

JOSEPH E KELLER
JEROME H HECKMAN
CHARLES M. MEEHAN
WILLIAM H. BORGHESE, JR.
ROBERT R. TIERNAN
WAYNE V. BLACK
DAVID L. HILL
MARTIN W. BERCOVICI
PETER M. NEMKOV
JOSEPH F. 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
202 296-2700
CABLE ADDRESS "KELMAN"

September 30, 1974

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 Division
(Voting Representatives);
SPI Executive Committee;
SPI Public Affairs Committee;
VC and PVC Producers Committee

Ladies and Gentlemen:

As I am sure almost all of you are aware, we are fully expecting this week to bring the first "moment of truth" with respect to the Occupational Safety and Health Administration (OSHA) situation. OSHA's Permanent Standard for vinyl chloride exposure is expected to be published in either the October 4 or October 7 Federal Register. Depending on precisely what is published, a reading of the Standard could trigger any number of actions. Aside from the all-critical OSHA situation, and while this letter includes some updating on the Food and Drug Administration (FDA), Environmental Protection Agency (EPA), and CBS television program matters, we think it is probably fair to say that developments in the non-OSHA areas cannot be viewed as having changed much, or as requiring further emergency type attention.

Turning specifically first to the OSHA status, many of you must be aware of the fact that Washington is rampant with rumors about the nature of OSHA's decisions and what the Permanent Standard will state. Having given thought to the advisability of reporting on the rumors, and taking into account the fact that

ASI-PR 0002466

September 30, 1974
Page Two

they seem to change almost daily and cannot be characterized as stable at the moment, we have concluded, after consulting with Ralph Harding, Tony Vittone, and others, that no useful purpose would be served by conveying any message other than that (1) we do not believe OSHA will impose a no detectable limit as originally proposed, but (2) we also do not expect the industry to be totally satisfied in any sense with what is published.

Under the circumstances, we are making preparations so that it will be possible to file a Petition for Review from the OSHA decision immediately after it becomes available, assuming that the Standard contains elements which the industry feels it must contest in a Federal Appellate Court proceeding. In short, we are readying for the likely possibility of court action even though it may ultimately be deemed that there need be no urgency in appealing. The one thing we might mention here for the benefit of those most directly concerned is that we, Mr. Harding, and Mr. Vittone, will really have little choice other than to make an appeal or not-to-appeal decision for SPI in short order if it is believed that the Standard is unacceptable for significant reasons. We will, in effect, have to operate on the basis of assuming an act of faith on your part. Of course, if a Petition for Review is filed and a later opportunity for more considered reflection so indicates, such a Petition could always be withdrawn so no permanent commitment will have been made.

The only other comment we are in a position to make regarding the OSHA situation is that we would appreciate hearing from any of you who receive any information that you believe might be helpful. On the other hand, at this stage it will not be particularly useful to us to receive vague reports of new rumors since such a short time remains before we will no longer have to consider all of the "trial balloons" and "information from reliable sources" that has seemed to have flowed so plentifully during the past two or three weeks.

On the Food and Drug Administration (FDA) front, we have been informed that there is a considerable

ASI-PR 0002467

September 30, 1974
Page Three

amount of "re-thinking" going on and the anticipated proposed Interim Food Additive Regulation is being re-drafted at Staff level. We do not have any sound basis for speculating as to whether there will be changes in the previously anticipated requirements of 10 parts per million maximum VCM content in food contact surfaces and 50 part per billion maximum VCM content in foods or food-simulating solvents. Indeed, the FDA Staffer with whom we have been maintaining closest contact advised just today that there really has been no identifiable change in the Agency's basic thinking but there do seem to be such divergences of opinion on how to write the anticipated Interim Food Additive Regulation that final composition is a problem. The only definite thing we know is "not to expect publication this week."

The Food and Drug Administration has asked us to request all those who have shelf life studies under way using "new" PVC compounds to report the migration results at this time. At least some of you will recall that, early in the year, FDA requested manufacturers and others to set up shelf life studies using the so-called "new compounds" which showed less than 50 part per billion migration under accelerated test conditions. It is these shelf life studies that the Food and Drug Administration is now referring to. In connection with these reports, those who have already submitted analytical procedures need not do so again; but those who have shelf life studies on the new compounds and who have not submitted analytical procedures are requested to include them with any reports provided. In this connection, FDA is requesting, as it did originally, that the reports include calibration and validation data and copies of chromatograms to permit the Administration's scientists to evaluate the results reported.

Early last week the Environmental Protection Agency (EPA) issued the report prepared by its Task Force. Previously, the EPA Task Force had stated that it had measured vinyl chloride emissions from a number of monomer and polymer producing facilities and found that, generally, levels were quite low, although there were a few measurements in the low part per million range. Based upon this, the Task Force concluded that there was no imminent hazard from environmental concentrations of vinyl chloride monomer but recommended that standards be developed to assure that no vinyl

September 30, 1974
Page Four

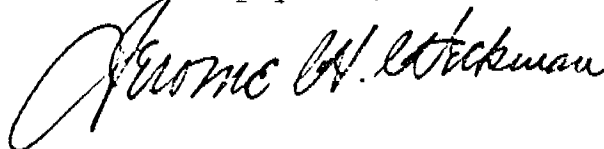
chloride general environmental contamination problems will occur. According to the Task Force report such standards are at least six months away and will be prepared in accordance with EPA's usual standard-making procedures. We are enclosing a copy of the Press Release that accompanied the report because it provides a convenient summary of the findings. For those who may be interested in the complete document, it can be obtained from:

Environmental Protection Agency
Room 335W
1101 M Street, S.W.
Washington, D. C. 20460

Finally, we are enclosing a copy of a CBS Release announcing its program on vinyl chloride/polyvinyl chloride. As we previously mentioned, Mr. Ralph L. Harding, Jr., President of SPI, has been interviewed at considerable length for this program but we have no way of knowing at this time how much of his taped interviews will be included in the program. We are sure that you will all have the same adverse reaction as we have to the title CBS has now given the program. We consider the choice unfortunate, if not irresponsible, and believe some protests should and will probably be made. However, and especially in light of last week's U.S. Court of Appeals for the District of Columbia Circuit's much publicized decision in the NBC pension reform program case, there would appear to be no legal remedy available to forestall use of the CBS language.

We shall continue to keep in touch with you to keep you up to date on the various aspects of the vinyl chloride/polyvinyl chloride matter. We do want to thank those of you who have complimented us on our coverage heretofore, and assure you we will continue to try to be as prompt and comprehensive in our reporting as we reasonably can.

Cordially yours,



Enclosure

ASI-PR 0002469