

MANUFACTURING CHEMISTS ASSOCIATION
MINUTES OF MEETING
LEGAL ADVISORY COMMITTEE
Conference Room, Wilmer, Cutler & Pickering
1666 K Street, N. W., Washington, D. C.
April 6, 1978

PRESENT

James I. Wyer, Chairman	American Cyanamid Company
Leon C. Holt, Jr., Vice Chairman	Air Products and Chemicals, Inc.
Richard W. Duesenberg	Monsanto Company
Harold J. Fast (alternate)	The BFGoodrich Company
Thomas D. Kent (alternate)	Allied Chemical Corporation
William E. McIntyre (alternate)	E. I. du Pont de Nemours & Company
Bernard J. McNamee	Hooker Chemicals & Plastics Corp.
James N. O'Connor (alternate)	Dow Chemical USA
David Sigman (alternate)	Exxon Chemical Company
G. J. Triplett	Union Carbide Corporation
Donald P. Walsh	Shell Oil Company
John A. Wilson	Diamond Shamrock Corporation
Bruce M. Barackman, Secretary	Manufacturing Chemists Association
Edmund B. Frost	Manufacturing Chemists Association
Andrew T. A. Macdonald	Wilmer, Cutler & Pickering
John H. Pickering	Wilmer, Cutler & Pickering

ABSENT

Robert H. Bidwell (alternate designated)	Exxon Chemical Company
Ray W. Brown	Mobay Chemical Corporation
Gerald M. Doppelt	Chevron Chemical Company
Brian D. Forrow (alternate designated)	Allied Chemical Corporation
James H. Hanes (alternate designated)	Dow Chemical USA
Richard W. Heuerman	The BFGoodrich Company
Peter H. Kaskell	Olin Corporation
E. J. Mooney	Nalco Chemical Company
John A. Stichnoth (alternate designated)	Union Carbide Corporation
S. Maynard Turk	Hercules Incorporated
Charles E. Welsh (alternate designated)	E. I. du Pont de Nemours & Company

GUESTS

Howard D. Fashbaugh	Virginia Chemicals, Inc.	CMA 086497
Terence J. Gallagher	Pfizer Inc.	
Harry W. Gill	ARCO Chemical Company	
Richard W. Gray	Air Products and Chemicals, Inc.	
David Jenkins	Celanese Corporation	

The meeting convened at 12:26 p.m. with chairman Wyer presiding.

1. Minutes of the March 2, 1978 Meeting The minutes were approved as distributed.

2. Cancer Regulation

- 2.1 Mr. Christofano of Hercules Incorporated testified on behalf of MCA at the March 23, 1978 EPA hearing on the Environmental Defense Fund petition concerning regulation of carcinogenic air pollutants. Copies of statement prepared by outside counsel for that occasion were distributed to the committee.
- 2.2 Mr. Frost reported on the status of proposed OSHA regulation and will decide what further filing by MCA, if any, is appropriate after reviewing written testimony of OSHA witnesses. Testimony of MCA's witness at the hearing will be consistent with that of the American Industria Health Council (AIHC).
- 2.3 Mr. Macdonald reported that MCA's suit asking for review of OSHA's permanent standard has been filed in the U. S. Circuit Court of Appeals for the District of Columbia. MCA asks that its petition for review be transferred to the Fifth U. S. Circuit Court of Appeals in New Orleans where MCA earlier had been granted permission to intervene in the American Petroleum Institute's petition for review. Outside counsel is looking into whether amicus brief should be filed on behalf of AIHC.

3. Safety Publications and MCA Insurance

CMA 086498

- 3.1 Mr. John Pickering advised: that MCA's officers and directors are not likely to have personal liability for MCA's safety publications; it is unlikely that member companies would be held liable for judgments entered against MCA; but member companies may be held liable for negligent acts of their employees serving as MCA committee members. He distributed a memorandum on the subject.
- 3.2 Mr. Frost discussed the need for continuing review of liability risks posed by CHEMTREC operations and by publications other than safety data sheets, e.g., Chem Cards, Cargo Information Cards, and

the ANSI Standard on labeling. Outside counsel was requested to extend original audit of safety data sheets to cover remainder of safety publications activities. The small group which met previously will be reconvened by May to prepare a recommendation to the MCA Board concerning continuation of the safety publications program. Mr. Barackman reported on the status of efforts to obtain insurance coverage.

4. OSHA Chemical Substances Identification Proposal

Mr. Frost reported that an MCA task group has been formed of representatives from several member companies. A meeting was held with Mr. Grover Wrenn on April 5. He indicated a desire to consider an industry proposal which (1) was limited to hazardous and toxic chemicals, (2) gave discretion in developing systems to give warnings so long as reasonable access to basic information was provided, and (3) required no new testing. It is believed that there will be a basic problem with confidentiality and trade secrets.

5. EPA Statement of Interpretation of Section 8(e) TSCA

The Legal Subcommittee of CRAC will prepare, for distribution to the membership, their interpretation of EPA's interpretation. No legal challenge is contemplated by MCA.

6. EPA Regulations - Section 311 of Clean Water Act Following discussion, certain questions were deemed to need further research. Mr. Frost will review the matter, after which a decision will be made concerning an appeal of the final regulations.

7. Executive Responsibility Under Criminal Law It was recommended that MCA support the efforts of more broadly based organizations, e.g. Business Roundtable, to modify objectionable provisions of S. 1437, the Criminal Code Reform bill.

8. Report by Counsel

8.1 Mr. Barackman

- Reported that the National Center for Administrative Justice is developing a seminar for attorneys on government regulation of cancer-causing chemicals. The issues to be addressed include many which concern the chemical industry. Responding to an invitation from the center to nominate a participant, MCA named Mr. Monte C. Throdahl, group vice president, environmental policy staff, Monsanto Company.

- Advised that MCA, in its recommendation concerning labeling as contained in safety data sheets, will include known information concerning chronic hazards as well as acute hazards and also reference to safety data sheets when they exist.

8.2 Mr. Frost

- Stated that the Executive Committee had approved the report and recommendations of the Special Committee on Product Liability. Addition of a lawyer to MCA staff is planned to handle proposed tort reform legislation in this area. The Board will be requested to approve a task group to work with staff. A program is expected to be in place by next year. Activity is contemplated in 4 or 5 key states.
- Reviewed activities regarding the AAR interchange rule 95. Further actions, if taken by MCA, will be coordinated with the MCA/AAR Task Force on Rail Transportation of Hazardous Materials.

1. Next Meeting The next meeting of the Legal Advisory Committee will be a luncheon meeting at 12:00 noon, May 4, 1978, at the law offices of Wilmer, Cutler & Pickering, ninth floor, 1666 K Street, N. W., Washington, D. C.


Bruce M. Barackman
Secretary
Legal Advisory Committee

Minutes subject to approval
April 21, 1978
BMB:jb