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TWO FIRST NATIONAL PLAZA

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August 29, 1972

Mr. Howard Minckler, President
Wood-Treating Chemicals Company
5137 Southwest Avenue
St. Louis, Missouri 63110

Dear Mr. Minckler:

In about 1970 my client, John L. O'Toole of Shawmut, Montana, purchased a five-gallon can of "Penta" wood preservative concentrate (code designation WL060A) made by your company. The purchase was from Lammers' Feed & Seed, Harlowton, Montana. The label on the container carried the designations: "CAUTION: Keep out of the reach of children" and "WARNING: Harmful if swallowed..."

Mr. O'Toole used this material for one of its common intended purposes, namely, the treating of wood fence posts. As is common, the Penta was mixed as directed and kept in a dipping vat (a barrel) for the purpose of soaking the fence posts. Early this year, some of his livestock got into the area where the barrel was kept and drank a small portion of the treating mixture. The result was that three bulls and two cows died and at least two other cows subsequently aborted their calves. The veterinarian who treated the livestock is Dean Holmes, Harlowton, Montana.

I have given Mr. O'Toole my opinion that your label was grossly inadequate, especially considering what turns out to be the deadly toxicity of the pentachlorophenol contents. According to Dr. Holmes, who determined the presence of the Penta in the stomach of the livestock, there is no antidote for pentachlorophenol poisoning. Certainly no antidote was contained on the label; nor was there any indication it could be fatal

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if swallowed; nor was there any warning that it would be dangerous to keep it around livestock, although it could certainly have been reasonably foreseen that it would be used around livestock. I have compared your label with, for example, the label employed on the Penta woodtreating product made by Dow Chemical. Dow's label contains a full warning of the hazards, including skull and cross-bones.

Certainly in the interests of safety to the public and animals you should take steps to amend your label. As for Mr. O'Toole:

1 Charolais bull (2 years old)
1 Charolais bull (3 years old)
1 Angus bull (2 years old)
2 cows (4 years old)
2 aborted calves
veterinarian fees
Total loss: \$3,000

I have advised Mr. O'Toole that before any legal action, either by way of a civil suit or complaint to the USDA, he should attempt to work out a settlement with your company amicably. Mr. O'Toole has the Penta can and label in his possession and you may also feel free to check with Dr. Holmes regarding the facts if you care to do so. After you have taken whatever steps you consider appropriate to investigate the facts in this case, I would appreciate having your best offer of settlement so that we may decide where to go from here.

Very truly yours,



Edward M. O'Toole

EMO:jl
cc - Mr. John L. O'Toole
Shawmut, Montana

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