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February 27, 1976

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CABLE ADDRESS "KELMAN"

Mr. Joseph Fath
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Re: SPI-PAC-VCM (EPA)

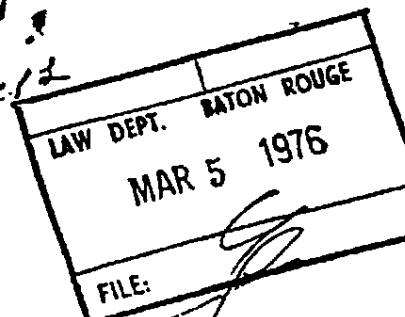
Dear Joe:

EWE, would you please summarize?
c/l

In accordance with the instructions given by the Steering Committee of the Vinyl Chloride Monomer and Polyvinyl Chloride Producers Group at the meeting held on February 19, we are enclosing herewith an excellent legal memorandum and cover letter from Bill Ruckelshaus relative to the question of potential civil and criminal liability for violations of the Clean Air Act. I think you will agree after looking the memorandum over that it provides a valuable dissertation on the subject and, therefore, should perhaps be circulated within your own company at all levels that you deem appropriate.

When I read the memorandum, it did occur to me that it might be of some slight added value if I mentioned a little more about the Food and Drug Administration's position on criminal liability vis-a-vis violations of the Statutes it is charged to enforce. The reason for my thinking this might be worthwhile is because I believe it is fair to say that the leading cases on criminal liability are the FDA cases cited in the Ruckelshaus, Beveridge, Fairbanks and Diamond memorandum.

It so happens that I have had considerable occasion to follow the development of the recently decided Park case which is still the subject of a great deal of discussion in food and drug law circles. As a matter of fact, this case was subjected to close scrutiny, or at least lengthy pro and con analyses, at the 19th Annual Educational Conference



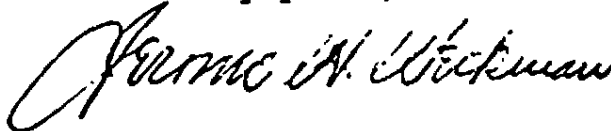
Mr. Joseph Fath
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of the Food and Drug Law Institute, Inc. and the Food and Drug Administration, held this past December. Learned presentations regarding the case and its implications were given during these sessions by representatives of industry, FDA, and the consumer movement.

I can see no useful purpose to be served by supplying the Group with copies of all of the papers given at the FDLI-FDA sessions but I am enclosing a reproduction of the discussion of the Park case presented by Richard A. Merrill, Chief Counsel of the Food and Drug Administration. The written version of his paper is only four pages long so I thought you might find it worth seeing. In looking it over, you might pay particular attention to page 685 (where the underlining is mine) and 686 which discusses legislative efforts still underway to take some of the sting out of the Supreme Court's decision. I suppose the only real point I am trying to reinforce here is that FDA has continually attempted to indicate that, the broad powers given it by the Supreme Court notwithstanding, it has not been its policy to recommend criminal prosecutions without there having been some type of notice which was allegedly ignored by an accused corporate officer. The reason the legislative effort is continuing despite such reassurances is because people like the President of Pillsbury, who spoke at the same session as Mr. Merrill, have made it quite clear that they do not want their personal freedom to depend on unwritten policies and government official discretion.

On behalf of both Bill Ruchelshaus' firm and ours, we hope that you will find the material being transmitted fully responsive to the instructions given. If any members of the Group have further questions, however, we trust they will not hesitate to let us know.

Cordially yours,



Enclosures

cc: VCM/PVC Producers Group