KUHLMAN

G. V. AGAJEENIAN, vice president and manager
Kuhlman Electric Company Division

January 12, 1972

Monsanto Industrial Chemicals Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166

Attention: Mr. Howard Bergen, Director
Specialty Products Group

Gentlemen:

We recently received a letter un-dated and un-addressed discussing newly contemplated restrictive policies regarding the sale of polychlorinated biphenyl products known by the generic term of askarel.

Your letter states that "effective 15 January 1972 Monsanto will sell and deliver these products only to manufacturers of transformers or capacitors who have entered into agreement to indemnify and hold harmless Monsanto in the use of these products." Your letter and your agreement state that because of certain undesirable characteristics in these materials you are discontinuing the sale of PCB's for all applications other than for use in transformers and capacitors. You appear to be giving recognition to the fact that this material has certain built in hazards to both human and animal life, and because of the fact that it is not completely biodegradable, should not be introduced into the environment. However, at the same time, you state that you are prepared to manufacture and sell PCB's if you can be assured of being held harmless from any liability that might develop as a result of its escape into the environment. It would seem to me that if this material is in fact hazardous to the ecology, it should simply not be manufactured and sold under any circumstance.

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I received a call this morning from your Mr. Paul Benignus, Marketing Manager of Dielectrics, who advised me that the "financial and other information" referred to in your agreement letter meant that you would be limiting your sale of these products to firms having a net asset value of not less than $50,000,000 and carrying product liability insurance in the amount of at least $10,000,000 with this insurance not carrying any exclusions with respect to liability for environmental hazards of any kind. In view of the fact that our last audited financial statement, a copy of which is enclosed, clearly shows that we do not have an asset value equal to your prescribed minimum, it would appear to me that such a stipulation would have to be regarded as discriminatory in any sense of the word. The deficiencies in our net asset value would appear to be further compounded from your point of view by the fact that our product liability coverage is also less than the amount you have specified.

To sum up therefore, it would appear to me that your position is neither equitably, nor morally, nor probably legally, very sound. You are in effect, stating that the PCB's which you apparently wish to continue to manufacture and sell are potentially hazardous to the environment, but that you would be willing to sell these products to companies which have in your opinion adequate financial resources to protect you from any liability that may result from the use of your products, and not to sell to those companies which do not meet the financial standards you have seen fit to impose. Your standards would appear to be arbitrary and your position capricious and discriminatory and in total, not tenable. Since askarel units represent a not insignificant part of our business, your position would appear to deny us the right to compete in the marketplace. Consequently, as the sole producer of this product in this country and thereby enjoying a monopoly position. Your position may be construed to have anti-trust implications.

In view of the fact therefore that our financial position does not meet the standards you have stipulated, there would appear to be no point in our completing the agreement letter you have submitted. May I suggest that you reappraise your posture on this matter before shutting off our supply of askarel.

0479997

I have asked our Crystal Springs plant to advise me as to the amount of askarel they would need to complete the orders we already have on our books. The units for which we have already committed ourselves will require a total of 1532 gallons of askarel and we would expect, and we would appreciate it if you would be good enough to accept this letter as your authority to arrange to supply us with that amount of your material. It should be noted here that in the normal course of doing business, we have quoted various of our customers certain transformers for which askarel is specified. This was done prior to the receipt of your letter. We are presently faced with the dilemma, not only of how to handle quotations we had previously submitted, but what our stance should be with regard to quotation requests coming in to us on almost a daily basis. It is obvious, therefore, that clarification of this whole matter is vital to our continuing activity, and we would appreciate it therefore if you would be good enough to give this matter your most urgent consideration and advise us as to what you will be doing in the foreseeable future.

Very truly yours,

G. V. Agajeenian

cc: P. Benignus
cc: J. Smelko
cc: B. Miksa

attachment

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