

For your information:

bcc: Mr. R. H. Marks
Mr. G. S. Flint
Mr. M. R. Haymon
Mr. W. Rupp
Mr. J. T. Sweeney
Mr. R. R. Neugold
Mr. W. Miringoff
Mr. J. E. Sandstedt ✓

Tenneco Chemicals

A Tenneco Company

Park 80 Plaza West-1
Saddle Brook, N J 07662
(201) 646-3800

November 25, 1980

FILE
VCR Compliance

Mr. J. Morales-Sanchez
Director
Enforcement Division
United States Environmental Protection Agency
Region 11
26 Federal Plaza
New York, New York 10278

Dear Mr. Morales-Sanchez:

This is in response to your letters, both dated November 10, 1980, advising Tenneco Chemicals that your records "suggest" that Tenneco's Burlington, New Jersey and Flemington, New Jersey polyvinyl chloride manufacturing facilities "are presently out of compliance with an applicable emission limitation or compliance schedule" and are, therefore, subject to non-compliance penalties under Section 120 of the federal Clean Air Act. We are quite frankly unaware of any applicable emission limitations or compliance schedules which Tenneco is not satisfying, and we believe that you have made an error in including Tenneco on the list of addressees of your letter. We would therefore appreciate it if you would review your records and inform us what specifically suggests that Tenneco is not in compliance with an applicable requirement.

I have performed a similar review here at Tenneco subsequent to the receipt of your letter. From this review, I have observed correspondence and discussions with EPA concerning isolated emergency relief valve discharges. As your staff is aware, however, corrective action where necessary has been completed with respect to such emergency relief valve discharges.

We would appreciate it if you would give this matter your prompt attention. If, contrary to our present understanding, there is indeed some corrective action that Tenneco should be taking, we would like to be able to consider it prior to the beginning of 1981, if at all possible. On the other hand, if there are no facts justifying a conclusion of non-compliance within the meaning of Section 120, then we would appreciate a letter from you correcting the charge in your letters of November 10, 1980.

Very truly yours,



R.T. Gottesman
Vice President
Environmental & Regulatory Affairs

RTG/lb

COLORITE 017037

DATE 11/17

To: *Tancred White*

ENVIRONMENTAL PROTECTION AGENCY

ON 11
FEDERAL PLAZA
NEW YORK 10278

*Attaching is copy of letter EPA sent
to *Tancred White* dated regarding "non-com-
pliance penalty" provisions under the
Clean Air Act. As discussed over the
phone, my concern is with the last para-
graph. We suggests we are not in
compliance." Since this is a formal
letter, I do not know exactly where the
signature is coming from.*

*These review and advise how
we think we should proceed. I can
see the pressure noted in the letter on
whether you can see where the thing*

From the office of: J. P. SANDSTEDT

has amended the federal Clean Air Act to
"compliance Penalty." (42 U.S.C. §7420.)
The Environmental Protection Agency ("EPA") to promulgate regu-
lations which would be imposed against sources of air
pollution which are in violation of any applicable State or federal emission
standards. The amount of this penalty is to be equiv-
alent to the source as a result of its delay
in compliance. The purpose of this penalty is to remove any financial or competi-
tive advantage enjoyed as a result of its violation of

cc: RTG

the Federal Register its final regulations
120. (40 CFR Part 66, 45 FR 50086 et

seq.) These regulations identify in greater detail the types of noncompliance
which may render a source liable for imposition of a noncompliance penalty.
Subject sources include:

1. All major sources out of compliance with any emission limitation or compliance schedule which is part of a federally-approved State Implementation Plan (regardless of whether the source is subject to a federal or State consent decree);
2. All sources out of compliance with any emission limitations or related requirements established under Section 111 (New Source Performance Standards) or Section 112 (National Emission Standards for Hazardous Air Pollutants) of the Clean Air Act;
3. All sources out of compliance with an emission control requirement or compliance schedule set forth in a federal or federally-approved State judicial consent decree, extension, order or suspension; and
4. All nonferrous smelters which are out of compliance with a requirement imposed pursuant to a nonferrous smelter order issued or approved by EPA under Section 119 of the Clean Air Act.

(A major source is one with potential emissions of any air pollutant of 100 tons per year or more.)

COLORITE 017038



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278

NOV. 10 1980

31 2260 07002

TENNECO CHEMICALS
RIVER RD
FLEMINGTON NJ 08822

To Whom it May Concern:

As you may know, in 1977 the U.S. Congress amended the federal Clean Air Act to include a new Section 120, entitled "Noncompliance Penalty." (42 U.S.C. §7420.) This law required the Environmental Protection Agency ("EPA") to promulgate regulations under which mandatory penalties would be imposed against sources of air pollution which are out of compliance with applicable State or federal emission limitations or compliance schedules. The amount of this penalty is to be equivalent to the economic benefit which accrued to the source as a result of its delay in compliance. The purpose of the penalty is to remove any financial or competitive advantage which a source may have enjoyed as a result of its violation of pollution control laws.

On July 28, 1980, the EPA published in the Federal Register its final regulations implementing the requirements of Section 120. (40 CFR Part 66, 45 FR 50086 et seq.) These regulations identify in greater detail the types of noncompliance which may render a source liable for imposition of a noncompliance penalty. Subject sources include:

1. All major sources out of compliance with any emission limitation or compliance schedule which is part of a federally-approved State Implementation Plan (regardless of whether the source is subject to a federal or State consent decree);
2. All sources out of compliance with any emission limitations or related requirements established under Section 111 (New Source Performance Standards) or Section 112 (National Emission Standards for Hazardous Air Pollutants) of the Clean Air Act;
3. All sources out of compliance with an emission control requirement or compliance schedule set forth in a federal or federally-approved State judicial consent decree, extension, order or suspension; and
4. All nonferrous smelters which are out of compliance with a requirement imposed pursuant to a nonferrous smelter order issued or approved by EPA under Section 119 of the Clean Air Act.

(A major source is one with potential emissions of any air pollutant of 100 tons per year or more.)

COLORITE 017039

These regulations provide for the imposition of the noncompliance penalties for sources remaining out of compliance after January 1, 1981.

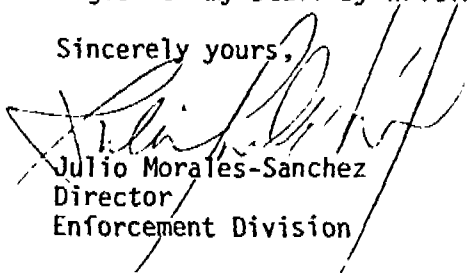
Our records indicate that yours is an air pollution source which falls into one of these four categories. We will be evaluating your compliance, and that of other air pollution sources within our jurisdiction, between now and the beginning of 1981. If the information in our possession at that time indicates that you remain out of compliance with an applicable emission limitation or compliance schedule, and we believe that imposition of a noncompliance penalty is appropriate pursuant to these regulations, we will notify you in writing of our conclusion. We will, at that time, also advise you in greater detail of your rights to contest either the finding of legal liability, and/or the size of any penalty.

The penalty itself is calculated using an economic benefit model designed by EPA and promulgated as part of the regulations. The derivation and use of the model, as well as the computer program for employing the model devised by EPA, are published in the same Federal Register cited above. The model utilizes various inputs reflecting both general economic factors and the manner in which a particular source finances the improvements necessary to comply with air pollution control requirements, such as the inflation rate, the interest rate at which the firm can borrow, the firm's equity share of any capital investment, and so on. These factors, together with the deferred costs of compliance and the period of time during which compliance has been postponed, are used in the model to determine the noncompliance penalty.

Sources can escape any liability for noncompliance penalties, or at least limit that liability, by making the necessary plans and expenditures to come into compliance prior to January 1, 1981, or as soon thereafter as possible. In addition, this letter is to advise you that EPA will be assigning differing priority levels to the initiation of noncompliance penalty proceedings against violating sources. Sources that have agreed to compliance schedules which are embodied in a federal or federally-approved State judicial consent decree, and which are meeting such schedules, will generally be assigned a lower priority for initiation of a penalty action. Sources on such consent decrees may also be eligible under the regulations to petition for an exemption from penalty liability.

If, as our records suggest, you are presently out of compliance with an applicable emission limitation or compliance schedule, we urge you to make every effort to come into compliance by the earliest possible date. We also invite you to enter into a consent decree with us which will establish a compliance schedule for you. If you have any questions about the noncompliance penalty program, or about the air pollution control regulations to which your source is subject, you may contact Mr. Walter Mugdan of my staff by writing to this address or by calling (212) 264-4434.

Sincerely yours,


Julio Morales-Sanchez
Director
Enforcement Division