



## CHEMICAL MANUFACTURERS ASSOCIATION

MEMORANDUM  
June 25, 1985

TO: Environmental Management Committee

FROM: William P. Gullledge *WPG*  
Alice R. Mayer *ARM*  
Fredric P. Andes *FPA*

RE: CMA Participation in Vinyl Chloride Litigation

On January 9, 1985, EPA withdrew proposed revisions to the vinyl chloride emission standards under section 112 of the Clean Air Act. The Natural Resources Defense Council (NRDC) has challenged that withdrawal in the U.S. Court of Appeals for the D.C. Circuit. That litigation will be the first case to decide how stringently EPA must set emission standards under section 112 of the Clean Air Act (the "ample margin of safety" issue). The case will therefore serve a precedent governing all future section 112 standards. Since many of the chemicals used or produced by CMA members are being considered for regulation under section 112, the case will have an important effect on CMA members' plant operations. Further, CMA's interest is not being adequately represented in the case.

We therefore recommend that CMA intervene, or participate as amicus curiae, in the case in order to present its position that section 112 should be interpreted to allow EPA to use a reasonable, risk management-based regulatory approach. The leaders of the Clean Air Act Revisions and Process Emission Regulations Task Group join in this recommendation. CMA would file joint briefs with the American Petroleum Institute, to ensure industry coordination. Briefing will not involve significant resources, since the relevant legal issues have already been researched for other section 112 litigation in which CMA is involved. The necessary resources have already been factored into CMA's budget for outside counsel assistance.

The vinyl chloride litigation has moved very quickly. As a result, the case has moved ahead of the briefing schedules of two other section 112 cases which began earlier, benzene and radionuclides, both of which CMA has intervened in. Further, it has only recently become evident that CMA's participation is needed. Therefore, we need permission to file the necessary papers with the court as soon as possible -- by Friday, June 28.

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the Vinyl Institute. The Institute will focus its efforts on technical issues involving the vinyl chloride standards rather than policy issues concerning the meaning of section 112. Therefore, further industry participation is necessary. API is interested in the case and in the possibility of filing a joint brief with CMA. This brief would enunciate the same position that CMA and API plan to take in the benzene case: that section 112 permits EPA to set standards taking into account technical and economic considerations. The research on this issue has basically been completed, so the effort should not involve significant resources.

#### RECOMMENDATION

We and the leaders of the Clean Air Act Revisions and Process Emission Regulations Task Groups recommend that CMA petition to intervene (or, if that is not feasible, to file as amicus curiae) in the section 112 vinyl chloride litigation. The filing should be done jointly with API, and should be completed as soon as possible.