

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

THE SOCIETY OF THE PLASTICS	)	
INDUSTRY, INC.,	)	
	)	
Petitioner	)	
	)	
v.	)	No. 89-7249
	)	
OCCUPATIONAL SAFETY AND HEALTH	)	
ADMINISTRATION, UNITED STATES	)	
DEPARTMENT OF LABOR,	)	
Respondent	)	

SETTLEMENT AGREEMENT

The Society of the Plastics Industry, Inc., (SPI) and the Occupational Safety and Health Administration, United States Department of Labor (OSHA), are the parties to this agreement.

WHEREAS, OSHA promulgated an air contaminants standard (the Standard) establishing, inter alia, amended permissible exposure limits (PELs) for ethylene dichloride (EDC) of 1 part per million (ppm) as an 8-hour time weighted average (TWA) and 2 ppm as a short-term exposure limit (STEL), 54 Fed. Reg. 2937 (Jan. 19, 1989);

WHEREAS, on March 10, 1989, SPI filed a petition for review of the Standard challenging the amended EDC PELs on behalf of SPI's members engaged in the commercial production of EDC;

WHEREAS, on May 22, 1989, SPI filed with OSHA a petition for an administrative stay and for reconsideration of the EDC provisions of the Standard, arguing, inter alia, that compliance

with the amended PELs was technologically and economically infeasible for certain intermittent maintenance and repair operations for which respirators are typically permitted, because (1) NIOSH odor threshold and maximum contaminant concentration guidelines ruled out use of feasible air-purifying respirators and (2) air-supplied respirators are infeasible for these operations;

WHEREAS, on July 17, 1989, OSHA responded to SPI's petition, denying a stay and finding no basis for reconsideration, on grounds that NIOSH respirator selection criteria provide general guidance but are not controlling in all circumstances; that the agency remains willing to consider special circumstances applicable to EDC producers; and that SPI should submit a written request for authorization to use air-purifying respirators if it believed these devices were feasible and efficacious;

WHEREAS, on July 29, 1989, SPI filed a motion and accompanying memorandum in the court of appeals seeking a judicial stay of the EDC provisions of the Standard;

WHEREAS, on August 1, 1989, SPI submitted a letter to OSHA proposing to withdraw its request for a judicial stay if the agency would authorize the use of air-purifying respirators for certain intermittent operations such as cleaning, maintenance and sampling;

WHEREAS, OSHA has considered SPI's request and believes that the use of air-purifying respirators by EDC producers is appropriate under certain circumstances, and;

WHEREAS, OSHA (whose response to SPI's judicial stay motion is not due to be served until August 21, 1989) has not yet responded to that motion, and the matter is pending before the court;

NOW THEREFORE, the parties agree as follows:

1. OSHA interprets the EDC exposure limits, as they apply to employers engaged in the production of EDC, as follows:

For those intermittent industry operations for which engineering and work practice controls alone are inadequate to reduce exposure below the PEL, OSHA authorizes, as a supplement to engineering and work practice controls, the use of half-mask air-purifying respirators at EDC concentration levels up to 10 ppm, and full-mask air-purifying respirators at levels up to 50 ppm, provided the filter in each such device is changed at the end of any day in which the cumulative service life of the filter totals 1 hour or more.

2. This interpretation does not affect or modify the hierarchy of controls set forth in Part 1910.1000(e) of the Standard. 54 Fed. Reg. 2921. Further, the use of air-purifying respirators shall comply, to the extent applicable, with the provisions of 29 C.F.R. 1910.134.

3. OSHA recognizes that SPI's member producers may request a variance from the Secretary pursuant to Section 6(d) of the Occupational Safety and Health Act, 29 U.S.C. 655(d), permitting use of half-mask air-purifying respirators at EDC concentration levels above 10 ppm. Pursuant to Section 6(d), the Secretary

shall consider any such request and will issue a variance if she determines that the statutory criteria are satisfied.

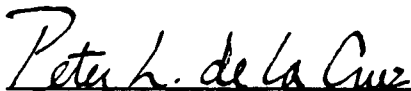
4. OSHA also recognizes that some of SPI's member producers may, on the basis of ongoing or future tests, propose that filters be replaced at less frequent intervals than agreed to herein. OSHA will consider any additional data, if submitted, and will amend this interpretation to provide for less frequent filter replacement should circumstances warrant.

5. Within three working days after execution of this Settlement Agreement, SPI will move to withdraw its pending motion for a judicial stay. OSHA agrees to enforce the EDC PELs in accordance with this Settlement Agreement.

6. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with SPI's requests for administrative and judicial stays, the agency's response thereto and the instant Settlement Agreement.

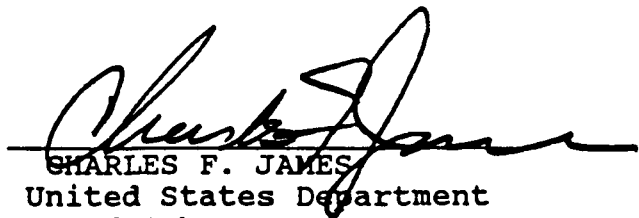
7. This Settlement Agreement shall take effect when signed on behalf of both parties.

Agreed this 15th day of August, 1989.



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Respondent.

No. 89-7249

MOTION TO WITHDRAW
MOTION FOR STAY OF THE SOCIETY
OF THE PLASTICS INDUSTRY, INC.

Petitioner The Society of the Plastics Industry, Inc. (SPI) respectfully moves to withdraw its Motion for Stay dated July 29, 1989 and filed with the Court on July 31, 1989. SPI's motion had requested that the Court stay enforcement of the ethylene dichloride (EDC) provisions of the final air contaminants rule promulgated by the Occupational Safety and Health Administration (OSHA) pending the Court's decision on SPI's Petition for Review. See 54 Fed. Reg. 2332, 2937 (Jan. 19, 1989). SPI's Petition for Review of these provisions is not affected by this motion and remains for the Court's consideration.

Respectfully submitted,



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Dated: August 16, 1989