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DEC 13 1974

Ms. Gladys M. Kiernan
Vice President
Association of General Merchandise
Chains, Inc.
1625 Eye Street, N.W.
Washington, D.C. 20006

Dear Ms. Kiernan:

This is in response to your letter of October 21, 1974, requesting information on the repurchase responsibilities of private labelers whose products contain the banned hazardous substance vinyl chloride monomer.

Under Section 15 of the Federal Hazardous Substances Act, a manufacturer of a banned hazardous substance must repurchase the substance from the person to whom he sold it. Regulations implementing Section 15 define a "manufacturer" to include "any person under whose name the article or substance is distributed or sold." (16 CFR 1500.202(a)(1)) Under this definition, all private labelers have an obligation to repurchase the banned product from the persons to whom they sold it.

In discussing the definition of manufacturer, the Commission at 39 Fed. Reg. 4471 states: "The intent of this provision was to impose all of the obligations of a manufacturer on any person who markets a product made to his specifications and labels that product so as to represent himself to the public as the manufacturer of that product... [T]he term 'manufacturer' includes any person under whose name a product is distributed or sold. In light o f the clear language of the definition including within the term "manufacturer" any person under whose name the product is sold or distributed, it is our opinion that the phase "product made to his specifications" should be interpreted broadly to mean a product which conforms with the description of the product which the private labeler contracted to purchase from the actual manfuacterer. The absence of detailed specifications would not excuse a private labeler from repurchase responsibilities.

The repurchase regulations require a manufacturer to notify distributors and retailers that his product is a banned hazardous substance as soon as the manufacturer knows or receives information from which the manufacturer should know that the article or substance is banned. (16 CFR 1500.202(f)(1)) If the private labeler receives information that one of his products may be a banned hazardous substance, he should immediately obtain information from the manufacturer to determine whether the product is in fact banned. If it is, then he must immediately notify each distributor, dealer, and other person to whom he has sold the product that it is banned.

I hope this information proves helpful to you.

Sincerely,

Original signed by
Michael A. Brown

Michael A. Brown
General Counsel

JKinney:mli:12/11/74

cc: EK
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