

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THE SOCIETY OF THE PLASTICS
INDUSTRY, INC., THE DOW CHEMICAL
COMPANY, GEORGIA GULF CORPORATION,
and VISTA CHEMICAL COMPANY,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and LEE THOMAS,
Administrator, U.S. Environmental
Protection Agency,

Respondents.

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CLERK OF THE UNITED
STATES COURT OF APPEALS

No. 81-1010

PETITION FOR REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b), The Society of the Plastics Industry, Inc., The Dow Chemical Company, Georgia Gulf Corporation and Vista Chemical Company hereby petition the Court for review of a Final Rule promulgated by the United States Environmental Protection Agency. 51 Fed. Reg. 34,904-34,915 (Sept. 30, 1986). This Rule revises the standard governing emissions of vinyl chloride found in Subparts F and V of 40 C.F.R. Part 61. We respectfully request that the Court grant this Petition.

Respectfully submitted,

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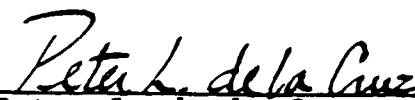
CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Review of the Society of the Plastics Industry, Inc. was mailed, postage prepaid, this 26th day of November, 1986 to:

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CTL026705

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THE SOCIETY OF THE PLASTICS	)	
INDUSTRY, INC., THE DOW CHEMICAL	)	
COMPANY, GEORGIA GULF CORPORATION)	)	
and VISTA CHEMICAL COMPANY,	)	
	)	
Petitioners,	)	
	)	
v.	)	No.
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY and LEE THOMAS,	)	
Administrator, U.S.E.P.A.,	)	
	)	
Respondents.	)	

ON PETITION FOR REVIEW OF AN ORDER OF
THE U.S. ENVIRONMENTAL PROTECTION AGENCY

MOTION FOR STAY

1. The Society of the Plastics Industry, Inc. and the other petitioners, The Dow Chemical Company, Georgia Gulf Corporation and Vista Chemical Company (hereinafter collectively referred to as "SPI") have this day filed their petition for review of a Final Rule promulgated by the respondent United States Environmental Protection Agency (EPA). 51 Fed. Reg. 34,904-34,915 (Sept. 30, 1986). The Final Rule revises the standard governing emissions of vinyl chloride found in Subparts F and V of 40 C.F.R. Part 61. Pursuant to Rule 18 of the Federal Rules of Appellate Procedure, Petitioner respectfully moves this Court to stay enforcement of the Final Rule.

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2. Without adequate notice or explanation, EPA has revised key provisions with the effect of (1) overturning existing case law, (2) imposing new penalties, (3) creating multiple penalties for the same event in excess of statutory authority, and (4) expanding the types of equipment subject to the standard. In addition, as a result of prior enforcement action, some SPI members have entered into consent decrees requiring compliance with the vinyl chloride standard. Since most of these changes were effective immediately upon publication in the Federal Register, member companies may be held in contempt for violating their consent decrees unless a stay is granted during the pendency of this review proceeding.

3. As more fully described in the memorandum accompanying this motion, SPI is likely to succeed on the merits of its claims, member companies will suffer irreparable damage without adequate legal remedy if the Final Rule is enforced prior to a decision on appeal, other parties will suffer no harm if a stay is granted, and the public interest will be promoted rather than harmed by a grant of a stay.

4. Application for the relief sought by this motion was formally made to the Respondent EPA on November 25, 1986. The Agency has not yet reached a decision on the request.

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WHEREFORE, Petitioner SPI respectfully moves this Court to enter an order staying the enforcement of the provisions of the Final Rule promulgated by Respondent until final determination in this Court of the issues raised by the Petition for Review.

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IN THE UNITED STATES COURT OF APPEALS
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and VISTA CHEMICAL COMPANY,	)	
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	)	
Respondent.	)	
	)	

ON PETITION FOR REVIEW OF AN ORDER
OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

PETITIONER'S MEMORANDUM IN
SUPPORT OF MOTION FOR STAY

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INDUSTRY, INC., THE DOW CHEMICAL	)	
COMPANY, GEORGIA GULF CORPORATION)	)	
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Respondent.	)	

ON PETITION FOR REVIEW OF AN ORDER
OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

PETITIONER'S MEMORANDUM IN
SUPPORT OF MOTION FOR STAY

The Society of the Plastics Industry, Inc., The Dow Chemical Company, Georgia Gulf Corporation and Vista Chemical Company (hereinafter referred to as "SPI") request that this Court stay a final order of the Environmental Protection Agency (EPA) revising the emission standard for vinyl chloride. 51 Fed. Reg. 34,904 (Sept. 30, 1986). This rulemaking is of particular concern to the Vinyl Institute, a division of SPI, whose members represent the major domestic producers of vinyl chloride and polyvinyl chloride.*

*/ SPI is a 1,800 member not-for-profit corporation organized under the laws of the State of New York. The Society's members include processors and manufacturers of plastics or plastics products, suppliers of raw materials, processors and converters of plastic resins and manufacturers of accessory equipment for the plastics industry. Founded in 1937, the Society is the "voice" of the plastics industry.

Without adequate notice or explanation, EPA has revised key provisions with the effect of: (1) overturning existing case law, (2) imposing new penalties, (3) creating multiple penalties for the same event in excess of statutory authority, and (4) expanding the types of equipment subject to the standard. As a result of prior enforcement action, some SPI members have entered into consent decrees requiring compliance with the vinyl chloride standard. Since almost all these changes were effective immediately upon publication in the Federal Register, member companies may be held in contempt for violating their consent decrees unless a stay is granted pending review by this Court.

A. STATEMENT OF FACTS

1. Regulatory Proceedings

Vinyl chloride monomer (vinyl chloride or VCM) is a gas at ambient temperatures and pressure. Vinyl chloride is

[Footnote Continued]

The Vinyl Institute's members account for approximately 82% of the domestic production of vinyl chloride and 63% of the domestic production of polyvinyl chloride. The members include: Air Products and Chemicals, Inc., the BFGoodrich Company, Borden, Inc., CertainTeed Corporation, The Dow Chemical Company, Georgia Gulf Corporation, Occidental Chemical Corporation, PPG Industries, Inc., and Vista Chemical Company.

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used principally to produce polyvinyl chloride (PVC), an inert plastic which can be fabricated into many items including blood transfusion bags, medical devices, photograph records, water and sewage pipes, food wraps and bottles.

In December 1975, EPA designated vinyl chloride as a hazardous air pollutant under Section 112 of the Clean Air Act 42 U.S.C. § 7412, and published a proposed standard. 40 Fed. Reg. 59,532 (1975). That notice outlined data linking vinyl chloride to various carcinogenic and non-carcinogenic disorders and proposed emission levels which would provide an ample margin of safety while taking the limitations of the available technology into consideration. Id. at 59,534.

EPA promulgated final rules for vinyl chloride on October 21, 1976. 41 Fed. Reg. 46,560 (1976); 40 C.F.R. §§ 61.60 to 61.71 (hereinafter "1976 Standard"). The standard created a comprehensive regulatory scheme for minimizing emissions of vinyl chloride from ethylene dichloride plants, vinyl chloride plants and polyvinyl chloride plants. In general, the rules applied only to those portions of the plant that were "in vinyl chloride service," which is defined as equipment contacting a liquid or gas that is at least 10% vinyl chloride.

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Because of its physical properties, vinyl chloride is contained in pressurized reactors, vessels or piping during manufacture and use. Reactions involving vinyl chloride also generate heat. As a necessary precaution dictated by safety, environmental and insurance concerns, the reactors are equipped with safety relief valves. The relief valves are set to open and safely relieve any increasing pressure at a level below the pressure at which the reactor or vessel would rupture. The 1976 Standard prohibits all but emergency relief valve discharges.

The 1976 Standard also requires that vinyl chloride in exhaust gases be controlled to no more than 10 parts per million (ppm). Other provisions of the 1976 Standard require the institution of detailed leak detection and elimination programs. Periodic reports and records detailing leak detection and repair must be maintained. In addition, there are a variety of other monitoring, recordkeeping and reporting requirements.

The Environmental Defense Fund (EDF) sought review of the 1976 Standard in the U.S. Court of Appeals for the District of Columbia Circuit but later dismissed its petition as part of

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a settlement between EDF and EPA. SPI and industry were excluded from the settlement process. The Agency agreed to propose new and more stringent rules and did so in June 1977. 42 Fed. Reg. 28,454 (1977).

In January 1985, EPA published a notice withdrawing the 1977 proposal and simultaneously proposing a new set of revisions to the standard. 50 Fed. Reg. 1,182 (1985) (hereinafter "1985 Proposal"). The Agency's withdrawal of the 1977 proposal was upheld by the D.C. Circuit Court in National Resources Defense Council, Inc. v. EPA, No. 85-1150 (D.C. Cir. Nov. 4, 1986).

The 1985 Proposal suggested: (1) replacing the industry-specific leak detection and elimination programs with a generic program; (2) substituting a numerical limitation for the "emergency" relief valve discharge provision; (3) revising some key definitions; and (4) adding several new definitions.

EPA issued a final rule on September 30, 1986. 51 Fed. Reg. 34,904 (1986) (hereinafter 1986 Amendments). The 1986 Amendments differ significantly from the 1985 Proposal. For example, the final rule reverts to the 1976 Standard permitting

only "emergency" pressure relief valve discharges as compared to the proposed numerical limitation. Other provisions of particular importance to our request for a stay are explained more fully in the following section.

2. Provisions Of The Standard Exemplifying Why A Stay Is Required

SPI's request for a stay can be best understood by a review of six specific provisions of the 1986 Amendments. The adverse impact of each is outlined below.

(a) Definition of "Exhaust Gas;" § 61.61(x)

Under the 1976 Standard, exhaust gases had to be routed to a control device which limits the amount of vinyl chloride discharged to 10 parts per million (ppm). In contrast, there was no specific concentration limitation for leaks. There can be none. Rather, leaks were controlled through leak detection and elimination plans developed for each individual plant. Contrary to the regulatory history underlying the vinyl chloride standard, EPA has attempted to categorize emissions from leaks as exhaust gases and to allege

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violation of the 10 ppm emission limitation requirement. In United States v. Conoco, Inc., Civ. Action No. 83-2518 (W.D.La. June 1, 1984), the court reviewed the regulatory history and concluded that leaks are not exhaust gases and, therefore, are not subject to the 10 ppm emission limitation. A copy of the decision is attached.

The 1976 Standard contained no definition of exhaust gas. In the 1985 Proposal, EPA proposed a definition for exhaust gas that was consistent with the Conoco decision and specifically stated: "A leak . . . is not an exhaust gas." 50 Fed. Reg. 1,194; proposed § 61.61(x). Without adequate explanation or comment requesting such change, the definition for exhaust gas promulgated in the 1986 Amendments deleted this key sentence.

EPA can now argue that emissions from leaks are exhaust gases. The discussion in EPA's Background Information Document is inadequate. Vinyl Chloride Standards: Responses to Comments on January 1985 Proposed Revisions, pg. 2-52 (Sept. 1986) (hereinafter "Background Information Document"). This represents an unjustified change in the 1976 Standard that attempts to silently overturn the Conoco decision. Such a rule

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is fundamentally unfair since it was promulgated without notice or opportunity to comment as required by Section 307(d) of the Clean Air Act, 42 U.S.C. § 7607(d). A stay is required because leaks from equipment in vinyl chloride service will exceed the 10 ppm emission limitation for exhaust gases, thus subjecting industries to a potential fine of \$25,000 per day for each leak notwithstanding compliance with the leak detection and elimination requirements in 40 C.F.R. § 61.65(b)(8).

(b) Definition of "Relief Valve Discharge;" § 61.61(y)

The interpretation of the relief valve discharge provisions of the vinyl chloride standard have been the primary point of contention between industry and EPA. Although serious questions of technological feasibility, safety and cost exist, EPA has urged industry to develop methods for routing relief valve discharges through equipment to minimize emissions of vinyl chloride to the atmosphere. Although no definition of "relief valve discharge" existed in the 1976 Standard, EPA's 1985 Proposal defined relief valve discharge to mean "any nonleak discharge through a relief valve." 50 Fed. Reg. 1,194 (Jan. 9, 1985). Again, without explanation and without any support in the record of which we are presently aware, EPA

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added the following language to this definition in the 1986 Amendments, 51 Fed. Reg. 34,909 (Sept. 30, 1986):

"Relief valve discharge" does not include discharges ducted to a control system from which the concentration of vinyl chloride and exhaust gases does not exceed 10 ppm (average for 3-hour period), or equivalent as provided in § 61.66.

Although somewhat ambiguous, we understand this language to mean that, when vinyl chloride is routed from a pressure relief valve to a control system, no violation of the 1986 Amendments occurs. Nonetheless, the preamble to the 1986 Amendments can be read to mean that, when vinyl chloride travels through a relief valve to a control system, this is a violation; and if this causes emissions from the control system to exceed 10 ppm, the company would be subject to a double penalty for both the relief valve discharge and a 10 ppm exhaust gas exceedance.

A stay for this provision is necessary because it was promulgated without notice and the opportunity for comment required by Section 307(d) of the Clean Air Act, 42 U.S.C. § 7607(d). Moreover, if interpreted to impose double penalties, this provision would exceed EPA's statutory authority and unlawfully increase the maximum statutory penalty created by Congress for a single event that leads to an excursion.

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We are also concerned that this change in regulatory language may be employed by EPA to vitiate the requirement in 40 C.F.R. § 61.65(a) that only relief valve discharges "to the atmosphere" may violate that regulation. EPA has recently reversed six years of regulatory interpretation by asserting that relief valve discharges to flares and other emission reduction equipment may nonetheless violate § 61.65(a). This new interpretation is currently being litigated before the United States Court of Appeals for the Fifth Circuit in Dow Chemical Company v. EPA, No. 86-4286 (5th Cir.), and is not properly the subject of this rulemaking. Accordingly, we request that EPA confirm that the proposed amendment to § 61.61(y) is inapposite to the issue presented in Dow and that the court's decision in Dow will apply to the new standard as well as the old standard.

(c) Leak Detection and Elimination; § 61.65(b)(8)

Under the 1976 Standard, companies installed area monitors and developed plant-specific leak detection and elimination programs that included the routine use of portable monitors. Since that time, EPA developed a generic leak detection and elimination program which is codified in 40

C.F.R. Part 61 Subpart V of EPA's regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAPS). 40 C.F.R. §§ 61.240-61.247 (Subpart V). The Subpart V requirements were based on equipment and data for other industries, particularly benzene equipment, that EPA developed in conjunction with fugitive emission rules for those industries. BID at 2-25; 50 Fed. Reg. 1,191.

EPA is not letting the vinyl chloride and PVC industry continue its plant-specific program, nor is it simply imposing the Subpart V requirements. Rather, the Agency is requiring the retention of the area monitoring and also imposing Subpart V requirements. The Agency's justification that area monitors detect large leaks that might go undetected (50 Fed. Reg. 1,190) may be true. But, if it is, it is true for all industries regulated under NESHAPS, not just the vinyl chloride and PVC industry. The Agency fails to present any rational distinction. Moreover, while maintaining that a program which results in less than 2% of valves leaking (id. at 1,191) is effective, even a demonstration of effectiveness does not qualify for an exemption from all of Subpart V, only designated sections. See § 61.65(b)(8)(ii); 51 Fed. Reg. 34,911.

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EPA's position and the impact of the final rule is arbitrarily discriminatory. It attempts to impose additional Subpart V requirements while maintaining that the plant specific plans and area monitors are effective. Given the differences between the vinyl industry and the industries on which Subpart V was based, and a decade of successful leak detection and elimination programs under the vinyl chloride standard, retention of the original program is appropriate. EPA's new combination requirements in the 1986 Amendments find no record justification for the imposition of more burdensome requirements, especially when existing programs have been effective.

(d) Definition of Ethylene Dichloride Purification;
§ 61.61(o)

For reasons that are not altogether clear, the 1986 Amendments change the definition of ethylene dichloride purification. The definition excludes product storage following the vinyl finishing column. Again, while differences between the proposed and final rule are unexplained, based on EPA's Background Information Document (BID), the Agency intended to exclude not only final product storage but also

intermediate product storage. BID, pp. 2-43, 2-44 and 1-2. The 1986 Amendments fail to reflect exclusion of intermediate storage equipment. Even if EPA intended to include intermediate storage, the cost effectiveness ratios, shown on page 2-44 of the BID, exceeds EPA's own reasonableness criteria for control of extremely low quantities of vinyl chloride emissions. Because the provisions of the final rule are unexplained and conflict with the Agency's supporting materials, they are arbitrary and should be stayed pending review by the Court of Appeals.

(e) Definition of "Three-Hour Period;" § 61.61(z)

In adding a definition of three-hour period to the vinyl chloride standard, EPA was attempting to clarify that the emission limits prescribed in certain sections of the standard are considered to be three-hour averages. This is consistent with the intent of the original regulation as discussed by EPA. See 50 Fed. Reg. 1,192. While emission limitations may be properly evaluated on the basis of a three-hour average, the final rule presents a rolling three-hour period beginning on the hour, that is, "any three consecutive one-hour periods, each hour commencing on the hour." It is our understanding

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that EPA intends to have 24 three-hour periods each day, rather than eight three-hour periods. However well intended, this definition can result in multiple penalties since a single discharge during the one-hour period could cause the average in three three-hour periods to exceed 10 ppm. Defining a single event in this fashion can lead to double or treble penalties and thereby exceed the maximum penalty permissible under the Clean Air Act. This is an unwarranted position in excess of statutory authority, unsupported by the record and should be stayed pending revision.

(f) Definition of Leak; § 61.61(w)

The definition of leak in the 1986 Amendments lists a number of events that are examples of leaks. One such example is "indications of a liquid dripping." Section 61.61(w)(2); 51 Fed. Reg. 34,998 (Sept. 30, 1986). This example is arbitrarily overbroad. As SPI noted in its comments to the Agency in response to the 1985 Proposal, the intent of the definition of the term leak is to describe those events related to the unintended release of vinyl chloride. The phrase "liquid dripping" can mean many things in addition to the escape of vinyl chloride. For example, if piping or equip-

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ment become cold due to the nature of the process, condensation forming on the outside of equipment may be "liquid dripping." The same could be said for water remaining after equipment is cleaned or hosed down. Another example is liquid dripping from a pump. That could be seal fluid and not vinyl chloride. To be reasonable, the phrase "liquid dripping" should be deleted or revised to refer to vinyl chloride. Since this definition potentially impacts the leak detection and elimination programs conducted by industry under the Standard, a stay is merited.

B. ARGUMENT

Because the requirements for a stay of agency action have been met, the Court should stay the effectiveness of the 1986 Amendments pending its review of the issues raised in this petition. The Court has clear authority to stay agency action pending review. 5 U.S.C. § 705. In deciding whether to issue a stay, the Court typically considers four factors:

- (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal;
- (2) the likelihood that the moving party will be irreparably harmed absent a stay;
- (3) the prospect that others will be harmed if the court grants the stay; and

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- (4) the public interest in granting the stay.

Wisconsin Gas Company v. FERC, 758 F. 2d 669, 673-74 (D.C. Cir. 1985) (citing Virginia Petroleum Jobbers Assn. v. FPC, 259 F. 2d 921, 925 (D.C. Cir. 1958)). These factors are not to be applied in accordance with some precise mathematical formula, but rather should be considered together in arriving at a "balance of equities." Washington Metro Area Transit Comm'n. v. Holiday Tours, Inc., 559 F. 2d 841, 844 (D.C. Cir. 1977).

In its discussion of the balancing approach to interim injunctive relief, the Court in Holiday Tours described the function and purpose of a stay pending appeal:

Generally, such relief is preventative, or protective; it seeks to maintain the status quo pending a final determination of the merits of the suit. An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant.

559 F. 2d at 844. The Court also endorsed an earlier approach taken by the Second Circuit in Charlie's Girls, Inc. v. Revlon, Inc., 483 F.2d 953, 954 (2d Cir. 1973) (per curiam), namely, that a party seeking preliminary injunctive relief could prevail by demonstrating that the case raised serious legal

issues and that the balance of equities favored the party seeking relief. 559 F.2d at 844. Thus, the Court may decide to grant a stay based on either the four factors given in Virginia Petroleum Jobbers or on an overall balancing of the equities. The following discussion of each of the four factors demonstrates that each is met and that the balance of equities tips sharply in favor of granting a stay in this case.

1. Probability of Success on the Merits

SPI need not demonstrate a "substantial" probability of success, Holiday Tours, 559 F.2d at 844 (the court "should not be required at an early stage to draw the fine line between a mathematical probability and a substantial probability of success"). SPI has presented not only "difficult legal question[s]," id., but also a very strong probability of succeeding on the merits. EPA's promulgation of the 1986 Amendments disregards the notice and comment procedures contained in the rulemaking provisions of the Clean Air Act, 42 U.S.C. § 7607(d)(3), and the Administrative Procedure Act, 5 U.S.C. § 553, and the due process requirements of the U.S. Constitution. Certain provisions of the 1985 Proposal have been changed without adequate notice or justification by EPA.

For example, the 1986 Amendments excise a critical sentence in the definition of exhaust gas which would have made clear that "a leak . . . is not an exhaust gas." 50 Fed. Reg. 1182. No reasons are given for the deletion of that sentence, even though the result is to silently nullify prevailing case law. See discussion, supra, in section A.2.a.

Another example of EPA's failure to adequately explain or justify the changes made by the 1986 Amendments is its definition of "relief valve discharge," which has the effect of discouraging the use of control devices on relief valve discharges. It would impose double penalties on regulated parties whose relief valve emissions were vented to control devices which would significantly reduce the emission of vinyl chloride but which still might exceed 10 ppm. This result is not only unfair to those parties that do use controls, it also conflicts with the aims of the Clean Air Act.

EPA's definition of "EDC purification" in the 1986 Amendments is at odds with the Agency's expressed intentions throughout the rulemaking history. The Agency apparently intended to exclude both final product storage and intermediate storage from the EDC purification process, see BID pp. 2-43,44,

but the 1986 Amendments do not reflect this intention. In this and other instances, SPI has had no opportunity to present its views and oppose the rules other than in its request for reconsideration by the Agency and in this review proceeding. This is particularly true for those provisions that SPI considered acceptable in 1985.

The Agency's apparent disregard of the record, including the history and underlying rationale for the proposed rules, forces SPI to conclude that the decisions leading to the 1986 Amendments were arbitrary and capricious. See, 42 U.S.C. § 7607(d)(9)(A).

2. Irreparable Injury

Industry members represented by SPI will suffer irreparable harm if the effectiveness of the 1986 Amendments is not stayed during the period of review by this Court. Member companies have entered consent decrees with EPA that require these companies to fully comply with EPA's vinyl chloride standard. If a stay is not granted, these members will be technically in contempt for violating the consent decrees unless they begin to comply with the 1986 Amendments at the

same time these changes are being challenged. See, e.g.,
United States v. Georgia-Pacific Corp., Civil Action Nos. 84-
457-B and 85-136-B (M.D. La.) (see paragraph III of Consent
Decree); United States v. Shell Oil Co., Civil Action No. 83-
4494 (E.D. La.) (see paragraph V(E) of Consent Decree); United
States v. Conoco Inc., Civil Action No. 83-1916-E, (W. D.
Okla. Aug. 21, 1985) (see paragraph III of Consent Decree).

Since EPA can effectively be forced to sue companies
for violations under the citizen suit provisions of section 304
of the Clean Air Act, the Agency cannot assert that it will
exercise its prosecutorial discretion in any predictable
fashion. Moreover, concepts of judicial economy dictate that a
single stay in this forum would be preferable to the entry of
stays in a number of district court proceedings.

A regulated party, obligated by a consent decree to
comply with the 1986 Amendments despite ambiguities which make
rational action impossible, will be in technical contempt and
subject to a contempt citation if it awaits further guidance
from the Court of Appeals. This is the type of injury for
which there is no adequate legal remedy. A stay of the 1986
Amendments should be granted to avoid this inequitable and
irreparable injury.

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An example using provisions from the 1986 Amendments will serve to illustrate another type of irreparable injury at issue. The definition of "exhaust gas" in the 1986 Amendments fails to make clear, as the proposed rule did, that a "leak" as defined in the Amendments does not also fall within the definition of exhaust gas. Compare proposed definition at 50 Fed. Reg. 1194 (Jan. 9, 1985) with definition in 1986 Amendments at 51 Fed. Reg. 34909 (Sept. 30, 1986). If leaks are treated as exhaust gases, every leak would be a violation of the 10 ppm limitation.

3. A Stay Will Cause No Harm to Other
Parties or the Public Interest

The two remaining factors which the Court normally considers in determining whether to grant a stay are:
(i) whether possible harm to other parties would be caused by the stay, or (ii) whether a stay would adversely affect the public interest. Here, a stay of the 1986 Amendments will result in no harm to other parties and will promote the public interest.

Despite the immediate and detrimental impact of the 1986 Amendments on the regulated industry, EPA characterized the Amendments as making only "administrative and clarifying revisions" to the VC standard. 51 Fed. Reg. 34904 (Sept. 30, 1986). In the Agency's view, EPA did not attempt to change the substantive regulatory framework now in place. Thus, immediate implementation is not necessary to protect the public health. If a stay is granted, the existing vinyl chloride standard will remain in effect and will continue to provide adequate protection for human health and the environment during the period of appellate review. Harm will not result from maintaining the status quo for the relatively brief time necessary to obtain final judicial resolution of the issues raised by this petition.

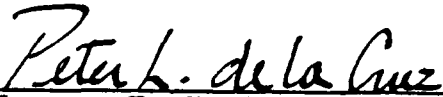
Far from having an adverse impact on the public interest, a stay will ensure that both industry and EPA do not engage in wasteful and unnecessary efforts to comply with the 1986 Amendments when they are likely to undergo significant revision. Thus, the public interest is promoted by delaying effectiveness of the 1986 Amendments until the Court has an opportunity to provide the clarity and guidance which the 1986 Amendments failed to provide.

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C. CONCLUSION

For the reasons given above, SPI respectfully requests that the Court issue a stay of the 1986 Amendments to the vinyl chloride standard pending completion of its review of the EPA rules.

Respectfully submitted,


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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THE SOCIETY OF THE PLASTICS)
INDUSTRY, INC., THE DOW)
CHEMICAL COMPANY, GEORGIA)
GULF CORPORATION, and VISTA)
CHEMICAL COMPANY,)

Petitioners,)

v.)

No.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY and LEE M.)
THOMAS, Administrator,)

Respondents.)

ON PETITION FOR REVIEW OF AN ORDER OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

STAY ORDER

Upon consideration of the motion of the Petitioners filed on November 25, 1986, to stay the final rule promulgated by the Respondents on September 30, 1986, it appearing that such a stay is necessary to prevent irreparable injury to Petitioners, would not adversely affect the public interest, and that the interests of justice require preservation of the status quo pending the outcome of this review proceeding,

IT IS ORDERED:

That the final rule promulgated by Respondents on September 30, 1986, 51 Fed. Reg. 34,904, amending the emission

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standard for vinyl chloride, is stayed pending the disposition of the issues raised in the Petition for Review filed by .
Petitioners.

By the Court:
