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February 24, 1976

Jerome H. Heckman, Esquire
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Dear Jerry:

On Monday, February 23, 1976 we filed with EPA three copies of SPI's written comments on the Agency's proposed Vinyl Chloride Standard. The comments consist of a cover letter from Ralph Harding responding further to questions raised at the public hearing on February 3; a detailed critique of the preamble, standard, and standard support documents; and an analysis of health issues.

During meetings of the Technical Subcommittee, several companies expressed concern over whether it is constitutional for EPA to announce in the proposed Standard that for certain purposes "operator error is considered to be preventable." 40 Fed. Reg. 59539, Col. 1. We have researched the question and can summarize the answer at this time. A detailed legal memorandum is attached.

Section 113 of the Clean Air Act imposes certain civil and criminal penalties on persons (defined in the Act to include companies) who violate requirements of the Act, including those imposed under Section 112. With respect to civil sanctions, the law is well-established that liability can be imposed upon companies and individual "responsible" officials for the acts of subordinate employees. This is so even when those acts are merely negligent, the company and its officials lack any knowledge of the violation, and the employees have failed to follow instructions.

Before criminal sanctions can be imposed under Section 113, with two exceptions the law requires that there be "knowing" violations of the Act. For this more severe penalty, negligence or inadvertance in operating a business cannot subject anyone to

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a criminal penalty. However, the "knowledge" of subordinate employees can be imputed to the company, and the company can be held criminally liable for the employees' conduct. Concerning the above mentioned exceptions (applicable to falsifying or tampering with monitoring devices or methods), the statute does not require knowledge of a violation or intent to violate the law as a condition to the imposition of criminal penalties. Thus criminal liability could be imposed upon a company for the mere inadvertent or negligent acts of employees violating these legal requirements. There are Supreme Court cases holding that individual "responsible" officials of a company can also be subject to criminal liability solely on the basis of the negligent acts of subordinate employees.

In summary, EPA does not have authority to impose criminal penalties upon a company or individual officials for negligence or carelessness where the statute requires "knowing" violations of the law. In the civil area, liability can be imposed for the mere negligence of subordinate employees.

Sincerely,



William D. Ruckelshaus

WDR/ap
Attachment