

From the Desk of
PHILIP TREW
Environmental Control

To: R. Samuelson
D. Cannon
P. King

FYI. Comments from the SPI
Vingl Institute concerning the
LA. ESHAP Regulations. These
comments were presented to the
LA. DNR on 3/30/83. I will
keep you informed on the DNR's
response to these or any other
comments.

Philip Trew

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Environmental Affairs

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The Society of the
Plastics Industry, Inc.

355 Lexington Ave
New York, New York 10017
(212) 573-9400

March 28, 1983

Mr. B. Jim Porter
Assistant Secretary
Office of Environmental Affairs
Department of Natural Resources
P. O. Box 44066
Baton Rouge, Louisiana 70804

Re: Comments on Proposed Emission Standards
for Hazardous Air Pollutants

Dear Mr. Porter:

The Society of the Plastics Industry, Inc. ("SPI" or the "Society") appreciates this opportunity to comment on the proposed emission standards for hazardous air pollutants (ESHAP) currently under consideration by the Office of Environmental Affairs (OEA). By way of background, SPI represents 1,200 member companies and is the major national trade association of the plastics industry. Its membership represents over 95% of the production and about 75% of the sales of plastics materials in the United States. SPI is organized into approximately 50 operating units.

These comments represent the efforts of SPI's Vinyl Institute. The Vinyl Institute (formerly the PVC Safety Group) has been actively involved in the United States Environmental Protection Agency's (EPA) regulation of ethylene dichloride

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(EDC), vinyl chloride monomer (VCM) and polyvinyl chloride (PVC) under the Clean Air Act. The Institute's historical involvement and that of its members has provided the foundation for these comments.

Our comments are presented by proposed section numbers. To facilitate your review, we have enclosed a copy of the proposed regulations showing the additions and deletions we recommend.

The VCM/PVC industry has invested heavily and worked diligently to limit emissions. The industry has attained an excellent record in this regard. According to a report prepared by TRW, Inc. for EPA, emissions from a typical PVC plant are 66% less than the amount of emissions allowed under the existing standard. Similarly, emissions from a typical EDC/VCM plant are 56% less than that allowed under the standard. "Vinyl Chloride--A Review of National Emission Standards," Tables 4-3 and 4-4 at pages 4-5 and 4-6 (February 1982) (EPA-450/3-82-003). In our view, actual emissions are probably even less than these figures suggest.

EPA established the emission limitations contained in the vinyl chloride standard to "minimize the risk to the public health." 40 Fed. Reg. 59,535 Col. 3 (Dec. 24, 1975). By limiting typical emissions even more stringently than required, the industry has provided an additional margin of safety to ensure that in those instances where a discharge results from a malfunction

tion, emergency or other similar cause, it will not endanger the public health or welfare.

A. ESHAP GENERAL PROVISIONS

Section 76.2 Definitions

a. "Emergency Emission"

The term "emergency emission" includes discharges that are in excess of those allowed by permit, license, variance or compliance schedule. Air emissions from EDC, VCM and PVC facilities are limited directly by regulation rather than by a permit or license. Therefore, proposed section 76.2 should include the term "regulation."

We agree that "an unauthorized act or omission of an employee" resulting in a discharge should be presumed to be an emergency emission. In our view, unauthorized acts or omissions should be considered "outside the scope of employment." Thus, this phrase is superfluous and should be deleted from subsection (4).

Excess emissions resulting from a "sudden and unavoidable failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner," should also be presumed to be an emergency emission. Such an event is a "malfunction" as defined by proposed section 4.125. "Malfunction" should be added to the list of events presumed to constitute an "emergency emission."

Under the proposed emission standard for vinyl chloride (Subpart B), emergency manual vent valve discharges and emergency relief valve discharges are permitted. See proposed sections 77.5(a)(3) and 77.6(a). Such discharges would not be "emergency emissions" as defined in proposed section 76.2 because they are not "in excess" of that allowed. We note, however, that the events which create a presumption of "emergency" conditions for unauthorized emissions apply with equal force to relief valve and manual vent valve discharges. As a matter of policy, the same presumptions should apply in determining whether relief valve and manual vent valve discharges are emergency discharges. Corrective language is suggested.

b. "Modification"

The phrase "by such source of which results" should be changed to "by such source or which results." This was a typographical error.

Section 76.7 Construction Permits

Section 76.7 addresses permits for the construction of new sources or the modification of existing sources. For clarity, the penultimate sentence in proposed section 76.7(a) should be deleted because it addresses the permitting of existing sources. Such concerns should be moved to section 76.8 which deals with existing source authorization.

Under the Louisiana Air Control Law, La. Stat. Ann. § 1089C, applicants seeking a construction permit must submit "evidence that the facility has no violation of a hazardous air pollutant emission outstanding at the time of application" We suggest that the term "facility" be inserted in proposed section 76.7(b)(4) to make it consistent with the statutory language.

Subsection 76.7(b)(5) has no basis in the statutory plan. The information required by subsection (b)(4) will provide all the information on violations needed by OEA and required by the Louisiana Air Control Law. Moreover, subsection (5) is largely redundant. Therefore, subsection (5) should be deleted. If not deleted, it should be amended to refer to the facility's outstanding violations of an applicable hazardous air pollutant standard.

Section 76.8 Existing Source Authorization

The wording of proposed section 76.8 needs to be clarified and made consistent with state law. The Louisiana Environmental Affairs Act, La. Stat. Ann. § 1071, mandates that all presently valid authorizations "granted by the agency having prior jurisdiction over any activity covered by this Chapter shall continue in effect according to their present terms and conditions unless revoked for cause." We note that "this Chapter" covers activities under the Louisiana Air Control Law.

In keeping with section 1071, proposed section 76.8 should state clearly that sources operating under a federal National Emission Standard for Hazardous Air Pollutants (NESHAP) regulation can continue to operate without further authorization.

The language of proposed section 76.8(b) directly contravenes the legislative mandate contained in section 1071. To the extent that the proposed regulations seek the submission of information on potential violations predating Louisiana's implementation of a NESHAPS program, the request is unwarranted. Rather than require submission of information likely to prove irrelevant, we suggest that sources be required to submit the information required under section 76.11. This should provide the state with an inventory of existing NESHAPS facilities, although EPA should provide this information to the state in a readily usable form.

Questions concerning prior violations involve the source and EPA. It is true that if the state is investigating a new violation, information on past enforcement activity might be pertinent. If so, at that time the state could request the information from EPA or the source. We hope, however, that EPA will provide all this information to the state during the transition period. Suggested language for an amended section 76.8(b) is provided.

Section 76.13 Emission Tests and Monitoring

Proposed section 76.13 refers to the "verification of allowable emissions." Emission testing measures actual, not "allowable," emissions. Measurements of actual emissions are then correlated with allowable emissions to assess compliance. We suggest that the term "allowable" be deleted as technically incorrect and potentially misleading. This would not be a substantive change.

Section 76.15 Source Test and Analytical Methods

Section 76.15 requires the use of specified methods unless the Assistant Secretary approves an equivalent or alternate method. In keeping with section 1071 of the Louisiana Environmental Affairs Act and our comments on proposed section 76.7, proposed section 76.15(a) should be amended to recognize equivalent or alternate methods previously approved by EPA.

Rudimentary concepts of due process in administrative proceedings require that the Assistant Secretary notify a source before withdrawing approval of an alternate or equivalent method. Section 76.15(b) should be modified to acknowledge that withdrawal of approval will occur only after notice to the source and a reasonable time to comment.

Section 76.18 Discharge Reporting Requirements

Section 76.18 requires a source to report a discharge in excess of allowable emissions rates. The source must report the discharge "immediately" by telephone and provide a written report within seven days. Several changes should be made.

(1) While proposed section 76.18 refers to excess emissions, it is used by reference as the reporting requirement for allowable emissions under the vinyl chloride standard. See proposed sections 77.5(a)(3) (emergency manual vent valve discharge) and 77.6(a) (emergency relief valve discharge). SPI is very concerned that reporting under proposed section 76.18 will be misinterpreted as an acknowledgement of a discharge in violation of the vinyl standard. This concern, although very significant, can be easily remedied by inserting the phrase "As otherwise required" at the beginning of proposed section 76.18. Adding this phrase will not change the intent or substance of the proposal.

(2) The wording of proposed section 76.18 assumes that NESHAPs sources operate under a permit or compliance schedule. The VCM/PVC industry operates directly under the vinyl chlor-

ide standard without a permit for daily operations. To correct this oversight, the term "regulation" should be added to proposed section 76.18 to cover sources operating under Louisiana's (formerly EPA's) VC standard.

(3) To clarify the method of calculating the time period in which sources must submit the follow-up written report, we suggest that the term "working days" be used.

(4) The grammatical structure of section 76.18 can be enhanced by dividing the long sentence which comprises the section into two sentences. This division is shown in the attached compilation of changes.

(5) As written, proposed section 76.18 requires that any exceedance, no matter how small, be reported. During the public hearings on the proposed regulations, OEA officials stated that the Agency did not intend to require sources to report de minimis exceedances. For example, if a standard limited emissions to 10 parts per million (ppm) for a specific substance, and actual emissions were 11 ppm for a temporary period, OEA officials stated that this was not to be reported under section 76.18.

For purposes of clarification, OEA should issue an interpretive letter stating that de minimis exceedances are not discharges "in excess of that allowed" under section 76.18. By "de minimis" we mean excess emissions which would not have an appreciable impact on ambient air quality.

B. EMISSION STANDARD FOR VINYL CHLORIDE

Section 77.2 Definitions

Under the vinyl chloride standard, emergency relief valve and manual vent valve discharges are permitted when they could not be avoided by taking "measures to prevent the discharge." This provision could be improved by defining the term "measures." We suggest that the term be defined as "an adequate combination of design, procedure and equipment to limit discharges which is approved by the Assistant Secretary."

While section 76.2 defines "emergency emission," it does not encompass "emergency discharges" under sections 77.5(a)(3) and 77.6(a) because emergency discharges are not "in excess of that allowed." In addition, one provision refers to "emission" and the other to "discharge." To provide a needed cross-reference, we suggest that a definition of "emergency discharge" be added to indicate that a determination of whether

a relief valve or manual vent valve discharge is an emergency discharge should include consideration of the presumptions listed in section 76.2.

Section 77.6(b) Fugitive Emission Sources

Section 77.6(b) regulates fugitive emissions (leaks) in EDC, VCM and PVC facilities. While the proposed section follows corresponding language in the federal standard, the presence of Louisiana's reporting requirements under proposed section 76.18 creates an ambiguity. To resolve this, we recommend that a new provision be added distinguishing reporting under the general provisions of section 76.18 from the leak detection requirements of section 77.6(b).

Section 77.7 Equivalent Equipment and Procedures

Section 77.7 authorizes the Assistant Secretary to approve the use of equipment or procedures which have been demonstrated to be equivalent in terms of reducing vinyl chloride emissions to the atmosphere. In keeping with section 1071 of the Louisiana Environmental Affairs Act, this section should be modified to endorse an equivalency approved by EPA prior to the effective date of these regulations. Suggested language is shown in the attachment.

Section 77.8 Annual Emission Tests

Proposed section 77.8 requires that sources conduct annual tests of emissions. The obvious purpose of the requirement is to ensure that pollution control equipment is properly operating and that actual emissions do not exceed allowable emissions. The requirement of annual testing may be redundant where specific regulatory provisions require continuous monitoring of emissions. To compensate for this redundancy, we suggest the addition of language to section 77.8(b)(g) that a source from which emissions are monitored and reported pursuant to proposed sections 77.9 and 77.11 not be required to conduct an annual emission test provided that such emission tests shall be or have been successfully completed once and may be required following construction or modification.

Section 77.9 Emission Monitoring

Proposed section 77.9 requires monitoring systems for certain emission sources. As noted previously in conjunction with other provisions, the reporting requirements contained in 76.18 introduce a potentially confusing factor not found in the structure of the federal regulations. To clarify reporting requirements for emission monitoring, which are reported in the semiannual report, a sentence should be added to section 77.9 (a) noting that such monitored emissions are not reportable

under section 76.18. This will obviate the need for duplicative reporting.

Section 77.10 Initial Report

Section 77.10 provides that sources submit an initial report. This section is drawn from the federal standard. Unlike the situation which existed when the federal rule was drafted, Louisiana is taking control of an existing regulatory system. Vinyl chloride NESHAP facilities have previously submitted an initial report that is available to the State from EPA. Therefore, we recommend that subsection 77.10(a) be modified to make it clear that the requirement of filing an initial report applies to facilities with an initial startup date after the effective date of these proposed regulations.

As proposed and as suggested in these comments, existing sources should be required to file an informational report with the state pursuant to proposed section 76.11. The filing of this report obviates the need for a duplicative requirement in 77.10(b)(1). Because the state would have no interest in receiving information beyond that required by section 76.11 and in light of the statutory intent underlying the continued operation of existing sources, we recommend that the subsection be deleted.

Section 77.11 Semiannual Report

Proposed section 77.11 requires sources to file a semi-annual report providing significant information on emissions. Due to the restructuring of the federal standard by the state, and as noted for other reporting requirements, duplicative reporting might be required by section 76.18. We recommend that a sentence be added to section 77.11(a) indicating that emissions reported in the semiannual report need not also be reported under section 76.18.

C. GENERAL AIR QUALITY REGULATION RULES

Section 6.1.7 Confidential Information

Our concern with the confidentiality provision stems more from a desire to clarify its operation than from opposition to the proposal as drafted. To this end, we would appreciate an interpretive statement that the stamping of materials as "confidential" constitutes a written request that the materials not be disclosed to the public. In addition, the Office of Environmental Affairs (OEA) should confirm that it will notify the submitter, prior to release, of its decision not to treat appropriately marked material as confidential.

We do not believe that OEA should burden itself with providing written determinations regarding disclosure when requests for confidentiality will be honored.

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We are interested in the practices that OEA employs to maintain the confidentiality of materials. Since the proposed regulations permit confidential information to be maintained in the same files with nonconfidential information, we are concerned that members of the public may be granted access to the files when the press of business prevents state employees from bringing the individual folders of material in the file to the requesting individual.

D. CONCLUSION

SPI appreciates this opportunity to comment on the Louisiana proposals. We believe that our suggestions are consistent with the intent of the Louisiana legislature and the Clean Air Act.

As you may be aware, the United States Environmental Protection Agency is presently reviewing the vinyl chloride standard for possible modification. Both SPI and EPA have been actively reviewing potential administrative changes to the current standard to improve and clarify its operation. Pertinent correspondence and materials on this federal review proceeding are enclosed for background information. By keeping the Office

of Environmental Affairs apprised of EPA activities in this regard, we hope to develop the best possible standard.

Cordially yours,

G. R. Munger, President
THE SOCIETY OF THE PLASTICS
INDUSTRY, INC.

Of Counsel:

Jerome H. Heckman
Peter L. de la Cruz
Keller and Heckman
1150 17th Street, N.W.
Washington, D.C. 20036

(202) 457-1110

SUGGESTED CHANGES
TO THE
PROPOSED LOUISIANA EMISSION STANDARDS
FOR
HAZARDOUS AIR POLLUTANTS

[Underlining indicates addition;
~~overstrike~~ denotes deletion.]

76.2 Definitions.

The terms used in this part are defined in Section 4.0 of these regulations with the exception of those terms specifically defined in the subparts or herein as follows:

"Emergency emission" is the discharge into the atmosphere of Louisiana of a hazardous air pollutant the rate of which is in excess of that allowed by regulation, permit or license and which could not have been avoided by taking measures to prevent the discharge. The emission of a hazardous air pollutant for a stationary source in excess of that allowed by regulation, permit, variance, or compliance schedule and which is caused solely by:

- 1) An act of God; or
- 2) An act of war; or
- 3) An act of sabotage; or
- 4) An unauthorized act or omission of an employee outside the scope of his employment; or

5) An unauthorized act or omission of a third party who is not an agent or contractor of the owner or operator of the stationary source; or

6) A malfunction; or

7) 6) Any one, or a combination of the above paragraph;

shall be presumed to be an emergency emission, unless the Assistant Secretary, in light of all available relevant facts and circumstances, determines otherwise. These presumptions apply to discharges under sections 77.5(a)(3) and 77.6(a).

"Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any hazardous air pollutant emitted by such source or of which results in the emission of any hazardous air pollutant not previously emitted, except that:

- (a) Routine maintenance, repair, and replacement shall not be considered physical changes, and
- (b) The following shall not be considered a change in the method of operation:
 - (1) An increase in the production rate, if such increase does not

exceed the operating design capacity of the stationary source;

- (2) An increase in hours of operation.

76.7 Application for Permit and Approval of Construction or Modification.

- (a) The owner or operator of any new source to which a standard prescribed under this part is applicable shall, prior to the date on which construction or modification is planned to commence, or within 30 days after the effective date of an applicable standard in the case of a new source that already has commenced construction or modification and has not begun operation, submit to the Assistant Secretary an application for a permit and approval of such construction or modification. The owner or operator of an existing stationary source subject to any standard prescribed under this part may be required to submit to the Assistant Secretary an application for a permit. A separate application shall be submitted for each stationary source.
- (b) Each application shall include:
 - (1) The name and address of the applicant.
 - (2) The location or proposed location of the source.

- (3) Technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of any equipment to be used for control of emissions. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of such calculations.
- (4) A listing of any violation by the facility of an applicable hazardous air pollutant standard which is outstanding at the time of application, except any such violation for which a compliance schedule has been established and satisfactory progress for meeting the conditions of the compliance schedule can be demonstrated by the applicant.
- (5) [Delete entire subsection, or as an alternative use the following:]
- A listing of any outstanding administrative or judicial actions taken against the facility applicant under an applicable hazardous air pollutant standard

federal or state environmental laws or regulations including emergency cease and desist orders, notices of violation, compliance orders, penalty orders, or other administrative orders, and any administrative or judicial proceedings which could result in such actions.

76.8 Existing Source Authorization.

- (a) An owner or operator of an existing source who, as of the effective date of an applicable standard prescribed under this part, has been operating under issued a Federal NESHAP standard compliance schedule or approval, may, subject to subsection (b), continue to operate without further authorization provided the owner or operator of such source complies with Sections 76.5(e), 76.7(a)(4) and (5), and 76.11.
- (b) An owner or operator of an existing source shall provide the information required by Section 76.11 within 90 days after these regulations become effective. After a review of the information supplied pursuant to Sections 76.7(a)(4) and (5) and 76.11, the Assistant Secretary may require the owner or operator of an existing source to

submit an application for a permit under Section 76-77 or the Commission or Assistant Secretary may issue an order and compliance schedule pursuant to Section 76-12. The owner or operator may continue to operate such source until final action is taken on the permit application or until an order and compliance schedule is issued.

76.13 Emission Tests and Monitoring.

- (a) Emission tests and monitoring shall be conducted and reported as set forth in this part and the Division's Source Test Manual. A facility emitting a hazardous air pollutant into the atmosphere of Louisiana shall, on an annual basis, conduct emission testing as required in the applicable subparts for the purpose of verification of allowable emissions.

76.15 Source Test and Analytical Methods.

- (a) Methods 101, 101A, 102, 104, 105, 106 and 107 in the Division's Source Test Manual shall be used for all source tests required under this part, unless an equivalent method or an alternative method has been approved by the Assistant Secretary or previously approved by the United States Environmental Protection Agency.

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- (b) The Assistant Secretary may, after notice, withdraw approval of an alternative method granted under Paragraph (a). Where the test results using an alternative method do not adequately indicate whether a source is in compliance with a standard, the Assistant Secretary may require the use of the reference method or its equivalent.

76.18 Discharge Reporting Requirements.

As otherwise required and for ~~For~~ any discharge of a hazardous air pollutant into the atmosphere of Louisiana the rate of which is in excess of that allowed by regulation, permit, compliance schedule, or variance, the owner or operator of the source from which discharge occurs shall immediately notify the Office of Environmental Affairs by telephone, and The owner or operator of the source shall submit to that office a written report within seven work days containing information on the source, nature and cause of the discharge, the date and time of the discharge, the approximate total loss during the discharge, the method used for determining the loss, the action taken to prevent the discharge, and measures adopted to prevent future discharges.

77.2 Definitions.

- (w) "Measures"--an adequate combination of design, procedure and equipment to limit discharges which is approved by the Assistant Secretary.
- (x) "Emergency discharge"--in evaluating whether a relief valve or a manual vent valve discharge is an emergency discharge, the presumptions in Section 76.2 apply.

77.6(b) Fugitive Emission Sources

- (8) (vii) Leaks detected under this section are not reportable under section 76.18.

77.7 Equivalent Equipment and Procedures.

Upon written application from an owner or operator, the Assistant Secretary may approve use of equipment or procedures which have been demonstrated to his satisfaction to be equivalent in terms of reducing vinyl chloride emissions to the atmosphere to those prescribed for compliance with a specific paragraph of this subpart. For an existing source, any request for using an equivalent method as the initial measure of control is to be submitted to the Assistant Secretary within 30 days of the effective date. For a new source, any request for using an equivalent method is to be submitted to the Assistant Secretary with the application for a permit and approval of construction or modification required by Section 76.7. An equivalency approved

by U.S. EPA before the effective date of these regulations shall continue in full force and effect.

77.8 Emission Tests.

- (g) Unless otherwise specified, the owner or operator shall use test methods in the Division's Source Test Manual for each test as required by Paragraphs (g)(1), (g)(2), (g)(3), (g)(4), and (g)(5) of this section, unless an equivalent method or an alternative method has been approved by the Assistant Secretary. If the Assistant Secretary finds reasonable grounds to dispute the results obtained by an equivalent or alternative method, he may require the use of a reference method. If the results of the reference and equivalent or alternative methods do not agree, the results obtained by the reference method prevail, and the Assistant Secretary may notify the owner or operator that approval of the method previously considered to be equivalent or alternative is withdrawn. A source from which emissions are monitored and reported pursuant to Sections 77.9 and 77.11 shall be deemed to have conducted an annual emission test under this section, provided that such emission tests shall

be or have been successfully completed once and may be required again following construction or modification of the facility.

77.9 Emission Monitoring.

- (a) A vinyl chloride monitoring system is to be used to monitor on a continuous basis the emissions from the sources for which emission limits are prescribed in Sections 77.3(a) and (b), 77.4(a), and 77.5(a) (1), (b), (c), and (d), and for any control system to which reactor emissions are required to be ducted in Section 77.5(a) (2) or to which fugitive emissions are required to be ducted in Section 77.6(b) (1) (ii), and (b) (2), (b) (5), (b) (6) (ii), and (b) (9) (ii). Such monitored emissions are not reportable under Section 76.18.

77.10 Initial Report.

- (a) An owner or operator of any source to which this subpart applies and which has an initial startup date after the effective date of this subpart shall submit a statement in writing notifying the Assistant Secretary that the equipment and procedural specifications in Sections 77.6(b) (1),

(b) (2), (b) (3), (b) (4), (b) (5), (b) (6), (b) (7), and (b) (8) are being implemented.

(b)

(1) In the case of an existing source or a new source which has an initial startup date preceding the effective date of this subpart, the statement is to be submitted within 90 days of such effective date, unless a deferred compliance is granted under Section 76.12, along with the information required under Section 76.11. If deferred compliance is granted, the statement is to be submitted on a date scheduled by the Assistant Secretary.

(2) In the case of a new source which did not have an initial startup date preceding the effective date of this subpart, the statement is to be submitted within 90 days of the initial startup date.

77.11 Semiannual Report.

(a) The owner or operator of any source to which this subpart applies shall submit to the Assistant Secretary on September 15th and March 15th

of each year a report in writing containing the information required by this section. The first semiannual report is to be submitted following the first full 6-month reporting period after the initial report is submitted. Emissions reported under this section are not reportable under section 76.18.