

JOSEPH E. KELLER
JEROME H. HECKMAN
CHARLES M. NEEHAN
WILLIAM H. BORGHESE, JR.
ROBERT R. TIERNAN
WAYNE V. BLACK
DAVID L. HILL
MARTIN W. BERCOVICI
PETER M. NEMKOV
JOSEPH E. HADLEY
CAROLE C. HARRIS
WILLIAM W. PUGH
PETER THOMAS SMITH

LAW OFFICES
KELLER AND HECKMAN
1150 17TH STREET, N. W.
SUITE 1000
WASHINGTON, D. C. 20036

TELEPHONE
908 996-2700
CABLE ADDRESS "KELMAN"

February 25, 1975

TO: All Members of:

SPI Food, Drug and Cosmetic
Packaging Materials Committee;
General Polyvinyl Chloride Interest
Mailing List;
Ad Hoc Liquor Bottle Committee;
Plastic Pipe Institute
(Executive Board);
Plastic Bottle Committee
(Voting Representatives);
SPI Executive Committee;
SPI Public Affairs Committee;
VC and PVC Producers Committee

Ladies and Gentlemen:

The purpose of this letter is to try to update you once again on the status and collateral ramifications (e.g. transportation concerns) of the Occupational Safety and Health Administration's (OSHA) October 4, 1974 Vinyl Chloride Standard and to inform you about the latest activity with respect to prospective or anticipated rulemaking proceedings by the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA).

OSHA

After considerable discussion and study of the decision rendered by the United States Court of Appeals for the Second Circuit sent to you on February 4, 1975, the Vinyl Chloride and Polyvinyl Chloride Producers Committee voted on February 18, 1975 to petition the

BFG13602

21404001

February 25, 1975
Page Two

U.S. Supreme Court for a Writ of Certiorari. As a first step in this process, SPI filed the attached "Motion for Stay of Mandate and Stay of Effective Date of Standard Pending Application for Writ of Certiorari" on February 18 in the Second Circuit. In brief, the action taken on behalf of the Society, Firestone and Union Carbide asks the Second Circuit to postpone the implementation of its decision and keep the Emergency Temporary Standard in effect pending a determination on the Society's request of the Supreme Court that it exercise its discretion to grant appellate review of Justice Clark's decision.

Also attached is the Justice Department's "Opposition to Motion for Stay of Mandate and Stay of Effective Date of Standard" filed the day after it was notified that review by the Supreme Court would be sought.

At this juncture we can only speculate that the Second Circuit is likely to rule on the SPI Motion for Stay of Mandate fairly soon. If the Second Circuit refuses to grant the Motion, a similar request will be made of the Supreme Court in short order. Since it is anticipated that the actual Petition for a Writ of Certiorari will be filed in the very near future, it is quite possible that the Supreme Court will decide by late spring or early summer whether to receive briefs on and ultimately hear argument of the case. Since the Supreme Court has complete discretion on whether or not to deal with each such case, and necessarily takes only a relative few, it would be unwise to be unduly optimistic in this instance.

EPA

As we had previously informed you, the United States Environmental Protection Agency continues to move towards the establishment of air emission standards for vinyl chloride; it is still possible, however, that arguments might be made to try to convince EPA no such standard is really required by law or practicality. In any event, SPI has been granted a meeting with EPA technical representatives in Research Triangle Park, North Carolina so that the EPA Subcommittee of the Producers Committee, which has been in a state of continued

BFG13603

21404002

February 25, 1975
Page Three

preparedness to discuss the various control technologies EPA has been known to be considering, is meeting with the appropriate EPA personnel as this letter is being written, i.e. on February 25, 1975.

In order to assist this group and to direct the Producers Committee's future dealings with EPA in general, on February 18 it was decided to retain the law firm of Ruckelshaus, Beveridge and Fairbanks as SPI Associate Counsel. This has been done so that the EPA situation is now receiving very intensive attention by the former Administrator of the Agency and his very able law firm.

By the time of our next letter, we should have much more definitive information for you concerning the status of prospective EPA regulation.

FDA

The proposed Interim Regulation for PVC remains unpublished in the Federal Register. Because of another of the "pesky" flurries of rumors that suggested a possible change in the FDA handling of this proposed Interim Regulation from the previously reported limitations which the Food and Drug Administration had been favoring until recently, we made a special effort to check present FDA thinking with a number of our contacts, going all the way up to the FDA Associate Commissioner for Compliance. Based upon the information we have received, we believe it fair to state that the current draft, which is "going the rounds" through FDA's normal procedure for the preparation of Regulations or proposed Regulations, still contains a "non-detectable at 50 ppb sensitivity" type of restriction. Although it should be pointed out that there are still differences of opinion in FDA regarding this proposed Regulation, the current draft is now being reviewed at high levels and, so far, no substantive changes appear to have been made. In other words, the position enunciated by Secretary Weinberger in his letter to Senator Tunney, which we reported on previously in our January 30 letter, still

21404003

BFG13604

February 25, 1975
Page Four

represents the most definitive statement of present FDA intentions.

Transportation Aspects
of OSHA Standard

At a meeting held February 18, the PVC and VCM producer representatives to the SPI Committee on Distribution considered the labeling and other transportation related aspects of the OSHA Standard. An industry-wide approach to the labeling of transportation equipment and packaged materials was adopted at that meeting, and a synopsis of the recommended labeling procedures is attached. The Committee plans to present its labeling recommendations to OSHA, with a view toward incorporation into OSHA's compliance guidelines; however, this effort will be held in abeyance pending court action on the request for a further stay of the Standard.

The Committee has established liaison with the rail and motor carrier organizations, and also with the maritime industry, in an effort to facilitate implementation of the OSHA Standard by the transportation service industries. In this regard, a meeting has been scheduled for mid-March with the tank truck operators, at their request, to discuss the programs and procedures required for compliance with the Standard.

The first motor carrier tariff change related to the OSHA Standard is expected to be proposed later this week. This proposal consists of an amendment to the National Motor Freight Classification packaging rules to require that commodities bearing an OSHA prescribed "Cancer-Suspect Agent" label must be in containers resistant to, if not entirely secure against, vapor permeation. The industry's response to this proposal will be coordinated through the Hazardous Materials Subcommittee of SPI's Traffic Committee. Those having an interest in this matter are requested to communicate with Phil Cupertino of Stauffer Chemical Company, Chairman of the Subcommittee, or with Martin Bercovici of this office.

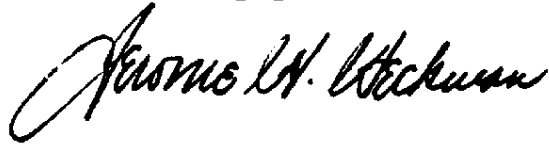
21404004

BFG13605

February 25, 1975
Page Five

As we have attempted to do in the past, we shall continue to follow the various aspects of the entire VC/PVC matter and will keep you promptly and fully informed.

Cordially yours,

A handwritten signature in cursive script, reading "James W. Wickham". The signature is written in dark ink and is positioned to the right of the typed name "James W. Wickham".

Enclosures

21404005

BFG13606