Vista Chemical Company
15990 North Barker's Landing Road
Post Office Box 19029
Houston, Texas 77224
Phone (713) 531-3200

August 19, 1988

TGG: JGL MMG VISTA
XF: MCIA

Robert M. Sussman, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N. W.
Suite 1300
Washington, D. C. 20004

Re: Notice of Intent to Test Methyl Chloride
OSW Chemicals Final Test Rule
40 CFR 796.3500
53 Fed. Reg. 22300 (June 15, 1988)

Dear Mr. Sussman:

This letter confirms that Vista Chemical Company will act as a sponsor of the hydrolysis testing for methyl chloride required by the Environmental Protection Agency under the subject test rule.

We hereby authorize the Methyl Chloride Industry Association (MCIA), of which Vista Chemical Company is a member, to undertake the studies required under the subject test rule and to administer the test program in a manner so as to satisfy the requirements of the subject test rule.

Our panel representative is Thomas G. Grumbles. For additional information, he can be reached at 713-531-3445.

This constitutes our letter of intent in accordance with 40 CFR 790.45. We understand that you will file it with EPA on or before August 29, 1988.

Sincerely,

Thomas G. Grumbles, C.I.H.
Environmental Quality Manager

dlj

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LATHAM & WATKINS
ATTORNEYS AT LAW
1001 PENNSYLVANIA AVENUE, N.W.
SUITE 1300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200

RECEIVED
MAR 25 '88
Route:
Copy:
File: MCIA

TO: MCIA Members

DATE: March 22, 1988

FILE NO: 015237-0000

FROM: William K. Rawson

COPIES TO: Robert M. Sussman

SUBJECT: Minutes of the March 3 Meeting

Enclosed are minutes of the March 3 meeting. Copies of materials distributed during the meeting are enclosed for members who were absent.

Please note that the next meeting has been scheduled for April 6 at 9:00 a.m. Topics to be discussed at that time include: (1) whether to file suit to challenge the final rule that EPA is expected to promulgate under Section 4 of TSCA in late March or early April (will require testing to determine the rate of hydrolysis and anaerobic biodegradation for methyl chloride); and (2) whether to have someone prepare a white paper on methyl chloride. Such a white paper could be submitted to ATSDR and also might assist member companies in responding to inquiries prompted by their Section 313 toxic chemical release submissions (due July 1, 1988).

Please have your secretary let me know immediately if you cannot attend the meeting on April 6.

METHYL CHLORIDE INDUSTRY ASSOCIATION
MINUTES OF MEETING

DATE: Thursday, March 3, 1988

TIME: 10:00 a.m. - 1:30 p.m.

PLACE: Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

Attendance:

G. Browning	General Electric
G. Burton	Exxon Corporation
E. Hobbs	Dow Corning Corporation
R. Jones	Occidental Chemical Corporation
Tom Robinson	Vulcan Materials Corporation
Robert M. Sussman	Latham & Watkins
William K. Rawson	Latham & Watkins

1.0 Approval of Minutes of Meeting of November 19, 1987

Minutes of the previous MCIA meeting were distributed and approved.

2.0 By-laws

At the November, 19, 1987 meeting, it was noted that MCIA does not have by-laws. Latham & Watkins was directed to prepare new, simpler by-laws. Upon reviewing the file, Latham & Watkins determined that short by-laws had previously been circulated and accepted by five of the nine MCIA members. Copies of these by-laws were handed out. Mr. Hobbs accepted the by-laws on behalf of Dow Corning. Messrs. Burton and Browning said they will submit the by-laws to the

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appropriate people at their respective companies for approval. Latham & Watkins will send a copy of the by-laws with an acceptance form to D. Liebeskind of Union Carbide Corporation for his review and acceptance.

3.0 EPA Rulemaking Activities

3.1 TSCA Section 4

Mr. Sussman recited the history of this rulemaking proceeding under Section 4 of TSCA, including the filing of comments by MCIA on July 24, 1987 and the filing of supplemental comments by MCIA on February 16, 1988. A final rule is expected in late March or early April. The final rule is expected to contain the same test requirements contained in the proposed rule, including testing to determine the rate of hydrolysis and anaerobic biodegradation for methyl chloride.

It was noted that methyl chloride is present in the environment naturally (swamp gas). The comments filed by MCIA focused on the failure of EPA to justify a finding that methyl chloride may present an unreasonable risk of injury, including EPA's failure to present any evidence that methyl chloride is present in the environment as a result of waste disposal activities at levels that might present a significant risk of adverse health effects. The comments do not make the point that methyl chloride is present in the environment naturally. Ed Hobbs agreed to identify articles that discuss the natural presence of methyl chloride in the environment, for possible submission to EPA with a short cover letter.

The group discussed what should be done in the event methyl chloride is included in the final test rule. Three alternatives were identified: (1) take a lead role in litigation challenging the final rule; (2) intervene in litigation initiated by CMA and play a secondary role in the litigation focusing on issues pertaining specifically to methyl chloride; or (3) conduct the required testing without any legal challenge. The required testing is likely to cost $150,000.00, and may cost more. The cost of intervening in litigation initiated by CMA would be approximately $10,000.00.

No final decision was reached. However, Latham & Watkins was directed to find out whether CMA intends to challenge the final rule. If not, the group agreed that MCIA should conduct the required testing; a legal challenge by MCIA alone would be too expensive. If CMA does decide to litigate, then MCIA could intervene to address issues pertaining specifically to methyl chloride. However, if CMA is not successful in obtaining a stay of the final rule pending the litigation, then intervention probably would be pointless for MCIA because the required testing would be completed before the case had been decided.

In other words, two pre-conditions to litigation by MCIA were identified: (1) CMA must file suit; and (2) CMA must obtain a stay of the final rule pending the outcome of the litigation.

Mr. Sussman pointed out that a motion for a stay of the final rule probably would not be decided until at least six to eight weeks after promulgation of the final rule. Given the tight time schedule stated in the proposed rule and the large number of chemicals (73) for which testing would be required, it was agreed that MCIA needs to proceed at this time to identify a laboratory that could do the required work. Accordingly, Ed Hobbs agreed to contact Ann Arbor Chemical Services and ask them to evaluate the test requirements stated in the proposed rule (both generically and specifically for methyl chloride) and to provide a cost estimate for the required hydrolysis and biodegradation testing for methyl chloride.

3.2 CERCLA § 103

EPA has proposed to raise the RQ for methyl chloride under § 103 of CERCLA from 1 lb. to 100 lbs. MCIA has submitted comments suggesting an RQ of 1,000 lbs. A final rule is expected on or before April 30, 1988 (statutory deadline). No action on this item is required at this time. It was agreed that an increase in the RQ from 1 lb. to 100 lbs. would provide substantial relief for member companies, and that litigation to challenge a decision by EPA not to adopt the RQ suggested by MCIA would not be advisable.

4.0 <u>ATSDR Toxicological Profiles -- Strategy for Methyl Chloride</u>

Latham & Watkins distributed a short memo summarizing the procedures for preparation of toxicological profiles and the opportunities for MCIA to participate in the preparation of the methyl chloride tox profile. Latham & Watkins had previously distrubted by mail (1) a list of studies in the MCIA files at Latham & Watkins, and (2) a list of submissions pertaining to methyl chloride submitted under § 8(d) of TSCA.

Opportunities for MCIA participation in the preparation of the methyl chloride tox profile include: (1) Submission of documents to ATSDR and, perhaps, directly to the contractor; (2) Recommending candidates for the review panel; and (3) Submitting comments after the draft profile has been released to the public.

Mr. Sussman raised the possibility of preparing a white paper on methyl chloride. Such a document could be submitted to ATSDR and also might be useful to member companies in connection with Section 313 of SARA (which requires that toxic chemical release forms be filed annually for methyl chloride starting on July 1, 1988). It was generally agreed that MCIA probably should have a white paper addressing methyl chloride. It was further agreed that the group would begin the process of identifying possible contractors by taking the following actions:

1. Latham & Watkins will contact Joe Rodricks of Environ Corporation;
2. Mr. Hobbs will contact Jim Gibson of CIIT and ask him for the names of persons he would recommend;
3. Mr. Burton will contact John Matlock, a medical student, to see if he would be interested and available;
4. Mr. Burton also will see if Exxon has already generated a substantial portion of the necessary information and could prepare the paper;
5. Mr. Robinson will contact Ted Torkelson of John Hopkins;
6. Latham & Watkins will attempt to identify other consultants who might be interested.

In making the above-listed contacts, the members will attempt to determine availability and estimated cost for preparation of a paper of approximately 20 to 30 pages in length. The first draft would be due on or around July 1st. A more detailed task description will be prepared by Latham & Watkins and sent to those persons who express interest in the job.

Latham & Watkins also was directed to make inquiries concerning the content of the fact sheets being prepared by

EPA for Section 313 chemicals. Additionally, Latham & Watkins will find out if industry will be given an opportunity to review and comment on these fact sheets prior to their public release in final form.

5.0 Inclusion of Methyl Chloride in the Drinking Water Priority List

Methyl chloride was included in the recently released Drinking Water Priority List. Latham & Watkins distributed a memo summarizing the significance of inclusion of methyl chloride on this list. Generally, EPA will select at least 25 of the listed chemicals for further regulation during the next three years. The further regulation would consist of Maximum Contaminant Level Goals (MCLG) and National Primary Drinking Water Regulations (NPDWR). The MCLGs are not enforceable standards, though they may come into play when clean-up standards are established at superfund sites. The NPDWRs are enforceable standards that apply to all public water systems.

Inclusion of methyl chloride on the DWPL does not require any immediate action by this group. By telephone call to EPA, Latham & Watkins has learned that an MCLG and NPDWR are not likely to be established for methyl chloride during the next three years. However, at the end of the first three year period, EPA will promulgate a new list, and will carry over unregulated chemicals in which it has a continuing interest. It seems likely that an MCLG and NPDWR are likely to be set for methyl chloride in the future.

6.0 Financial Report

Invoices in the amount of $5,000.00 were sent to all members in December, 1987. All members have paid. A portion of the funds have been used to pay Covington & Burling's last bill and a bill from Latham & Watkins for the period ending December 31, 1987. The MCIA account now holds approximately $25,000.00. The group agreed that these funds are available for general administrative expenses in connection with meetings and related activities. In the event the group agrees to pursue preparation of a white paper on methyl chloride or some other significant activity, a separate commitment would be necessary.

8.0 Silicone Health Council

Mr. Hobbs reported that the Silicone Health Council is looking for companies interested in participating in an industrial hygiene sampling method validation exercise. The cost to each company would be $1,000.00. Additionally, each company would have to conduct some analysis of samples in-house. Companies interested in participating should contact Barbara Losey of Rhone-Poulenc, Inc. General Electric, Dow Corning and Union Carbide all are participating.

9.0 Membership List

Latham & Watkins was directed to distribute a current telephone and address list to all members.

10.0 Next Meeting Date

The next meeting is scheduled for April 6, 1988 at 9:00 a.m. at the offices of Latham & Watkins

William K. Rawson

Subject to Approval

METHYL CHLORIDE INDUSTRY ASSOCIATION
TENTATIVE AGENDA

DATE: Thursday, March 3, 1988

TIME: 10:00 a.m.

PLACE: LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

1.0 Approval of Minutes of Meeting of November 19, 1987

2.0 By-laws

3.0 EPA Rulemaking Activities

3.1 TSCA Section 4 -- proposed rule that would require testing to determine the rate of hydrolysis and anaerobic biodegradation for methyl chloride

3.2 CERCLA Section 103 -- proposed rule that would increase the RQ for methyl chloride to 100 lbs.

4.0 ASTDR Toxicological Profiles -- Strategy for methyl chloride

5.0 Inclusion of methyl chloride in Drinking Water Priority List

6.0 Financial Report

7.0 Next Meeting Date

METHYL CHLORIDE INDUSTRY ASSOCIATION

Minutes of Meeting

Date: November 19, 1987

Time: 10:00 - 2:00 p.m.

Place: Latham & Watkins
1333 New Hampshire Avenue, N.W.
Suite 1200
Washington, D.C. 20036

Attendance

E. Hobbs	Dow Corning Corporation
D. Liebeskind	Union Carbide Corporation
G. Browning	General Electric
G. Burton	Exxon Corporation
T. Grumbles	Vista Chemical Company

Invited Guests

Robert M. Sussman	Latham & Watkins
William K. Rawson	Latham & Watkins

1.0 Selection of Counsel

Mr. Sussman introduced Mr. Rawson and described generally Latham & Watkins and its environmental practice. Mr. Sussman also presented written materials consisting of (1) a general description of the firm, (2) a recent article about the firm's management in the Sloan Management Review, and (3) a detailed description of the firm's environmental practice. Mr. Sussman indicated that financial arrangements would be similar to the previous arrangements with Covington & Burling (hourly billing at rates of approximately $200 for Mr. Sussman and $150 for Mr. Rawson plus disbursements). Mssrs. Sussman and Rawson then were excused and the members present voted unanimously to retain Latham & Watkins as counsel. Mssrs. Sussman and Rawson were informed and the meeting continued.

2.0 By-laws

Mr. Hobbs noted that MCIA does not have by-laws. A draft was circulated but apparently never put in final form. A preference was stated for simpler by-laws. Latham & Watkins will prepare new by-laws for circulation to MCIA members.

3.0 Transfer of MCIA Files

Mr. Hobbs signed a letter authorizing the transfer of all MCIA files from Covington & Burling to Latham & Watkins. Latham & Watkins will deliver the letter and follow through.

4.0 Finances

The current balance in the MCIA bank account is approximately $10,000. MCIA owes approximately $15,000 to Covington & Burling. There is a need for an assessment (the first in approximately two years). The members agreed to put aside the issue of the appropriate amount for the assessment until after various substantive issues had been discussed.

5.0 Potential EPA Rulemaking Activities

Mr. Sussman identified two potential EPA rulemaking activities that may require action by MCIA in 1988.

5.1 First, a final test rule under TSCA section 4 is expected in the spring of 1988. MCIA has challenged the statutory basis for the test rule in comments submitted to EPA. CMA also commented negatively on the proposed rule. The required testing probably would cost more than $100,000. Latham & Watkins will review the status of the rulemaking proceeding and prepare a brief report, including CMA's likely course of action in the event EPA disregards the statutory arguments.

5.2 Second, EPA has proposed to raise the RQ for methyl chloride under section 103 of CERCLA from 1 lb. to 100 lbs. MCIA submitted comments suggesting an RQ of 1,000 lbs. Latham & Watkins will check the status of this rulemaking activity.

6.0 Massachusetts Proposed Legislation

T. Heinrich, an associate at Latham & Watkins, joined the meeting to discuss a bill recently introduced in the Massachusetts legislature that would include a ban on some chemicals. It had been reported in the trade press that methyl chloride had been identified as a likely candidate for a complete ban on manufacture and use in Massachusetts. This report appears to have been mistaken -- a representative of the Associated Industries of Massachusetts advised Mr. Heinrich that chlorinated solvents, including <u>methylene</u> chloride, are the main targets of the bill.

Methyl chloride would nevertheless be on the list of "toxic or hazardous substances" for which "toxic users" would have to develop "reduction plans." A company would be a "toxic user" if it manufactured or processed more than 25,000 lbs/yr or otherwise used more than 10,000 lbs/yr of a listed chemical.

Mr. Heinrich distributed a short memo summarizing the principal provisions of the bill (with a copy of the full text attached).

7.0 ATSDR Toxicological Profiles.

Mr. Sussman explained section 110 of SARA, which calls for the preparation of toxicological profiles by the Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR is charged with responsibility for preparing toxicological profiles for the 100 chemicals most commonly found at hazardous waste sites. The toxicological profiles are to be prepared over a period of 4 years (25 profiles per year). The first profiles are now due, and approximately twelve have been released. A copy of the beryllium toxicological profile was distributed during the meeting. The format used for this profile is a standard format that is being followed for all of the profiles.

Methyl chloride is in the third group of chemicals. Accordingly, the toxicological profile for methyl chloride will not be released until approximately November, 1989.

The toxicological profiles raise some important issues. First, for each chemical ATSDR must identify significant data gaps that will be filled at industry's expense. (It is not yet clear how the data gaps will be filled -- through TSCA section 4 rulemaking, or by independent contractors hired by ATSDR.) Second, a SHEL (Sale Human Exposure Limit) will be established for each chemical. The SHEL may ultimately be used for purposes that extend far beyond clean-up of hazardous waste sites.

The members present during the meeting agreed that (1) the members need to know more about how the toxicological profiles are being prepared, and (2) MCIA needs to participate as much as possible in the preparation of the profile for methyl chloride before it is released.

The following action items were agreed upon:

(1) Latham & Watkins will check on the schedule for selection of a contractor and the actual preparation

of the methyl chloride toxicological profile.

(2) Latham & Watkins will monitor EPA rulemaking activities that have a bearing on implementation of SARA section 110.

(3) Latham & Watkins will find out what opportunities are available under the statute and regulations for MCIA to participate in the preparation of the methyl chloride toxicological profile, including by (a) providing information to ATSDR; (b) providing information directly to the contractor hired by ATSDR; and/or (c) placing an industry representative on the methyl chloride toxicological profile peer group.

(4) Latham & Watkins will contact other industry associations or companies to find out the extent to which they have been able to participate in the preparation of recently released toxicological profiles.

(5) Latham & Watkins will review the MCIA files to see what studies and other information on methyl chloride already are in the files. A list will be distributed to MCIA members.

(6) Latham & Watkins will obtain a printout of all TSCA section 8(d) filings pertaining to methyl chloride.

(7) The MCIA members will then identify any additional materials concerning methyl chloride that are available (including unpublished materials, submissions to EPA and other federal, state or local agencies, and published materials).

8.0 Finances (cont'd)

The members present at the meeting agreed that an assessment of $5,000 per member was appropriate. Mr. Hobbs will discuss this with representatives of the absent members. Latham & Watkins will send out invoices no later than December 15, 1987.

9.0 Next Meeting Date

The next meeting will be on February 3, 1988 (10:00 a.m.) at the offices of Latham & Watkins (which then will be at 1001 Pennsylvania Avenue). The principal purpose of the meeting will be to discuss the results of the action items listed in section 7.0 of these Minutes,and to devise a strategy and work plan for participating in the toxicological profile process.

The meeting adjourned at approximately 2:00 p.m.

William K. Rawson

Subject to approval.

METHYL CHLORIDE INDUSTRY ASSOCIATION
BY-LAWS

ARTICLE I
PURPOSES AND OBJECTIVES

The general purpose of MCIA is to serve the needs of industry with respect to government regulation of methyl chloride (chloromethane) MCIA will represent the industry in negotiations with government agencies, prepare comments on proposed regulations and be prepared to carry out litigation if necessary. The MCIA may, from time to time, adopt additional objectives that are consistent with its general purposes stated above.

The members shall not engage in any activity or communications, such as discussion of pricing, allocations of markets, unfair competition, limitations of supply or bidding procedures, which could be violations of federal or state anti-trust law or regulations.

ARTICLE II
MEMBERSHIP

Membership in MCIA shall be open to any person or business entity engaged in the manufacture of chloromethane who agrees to pay its share of the expenses of MCIA, as that share may be determined under Article V. MCIA may, by majority vote of the members, allow processors, distributors, or users of chloromethane to join MCIA or to attend MCIA meetings with or without the right to vote.

ARTICLE III
STEERING COMMITTEE

MCIA shall be managed by a Steering Committee. Each member shall be entitled to one seat on the Steering Committee. Initially the MCIA members and Steering Committee representatives shall be:

R. Jones, Diamond Shamrock
E. Hobbs, Dow Corning Corporation, Chairman
S. Hearn, Dow Chemical Company
G. Burton, Exxon Chemical Company
G.R. Browning, General Electric, Secretary
D. DeNoon, LCP Chemicals-West Virginia, Inc.
J.J. Behen, Union Carbide Corporation
T. Grumbles, VISTA Chemical Company
T. Robinson, Vulcan Materials Company

By resolutions adopted and modified from time to time, the Steering Committee may adopt procedures to govern its operations. The Steering Committee shall have the authority to establish standing committees or ad-hoc subcommittees of MCIA, including committees composed of fewer than all of the members of the Steering Committee, to which the Steering Committee may delegate authority to act for it, but in no case shall a committee be composed of fewer than three persons. Any subcommittee meetings shall be conducted in compliance with MCIA by-laws.

ARTICLE IV
MEETING OF MEMBERS

Meetings of members may be called by the Chairman of the Steering Committee or by a majority of the Steering Committee. At least seven days notice, including an agenda of meetings shall be provided to members of MCIA.

At meetings of members, a quorum shall consist of a majority of the voting members present in person or represented by valid, unrevoked proxies. Each voting member may vote in person (acting by its official representative or declared alternate) or by a duly authorized written proxy, filed with the Chairman. Except as otherwise provided in these bylaws, the Steering Committee may act by majority vote of the members duly represented at any meeting.

ARTICLE V
FUNDING

The Steering Committee shall from time to time develop formulas for funding the ongoing and th special activities of MCIA. These formulas shall be submitted to the members for approval by a two-thirds majority of all members and shall be utilized to obtain funds for MCIA activities.

Funds for MCIA activities may be dispersed upon submission of an appropriate written statement for services rendered or material supplied and upon approval of such statements by the Chairman of the Steering Committee, or by a person authorized by the Steering Committee.

ARTICLE VI
LEGAL AND ADMINISTRATIVE SERVICES

The Steering Committee shall retain counsel to provide legal and administrative services, including prior review of agenda of meetings and monitoring of association activities at meetings of members consistent with the purposes and objectives stated in Article I and the avoidance of antitrust activities.

ARTICLE VII
AMENDMENTS OF BY-LAWS

These by-laws may be amended by the Steering Committee, provided that at least fifteen days written notice of any proposed amendment is sent to each member of the Steering Committee and any amendment is adopted by the affirmative votes of two-thirds a majority of the full Steering Committee. The Steering Committee shall give the members of MCIA prompt written notice of any amendments.

Adopted by MCIA, effective as of February 4, 1986.

METHYL CHLORIDE INDUSTRY ASSOCIATION

By: Ed Hobbs, Chairman of the
Steering Committee

LATHAM & WATKINS
ATTORNEYS AT LAW
1001 PENNSYLVANIA AVENUE, N.W.
SUITE 1300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637 2200

TO: MCIA Members

DATE: March 3, 1988

FILE NO: 015237-0000

FROM: Theodore B. Heinrich

COPIES TO: Robert M. Sussman
William K. Rawson

SUBJECT: ATSDR Toxicological Profiles

At the last MCIA meeting it was agreed that Latham & Watkins would seek more information regarding 1) the preparation of toxicological profiles by the Agency for Toxic Substances and Disease Registry (ATSDR), as mandated by Section 110 of SARA, and 2) opportunities for industry to participate in the preparation of the toxicological profiles. This memorandum summarizes what we have learned so far.

1. Preparation of Toxicological Profiles

The "priority list" of 100 chemicals for which toxicological profiles must be prepared was published in the Federal Register on April 17, 1987. 52 Fed. Reg. 12866. See Attachment A. The profiles must be completed at a rate of no fewer than 25 per year, within 4 years after October 17, 1986. 42 U.S.C. § 9604(i)(3). See Attachment B. The availability of the first 25 profiles (Priority Group 1) was announced in the Federal Register on October 15, 1987. 52 Fed. Reg. 38340. See Attachment C. However, many of the profiles were not in fact publicly available until January. See Attachment D.

The 25 profiles in Priority Group 1 were prepared by five contractors chosen by EPA. The profiles all follow the same format -- as prescribed by EPA and ATSDR. See 52 Fed. Reg. 12873 (April 17, 1987). Comments have been submitted by the Chemical Manufacturers Association suggesting numerous changes to the format for the toxicological profiles. At the moment, we do not know if any changes suggested by CMA or other parties will be followed.

I spoke with David Ayres, an ATSDR program specialist with a contracting background, who informed me that ATSDR will award its own contracts for Priority Group 2. Mr. Ayres expects ATSDR to select approximately five contractors to prepare the Group 2 profiles. The contracts will be renewable for Group 3 chemicals if performance is satisfactory. Thus, it is possible that one of the Group 2 contractors will prepare the profile for Methyl Chloride (a Group 3 chemical). The RFP period closed February 1 and Mr. Ayres anticipated that ATSDR would choose the Group 2 contractors soon. The actual designation of a contractor to prepare the Methyl Chloride profile probably will not be made until this time next year.

2. Opportunities for Industry Participation

There are three opportunities which may allow for MCIA input into the preparation of the toxicological profiles for methyl chloride: a) Submission of information to ATSDR and its independent contractor, b) the peer review process, and c) public notice comment.

a. Submission of Information to ATSDR

The EPA notice of the first priority list requested the public to submit to EPA any "unpublished key studies" on any of the priority list substances. 52 Fed. Reg. 12870 (April 17, 1987). Supplementary data on methyl chloride is solicited to help "ensure that ATSDR will have all the key studies in its possession and peer reviewed" by the time ATSDR begins to draft the methyl chloride toxicological profile. Id.

The notice states that studies should particularly be submitted if "the submitter believes the data would substantially affect the determination of levels of significant human exposure or the identification of toxicological data needs." Id.

The studies should provide sufficient detail as to test materials, test methods, and results obtained to permit proper evaluation and peer review and, if the study was previously peer reviewed those comments should be included as well. Id.

MCIA may be able to submit information directly to the independent contractor hired to prepare the methyl chloride toxicological profile. We understand that some companies did submit materials directly to the contractors for the Group 1 profiles with copies to ATSDR. We understand further that, at least in some cases, industry representatives may have met with the contractor in person or by telephone, and may have been given an opportunity to review drafts of toxicological profiles. This was an informal process, and it is not known if the contractors will be permitted or willing to make drafts available the second time around. Dave Ayres, the ATSDR program specialist, said he believes that the contractors, as envisioned, would not have any significant public interaction and that all their information would be funneled through ATSDR.

b. Peer Review

In order to ensure the toxicological profiles are of high scientific and technical quality, EPA and ATSDR have taken measures to ensure that the profiles are properly peer reviewed. See 52 Fed. Reg. 12872 (April 17, 1987). This notice provides as follows:

- The contractor will assemble a peer review panel for each substance
- The panel will consist of 3 - 7 experts who collectively have knowledge of the substance's
  - physical and chemical properties
  - toxicokinetics
  - key health end points in animals and humans
  - mechanisms of actions
  - human exposure
  - quantification of risk to humans
- Each expert will have distinguished himself/herself through research, publications and peer recognition as qualified to serve as peer reviewers of the studies and evaluations of the substances in question.

Although the contractor assembles the peer review panel, it is unclear whether an industry representative could be designated. The notice states that "ATSDR and EPA will ensure that the chosen experts do not have a conflict of interest in their peer review of toxicological profiles of specific substances." 52 Fed. Reg. 12872 (April 17, 1987). I asked Dave Ayres to explain what is meant by a conflict of interest, and while he could not give an authoritative answer, he indicated that ATSDR wants to ensure objectivity and to disqualify anyone with a vested interest in the toxicological profile of that substance.

c. Public Comment on Draft Profiles

The availability of a particular toxicological profile is announced in the Federal Register concurrently with the establishment of a 90 day period for public comment on that profile. 52 Fed. Reg. 38340 (Oct. 15, 1987) (Availability of Priority Group One Profiles.) ATSDR program specialist Dave Ayres noted that commentors have stated that 90 days is too short a period, but ATSDR has taken the position that the profiles are under Congressionally-imposed time deadlines and the comment period therefore cannot be extended. Mr. Ayres said late comments would be considered when the profile is updated. The profiles must be revised and republished as necessary, but no less often than once every three years. 42 U.S.C. § 9604(1)(3).

Draft

~~Comments by 8/31~~

DRAFT

File - MCIA

F

AGREEMENT FOR THE CONDUCT AND FUNDING
OF A TESTING PROGRAM FOR METHYL CHLORIDE

A. SCOPE AND PARTIES

1. Purposes. This Agreement is entered into by the undersigned Companies ("Companies") and the Methyl Chloride Industry Association ("MCIA"). The purposes of the Agreement are (i) to establish an allocation among the Companies of the costs of the testing program required for methyl chloride by the OSW chemicals final test rule promulgated by the Environmental Protection Agency ("EPA") under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Sections 2601-2629, and (ii) to create mechanisms for sharing the related expenditures and liabilities incurred by virtue of those jointly-supported testing activities.

2. Scope of Testing. The scope of testing covered by this Agreement is the hydrolysis testing specified in the final test rule attached hereto as Exhibit 1 and incorporated herein by reference. The Agreement also applies to other tests, ancillary to the testing required by the final test rule and necessary for its proper performance, including analytical and methods development work and such other tests as may be designated by a majority vote of the Companies as defined in Paragraph 8. However, the scope of testing does not include the biodegradation testing that is included in the final test rule as an optional test.

3. Sponsorship of Testing. The following Companies have agreed to conduct the studies identified above:

The Dow Chemical Company

Dow Corning Corporation

Exxon Chemical Company

General Electric Company

LCP Chemicals - West Virginia, Inc.

Occidental Chemical Corporation

Union Carbide Corporation

Vista Chemical Company

Vulcan Materials

4. Role of MCIA. MCIA shall provide support for the Companies by negotiating and administering contracts entered into under this Agreement, by providing administrative oversight for the testing program, and by collecting and disbursing the financial contributions required of the Companies under this Agreement.

5. Role of Technical Committee. To assist in implementing the testing program required for methyl chloride by the EPA final test rule, a Technical Committee will be stablished by the Companies. Each Company will be entitled to designate a representative to serve on the Technical Committee. The role of the Technical Committee will be to advise the Companies on the resolution of scientific issues relating to the testing, including the selection of laboratories, preparation and composition of th test

substance, development of protocols, auditing of laboratory performance, the submission of reports to EPA, interpretation of test results and such other tasks as may be designated by majority vote of the Companies as defined in Paragraph 8. The Technical Committee will be empowered to investigate and evaluate subjects within the scope of its authority, and to make recommendations on these subjects to the Companies, but will not be authorized to take binding action on the Companies' behalf.

B. LIMITATIONS

6. Right to Seek Reimbursement. This Agreement does not limit the right of any company to recover funds contributed and expended under this Agreement from any other company that has not signed this Agreement by invoking any available legal remedies.

C. FINANCING AND ADMINISTRATION

7. Financial Contributions

a. The Companies agree to share equally the costs of the testing and related administrative and legal activities encompassed by this Agreement.

b. The Companies have collectively budgeted a total of _______ to cover the costs of contracting with testing laboratories, administering testing, communicating with EPA, providing 1 gal support for the testing program, and monitoring and auditing test data. If the budgeted amount is exceeded, the Companies agree to contribute additional funds in accordance with the formula specified in Paragraph 7.a. should the Companies determine, by majority vote recorded during a meeting or conference call of the Companies, that such funds are necessary to support the activities authorized by the Agreement.

c. The funds contributed under this Agreement may be used to finance activities in addition to those specified in Paragraph 7.b. with the approval of all the Companies recorded by unanimous vote during a meeting or conference call of the Companies. Once such an additional activity is authorized, it may be suspended or discontinued only upon a majority vote of the Companies recorded in the same manner.

8. <u>Voting Procedures</u>. The Companies agree that they will each cast one vote in connection with matters arising under this Agreement.

As used in this Agreement, the term "majority vote" shall mean at least 51 percent of the total number of votes eligible to be cast under this Paragraph, and the term "unanimous vote" shall mean 100 percent of such eligible votes.

9. Administration of Funds.

a. The Companies agree to make separate commitments of funds for each calendar year, including 1988, in which testing or other activities authorized by this Agreement are underway. In 1988, this commitment of funds will occur no later than August 29 (30 days after the final test rule becomes effective). Subsequent commitments of funds will occur within the first 30 days of the calendar year. Each funding commitment will be based on MCIA's and the Companies' best estimate of the anticipated costs of testing and related activities during the ensuing 12-month period. The size of a funding commitment will be determined by a majority vote of the Companies recorded during a meeting or conference call of the Companies. For purposes of this Agreement, the term "time of commitment" will mean the date on which such a vote has occurred. The term "commitment period" will mean the period following the time of commitment and continuing until the next commitment of funds has occurred.

b. Within 30 days of the time of commitment, MCIA shall notify each Company of its pro rata share of the total amount budgeted by the Companies for the commitment period. After consulting with the Companies, MCIA shall establish a payment schedule for the commitment period, taking into account the expected dates for disbursing funds to laboratories and discharging other obligations incurred under the Agreement. MCIA shall periodically invoice the Companies in accordance with this schedule, and each Company shall pay the amount billed within 60 days of being invoiced.

c. Any Company failing to make payment within 60 days of the Company's receipt of an invoice under Paragraph 9.b. shall be deemed in default. A Company in default shall forfeit all voting rights concerning matters arising under this Agreement, and shall be excluded from all meetings and conference calls of the Companies, until the default has been cured by the payment of the funds due plus all interest accruing since the time of default. Where a Company has forfeited voting rights, the votes assigned t the C mpany shall not be taken into account in determining whether a "majority vote" or "unanimous" vote has been cast for purposes of Paragraph 8. Any interest which is payable under this Paragraph shall be set on the basis of the prime rate(s) published in The Wall Street Journal for the applicable period. The amount of interest for any 60-day period shall be established by the rate on the thirtieth (30th) day of the period. Interest shall not be compounded.

d. The Companies may increase the funding commitment for a calendar year if the initial amount committed is insufficient to cover testing costs and other expenditures for that calendar year. A funding commitment may be increased by majority vote of the Companies recorded by vote during a meeting or conference call of the Companies.

e. **MCIA shall promptly deposit all funds received from the Companies in the MCIA fund account currently maintained by Latham & Watkins, and shall disburse such funds as necessary to make timely payments to testing laboratories or finance other activities authorized under this Agreement. Though a separate MCIA account shall not b maintain d for this t st** program, MCIA companies shall furnish to the Companies a separate accounting for all commitments and expenditures pertaining to this test program.

f. If, at the conclusion of all activities encompassed by this Agreement, funds received by MCIA pursuant to this Agreement remain in the MCIA account, then such remaining funds shall be distributed to the Companies by MCIA on a pro rata basis in accordance with the formula specified in Paragraph 7.a, unless MCIA has been otherwise directed by the Companies by unanimous vote during a meeting or conference call of the Companies.

10. Cessation of Production/Importation By Signatory.

a. In the event any Company ceases all production and importation of methyl chloride in the United States before the testing and other activities encompassed by this Agreement have been completed, that Company shall continue to be liable for its portion of funds already committed under this Agreement and for legal liabilities/indemnification obligations specified in Part E that were incurred before the date of the next commitment of funds under this Agreement. Such Company shall not be responsible for further costs, liabilities and obligations unless it resumes production or importation of methyl chloride before the testing and other activities encompassed by the Agreement have been completed, in which event the Company's share of costs and liabilities will be adjusted to reflect the period of time for which it did not produce or import methyl chloride.

b. If a Company's share of costs and liabilities is reduced under this Paragraph, the remaining Companies' shares will be increased proportionally in accordance with the formula specified in Paragraphs 7.a.

11. Other Manufacturers and Importers. Any other company may enter into this Agreement after its initial execution on the following terms and conditions:

a. The Companies and this company will agree on an appropriate modification of the cost-allocation formula in Paragraph 7.a. As modified, this formula will govern the sharing of testing costs during the commitment period(s) following the company's execution of the Agreement.

b. The Companies and the new signatory will agree on whether and to what extent the company will be liable for funds previously committed under this Agreement. The Companies and the company will also agree on whether it will pay an "entry fee" as a condition to executing the Agreement.

c. Any amount received from a company entering into this Agreement after its execution shall be credited to the funds contributed under this Agreement. A reallocation among those Companies already parties to this Agreement shall be made at the time of the next commitment (or at the end of the testing program if no additional commitments are made) in accordance with the formula specified in Paragraph 7.a.

d. A company that enters into this Agreement after its initial execution shall be responsible for any liabilities/indemnification obligations specified in Part E which have arisen or will arise under the Agreement during any commitment period following the date on which the company initiated manufacture or importation of methyl chloride.

e. The terms and conditions on which another company enters into this Agreement will be incorporated into the Agreement by reference and will be binding on all the signatories.

D. CONDUCT OF TESTING

12. Contracts with Test Laboratories. The testing required for methyl chloride under the final test rule shall be conducted pursuant to contracts between MCIA and one or more qualified testing laboratories. Any such laboratory shall be selected by majority vote of the Companies recorded by vote during a meeting or conference call of the Companies. Contracts with these laboratories shall be negotiated by MCIA and its counsel in consultation with the Companies. Draft contracts resulting from these negotiations shall be reviewed by the Companies and, before final execution by MCIA, shall be ratified by majority vote of the Companies recorded during a meeting or conference call of the Companies.

E. PENALTIES AND LIABILITIES

13. Payment of Penalties or Costs of Repeat Testing.

a. The Companies recognize that the EPA may seek to assess civil penalties under Section 16 of TSCA against one or more of the Companies based on alleged noncompliance with EPA's Good Laboratory Practice ("GLP") regulations (40 C.F.R. Part 792) or other asserted violations of the final test rule resulting from the activities of MCIA under this Agre m nt or testing laboratories with which MCIA has contracted under this Agreement. The Companies agree that any penalty liability incurred by one or more Companies based on activities undertaken by MCIA or its contractors pursuant to the final test rule will be apportioned among all the Companies in accordance with the allocation formula specified in Paragraph 7.a. In the event any Company is named in a civil penalty complaint issued by EPA, it will promptly inform the remaining Companies and MCIA and thereafter consult with them about its defense against EPA's penalty claims.

Kier Labs will indemnify for GLP §16 violations

b. If any Company by its own negligence, misconduct, or non-performance becomes liable for a civil penalty under Section 16 of TSCA for asserted violations of the final test rule, then that company will be solely liable for payment of the civil penalty, notwithstanding the allocation formula provided in this Agreement.

c. The Companies recognize that MCIA may be subjected to civil penalties as a result of alleged noncompliance with EPA's GLP regulations or violations of ther provisions of the final test rule growing out of the activities of MCIA or its contract laboratories. Where such penalties are attributable to the acts or omissions of a laboratory contracting with MCIA, it will seek to exercise its right to receive indemnification from the laboratory. In the event that a contracting facility cannot or will not indemnify MCIA for those penalties, the Companies will indemnify MCIA in accordance with the allocation formula in Paragraph 7.a. In the event MCIA is named in a civil penalty complaint issued by EPA, it will inform the Companies and thereafter consult with them about its defense against EPA's penalty claims.

d. If reasonable legal fees and costs are incurred by MCIA or any of the Companies because EPA seeks to assess penalties for noncompliance with GLP regulations or other violations of the final test rule growing out of activities conducted by MCIA or its contract laboratories, such legal fees and costs will be apportioned among the Companies based on the allocation formula set forth in Paragraph 7.a.

e. The Companies recognize that EPA may require one or more of the studies required under the final test rule to be repeated because of alleged non-compliance with EPA's GLP regulations or other asserted violations of the final test rule. Where a requirement to repeat a study is attributable to the acts or omissions of a laboratory contracting with MCIA, it will seek to require the laboratory to conduct repeat testing at the laboratory's own expense. In the event that a contracting facility cannot or will not bear the costs of repeat testing, the Companies agree to share these costs in accordance with the allocation formula in Paragraph 7.a. However this allocation formula will not apply if the requirement to repeat a study is attributable to the negligence of an individual Company. In these circumstances, the Companies may agree on a new allocation formula which takes into account the responsibility of the individual Company for the requirement to conduct repeat testing.

f. In addition to the previous provisions of this Agreement, the Companies agree to indemnify

MCIA against all other liabilities arising out of the terms of this Agreement.

F. RECORDS AND DISCLOSURE OF DATA

14. Maintenance and Record Retention.

a. MCIA shall maintain books and records relating to the administration, financing and performance of the testing program required by the final test rule.

b. All records, raw data, test reports and minutes relating to testing or other activities conducted under this Agreement will be retained for ten (10) years after their creation by MCIA or individual(s) or entities designated as custodian(s) by majority vote of the Companies.

15. Data Dissemination. The Companies agree that the results of all testing conducted under the finest rule shall be provided to EPA. No Compawyll have an exclusive ownership interest in dhea and information generated in compliance withthe final test rule.

16. Use of Data by Individual Companies. Subjectheo requirements of Paragraph 15, each Compaagrees to utilize the consultants' reports and anyother data and information generated pursuant this Agreement at its own risk and to assume responsibility for

the consequences of Company's utilization of all such reports andnformation.

G. MISCELLANEOUS PROVISIONS

17. Effective Date of This Agreement. This agreement shall be in full force and effect when executed by MCIA and all of the following Companies:

The Dow Chemical Company
Dow Corning Corporation
Exxon Chemical Company
General Electric Company
LCP Chemicals - West Virginia, Inc.
Occidental Chemical Corporation
Union Carbide Corporation
Vista Chemical Company
Vulcan Materials

18. Relationship of Companies and Contractors. Each Company, and each consultant and contractor retained by MCIA to conduct testing or other activities authorized by this Agent, shall act as an independent entity or contractor, not as an agent for, partner of, or joint venturer with other Companies or MCIA. No relationship, other than the cost-sharing and liability-sharing arrangements created by and set forth in this Agreement, shall be established by virtue of activities of MCIA on the Companies' behalf.

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19. Governing Law. This Agreement shall be governed by the laws of the District of Columbia. Actions brought under this Agreement shall be brought in any court of competent jurisdiction in the District of Columbia.

20. Modification of this Agreement. This Agreement may be amended only in accordance with the terms of the Agreement or by written addendum signed by all the Companies and MCIA.

21. Successor Liability. The obligations imposed under this Agreement shall apply to the legal successors and assigns of MCIA and the Companies, including any acquirors of all or substantially all of the methyl chloride production facilities of a Company or Companies. In particular, if two or more of the Companies form a new entity to carry on their methyl chloride production operations as a joint venture, the new entity shall be deemed the successor of the Companies involved and shall exercise their rights and discharge their obligations under this agreement.

22. Termination Date. This Agreement shall terminate two years after the last final report for a study required under the final test rule is submitted to EPA or at such other date selected by majority vote of the Compani s. However, the 1 gal liability and

indemnification provisions in Part E of this Agreement shall remain in full force and effect until the statute(s) of limitations on the possible legal causes of actions under this Agreement have run.

23. Exclusiveness of Agreement. The provisions of the Agreement constitute the entire Agreement among the Companies and MCIA regarding the sharing of costs and liabilities for the studies required by the final test rule. There are no oral or written promises, terms, conditions, or obligations between the Companies and MCIA other than those contained herein, regarding the conduct and funding of the testing required under the final test rule and any subsequent liabilities.

24. Legal Compliance Policy. It is the express policy of each Company to comply at all times with all applicable laws and regulations, including U.S. federal and state antitrust laws. In furtherance of this policy, MCIA will not sponsor or conduct any program or activity which violates any such law or regulation.

25. Signature. This Agreement may be signed in multiple counterparts, which together shall constitute a single Agreement.

DRAFT

Ratification and Execution of the "Agreement for the Conduct and Funding of a Testing Program for Methyl Chloride"

ACCEPTED FOR:

____

____
Name Signed

____
Name Typed

____
Title

____
Date

ACCEPTED FOR:

Methyl Chloride Industry Association

____
Name Signed

____
Name Typed

____
Title

____
Date

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