other action the facility will routinely follow to prevent relief valve discharges. Following approval of a plan by EPA, a source would be deemed to violate the relief valve discharge provisions only if it fails to comply with its plan. EPA would retain authority to require revisions to the plan if a facility's history of relief valve discharges indicates to the Agency that additional preventive measures are needed.

The Manufacturing Practices Committee's current plan is to finalize the letter at its August 4, 1983 meeting. We would appreciate your sending comments through your representative on the Manufacturing Practices Committee. If that is not feasible, please contact us with your comments by August 3. In particular, we are requesting additional case histories like those in the enclosed draft letter (pages 10-12).

The EPA staff at Research Triangle Park indicated that an internal EPA working group meeting is tentatively scheduled for August. We hope to submit the letter in early

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SPI Mailing
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August so that it may be considered during that meeting. Prompt submission of any suggestions is also desirable in light of the recent District Court decision declaring the relief valve provisions of the standard unenforceable. While EPA has not determined whether it will appeal that decision or repromulgate the standard, it behooves us to act quickly in the event that the Agency decides to proceed with repromulgation.

While working on the draft letter to EPA, one research area was the cost imposed by the standard. In the past we have referred to a 1979 EPA report to Congress (copy enclosed). We recently obtained from EPA an updated draft report being prepared by Development Planning and Research Associates, Inc. A copy is enclosed for your review and comparison. One peculiarity is an assumption of zero investment costs after 1981. EPA is checking with the contractor on this point.

I look forward to seeing you on August 4 and 5. In the interim, if you have any comments or questions, please feel free to contact us.

Cordially yours,


Peter L. de la Cruz

Enclosures

D R A F T

Sheldon Meyers, Director
Office of Air Quality, Planning and Standards
Environmental Protection Agency
41 M Street, S.W.
Washington, D.C.

Re: Revision of the Vinyl Chloride Standard

Dear Mr. Meyers:

This letter follows your meeting with representatives of the Vinyl Institute on May 26, 1983. The meeting concerned the Environmental Protection Agency's (EPA) review of the vinyl chloride standard. 40 C.F.R. § 61.60 et seq. In particular, discussion focused on problems presented by the relief valve discharge provision of the standard. Id. at § 61.65(a). You suggested that we provide written comments indicating the basis of our difficulty with this provision and suggestions for improvement.

There are a number of administrative provisions of the current standard which we have discussed previously with the Agency and which are being considered in EPA's current review of the vinyl chloride standard. The single major difficulty with the standard is the relief valve discharge provision. Our mutual goal is to establish a standard of performance that is reasonable, adequately protects the public health and provides guidance to the industry while retaining enough flexibility to incorporate improved control technologies.

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A. Defining the Problem

The current standard prohibits relief valve discharges except for emergency relief discharges. An emergency relief discharge is defined as a discharge which "could not have been avoided by taking measures to prevent the discharge."

The Society of the Plastics Industry, Inc. (SPI), through its PVC Safety Group and now through The Vinyl Institute, was deeply involved in the vinyl chloride standard proceedings. When the standard was promulgated, we had a clear understanding of the relief valve discharge provisions. Quite simply, industry anticipated that if it made a best effort to eliminate discharges, it would be considered to be in compliance with the standard. This view is reflected in EPA's 1976 Guideline for Enforcement of the Vinyl Chloride Regulations (at 16).

Upon examination of these [relief valve discharge] reports, the regional office should determine the following:

- (1) was the discharge unavoidable
- (2) if so, were the measures taken to prevent and/or remedy it sufficient;
- (3) if not, should any additional action be taken.

This rule of reason was abandoned by the Agency within two years, as reflected in the following passage from a May 18, 1978, memorandum by the Director of EPA's Division of Stationary Source Enforcement.

A relief discharge will be considered an emergency discharge only if it occurs as the result of an unpreventable disaster (i.e., tornado, hurricane, earthquake, flood, riot, sabotage, etc.). Discharges which could have been prevented thorough the use of backup equipment and/or proper operation and maintenance procedures will be considered vialtions of § 61.65(a). Some examples of conditions uder which discharges will be considered violations include power outages, operator errors, preventable equipment failures and malfunctions, etc. In these instances, vinyl chloride releases could be avoided through use of backup power supplies, backup equipment, employee training, and proper operation and maintenance procedures.

This restrictive approach has been the hallmark of EPA's enforcement efforts. For example, EPA recently represented in civil enforcement proceedings that the relief valve and manual vent valve discharge provisions "are emission standards setting a quantifiable limit of zero emissions but which also allow the violator to assert an affirmative defense of emergency discharge under certain conditions." United States v. Ethyl Corp., Civil Action No. 83-0120-A (M.D. La. July 1, 1983) (slip op. at 8).

EPA's radical change in interpretation since the vinyl chloride standard was initially promulgated has created a serious problem, lead to unwarranted expenditures of public and private resources, deprived industry of any realistic standard of conduct, and robbed a significant regulatory provision of its intended meaning. Such a state of affairs merits the effort needed to

revise the discharge provisions and re-establish a rational framework.

In the last two years SPI has reviewed a draft report by TRW, Inc., submitted substantial comments and met with EPA and TRW representatives in Research Triangle Park. During the fall of 1981, we anticipated that the Agency would publish an Advanced Notice of Proposed Rulemaking but this never materialized. Concerned with the Agency's review of the standard, SPI submitted proposed amendments to the vinyl chloride standard in July, 1982. This proposal resulted in additional correspondence and consultation with the Agency staff and another meeting in Research Triangle Park in November, 1982. In February, 1983 EPA issued a revised TRW Report and a draft chapter discussing regulatory alternatives but not addressing the relief valve discharge question. The letter is a continuation of our efforts to correct deficiencies in the standard.

B. Summary of Suggestions

1. Fixed Quantitative Limit

One solution would be to set a quantitative limit on the allowable amount of vinyl chloride monomer (VCM) that could be discharged. For example, the regulation could be amended to provide that relief valve and manual vent valve discharges may not exceed 50 pounds of VCM for every million pounds of polyvinyl

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chloride (PVC) or VCM production during a calendar year. A numerical limit would establish a clear goal for industry and simplify EPA enforcement activity.

2. Relief Valve Discharge Prevention Plan

As an alternative to a finite limit, we suggest that a relief valve discharge prevention plan be added to the current regulation. Each facility would be required to submit a plan to the Agency detailing the training, maintenance, written procedures and other actions the facility will routinely follow to prevent relief valve discharges. Following approval of the plan by EPA, sources would be deemed to violate the Act and the relief valve discharge provisions if they fail to comply with the plan. EPA would retain authority to require revisions to the plan if a facility's history of relief valve discharges indicates to the Agency that additional preventive measures are needed.

By establishing specific work practices and other criteria to be followed, industry would have a clear and specific list of actions that must be followed to comply with the standard. From the Agency's perspective, enforcement proceedings will be simplified because disputes over what constitutes an "emergency" should not arise. Rather, once it is demonstrated that a facility failed to follow its plan, the source would be subject to penalization under the enforcement provisions of the Clean Air

Act. Moreover, the preparation and review of plans will facilitate the exchange of relief valve discharge prevention techniques and information throughout industry and between industry and EPA. These improved communications should assure continuing reduction of discharges throughout industry.

We do not anticipate that review and approval of the plans by EPA will be inordinately time consuming since the plans only address one element of the vinyl chloride standard. Indeed, we suspect that the total amount of Agency resources and funds expended on the vinyl chloride standard will decrease when the relief valve provision is clarified through the facility plans.

Providing clear rules of conduct for industry is a hallmark of good administration. Under the proposal, the Agency's involvement in establishing plans will ensure the minimization of relief valve discharges.

Specific draft language for revising section 61.65(a) is attached to this letter. The remainder of the letter provides examples of the enforcement problems created by the current standard and details the basis for the relief valve discharge elimination plan. In addition, it sets forth a suggestion to incorporate EPA's current interpretation into the standard.

C. Industry Compliance Efforts

Existing safety regulations and insurance company requirements mandate the use of safety relief devices on the pressurized equipment used to produce VCM and PVC. See Vinyl Chloride--A Review of National Emission Standards at pp. 3-35 and 4-17 (EPA) (Feb. 1982) (hereinafter referred to as the TRW Report). The vinyl chloride standard prohibits relief valve discharges except for emergency relief discharges.

As proposed by EPA in 1975, the definition of an emergency relief discharge was "a discharge which could not have been avoided by taking all available measures to prevent the discharge," 40 Fed. Reg. 59,545 (Dec. 24, 1975) (emphasis added). Industry objected to the use of the term "all available" in the definition and argued that reasonable practices and procedures to prevent relief valve discharges should be sufficient. In response to these comments, EPA deleted the term "all available" from the final definition which lists an emergency relief discharge as one "which could not have been avoided by taking measures to prevent the discharge." 41 Fed. Reg. 46,565 (Oct. 21, 1976).

Involved members of industry, through discussions with the EPA staff at Research Triangle Park, believed that they had a working understanding of how the relief valve discharge provisions would be interpreted. Quite simply, industry anticipated that if it made a best effort to eliminate discharges, it would be considered to be in compliance by the Agency.

According to our statistics, the number of pounds of VCM released per million pounds of PVC production has decreased from approximately 125 pounds during 1978-1979, to 100 pounds in 1980, and to 50 pounds in 1981-1982. Similarly, the total amount of VCM from emergency releases (relief valves, rupture disks, and manual vent valves) has decreased by one-fourth from over 400,000 pounds in 1978 to approximately 100,000 pounds in 1982. In its Standard Support Document (Oct. 1975), EPA estimated that a typical discharge was approximately 5,000 pounds (2,260 kg). By 1978-1979, this was reduced to 2,000 pounds and in 1981-1982, the average release was about 1,500 pounds. This constitutes a 70% reduction in the size of the typical discharge, a 75% reduction in the total amount discharged, and a 60% reduction in the amount released as a function of production.

This change is only part of a very successful industry effort to reduce all VCM emissions. Indeed, the 1982 TRW report concluded that a typical PVC suspension plant had total emissions, including relief valve discharges, of about 67% less than the total amount that could be emitted under the present standard. TRW Report at 4-6 Table 4-4.

In spite of these efforts, EPA enforcement activity has increased, as witnessed by the filing of two new civil enforcement actions in July, 1983. Nonetheless, in the face of the Agency's "punishment for progress" policy, the industry con-

tinues to spend its time, money, and resources in an on-going effort to limit relief valve and other discharges. According to EPA estimates, the vinyl chloride industry will spend \$235.57 million on investments and \$765.72 million on annual costs during the 1977-1986 period (in 1977 dollars). The Cost of Clean Air and Clean Water, Annual Report of the Administrator of the Environmental Protection Agency, 96th Cong., 1st Sess., Doc. No. 96-38, p. 58 (Dec. 1979). A revision to this 1979 report is being prepared for EPA by Development Planning and Research Associates, Inc. Their initial draft estimates total annual costs for the 1981-1990 period to be \$981.46 million. A 1979 survey also showed that this billion dollar effort was coupled with a 10-to-12% average loss in production capacity as a result of compliance requirements. TRW Report at 2-11.

While the industry has made great strides in reducing VCM emissions overall and in reducing relief valve discharges in particular, the relief valve discharge provisions of the standard have created a major difficulty for industry and led to disputes and litigation. We view this provision as the major substantive difficulty with the standard.

Past EPA action has obscured the meaning of the relief valve discharge provisions. The lack of a clear standard has placed a drain on Agency resources. For example, EPA has had a continuing review of the vinyl chloride standard for several

years. TRW provided an initial review of the standard, and it is our understanding that Radian Corporation has now been hired to assist in the ongoing Agency review. In addition, both regional and enforcement personnel have expended a considerable amount of time on these matters. Indeed, since there are no clear guidelines, we have witnessed variations in enforcement practices among the different EPA regions. At present, there are at least five active court cases and a number of Agency inquiries.

D. Case Histories of EPA Enforcement

A main complaint of industry is that without objective standards for compliance, there is no certainty that EPA will consider a particular relief valve discharge to be an emergency discharge. The following are some brief case histories of enforcement activity designed to provide concrete examples of the delay and uncertainty generated by the relief valve discharge provision.

1. Calvert City, Kentucky

Enforcement activity relating to a Calvert City VCM plant operated by BF Goodrich began with a telephone request for information on November 20, 1978. The information was submitted 10 days later. This was followed by four separate letters issued under Section 114 of the Clean Air Act and dated March 2, 1979, October 16, 1979, April 18, 1980, and August 1, 1980. A response to the last Section 114 letter was submitted on August

18, 1980. In addition to the Section 114 letters, a conference was held in Atlanta in April, 1979.

Two years after the last information was submitted, a complaint was filed in U.S. District Court. In all, approximately four years elapsed between the initial phone request for information and the filing of a complaint. BF Goodrich estimates that the vinyl chloride standard would have permitted the release of approximately 618,000 pounds of vinyl chloride assuming that there were no relief valve discharges. Including the relief valve discharges, the actual total amount of emissions was approximately 292,000 pounds. In other words, the facility emitted 326,000 pounds less than that allowed under the standard.

2. Louisville, Kentucky

BF Goodrich operates a PVC suspension and latex polymerization process facility in Louisville, Kentucky. The Agency sent Section 114 letters on November 2, 1979, March 14, 1980, June 27, 1980, and October 22, 1982. Conferences, inspection and plant visits were held. A complaint was filed in U.S. District Court on April 28, 1983, with 17 counts, all for relief valve discharges. In this instance, four and one-half years elapsed from the initial inspection to the filing of a complaint. Under the regulation, this facility could have emitted 445,000 pounds of VCM. Its actual total emissions were 115,000 pounds or "over-control" of 330,000 pounds.

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3. Region VI PVC Facility

Another SPI member company producing PVC in Region VI has not had a reportable release of vinyl chloride through a relief valve in over three years. Yet, it received a 114 letter on May 12, 1981. The letter requested information and documents on six relief valve discharges that occurred since the standard became effective. The company's internal review and document gathering effort took approximately 6 man-months. The 114 submittal was made on September 15, 1981.

EPA has not commented on the adequacy of the response or notified the company with its determination of preventability. The company is assuming that EPA considers the 114 response adequate and that the releases were considered emergencies.

E. Force Majeure Causes

Given the difficulties presented by the relief valve provision of the standard, some change is needed. It is not possible to develop a comprehensive list of all the events or effects that can be reasonably anticipated or controlled. There are a number of events, which we will refer to as force majeure, that constitute bona fide emergencies. We propose that relief valve discharges resulting from the following causes be deemed emergencies:

- (1) an act of God; or

(2) an act of war; or
(3) an act of sabotage; or
(4) an unauthorized act or omission of an employee outside the scope of his employment;
or

(5) an unauthorized act or omission of a third party who is not an agent or contractor of the owner or operator of the stationary source.

This list is derived from Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund), 42 U.S.C.A. § 9607. This list is also part of the Louisiana emission standards for hazardous air pollutants recently approved by EPA. See Section 76.2 of Louisiana Hazardous Pollutant Regulations.

**F. Relief Valve Discharge
Elimination Plan**

We also suggest that each facility be required to develop a specific plan to prevent relief valve discharges. At a minimum, the plan should address training, written standard operating procedures to be followed during the production process, preventive maintenance/inspection plans and equipment. Facilities could add additional topics as warranted. Plans would be subject to mandatory periodic review every three to five years.

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Under our proposal, facilities would be required to submit the plans to EPA within 90 days after the amended standard becomes final. EPA would review the plans for completeness and sufficiency. We suggest that EPA approve or disapprove a plan within 90 days after receipt. When the plan is approved, the source would be obligated to strictly comply with its relief valve discharge elimination plan. If, releases occur at a frequency and level EPA deems inappropriate, it may require revision of the plan to further reduce relief valve discharges.

When a facility is operating in compliance with an approved plan, it would be considered in compliance with the relief valve discharge provision of the standard. Failure to adhere to the plan would be punishable as a violation of the standard. Discharges occurring when there is an approved plan are not subject to enforcement actions.

G. Benefits

We anticipate that the specific nature of the plan will facilitate EPA enforcement if a source violates its plan. Proof that the plan had not been observed would constitute a demonstration that the standard had been violated. This should eliminate or greatly reduce any question concerning whether a particular discharge constituted an "emergency" within the meaning of the

vinyl chloride standard. Similarly, if the Agency feels that the work practices, procedures or other techniques employed to prevent relief valve discharges are inadequate, the ability to require revision of the plan permits the Agency to force changes without court action. If a facility is operating without an approved plan, relief valve discharges would be subject to Agency enforcement action as under the current standard.

The major benefit for industry will be the development of specific obligations that will constitute compliance with the standard. It also will provide an administrative mechanism short of litigation for resolving concerns relating to relief valve discharges.

The plan concept was derived from EPA's regulations for a Spill Prevention Control and Countermeasure Plans (SPCC Plans) under the Clean Water Act. 40 C.F.R. § 112.2. Our proposal is more demanding than the SPCC Plan regulations and would involve somewhat increased Agency supervision at the outset. However, given the small number of facilities that would file relief valve discharge elimination plans, we do not believe that the amount of Agency resources involved is unjustified. Although we disagree with EPA's enforcement activity, if the Agency deems this issue important enough to litigate, it must be important enough to merit a prospective solution as opposed to retrospective litigation.

The plan proposal is consistent with current EPA enforcement goals. A recently-filed complaint sought, among other things, that the facility "submit for EPA approval a continuing program . . . to prevent future discharges" United States v. Borden, Inc., (D. Mass.) (Complaint, p. 7).

On July 1, 1983, United States District Court Judge John V. Parker dismissed an action by EPA against Ethyl Corporation for relief valve discharges. Judge Parker held that the relief valve provisions were "work practice" requirements that EPA lacked authority to promulgate in 1976. United States v. Ethyl Corp., Civil Action No. 83-0120-A (July 1, 1983). That decision may prompt EPA to re-promulgate a vinyl chloride standard under the Agency's later-acquired authority. We most strongly urge that you consider our suggestion for a relief valve discharge elimination plan. We have attached draft language that might serve as a starting point for amending the regulation.

We look forward to discussing this matter with you or your staff after you have had an opportunity to consider our proposal. We appreciate the time and effort involved and believe that the end result will be in the best interest of the public, EPA and industry.

Cordially yours,

G. R. Munger
President

Enclosures

VVC 000006997

Draft - July 13, 1983

MANUFACTURING PRACTICES COMMITTEE
VINYL INSTITUTE
THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

SUGGESTED AMENDMENTS TO
THE VINYL CHLORIDE STANDARD

40 C.F.R. § 61.65.

An owner or operator of an ethylene dichloride, vinyl chloride, and/or polyvinyl chloride plant shall comply with the requirements of this Section.

(a) Relief Valve and Rupture Discharge.

(i) Except for an emergency discharge, there is to be no discharge to the atmosphere from any relief valve or rupture disk on any equipment in vinyl chloride service. *delete* An emergency discharge means a discharge which could not have been avoided by taking measures to prevent the discharge.

(ii) Discharges resulting from the following causes shall be deemed to be emergency discharges:

- (A) an act of God; or
- (B) an act of war; or
- (C) an act of sabotage; or

(D) an unauthorized act or omission of an employee outside the scope of his employment; or

(E) an unauthorized act or omission of a third party who is not an agent or contractor of the owner or operator of the stationery source; or

(F) any one or a combination of the above circumstances.

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(iii) Within 90 days from the effective date of this regulation or 90 days prior to the start-up of new facilities, each owner or operator shall submit a written plan ~~to eliminate~~ ^{prevent} relief valve discharges for each facility subject to this standard.

(iv) The relief valve discharge ~~elimination~~ ^{prevention} plan submitted under subsection (iii) above shall address, at a minimum, the following topics: training, written operating procedures, maintenance and inspection plans, and equipment.

(v) The Administrator shall approve or disapprove a plan within 90 days after submission.

(vi) Relief valve discharges from facilities with an approved plan shall be deemed to be emergency releases.

(vii) In light of a facility's history of relief valve discharges, the Administrator may require that a plan be reviewed or revised in an effort to reduce relief valve discharges. Plans shall be reviewed at least once every five years.

(viii) The owner or operator of the source from which the relief valve or rupture disk discharge occurs shall submit to the Administrator a quarterly report in writing containing information on the source, nature and cause of the discharge, the date and time of the discharge, the approximate total vinyl chloride loss during the discharge, the method used for determining the vinyl chloride loss, the action that was taken to prevent the discharge, and measures adopted to prevent future discharges.

Get number of incidents

The Society of the Plastics Industry, Inc.
Vinyl Institute
Manufacturing Practices Committee

Borden Dairy Division
Columbus, Ohio

Monday, June 20, 1983
9:30 a.m.

MINUTES

Attendees:

W.C. Holbrook, Chairman, B.F. Goodrich Co.
6100 Oak Tree Boulevard, Cleveland, Ohio 44131

Joseph C. Ledvina, Conoco Chemicals Co.
P.O. Box 19029, Houston, Texas 77224

J.A. Mullins, Shell Oil Co.
1 Shell Plaza, Houston, Texas 77001

W. Bailey Barton, Borden, Inc.
180 East Broad Street, Columbus, Ohio 43215

Peter L. de la Cruz, Keller & Heckman
1150 17th Street, N.W., Washington, D.C. 20036

1. Chairman Holbrook called the meeting to order at 9:30 a.m.
2. The attendees discussed the current status of the Environmental Protection Agency's (EPA) review of the vinyl chloride standard and related enforcement activity. The EPA staff at Research Triangle Park is continuing to review the standard, but their progress seemed slow and uncertain. Based on this, representatives from the Committee met with Sheldon Meyers, Director of EPA's Office of Air Quality, Planning and Standards. Mr. Meyers recommended that the Committee communicate its concerns with the vinyl chloride standard in a letter to him.
3. A substantial discussion ensued concerning the various ways to approach the letter to Meyers and what suggestions the Committee should present. The central problem is defining the term "emergency release." Mr. Mullins suggested using a concept derived from EPA's Spill Prevention Control and Counter-Measure Plan (SPCC Plan) under the Clean Water Act. The plans would cover emergency discharges and be submitted to EPA for approval. Mr. Holbrook reviewed various criteria or procedures that might be specified as satisfactory work practices for EPA.

VVC 000007000

Minutes
The Society of the Plastics
Industry, Inc.
Manufacturing Practices Committee
June 20, 1983
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These would include programmed preventative maintenance, formal operator training, written operating procedures and other factors. Mr. Barton suggested using a flat numerical criteria setting some permissible pound limit for discharges. Discharges above that level would be subjected to a penalty based on a fixed dollar figure excess emissions. Other alternatives discussed included the definition of emergency used in the Louisiana vinyl chloride standard, and a de minimis discharge provision.

4. Following this discussion of alternatives, the Committee outlined a draft letter to Sheldon Meyers suggesting the use of an emergency discharge prevention plan for each facility. (A copy of the draft letter, which will be discussed at the August 4, 1983 meeting, is enclosed.)
5. Mr. Ledvina discussed materials released by the National Clean Air Act Coalition in conjunction with congressional reauthorization proceedings. Among other things, the Coalition materials stated that the vinyl chloride standard adopted by EPA in 1976 provided for less controls than were present at existing facilities and that the standard made "no perceptible change in the price of the products." After some discussion, Mr. Ledvina agreed to draft a short letter of rebuttal that would be submitted for approval by the Institute.
6. The Committee made tentative plans to meet in early August.
7. The meeting was adjourned at 2:30 p.m.

Respectfully submitted,


Peter L. de la Cruz

VVC 000007001