Secretary

CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

JAN 17 1975

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Marvin Kress
Technical Director
Red Devil Paints & Chemicals
30 North West Street
Mount Vernon, New York 10550

Dear Mr. Kress:

This is in response to your letter of January 6, 1975, inquiring as to the responsibility of the manufacturer of vinyl chloride propellant under the Federal Hazardous Substances Act. Section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274) and its accompanying regulations (16 CFR 1500.202) require manufacturers of a banned hazardous substance or article to repurchase such article or substance from the person to whom he/she sold it. In the case of vinyl chloride, the Commission banned self-pressurized products intended or suitable for household use that contain vinyl chloride as an ingredient or propellant (39 FR 30114; 16 CFR 1500.17(a)(10)). The Commission did not ban vinyl chloride per se, and therefore a manufacturer of vinyl chloride would not be obligated to repurchase the vinyl chloride under the Federal Hazardous Substances Act. There may, however, be applicable state statutory or common law that would govern repurchase of vinyl chloride.

For your information, the United States Court of Appeals for the 9th Circuit has stayed the Commission's ban on products containing vinyl chloride monomer insofar as it requires repurchase pending the Commission's compliance with the National Environmental Policy Act (NEPA). In other words, the Commission's ban order remains in effect, but repurchase cannot be required until the Commission complies with NEPA. The Commission is presently taking steps to bring itself into compliance with NEPA.

If you have additional questions, please feel free to inquire of this office again.

ADVISORY OPINION

Sincerely,

Margaret A. Freeston
Acting Assistant General Counsel

RED DEVIL PAINTS & CHEMICALS
30 NORTH WEST STREET • MOUNT VERNON • NEW YORK 10550

AREA CODE (914) 699-3311
(212) TA 4-5800
CABLE ADDRESS
"REDEVIL NEW YORK"

January 6, 1975

Office of the General Counsel
Consumer Product Safety Commission
Washington, D.C. 20207

Gentlemen:

In regard to the provisions of Section 15 of the Federal Hazardous Substances Act & Regulation 16 CFR 1500.202, information is requested as to the responsibility of the manufacturer of the vinyl chloride propellent in this matter. Namely is the manufacturer of vinyl chloride propellent responsible or liable to the packager of aerosol sprays for the costs involved in the recall of banned products.

We would appreciate your prompt response.

Very truly yours,

RED DEVIL PAINTS & CHEMICALS

Marvin Kress

Marvin Kress
Technical Director

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Consumer Product Safety Commission
Office of the General Counsel

DIVISION OF

RED DEVIL PAINTS & CHEMICALS
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