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RECEIVED
OCCUPATIONAL SAFETY & HEALTH

TO: All Members of:

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SPI Food, Drug and Cosmetic
Packaging Materials Committee;
General Polyvinyl Chloride Interest
Mailing List;
Ad Hoc Liquor Bottle Committee;
Plastic Pipe Institute
(Executive Board);
Plastic Bottle Division
(Voting Representatives);
SPI Executive Committee;
SPI Public Affairs Committee;
VC and PVC Producers Committee

BWD FMS
JDR WAR MHZ FILE

Ladies and Gentlemen:

Late Friday afternoon we received the unhappy word that a Decision was filed in the United States Court of Appeals for the Second Circuit unanimously denying the industry's Petitions for Review of the Occupational Safety and Health Administration's (OSHA) Standard for Occupational Exposure to Vinyl Chloride. Under the terms of the Court's opinion, 60 days "lead time" will be allowed before the Standard, as originally written, will become effective. This delayed effective date also applies to the respiratory protection requirements of 29 C.F.R. §1910.93q(g)(1) which allows employees an option during the first year as to whether a respirator is actually worn at concentrations of less than 25 ppm.

The Decision, dated January 31, 1975, was written by Mr. Justice Clark. Official copies of the Court's opinion will be sent to you as soon as they become available.

The options now available to industry, should it desire to continue its legal challenge of the Standard, are to Petition the United States Court of Appeals

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for the Second Circuit for a Rehearing en banc or to Petition the United States Supreme Court for a Writ of Certiorari. Without commenting on either of these potential courses of action at this stage, the following is a brief outline of what would be involved in each course, procedurally speaking:

1. A Petition for Rehearing en banc would be a request that the entire Second Circuit Court panel reconsider the judgment. Such a Petition must be filed within 14 days and, while the Court is considering the Petition, formal entry of the judgment is suspended. If the Petition were granted, the Court would review the case and either affirm the decision or vacate it and write a new decision. Ordinarily, these cases are considered on the basis of the briefs already filed and the contents of any Petition for Rehearing. No new oral argument is allowed. If the Petition for Rehearing were denied, the judgment would become final seven days after the denial.

2. A Petition for a Writ of Certiorari may be filed within 90 days after entry of the Court of Appeals judgment. The Petition would request the Supreme Court for a discretionary review of the case in a manner very similar to an appeal. During the pendency of such a Petition, the judgment may be stayed on Order of the Court of Appeals or a Supreme Court Justice. If the Supreme Court were to issue a Writ of Certiorari, the Court of Appeals decision, if stayed, would continue to be stayed while the case is briefed and argued in the Supreme Court. A refusal of the Supreme Court to issue a Writ of Certiorari would mean it refused to hear the case. If this were to occur, the stay would be dissolved and the Court of Appeals decision would become immediately effective.

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Pending our having had much more of an opportunity to consult with other counsel and the leadership of the industry, we shall make no further comment at this time regarding our views about the advisability of pursuing the case in any specific way. We will keep you posted on further developments, as usual, and will send you reproductions of the Court's Slip Opinion, probably tomorrow.

Cordially yours,

Norman C. Litchman