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OUR REFERENCE MG:WI
YOUR REFERENCE RFG:d

30th March, 1972.

R.F. Garnsworthy, Esq.,
Product Manager, Chemicals,
Monsanto Australia Limited,
151 Flinders Street,
MELBOURNE, 3000.

Dear Sir,

re: Sale of Polychlorinated Biphenyl Products.

Thank you for your letter of the 27th March, 1972, enclosing a draft letter which your company intends writing to all customers who purchase Dielectric fluids.

You have asked us to write to confirm our advice regarding the adequacy of the steps which Monsanto proposes to take in relation to the sale of PCBs to protect the company so far as possible from product liability.

At our meeting on the 21st March, you indicated that Head Office policy had changed. Whereas, formerly, it was proposed that Monsanto would demand an indemnity under seal from every purchaser of PCBs, it has now been decided that this is commercially unacceptable. Instead, the procedure set out in Messrs. H.S. Bergen and E. Greene's Memorandum dated 8th March, 1972, will be followed. This contemplates that in every case a letter in terms of the draft which accompanied your letter of the 27th March, 1972, will be sent in duplicate to the customer who will be required to acknowledge its receipt by signing and returning a copy prior to the sale of PCB products to him.

The first paragraph of the Memorandum of the 8th March, 1972, requires Monsanto to check with local counsel to ensure that it will be "reasonably protected" if it relies on a full warning to customers.

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DSW 223081

STLCOPCB4053427

Mr. Weston indicated at the meeting that while present company policy dictated a reduction in insurance coverage in order to reduce the burden of premiums, it was not intended that the present cover in respect of product liability would be reduced: however, it would be contrary to this policy for it to be increased even though failure to obtain indemnities by PCB customers placed additional responsibility on Monsanto.

Basically Monsanto's potential liability in respect of its products can be divided into two categories, namely liability to its customers in contract and liability to third parties in tort and particularly for negligence.

The former category of liability is governed by the terms and conditions of sale of products and it is legally possible for Monsanto to contract out of liability to its customers by inserting suitable conditions in its contracts of sale. The form of indemnity, which it was originally proposed would be entered into by all PCB customers, would have been effective in transferring liability in respect of these products from Monsanto to its customers. Similarly the indemnity would have provided protection for Monsanto against claims by third parties.

If no indemnity is entered into with PCB customers, Monsanto will be exposed to potential liability both in contract and in tort. While the proposed letter coupled with clear warning labels on all packaging of PCB products will serve to minimise the risk of an action by Monsanto's customer in contract, it is unlikely to afford much protection against an action by a third party in negligence. Indeed, the only real protection which can be obtained against this kind of liability is for Monsanto to take out adequate product liability insurance. However, placing adequate warning notices on the packages containing PCB products and ensuring, so far as possible, that Monsanto's customers comply with the undertakings set out on page 2 of the proposed letter would appear to be all that Monsanto can reasonably do to protect itself and at the same time meet the commercial objectives mentioned above.

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DSW 223083

Finally, we confirm that the wording of the proposed letter is, in our opinion, satisfactory. However, you did not send us a copy of the Article referred to in the second paragraph of it. We take it that this does not require any comment from us.

Yours faithfully,



DSW 223082

STLCOPCB4053429

ATTACHMENT F

MONSANTO EUROPE VERSION

TO PCB DIELECTRIC CUSTOMERS

ATTENTION / GENERAL MANAGER MANAGING DIRECTOR ETC.

Dear Sir,

As you are aware from our letter of January 1972, this company is engaged in a voluntary program to limit sales of products containing polychlorinated biphenyls/PCBs/ to the - closed systems-dielectric uses of transformer and capacitor manufacturing in which uses escape of PCBs to the environment can be prevented.

Your company has been fully advised of the potential problems associated with the continued use of PCB containing products as dielectric fluids in the manufacture of capacitors or transformers. We believe you can by the exercise of care on their part assure that PCBs purchased by you do not escape into the environment.

Monsanto is presently willing to continue to make its PCB containing products available for sale for use as a dielectric fluid on its normal sales conditions subject to the undertakings requested below. You will appreciate that we must however reserve the right to change our policy as additional facts may become known about PCBs.

The undertakings with which we would request you to agree are as follows:

1. You agree to use Monsanto's PCB containing products only as dielectric fluids in capacitors and transformers.

2. You acknowledge of having been advised by us of and that you are aware of the potential harm to the environment and to food and the food chain by the escape of PCBs into the environment.

3. Your agreement to take all care in handling use and disposal of PCBs to ensure they do not enter the environment and to so advise your customers.

4. Your acknowledgement of receipt of the attached Handling Precautions for Monsanto's PCB containing products.

If you agree to the above, would you kindly sign and return to us the enclosed duplicate of this letter where indicated. To enable us to give you satisfactory servicing on your future orders, your prompt reply would be appreciated.

Yours faithfully,

We agree to the foregoing.

Dated..... .....

Signed

DSW 223084

STLCOPCB4053430