THIS LETTER PERTAINS TO
RULE 16b-3 UNDER THE SECURIT.
EXCHANGE ACT OF 1934

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August 11, 1987

Office of Chief Counsel
Division of Corporate Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

PUBLIC AVAILABILITY DATE: 12-23-87

ACT	SECTION	RULE
1934	16(b)	16b- 3

Attn: William E. Toomey, Esq.
Assistant Chief Counsel

Re: Vista Chemical Company

Dear Mr. Toomey:

We are writing to you on behalf of Vista Chemical Company, a Delaware corporation (the "Company"), to request the Staff's concurrence with our interpretation of Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Act"), with respect to certain proposed amendments (the "Amendments") to the Company's 1984 Incentive Stock Option Plan (the "Plan"), as more fully described below. A copy of the Plan as proposed to be amended is attached as Exhibit A to this letter. The Company's Board of Directors has approved the Amendments, subject to stockholder approval. The Amendments will be presented to the Company's stockholders for approval at a meeting currently scheduled to be held on September 23, 1987.

I. The Plan

The Plan, which was approved by the Company's Board of Directors on July 17, 1984, amended and readopted by the Board on August 29, 1984 and approved by the

Company's stockholders on April 30, 1985, authorizes the grant of incentive stock options ("ISOs") to key employees of the Company. Options granted under the Plan qualify as incentive stock options within the meaning of Section 422A of the Internal Revenue Code of 1986, as amended. Options to purchase 1,681,440 shares of Common Stock at exercise prices ranging from $3.33 to $10.67 are presently outstanding under the Plan, exercisable at varying periods ranging from July 20, 1984 to August 4, 1989. Pursuant to Section 6(f) of the Plan, all shares purchased under the Plan must be paid for in cash. All options have been outstanding for more than six months. The Company has been subject to the reporting requirements of Section 13 of the Act since December 11, 1986.

II. The Amendments

Following the passage of the Tax Reform Act of 1986, the Company began to evaluate the possibility of offering Plan participants non-qualified stock options ("NQSOs") in place of their ISOs. The Company's management has concluded that if the ISO holders were to hold NQSOs in lieu of ISOs and then exercise such NQSOs, the Company would realize a federal income tax savings of approximately $17.4 million over the next eighteen months. This opportunity is the result of two factors: 1) the Tax Reform Act of 1986, which, by narrowing in 1987 and eliminating thereafter the tax rate differential between capital gains and ordinary income, not only eroded the traditional tax advantage of ISOs but made the corporate federal income tax deduction (generally available only for NQSOs) relatively more valuable than the tax savings to holders of ISOs of generally not being subject to tax at the time of exercise, and 2) the significant rise in the price of the Common Stock, which created a large potential federal income tax deduction for the Company by reason of it being able to deduct as compensation, generally upon exercise of the converted ISOs, the spread between the exercise price and the fair market value of the NQSO shares.

A. Incentive Payments

The Amendments described in paragraphs B and C below will result in the options granted under the Plan

being disqualified from ISO treatment. Individual ISO holders will be offered, in most cases, the following incentives to agree to such Amendments:

a. reimbursement (grossed up for any income tax liability thereon) for the difference, if any, between the ordinary income tax rate and the capital gains tax rate at the time the holder would be subject to tax;

b. reimbursement (grossed up for any income tax liability thereon) for three years of interest at a market interest rate (currently 9.5%) payable by an ISO holder on financing obtained to pay the tax incurred upon exercise of the NQSO, which, in the absence of conversion, would not have been incurred until the sale of the Common Stock for which the ISO had been exercised; and

c. reimbursement (grossed up for any income tax liability thereon) for three years of interest at a market interest rate (currently 9.5%) payable by an ISO holder on financing obtained to pay the exercise price of the options.

The Company estimates the value of these incentives at $3.11 per option share, which represents approximately 30% of the Company's estimated tax savings. In order to provide all ISO holders with the opportunity to participate, this offer would remain open through September 30, 1988 (or such later time as the Committee may determine).

B. Payment of exercise price in Common Stock.

The Amendments would permit Plan participants to exercise an option by delivering to the Company shares of Common Stock already owned by such optionee in an amount such that the market price of the Common Stock so delivered would be equal to the total exercise price for the number of shares as to which the option is being exercised.

C. Election to satisfy withholding requirements with

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Common Stock.

The Amendments would further enable the holder of an option under the Plan to elect to have withheld a portion of the shares of Common Stock otherwise issuable to him pursuant to the exercise of the option to satisfy federal and state withholding tax requirements. The Compensation Committee of the Board of Directors (the "Committee") administering the Plan has the right to disapprove any such withholding election. Elections by participants whose transactions in Common Stock are subject to Section 16(b) of the Act (an "Officer") will be subject to the following restrictions: (1) they may not be made within six months of the date of grant of the option (except that this limitation will not apply in the event of the death or disability of a participant prior to the expiration of the six-month period), and (2) they must be made at least six months prior to the date the amount of withholding tax due with respect to the exercise is calculated (the "Tax Date") or within a ten-day "window period" following release of the Company's annual or quarterly financial results. Furthermore, where the Tax Date of an Officer is deferred until six months after exercise (which will be the case if no election is made under Section 83(b) of the Internal Revenue Code (a "Section 83(b) Election")) and the Officer elects share withholding under the Plan, the full number of option shares will be issued upon exercise but such Officer will be unconditionally obligated to tender back to the Company the proper number of shares of Common Stock (the "Withholding Shares") on the Tax Date. This Amendment to the Plan and the options thereunder is herein called the "Withholding Amendment".

The Company is seeking stockholder approval of all of the Amendments.

III. Request For Interpretive Advice

We request your concurrence in our view that the election by an Officer to have stock withheld pursuant to the Withholding Amendment at any time following approval of the Amendments by the stockholders of the Company, but prior to the time when the Company will have been subject to the reporting requirements of Section 13

of the Act for one year, will be exempt from the operation of Section 16(b) of the Act pursuant to the provisions of Rule 16b-3(e) in the event that such Officer does not make a Section 83(b) Election and tenders back to the Company the Withholding Shares at a time when the Company will have been subject to the reporting requirements of Section 13 of the Act for at least one year.

We further request your concurrence in our view that an election to have stock withheld at any time subsequent to the date on which the Company will have been subject to the reporting requirements of Section 13 of the Act for at least one year will be exempt from the operation of Section 16(b) of the Act pursuant to the provisions of Rule 16b-3(e), regardless of whether the Officer making such election has made a Section 83(b) Election.

For purposes of this letter, it should be assumed that the Plan, as approved by the Company's stockholders in 1985, satisfied in all respects the conditions required by Rule 16b-3 in order for the exemptive provisions of that Rule to be applicable.

IV. Discussion

The Withholding Amendment would grant a participant discretion to elect to have withheld to satisfy federal and state income tax liability a portion of the shares issuable upon exercise of an option. This discretion could be held to be tantamount to an election to receive either shares of stock or a cash equivalent (taxes paid) with respect to that number of shares which would be equal in value to the withholding tax.

The Staff has taken the position, in Question 115(c) of Release No. 34-18114, that when a stock appreciation right is exercised for stock and the appreciated value of the shares subject to the right is reduced by the amount of tax incurred by the participant, such a reduction is tantamount to a cash settlement of a stock appreciation right and is exempt if made in compliance with Rule 16b-3(e). This arrangement is analogous to the Withholding Amendment.

The Staff has also indicated in various no-action and interpretive letters that the receipt of cash under stock award plans which provide a cash or stock alternative is exempt under Rule 16b-3 if made in compliance with paragraph (e) of that Rule. See, Intertherm, Inc. (December 10, 1984), Southwestern Bell Corp. (September 28, 1984) and P.P.G. Industries, Inc. (December 22, 1981). The Withholding Amendment involves less discretion than many of these award plans because the Withholding Amendment involves discretion only with respect to a number of shares equal in value to the required withholding tax while the stock award plans involved discretion with respect to the total amount of the award.

Accordingly, the Withholding Amendment should be viewed at least as favorably as the withholding in Question 115(c) and the cash or stock elections in the letters cited, and should therefore be exempt if made in compliance with Rule 16b-3(e). See, Baxter Travenol Laboratories, Inc. (February 10, 1986); Eli Lilly & Co. (July 23, 1986); Primark Corporation (February 23, 1987).

A. Election to withhold prior to December 11, 1987

In order for the cash settlement of a stock appreciation right or, by analogy, the withholding of stock pursuant to the Withholding Amendment, to comply with Rule 16b-3(e), the transaction must occur on a date when the issuer will have been subject to the reporting requirements of Section 13 of the Act for at least one year pursuant to subparagraph (1)(i) of the Rule. We request your concurrence in our view that in the event that an Officer elects to have stock withheld pursuant to the Withholding Amendment prior to December 11, 1987 (the date on which the Company will have been subject to the reporting requirements of the Act for one year), but does not make a Section 83(b) Election so that he receives the full number of option shares upon exercise and becomes unconditionally obligated to tender back to the Company on the Tax Date the Withholding Shares (based on the price of the Withholding Shares on the Tax Date) satisfies the requirements of subparagraph (1)(i) of Rule 16b-3(e) because the Company will have been subject to the reporting requirements of Section 13 for at least one

year prior to the tender back to the Company of the Withholding Shares.

We further request your concurrence that, if you concur with the foregoing, an election to withhold shares under the circumstances described above will be exempt under Rule 16b-3(e) as a result of the compliance with the other requirements of the Rule, as described below.

B. Election to withhold subsequent to December 11, 1987

We request your concurrence in our view that an election by an Officer to have stock withheld pursuant to the Withholding Amendment at any time subsequent to the date on which the Company will have been subject to the reporting requirements of Section 13 of the Act for at least one year, will be exempt from the operation of Section 16(b) of the Act pursuant to the provisions of Rule 16b-3(e), regardless of whether the Officer has made a Section 83(b) Election,

The Amendments comply with all the requirements of Rule 16b-3. Assuming the election to withhold will have occurred at least one year subsequent to the date on which the Company became subject to the reporting requirements of Section 13 of the Act, the requirements of subparagraph (1)(i) of Rule 16b-3(e) will have been complied with. Subparagraph (1)(ii) is complied with because the Company regularly releases for publication quarterly and annual summary statements of sales and earnings.

Subparagraph (2) is complied with because the option exercise and any election to have shares withheld will not occur until at least six months after the date of grant of the option. We do not believe that the date that an option no longer qualifies as an ISO and is converted into a NQSO for federal income tax purposes by reason of the Amendments should be deemed the date of grant of the option for purposes of the six month holding period of Rule 16b-3(e)(2), but rather that the six-month holding period should be deemed to commence on the date of the grant of the ISO. The number of shares of Common Stock into which the option would be exercisable follow-

ing disqualification of ISO treatment is no greater than the number of shares of Company Common Stock into which an ISO would have been exercisable, so that a Plan participant will ultimately receive the same number of shares of Common Stock. The only benefits available to a participant who converts his ISOs into NQSOs are the cash incentives offered by the Company. The conversion will not be related to the knowledge of any inside information concerning the Company held by the participant because he will ultimately own the same number of shares whether or not the conversion occurs; his decision will be based solely on the tax consequences to him and the attractiveness of the cash incentives being offered by the Company. Accordingly, because there is no danger of the misuse of inside information by a participant, the date of grant of the ISO under the Plan should be deemed the date of grant of the option for purposes of Rule 16b-3(e)(2), and neither the adoption of the Amendments by the Company's board of directors or stockholders nor the implementation thereof with respect to an ISO should be deemed to commence a new 6 month holding period.

As noted above, we ask the Commission to assume that all members of the Committee administering the Plan are disinterested as required by subparagraph 3(i). The Withholding Amendment provides that the Committee may disapprove a participant's election to have shares withheld, as required by subparagraph (3)(ii)(B).

Finally, any election to have shares withheld must be made in the ten-day "window period" following a financial data release as provided in subparagraph 3(iii) or must be made at least six months prior to the Tax Date. Subparagraph (3)(iii) of Rule 16b-3(e) requires that elections to settle stock appreciation rights for cash be made in the ten-day "window period" and does not provide, as do the Amendments, that such an election may, alternatively, be made at least six months prior to the Tax Date. However, the existence of this alternative should not affect the compliance of the Plan with Rule 16b-3(e). A participant in a Plan who makes an election six months prior to a Tax Date to have shares withheld when he exercises his options is doing so "based upon an unknown market price of stock" six months in the future. Accordingly, the six-month delay in the context of the

share withholding election should be an acceptable alternative to making the election during a window period. See Baxter Travenol Laboratories, Inc. (February 10, 1986); Eli Lilly & Co. (July 23, 1986); GEO International Corp. (April 6, 1987); Payless Cashways, Inc. (May 25, 1987), which reached the same conclusion in analagous situations.

We would appreciate a response from the Staff at its earliest possible convenience. If any additional information is required in connection with the foregoing, please do not hesitate to call the undersigned or David Hollander of this firm, collect, at (212) 735-3000.

Very truly yours,

Mitchell J. Solomon

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November 11, 1987

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Attention: Abigail Arms, Esq.

Re: Vista Chemical Company

Dear Ms. Arms:

In connection with the no-action request submitted by this firm on behalf of Vista Chemical Company, a Delaware corporation (the "Company"), dated August 11, 1987, you have requested clarification of the purpose of Section 7, Cash Payments, of the Vista Chemical Company 1984 Stock Option Plan, as amended as of September 27, 1987 (the "Plan").

The Company has confirmed to us that the sole purpose of Section 7 of the Plan is to authorize the Compensation Committee of the Board of Directors to offer holders of incentive stock options ("ISOs") who convert their ISOs into non-qualified stock options the incentive payments described in part IIA of the no-action request. The Company has told us that no cash payments will be made under the Plan except for such incentive payments.

If you require any further information or have any questions regarding this letter, please contact the undersigned or David Hollander at (212) 735-2138 or 735-2845, respectively.

Very truly yours,

Mitchell J. Solomon

Mitchell J. Solomon

November 23, 1987

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

RE: Vista Chemical Company (the "Company")
Incoming letters dated August 11 and November 11, 1987

Based on the facts presented, it is the view of this Division that the election by a participant in the Stock Option Plan to have a portion of the shares of the Company's common stock otherwise issuable to that participant withheld to satisfy witholding tax requirements is exempt from the operation of Section 16(b) of the 1934 Act pursuant to Rule 16b-3(e) for elections to withold made subsequent to December 11, 1987.

Based on a phone conversation with a staff member, the Division understands that it is no longer necessary to address the issue concerning any tax withholding election made prior to December 11, 1987. Therefore, we have not responded to this part of your request.

Because these positions are based upon the representations made to the Division in your letter, it should be noted that any different facts or conditions might require a different conclusion.

Sincerely,

Abigail Arms

Abigail Arms
Attorney Adviser