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February 10, 1988

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Richard Roos-Collins, Esq.
U.S. Environmental
Protection Agency
Office of the General Counsel
401 M Street, S.W.
Washington, D.C. 20460

Re: SPI v. EPA, No. 86-1640 (D.C. Cir.);
Draft Settlement Agreement

Dear Richard:

My letter of December 21, 1987 listed four points of clarification to your November 16, 1987 draft settlement proposal. On January 15, 1988 Bob Ajax, you and I discussed these points. The only issue that required any substantial discussion involved the definition of a leak.

Part of the leak issue involved the application of section 61.242-2(d)(4) and (6). I now understand that the Agency interprets subparagraph (d)(4) as addressing drips from pump seals that contain vinyl chloride and that subparagraph (d)(6) addresses drips from pump seals when the drips do not include vinyl chloride. The preamble to the Agency's proposed rule will include a discussion clarifying this point.

The only remaining issue is the definition of leak, specifically section 61.61(w)(4). SPI is concerned that the language in this provision might mistakenly be interpreted to include as "leaks" any indications of liquid dripping from pump seals despite our agreement that liquid dripping from pump seals should be governed by section 61.242-2(d). Thus, we are suggesting a minor revision to 61.61(w) to clarify this. We

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suggest that the language in subsection (4) be revised to read as follows (underlining denotes insertion):

in the case of pump seals regulated under section 61.242-2, indications of liquid dripping constituting a leak under section 61.242-2.

With the insertion of this clarifying language in section 61.61(w), we would be happy to sign the settlement agreement and proceed to resolve the matter.

We appreciate your assistance and look forward to promptly signing the agreement. If you have any comments or questions, please call me.

Sincerely,



Peter L. de la Cruz

cc: Steven L. Samuels
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Re: SPI v. EPA, No. 86-1640 (D.C. Cir.);
Draft Settlement Agreement

Dear Richard:

In my letter dated February 10, 1988, we requested that additional clarifying language be added to the definition of "leak" in Section 61.61(w)(4) of the 1986 vinyl chloride standard (the Standard), 40 C.F.R. § 61.61(w)(4). During previous discussions, you had offered to include explanatory language in the preamble to address our concerns. You then asked for more information concerning a situation I mentioned where the Agency was taking a different position than that explained in the preamble. This letter responds to that request for an example of a situation arising under the original 1976 Standard that demonstrates the need for these regulations to be as precise and clear as possible. The situation shows how a decision to include clarifying language only in the preamble to the regulations and not directly in the Standard itself can lead to a gross distortion of the original meaning and intent of the regulatory provision.

The original 1976 Standard prohibited discharges to the atmosphere from manual vent valves on PVC reactors except in an emergency. 40 C.F.R. § 61.64(a)(3). While Section 61.64(a)(3)

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defines "emergency manual vent valve discharge," it does not include any further description of the process of manual venting. The only discussion of that process occurs in the preamble. See 41 Fed. Reg. 46560, 46562 (Oct. 21, 1976).

Manual venting was a fairly common practice at the time the original Standard was promulgated. It was described in the preamble as a means of cooling and reducing the pressure within the reactor and as one of several methods then available for preventing relief valve discharges. As it existed in 1976, manual venting was a very narrowly-defined and specific process. It related to a single valve, the reactor's "manual vent valve." The regulation's limited purpose of restricting the routine practice of manual venting was well understood in 1976, despite the fact that the name "manual venting" was broad enough to encompass virtually any release, intentional or unintentional, resulting from manual operation of valve equipment.

This broad language, combined with the fact that no specific description of the process was included in the regulations, has permitted the prohibition against routine manual venting to be extended far beyond its original purpose. While the practice of manual venting is virtually nonexistent at present, EPA enforcement personnel in Region VI have used the broad wording of the regulation to take action against a Vinyl Institute member for some incidental releases caused by the momentary opening of a valve due to a computer software error on the basis that they are prohibited "manual vent valve discharges." The valve involved is not the manual vent discussed in the preamble. This issue is now the subject of continuing negotiations between plant operators and enforcement personnel who claim that the preamble language is no longer relevant in interpreting the regulation. It is clear, therefore, that the lack of clarification in the regulation has permitted it to be misinterpreted and applied in a manner that is inconsistent with the original meaning and purpose of the provision.

Because of situations like this, which can arise many years after a regulation is first promulgated, we believe that it is extremely important to have specific clarifying language, such as that recommended in my February 10 letter, included directly in the regulation rather than the preamble. This will mitigate the potential for misinterpretation and confusion that

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