

THE VINYL INSTITUTE LEGAL COMMITTEE

Keller and Heckman
Conference Room
1150 17th Street, N.W.
Washington, DC 20036

Tuesday
January 27, 1987
10:30 a.m.

Attendees:

Robert D. Luss, Chairman	- Occidental Chemical
Phil Carey	- Vista Chemical
Gail Cudak	- BFGoodrich
Peter de la Cruz	- Keller and Heckman
Beverly Gholson	- Georgia Gulf
Roy Gottesman	- Vinyl Institute
Greg Rutman	- BFGoodrich
David Redmon	- Brown, Todd & Heyburn (Guest)
Carl Henlein	- Brown, Todd & Heyburn (Guest)
William J. Henrick	- GenCorp (Guest)

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Sherry M. Carr

I. DuPont Plaza Puerto Rico Fire

Due to weather-related delays, Chairman Luss opened the meeting at 11:15 a.m. Following introductions, Carl Henlein and David Redmon reviewed a fire that occurred at the DuPont Plaza Hotel in Puerto Rico. The fire began in a remote location and there were allegations that toxic smoke spread to other portions of the hotel. Like the MGM Grand Casino fire, the pathway included PVC materials. However, the fire apparently was started by an arsonist on vinyl-covered urethane foam cushion chairs.

Counsel for defendants have already brought in experts used in the MGM Grand and Beverly Hills fires and appear to be developing a better prepared case. The DuPont Plaza had liability coverage of only \$1 million. Ownership of the hotel and ultimate liability was still somewhat clouded.

David Redmon joined the Shelby Williams representatives during the on-site investigation. (Shelby Williams' chairs were involved in the initial fire.) This team was working in coordination with a court appointed video and photographic team. As of the meeting date, about six cases had been filed. The question of consolidation and whether the fire would result in one or two large actions was still an open question.

Brown, Todd & Heybrun's findings will be presented in their report to The Vinyl Institute. Chairman Luss noted that The Vinyl Institute will end its formal involvement after the report based on the initial funding for the fire investigator is delivered. After that point, an independent litigation group will be established. Mr. Luss and Mr. Rutman will meet to discuss establishing a joint defense group.

II. New York State Toxicity Regulation

The Committee discussed the current status of the New York State Toxicity Data Bank regulations. The National Institute of Building Sciences (NIBS) and National Fire Protection Research Foundation (NFPRF) joint project appeared to be at least six months away from developing a presentable fire hazard analysis program. Roger Bernstein and Mike O'Mara had spoken with Mr. McGary at New York State, who was not receptive to suggestions that the State delay implementation pending substitution of the Pittsburgh test results with a more comprehensive fire hazard analysis model expected from NIBS/NFPRF.

Further discussion indicated that most companies were readying themselves for compliance. Previously, the Legal Committee had recommended to the Executive Board that it authorize the filing of a legal action against the New York State regulation as a method for delaying implementation and promoting adoption of the NIBS/NFPRF fire hazard analysis model. Because it now appears that the NIBS/NFPRF model will not be available in the near term, the commencement of judicial review proceedings may no longer be justified.

III. EPA Vinyl Chloride Standard Litigation

Peter de la Cruz reported on the status of The Vinyl Institute's challenge to the Environmental Protection Agency's (EPA) September, 1986 amendments to the Vinyl Chloride Standard. Settlement discussions were held on January 26, 1987 with EPA officials on five of the seven matters raised in The Institute's challenge. A meeting will be held on February 11, 1987 to develop language for these items. [Mr. de la Cruz's report is detailed in the attached letter of February 6, 1987. In addition, the language submitted to EPA on February 18, 1987 is also attached.]

IV. OSHA Labeling Requirements

Mr. Luss reported that Occidental had persuaded the Occupational Safety and Health Administration (OSHA) to favorably settle a complaint brought by the Agency

alleging that the Company's MSDS was deficient for failing to indicate that PVC was a carcinogen. OSHA agreed to dismiss the citation if Occidental placed a statement on its MSDS indicating that PVC was not carcinogenic. Occidental accepted this disposition. Given the settlement, renewed efforts will be brought to obtain a letter from OSHA confirming that PVC resin and compound with a low residual vinyl chloride monomer (RVCM) level may not be labeled as a carcinogen.

As part of the OSHA labeling issue, The Institute requested in December, 1986 that the Registry of Toxic Effects of Chemical Substances (RTECS) within the National Institute for Occupational Safety and Health, revise the RTECS listing of PVC so that it is no longer described as an animal carcinogen. The Committee agreed to continue to pursue this matter with RTECS and renew its request to present our position to the Editorial Review Board at its meeting in the spring of 1987.

V. FDA PVC Rulemaking

Mr. Gottesman and Mr. de la Cruz reported on the January 13, 1987 submission to the Food and Drug Administration (FDA) in response to a campaign by environmental groups to persuade FDA to prepare an extensive Environmental Impact Statement (EIS) before the Agency takes final action on the proposal. The comments on the EIS matter addressed the three major environmental issues raised by EPA and others in their comments: (1) the increased use of plasticizers; (2) the formation of dioxins, furans, and hydrochloric acid during incineration of PVC; and (3) the impact of the proposal of recycling efforts. Representatives from The Vinyl Institute will meet with FDA on February 27 to further persuade the Agency to stand by its initial decision that no EIS is required.

VI. Litigation Matters

The group discussed the general status of litigation in which their individual companies were involved.

VII. Next Meeting and Adjournment

The next meeting of the Legal Committee will be held in coordination with The Vinyl Institute Annual Meeting.

The meeting was adjourned at 3:00 p.m.

Respectfully submitted,

Peter L. de la Cruz
Peter L. de la Cruz

CTL028306

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February 6, 1987

Federal Express

Roy T. Gottesman, Ph.D.
The Vinyl Institute
Wayne Interchange Plaza II
155 Route 46 West
Wayne, New Jersey 07470

Re: EPA Vinyl Chloride Standard Litigation

Dear Roy:

This letter summarizes the current status of the Vinyl Institute's challenge to amendments to the vinyl chloride standard promulgated by the Environmental Protection Agency (EPA) last fall and the status of a case brought by the Natural Resources Defense Council (NRDC) contesting EPA's withdrawal of its 1977 proposal to amend the vinyl chloride standard.

A. Settlement Discussions on 1986 Amendments

On January 26, 1987, we discussed with EPA officials the possibility of reaching an agreement on five definitional issues raised in response to the September 1986 revisions to the vinyl chloride standard. Although the meeting was held at EPA offices in North Carolina, several of us participated by telephone due to flight cancellations caused by severe winter weather. A memorandum summarizing the meeting is attached. We agreed to provide suggested regulatory language on a number of issues and a summary of meeting highlights is listed below.

- For the definition of exhaust gas, we agreed to provide suggested language to indicate that leaks are

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not exhaust gases and to define leak as an unintended release that is detected and repaired promptly after detention in accordance with leak detection and elimination plans.

- Although no consensus was reached with EPA on how to treat relief valve discharges that are routed through a control device and not discharged directly to the atmosphere, we agreed to provide EPA with examples of state enforcement based on stack monitor exceedances; we may wish to suggest new language for this definitional section also.

- We reminded EPA of the information previously submitted and W.C. Holbrook provided EPA with additional information supporting our position that intermediate product storage facilities should not be included within the definition of EDC purification. EPA is to review this information.

- We are to provide EPA with suggested language for interpreting the three-hour averaging provisions to eliminate the apparent ambiguity permitting a single hourly exceedance to result in three potential violations.

- We are to provide new language to the definition of a leak to clarify that, in the case of pump seals regulated under C.F.R. § 61.242-2, indications of liquid dripping would be a leak. However, we are also to develop additional language indicating that intermittent or slow leaks, infrequent drips or leaks associated with the installation of new seals are not intended to be "leaks" within the meaning of the definition.

EPA was unwilling to discuss the use of numerical limitations in place of the current "emergency" relief valve discharge provisions. Similarly, EPA was unwilling to discuss the applicability of Subpart V for controlling fugitive emissions.

I was to meet with Richard Roos-Collins of EPA's General Counsel's Office to develop language indicating that

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EPA was staying enforcement of provisions under negotiation. Although I scheduled a meeting, it has been postponed because, according to Mr. Roos-Collins, EPA has not yet reached agreement internally as to its preferred procedure and approach in implementing the stay. I am to contact Mr. Roos-Collins later today to see whether EPA has internally agreed to an acceptable approach.

During the course of our meeting with EPA, we also confirmed that Doreen Cantor, of the Stationary Source Enforcement Group within EPA's Air Office, was preparing a memorandum with guidance to enforcement personnel. We had been aware of two potential problems with the enforcement document based on how it defined a "process unit" for valve leak detection counting and for the applicability of the standard HCl product streams. EPA declined to discuss these issues at our January 26 meeting and suggested that we raise these issues separately in writing after receipt of the enforcement memorandum from Ms. Cantor. I have not yet received the guidance memorandum, although EPA had previously indicated it would be ready last week.

At our meeting on February 11, we should develop suggested regulatory language for EPA as outlined above, and, if we have received the guidance document, draft a separate letter outlining our concerns.

The discussions with EPA were in response to a Petition for Reconsideration we filed with the Agency. We also requested that the Court of Appeals stay the effectiveness of the regulations. We have received a copy of the court's order denying our motion for a stay. Although I disagree vehemently with the reasoning expressed in a two-page memorandum accompanying the court's order, it clearly contemplates that individual companies may seek a stay of the rules if EPA should bring enforcement actions while our judicial challenge to the amendments is pending.

D. EPA Withdrawal of the 1977 proposal

Last November, the Court of Appeals issued a decision rejecting the Natural Resources Defense Council's challenge to EPA's withdrawal of its 1977 proposal to amend the vinyl chloride standard. The court's opinion established for the

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first time that EPA could consider cost and technological feasibility in establishing standards for hazardous air pollutant emissions. NRDC filed a Petition for Rehearing and a suggestion for Rehearing En Banc. Although the Petition for Rehearing by the three-judge panel was denied, a majority of the eleven active judges on the Court of Appeals voted to rehear the case en banc. This means that a hearing will be held at a time not yet scheduled before all eleven judges. We do not anticipate that the court will request additional briefing on the issues, although this is a slim possibility. The court's agreement to rehear the case is disheartening because it may reflect a tentative disposition by the majority of judges to reverse the panel's opinion or substantially revise the court's earlier decision.

I look forward to seeing you at the February 11 meeting. In the interim, if I can be of any assistance, please let me know.

Cordially yours,



Peter L. de la Cruz

Enclosures

cc: Robert D. Luss, Esquire (w/encs)
W.C. Holbrook "
Paul Bork, Esquire "
Charles E. O'Connell "
Lewis R. Freeman, Jr. "
Hugh Patrick Toner "
Margaret Rogers "

CTL028310

MEMORANDUM OF MEETING WITH
EPA EMISSION STANDARDS AND ENGINEERING DIVISION

411 West Chapel Hill Street
Raleigh, North Carolina

January 26, 1987

Present:

For the Vinyl Institute

W.C. Holbrook BFGoodrich Co.
R. Oubre Dow Chemical U.S.A.
Gary C. Phillips Dow Chemical U.S.A.
Roy T. Gottesman The Vinyl Institute

For EPA

Robert Ajax
Les Evans
Gil Wood
Rob Rosensteel
Fred Dimmick (in part)

Participating by Telephone:

For the Vinyl Institute

Peter L. de la Cruz Keller and Heckman
Joseph Ledvina Vista Chemical Co.

For EPA

Richard Roos-Collins
EPA General Counsel's Office
Doreen Cantor
EPA Stationary Source Enforcement,
Air Office

Mr. Ajax opened the meeting by noting that EPA has looked at the Petition for Reconsideration and the items of concern detailed therein. He noted his belief that there is room for reaching an accommodation on five of the seven points raised. He stated that on a technical basis, the Agency feels it could litigate all seven items and win. Although it has no hesitancy in litigating, it would like to reach agreement on the five items where it feels an accommodation can be reached and avoid litigation on these.

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Mr. Roos-Collins stated that a condition for this meeting, to which counsel had agreed to was that no statement or representation by either side could be used in a subsequent litigation. It is the Agency's desire that this would lead to a candid off-the-record discussion.

The subsequent discussion covered the six provisions for which a stay was requested in the Petition for a stay and for reconsideration as filed with the Agency on November 24 (pgs. 6-15).

1. Definition of "Exhaust" Gas

Mr. Ajax noted that EPA's interest in this regulatory provision is its concern that a leak be repaired rapidly and its desire to issue a citation if a leak is not remedied. Vinyl Institute representatives wanted clarification that "a leak is not an exhaust gas." EPA offered the following suggested language: "An emission which is determined to be a leak by the Administrator is not an exhaust gas."

Roy Gottesman advised that from an industry point of view, having what constitutes a leak determined on a case-by-case basis by the Administrator was unsatisfactory and cumbersome. He offered the following language:

A leak is not an exhaust gas. A leak is defined separately as: An unintended release of vinyl chloride which is subject to regulation under the leak detection and elimination provision of the standard.

EPA objected since what constitutes an "unintended release" is subject to different interpretations.

Mr. Ajax suggested language to define a leak as an emission which is immediately detected by an area monitor and is thereafter promptly repaired. He expressed concern over the possibility that a leak, not uncovered in the leak detection and elimination program, might continue unabated.

It was agreed that Vinyl Institute representation will review this and propose language, via a submission from Mr. de la Cruz for EPA consideration, on a definition of "exhaust gas."

Mr. Ajax agreed that EPA will take a look at this and see if they can propose a definition that would reflect the fact that a leak which is unintended, detected, and repaired under the leak detection and elimination system, is not an exhaust gas. The applicability to exhaust gas containing less than 10 ppm VCM was left open.

2. Enforcement Guidance Memo on HCl Product Stream

Mr. Phillips noted that in discussions with EPA regional personnel, he was advised that an enforcement guidance memo was being prepared by EPA. He was informed that the guidance memo would subject HCl product streams to the standard if VCM concentrations exceeded 10 ppm. Mr. Phillips indicated that the 10 ppm level might be exceeded slightly during shut-down or start-up phases. Mr. Ajax indicated that the Agency did not wish to discuss the enforcement memorandum at this meeting because it was outside the Petition for Reconsideration. Rather, he asked that we present this issue to the Agency in writing.

3. Definition of Relief Valve Discharge

Mr. Ajax indicated that where relief valve discharges were routed to a control device that reduced emissions to less than 10 ppm, no violation occurred. Where relief valve discharges were routed to a dedicated control device, it was EPA's position that, when emissions exceeded 10 ppm, this was a relief valve discharge but not a 10 ppm control level violation. Where relief valve discharges were routed to a control device that was also used for limiting emissions from other streams, emissions above 10 ppm were both in exceedance of the 10 ppm limitation and a relief valve discharge. Industry attendees disagreed with EPA's characterization of relief valve discharges to control devices that resulted in exceedances. In addition, while EPA indicated that the 10 ppm exceedance was not necessarily a violation, Mr. Holbrook suggested that state enforcement officials did use continuous monitor exceedances as evidence of a violation, rather than relying on test method 106. Mr. Ajax was receptive to receiving information on state enforcement based on 10 ppm exceedances with the implication that the Agency might reconsider its position based on state activity. The Vinyl Institute should also restate its position and suggested interpretation for EPA.

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4. Leak Detection and Elimination

Mr. Ajax indicated that EPA was unwilling to negotiate the leak detection and elimination revisions. Mr. Gottesman noted that our main complaint here was that if the 2% test was exceeded by companies there was no opportunity to retest without becoming subject to the Subpart V requirements. EPA reiterated its unwillingness to negotiate on this point.

During this discussion, Mr. Phillips raised another issue created by the enforcement memorandum EPA was preparing. In particular, he noted that EPA was using a very narrow definition of "a process unit" which affected the number of valves needed to be counted. In particular, he noted that based on comments by EPA regional enforcement personnel, tank farms, recovery areas, and other portions of production units were being considered discrete process units, each of which would be subject to the 10% or 200 valve count requirements. Although EPA declined to discuss this substantively, Doreen Cantor indicated that she was preparing the guidance document and would provide it to Mr. de la Cruz later in the week when it became available. Vinyl Institute was then to write to EPA separately on the guidance document issues.

Fred Dimmick of EPA indicated that a discussion in the June 1984 background information document involved with the synthetic organic chemical manufacturing industry fugitive emission proceedings should be examined to shed interpretative light on the definition of a process unit found in Subpart V.

5. Definition of EDC Purification

Bob Ajax and Les Evans indicated that intermediate product storage of facilities were included under the definition of EDC purification because the Agency lacked data justifying that no controls were needed. Karen Fidler of Radian Corporation was unable to attend the meeting and she apparently was the most knowledgeable person on the EPA position. Mr. Holbrook noted that the Vinyl Institute submitted information to EPA in March 1985 on this issue and that, in responding to Section 114 letters, EDC manufacturers had responded individually to EPA with information. In addition, Mr. Holbrook presented Mr. Evans with additional information indicating that additional controls under the vinyl chloride standard were not needed and not cost justified. EPA agreed that it would examine the new data and not enforce these provisions pending

EPA review of the submitted data. If initial review of the submitted data indicated that a change in EPA's interpretation was warranted, a formal order staying effectiveness would be considered. Peter de la Cruz was to meet with Richard Roos-Collins to develop language by which the Agency would indicate it was temporarily staying the rule.

6. Definition of Three-Hour Period

Mr. Ajax indicated that EPA was concerned with excluding events that should be considered as exceedances. Mr. de la Cruz explained the Vinyl Institute's position that rather than 24 rolling three-hour periods during a day only eight discrete three-hour periods should be considered. Although EPA did not express a willingness to change from a rolling three-hour period to eight discrete three-hour periods, Mr. Ajax did express a willingness to consider suggestions from industry on clarifying language. For example, if the hourly emissions were as follows: 0,0,50,0,0,0, EPA would interpret this as one exceedance although admitting that the language of the provision could be read to make this constitute three exceedances of three rolling three-hour periods in which the 50 ppm would be counted. Another situation with which EPA would be concerned would be when the 10 ppm level was exceeded for more than one, one-hour period. The Agency would be willing to consider clarifying language from the Institute on how to interpret exceedances.

7. Definition of Leak

Mr. Ajax indicated that EPA was not willing to make a change other than to indicate that the "liquid dripping" provision of the leak definition applied only to pump seals regulated under 40 C.F.R. § 61.242-2. Industry attendees expressed the view that only indications of liquid vinyl chloride dripping should be considered a leak. Mr. Smith noted that EPA should distinguish between single and double barrier seals. In addition, new double barrier seals tend to drip after installation and may be subject to an intermittent or infrequent leak that does not indicate the need for repair. Bob Ajax indicated that he would discuss this matter with Karen Fidler of Radian and, although not encouraging, did indicate a willingness to review any suggested additional language that the Vinyl Institute might provide to indicate that these intermittent leaks from pump seals not be included under the definition of a leak.

8. Emergency Relief Valve Discharges

EPA indicated that it was not willing to discuss a change to the emergency relief valve discharge provision. Industry supported the substitution of a numerical discharge limitation.

The meeting concluded at 3:30 p.m.

Respectfully submitted,

Peter L. de la Cruz

Peter L. de la Cruz

CTL028316

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-1640

September Term, 19 86

Society of the Plastics Industry, Inc.,
et al.,

Petitioners

v.

U.S. Environmental Protection Agency
and Lee Thomas, Administrator,

Respondents

United States Court of Appeals
For the District of Columbia Circuit

FILED JAN 3 1987

GEORGE A. FISHER
CLERK

BEFORE: Ruth B. Ginsburg and Williams, Circuit Judges;

ORDER

Upon consideration of petitioners' motion for stay and the opposition thereto, it is

ORDERED by the court that respondents' lodged response in opposition to petitioners' motion for stay be filed. It is

FURTHER ORDERED by the court that petitioners' motion for stay be denied for the reasons set forth in the accompanying memorandum.

Per Curiam

CTL028317

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-1150

September Term, 19 86

Natural Resources Defense Council, Inc.

United States Court of Appeals
For the District of Columbia Circuit

v.

FILED JAN 28 1987

Environmental Protection Agency, et al.

GEORGE A. FISHER
CLERK

BEFORE: Wald, Chief Judge; Robinson, Mikva, Edwards, Ruth B. Ginsburg,
Bork, Starr, Silberman, Buckley, Williams and D. H. Ginsburg,
Circuit Judges

ORDER

Petitioner's suggestion for rehearing en banc was circulated to the full Court. The taking of a vote thereon was requested. A majority of the judges of the Court in regular active service have voted in favor of the suggestion. Accordingly, it is

ORDERED, by the Court en banc, that this matter will be reheard by the Court sitting en banc, and it is

FURTHER ORDERED, by the Court en banc, that the opinion and judgment of November 4, 1986 be, and the same hereby are, vacated.

A future order will govern further proceedings.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: *Robert A. Bonner*
Robert A. Bonner
Chief Deputy Clerk

CTL028318

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-1150

September Term, 1986

Natural Resources Defense Council, Inc.

v.

Environmental Protection Agency, et al.

United States Court of Appeals
For the District of Columbia Circuit

FILED JAN 8 1987
GEORGE A. FISHER
CLERK

BEFORE: EDWARDS and BORK, Circuit Judges; WRIGHT,
Senior Circuit Judge

ORDER

Upon consideration of petitioner's petition for rehearing, it is
ORDERED, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

CTL028319

No. 86-1640 - The Society of the Plastics Industry, Inc. v. EPA

MEMORANDUM

Petitioners' motion for administrative stay was requested after the close of business on November 25, 1986. Petitioners' motion for judicial stay was filed in this court on November 26, 1986. We do not regard these back-to-back filings as in genuine compliance with Rule 18 of the Federal Rules of Appellate Procedure, particularly in view of the September 30, 1986 promulgation date of the Environmental Protection Agency's (EPA) final rule. Rule 18 requires a petitioner to show "that the action of the agency did not afford the relief which the applicant had requested." Fed. R. App. P. 18. Here, petitioners state that EPA has not yet reached a decision on their request. But a stay applicant cannot make that statement reasonably, with candor, unless the applicant has given the agency a fair opportunity to respond to the request for an administrative stay, or has demonstrated urgent need for immediate court intervention.

EPA has responded on the merits, however, and the case seems to us so clear that definitive denial of the stay is in order. Petitioners assert irreparable harm absent a stay of the effectiveness of the 1986 Amendments pending this court's review. The assertion is not well founded. For a harm to be irreparable, "the injury must be both certain and great; it must be actual and not theoretical." Wisconsin Gas v. FERC, 758 F.2d 669 (D.C. Cir. 1985). Here, the contention that petitioners will face contempt citations is conjectural. Moreover, should CTL028320

No. 86-1640 - The Society of the Plastics Industry, Inc. v. EPA

petitioners' supposition become manifest, they can be compensated for their interim loss, so their injury, if any, will not be irreparable. Id. We note, finally, that petitioners' lateness in filing their stay request hardly adds to the credibility of their claim of imminent, irreparable injury. See Wisconsin Gas, supra, 758 F.2d at 674.

CTL028321

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February 18, 1987

Mr. Robert Ajax
Chief, Standards Development Branch
Emission Standards and Engineering Division
U.S. Environmental Protection Agency (MD-13)
Research Triangle Park, North Carolina 27711

Re: Vinyl Chloride Standard

Dear Bob:

We appreciate the Environmental Protection Agency's (EPA) willingness to discuss five of the seven issues raised in the petition of the Society of the Plastics Industry, Inc (SPI) for a stay and reconsideration of the Agency's final rule amending the national emission standard for vinyl chloride. 51 F.d. Reg. 34,904 (Sept. 30, 1986). Suggested language on these five issues follows. We understand that EPA is unwilling to discuss the objections we raised to the relief valve discharge provision and leak detection and elimination provisions found in 40 C.F.R. §§ 61.65(a) and (b)(8). Accordingly, we do not address those two points in this letter.

Subsequent to our meeting, we received a memorandum dated February 4, 1987 by John B. Rasnic concerning implementation of the vinyl chloride standard. In keeping with our discussions, we will address issues raised by the February 4 memorandum in a separate letter.

During our January 26 discussion, Richard Roos-Collins and I agreed to meet and finalize language staying enforcement of the new provisions temporarily pending EPA reconsideration. This was particularly important for the new definition of

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Mr. Robert Ajax
February 18, 1987
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ethylene dichloride (EDC) purification. The main issue with this provision is whether it requires certain controls on intermediate EDC storage facilities. After the meeting, Mr. Roos-Collins expressed hesitancy on behalf of the Agency to stay enforcement of the new definition until some additional consensus is reached within EPA.

As the background information document stated, "The original VC standard did not clearly delineate which purification process equipment were subject to regulation as EDC and VC purification equipment." BID at 2-43. Given EPA's acknowledgement that the definition was subject to varying interpretations by Agency personnel and because we are currently in the process of discussing this issue, it seems reasonable to temporarily stay enforcement of the new definition pending the outcome of these discussions. Such a stay would not require the Agency to express any opinion on the proper interpretation of the 1976 standard. Thus, staying the 1986 language would in no way compromise whatever position the Agency wishes to take on the 1976 language. In this regard, we do wish to inform you that Region IV personnel have been asking for process flow diagrams and other materials relevant to this issue.

For some facilities, if intermediate storage controls are required, the capital costs are of sufficient magnitude that statements of contingent liability would need to be prepared for company auditors and perhaps to comply with Security and Exchange Commission (SEC) requirements. In addition, managers supervising regulatory affairs are subject to internal company policies requiring prompt compliance with environmental and other laws. The absence of a written stay places these managers in individual jeopardy. Therefore, we are continuing to renew our request for the stay of this provision.

A. Definition of "Ethylene Dichloride Purification;"
40 C.F.R. § 61.61(o)

Data we provided previously indicates that intermediate storage facilities are not a source of vinyl chloride emissions warranting regulatory attention. We recommend that the definition of EDC purification be revised as follows.

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Mr. Robert Ajax
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'Ethylene dichloride purification'
includes any part of the process of ethylene
dichloride production which follows ethylene
dichloride formation, excluding intermediate
and product storage ~~following the final~~
~~finishing~~ column.

[Underlining indicates addition and ~~overstrike~~ denotes
deletion based on language appearing in the September 30, 1986
amendments.]

B. Definition of "Leak;" 40 C.F.R. § 61.61w)(2)

We recommend that the following modifications to sub-
section (w)(2), which describes one of the events regulated as
a leak.

(2) In the case of pump seals regulated
under § 61.242-2, indications of liquid
dripping other than the loss of seal fluid
from double barrier seals.

C. Definition of "Exhaust Gas;" 40 C.F.R. § 61.61(x)

Add the following language to the September 1986
definition of exhaust gas.

A leak is not an exhaust gas. As used
in this definition, the term leak means any
unintended release of vinyl chloride that is
detected and repaired or eliminated promptly
in accordance with the leak detection and
elimination provisions of section 61.65(b)(8)
of this part.

D. Definition of "Relief Valve Discharge;" 40 C.F.R. §
61.61(y)

Revise the definition of relief valve discharge as
follows:

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"Relief valve discharge" means any nonleak discharge through a relief valve directly to the atmosphere. 'Relief valve discharge' does not include discharges ultimately ducted to a control system, including a flare, but control system discharges are exhaust gases subject to the 10 ppm emission requirements (average for 3-hour period) from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm (average for 3-hour period) or equivalent as provided in § 61.66.

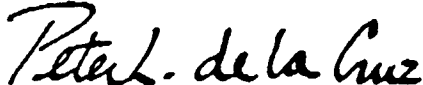
E. Definition of 3-Hour Period;" 40 C.F.R. § 61.61(z)

Revise this definition as follows:

'3-Hour period' means any three consecutive 1-hour periods (each hour commencing on the hour), provided that: (1) the number of 3-hour periods which the vinyl chloride concentration exceeds 10 ppm shall not exceed the number of 1-hour periods which the vinyl chloride concentration exceeds 10 ppm, and (2) there shall be no more than eight 3-hour periods per day.

We trust that this language is consistent with our prior discussions and will meet with your approval. We would be happy to discuss these suggestions in detail after you have had an opportunity to review them. We look forward to resolving these issues with you shortly.

Sincerely,


Peter L. de la Cruz

cc: Richard Roos-Collins, Esquire
Elliott J. Gilberg, Esquire
Doreen Cantor, Esquire

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