

10-1

VI EXECUTIVE BOARD MEETING

Stouffers Tower City Hotel
24 Public Square
Cleveland, Ohio 44113

Tuesday
September 18, 1990
8:00 a.m.

Attendees:

Alan Bailey, Occidental Chemical Corporation
Michael Barish, Borden Chemicals and Plastics
Pat Benkner, Vinyl Institute
Chuck Bush, BFGoodrich Company
Rick Flammer, Vista Chemical Company
Roy Gottesman, Vinyl Institute
Robert Kelly, CertainTeed Corporation
Don Knechtges, BFGoodrich Company
Jerry Koral, Atochem, N.A.
Fred Krause, BFGoodrich Company
Robert Luss, Occidental Chemical Corporation
Donna Magill, PPG Industries
Robert Margevich, Akzo Chemicals
Woody Miller, GE Specialty Chemicals
William Patient, BFGoodrich Company
Robert Petrich, Rohm and Haas Company
Michael Reynolds, Vista Chemical Company
John Russ, Borden Chemicals and Plastics
Fred Sacks, Occidental Chemical
Gonzalo Sandino, Petroquimica Colombiana
Meredith Scheck, Vinyl Institute
Ed Schiffer, Georgia Gulf Corporation
E. Schroeder, Shintech Inc.
William Shoun, Dow Chemical Company
Rick Smith, Vista Chemical Company
D'Lane Wisner, BFGoodrich Company
John York, EVC

I. OPENING OF MEETING AND SELF-INTRODUCTIONS

The meeting was convened at 8:00 a.m. by Executive Board Chairman H. R. Flammer. In brief opening remarks, he thanked the BFGoodrich Company for hosting the members of the Executive Board and guests on September 17, 1990. Mr. Flammer's brief opening remarks were followed by a round of self-introductions.

SPI-10488

II. APPROVAL OF MINUTES OF MAY 12, 1990 EXECUTIVE BOARD MEETING

Mr. Russ moved that the minutes of the May 12, 1990 meeting of the Vinyl Institute Executive Board as contained under Tab A of the briefing book for this meeting be approved. The motion was seconded by Mr. Schiffer and approved by voice vote.

III. FINANCIAL REPORTS

A. Final Financial Results for Fiscal Year Ending May 31, 1990

Dr. Gottesman reviewed the cash basis statement of revenues and expenditures for the period ending May 31, 1990 as contained under Tab B of the briefing book for this meeting. He noted the revised fund balance figure of \$99,454.

Dr. Gottesman also reviewed the comparison of performance vs. budget chart included under Tab B of the briefing book and noted that indirect expenses were up 1% over budget; and that direct expenses were up 4% over budget. He noted that the chart contained a bookkeeping error in the direct project area and that a portion of the expenditures reflected under the Communications Committee were expended by the Pipe Resource Organization. He noted, however, that the bottom line of total expenses in the actual and budget areas are correct.

B. Status of Current Expenditures

Dr. Gottesman reviewed the cash basis statement for the period ending July 31, 1990, the first two months of the current fiscal year, is included under Tab C of the briefing book for this meeting. Dr. Gottesman noted that the assessments of one affiliate and one associate member are not reflected on this chart. He noted that the fund balance of \$548,873 only reflects half-year assessments.

C. Revised Fiscal Year 1990-1991 Budget

Dr. Gottesman noted that a copy of the revised Fiscal Year 1990-1991 budget is included under Tab C of the briefing book for this meeting. He commented that the FY 1990-1991 budget, which was officially approved at the May 12, 1990 Executive Board meeting, has been revised to reflect the loss of assessment income due to the

resignations of Air Products and Chemicals and the BASF Corporation and the use of the actual fund balance

through May 31, 1990, rather than an estimate of the fund balance. Dr. Gottesman noted that the revised budget does not reflect any changes in budgeted amounts for either direct or indirect expenses. He noted that the net effect of the changes discussed was to have an amount of \$60,613 available for contingency.

IV. PROACTIVE TASK FORCES AND MARKET-RELATED ACTIVITIES

A. Pipe

1. Pipe Resource Organization Update

Mr. Flammer welcomed the new PRO Chairman Mike Barish of Borden Chemicals and Plastics to his first meeting of the Executive Board. In addition to the material included under Tab D of the briefing book for this meeting, Mr. Barish's comments also reflected discussions at the September 6th PRO meeting. Mr. Barish updated the Board on the status of the current advertising campaign and noted that the total inquiry list developed is to be shared by members of PRO.

Additionally, he updated the Board on PRO's discussions related to recent anti-plastic pipe advertising campaigns; liaison projects underway with the Uni-Bell PVC Pipe Association; and a report on "The Scope of Plastics in DWV Pipe in High-Rise Buildings" prepared for PRO by Business Communications Company. He noted that this market was identified to be in the 100-110 million pound range, and the group has discussed technical issues related to expansion into this market.

In response to a question from Mr. Flammer regarding whether it appears as though originally-budgeted items for FY 1990-1991 need to be expended, Mr. Barish commented that to date the feedback from pipe producers is positive and that PRO has been working to change previous opinions that the industry was fragmented.

He commented that the FY 1990-1991 PRO budget had been constructed to better position the industry and that the group decision to seek additional feedback on its current advertising campaign to continue to assess the effectiveness of its activities may help refine necessary financial resources.

2. California Environmental Impact Report (EIR) - Status Report

At the May 12, 1990 Executive Board Meeting, the Executive Board authorized the Executive Director to become involved in negotiations with representatives of the California Pipe Trades Council on behalf of the vinyl interests, if such action was appropriate and might lead to an early issuance of a completed EIR. In addition to the background material included under Tab P of the briefing book for this meeting, Dr. Gottesman reviewed in detail all events since April 19th that have involved SPI representatives and legal counsel and noted the current status of the completion of the report by SRI.

In response to a question from Mr. Luss regarding expenditures made to date, Dr. Gottesman noted that to date some 80% of the money spent has been contributed by vinyl interests and that it is not his intention to recommend additional financial contributions. Mr. Patient commented that the CPVC people are pursuing their own interests, which he believes are not in conflict with industry activity. Following an extensive roundtable discussion on the status of this issue, the Board's frustration of its continuation, the following two action items were agreed to:

1. Mr. Luss is to provide Mr. Flammer with a draft letter to Mr. Thomas, President of SPI, noting agreement be sent with SPI policy as detailed in Mr. Thomas' letter of August 3rd. Further, this letter is to agree not to deviate from this policy if SPI and/or other affected interests agree to pick-up all other costs associated with the completion of this project.
2. Mr. Barish and Dr. Gottesman are to further discuss the involvement of PW Pipe.

B. Electrical Materials Council

Mr. Rick Smith, Chairman of the Electrical Materials Council, reviewed in detail the Market Advisory Panel meetings held July 23rd and 24th. A report on these meetings prepared by Mr. Dan Stanowick of Edward Howard and Company was included under the Council's report to the Board under Tab E. Mr. Smith commented that the Electrical Materials Council is scheduled to meet September 19th to consider program proposals to undertake as a result of the panel sessions.

Among the suggestions to be considered by the Council are the development of a video and accompanying literature on key issues, the preparation of a quarterly or monthly newsletter, and direct interface with editors covering this market. In response to a question from Mr. Flammer, Mr. Smith noted that it is the committee's intention to develop programs at or under the amount included in the FY 1990-1991 budget.

C. Vinyl Packaging Council

Mr. Wisner, Chairman of the Vinyl Packaging Council updated the Board on recent activities undertaken by the Council. Background information is included under Tab F of the briefing book for this meeting. He commented that the Council had decided that it would focus its promotional activities in the bottled water market, which represents a return to the Council's original marketing plan. At the same time, the group intends to closely coordinate its activities with those of VIGOR, as it is the solid waste issues that are of significant concern to packaging specifiers.

Mr. Wisner noted that during the second year of the VIP awards program, which is now underway, the Council intends to significantly expand public relations activity. Mrs. Scheck noted that the group also intends to undertake a media briefing program to the vertical trade press.

At the conclusion of the reports on the activities of the three market task forces (PRO, Electrical Materials Council and the Vinyl Packaging Council), Mr. Flammer commented that it is difficult to assess from a cost vs. benefit approach the impact of these activities which now consume approximately 1/3 of the Institute's operating budget.

Mr. Flammer commented that he has been considering instituting a new reporting format that would include a measurement system for committee activities. Dr. Gottesman noted that the Board had decided to form the committees at a time when it appeared as though the critical, defensive activities needed were under control. Mr. Knechtges commented that data can be important in helping to decide whether resources should be redeployed rather than institutionalizing existing structures and programs. Mr. Krause urged that it is important to look

at the underlying issues that are affecting important markets.

At the conclusion of the discussion, it was agreed that Mr. Flammer and Dr. Gottesman would work on developing a reporting format for committee activities to help the Board focus more easily on the benefits of projects undertaken.

V. SPECIAL PROJECTS/ISSUES

A. Solid Waste Management

1. Vinyl Institute Group on Recycling (VIGOR) Report

Mr. Krause updated the Board on recent activities undertaken by VIGOR. Background information was included under Tab G of the briefing book for this meeting. Mr. Krause commented that since the last meeting of the Executive Board a press briefing on the project at the Center For Plastics Recycling research at Rutgers University was held. A video of the May 21st briefing and the recycling technology was shown. Mr. Krause noted that a fact kit of materials related specifically to the solid waste issue has been developed in a format that can easily be added to or amended.

Mr. Krause stated that at the September 13th meeting of VIGOR it was decided to proceed with a proposal from the Vinyl Packaging Council to demonstrate vinyl recycling technology at the Packaging Materials Machinery Institute Trade Show in November 1990. He noted that Mr. Mullen of American Mirrex is serving as program director of this project.

Mr. Krause updated the attendees on research underway at National Recovery Technology and showed a brief video of the process. He stated that at this time, a press briefing is planned for October 16th and that NRT is working with the Institute's public relations firm to finalize the speakers. Mr. Krause noted that NRT intends to install its technology on a pilot basis at XL, a material recovery facility in Illinois.

Lastly, Mr. Krause reviewed technology developed by DevTech Labs, Inc. and noted that both VIGOR members and staff of the Council For Solid Waste Solutions have signed secrecy agreements on the technology which was presented at the September 13th meeting. Mr. Krause noted that DevTech is seeking approxi-

mately \$450,000 to help fund the pilot plant scale up of a prototype commercial machine for their separation process which handles plastics in flake form. He commented that the Council For Solid Waste Solutions is considering funding at a \$75,000 level and that individual companies are also to be contacted for their support. He noted that this would be beneficial also to PET interests as the process would not only help the curbside collection problems, but also assist in yielding a pure PET stream for recycling.

2. European Developments

Mr. York commented that he had provided Dr. Gottesman and members of the Board with a status report as of July 1st on legislative and regulatory developments in Europe. He noted that this report would be updated at the end of the year. Mr. York's comments focused on activities in Austria related to the positive deselection of vinyl building materials.

Mr. York also updated the Board on the ban on PVC beverage containers in Switzerland that will go into force in November 1991. He commented that EVC is the only European PVC producer with facilities in Switzerland and that the company is considering what activities to undertake that may have an effect on this action.

3. Legislative/Regulatory Update

Mrs. Scheck updated the Board on state and federal legislative activities underway since the last Board meeting. Background information is included under Tab K of the briefing book for this meeting.

Mrs. Scheck noted that 42 states have already adjourned or were not in session this legislative cycle, but that there is a significant amount of "study" activity underway at the state and municipal level that will impact the direction of legislative proposals beginning in January 1991. She commented that there has been a distinct trend away from outright ban proposals, with more focus to proposals specifying recycling rates or recycled content requirements.

B. Fire and Combustion Toxicity

1. Technical Committee Report

Dr. Bush, Chairman of the Technical Committee, updated the Board on committee activities as they relate to the issue of fire and combustion toxicity. Background information was included under Tab H of the briefing book for this meeting.

Dr. Bush reviewed in detail a recent amendment to the model building code issued by BOCA regarding radiant heat requirements for materials used on building exteriors. He commented that this is of great concern to the SPI Vinyl Siding Institute and that Dr. Hirschler of the VI Technical Committee is providing liaison on this issue. The next meeting of the VSI on this issue is scheduled for September 27th. Mrs. Scheck updated the Board on discussions at the last meeting of this VSI group. Dr. Bush noted that it appears likely that NIBS will submit their toxicity protocol to ASTM in the near future and that a critique of the method has been prepared. Dr. Bush also reviewed the report being prepared by Brady Williamson of the University of California regarding fire performance in flashover situations.

VI. REGULATORY AND LEGAL UPDATE

A. Health, Safety & Environment Committee

On behalf of the Chairman, Frank Borrelli, Mrs. Scheck updated the Board on activities undertaken by the committee since the last report. She noted the two special task forces that had met over the summer to address the issues of establishing a vinyl-specific mutual aid emergency response network and that, based on a survey conducted, a meeting with CMA is scheduled to further discuss the network concept. She noted that it was not envisioned that this would be a Vinyl Institute activity or that it would consume VI resources or staff.

The second workshop dealt with the hazard communication issues. Mrs. Scheck further noted that as noted in the Legal Counsel's report under Tab J of the briefing book that the final rule on the vinyl chloride standard had been published July 10th. This rule implemented the settlement agreement signed in 1988. She also noted that the briefing schedule in challenge to OSHA's reduction of the permissible exposure limit for ethylene dichloride is to be completed by January 1991, with oral arguments to take place early in 1991. Mr. de la Cruz provided additional comments.

B. Legal Committee/Legal Counsel's Report

Mr. de la Cruz updated the Board on activities related to H&W Industries vs. Formosa Plastics Corporation. He commented that Dr. Gottesman was deposed on March 20, 1990. He noted that Magistrate Orlansky of the U.S. District Court for the Northern District of Mississippi has recently granted SPI's move to quash H&W's subpoena for additional materials. Mr. Luss commented that because of this case and recent press coverage of resin price increases, he urges all members of the VI Board and committees to be particularly mindful of their antitrust responsibilities. Mr. Luss asked that materials on this issue be appended to the minutes of this meeting.

Mr. de la Cruz also commented on recent activities of the Federal Trade Commission dealing with environmental claims and commented that the Commission's Consumer Protection Division has taken a number of actions on claims in the consumer products area.

Mr. Luss updated the Board on the status of litigation resulting from the Happy Land Social Club fire. Noting that New York State is a marketshare state, he commented that interested companies are pursuing a settlement agreement and that Vinyl Institute members may be contacted. He noted that this is not a Vinyl Institute activity, but an individual member company activity.

VII. OTHER BUSINESS

A. Research and Strategic Plan to Manage Anti-PVC "No Chlorine" Issues

1. Introduction

Mr. Reynolds, Chairman of the Communications Committee presented a summary of recent activities that have targeted chlorine, noting that the issue in the U.S. has focused largely on the paper industry, while in Europe the focus has been PVC. Mr. Reynolds noted that the Chlorine Institute has recently retained a public relations agency. Mr. Reynolds commented that based on discussions at the May 12th meeting of the Executive Board, he, Mr. Krause of BFGoodrich, and Roy Gottesman met and developed a "Request For Proposal". In these preliminary discussions, it was agreed that the industry has faced many problems in the past, and that the vinyl industry in the U.S. should anticipate that the anti-chlorine initiative will grow

beyond the initial "ban" proposals that have already surfaced. Mr. Reynolds noted that the RFP for Research and Strategic Planning was sent to several companies who were asked to submit proposals that would include an audit of all current Institute communications programs as well as problems that vinyl products have as a result of environmental or other pressures.

Mr. Reynolds noted that a review committee consisted of Sandra Kroeger of Occidental, Dave Taylor of BFGoodrich Company, John Catt of the European Vinyls Corporation, Fred Krause of BFGoodrich, Maryann Stephenson of Vista Chemical and Roy Gottesman. Five firms reviewed their proposals at July 18-19 meetings.

The task force selected Ketchum Public Relations to carry-out a first-stage research project to include secondary research and quantitative research. Mr. Reynolds noted that the work done to date is well within the amount authorized by the Board on May 12th (not to exceed \$30,000). Details on the Ketchum proposal are included under Tab N of the briefing book for this meeting. Mr. Reynolds introduced the Ketchum account team for the purpose of making a presentation on the work completed to date.

2. Ketchum Presentation

a. Walter Lindenmann, Senior Vice President, Director of Research

Dr. Lindenmann reviewed the media search activities covering the period of January 1989 through September 1990, which included a total of 688 articles contained in the following publications:

national and local newspapers
general interest magazines
special interest magazines
industry newsletters

Dr. Lindenmann reviewed in detail the major findings of this media audit, including a summary of topics mentioned and the description of the rating scale used and the outcome for specific subjects.

b. Jerry Olszewski, Vice President and Senior Account Manager

Mr. Olszewski highlighted a series of summary observations and reviewed some preliminary conclusions, including:

1. Within the consumer media there is no coalescing around a particular view, and that there is time for industry to affect coverage.
2. Within the trade media industry insiders are receiving positive messages about PVC.
3. There is no clear indication that environmental groups have put PVC at the top of their agenda, but that more in-depth research is warranted within the environmental groups.
4. The media coverage is surprisingly positive, but did not include the larger universe of general plastics stories, which may be considerably more negative.
5. No clear advantages or disadvantages for PVC vs. other plastics surfaced.
6. The analysis of the media coverage alone does not surface the "hot button" which might be driving customer deselection. There is a need to stay and continue the hunt.

c. Lorraine Thelian, Senior Vice President and Senior Strategist

Ms. Thelian addressed the issue of appropriate next steps to be taken and briefly highlighted the recommendations. The next steps recommended was to expand on talking to the "customers", defined as including building contractors, building code bodies, product managers, product designers and engineers, package designers and engineers retailers.

An in depth roundtable discussion followed Ms. Thelian's presentation, including discussion on the need for additional research to be conducted.

B. Program To have PVC Ecobalance Developed - Status Report

Dr. Bush noted that a subcommittee of the Technical Committee had been formed to develop a Request For Proposal for a definitive and comprehensive analysis of the quantitative aspects of raw materials inputs and environmental effects, as well as the costs and benefits of vinyl plastics relative to alternative materials. Dr. Bush noted that the members of the subcommittee included Frank Borrelli of Georgia Gulf, Dr. William Carroll of Occidental Chemical, Fred Krause of BFGoodrich Company, John Krokosky of Dow Chemical and Robert van Winkle of Klockner Pentaplast.

He noted that detailed material is included under Tab M of the briefing book for this meeting. Based on a September 13th subcommittee review meeting, 3 of these firms have been selected to make a presentation on their recommended approach in early October. He reviewed in detail why the subcommittee believes that this is an important project to undertake. The basic scope of such a project will provide a cradle-to-grave lifecycle analysis, will compare vinyl pipe, siding and packaging materials with alternatives, and yield a user-friendly computerized model. Dr. Bush noted that the subcommittee feels that there are benefits to being a pioneer in this area. Dr. Bush also noted that a similar project is underway within Europe, and that Mr. Gabe Lefebvre is providing liaison.

The Board had an extensive discussion on the need for proceeding with this proposal, its potential reception by environmental activists, resources necessary for the total project, the importance of a scientific vs. public relations approach and a review of alternative materials to be considered.

VIII. NEW BUSINESS

A. Funding of Proposed Research/Strategic Plan and Ecobalance

As background to further discussions by the Board on discussing the Ketchum Public Relations proposal and the ecobalance issue, Dr. Gottesman commented that he had reviewed the VI current fiscal year budget and preliminarily developed a list of savings that might be realized from current activities. He emphasized that this review was not done in consultation with the committee chairmen, and that it only represented his best estimate of how existing available funds could be reallocated. He reviewed the following information:

Estimate of Additional Funding Needs and Potential Sources

Sources

Indirect Project Costs (salaries/benefits)	\$ 25,000
Technical Committee:	
- Plastics Recycling Foundation (CPRR)	20,000
- Hennepin County	10,000
Communications Committee:	
- Fire Issues	15,000
- Symposium	30,000
Vinyl Packaging Council	23,000
Electrical Materials Council	55,000
PRO Direct Mail Program	30,000
Consultants	2,000
Total	<u>\$210,000</u>

Needs

Completion of Strategic Research by Ketchum	95,000
Approval of Strategic Plan in December and 5 Months of Funding Through May 31, 1991	100,000
Ecobalance - Expenditure of Part of a Total Assumed Expenditure of \$350,000	150,000
Total	<u>\$345,000</u>

Dr. Gottesman stated that based on his review of the potential sources of funding, he recommends that the Board authorize the expenditure of up to \$95,000 to complete the research phase and development of a strategic plan by Ketchum, with such plan to be presented to the Board at the December meeting.

After extensive discussion by the Board, the following motions were made:

Motion: Mr. Reynolds moved that the Board approve the expenditure of up to \$95,000 to complete the research program and the preparation of a strategic plan by Ketchum and further that Vinyl Institute members agree to share with Ketchum any existing research that could supplant recommended original research thereby offsetting some of the resources needed, and further, that if other research by independent organizations exists that it be provided to also offset the total cost.

The motion was seconded by Mr. Russ and approved on a vote of 7 to 1.

Motion: Dr. Bush moved that the Technical Subcommittee be authorized to proceed and to select a contractor to prepare an ecobalance within the financial guidelines discussed at an amount not to exceed \$150,000 this fiscal year, and further that a) the definition of comparative materials is to be decided by the committee, and b) that the VI Executive Board be presented with a report taking the ecobalance through a finished product within these financial guidelines.

The motion was seconded by Mr. Bailey and voted on and approved by the Executive Board by a vote of 7 to 1. Dr. Gottesman agreed that he would provide the Board with revised/final current fiscal year budget numbers from each of the committees at the December meeting of the Executive Board.

B. Executive Committee of the Board

Mr. Flammer proposed that an "Executive Committee" of the Board be formed and that this committee plan to meet from 4:00 p.m. to 6:00 p.m. the day preceding the Executive Board Meeting. He indicated this group will consist of the present officers, the voting representative of the affiliate members, and Mr. Shoun (representing the VCM interests) and Mr. Bailey.

IX. MEMBERSHIP

A. Current Status/Resignations

1. Air Products and Chemicals Inc.

Dr. Gottesman noted that the material included under Tab O of the briefing book for this meeting includes a letter from Mr. Fred Fisher of Air Products and Chemicals formally notifying the Vinyl Institute that Air Products' PVC business had been sold to PW Resins and, therefore, Air Products was officially dropping its membership in the Vinyl Institute effective June 1, 1990.

Motion: Mr. Schiffer moved that the resignation of Air Products and Chemicals Inc. as a member of the Vinyl Institute, be accepted effective June 1, 1990. The motion was seconded by Mr. Shoun and approved by voice vote.

2. BASF Corporation

Dr. Gottesman noted that as reflected in the material included under Tab O of the briefing book for this meeting, on August 14, 1990 the Executive Director was notified that BASF would not continue its affiliate membership in the Vinyl Institute as a result of a decision to exit the phthalate plasticizer business.

Motion: Mr. Schiffer moved that the resignation of BASF Corporation as an affiliate member of the Vinyl Institute be accepted effective June 1, 1990. The motion was seconded by Mr. Flammer and approved by voice vote.

B. Potential New Members

Dr. Gottesman reviewed the information contained in the program of the briefing book as it relates to activity to secure new members and asked the members of the Board to contact him should they be able to provide any assistance in this area.

X. FUTURE MEETING DATES

A. Next Executive Board Meeting

The next meeting of the Executive Board is scheduled for December 12, 1990 in New Orleans. Dr. Gottesman noted that the meeting would likely be held at the Westin Canal Place Hotel and that Board members would shortly be receiving details including the definitive hotel selected.

B. March 13, 1991 Meeting Location/Change of Date

Dr. Gottesman noted that due to a conflict with another SPI division in which some VI member company representatives are active, that it is necessary to change the date for the previously-agreed to March 13th meeting. Mr. Flammer suggested that the Board meet in late February in Houston. Following a brief discussion, it was agreed that a suitable date/location would be selected and the Board notified at the earliest possible date.

C. Annual Meeting

As a result of discussions at the May 12, 1990 Executive Board meeting, Ms. Benkner of the VI staff has put a hold on space at the Four Seasons Hotel in Dallas, Texas.

However, because of the hotel's unavailability of space for the previously-agreed to dates of May 14-16, 1991, space was tentatively put on hold for May 29-31, 1991. Because this was a change in date, Ms. Benkner did additional research on suitable sites for the 1991 Annual Meeting. A letter to the Board outlining alternative locations and availability was distributed. Following a brief discussion by the Board, it was agreed to proceed with the alternative dates of May 29-31, 1991 at the Four Seasons Resort Hotel in Dallas.

XI. ADJOURNMENT

There being no other business, the meeting was adjourned at 3:20 p.m.

Respectfully submitted,



Meredith N. Scheck

The Regulatory Status of
Vinyl Chloride and Polyvinyl Chloride */

EPA

The Environmental Protection Agency's National Emission Standard for Vinyl Chloride is due to be published in the Federal Register soon. With the requisite hearing and Comment period complete, the final document is known to be circulating at the Assistant Administrator level prior to final presentation to EPA Administrator Russell Train.

Since we first described its provisions, the EPA Standard has not been altered substantially. It still exempts the compounding and fabrication segments of the industry but calls for strict limits on both point and general emission sources in plants manufacturing monomer and/or resin. However, because EPA worked closely with the industry during the development of its Regulations for vinyl chloride, the final text will probably be as reasonable as could be expected under the circumstances.

Once the Regulation appears in the Federal Register, it will go into effect 90 days later, except to the extent that individual applicants have during that time been granted statutory waivers of up to two years duration. Additionally, we now expect the Preamble to the Standard to contain a notation that the research and development portion is subject to further review and, perhaps, revision by the addition of an alternate control strategy. The Agency has at last become convinced that some "solid questions" still remain to be answered in this area, and, as a result, requests for further information have been sent out by EPA in anticipation that the new data will justify waivers while the additional control strategy is developed.

OSHA

In the past we noted that, with the approach of the April 1, 1976 date upon which the Occupational Safety and

*/ Prepared on September 22, 1976 by Keller and Heckman, SPI General Counsel, for use by the SPI VCM/PVC Producers' Group Steering Committee at its meeting to be held in New York City on September 28, 1976.

Health Administration (OSHA) Standard went into full force and effect with regard to respirator usage, five members of the Vinyl Chloride/Polyvinyl Chloride Producers Group had filed with OSHA seeking temporary variances based on the non-availability of certain types of respirators, insufficient time to complete engineering modifications, the effects of other regulatory action (viz., FDA and EPA activity), and other grounds.

We also reported that all of these temporary variance requests were mooted by the publication in the April 1, 1976 Federal Register by the Mining Enforcement and Safety Administration (MESA) of the Department of the Interior of its retroactive (to January 1, 1976) extension to September 30, 1976 of the previously established December 31, 1975 deadline for development of an "end-of-service-life indicator" for canister and cartridge respirators in vinyl chloride service. Prior to this, the failure to develop the requisite indicator had made use of canister and cartridge respirators inadequate for compliance with the OSHA Standard during 1976; only air-supplied respiratory protective devices were approved. With MESA on its own motion having extended the deadline for the end-of-service-life indicator requirements, the resultant canister and cartridge mask availability made it possible for OSHA to deny all requests for variances.

Of late, we have had occasion to be in touch with the responsible officials at OSHA, NIOSH and MESA concerning the status of an end-of-service-life indicator and to determine, were such an indicator not approved by the deadline, whether an extension of the September 30, 1976 cutoff could be expected.

The NIOSH laboratories responsible for investigating the end-of-service-life indicator for vinyl chloride informed us that the only applicant's device was rejected and had not been resubmitted. We were told that it would now be impossible to approve any indicator device prior to the cutoff date.

Having already addressed ourselves to MESA and OSHA officials about a time extension with no success, we inquired

of the appropriate NIOSH officials as to whether they were going to take any action. We received something in the nature of a "no--that is your problem" response.

Only two companies have so far expressed to us any desire for an extension of time. Nevertheless, with only a little time left, we are still prepared to proceed if sufficient interest exists to support a request for an extension of time by the VCM/PVC Producers Group.

FDA

We have previously reported to you that the Food and Drug Administration (FDA) had scheduled its priority for finalizing the PVC Regulations into the fourth quarter of 1976 but that, as a result of internal objections to the timing schedule, the Agency began to state it was committed to finalizing the Regulations by June, 1976. At this juncture, our characterization of that time schedule as "improbable" has certainly proven correct. In fact, the most the Director of the Division of Food and Color Additives has been willing to say recently is that the Regulations "might be promulgated some time in the fall."

We do know that the Bureau of Foods' evaluation of the scientific data was completed in April, 1976, and that a preliminary draft of regulatory language is now circulating within the Bureau. At least two issues are holding up further progress: one involves a question of a basic regulatory philosophy for PVC, while the other was brought on by the difficulties inherent in regulating potable water pipe.

Speaking at a recent American Chemical Society Symposium in San Francisco, Mr. Richard Ronk, Director of FDA's Division of Food and Color Additives stated that biostatisticians working with the available data have informed him that a level of 2 parts per billion (ppb) in food is a "safe" level with respect to vinyl chloride. Nevertheless, he cautioned that no Regulation could set a "tolerance" in the conventional sense, even at the 2 ppb level, since to do so would violate the Delaney Clause as that section of the Food, Drug and Cosmetic Act is presently interpreted by staff

attorneys at the Food and Drug Administration. He implied that the staff in the Bureau of Foods is presently wrestling with the problem of just how to regulate materials which are recognized to be safe without at the same time setting any number which could be interpreted as a tolerance. This is a problem we have long recognized and took into account in SPI's PVC Comments.

We understand that the present draft is attempting to finesse the problem by proposing a maximum residual monomer limit for rigid and semi-rigid PVC finished plastics. This limit will be set at a level sufficiently low so as to assure there will be no reasonable expectation that VCM can become a component of food. We have not been able to obtain any firm insight as to what level is being considered but our best (and paltry) information leads us to believe that a level below 0.100 ppm in the plastic is being discussed.

On the PVC potable water pipe front, you will recall that the Food and Drug Administration and the Environmental Protection Agency set up a joint Task Force to resolve, among other jurisdictional questions, the potable water pipe issue which was highlighted when FDA proposed an Interim Food Additive Regulation for PVC potable water pipe as a part of its proposed PVC package. SPI filed vigorous Comments pointing out that, in our opinion, EPA rather than FDA has exclusive federal jurisdiction in this area. Partly in response to these Comments and partly because other areas of apparent overlapping jurisdiction also exist, the Task Force has been meeting to develop a Memorandum of Understanding (MOU) to set inter-agency jurisdictional ground rules.

We have been informed that an agreement in principle has been reached between EPA and FDA working level representatives on the Task Force; that a preliminary MOU prepared by EPA was sent to FDA for review; that FDA found that draft to be satisfactory in general content but has prepared its own rewrite to include more details; and that the FDA version has been favorably received by the EPA Task Force representatives.

Although we have not had any access to the various working drafts, we believe that the present proposed Task Force Agreement is along the following lines: EPA will exercise primary jurisdiction over potable water piping systems (FDA will presumably withdraw the proposed Interim Regulation as it relates to piping systems in due course) but EPA will not recommend the use of any components that pose food additive problems. Should EPA determine there may be migration of an uncleared component of piping systems into potable water, the MOU presumably provides for it to notify FDA of the need to take enforcement action under the Food, Drug and Cosmetic Act's provisions barring adulteration of food (water).

We understand that the FDA draft MOU is now circulating among the upper echelons of both EPA and FDA. Based upon our understanding of past attitudes and positions, we would suspect little or no opposition will be encountered at EPA, but the concepts in the MOU could encounter significant resistance in the Office of the Commissioner or Chief Counsel of FDA. In particular, the new Associate Commissioner for Compliance, Paul J. Hile, has traditionally been reluctant to yield FDA jurisdiction in any area and if our understanding is correct, the MOU will propose that FDA "give up" something, i.e. general jurisdiction over potable water piping systems.

If the Memorandum of Understanding that is finally approved coincides with our current information, we believe that part of the reason why FDA will have agreed to cede jurisdiction and EPA to assert it will have been because of the very responsible way in which the PVC piping industry acted to assure both Agencies that the levels of residual monomer in PVC piping can and will be controlled so that there will be no reasonable expectation that vinyl chloride can enter the potable water supply system.

It is still too early to be sure that the ultimate outcome will be in the directions indicated but we do feel cautiously optimistic.

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As a final note about the status of vinyl chloride, we thought you might be interested to know that in the July 29, 1976 edition of the Federal Register, NIOSH (that is, the National Institute for Occupational Safety and Health) announced a "request for information on certain chemical/physical agents."

Curiously, although the Notice only requests the submission of new information regarding vinyl chloride, among other substances, the Agency is interested in more than updating the criteria document for vinyl chloride. In fact, we have learned that NIOSH has employed a contractor that is actually sending investigators into vinyl chloride and PVC plants. The information we have received is that, ultimately, all the information accumulated by NIOSH will be used to determine whether the Agency should recommend that OSHA revise its Vinyl Chloride Standard.

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The California bill aimed at requiring special permits, standards, and inspections for the "use" of any carcinogen has now passed through both Houses of the California Legislature and is on Governor Brown's desk where it is expected to be signed.

This OSHA-type bill, originally a "special use permit" bill which we vigorously contested, now provides for specific state enforcement of its almost mirror-image vinyl chloride exposure regulation but it adds a few procedural twists with which the PVC producers in California will have to wrangle. Specifically, the bill mandates certain duplicative inspections and fees, reports, medical examinations in some cases and "civil" penalties with minimums ranging from \$500 to \$5,000. It also fails to distinguish a level below which a carcinogenic effect is not expected or regulated; this, combined with a more restrictive definition of "fabricated product", will probably cause some problems where operations had been taking advantage of the "not...melting...the polyvinyl chloride

resulting in the release of vinyl chloride" exemption-type language. Although the language in the bill does not explicitly apply to compounders and fabricators, the author of the bill has stated that it is his intent that both the reporting and inspection provisions should apply to all elements of the industry.