

LAW OFFICES
BEVERIDGE, FAIRBANKS & DIAMOND

ONE FARRAGUT SQUARE SOUTH
WASHINGTON, D. C. 20006

TELEPHONE
(202) 638-7800

CARL E. POLEY
OF COUNSEL

CABLE ADDRESS
"MOLAN"

ALBERT J. BEVERIDGE, III
RICHARD M. FAIRBANKS, II
HENRY L. DIAMOND
GARY M. BAISE
KEVIN M. FOLEY
A. JAMES BARNES
HAROLD HUMMELMAN
JONATHAN Z. CANNON
ANDREW C. MISHKIN
CHRISTOPHER M. SICKLEY, JR.
CHARLES A. PATRIZIA
SUEDEEN M. GIBBONS

*NOT A MEMBER OF D. C. BAR

October 27, 1976

Jerome H. Heckman, Esquire
Keller and Heckman
Suite 1000
1150 17th Street, N.W.
Washington, DC 20036

Dear Jerry:

As you know, the SPI VCM/PVC Technical Committee met in Washington on October 26, 1976 to discuss the issuance on October 21 of the final Vinyl Chloride Standard. Several issues were raised and we were asked to provide clarification.

Prior to the meeting, EPA had propounded only one specific question on which it requested SPI's comments; the question related to how companies determine production rates at their plants. It was the consensus that because the issues are so variable the industry not attempt to specify methodology. I have written Susan Wyatt, Research Triangle Park, Durham, North Carolina, to advise her. A copy of that letter is enclosed.

There were four other specific issues discussed which have legal overtones. First, some members raised the question whether the final Standard is now applicable or is only applicable ninety days after the effective date, i.e., the promulgation date (October 21, 1976). The answer is that the Standard is not operational until January 19, 1976. While information must be submitted during the ninety-day period, no company can be held in violation of the Standard until January 19.

Second, a question was raised as to whether a company must delay filing a waiver request until EPA has supplied a specific form for that purpose. We have checked with EPA on this point and have been advised that a proposed form to cover Vinyl Chloride was never officially sent to the Office of Management and Budget (OMB) and that no form will be issued. Companies submitting source reports and waiver requests should utilize any convenient format. It would be wise to coordinate with the various EPA regional offices. It should be noted that even if waiver requests are filed, companies are still required

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to submit the background information called for in Section 61.10 of the general EPA Regulations.

Third, some questions were raised as to when waiver applications should be filed. As you know, waivers may be requested within the ninety-day period between the effective date of the Standard and the date that the Standard becomes applicable. However, no company which fails to obtain a waiver can operate its plant in non-compliance with the Standard after the expiration of the ninety days. Thus, all waivers should be filed timely enough to permit EPA a reasonable opportunity to act on the request prior to January 19, 1976. EPA's general policy is that if waiver applications are filed in timely fashion, the Agency will act on a request within the ninety day period. If, on a timely application, EPA for internal reasons is unable to act on the request, the Agency would probably take no enforcement action until it had reviewed the waiver request. It is our view that EPA would regard all requests for waivers filed within thirty to forty-five days after the date of promulgation as "timely" filed. Applications filed between forty-five and sixty days would probably be considered timely but would present a closer question. Waiver applications filed within thirty days of the date on which the Standard becomes applicable might be considered as having afforded EPA too little time in which to act and could result in an enforcement action if the Agency does not complete review of the waiver request by the ninetieth day.

Finally, a question was raised as to whether EPA would permit a state environmental requirement that might conflict with the Vinyl Chloride Standard (or its procedures) to absolve a company attempting to meet the Standard from compliance with it. While it is difficult to respond to this inquiry other than on a case by case basis, it is general EPA policy that state environmental requirements cannot serve to excuse lack of compliance with a federal hazardous pollutant standard. EPA recommends that any company with potential problems in this area immediately contact the appropriate EPA regional office to devise a solution.

Before closing, let me advise that in talking with EPA we have learned that the general Vinyl Chloride enforcement guideline is in its final draft and should be available within the next ten days. We will forward you a copy for circulation to the Technical Committee as soon as we receive it. This guideline

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will serve as EPA's narrative explanation of the Vinyl Chloride regulations. The more detailed inspection guide or "field manual" will probably not be available for several months. A contractor has not yet been selected. EPA has assured us and representatives of the Technical Committee that it is standard EPA operating procedure to afford industry representatives a role in the development of such a manual; EPA plans to follow that procedure in this case. As soon as a contractor is selected we will advise.

We will keep you posted on all further developments.

Sincerely yours,

Harold Himmelman

HH/ap .

cc: John R. Lawrence