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* OHIO BAR ONLY

ENVIRONMENTAL CONTROL

TO: All Members Of:

- SPI--VCM/PVC Mailing List
- Plastic Bottle Institute
 - Plastic Beverage Container Division
 - AN Polymers Group
 - PET Safety Group
 - Food, Drug & Cosmetic Packaging
Materials Committee
 - PVC Safety Group
 - Public Affairs Committee

Re: Status of Plastic Liquor Bottles at BATF

Letter Highlights

1. The Bureau of Alcohol, Tobacco & Firearms (BATF) is now expected to deny (or indicate an intent to indefinitely delay action on) the SPI Petition for Generic Approval of Polyvinyl Chloride (PVC) to package liquor; its action will be premised on the Food and Drug Administration's (FDA) refusal to give its blessing to the Petition. We are hopeful that BATF's action will help to focus Administration and Congressional interest on the Food and Drug Administration's refusal to affirm the safety of PVC food packaging.

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2. BATF continues to review a pending application regarding the use of polyethylene terephthalate (PET) for packaging liquor. It appears that a policy decision has yet to be made on the question of what constitutes an acceptable proof gain.
3. BATF is now giving some thought to the regulatory mechanics of approving plastic liquor bottles. One alternative could require completion of a rule making proceeding before any plastic bottles are approved.

Ladies and Gentlemen:

On Friday, April 17, 1981, John Dubeck and I met with Ray Conrad, Bureau of Alcohol, Tobacco & Firearms (BATF), Acting Chief of the Special Operations Branch in the Trade and Consumer Affairs Division (he is acting for Dorothy Lee while she recovers from an illness), Mike Dressler, a "Tax Specialist" in the Special Operations Branch of that Division, and Robert White, a "Tax Specialist" in the Research and Regulations Branch of the Regulation and Procedures Division to discuss general issues relating to approval of plastics liquor packaging. At the outset, let us apologize for the fact that you will not find this report as clear cut and definitive as either you or we would like.

The events that lead to the meeting may help to explain why we have nothing definite to report. A week or so ago, Mr. Tom George, Chief of the Regulation and Procedures Division at BATF called us on his own initiative so he could inform us about some vague "rule making plans." After thinking this rather puzzling contact over, we advised BATF that we would like to have a meeting so that we could better understand the significance of this development. This request was initially rejected because we were told that no final decisions had been made and there was nothing that BATF could tell us. We offered to meet with them anyway, even if only to share with them some of our background involving the regulation of plastics packaging. They agreed that such background could be useful as they consider whether there is a need for rule making regarding plastic liquor bottles.

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PVC Liquor Bottles

As you all know, the latest development with regard to PVC liquor bottles was a letter from Dick Ronk to BATF dated January 13, 1981. Despite the fact that it took the Food and Drug Administration (FDA) a year to write the letter, BATF has already decided that the FDA response is too nebulous to support BATF approval of PVC liquor bottles. We have now been told that BATF intends to deny, or inform us in writing that it intends to indefinitely delay action on the SPI Petition requesting generic approval of PVC for liquor packaging.

While we would have preferred that the Petition be approved, BATF's response should help to focus Administration and Congressional interest on FDA's handling of PVC both for liquor bottles and food packaging and, hopefully, bring about formal FDA recognition of the safety of PVC food packaging. Accordingly, we advised BATF that we would like to receive the letter as soon as possible.

PET Liquor Bottles

Consistent with its tight-lipped policy regarding its review of an application for a polyethylene terephthalate (PET) liquor bottle, we did not receive any details regarding the status of this application, other than that some of the technical reviews are still not complete. We have no idea how many technical issues remain to be resolved; however, we did learn that there has been no policy decision made as yet regarding the degree of "proof gain" that will be considered acceptable.

One minor difficulty concerns the fact that the FDA food additive regulation for PET only covers alcoholic beverages up to 100 proof. Read literally, 100 proof liquor could not be packaged in PET because if any proof gain did occur, the bottle would not comply with the food additive regulation. We suggested that such an interpretation would be unduly restrictive and, in our opinion, was not required under the Federal Food, Drug and Cosmetic Act.

General Issues Regarding Plastics Liquor Bottles

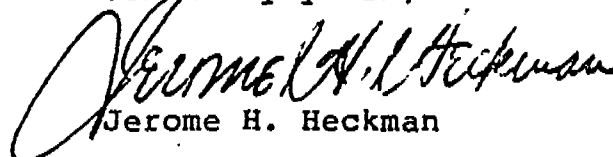
BATF's newfound concern regarding the regulatory mechanics for approving a plastic beverage container can be viewed optimistically as indicating that BATF anticipates approving such packaging in the near future. For those who thought that the near future might be a matter of weeks, the news is not heartening. Since we have no idea what the nature or scope of any potential rule making might be, it is impossible for us to comment upon the significance of this development. Conceivably, the rule making proceeding could be little more than a Federal Register Notice that specific plastic liquor packaging will be approved upon appropriate application by a distiller. The first such approval might then follow within thirty days. The most depressing possibility is that BATF could adopt a procedure comparable to FDA's food additive petition procedure, complete with the inordinate delays involved therein. We vigorously suggested that the FDA model be avoided at all costs, and that BATF either continue to grant applications as in the past, or develop a rule which would allow simple registrations and preclude long delays.

Since BATF said very little on this subject and committed to nothing, we can only report that BATF seemed willing to listen to (and perhaps even enjoyed) our horror stories regarding FDA regulations. Ray Conrad, in particular, seemed genuinely interested in not repeating the regulatory mistakes of others.

At this time, we have no idea whether BATF will indeed decide that a rule making proceeding is necessary. The June meeting of the SPI Food, Drug, & Cosmetic Packaging Materials Committee should be the best opportunity to find out more about BATF's plans since Alan Graham, Chief of the Commodity Classification Branch of the Trade and Consumer Affairs Division of BATF has agreed to be a speaker on the program. The Commodity Classification Branch is responsible for the technical evaluation and approval of liquor packaging.

If you should have any questions, or if we can be of any further assistance, please do not hesitate to contact us.

Cordially yours,



Jerome H. Heckman