



A Division of The Society of The Plastics Industry, Inc.

le
BFGoodrich
RTG

Roy T. Gottesman
Executive Director

C O N F I D E N T I A L

September 30, 1991

Mr. Julian Steinberg
BFGoodrich Company
6100 Oak Tree Boulevard
Cleveland, Ohio 44131

Dear Julian:

Knowing of your interest in the situation regarding the New York State Toxicity Data Bank, which we recently discussed, I am enclosing a copy of a letter from Pat Toner dated September 13 to Fred Richard which is self-explanatory. I believe Pat is trying to set up a meeting to involve the Plastic Pipe Institute (PPI) and the New York State people for late October. I will be "plugged in" to the progress made at that meeting via Stan Mruk and Norm Bryan of PPI and will keep you advised.

Also enclosed is a privileged and confidential letter from Sheila Millar of Keller and Heckman to Pat Toner which is interesting and you may wish to provide this to your attorneys for their possible use. Please treat Sheila's letter as confidential.

Kindest personal regards.

Sincerely yours,

Roy

RTG/pmb

SPI-07719



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SPI-07720

**The Society of the
Plastics Industry, Inc.**



REC'D SEP 18 1991

1275 K Street, N.W., Suite 400
Washington, D.C. 20005
(202) 371-5200
FAX 371-1022

Hugh Patrick Toner
Vice President
Technical Affairs

September 13, 1991

Mr. Fred Richards
Office of Fire Prevention & Control
State of New York
Department of State
Albany, New York 12331-001

Dear Fred:

I am writing to request a meeting to discuss your concerns regarding the data we submitted for our PVC pipe classification. As I'm sure you are aware, I asked Sheila Millar, Keller and Heckman, SPI's legal counsel, to talk to Phil Sparkes to get some background on the State's thinking which lead to Frank's letter to Norm Bryan of our Plastic Pipe Institute regarding closure of our classification for PVC pipe.

Sparkes indicated to Millar that your concerns about the data are technical in nature and as Frank indicated in his letter that you are ready to work with us to resolve those technical issues. We are ready also and feel some urgency to resolve these issues before the end of the year so that the class may remain open to our pipe producing members. We do feel that US Testing should be part of the discussion and would propose to invite them to any meeting unless you suggest otherwise.

It may be more difficult to arrange a meeting date than to resolve the technical issues so please call me at your earliest convenience to begin the process of finding a date we can all make.

I look forward to resolving this issue.

Regards,

A handwritten signature in dark ink, appearing to read 'H.P. Toner'.

HPT:tmc

cc: M. Bryan S. Mruk
B. Chien S. Millar
G. Delain F. McGarry
L. Freeman P. Sparkes
R. Gottesman F. Stefanelli
R. Gottwald

a:\corr
nys\richards

SPI-07721

~~SECRET~~

RHB

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R. Gottwald

a:\corr
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SPI-07722

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September 12, 1991

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PRIVILEGED AND CONFIDENTIAL
COMMUNICATION BETWEEN ATTORNEY
AND CLIENT RELATING TO LEGAL
MATTERS REFERRED TO COUNSEL

Mr. H. Patrick Toner
The Society of the Plastics
Industry, Inc.
1275 K Street, N.W.
Suite 400
Washington, D.C. 20005

Re: New York State Toxicity Data Bank: Possible
Closure of SPII-003 Class

Dear Pat:

This will provide you with a file record of my discussion on September 11, 1991, with Phil Sparks, the attorney with the New York State Department of State assigned to monitor activities associated with the New York State Uniform Fire Prevention and Building Code combustion toxicity test requirements, Article 15, Part 1120. I spoke with Phil at your request to obtain more information regarding the state's position that the product class designated SPII-003 on PVC pipe will be "closed to further filings" at the end of 1991 unless certain technical concerns are raised. The technical concerns of the state relate to the fact that the results obtained for the product class in tests conducted by U.S. Testing, Inc. are not "comparable" to results on other PVC products, which Phil characterizes as "similar."

Phil explained that what he terms the "discrepancies" between the results obtained by U.S. Testing and those obtained by other labs on PVC products were uncovered in a "data review process." The state initiated this data review process on combustion toxicity data filed pursuant to these regulations when Dr. William Chien joined the State Office of Fire

SPI-07723

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SPI-07724

Mr. H. Patrick Toner
September 12, 1991
Page 2

KELLER AND HECKMAN

Prevention and Control. Dr. Chien was specifically hired to assist in the administration of the data bank. Dr. Chien's review of the data bank indicated that discrepancies existed between filings accepted earlier in the process (by what Phil Sparks characterizes as "people incapable of understanding the technical issues"). Dr. Chien discovered variations in LC 50 results on various PVC products between U.S. Testing and other labs. This was the genesis of the state's effort to conduct a round robin study of the laboratories approved by the state.

The round robin tests were on CPVC. Interestingly, the round robin results which were distributed show that all of the seven approved laboratories involved had results reasonably similar, with the exception of one lab, which was unusually low as compared to the others. Phil confirmed, however, that the laboratory showing the unusually low results in the round robin was not U.S. Testing. He therefore confirmed that the basis for the proposal to "close" the class was solely the apparent "discrepancies" between the data filed on the SPI class and data filed on what the state considers to be similar products.

In my discussions with Phil, he confirmed that there are no other issues related to tests on other products conducted by U.S. Testing at present. No other laboratories which have conducted class tests are under specific scrutiny at present. Phil noted, however, that in the course of conducting the quality examination of laboratories, site visits to each of the approved labs have been made (presumably by Dr. Chien). In response to questions about what, if any, problems were discovered at U.S. Testing as compared to the other labs, he noted that each laboratory has slight differences in their procedures, and the state is in the process of evaluating these differences. He also stated that while the LC 50s obtained on similar products are often quite similar, the residues after combustion vary widely, and other required information can differ. Phil nevertheless stated that the state has no plans to withdraw approval from any laboratory currently approved, and confirmed that U.S. Testing remains an approved laboratory.

I suggested in our discussions that the state lacked the legal authority to "close" a class which has been duly accepted by the state, where the tests were conducted by an approved lab which remains approved to conduct such tests by the state. Phil stated repeatedly, however, that the state is simply looking for "technical answers" at the present time, and that there is "no legal issue" at present. He stated that he could not conclude that the continued efforts of the state to properly administer the data bank (including resolving technical issues) raises a legal issue. I suggested that under

SPI-07725

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SPI-07726