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September 30, 1976

Mr. Edward Reich
Environmental Protection Agency
Room 3202, Mall Building
4th and M Streets, S.W.
Washington, DC 20460

Note: This letter is a composite
of questions from a previous
letter and answers from the
letter to Mr. Edward Reich.

Added comments from Mr.
Reich November 16, 1976.

Dear Mr. Reich:

On behalf of representatives of the Technical Committee
of the Society of the Plastics Industry's VCM/PVC Producers
Group, I wish to thank you for meeting with us on Wednesday,
September 29, 1976 to explain EPA's general policy for enforce-
ment of standards applicable to hazardous pollutants and to
advise us of the Agency's tentative plans for implementing the
proposed Vinyl Chloride Standard. We appreciate your invita-
tion to join in efforts to insure a fair enforcement program
in the public interest.

I would like to outline our understanding of the infor-
mation provided to us at the meeting in response to certain
questions raised by representatives of the Technical Committee.

Q. 1. When will EPA's Vinyl Chloride enforcement guide
be available? (EPA is beginning work on one to instruct
regional offices on how to enforce the new Standard.)

A. 1. EPA indicated that it is working on a general enforce-
ment guideline and a more specific inspection manual for dis-
tribution to the regions. We understand the enforcement guide-
line may be completed within three weeks but that the inspection
manual, which will be contracted out, will not be ready for
several months. You indicated that it is standard practice
for industry to meet with contractors who prepare inspection
manuals, so that the manuals reflect as accurately and com-
pletely as possible the practical aspects of production. We
understand this practice will be followed in the case of the
Vinyl Chloride Standard. We also understand that current
guidelines, S.17-S.20, will apply in general to the new Standard
insofar as they do not pertain specifically to other hazardous
pollutants.

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Q. 2. What is EPA's policy regarding plant compliance when the Agency does not reach a decision on a waiver request within the required 90 day period.

A. 2. While EPA indicated it expects to be able to process any waiver applications within 90 days, it is aware there may be administrative reasons causing some delay beyond that period.

We understand that so long as each plant files its waiver request on a timely basis, delays caused by factors within EPA would be unlikely to prejudice any company. In short, the Agency's general policy, assuming full cooperation from a company, is not to initiate enforcement action prior to acting on a waiver request.

Q. 3. EPA needs to clarify its procedure on accepting "equivalent methods" of complying with the Standard.

(a) We should confirm that equivalency can be applied for not only at the outset but at any time. Additional questions are (b) What is EPA policy if it fails to act on a request

for equivalency within 90 days. Would waiver become automatic or not; (c) If the equivalency request is rejected within 90 days or later, will EPA automatically grant a waiver or will additional information have to be submitted.

A. 3. We understand that EPA expects each company which seeks an equivalency to submit a waiver request at the same time. It is necessary to specify in any waiver application on a point by point basis where equivalency is being sought. Equivalent methods will not generally be approved if required methodology would insure earlier compliance. However, after compliance is achieved, equivalent methods can again be sought.

I concur. However, seeking equivalent methods after compliance is achieved is acceptable provided that the source remains in compliance during the installation or initiation of equivalent methods.

Q. 4. Advise EPA of industry's view that since the Standard Support document says EPA does not regard vinyl chloride emissions as posing any "imminent endangerment" to health, plants seeking waivers should not have to prove the absence of such a danger in seeking waivers as required by Section 112. If EPA agrees, then the only burden on companies would be to show they need time to install controls.

A. 4. You indicated that in light of EPA findings on the health issues, it would be unlikely the companies would have an affirmative obligation in seeking waivers to prove the absence of imminent endangerment to health because of the manufacture of PVC/VCM; the absence of such a threat is assumed by the Agency. While you reserve the right to comment on this issue in further detail, you indicate that waiver requests will primarily involve the issue of installation of necessary controls.

Q. 5. What procedure does EPA follow if it decides to terminate a waiver prior to the time specified in the waiver? Will there be notice and opportunity to be heard?

A. 5. On the question of whether EPA might terminate a waiver, you indicate that EPA has not done so in the past. It is generally EPA policy to enforce waivers specifically rather than revoke them. Generally, before enforcement steps would be undertaken there would be discussion with the party involved.

Q. 6. What is EPA's standard operating procedure with respect to enforcement personnel visiting plants? How often will they come? Will there be notice? How will the Agency determine whom to visit first? What will they request?

A. 6. With respect to on-site inspection, you indicated it is likely that within one year all plants will be inspected. There is no standard operating procedure on when inspections occur, because they will be fit into each inspector's personal schedule. Generally there is a 24 to 48 hour notice to a plant prior to a visit. EPA does not regard this as a requirement of law. The information requested on any visit would vary from plant to plant. Normally EPA would furnish a plant with a questionnaire and provide time in which to reply.

Q. 7. Ask EPA to indicate which states, if any, have expressed an interest in taking over the main brunt of enforcement as allowed by Section 112.

A. 7. Apparently EPA has no information at this time on which states, if any, may request to take over enforcement responsibilities as authorized in Section 112. In any case, the waiver process cannot be delegated to the states and will be handled exclusively by EPA.

You are correct that EPA has no information as to which state and local agencies may request enforcement responsibilities for vinyl chloride. As to the waiver process, EPA has not to date delegated this to state and local agencies. However, we are currently reviewing whether the Agency should consider delegation in the future. I do not expect a decision in the next 90 days which would affect the vinyl chloride waiver process.

Q. 8. Ask EPA to explain the sentence at the bottom of page two of the Memorandum of the Assistant Administrator for Air and Waste Management to the Administrator (July 16, 1976) that "During malfunctions, we do not believe plants should be allowed to emit excess emissions, and therefore are requiring them to shut down immediately." Ask the Agency to reconcile this language with its response to comment 3 on page 2-68 of the Standard Support and Environmental Impact Statement, Volume II.

when on-site inspections or compliance tests should be conducted. Excess emissions obtained pursuant to this section will not in themselves be a violation of the standard.

Section 61.70(c) (2) requires that the owner or operator of a polyvinyl chloride plant who elects to use the stripping operation to attain the emission level in §61.64(e) must report a record of the vinyl chloride content in the polyvinyl chloride resin. Since this is a means for achieving compliance with the standard, any emissions in excess of the standard will be considered a violation and may be enforced directly.

Similarly §61.70(c) (3) requires that the semiannual report include a record of the emissions from each reactor opening for which an emission limit is prescribed in §61.64(a) (2). Again, since this is a means for determining compliance with the standard, any emissions in excess of the standard will be considered a violation and may be enforced directly.

Section 61.68 requires the use of a vinyl chloride monitoring system on a continuous basis for the purpose of monitoring emissions from sources for which emission limits are prescribed (i.e., the 10 ppm limit). Any emissions recorded in excess of this limit must be reported to EPA (§61.70(c) (1)). This data will be used by EPA as a method for determining

Q. 9. For those plants which do not request a waiver, and therefore initiate required emission tests, what will EPA's policy be if at the end of the testing period it is determined that the plant may be in violation of a part of the Standard? Will notice and opportunity to be heard be provided? Will the plant be permitted to apply for a waiver?

A. 9. For those plants which believe they are in compliance with the Standard and initiate emission tests, but which fail the test, enforcement action would be likely. They would not be given an opportunity to apply for a waiver. However, EPA indicated that it would look at each situation on a case by case basis to determine a fair resolution. We understand that a plant planning to ask for a waiver of compliance does not need to ask for a waiver of testing, because that would be automatic when there is non-compliance with the Standard.

Q. 10. Request EPA to grant an automatic, blanket waiver to all companies re research and development in light of recent developments.

A. 10. With respect to the industry's request on the basis of new information for a possible blanket waiver of compliance for all companies concerning the research and development requirement, EPA indicated that it would be necessary to consult further with Research Triangle Park in Durham. You indicated that generally EPA must enforce a Standard as promulgated even if the Agency might eventually amend certain parts of it. However, we understand that if you are advised by Durham that revision of the research and development section of the final Standard is imminent, it would be a factor in your determination of how to use available enforcement resources and might result in reconsideration of the request for a blanket waiver in this area.

10. The entire research and development issue surrounding these regulations is under investigation by the Office of Air Quality Planning and Standards in Durham, N.C. Any notification regarding this issue will come from that office. In the meantime these regulations will be enforced as they appear in the Federal Register.

Q. 11. Is there an EPA standard operating procedure on the question of holding companies or individuals responsible for "operator error"?

A. 11. Your position on whether to hold a company responsible for operator error is to determine each case on its own facts. EPA would look to determine whether error was avoidable, what steps have been taken to assure it will not happen again, and related factors.

Q. 12. Is there an SOP on holding conciliation conferences and seeking voluntary enforcement with respect to alleged violations of a Section 112 standard before formal enforcement action is undertaken?

A. 12. EPA believes there is no requirement for conciliation prior to enforcement of Section 112 standards. However, you indicated that EPA retains some discretion to meet with an alleged offender prior to any specific action being taken.

Q. 13. Will regional offices be required to clear proposed enforcement action with the enforcement and general counsel's office in Washington or will they be permitted to act autonomously?

A. 13. With respect to the obligation, if any, of regional offices to consult with the enforcement office in Washington before taking action, it is your view that generally no formal approval is required. Apparently as a matter of practice, the regions seek Washington approval for "unique" situations that may occur.

Q. 14. How binding on the regional offices is any advice issued from Washington? How binding would any agreements between Washington and the industry be?

A. 14. You indicated that formal interpretations of standards by the national office are binding on the regions but that they retain discretion in other situations. EPA would generally regard the states as being bound by the same guideline, i.e., where the state is enforcing EPA's regulations it would have to accept any binding determinations; if the state has adopted its own regulations and is enforcing them as a matter of state law, a different conclusion might be reached.

If a state should adopt its own regulations and enforce them rather than enforcing EPA's regulations, it may reach different conclusions. However, these conclusions must be at least as stringent as EPA's interpretation of the regulations.

Q. 15. How will each company's required standard operating procedure be evaluated by the regional offices? Who will do the evaluating and what standards will they apply in measuring the acceptability of a company's plans?

A. 15. Each regional office is responsible for considering the acceptability of each company's standard operating plan as required by certain parts of the Standard. It is our understanding that regional officials seek guidance as needed from Research Triangle Park.

Statement - 16. EPA reviews on a case by case basis the requests of each company for approval of the compliance plan required to be filed with a waiver request. We understand that these plans may include the establishment of certain projects to be completed seriatim, rather than conducted on a simultaneous basis. Whether or not such plans would be acceptable would be determined by EPA based on the overall requirements imposed by the Standard.

I concur. However, EPA must act to ensure compliance as expeditiously as practicable.

If you have any questions regarding our understanding of the points raised at the meeting, I would appreciate your letting me know so that we can clarify the record.

Further, we would be appreciative if you or the other members of your staff and Susan Wyatt could indicate more specifically to us those areas in which additional information from the industry would be helpful. One such area, on which we will respond shortly, is an appropriate method to determine hourly production.

Finally, while we do not in all cases agree with your analysis of the requirements imposed under Section 112, related parts of the Clean Air Act and the regulations, and reserve all rights thereunder, we wish to repeat our commitment to

working with your Agency to insure a fair enforcement process in the public interest. We appreciate your cooperation in accomplishing this goal.

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