



COMPRESSED GAS ASSOCIATION, INC.
500 FIFTH AVENUE • NEW YORK, N.Y. 10110 • (212) 354-1130

November 24, 1980

To: CGA Vinyl Chloride Committee

Subject: Proposed Rule, Environmental Protection Agency

Gentlemen:

The attached notice from EPA calls for comment by January 1981 on some revisions to the testing requirements for vinyl chloride as a "Hazardous Air Pollutant".

The Administrator states his determination that it is not necessary to follow the usual procedure of notice, industry comment, hearing and agency response because the revisions are "minor and technical".

Please determine if cognizant personnel in your company have received this notice directly or through another referral circulation and advise on the return form attached.

A CGA comment, if any by the Committee, should be drafted before the close of 1980 in order to make sure of its preparation and transmittal by the required date.

Because of the deadline for comment to EPA, it will not be feasible to prepare or coordinate a CGA reply as an agenda item for the next regular meeting of the Vinyl Chloride Committee which will be held at the Fairmont Hotel, San Francisco during the 68th Annual Meeting of the Association, during the week of January 25, 1981. (Action taken and additional discussion can, of course, be considered and this item will appear on the published agenda.)

To effect a timely review of this notice and draft CGA comment, it is requested that you complete the enclosed reply form addressed to Chairman E. J. Wilcox, copy to this office for summary and committee file.

Thank you.

Very truly yours,

J. C. Crawford

JCC:ls
Attachments

COLORITE 017087

TO: CGA VINYL CHLORIDE COMMITTEE

RE: EPA Notice of Rulemaking Changes
40 CFR Part 61
AP-FRL 1563-1

1. On the referenced notice as published in the FEDERAL REGISTER, my comment is as follows: (Use reverse or additional sheets if necessary)

COMMENT _____

2. A separate response to EPA for my company: _____

_____ is being prepared

_____ will be prepared

_____ not planned

3. Contact on this subject, if other than myself, is : _____

Name _____

Address _____

_____ Zip Code _____

Telephone # _____

PLEASE RETURN TO:

E. J. Willcox
Mgr. Rail Fleet
Diamond Shamrock Chem. Co.
P.O. Box 1000
Pasadena, TX 77501

cc: CGA OFFICE
J.C. Crawford

PLEASE RETURN BY DECEMBER 29, 1980.

NAME _____

COMPANY _____

ZIP CODE _____

TELEPHONE # _____

COLORITE 017088

Xx/7/22 To John Sandstedt

JOSEPH E. KELLER
JEROME E. HECKMAN
CHARLES V. MEEHAN
WILLIAM H. BORGHESEAN, JR.
ROBERT R. TIERNAN
WAYNE V. BLACH
DAVID L. HILL
MARTIN W. BERCOVICI
JOHN S. ELDRED
JOSEPH E. HADLEY, JR.
CAROLE C. HARRIS
MICHAEL F. MORRONE
LARRY S. SOLOMON
JOHN E. DUBECE
CHRISTINE A. MEAGHER
SHIRLEY S. FUJIMOTO
LAWRENCE P. HALPRIN
DEBORAH SHUR TRINEER
C. DOUGLAS JARRETT
EDWARD L. KORWER

LAW OFFICES
KELLER AND HECKMAN
1150 17TH STREET, N.W.
SUITE 1000
WASHINGTON, D.C. 20036

July 8, 1980

RECEIVED

JUL 18 1980

R.T. GOTTESMAN

TELEPHONE
202 457-1100
CABLE ADDRESS: 'KELMAN'
WRITER'S DIRECT DIAL NUMBER

(202) 457-1116

*John -
You and Marty Bruys should review this
as it relates to process wastes and sludges from
the PVC plants recognizing, of course, that EPA is
planning to promulgate a generic hazardous waste
listing in the fall.*

RJL

TO: The SPI-PVC Safety Group
The SPI-PVC Manufacturing Technology Committee
The SPI-PVC Health Committee
The SPI-PVC Communications Committee

Re: SPI-VCM/PVC
Identification and Listing of
Hazardous Wastes Under RCRA

Ladies and Gentlemen:

In our letter of May 23, 1980, we outlined the regulations promulgated by EPA for the identification and listing of hazardous wastes. As the memorandum attached to that letter stated, Section 261.3 defines the term "hazardous waste" to include, among other things, all mixtures of solid waste and one or more listed hazardous wastes unless excluded by rule making. Because Section 261.33 classifies vinyl chloride (the monomer) in pure or off-specification form as a hazardous waste, we have received numerous inquiries as to whether the regulations classify as hazardous any waste containing vinyl chloride.

As explained on page 6 of the attached memorandum (a revised version of the earlier memorandum), the intent of Section 261.33 was to encompass only those materials which were being discarded in a pure or off-specification form. The intent of Section 261.3, in combination with 261.33, was to encompass only Section 261.33 materials and those materials which would have been Section 261.33 materials but for the fact that they were mixed with another substance after their intended use in the commercial manufacturing process had ceased.

Therefore, a manufacturing process waste containing vinyl chloride would not be deemed a hazardous waste when ready to be discarded simply because vinyl chloride is listed as a hazardous waste when ready to be discarded.

COLORITE 017089

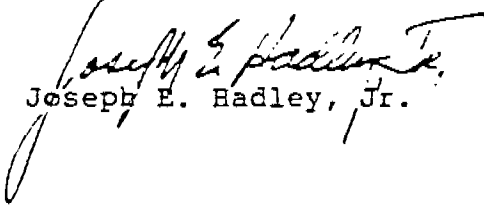
July 8, 1980
Page two

KELLER AND HEDGEMAN

Process waste from PVC polymerization operations may, however, still be classified as a hazardous waste, but only if it exhibits the characteristics of ignitability (Section 261.21), corrosivity (Section 261.22), reactivity (Section 261.23) or Extraction Procedure (EP) toxicity (Section 261.24). A waste exhibits the characteristic of EP toxicity if the extract from a representative sample contains any of the toxic contaminants identified in the National Interim Primary Drinking Water Standards (NIPDWS) in concentrations 100 times greater than specified in the Standards. At present, however, there is no NIPDWS standard for vinyl chloride. Therefore, PVC processing waste would not demonstrate EP toxicity based solely on the presence of vinyl chloride. The foregoing is subject, of course, to the scheduled Fall promulgation of a generic hazardous waste listing of batch residues from the batch production of chlorinated polymers.

If you have any further questions or comments regarding this matter please do not hesitate to contact us.

Cordially yours,


Joseph E. Hadley, Jr.

Attachments

COLORITE 017090

MEMORANDUM

To: Joseph E. Hadley, Jr.
From: Lawrence P. Halprin
Date: June 27, 1980

Re: Final and Interim Final Rules Concerning the Identification and Listing of Hazardous Waste Issued by the Environmental Protection Agency (EPA) to Implement the Solid Wastes Disposal Act as Amended by the Resource Conservation and Recovery Act (RCRA).

EPA's regulations concerning the identification and listing of hazardous waste, 40 C.F.R. 260 (Hazardous Waste Management System: General) and 40 C.F.R. 261 (Identification and Listing of Hazardous Waste), were published in the Federal Register on May 19, 1980 (45 Fed. Reg. 33063).

Part 260 includes provisions (§§260.20 and 260.22) under which a company can challenge EPA's classification of a waste as a hazardous waste. Part 261 is divided into four subparts. Subpart A (§§261.1-261.6) defines the terms "solid waste" and "hazardous waste." Subpart B (§§261.10 and 261.11) establishes the criteria for identifying the characteristics of hazardous waste and for listing wastes as hazardous wastes. Subpart C (§§261.20-261.24) establishes the characteristics of hazardous waste. Subpart D (§§261.30-261.33, originally proposed as §250.14) contains

lists of particular wastes which EPA has found to be hazardous and was published in "interim final" form. This means that --although these regulations are promulgated for purposes of the 90-day notification requirement under §3010(a), the six-month effective date under §3010(b), and the 90-day petition deadline under §7006 -- the public will have an additional opportunity to comment on them before they are published as "final final" regulations. Comments on the interim final regulations are due no later than July 18, 1980.

Section 261.3 defines the term "hazardous waste" to include: 1) wastes listed in Subpart D*, unless excluded by rule making; 2) a mixture of solid waste and one or more wastes listed in Subpart D, unless excluded by rule making; and 3) a waste which exhibits any of the four characteristics of hazardous wastes identified in Subpart C. They are:

* §261.11 contains the three alternative criteria for listing hazardous waste. The first criterion is that the waste possess one or more of the identified characteristics of hazardous wastes. The second criterion covers the listing of acutely hazardous wastes - those which have been shown to be fatal to humans in low doses or have been shown in mammalian studies to have an oral LD 50 toxicity of less than 50 mg/kg, an inhalation LC 50 toxicity of less than 2000 mg/kg per cubic meter, or a thermal LC 50 toxicity of less than 200 mg/kg. The third criterion, designed to list toxic wastes, provides that a waste must be listed where it contains any of a number of designated toxic constituents listed in Appendix VIII to 40 C.F.R. 261 unless EPA concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

ignitability (§261.21), corrosivity (§261.22), reactivity (§261.23), and extraction procedure (EP) toxicity (§261.24).** Rather than merely repeating the regulatory language, copies of the referenced sections are attached.

§261.11(b) provides that EPA may list classes or types of solid wastes as hazardous wastes if it "has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous wastes" found in RCRA. In finalizing this section, EPA rejected arguments that it was not authorized by the statute to list hazardous wastes on a generic or process stream basis. In the Preamble, EPA gives §261.11(b) two inconsistent interpretations. The first one, which is the one we expect EPA to follow, states that "a class of wastes may be listed generically so long as most of the wastes in the class are typically or frequently hazardous." (Emphasis added.) The second interpretation states that "EPA may list classes

** §261.10 sets out the two criteria for identifying the characteristics of hazardous wastes. First, the characteristic must be capable of being defined in terms of physical, chemical, or other properties which cause the waste to meet the definition of hazardous wastes. Second, the properties defining the characteristic must be measurable by standardized and available testing protocols. Because they did not meet the second criterion, EPA refrained from adding organic toxicity, carcinogenicity, mutagenicity, teratogenicity, bioaccumulation potential, and phytotoxicity to the set of proposed characteristics and, instead, left it to the listing mechanism to capture wastes exhibiting those properties.

of wastes if it was reason to believe that all wastes within the class or types typically or frequently [are] hazardous."

(Emphasis added...)

Subpart D lists as hazardous wastes a number of wastes which are significant to the plastics industry. Included in the §261.32 list of Hazardous Waste From Specific Sources are:

<u>EPA Hazardous Waste Number</u>	<u>Hazardous Waste</u>
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile
K012	Still bottoms from the final purification of acrylonitrile in the production of acrylonitrile
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.

PVC sludge, batch residues from the batch production of chlorinated polymers, solution residues from the production of chlorinated polymers, and waste PVC from the manufacture of coated fabrics, contained in the proposed lists of hazardous wastes, are not presently listed as hazardous wastes. However, in §III.A.5 of the Preamble to 40 C.F.R. 261, entitled Other Listed Wastes, the Agency

states that it has deferred final action on four other categories of waste streams which EPA had already proposed to list as hazardous wastes.

The first category includes wastes which EPA intends to list as hazardous but for which revised background documents could not be completed in time for promulgation as part of the May 19 regulation. EPA intends to amend Part 261 by June 15, 1980 to add most of the wastes included in the first category of deferred wastes (listed in Appendix A to the Preamble). The remainder (listed in Appendix B to the Preamble) are to be added by Fall, 1980.

Appendix A does not appear to involve wastes associated with the plastics industry. Appendix B (attached) includes many waste streams from processes involving the production of chlorinated hydrocarbons, including:

11. batch residues from the batch production of chlorinated polymers
12. solution residues from the production of chlorinated polymers.

In addition to classes of wastes, the regulations also list specific wastes as hazardous. Section 261.33 lists certain "commercial chemical products" or "manufacturing chemical intermediates" (including off-specifications materials) as either acute hazardous wastes (§261.33(e)) or toxic wastes (§261.33(f)). All substances listed in §261.33(e) and (f), and clean-up residues from land or water spills of those substances, will be deemed hazardous wastes when they are discarded or ready to be discarded. Section 261.33(f) includes

the following substances: 1) acrylonitrile, 2) 1,2-dichloroethane, and 3) vinyl chloride.

In addition, the containers used to hold §261.33(e) substances will (with certain exceptions) be deemed hazardous wastes when they are discarded or ready to be discarded. As stated by EPA:

The phrase "commercial chemical product or manufacturing chemical intermediate..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use. It does not refer to a material such as a manufacturing process waste, that contains any of the substances listed in paragraph...(f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraph...(f), such waste will be listed in either §§261.31 or 261.32 or will be identified as a hazardous waste by the characteristics set forth in Subpart C of this Part.

In other words, this regulation designates the chemicals themselves in pure or undiluted form as hazardous wastes, if discarded. It does not designate all wastes which might contain these chemical constituents as hazardous.

Obviously, the intent of the regulation would be frustrated if companies were free to dilute the listed substances so as to avoid the need to comply with the regulations. Accordingly, §261.3(a)(ii) defines the term "hazardous waste" to include "a mixture of solid wastes and one or more hazardous wastes listed in Subpart D." Generally, the key is that if, prior to mixing, the starting materials were not a hazardous waste (a solid waste which is ready to be discarded and is listed as hazardous or determined to be hazardous based on the four characteristics -- a) ignitability, (b) corrosivity, c) reactivity or d) extraction