



CHEMICAL MANUFACTURERS ASSOCIATION

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Dear Vinyl Chloride Panel Member:

Two documents of your interest are enclosed:

- (i) CMA staff recommendation to the Environmental Management Committee (EMC) that CMA intervene in the Section 112 vinyl chloride litigation on behalf of EPA; and
- (ii) Status report from the Environmental Health Associates (EHA) on the ongoing epidemiology study.

The EMC accepted the staff recommendation on intervening in EPA vs. Natural Resources Defense Council litigation and therefore appropriate papers have been filed by CMA with the court. Please feel free to call Mr. Fred Andes in our Legal Department, if you need additional information. He can be reached at 202/887-1162.

EHA anticipates submitting a draft final report to CMA by mid-November. I am currently working with both old and new owners of plants 17, 18, and 38 to obtain as much information as I can to update their employees' work histories and vital status.

On a separate subject, Dr. Maurice Johnson, the Panel Chairman, has now retired from B. F. Goodrich. I have enclosed the current membership list of the Panel. Please call me at 202/887-1192 with your nomination for a new chairman for the Panel.

Sincerely,

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Has Shah
Manager
Vinyl Chloride Program Panel

JRL 14793



CHEMICAL MANUFACTURERS ASSOCIATION

MEMORANDUM
June 25, 1985

TO: Environmental Management Committee

FROM: William P. Gullledge *WPG*
Alice R. Mayer *ARM*
Fredric P. Andes *FPA*

RE: CMA Participation in Vinyl Chloride Litigation

On January 9, 1985, EPA withdrew proposed revisions to the vinyl chloride emission standards under section 112 of the Clean Air Act. The Natural Resources Defense Council (NRDC) has challenged that withdrawal in the U.S. Court of Appeals for the D.C. Circuit. That litigation will be the first case to decide how stringently EPA must set emission standards under section 112 of the Clean Air Act (the "ample margin of safety" issue). The case will therefore serve a precedent governing all future section 112 standards. Since many of the chemicals used or produced by CMA members are being considered for regulation under section 112, the case will have an important effect on CMA members' plant operations. Further, CMA's interest is not being adequately represented in the case.

We therefore recommend that CMA intervene, or participate as amicus curiae, in the case in order to present its position that section 112 should be interpreted to allow EPA to use a reasonable, risk management-based regulatory approach. The leaders of the Clean Air Act Revisions and Process Emission Regulations Task Group join in this recommendation. CMA would file joint briefs with the American Petroleum Institute, to ensure industry coordination. Briefing will not involve significant resources, since the relevant legal issues have already been researched for other section 112 litigation in which CMA is involved. The necessary resources have already been factored into CMA's budget for outside counsel assistance.

The vinyl chloride litigation has moved very quickly. As a result, the case has moved ahead of the briefing schedules of two other section 112 cases which began earlier, benzene and radionuclides, both of which CMA has intervened in. Further, it has only recently become evident that CMA's participation is needed. Therefore, we need permission to file the necessary papers with the court as soon as possible -- by Friday, June 28.

We recommend that the EMC approve this action at its June 27 meeting.

BACKGROUND

The vinyl chloride standard was originally issued on October 21, 1976. The Environmental Defense Fund (EDF) sued, alleging that the standard was too lax and did not satisfy the "ample margin of safety" test of section 112. The case was never briefed, though; EPA and EDF instead signed a settlement agreement in March 1977, which committed EPA to propose certain amendments to the standards.

On June 2, 1977, EPA proposed those amendments. The proposed changes would have made the standard significantly more stringent and set a "zero emission goal," to be achieved over time as the standard was revised in light of developing control technology. CMA filed comments objecting to the proposal.

Once EPA proposed the amendments to the standard, EDF dismissed its judicial challenge. However, EPA took no action, over the next several years, to finalize the amendments. Finally, on January 9, 1985, EPA published a notice withdrawing the proposal. EPA had decided that the original 1976 standard was both technically appropriate and legal under section 112. Therefore, the proposed changes were rejected, and the original standard reaffirmed. (EPA did, at the same time, propose some administrative changes to the current standard, but those are not relevant to the litigation.)

LITIGATION

NRDC has filed suit in the D.C. Circuit challenging the Agency's withdrawal of the 1977 proposal. NRDC contends that EPA must set standards under section 112 based completely on health risks, with no consideration of costs, benefits or technological feasibility. If the court rules in favor of this position, all section 112 standards for carcinogens would apparently have to be set at a zero emission level. Of course, such a ruling would have severe impacts on the operations of CMA members, even forcing plant shutdowns.

It therefore is important for there to be an adequate defense of EPA's current interpretation of section 112, which allows technical and economic factors to be considered in setting standards. In other similar cases, industry participation has been important to buttress the Agency's own defense and to ensure that industry's viewpoint is adequately represented. In the vinyl chloride litigation, the only industry party currently involved is

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the Vinyl Institute. The Institute will focus its efforts on technical issues involving the vinyl chloride standards rather than policy issues concerning the meaning of section 112. Therefore, further industry participation is necessary. API is interested in the case and in the possibility of filing a joint brief with CMA. This brief would enunciate the same position that CMA and API plan to take in the benzene case: that section 112 permits EPA to set standards taking into account technical and economic considerations. The research on this issue has basically been completed, so the effort should not involve significant resources.

RECOMMENDATION

We and the leaders of the Clean Air Act Revisions and Process Emission Regulations Task Groups recommend that CMA petition to intervene (or, if that is not feasible, to file as amicus curiae) in the section 112 vinyl chloride litigation. The filing should be done jointly with API, and should be completed as soon as possible.

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