

TO: R. Flammer, R. Swantkowski, S. McGuire

FROM: T. G. Grumbles
DATE: January 6, 1987

Interoffice
Communication

SUBJ: LABELING OF PVC PRODUCTS

VISTA

As a result of OSHA Hazard Communication Standard enforcement activity and general end user concern regarding labeling of products the issue of warning labels on PVC products is once again becoming an issue.

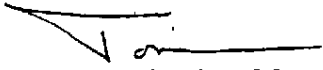
There remains inconsistent practice in the industry regarding placement of the OSHA VCM warning label and most recently additional warning labels are being placed on PVC containers by some producers and sellers. This is apparently in response to the hazard communication standard. This inconsistency in the industry is resulting in customer inquiries regarding the "absence" of labels and has the potential to become a commercial issue.

Specifically, one of our customers has been cited by Kentucky State OSHA for having unlabeled compound containers (Vista product) in his plant, Premiere has been asked why we weren't labeling by a major customer, and my group has probably answered a dozen inquiries in the last 12 months regarding PVC labeling. The Vinyl Institute is working with OSHA to get an official opinion on the PVC labeling questions, but has had little success as yet.

Vista's position remains that the OSHA VCM warning label is not required on products containing less than 8.5 ppm and that PVC products (resin, dry blend, compound) are not hazardous materials as defined by the Hazard Communication Standard and therefore, require no labels. We feel these positions are scientifically valid and appropriate from a "real hazard" standpoint.

Statements regarding additive package content, processing vapors and fire hazards are appropriate for the Material Safety Data Sheets.

I would like to meet in the near future to discuss the above to assure we have a clear understanding and position on these issues. The PVC sales force should be well informed on the above.


Thomas G. Grumbles

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Attachment

cc S. Saborsky, E. Kieschnick, J. Nelson

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the proposed rules lack a firm basis in statutory or scientific authority. The comments were submitted on September 26, 1986 and an addendum providing more technical data was submitted on October 20, 1986.

EPA is currently evaluating comments submitted on the proposal. A final rule is not expected until the Fall of 1987.

4. Land Ban Disposal Rule Issued

On November 7, 1986, the EPA published a final rule implementing congressionally mandated prohibitions on land disposal of certain hazardous waste. 51 Fed. Reg. 40,572. In its notice, EPA established, among other things, procedures for setting treatment standards for hazardous wastes, for granting nationwide variances from statutory effective dates as well as evaluating petitions for a variance from the treatment standard.

Specifically, EPA has promulgated treatment standards and effective dates for hazardous wastes included in the first phase of land disposal prohibitions under the Resource Conservation and Recovery Act (RCRA). These include certain dioxin and solvent-containing hazardous wastes. This is the same document in which EPA published the Toxicity Characteristic Leaching Procedures (TCLP) for use in determining whether these wastes meet applicable treatment standards. The rule became effective on November 8th.

C. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

1. PVC Labeling Dispute Leads to Meeting With OSHA

As part of its implementation of the Hazard Communication Standard, OSHA has been conducting compliance inspections and reviewing product labeling and material safety data sheets (MSDS). As a result of these inspections, some polyvinyl chloride (PVC) producers and compounders have received citations for failure to label PVC resin or compound as a carcinogen under OSHA's vinyl chloride and hazard communication standards or for failure to indicate PVC's carcinogenicity in MSDSs. We have been attempting to obtain a letter from OSHA confirming that: (1) PVC itself is not a hazardous chemical under the hazard communication standard and (2) vinyl chloride homopolymer and copolymer resins and compounds do not trigger the labeling and training provisions of the OSHA vinyl chloride standard when no exposure to vinyl chloride monomer at or above the action level of 0.5 ppm is anticipated.

In a meeting on October 23rd with Frank A. White, Deputy Assistant Secretary for Occupational Health, and other OSHA staff members, we again

presented our views on this issue. At the meeting, staff member Dave Smith suggested that we forward to him copies of any recent citations issued by OSHA inspectors relating to this matter for his coordinated handling. We agreed to provide the Agency with the information and are requesting that any pertinent OSHA citations be forwarded to us. We are awaiting the Agency's response on our request.

* * *

In October, we met with the National Paint and Coatings Association (NPCA) to discuss OSHA's May directive requiring "target organ effect labeling" for hazardous materials. Apparently, in the May directive OSHA has elected to view labeling requirements under the HCS as the primary, if not the sole source of hazard information. In so doing, the Agency has moved significantly from a performance-oriented standard that incorporates all aspects of the hazard communication program to a comprehensive labeling standard. NPCA subsequently met with OSHA. The Agency was sufficiently receptive to NPCA's concerns so that the association has decided to work with OSHA to try to reach agreement.

2. Court Upholds Federal Law Over
Right-To-Know Law in Akron,
Ohio, But Not in Pennsylvania

The extent to which the Hazard Communication Standard, 29 C.F.R. § 1910.1200 (HCS or the Standard), promulgated by the Occupational Safety and Health Administration (OSHA), preempts, inconsistent state "right-to-know" laws has previously been the subject of several court rulings. Earlier this year, however, those segments of industry which produce and utilize hazardous chemicals were startled by a federal court ruling which held that local "right-to-know" laws are not displaced by the Federal Standard. Due to the serious consequences of this ruling, which involved the City of Akron's right-to-know law, SPI joined other industry groups in filing a brief in the appeal of that decision.

As the result of these efforts, the lower court decision has been reversed. In a ruling issued on September 17, 1986, Ohio Manufacturers Association v. City of Akron, No. 86-3191 (6th Cir. 1986), the U.S. Court of Appeals for the Sixth Circuit reversed the decision of U.S. District Judge Ann Aldrich, and held that the Akron ordinance is preempted to the extent that it attempts to regulate employee safety in the manufacturing sector.

Nevertheless, a judicial decision on this issue in Pennsylvania threatens to make right-to-know compliance substantially more difficult for chemical manufacturers and suppliers doing business in that state. On December 12, 1985, the U.S. District Court for the Middle District of Pennsylvania held that