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October 3, 1988

Central Docket Section (LE-131)
ATTN: Docket No. OAQPS 79
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Proposed Rule for National Emission Standards
for Hazardous Air Pollutants; Benzene Equipment
Leaks; 53 Fed. Reg. 28,496 (July 28, 1988)

Dear Sir or Madam:

On July 28, 1988, the U.S. Environmental Protection Agency (EPA) published a notice of proposed rulemaking (NPR) for certain National Emission Standards for Hazardous Air Pollutants (NESHAP). Although specifically addressing benzene equipment leaks, EPA makes it very clear that the "final policy approach adopted in this proceeding and the relative weight it gives to the various risk measures and uncertainties will become the framework for decisions on future NESHAP." 53 Fed. Reg. at 28,497. Additionally, the policy approach selected is intended to make EPA's actions consistent with National Resources Defense Council, Inc. v. EPA, 824 F.2d 1146 (1987) ("Vinyl Chloride"). As a party to the Vinyl Chloride case, the Society of the Plastics Industry, Inc. (SPI)* and its Vinyl Institute is pleased to submit comments on this Notice of Proposed Rulemaking. In general, SPI supports Approach A, the case-by-case approach which considers all health information

*/ SPI, the major national trade association of the plastics industry, is a corporation organized under the Not-for-Profit Corporation Law of the State of New York. Its 2,000 member companies and individuals and 49 operating units include those who supply raw materials; process or manufacture plastics or plastics products; and engineer or construct molds or similar accessory equipment for the plastics industry. The majority of SPI members are the processors and converters of plastic resins into end products which represent 75% of the dollar volume sale of plastics in this country. (cont. on next page)



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and risk factors, as the only proposed approach that is consistent with the Vinyl Chloride decision and the mandates of the Clean Air Act.

A. SPI-Vinyl Institute Interest

Principally through the Vinyl Institute, SPI has extensively participated in the NESHAPs process. This included the initial National Emission Standard for Vinyl Chloride, 41 Fed. Reg. 46564 (Oct. 21, 1976); the proposed amendments, 42 F.d. Reg. 29006 (June 7, 1977); and EPA's notice withdrawing the 1977 proposal and simultaneously proposing a new set of revisions to the vinyl chloride standard, 40 C.F.R. § 61.60 et. seq. 50 Fed. Reg. 1182 (Jan. 9, 1985).

More significant to this rulemaking, the Vinyl Institute participated as an Intervenor-Respondent in National Resources Defense Council, Inc., (NRDC) v. EPA, 824 F.2d 1146 (D.C. Cir. 1987) ("Vinyl Chloride"). The Vinyl Institute's comments and briefs submitted in the Vinyl Chloride proceedings addressed specific areas where EPA has now requested information, namely: (1) risk determination (2) acceptable level of risk, and (3) ample margin of safety.

The Court of Appeals remanded the Vinyl Chloride case to the Agency for further action. Therefore, the Vinyl Institute and SPI have a particular interest in the outcome of this rulemaking which will ultimately influence the Agency's handling of Vinyl Chloride remand.

B. Support for CMA and API Statements

We have had the opportunity to review the public hearing testimony and the comments prepared by the Chemical Manufacturers Association (CMA) and the more specific benzene related comments submitted by the American Petroleum Institute

(cont. from previous page) Members of the Vinyl Institute include Air Products & Chemicals, the BFGoodrich Chemical Group, Borden Chemical, Certain-Teed, Dow Chemical U.S.A., Occidental Chemical, PPG Industries, Shintech and VISTA Chemical. Members of the Vinyl Institute account for approximately 82% of the domestic production of vinyl chloride and 85% of the domestic production of polyvinyl chloride.

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(API). We support both CMA's and API's position that Approach A, the case-by-case approach, is the only feasible approach to setting standards for hazardous air pollutants because it is the only proposed approach that evaluates all available information about a particular chemical, including the quality and quantity of health effects data and appropriate risk assessment methods. Accordingly, we endorse both CMA's and API's submissions and offer the following additional comments in support of Approach A and specific items addressed in the NPR.

C. The Vinyl Chloride Case Requires Adoption of Approach A

To be consistent with the approach established under the Vinyl Chloride decision, EPA must evaluate all scientific data in determining "acceptable risk to health" and then "decide what risks are acceptable in the world in which we live." As the Agency acknowledges, Approach A, the case-by-case approach, is the only approach that allows for consideration of all relevant health information, both qualitative and quantitative. The Vinyl Institute believes Approach A is the most consistent with the Vinyl Chloride decision and is the most scientifically sound approach for determining acceptable risk.

In determining acceptable risk as outlined by the Vinyl Chloride decision, the court concluded that Congress directed EPA to provide an "ample margin" of safety to account for any scientific uncertainties in deciding what constitutes a safe level. Additionally, Congress provided the EPA with discretionary powers under the statute to deal with these scientific uncertainties. While the Court concluded that the Congressional mandate to provide "an ample margin of safety" "to protect public health" requires the Administrator to make an initial determination of what is "safe" the "decision does not require a finding that safe means 'risk-free'" ^{1/}

^{1/} Zero risk is not required by Section 112. As the Supreme Court has held:

"[S]afe" is not the equivalent of "risk-free." There are many activities that we engage in every day--such as driving a car or even breathing city air--that entail some risk of accident or material health impairment; nevertheless, few people would consider these activities "unsafe." (cont. on next page)

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Moreover, the court's opinion, prior case law and common sense all suggest that EPA consider whatever credible health information is available at the time a decision is made.

In this regard, the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live.

Vinyl Chloride, 824 F.2d at 1,165.

The other proposed approaches, B, C and D respectively, focus on a single parameter of risk that is extremely inflexible and creates risk values based upon upper boundary confidence limits. These approaches directly conflict not only with the approach set forth by the Vinyl Chloride decision, but with EPA's own Guidelines for Carcinogen Risk Assessment. 51 Fed. Reg. 33992 (1986). In August 1988, the Agency announced its intent to review the 1986 Guidelines for Carcinogenic Risk Assessment. 53 Fed. Reg. 32656 (Aug. 26, 1988). The Notice emphasized that one purpose of the Guidelines was to "encourage research and analysis that will lead to new risk assessment methods and data" which would be used to improve and revise the Guidelines. The Guidelines were developed and published with the understanding that risk assessment is an evolving scientific undertaking and that continued study would lead to change. Thus, reliance upon a fixed number or a single numerical risk criterion under this rulemaking is inappropriate.

D. Conclusion

SPI and its Vinyl Institute believe regulation of National Emission Standards for Hazardous Air pollutants must be on a case-by-case approach. Given the inherent limitations

(cont. from previous page) Industrial Union Dept. AFL-CIO v. API, 448 U.S. 607, 642 (1980). See also Ethyl Corp. v. EPA, 541 F.2d 1, 18 n.33 (D.C. Cir. 1976), cert. denied, 426 U.S. 941 (1976). Indeed, if zero risk were required, the Administrator would have no need to exercise any judgment in setting emission levels, which is specifically what Section 112 requires him to do. Perhaps for this reason, even the panel dissent rejected NRDC's zero risk argument. See NRDC v. EPA, 804 F.2d 710, 735-36 (D.C. Cir. 1986), vacated, 810 F.2d 270, 824 F.2d 1146 (1987) (en banc).

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of a single parameter of risk in the face of evolving scientific information on the hazards associated with various substances and the high degree of uncertainty associated with absolute risk, a case-by-case approach and assessment of all available health information is the only appropriate approach in determining acceptable risk to protect public health.

SPI appreciates this opportunity to offer comments on this rulemaking. We would be happy to provide additional support for the comments that the Agency might need. Whatever the outcome of this proceeding, artificial limitations on the type of scientific or technical information that the Agency will consider for the remanded vinyl chloride standard must be viewed as arbitrary and improper.

Sincerely,

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