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August 23, 1989

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Hand Delivered

Ms. Susan B. Hazen
Deputy Director
Economics and Technology Division
U.S. Environmental Protection Agency
401 M Street, N.W.
Washington, D.C. 20460

Dear Ms. Hazen:

Enclosed is a copy of the memorandum setting forth our recollection of the minutes of the meeting you hosted at EPA's national headquarters on July 11, 1989 regarding the definition of glycol ether in Section 313 of EPCRA.

We would like to take this opportunity to reemphasize the urgency on the part of The Soap and Detergent Association in resolving this issue. Since our last meeting, we have been informed of business losses which members' executives believe are attributable to industry confusion about EPA's reporting requirements. Simply stated, the industry can't constructively respond to this dilemma until the status of this definition is finally resolved, one way or another.

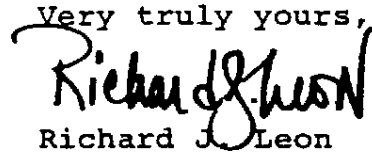
Finally, I would note in closing that when we last met, you had hoped to meet with Mr. Elkins by the end of July. Because time is of the essence, we will be requesting an opportunity to meet with Mr. Elkins by at least mid-September and hope that by then you will have had an opportunity to discuss

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Ms. Susan B. Hazen
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this matter with him. Thank you for your attention to this
matter and I remain,

Very truly yours,

Richard J. Leon

RJL:djp
Encl.

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The Soap and Detergent Association

August 23, 1989

**Minutes of Meeting on July 11, 1989
at EPA Headquarters in Washington, D.C.
Between EPA Officials and Soap & Detergent Association
Representatives Regarding the Glycol Ether Definition
in Section 313 of EPCRA**

Participants: Susan Hazen - Deputy Director, Economics and Technology Division, EPA; Dr. Robert Israel - Economics and Technology Division, EPA; Andrew Gordon - Office of the General Counsel, EPA; Mark Townsend - Health and Environmental Division, EPA; Cindy Coldiron - Office of Compliance Monitoring, EPA; Mary McDonald - Office of Compliance Monitoring, EPA; Edward Bentley - TEXACO; Tim Goodson - ALCOLAC; Tom Grumbles - VISTA Chemical Company; Mike Irwin - The Procter and Gamble Company; Charles Smith - Union Carbide; Dr. Keith Booman - The Soap and Detergent Association; Richard Leon - Baker & Hostetler; Kathleen Kunzer - Baker & Hostetler.

The meeting began by Susan Hazen noting that the meeting would be "on the record," and that a summary of the meeting would be placed in the public docket should one be created. Ms. Hazen was asked and assured us that we would have an opportunity to see and comment upon that summary before it was final. Ms. Hazen then summarized her views on the purposes of the meeting: (1) to explain why AE/APE/AES come within the definition for glycol ethers in the regulations; and (2) to discuss how to go about seeking a delisting of those chemicals. We responded by disputing the limited purpose of the meeting, as Ms. Hazen had described it.

On The Soap and Detergent Association's (SDA) behalf, Richard Leon pointed out the importance of AE/APE/AES to the industry and the importance of clarifying the glycol ethers definition. He indicated that we had four points that we intended to address at the meeting. Those were: (1) Congress did not intend to include these chemicals as glycol ethers on the 313 list; (2) AE/APE/AES have never been viewed in the soap and detergent or solvent industries as glycol ethers; (3) the toxicology of AE/APE/AES is different from chemicals traditionally considered to be glycol ethers; and (4) there are serious collateral consequences of labeling AE/APE/AES as glycol ethers. Mr. Leon also pointed out that just because many in the industry might have complied with the recent reporting deadline does not mean that they agree that the definition includes these substances. Finally, he noted that time was of the essence in resolving this issue.

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Ms. Hazen responded that three of the topics -- congressional intent, toxicology, and collateral consequences -- were beyond the purpose of the meeting, but that she would listen to our discussion of those issues. The only real issue, as she saw it, was whether AE/APE/AES constituted glycol ethers as EPA currently interprets that definition of that category. Ms. Hazen later reiterated she did not want to get into toxicology issues because she was not prepared to discuss them.

With respect to congressional intent, Ms. Hazen noted that the New Jersey and Maryland lists were best viewed as indicators of the kind of chemicals Congress intended to be regulated. Congress intended that EPA review and evaluate those chemicals, which, Ms. Hazen noted, EPA is in the process of doing. Nonetheless, Ms. Hazen stated that as long as the chemicals are on the list, they should be reported.

Dr. Israel then undertook to explain the rationale behind his definition of glycol ethers and why, if this category is so defined, AE/APE/AES are included. In his evaluation of these chemicals, he said there were only two issues: first, whether the substance was a mixture; and second, whether the diagram in the regulations fit AE/APE/AES. If the answer to both of those questions was yes, then the chemical or mixture is subject to reporting. Dr. Israel explained that because AE/APE/AES have a range of composition and pieces of this "mixture" meet the glycol ethers definition, any portion of the AE/APE/AES mixtures that meets the definitional standards must be reported. In addition, Dr. Israel was asked how he had decided to limit the number of moles to three. He responded, essentially, that it was an arbitrary selection. Edward Bentley then observed that the definition in the regulations limited coverage to 1, 2 and 3 mole ethoxylates, but it did not, even though it could or should have, also limited the carbon chain length (R). No explanation was given by Dr. Israel as to why (R) has not been similarly restricted to the glycol ethers of known toxicological concern.

When asked how he defined "polymer" as used in the regulation, Dr. Israel, responded that a polymer is a chemical in which either "N" is greater than three or the R¹ group is a polymer. Dr. Israel stated that in making his determination on AE/APE/AES he did not consider that their use as surfactant was different than glycol ethers, and he didn't consider the fact that AE/APE/AES were not considered glycol ethers by either those who used these chemicals or those who manufactured them.

Ms. Hazen then pointed out the importance EPA places on having consistency across programs, (i.e. TSCA, et. al.). That

subsequently prompted a comment from Michael Irwin on the disparate interpretation of mixtures between TSCA and SARA. Mr. Irwin noted that despite the similarity of the definitions for "mixtures" contained in TSCA and SARA, the Agency was not giving those definitions similar interpretation, at least as implemented by Dr. Israel in this case. Mr. Irwin noted that under TSCA, AE/APE/AES are not mixtures. This issue of the interpretation of the definition of mixture as applied to AE/APE/AES was one which both Dr. Israel and Ms. Hazen stated they needed to consider further.

Dr. Israel observed that when the definition of glycol ethers was published for comment in the Federal Register, there was no comment submitted with regard to AE/APE/AES. In response, Charles Smith said that no one in the industry thought that AE/APE/AES were intended to be covered by the definition of glycol ether when it appeared either in the statute or in the subsequent regulations. Dr. Keith Booman seconded this comment, noting that when industry members saw glycol ethers on the §313 list, nothing would have triggered them to think about AE/APE/AES and thus they did not comment when the regulations were first proposed. Finally, Tom Grumbles described the responses from perplexed and dismayed customers Vista has received after notifying them that these chemicals may have to be reported under §313. To that Ms. Hazen responded that "a lot of people in the second year are only now realizing that they must report." Mr. Leon specifically asked Dr. Israel if any thought regarding AE/APE/AES was given prior to drafting the definition. He also asked him if they had been aware prior to drafting the definition that AE/APE/AES was not viewed as a glycol ether in the soap and detergent, solvent and surfactant industries. Dr. Israel said no to both questions.

Following this discussion, Ms. Hazen indicated that they would go back and take a look at the definition of glycol ethers, taking into consideration the issue we raised with regard to the definition of mixtures. In her view, however, even if Dr. Israel's interpretation of mixtures was modified, there would still be some portion of AE/APE/AES out there that would need to be reported.

Ms. Hazen then moved the meeting on to "where do we go from here." Discussion then ensued about the appropriateness of a delisting petition. We indicated our objections to delisting: namely, that it would be viewed as an acknowledgment that AE/APE/AES were already on the list; and it involved substantial expense by both industry and government, resulting, we believe, in an unnecessary use of resources by both. Other problems with delisting were discussed including the possible limitation on delisting chemicals within categories suggested in the copper

compounds notice, the uncertain level of proof necessary and problems that may result in testing program disagreements.

Mr. Irwin also argued that since Congress never intended to have AE/APE/AES on the list, the Agency, by virtue of its definition, in essence added AE/APE/AES to the list. The Agency did not, however, establish that these chemicals met the toxicology requirements of §313(d). Dr. Booman argued that it was unfair of EPA to shift the burden to the regulated industry.

As an alternative, Mr. Leon raised the possibility of the Agency doing some kind of "clarification under the administrator's plenary power." Andrew Gordon from the Office of the General Counsel responded that the Agency could not just clarify. He stated he would be reluctant to advise the Administrator that he could do anything that did not involve a notice and comment. There was considerable discussion on the appropriateness of a "clarification." Kathleen Kunzer suggested that the clarification be in the form of a rulemaking, which would require notice and comment. The industry participants at the meeting repeatedly said that they had no objection to notice and comment or to public discussion of the issue. We argued that since the definition itself had been promulgated as a regulation by the Agency rather than arising out of legislation, that a rulemaking was an appropriate way to modify the definition of glycol ethers. Ms. Hazen and the other EPA officials present were receptive to considering that approach.

Further attention was directed toward the process for arriving at a solution to the problem. Ms. Hazen pointed out that the first decision that had to be made was whether AE/APE/AES are covered by the definition. That decision would be made by Charles Elkins and, ultimately, by the Assistant Administrator of Pesticides & Toxic Substances (Victor Kimm is the Acting Assistant Administrator as of today). If their decision was that AE/APE/AES were covered, then we would get to the issue of rulemaking. Ms. Hazen broke down the potential outcomes of this process into three possibilities. First, if the Agency were to determine that AE/APE/AES were covered and that the definition should stand as is, then submitting a petition to delist or reporting are the only options available. Second, if the Agency decides to modify its current interpretation of the definition because it concludes that AE/APE/AES are not covered, then a Federal Register notice would be issued to that effect. Finally, if the Agency concluded that AE/APE/AES were covered by the initial definition but that that definition needed restructuring, then they would consider changing the definition in a rulemaking proceeding.

Ms. Hazen was informed by Mr. Leon that we would like an opportunity to be heard by Mr. Elkins and, if necessary, Mr. Kimm before final decisions were made. She assured us we would but that the next step in the process is that Ms. Hazen and Dr. Israel would meet with Mr. Elkins and make recommendations to him. Ms. Hazen suggested that we may want to arrange a meeting with Mr. Elkins about the same time. She expected that they would be meeting with Mr. Elkins sometime in the next couple of weeks. Ms. Hazen pointed out that in any further meeting with either Mr. Elkins or Mr. Kimm there would be more people in attendance -- more enforcement people, labor and environmentalists. Dr. Booman and others noted we welcome the participation of these individuals.

During the discussion on a possible clarification or rulemaking amending the definition, Ms. Hazen asked us to give some thought to the effect of the change we were proposing and whether it might exclude other chemicals. In addition, she wanted us to consider what other changes might be appropriate to the definition. We did not conclude exactly what form the amended definition should take. Two possibilities were mentioned, the recommendation made in The Soap and Detergent Association's Request for Clarification and limiting the carbon chain length as suggested by Mr. Bentley and later Mr. Smith.

In conclusion, Ms. Hazen and Dr. Israel said they would go back and rethink their interpretation of the glycol ethers definition and the definition of mixture as it relates to AE/APE/AES and would entertain the possibility of clarifying the glycol ethers definition by amending it through a rulemaking proceeding, if it is determined that AE/APE/AES falls within definition of glycol ethers. Mr. Leon pointed out the Association's concern regarding enforcement and the consequent difficulty of filing a petition to delist substances which the Association does not believe were ever intended to be listed as glycol ethers in the first place. He acknowledged, however, that it was premature to discuss the enforcement posture of EPA regarding the industry at this point. Ms. Hazen agreed.

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