



Many companies use the ACGIH TLV as a guideline for employee exposure.

The National Institute for Occupational Safety and Health (NIOSH) issued a recommended exposure limit (REL) of 1 ppm TWA and a 2 ppm 15-minute STEL. OSHA proposed and adopted the 1 ppm TWA and 2 ppm STEL.

Health Issues -- The scientific literature cited by OSHA to justify the reduction to 1 ppm consists of two Eastern European studies published in 1954 and 1957 which have significant limitations. For example, these studies provide no evidence of the chronic effects from EDC at low levels because they involved high dermal exposure and inadequate reporting. In addition, the fact that the original foreign language versions of these studies are included in the docket suggests that OSHA may not have even reviewed the complete studies. While these older studies and more recent work may support the ACGIH TLV of 10 ppm, it is our position that they do not justify the 1 ppm PEL and that OSHA's action on EDC is, therefore, arbitrary.

Feasibility -- The feasibility of attaining a 1 ppm PEL and 2 ppm STEL is called into question by the absence of workable methods for cleaning certain vessels, piping, pumps and other process equipment so that worker exposure will be below these limits. Certain loading or unloading operations may also pose feasibility issues.

There is apparently no way to achieve 1 ppm using engineering and work-practice controls in these particular situations. Moreover, the use of respirators for these operations presents some unique concerns. Airline respirators or Scott air packs may be so disabling as to prevent workers from performing the job at hand. The use of air-purifying respirators, such as half face-piece charcoal canister masks, presents two different concerns. First, we would need to obtain OSHA's concurrence that the use of air-purifying respirators is acceptable under these circumstances since some Agency guidelines for respirator use may not be met. For example, since 1 ppm is well below the odor threshold, it may not be physically possible to detect breakthrough. A second concern with the air-purifying respirators is the potential for misuse by workers at facilities where both EDC and vinyl chloride are produced. More specifically, while the air purifying respirators may be suitable for EDC operations, workers could conceivably use them for certain vinyl chloride operations where they would not be appropriate.

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## B. TENTATIVE LITIGATION STRATEGY

File petition for review -- We plan to file a petition for review on behalf of SPI on March 10, 1989. For jurisdictional reasons, we plan to file the petition in the United States Court of Appeals for the District of Columbia Circuit. The petition will be accompanied by a cover letter to the clerk noting that similar cases have been consolidated before the Eleventh Circuit under an order of the Judicial Panel on Multidistrict Litigation.

Settlement Discussions with Agency -- We have completed a preliminary review of the OSHA docket as it relates to EDC and have had informal discussions with several EDC producers concerning the rule's potential impact. I spoke with Chuck Gordon in the Solicitor's Office at the Department of Labor. He was the lead attorney during the administrative phase, and I have dealt with him previously. Based on this conversation, further discussion with the Agency to refine the issue and perhaps find a basis for resolution seems a viable alternative.

In the coming weeks, I would like to meet with companies interested in this issue to determine whether this matter can be resolved through administrative relief or whether our only alternative is a judicial decision invalidating the 1 ppm PEL and 2 ppm STEL. Our administrative options would include requesting an Agency interpretation of the rule or seeking an Agency stay of particular provision of the rule.

Judicial Stay of EDC Provisions -- We are not currently planning to seek a judicial stay of the OSHA rule. Rather, as discussed above, we will seek to resolve this issue directly with OSHA and may ask the Agency to stay the application of the rule, at least for certain operations. I believe that this approach should avoid Neil King's concerns regarding a motion before the Eleventh Circuit to stay certain provisions of the OSHA rule.

We fully understand that CMA's participation and support may be predicated on not seeking a stay of the rule's provisions. While we have no present plans to seek a judicial stay, given the time frames within which we are working, I cannot at this point represent that SPI and its Vinyl Institute will never find it necessary to file a motion for a stay with the Court of Appeals at some future date. Should a motion for a judicial stay appear desirable to SPI in the future, please

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be assured that we will not pursue such a motion without prior consultation with you.

C. OTHER SUBSTANCES OF CONCERN

As far as I am aware, the only other substance with which SPI may be concerned in this appeal is styrene. The comments filed by the Styrene Information and Research Center (SIRC), an SPI affiliate, clearly indicated that it was not challenging the rule as a whole and that its concerns were substance-specific. The only remaining issue on styrene is whether manufactures can comply with the new PEL of 50 ppm through the use of respirators for large parts manufactured through the hand layup and sprayup method. A request for an interpretive letter was filed with OSHA in January on this issue and we expect a response within a few weeks. If SIRC or SPI does decide to litigate on styrene, the action will be limited to this single feasibility matter, will not attack the rule as a whole, and should not present any inconsistency or policy problem for CMA.

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I trust that this letter will adequately summarize our discussion and our current plans on addressing the EDC issue. We hope that CMA will elect to join us in this matter through its own petition for review or by intervening in the SPI case. In either event, I would very much like to file a joint brief.

Thank you for your consideration.

Cordially yours,

*Peter*  
Peter L. de la Cruz

Enclosure

cc: Larry Thomas  
Meredith Scheck  
Robert W. Sherman  
Hugh Patrick Toner  
Margaret Rogers  
Betsy M. Shirley  
Daniel P. Boyd, Ph.D.  
Robert D. Luss, Esq.  
W.C. Holbrook

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