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CARL EARDLEY
OF COUNSEL

CABLE ADDRESS
"INDLAW"

February 11, 1977

Donald W. Fowler, Esquire
Lands & Natural Resources Division
Pollution Control Section, Room 2634
Department of Justice
Washington, D.C. 20530

Dear Mr. Fowler:

On November 19, 1976, the Environmental Defense Fund (EDF) filed a petition in the United States Court of Appeals for the District of Columbia Circuit to review the National Emission Standard for Vinyl Chloride pursuant to Subsection 307(b)(1) of the Clean Air Act. EDF v. Train, No. 76-2045 (D.C. Cir., filed Nov. 19, 1976). The Society of the Plastics Industry, Inc. (SPI) filed a Motion for Leave to Intervene on December 9, 1976. The Motion was granted by order of January 18, 1976.

On or about January 10, 1977, I discussed this case with Robert Rauch, Counsel for EDF. He advised that negotiations between EDF and EPA were contemplated to attempt to reach a compromise settlement of the case.

There have been two meetings between EDF and EPA. On behalf of SPI, I requested permission to attend the first session, on January 18, 1977. You denied the request for the Department of Justice (DOJ) on the ground that (1) you have not received an order granting SPI leave to intervene and (2) you were uncertain, in any event, whether SPI had the right to attend the negotiating session.

On January 31, 1977, EDF, EPA and DOJ held another negotiating session. SPI was not invited to attend this session although you indicated you would consider including SPI in future meetings. We understand that another meeting will be held and we have not yet been advised whether SPI will also be excluded from that meeting.

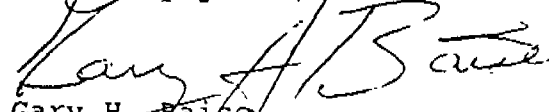
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Donald W. Fowler, Esq.
February 11, 1977
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SPI hereby requests that it be advised of, and that its representatives be permitted to attend, all future meetings and negotiating sessions attended by representatives of both EDF and EPA or DOJ concerning settlement of EDF v. Train or relating to the National Emission Standard for Vinyl Chloride or possible changes thereto, or relating to vinyl chloride or vinyl chloride emissions.

Please advise us by February 15, 1977 whether you will grant this request.

Sincerely yours,



Gary H. Balse
Associate Counsel
The Society of the
Plastics Industry

GHB/sm

cc: Jerome H. Heckman, Esq. ✓
Theodore L. Garrett, Esq.
Robert J. Rauch, Esq.
Ronald S. Naveen, Esq.

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CARL EARDLEY
OF COUNSEL

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February 22, 1977

Jerome Heckman, Esquire
1150 17th Street, NW
Suite 1000
Washington, DC 20036

Dear Jerry:

This letter will bring you up to date on the present status of Environmental Defense Fund, Inc. (EDF) v. Train, No. 76-2045 (D.C. Cir., filed Nov. 19, 1976).

The Court has not yet acted on our Motion to Expedite Briefing and Oral Argument. As expected, and as we previously advised you, EDF opposed the Motion. While EPA did not oppose the concept of expedited briefing, it proposed a longer period in which to file its brief than SPI had proposed.

You are aware that EDF, EPA and the Department of Justice have held negotiations in an attempt to settle the case. Another meeting was held last Friday, February 18. We were not invited to attend, but I spoke with both Don Fowler of Justice and Bob Rauch of EDF after their meeting. On the basis of those conversations, it appears that the parties believe a settlement is possible along the following lines:

1. The existing Standard for Vinyl Chloride would remain unchanged. ✓
2. At some time in the future, EPA would issue additional proposed regulations to lower the existing 10 ppm standard on existing sources. Neither the suggested lower target emission figure nor the date on which it would take effect has been determined, but EDF and EPA believe they can reach agreement on these points shortly. Since all parties recognize that the feasibility of lowering emissions to the target figure in the time allowed cannot now be determined, the proposed regulation would also provide an opportunity for affected companies to demonstrate that the new standard would not be technologically feasible. ✓

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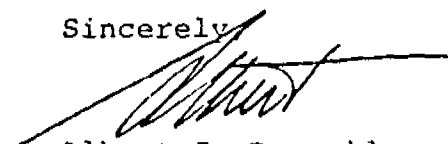
Jerome Heckman, Esquire
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3. The proposed regulation would commit EPA to a review of the Vinyl Chloride Standard when the new lower emission standard on existing sources becomes effective.
4. Finally the proposed regulation would include a separate "new source" standard for plants which are constructed (and possibly "modified"). The standard for new sources presumably would be tighter than that for existing sources. Again, the precise date on which such a standard would take effect has not yet been determined.

Two aspects of this possible settlement proposal deserve emphasis. First, EDF, Justice and EPA have reached agreement only on the broad outlines for a settlement. At the present time there has been no agreement on detail, and I don't believe that it is worthwhile speculating about all of the potential problems which the settlement proposal raises. Second, when EPA proposes new regulations, SPI and all of its affected members will have the normal rights under the Administrative Procedure Act to comment on the proposal, to appear at a public hearing and to seek judicial review. The settlement proposal apparently would force EPA to establish a set time table for considering the lowering of vcm emissions, rather than allowing the Agency complete discretion as to whether and when it would consider the subject again. We must await more information on the details before we can advise you on a course of action.

EDF believes that a written proposed stipulation should be ready in approximately ten days. We then would be given an opportunity to review it and to join, oppose, or take no position on a stipulated dismissal. There is no firm time table. Assuming the negotiations continue to progress, it is likely that a stipulated dismissal would be ready by the time EDF's opening brief is due. That due date will depend on the Court's action on our motion to expedite, but under a normal schedule it would be March 29th, unless extended.

Sincerely,



Albert J. Beveridge, III

AJB:ged

Gershon Fishbein

Are Chemical Substitutes Safe?

Now is the time for Congress to consider a national research policy aimed at developing safer substitutes for products that are desirable, useful and even necessary—but that harm, even kill, workers who make them.

The newspapers have been giving us details about pesticides, asbestos, vinyl chloride and other chemicals that go into our foods, our drugs, our homes and into scores of goods that add to creature comforts but take their toll in disease and death.

We justify their use on the grounds of the oft-repeated "benefits vs. risk"

The writer is publisher of Environmental Health Letter and Occupational Health and Safety Letter.

ratio. The problem is that the consumers derive the benefits while the workers bear the risks.

In coping with cancer-causing substances in the environment, the goal has been to come up with standards designed to protect the workers and the consumers. This assumes some numerical threshold limit below which no threat to health exists. In other words, the objective is to regulate or control the substance.

But is this wise public policy? Rather than hassle for years over the correct numbers, based on guesstimates by scientists and tempered by economic and political realities, does it not make more sense to spend the time working on less hazardous substitutes with the ultimate objective of phasing out the dangerous products?

The scientists can continue to adjust the threshold limits on the cancer-causing substances and debate the engineering techniques to keep the workers from being exposed to dangerous levels of the chemicals. But they should be considered short-term steps, to be taken only while the long range goal of a total phase-out is being pursued.

Sweden offers an example. The country has embarked on a national research program to develop substitutes for all major uses of asbestos by 1980. Despite some setbacks, the program is essentially on schedule.

Sweden acted after information on the health hazards of asbestos had accumulated to a point where the government authorities simply said "no more." There it was regarded as merely another step in the continuing partnership of unions and management over workplace conditions in a steady, but

toxic and less effective than the products they were designed to replace. In the case of PCBs, some of the substitutes are less hazardous to the environment but aren't as fireproof. Obviously, a decision for or against a substitute must include many factors.

Many industrialists aren't sure they need or want the government's help or even its guidance. They argue that the development of safer substitutes is pursued relentlessly by competitive companies in the interests of both safety and profits. A toxicologist for a leading chemical company put it this way:

"We're all making major investments to develop substitutes simply because the company that can market a safer product is going to make a fortune."

Others don't believe that conventional marketplace economics work on behalf of safety, pointing to the recent proliferation of pesticides and thousands of other chemicals—some harm-

ful, some not—as evidence that the opposite is true.

It is possible that the new Toxic Substances Control Act may offer an administrative tool to encourage the development of safer products. Under that law, the EPA administrator has authority to give pre-marketing approval or disapproval of chemical which may, in his judgment, present "unreasonable risk" to health or environment.

Rather than make a go or no-go decision on such chemicals, would it not be possible to approve some of them for a specified period, say three years, on the condition that the time be spent by the company in developing safer substitutes for them? Legal authorities are divided on whether the law gives the administrator that much flexibility. A court test might provide clarification and, if necessary, an amendment to the law. The result could be safer homes, offices and factories.

The Star-Ledger

The Newspaper for New Jersey

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Newark, N.J. Saturday, February 19, 1977

CHEMICAL EXEC SEES 'ECONOMIC DISASTER'

Industry fights carcinogen ban

By JAMES McQUEENY

A representative of the state's chemical industry yesterday told a Senate commission its proposal to ban 16 cancer-causing agents from emission into the air would be an "economic disaster."

Chris Hansen, vice chairman of the Chemical Industry Council, testified that a ban on polyvinyl chloride, used for plastics, alone would force the closing of 146 production and support plants in the state, leaving 25,000 persons jobless.

"The elimination of other chemicals on the list would have similar major economic consequences," Hansen told the commission at a hearing in Trenton on legislation calling for the ban.

Sen John Skevin (D-Bergen), commission chairman and sponsor of the legislation, convened the hearing to assess the economic impact of the panel's recent recommendations to reduce the relatively high rates of cancer in the state.

The commission also heard testimony from environmental groups, and state labor and business leaders.

Hansen said the ban "would launch an era of economic disaster in New Jersey that is almost incalculable."

He said the chemical industry, the largest in the state, employs 130,000 workers, with total sales near \$10 billion a year.

If polyvinyl chloride, used in the manufacture of plastics, were banned, he cited for instance, it would affect such things as records, sporting goods, floor tiles, food packaging and house siding.

Although five plants manufacture the substance directly, he said another 141 convert the resin into the finished products.

Hansen said the industry supports

efforts to control cancer through the federal worker safety programs and the environmental Protection Agency, which he said was "a reasonable (and) sound path to follow."

A coalition of environmental groups, represented by Dr. Samuel S. Epstein, professor of environmental medicine at the University of Illinois School of Public Health, strongly countered the chemical industry arguments over who the economic victims actually are.

Dr. Epstein said environmental and occupational cancer-causing agents cost the public \$18 billion a year in lost wages, earnings and medical expenses.

He charged the chemical industries with widely ignoring existing constraints to the extent "total chaos" represents the present situation.

"You and your commission are trying to control this anarchy," Dr. Epstein said, calling the proposed ban "the

(Please turn to Page 9)

Carcinogen ban fought

(Continued from Page One)

first comprehensive state legislation designed to protect the public from exposure to industrial carcinogens."

Dr. Epstein also urged the commission to broaden its proposed ban to include "probable" as well as proven cancer-causing agents.

In other testimony, Acting State Labor and Industry Commissioner John Horn said the department has been unable to estimate the potential economic and employment effects of such a ban.

Horn, along with ALF-CIO President Charles Marcianite, urged caution before moving toward such a drastic step as an outright ban.

Marcianite called such a step "simplistic," while Horn, in a statement read

by an assistant, said such bans were better left in the hands of existing state and federal agencies to consider administratively.

Also, Donald H. Scott, president of the New Jersey State Chamber of Commerce, said less drastic steps have been taken in the past to control carcinogenic materials.

"We are told that X-rays are the most powerful carcinogenic agent," he said. "It would be no harder to ban the use of this most beneficial health-care tool."

"Because research has delineated permissible exposure levels and it can be handled with adequate precautions, an otherwise dangerous agent is turned into a benefit for people."

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CARL EARDLEY
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February 24, 1977

Jerome H. Heckman, Esq.
Keller and Heckman
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036

Dear Jerry:

We have been advised by the U.S. Department of Justice (DOJ) and the Environmental Defense Fund (EDF) that agreement has been reached to file a joint motion to dismiss without prejudice EDF v. Train (C.A.D.C. 76-2045). EDF wants the suit dismissed without prejudice because in the event a settlement is not consummated, the suit can be reinstated.

The DOJ will provide us with a draft of the proposed settlement within the next ten (10) days. We are advised that it follows the general outline provided to you in Albert Beveridge's letter of February 22, 1977; however, we can add one piece of new information. With respect to the existing Vinyl Chloride Standard, it would be lowered from the present 10 ppm standard to 5 ppm within three (3) years from the date of promulgation. The goal of EDF is to have an amended Standard promulgated by the end of this calendar year.

When the amendments are proposed, SPI and its members will have the opportunity to comment and petition for judicial review under Section 307 (b)(1) of the Clean Air Act.

We cannot comment on the stipulation until we see it; however, it is our initial reaction to oppose any dismissal without prejudice.

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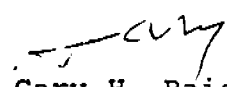
Jerome H. Heckman, Esq.
February 24, 1977
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Medical

Dr. Roy Albert has advised us that the meeting scheduled with Dr. Maltoni on February 14, 1977, was cancelled because Dr. Maltoni was ill. A new meeting has not been rescheduled, but Dr. Albert is hopeful it will be within the next thirty (30) days.

If you have any questions, please advise.

Sincerely yours,


Gary H. Baise


GHB/sm