

VC SPI Man. Practices Group

LAW OFFICES

BEVERIDGE, FAIRBANKS & DIAMOND

1333 NEW HAMPSHIRE AVENUE, N.W.

WASHINGTON, D.C. 20036

TELEPHONE

(202) 828-0200

WRITER'S DIRECT DIAL NUMBER

828-0240

May 20, 1980

HENRY L. DIAMOND
RICHARD M. FAIRBANKS, III
ALBERT J. BEVERIDGE, III
GARY H. BAISE
A. JAMES BARNES
HAROLD HIMMELMAN
CHRISTOPHER H. BUCKLEY, JR.
JONATHAN Z. CANNON
ANDREW E. HISHKIN
CHARLES A. PATRIZIA
SCOTT W. BOWEN
CATHERINE M. DUNLAP
CYNTHIA A. LEWIS
KARL S. BOURDEAU
JOHN N. HANSON

CARL EARLEY
OF COUNSEL

CABLE ADDRESS
"INCLAW"

TELECOPIER
(202) 828-0234

BY MESSENGER

Joseph Hadley, Esquire
Keller & Heckman
1150 Seventeenth Street, NW
Washington D.C. 20036

Re: Potential Criminal Prosecution and
Enforcement by EPA and the U. S.
Department of Justice

Dear Joseph:

On April 18, 1980, the Environmental Defense Fund (EDF) requested the Administrator of EPA to consider imposing a system of civil penalties to discourage future discharges of vinyl chloride from emergency relief valves. I contacted the Agency staff to determine their views with respect to the EDF request and was advised that the Agency would be responding to EDF by letter and that I would receive a copy of their response. Today I received a copy of a letter dated May 12, 1980, a copy of which is enclosed for your review.

Note the second paragraph which indicates that EPA "has initiated the judicial enforcement process against several sources" Based on this sentence I called the EPA staff to determine when and what the Agency has initiated. I was advised that EPA has referred at least one case to the Department of Justice for criminal prosecution and several cases for civil action. Moreover, the staff indicates that such action will be filed within the next 30 - 45 days. In addition, several cases are being prepared by the regional offices for referral to the Department of Justice. With respect to the criminal action, I was told that it would not be filed with respect to any company operating in Region II. You will recall that I thought such an action might be filed in Region II based on a conversation I had had with EPA enforcement personnel in that Region in October of 1979.

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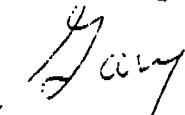
Joseph Hadley, Esquire
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Because of this information I suggest that with respect to the relief valve discharge issue the PVC Safety Group may wish to reconsider the Complaint and Motion of Points and Authorities we prepared on this issue in 1979.

One note of caution, the Department of Justice after considering the recommendation of EPA could decide not to proceed. As you know, the Agency can recommend that the Department of Justice take action but cannot force it to do so. However, if the Department of Justice refuses to represent the Administrator, he may pursuant to Section 305 of the Clean Air Act appoint his own attorneys to appear and represent him.

If you have any questions, please advise.

Cordially,



Gary H. Baise

GHB/tsl

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

RECEIVED MAY 20 1980

MAY 12 1980

OFFICE OF ENFORCEMENT

Mr. Larry Martin Corcoran
Environmental Defense Fund
1525 18th St., N.W.
Washington, D.C. 20036

Dear Mr. Corcoran:

I have been asked to respond to your letter of April 18, 1980, addressed to Douglas Costle, concerning the vinyl chloride National Emissions Standard for Hazardous Air Pollutants (NESHAPs). In that letter, you requested that the Environmental Protection Agency enforce more strictly the regulation restricting relief valve discharges of vinyl chloride, 40 CFR Section 61.65(a).

The Agency has recently accelerated its efforts to enforce the relief valve discharge provision of the NESHAPs standard. In fact, during the past three months, the Agency has initiated the judicial enforcement process against several sources which, we believe, have violated the relief valve discharge standard. These actions will seek various forms of injunctive relief, including improved operator training, inspection and maintenance procedures, and installation of equipment designed to prevent future discharges. I anticipate that more civil actions will be referred to EPA Headquarters by our Regional Enforcement Divisions in the very near future.

As to your suggestion that EPA prepare a schedule of fines for discharge of vinyl chloride to the environment, EPA will be seeking civil penalties in civil actions filed for relief valve discharges. Under Section 113(b) of the Clean Air Act, EPA can seek up to a maximum of \$25,000 per day of violation for each violation of the NESHAPs regulations. Regarding a minimum amount of civil penalties acceptable in any settlement of a civil action, the Agency is presently evaluating the applicability of its civil penalty policy, which does not on its face apply to intermittent violations such as these. The Agency will consider the ideas proposed in your letter in developing criteria for determining appropriate civil penalties in this category of cases.

I share your concern over the frequency with which vinyl chloride sources have experienced relief valve discharges, and I thank you for bringing specific sources to my attention. I believe that the Agency is now pursuing enforcement of the relief valve discharge standard vigorously and will continue to do so in the future.

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If you have any further questions about our vinyl chloride enforcement program, please contact Elliott Gilberg of my staff at 755-0940.

Sincerely yours,



Edward E. Reich, Director
Division of Stationary Source
Enforcement

cc w/incoming:

Enforcement Division Directors
Regions I-VI, IX

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