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January 30, 1989

VIA TELECOPIER

Meredith M. Scheck
The Vinyl Institute
Wayne Interchange Plaza II
155 Route 46 West
Wayne, New Jersey 07470

Re: Review of OSHA Air Contaminants Rule for EDC

Dear Meredith:

This letter is intended to summarize our discussions on January 26 and 30 concerning the new permissible exposure limit (PEL) for ethylene dichloride (EDC) issued by the Occupational Safety and Health Administration (OSHA) on January 19, 54 Fed. Reg. 2332 (Jan. 19, 1989). EDC was but one of over 420 substances addressed in the air contaminants rulemaking. The former OSHA standard was 50 parts per million (ppm) and the American Council of Governmental Industrial Hygienists (ACGIH) threshold limit value (TLV) is 10 ppm. OSHA, however, proposed and adopted a 1 ppm PEL in keeping with a recommended exposure limit (REL) issued by the National Institute for Occupational Safety and Health (NIOSH). In the preamble to the final rule, the Agency justified the 1 ppm PEL as "necessary to protect workers against the significant risks of liver damage, gastrointestinal toxicity, and cancer, all material health impairments that are associated with exposure to ethylene dichloride."

The compliance deadlines are important. The final rule becomes effective March 1, 1989, but the start-up date for compliance using any combination of controls, including respirators, is September 1, 1989. The start-up date for compliance

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through engineering and work practice controls is December 31, 1992.

The avenues for possible relief open to the Vinyl Institute and its member companies are extremely limited. They are: (1) requesting that OSHA reconsider its decision, or (2) filing a petition for review with the court of appeals. While we may wish to notify the Agency of our concern, I am very skeptical that we will be successful in convincing the Agency to raise the PEL to 10 ppm. OSHA has taken a hard-line approach and with very few exceptions issued a final rule setting PELs at the proposed level. Since an industry group interested in carbon disulfide has already filed a petition for review with the court of appeals on this rulemaking, the prospect of litigation on the EDC issue would not be viewed as very significant by the OSHA staff and provides us with little if any leverage for change.

Under section 6(f) of the Occupational Safety and Health Act, 21 U.S.C. § 655(f), any person adversely affected by the standard may file a petition for review within 60 days, in this case March 20, 1989. If we are interested in seeking a stay of the rule, we should act as quickly as possible. The longer we take to file a request for a stay, the less likely we are to be successful.

To overturn the Agency's decision on appeal, we would have to demonstrate that OSHA's interpretation of the health literature is arbitrary and capricious or not supported by substantial evidence. An alternative basis for overturning the standard is to show that it is not economically or technologically feasible to limit worker exposure to 1 ppm through engineering and work practice controls or through respiratory controls.

Both of these arguments may be difficult to pursue successfully. As for the propriety of the 1 ppm standard itself, we will be asking the court of appeals to substitute its review of the health literature for the "expert" analysis by OSHA and NIOSH. The feasibility issue carries more promise, but the court may feel inclined to duck that issue given the fact that OSHA has the burden of proving the feasibility of meeting the PEL through engineering controls during enforcement proceedings. See, 54 Fed. Reg. 2366, col. 2-3.

I trust that this brief overview will adequately summarize our conversations. Since I have been thoroughly immersed in this rulemaking and participated extensively in the

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hearing process, I would be happy to discuss these options in more detail.

Cordially yours,



Peter L. de la Cruz

cc: Larry Thomas
Robert W. Sherman
Lewis R. Freeman, Jr.
Margaret Rogers