

MEMORANDUM

Re: Legal Issues Raised by the Proposed Amendments to the National Emission Standard for Vinyl Chloride

On June 2, 1977, the Environmental Protection Agency proposed amendments to the National Emission Standard for Vinyl Chloride. 42 Fed. Reg. 28154-59 (1977). The National Emission Standard for Vinyl Chloride (the "Vinyl Chloride Standard"), 40 CFR §§61.60 et seq., was promulgated by EPA on October 21, 1977 pursuant to Section 112 of the Clean Air Act, as amended, 42 U.S.C. 1857c-7. 41 Fed. Reg. 46560-73 (1976).

The Society of the Plastics Industry, Inc. ("SPI") already has commented on EPA's action in proposing the amendments and, to the extent we have been able to do so, on the proposed amendments themselves. At the July 19 meeting, SPI noted that the proposed amendments raise several legal issues. In addition to our other comments, this memorandum will raise some of the legal issues we believe the Agency must consider before taking final action on the proposed amendments.

Among the issues that concern us that deserve careful consideration by EPA are the following:

1. Whether, under Section 112 of the Clean Air Act ("Section 112"), EPA properly may establish a goal of zero emissions of vinyl chloride; and

whether EPA properly may do so in the absence of adequate information that a zero emission goal is necessary to provide an ample margin of safety to protect the public health.

2. Whether EPA has authority to promulgate significant and substantive amendments to the Vinyl Chloride Standard, promulgated under Section 112, in the absence of adequate new information on which to base such amendments. (Although some sections of the Clean Air Act expressly authorize EPA to promulgate amendments to standards promulgated pursuant to those sections, Section 112 does not. SPI already has pointed out that EPA has not cited an adequate basis of information for the proposed amendments. Presently available information indicates that there is no new information.)
3. Whether EPA has authority to promulgate regulations under Section 112 to regulate one pollutant, vinyl chloride, that contain different and more stringent emission standards for new sources than for existing sources.
4. Whether EPA has authority to promulgate regulations under Section 112 that automatically would

lower, three years from promulgation of the regulations, the emission limit for existing sources.

a. If so, whether EPA has authority to approve an interim emission limit for a source that is unable to comply with the limit so automatically lowered; and whether EPA has authority to do so in the absence of specified criteria in the regulations for approving such an interim emission limit.

5. Whether EPA has authority to promulgate regulations under Section 112 that restrict the residual vinyl chloride concentration in polyvinyl chloride resins, which residual vinyl chloride is not an air pollutant and is not emitted by sources to which the regulations apply.

a. If so, whether EPA has authority to regulate the residual vinyl chloride concentration in polyvinyl chloride resins by promulgating regulations under Section 112:

(1) that contain different and more stringent requirements for resins first produced by a plant after

June 2, 1977 than for resins
produced before June 2, 1977 by
that plant; or

- (2) that contain different and more
stringent requirements for a plant
that did not produce any particular
resin before June 2, 1977 than for
a plant that did produce that same
resin before June 2, 1977.

6. Whether EPA has authority to promulgate regulations under Section 112 that contain design or process standards, or whether EPA has authority to promulgate such regulations that were proposed when EPA did not have such authority.
7. Whether EPA has authority to promulgate regulations under Section 112 containing emission offset requirements for vinyl chloride emissions.
8. Whether EPA has adequately considered the economic and environmental impacts of the proposed amendments.
9. Whether EPA has complied with procedures required by the Clean Air Act and/or EPA regulations, directives, guidelines and manuals in determining whether to propose or promulgate amendments to the Vinyl Chloride Standard and in determining

what amendments to propose or promulgate.

10. Whether the decision and commitment to propose amendments to the Vinyl Chloride Standard was made by an EPA official authorized to make such decisions and commitments.
11. Whether EPA has complied with the mandatory requirements of subsection 117(f) of the Clean Air Act.
12. Whether EPA properly could re-promulgate as amendments to the existing Vinyl Chloride Standard, requirements already contained in the existing Vinyl Chloride Standard, thereby possibly prohibiting vinyl chloride emissions from existing sources without new waivers of the re-promulgated requirements.
13. Whether there is an adequate basis for promulgating the proposed amendments.

SPI believes that EPA's proposal of the amendments to the existing Vinyl Chloride Standard raises serious legal questions. The promulgation of any of the proposed amendments would be legally objectionable. Accordingly, SPI urges the Agency to withdraw the proposed amendments.