

LAW OFFICES
KELLER AND HECKMAN

1150 17TH STREET, N.W.
SUITE 1000
WASHINGTON, D.C. 20036
(202) 457-1100

JOSEPH E. KELLER
JEROME H. HECKMAN
CHARLES H. MEEHAN
WILLIAM H. BORGHESEANI, JR.
MALCOLM D. MACARTHUR
WAYNE V. BLACK
MARTIN W. BERCOWICZ
JOHN S. ELDRIDGE
CAROLE C. HARRIS
MICHAEL P. MORRONE
LARRY S. SOLOMON
JOHN S. OUSECK
CHRISTINE A. MEASHER
SHIRLEY S. FUJINO
MARK FOX EVENS

PETER L. DE LA CRUZ
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March 15, 1985

To: SPI Vinyl Institute Manufacturing
Practices Committee

Re: Comments on Proposed Amendments to
the Vinyl Chloride Standard

Ladies and Gentlemen:

A copy of the comments filed with the Environmental Protection Agency (EPA) on the proposed amendments to the National Emission Standard for vinyl chloride are enclosed. Except for minor editorial changes, the final comments are the same as those circulated with my letter of March 11, 1985.

I was happy to assist the Committee in the preparation of these comments and believe that they reflect both the consensus of the Committee and a solid presentation. I would very much appreciate receiving copies of comments filed by individual companies so that our files will be complete.

If you have any comments or questions or if I can be of any further assistance, please let me know.

Cordially yours,

Peter

Peter L. de la Cruz

Enclosure

VEV 000100963



April 4, 1985

TO: VI Manufacturing Practices Committee
VI Legal Committee

FR: Meredith N. Scheck

RE: NRDC v. EPA

As you are aware, on March 28, the Vinyl Institute filed a motion for Leave to Intervene in NRDC v. EPA, No. 85-1150 (D.C. Cir., March 8, 1985), a case challenging EPA's withdrawal of the June 2, 1977 proposed amendments to the vinyl chloride standard.

The attached letter from counsel, dated April 1, reviews why this action was necessary and brings you up to date on other important information. If you have any questions after reviewing the attached, please call Roy or me. Please heed the attorney - client privilege notation.

Meredith N. Scheck

MNS:ms

attachments

Manufacturers Practices Committee	4/1/85 K&H letter
	3/28/85 Beveridge & Diamond letter
Legal Committee	4/1/85 K&H letter
	3/28/85 Beveridge & Diamond letter
	VI Motion for Leave to Intervene
	NRDC Petition for Review

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A Division of

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

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VEV 000101086

LAW OFFICES
BEVERIDGE & DIAMOND, P. C.
1333 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036

(202) 828-0200
TELECOPIER (202) 828-0234
WRITER'S DIRECT DIAL NUMBER

(202) 828-0240

March 28, 1985

BEVERIDGE & DIAMOND
SUITE 25
101 PARK AVENUE
NEW YORK, N. Y. 10178
(212) 557-3355

JIM J. TOZZI
CONSULTING ECONOMIST

HENRY L. DIAMOND
ALBERT J. BEVERIDGE, III
GARY H. BAISE
HAROLD HIMMELMAN
CHRISTOPHER H. BUCKLEY, JR.
EDWARD H. FORGOTSON
J. MARSHALL COLEMAN
STEPHEN L. GORDON
J. NATHAN Z. CANNON
ALEXANDER W. SIERCK
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GAINES GWATHMEY, III
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KARL S. BOURDEAU
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JOHN R. ELDRIDGE
RICHARD S. DAVIS
THOMAS RICHICHI
CHRISTINA T. SIMMONS
DEAN H. CANNON
VIRGINIA S. ALBRECHT
PAUL E. SHORS, III
ELISABETH A. ROBINSON

CARL EARDLEY
OF COUNSEL

Peter de la Cruz
Keller & Heckman
1150 17th St., N.W., Suite 1000
Washington, D.C. 20036

D ar Peter:

Enclosed is a copy of the Vinyl Institute's Motion for Leave to Intervene in NRDC v. EPA, No. 85-1150 (D.C. Cir. March 8, 1985), a case challenging EPA's withdrawal of the June 2, 1977 proposed amendments to the vinyl chloride standard. Also enclosed is a copy of a letter from Mark Fitzsimmons, an attorney with the Department of Justice, to Rob Brager of this firm, stating that the Department will not oppose the motion to intervene, will treat the Institute as a party, will include the Institute in settlement negotiations, and will let the Institute comment upon any proposed settlement with NRDC before that settlement is filed with the Court. In return, we have agreed not to file a Petition for Review of EPA's withdrawal of the June 2, 1977 proposed amendments.

We believe that receipt of the Fitzsimmons letter is a modest victory for the Institute. The Institute's Petition for Review could not have been filed within 60 days as required by the Clean Air Act and would not have sought reversal of any EPA action. For these reasons, a dismissal of the Petition would almost certainly have been sought by the Government and granted by the Court. Consequently, we believe that this letter provides the Institute with more insurance against a disadvantageous settlement of NRDC v. EPA than would a Petition for Review.

It appears at this juncture that there is little possibility of settlement. We have learned from government attorneys that NRDC wants to stay the case and then consolidate it with any challenges to the new vinyl chloride standard, once that standard is promulgated. EPA is leaning against agreeing to a stay, believing

BEVERIDGE & DIAMOND. P C

Peter de la Cruz
March 28, 1985
Page 2

that it has a good case on the merits. EPA may want a definitive ruling that it can withdraw proposed standards issued under Section 112 of the Clean Air Act, and may see this case as a good test case. For these reasons, government attorneys believe the case will not be settled.

Finally, based on our experience in the vinyl chloride enforcement arena and conversations with government attorneys, we believe EPA may be planning to bring more actions based on relief valve discharges, especially in Texas, and may be planning to bring more suits involving the 10 ppm standard, similar to the litigation against Georgia Pacific. The timing of such enforcement actions is unclear, however. We will, of course, keep you fully apprised of any developments.

Cordially,


Gary H. Baise

GHB/bjd
Enc.



MNS:MPP

Washington, D.C. 20530

March 28, 1985

Robert Brager, Esq.
Beveridge & Diamond
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Re: NRDC v. EPA (No. 85-1110)

Dear Rob:

As discussed in our conversations of yesterday, this letter spells out the position of EPA with regard to the participation of your client, the Vinyl Institute, in the above case. We will not oppose your motion to intervene. If your motion is granted, your client will be treated as any other party in the case. To the extent there are any settlement negotiations with NRDC, you will be apprised of those discussions, and, if practicable, you will be invited to them. If in our judgment however, it is necessary to meet individually with any party in the case at any time, we reserve the right to do so. Finally, in the event there is a settlement, you will be given an opportunity to comment thereon before it is submitted to the court. In return, the Vinyl Institute will not file any independent petitions to review EPA's withdrawal of its June 2, 1977 proposed amendments to the vinyl chloride standard.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Mark E. Fitzsimmons
Attorney, Environmental Defense Section

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APR 12 1985

DR. R. T. GOTTESMAN

TELEX
48 99881

TELECOPIER
(202) 266-7682

CABLE ADDRESS "KELMAN"

WRITER'S DIRECT DIAL NUMBER

(202) 457-1116

LAW OFFICES
KELLER AND HECKMAN

1150 17TH STREET, N.W.

SUITE 1000

WASHINGTON, D.C. 20036

(202) 457-1100

JOSEPH E. KELLER
JEROME W. HECKMAN
CHARLES M. NEEMAN
WILLIAM H. BORGHESEANI, JR.
MALCOLM D. MACARTHUR
WAYNE V. BLACK
MARTIN W. BERCOVICI
JOHN S. ELDRED
CAROLE C. HARRIS
MICHAEL F. MORRONE
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CHRISTINE A. MEAGHER
SHIRLEY S. FUJIMOTO
MARK FOX EVENS

PETER L. DE LA CRUZ
LAWRENCE P. HALPRIN
RALPH A. SIMMONS
C. DOUGLAS JARRETT
EDWARD L. KOSWEK
PETER A. SUBBER
SHEILA A. MILLAR
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LEE M. WEINER
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MARK C. HAYES
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April 1, 1985

FEDERAL EXPRESS

CONFIDENTIAL

Ms. Meredith Scheck
The Society of the Plastics
Industry, Inc.
355 Lexington Avenue
New York, New York 10017

**LAWYER'S WORK PRODUCT. NOT SUBJECT
TO REQUEST FOR PRODUCTION OR
OTHER REQUESTS FOR DISCOVERY.
ATTORNEY - CLIENT PRIVILEGE APPLIES.**

Re: Natural Resources Defense Council v. EPA

Dear Meredith:

As you are aware, we have moved to intervene in an action brought by the Natural Resources Defense Council (NRDC) challenging the Environmental Protection Agency's (EPA) withdrawal of the Agency's 1977 proposed amendments to the vinyl chloride standard. The withdrawal appeared in the preamble to the EPA proposed amendments published on January 9, 1985. 40 Fed. Reg. 1,182.

As the enclosed letter from Gary Baise discusses in more detail, a primary concern is that the Vinyl Institute be permitted to participate as a party in this litigation and in any settlement negotiations. For example, when the Environmental Defense Fund (EDF) instituted litigation after promulgation of the 1976 standard, SPI was excluded from the settlement negotiations which ultimately led to EPA's 1977 proposal. Thus, I am particularly pleased to enclose a March 28, 1985 letter from the Justice Department stating that it will not oppose the Vinyl Institute's Motion to Intervene, will treat VI as any other party in the case, and will involve VI in any settlement proceedings. This Justice Department letter, therefore, offers us the opportunity to effectively represent the interests of the Vinyl Institute and its members. We ask that you treat this letter as confidential at the present time and not publicly distribute it.

VEV 000101090

KELLER AND HECKMAN

Ms. Meredith Scheck
April 1, 1985
Page Two.

It is difficult to predict at this time whether the NRDC case will be litigated now or whether it will be stayed until the 1985 proposals are finalized. Naturally, we will keep you informed of any significant developments. In the interim, if you have any comments or questions, please let me know.

Cordially yours,

Peter

Peter L. de la Cruz

Enclosure

QEV 000101091

A

TO: Harry Garrison
John Friend
Dick Conrad
John McCulley

JJH: JCL: ~~FGG~~: RF

XF: _____

FROM: Joe Ledvina
DATE: April 2, 1985

VISTA

Interoffice
Communication

SUBJ: INFORMATION ON VCM NESHAP'S

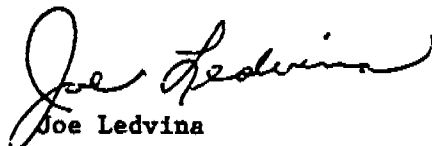
Recently, I sent you NRDC's petition For Review of the EPA decision to recind the 1977 proposed amendments to the VCM NESHAP's. The Vinyl Institute has decided to intervene in the review process. Attached is a copy of the VI's motion to intervene.

The second attachment is a copy of the NY Times article on the recent NESHAP's proposal. Roy Gottesman of the VI called the reporter, Philip Shabecoff, to correct inaccuracies. According to Shabecoff, no follow-up article is planned in the near future.

Peter de la Cruz of Keller and Heckman had someone from his firm go through the docket at EPA. There were 12 sets of comments filed on the January 9 proposal. Vista's comments were in the docket. I will be receiving copies of comments submitted by those outside of the Vinyl Institute. As I understand it, NRDC/EDF, CMA, National Solid Waste Management Association, and a Delaware legislator filed comments. I'll send these along when I receive them.

Also enclosed is a letter I came across in my files from EPA to Firestone (now Oxy) granting several equivalencies. One of the equivalencies is on Reactor Opening Loss.

Give me a call if you would like to discuss any of these items.


Joe Ledvina

Attachments

VEV 000101092

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LAW OFFICES
KELLER AND HECKMAN

1150 17TH STREET, N.W.

SUITE 1000

WASHINGTON, D.C. 20036

(202) 457-1100

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CHARLES M. NEESHAN
WILLIAM H. BORGHESANI JR.
MALCOLM D. MACARTHUR
WAYNE V. BLACK
MARTIN W. BERCOVITZ
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MARK C. HAYES
DEREK A. BLOOM
SANDRA J. JENNIS
KENNETH A. GRIGG JR.

TELEX
49 95551

TELECOPIER
(202) 296 7682

CABLE ADDRESS: KELMAN

WRITER'S DIRECT DIAL NUMBER

(202) 457-1116

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April 1, 1985

FEDERAL EXPRESS

Ms. Meredith Scheck
The Society of the Plastics
Industry, Inc.
355 Lexington Avenue
New York, New York 10017

Re: EPA Vinyl Chloride Standard Rulemaking

Dear Meredith:

On March 29, 1985, we reviewed the Environmental Protection Agency's (EPA) docket for the proposed amendments to the vinyl chloride standard. Although the comment period ended on March 25, 1985, EPA typically accepts comments postmarked on the last day of the comment period. Thus it has been our practice to wait several days before reviewing the docket.

A total of 12 comments were filed. The commenting parties were:

- Natural Resources Defense Council
(Environmental Defense Fund)
- Delaware State Representative Jeffrey G. Mack
- National Solid Wastes Management Association
- Georgia Gulf Corporation
- Chemical Manufacturers Association
- Air Products and Chemicals, Inc.
- Dow Chemical U.S.A.
- Occidental Chemical Corporation
- PPG Industries, Inc.
- Shell Oil Company
- Vista Chemical Company
- SPI Vinyl Institute

95 00010199

Ms. Meredith Scheck
April 1
Page 2

Comments by parties other than the Vinyl Institute and its members are enclosed. The Natural Resources Defense Council (NRDC) stressed the need for a zero emissions policy and opposed withdrawal of the 1977 proposal to amend the vinyl chloride standard. NRDC argued that Section 112 of the Clean Air Act is technology-forcing and that EPA should further limit discharges of vinyl chloride. Turning to the 1985 proposed amendments, NRDC contended that the use of a numerical limit grants the industry a "free" number of discharges. The comments also support the use of a gas holder systems to contain releases. NRDC supported retention of the current leak detection and elimination program under the vinyl chloride standard rather than the leak detection program under Subpart V of the hazardous air pollutant regulations. The Council opposed changing the the 10-day reporting requirement to a quarterly requirement and argued that any non-emergency, preventable release must be reported under CERCLA. The NRDC comments were filed jointly with the Environmental Defense Fund (EDF).

Delaware State Representative Jeffrey G. Mack commented that EPA should withdraw its current proposal and replace it with one which provides added measures of risk reduction. Representative Mack noted that the State of Delaware and Formosa Plastics Corporation entered into a consent agreement under which Formosa agreed to design and construct a containment system for capturing releases of vinyl chloride monomer (VCM) from reactors and other vessels. His comments suggest that EPA impose similar obligations on the entire industry.

Comments by the National Solid Wastes Management Association (NSWMA) raise a concern with VCM contamination of ground water. The comments contend that the permissible VCM levels in resins could lead to ground water contamination. Thus, NSWMA argues, the vinyl chloride standard reflects a lack of coordination among EPA's various programs. The strong implication is that polyvinyl chloride resins be treated as hazardous waste.

Comments filed by the Chemical Manufacturers Association (CMA) are also enclosed together with those of Georgia Gulf Corporation. CMA made several additional suggestions for the leak detection and elimination provisions of Subpart V as well as comments on Method 21.

KELLER AND HECKMAN

Ms. Meredith Scheck
April 1, 1985
Page 3

In addition to the comments, copies of the New York Times and Washington Post articles on the proposed vinyl chloride standard are also enclosed. Since the Manufacturing Practices Committee previously discussed inquiries by Representative Waxman, a Washington Post report on statements by Representative Waxman based his inquiry is enclosed. A Federal Register notice concerning a proposed consent decree in an emergency relief and manual vent valve case is also enclosed.

As you are aware, the United States Court of Appeals for the Fifth Circuit is reviewing whether the emergency relief valve provisions of the vinyl chloride standard are an impermissible work practice or an acceptable emission limitation. Copies of the EPA January 1985 proposed amendments were filed with the court which then asked for comments on whether the proposal mooted the lawsuits. A response filed by the industry defendants is enclosed for your information. It aptly describes the impact of the EPA-proposed amendments. The governments' response is also enclosed.

If you have any comments or questions, please let me know.

Cordially yours,

Peter

Peter L. de la Cruz

Enclosures