



U.S. Department of Justice

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90-5-2-3-1606

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September 13, 1985

SEP 16 1985

Chemical Manufacturers Association
OFFICE OF GENERAL COUNSEL

Mr. George A. Fisher, Clerk
United States Court of Appeals
for the D.C. Circuit
U.S. Courthouse, Room 5423
3rd Street & Constitution Ave., N.W.
Washington, D.C. 20001

Re: NRDC v. EPA, et al. (No. 85-1150)

Dear Mr. Fisher:

Enclosed please find an original and two copies of
EPA's Response to EDF's Motion for Leave to File Amicus Brief.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By: *Mark P. Fitzsimmons*

Mark P. Fitzsimmons, Attorney
Environmental Defense Section

Enclosures

CMA 015455

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL,
INC.,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and LEE THOMAS,
ADMINISTRATOR,

Respondents.

No. 85-1150

EPA RESPONSE TO EDF MOTION FOR
LEAVE TO FILE AMICUS BRIEF

Respondents EPA et al. hereby respond to the motion of the Environmental Defense Fund (EDF) for leave to file an amicus curiae brief in this case. Respondents do not oppose EDF's motion, although it is not in compliance with Rule 29 of the Federal Rules of Appellate Procedure. That rule provides that amicus briefs may be filed in support of petitioner's or respondent's main case; it does not provide for amicus reply briefs. 16 C. Wright, A. Miller, E. Cooper & E. Gressman, Federal Practice & Procedure § 3975 (1977). Moreover, the standard for granting amicus status is whether the would-be amicus is adequately represented by other parties, and whether he is raising issues not raised by the other parties. Id. NRDC adequately represents EDF's interests in this case, as EDF's

CMA 015456

own motion concedes. Motion at page 2. And NRDC spent the first 10 pages of its reply brief on the only issue raised by EDF in its brief. Thus, the amicus motion need not be granted.

More important is the issue addressed by EDF. In its brief, EPA stated that in the rulemaking on the 1977 proposed changes to the vinyl chloride standard, the only Agency action at issue in this case, no party argued that it was illegal to consider technological feasibility in setting a standard under section 112 of the Clean Air Act. EPA Brief at 11-12. EDF disputes this fact. In its comments on the 1977 rulemaking, attached to its motion, EDF did mention that it had made this argument in the 1975-76 rulemaking on the original standard, a rulemaking not at issue here. But EDF did not put forward that argument in reference to the 1977 proposed rules. On the contrary, it specifically endorsed the proposed standard, even though that standard was based primarily on available technology and thus suffered from the same alleged legal defect as the 1976 promulgated standard. EDF presumably did this because it was satisfied with the proposed tightening of the standard, even though it was still technology based:

The proposed amendments represent a true compromise between what EDF could have pressed for in Court and the existing standard . . .

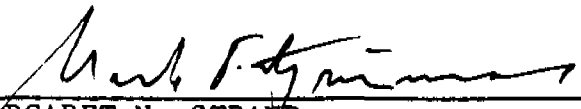
The revised limits can be achieved through the improved operation of existing technology permitting full a mortization of the industry's investment in control technology.

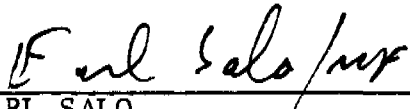
EDF comments at 1-2.

What EDF really seems to be attempting to do is resurrect its challenge to the 1976 rule. For the reasons stated at page 39-40 of EPA's brief, it cannot do so.

Respectfully submitted,

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I hereby certify that the foregoing EPA Response to EDF Motion for Leave to File Amicus Brief was served upon the following counsel by first class mail, postage prepaid, this ____ day of September, 1985:

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MAR 4 1986

Chemical Manufacturers Association
OFFICE OF GENERAL COUNSEL

No. 85-1150

September Term, 1985

Natural Resources Defense Council, Inc.,
Petitioner

v.

U.S. Environmental Protection Agency and
Lee Thomas, Administrator, U.S.
Environmental Protection Agency,
Respondents

Vinyl Institute,

Intervenor

United States Court of Appeals
For The District of Columbia Circuit

FILED FEB 28 1986

GEORGE A. FISHER
CLERK

BEFORE: Wright, Edwards and Bork, Circuit Judges

O R D E R

Upon consideration of petitioner's motion to correct reply brief,
it is

ORDERED, by the Court, that petitioner's aforesaid motion is
granted and the reply Brief is corrected as follows:

Page 8, delete footnote 18 in its entirety and insert
in lieu thereof:

"NRDC commented on two draft EPA 'policy statements' on
the implementation of Section 112 in 1982 and 1983."

Per Curiam

For the Court:
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By:

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CMA 015461

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Re: Natural Resources Defense Council, Inc. v. U.S.
Environmental Protection Agency, et al., No. 85-1150:
Errata to Brief for Intervenor The Vinyl Institute

Dear Mr. Fisher:

Enclosed please find the original and 30 copies of a new first page to the Table of Contents; the page filed with our brief inadvertently contained two typographical errors. Please distribute the new page to the judges. Copies have been served on counsel of record in this action.

Thank you for your attention to this matter.

Sincerely,



Rob Brager

RB/bjd
Enc.
768F

CMA 015462

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