

cc George Shirley
File - 603

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June 26, 1989

To: SPI Vinyl Institute
Legal Committee
Health Safety and Environment Committee
EDC Task Group

Re: Litigation on OSHA EDC Air Contaminants Rule

Dear Committee Member:

In our letter of June 8, 1989, we solicited responses from member companies concerning a settlement offer from the Occupational Safety and Health Administration (OSHA) involving our judicial challenge to the revised permissible exposure limits (PELs) for ethylene dychloride (EDC). In exchange for dismissing our challenge to the revised PELs, OSHA tentatively offered to provide a formal opinion letter stating the Agency's position that the use of half-face mask air purifying respirators are appropriate and adequate for purposes of complying with the new EDC PELs.

There appears to be no substantial support among Vinyl Institute members for dismissing the petition on this basis. Most companies stated their view that OSHA had improperly reduced the eight-hour time waited average (TWA) limit to one part per million (ppm) and that we should continue to seek judicial relief. Although one or two companies reported that they would willing to live with the proposed settlement, no one expressed any opposition to proceeding with litigation. Therefore, we will proceed do so. To this end, we have filed a the enclosed docketing statement with the U.S. Court of Appeals with the 11th Circuit. Although the court has not establish a briefing schedule, we anticipate that the briefs will be due no sooner than late August, 1989.

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Having resolved to go forward with the judicial challenge, we are still confronted with the problems posed by the need to comply with the new PELs beginning in September 1989. We will now explore OSHA's willingness to grant a stay so that the 50 ppm TWA remains in effect during the pendency of the litigation. If OSHA seems unwilling to do so, we will also explore whether the Agency would recognize the use of half-face mask air purifying respirators as an appropriate interim step in exchange for our withdraw of the administrative petition for a stay and reconsideration filed with the Agency, as well as our agreement not to seek a stay from the court of appeals. If we cannot obtain a satisfactory resolution with the Agency, we have until July 31, 1989 to file request for a stay with the court of appeals.

We trust that everyone will be agreeable to proceeding in this fashion. If anyone has serious reservations, please contact me. I will report promptly on OSHA's handling of our pending request for a stay and reconsideration.

Cordially yours,


Peter L. de la Cruz

Enclosure

cc: Larry Thomas
Robert W. Sherman
Meredith M. Scheck

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