Monsanto

FROM (NAME & LOCATION): H. S. BERGEN/E. GREENE - ST. LOUIS GENERAL OFFICE

March 8, 1972

SUBJECT: PCB DIELECTRIC SALES

REFERENCE:

TO : J. P. Berndt - A2NB
P. A. Klingsporn - A2NC
A. D. Lapthorne - 5020
P. J. A. Marsh - 5040

cc W. R. Corey - B2SL
J. Culver - MOFEL 5210
J. R. Durland - 5260
R. B. Giles/K. Witcombe - 5020
T. L. Gossage - B2SL
R. S. Hill - 5400
T. Ishijima - 5270
S. P. Karlow - 1920
R. K. Louis - 5330
C. Paton - B2SH
G. W. Sperberg - A2NG
J. E. Tucker/F. Camargo - A2NF

As I telexed some of you, there has been a notable change in PCB policy. A decision has been made to permit continuing PCB sales ex-U.S. and Canada directly to manufacturers of capacitors and transformers, without hold harmless agreements, provided a recheck with the local counsel indicates we will be reasonably protected if we rely on a full warning to customers and obtain acknowledgment of the warning.

Our program is essentially complete for these limited PCB sales in the U.K., Europe and Eastern Europe. Before expanding the program to other areas ex-U.S.A. and Canada, we need as promptly as possible to get confirming advice from you that local counsel concur with what we believe to be the local situation in substantially all countries. Please note as well that if local counsel recommend warning not only our direct customers, but their customers or others they conclude to be in a group to which some harm may be foreseeable, that all advice below as to warning should be followed for the group which counsel defines.

We, therefore, plan, subject to the preceding, to authorize PCB sales after March 31, subject, in addition, to the following conditions:

a) only directly to manufacturers of capacitors and transformers. This clarifies the term "dielectric user" and specifically excludes agents and distributors. A prospect wanting material to top off his transformer should be referred to the manufacturer, and

b) only if the customer acknowledged in writing that he has been adequately warned of the nature and extent of the environmental hazards of PCB's. In warning each customer or member of the group to be warned, they should be given a copy of the article by Carl G. Gustafson, "PCB's--Prevalent and Persistent," if this has not already been done, and if in your view the English version is not understandable by the customer or member of the group, arrangement should be made for a translation.

We are counting on you to make sure that these conditions are met without fail in every case.

A draft of an acceptable acknowledgment letter is being prepared and will be sent to you in the next day or two. If the business in any country justifies the cost and trouble, have the letter cleared with your legal counsel, translated if necessary, and ask your customer to sign. If local counsel revises the letter, he should communicate the changes and their rationale to John Stapleton of the Law Department.

We are not requiring the financial criteria suggested for the hold harmless agreement, but we are naturally relying on your good judgment to accept an acknowledgment (and subsequent business) only from firms which can be counted upon to exercise the necessary precautions.

We are asking you to send us a copy of all acknowledgment letters and to keep a copy in your files.

All orders you send to either U.S. or Brussels should carry a reference to that letter and its date. St. Louis Order Processing is responsible for clearing each order with Messrs. Corey, Bergen or Gossage and for insuring that a warning letter or notation is sent with each acknowledgment. Warning labels are carried prominently on all drums.

Shipments from ex-U.S. warehouses should be made only after similar clearances, i.e., by Corey, Bergen, or Gossage.

The Brussels Order Processing Group is responsible for obtaining clearance and approval by the appropriate people of each order for shipments from the U.K. plant at Newport and for assuring that a warning letter or notation is sent with each acknowledgment of such orders. This will be accomplished during the week of March 13.

In answer to the questions some of you have raised, we are investigating the extent to which our own product liability insurance covers us in cases of pollution by our customers, especially ex-U.S. and in cases where the product is bought and resold by a subsidiary. Preliminarily, it appears we are covered only in cases of "sudden" and "accidental" events, not in cases of seepage and emission.

In view of the fluidity of the whole PCB/PCT situation, please avoid any long term commitments to supply beyond one year.

Three last but vital points:

1) All of us are charged with carrying on sales of PCB in such a way as to minimize risks, specifically both risks to the environment and risks of legal liability. We must carry out both the spirit and the letter of our instructions, even if it means losing business.

2) We are charged with informing management of any changes in environmental or legal trends which would affect our program. Specifically, we are asking you to review the subject with local legal counsel and to report results quarterly--starting June 1972.

3) Each of you is personally charged with the responsibility for execution of this program to the letter.

Howard S. Bergen Edmund Greene

/jf