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September 30, 1976

Mr. Edward Reich
Environmental Protection Agency
Room 3202, Mall Building
4th and M Streets, S.W.
Washington, DC 20460

Dear Mr. Reich:

On behalf of representatives of the Technical Committee of the Society of the Plastics Industry's VCM/PVC Producers Group, I wish to thank you for meeting with us on Wednesday, September 29, 1976 to explain EPA's general policy for enforcement of standards applicable to hazardous pollutants and to advise us of the Agency's tentative plans for implementing the proposed Vinyl Chloride Standard. We appreciate your invitation to join in efforts to insure a fair enforcement program in the public interest.

I would like to outline our understanding of the information provided to us at the meeting in response to certain questions raised by representatives of the Technical Committee.

1. EPA indicated that it is working on a general enforcement guideline and a more specific inspection manual for distribution to the regions. We understand the enforcement guideline may be completed within three weeks but that the inspection manual, which will be contracted out, will not be ready for several months. You indicated that it is standard practice for industry to meet with contractors who prepare inspection manuals, so that the manuals reflect as accurately and completely as possible the practical aspects of production. We understand this practice will be followed in the case of the Vinyl Chloride Standard. We also understand that current guidelines, S.17-S.20, will apply in general to the new Standard insofar as they do not pertain specifically to other hazardous pollutants.

2. While EPA indicated it expects to be able to process any waiver applications within 90 days, it is aware there may be administrative reasons causing some delay beyond that period.

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We understand that so long as each plant files its waiver request on a timely basis, delays caused by factors within EPA would be unlikely to prejudice any company. In short, the Agency's general policy, assuming full cooperation from a company, is not to initiate enforcement action prior to acting on a waiver request.

3. We understand that EPA expects each company which seeks an equivalency to submit a waiver request at the same time. It is necessary to specify in any waiver application on a point by point basis where equivalency is being sought. Equivalent methods will not generally be approved if required methodology would insure earlier compliance. However, after compliance is achieved, equivalent methods can again be sought.

4. You indicated that in light of EPA findings on the health issues, it would be unlikely the companies would have an affirmative obligation in seeking waivers to prove the absence of imminent endangerment to health because of the manufacture of PVC/VCM; the absence of such a threat is assumed by the Agency. While you reserve the right to comment on this issue in further detail, you indicate that waiver requests will primarily involve the issue of installation of necessary controls.

5. On the question of whether EPA might terminate a waiver, you indicate that EPA has not done so in the past. It is generally EPA policy to enforce waivers specifically rather than revoke them. Generally, before enforcement steps would be undertaken there would be discussion with the party involved.

6. With respect to on-site inspection, you indicated it is likely that within one year all plants will be inspected. There is no standard operating procedure on when inspections occur, because they will be fit into each inspector's personal schedule. Generally there is a 24 to 48 hour notice to a plant prior to a visit. EPA does not regard this as a requirement of law. The information requested on any visit would vary from plant to plant. Normally EPA would furnish a plant with a questionnaire and provide time in which to reply.

7. Apparently EPA has no information at this time on which states, if any, may request to take over enforcement responsibilities as authorized in Section 112. In any case, the waiver process cannot be delegated to the states and will be handled exclusively by EPA.

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8. We questioned what EPA meant by "excess emissions" as discussed in the memorandum of the Assistant Administrator for Air and Waste Management to the Administrator (July 16, 1976). You indicated that you would like to review this question more closely and advise us further after having an opportunity to do so. We understand that there may be some distinction between the reporting requirement relating to excess emissions and the enforcement standard.

9. For those plants which believe they are in compliance with the Standard and initiate emission tests, but which fail the test, enforcement action would be likely. They would not be given an opportunity to apply for a waiver. However, EPA indicated that it would look at each situation on a case by case basis to determine a fair resolution. We understand that a plant planning to ask for a waiver of compliance does not need to ask for a waiver of testing, because that would be automatic when there is non-compliance with the Standard.

10. With respect to the industry's request on the basis of new information for a possible blanket waiver of compliance for all companies concerning the research and development requirement, EPA indicated that it would be necessary to consult further with Research Triangle Park in Durham. You indicated that generally EPA must enforce a Standard as promulgated even if the Agency might eventually amend certain parts of it. However, we understand that if you are advised by Durham that revision of the research and development section of the final Standard is imminent, it would be a factor in your determination of how to use available enforcement resources and might result in reconsideration of the request for a blanket waiver in this area.

11. Your position on whether to hold a company responsible for operator error is to determine each case on its own facts. EPA would look to determine whether error was avoidable, what steps have been taken to assure it will not happen again, and related factors.

12. EPA believes there is no requirement for conciliation prior to enforcement of Section 112 standards. However, you indicated that EPA retains some discretion to meet with an alleged offender prior to any specific action being taken.

13. With respect to the obligation, if any, of regional offices to consult with the enforcement office in Washington before taking action, it is your view that generally no formal

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approval is required. Apparently as a matter of practice, the regions seek Washington approval for "unique" situations that may occur.

14. You indicated that formal interpretations of standards by the national office are binding on the regions but that they retain discretion in other situations. EPA would generally regard the states as being bound by the same guideline, i.e., where the state is enforcing EPA's regulations it would have to accept any binding determinations; if the state has adopted its own regulations and is enforcing them as a matter of state law, a different conclusion might be reached.

15. Each regional office is responsible for considering the acceptability of each company's standard operating plan as required by certain parts of the Standard. It is our understanding that regional officials seek guidance as needed from Research Triangle Park.

16. EPA reviews on a case by case basis the requests of each company for approval of the compliance plan required to be filed with a waiver request. We understand that these plans may include the establishment of certain projects to be completed seriatim, rather than conducted on a simultaneous basis. Whether or not such plans would be acceptable would be determined by EPA based on the overall requirements imposed by the Standard.

If you have any questions regarding our understanding of the points raised at the meeting, I would appreciate your letting me know so that we can clarify the record.

Further, we would be appreciative if you or the other members of your staff and Susan Wyatt could indicate more specifically to us those areas in which additional information from the industry would be helpful. One such area, on which we will respond shortly, is an appropriate method to determine hourly production.

Finally, while we do not in all cases agree with your analysis of the requirements imposed under Section 112, related parts of the Clean Air Act and the regulations, and reserve all rights thereunder, we wish to repeat our commitment to

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working with your Agency to insure a fair enforcement process
in the public interest. We appreciate your cooperation in
accomplishing this goal.

Very truly yours,

Harold Himmelman

HH/ap

cc: Robert Laundrie
William W. Madden
W. C. Holbrook
James Mullins
John R. Lawrence
Joseph E. Hadley

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