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July 6, 1977

Jerome Heckman, Esq.  
Keller and Heckman  
1150 17th Street, N.W.  
Suite 1000  
Washington, D.C. 20036

Re: Lawyer's Subcommittee Meeting on June 29th

Dear Jerry:

On June 29, 1977, the Lawyer's Subcommittee for the PVC Safety Committee held its second meeting. The following persons attended: Gary Ford (Stauffer), Ernie Bean (Goodrich), Ron Davis (Dow), Allan Topol (for Tenneco), Bob Hill (Diamond Shamrock), and Joe Hadley. A copy of the agenda for the meeting is enclosed.

We discussed the results of meetings that have been held since the last Lawyer's Subcommittee meeting on May 24. The "commencement of construction" issue was discussed at some length. At the June 22 meeting at Research Triangle Park (RTP), the Manufacturing Technology Committee posed a number of hypothetical questions regarding the definition of "commencement of construction" and its relationship to what constitutes an "existing source" versus a "new source". EPA did not provide definitive answers to our questions. Moreover, comments by a representative from the Washington Enforcement Office caused considerable concern as to what would be considered an "existing source" or a "new source". The Technology Committee believes this issue should be clarified. SPI's alternatives for dealing with this issue include:

- (1) Requesting a letter from the enforcement branch establishing a national policy that the "existing source" provisions of the proposed amendments apply to companies that requested waivers or were granted waivers before June 2nd;

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- (2) Relying on each company to negotiate individually with the EPA regional office concerned;
- (3) Submitting interrogatories or comments covering this issue.

We suggest alternative #1 be followed but you may wish to clear this with the PVC Steering Committee. While a letter from the enforcement division will be helpful, it will not dispose of the legal issues. The definition of a "new source" is contained in Section 112 of the Clean Air Act itself. Citizen suits presumably could challenge the application of any policy interpretation by the enforcement branch as not complying with the statute.

The following action was taken on the substantive issues:

A. Status of EDF v. Train -

On June 24, the Court of Appeals issued a brief order dismissing the petition for review.

B. Freedom of Information Requests -

We are preparing freedom of information requests to follow-up our earlier requests. The PVC Safety Committee has authorized us to file an action in District Court to obtain the documents if EPA does not comply with the requests. If court action becomes necessary, we will consider alternative forums.

C. SPI's Request for a "Hybrid Hearing" -

EPA has not yet responded to SPI's June 24 request for a "hybrid hearing". If EPA grants the procedure requested, we will file a complete set of interrogatories. The Manufacturing Technology Committee will be meeting on July 6-7 to formulate technical interrogatories. If EPA denies our request for hybrid rulemaking proceedings, we probably will file some interrogatories to build the record for an appeal.

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D. Action to be Taken if Request Denied -

EPA's Deputy Administrator has advised us by letter that a public hearing is scheduled for 10:00 a.m., July 19, 1977, at Crystal Mall, Route 1112, Building 2, 1921 Jefferson Davis Highway, Arlington, Virginia. That letter was dated before SPI's June 24 request. The short time available dictates that we plan for a July 19th hearing. If our June 24 request is granted, the hearing dates would be postponed until fall.

SPI's testimony should include a statement of the background of the existing Standard and a criticism of the present proceedings, and a separate technical statement focused on the difficulties of the proposed amendments. The Manufacturing Technology Committee will be drafting a proposed technical statement on July 7. We will send our proposed drafts to you on July 8 or 9. The Lawyer's Subcommittee will meet on July 15 to finalize SPI's testimony. We suggest that comments on the draft statements be forwarded to Joe Hadley or me before July 15th, by telecopier if necessary.

Some individual companies will present oral statements at the public hearing, particularly with respect to the offset and new resins policies. We would appreciate having advance copies of individual company statements. On July 18, we will meet to preview SPI's actual presentations. Any spokesmen for individual companies who wish to participate in the dry-run of possible questions from the EPA panel are welcome to participate.

E. Legal Issues -

Potential grounds for attacking the proposed amendments were discussed. The PVC Safety Committee has voted not to take action to attempt to prohibit the pending rulemaking proceeding. We are continuing to explore and analyze challenges to the amendments for use if they are promulgated.

If you desire any additional details regarding this meeting, please advise.

Sincerely,

Gary H. Baise

GHB/sm

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AGENDA

SPI LAWYERS COMMITTEE  
Mayflower Hotel  
June 29, 1977  
Washington, D. C.

I. BACKGROUND

- A. Manufacturing Technology Committee Meeting - June 19, 1977
- B. Meeting with EPA Technical Staff - June 22, 1977
- C. PVC Safety Committee Meeting - June 24, 1977

II. SUBSTANTIVE ISSUES

- A. Status of EDF v. Train
- B. New Freedom of Information request
- C. SPI's Request for "Hybrid Hearing"
  - 1. Alternative Courses of Action
    - (a) Request denied
    - (b) Request accepted
  - 2. Interrogatories
- D. Action to be Taken if Request Denied
  - 1. Strategy
  - 2. Meetings now scheduled
  - 3. Drafting of statements
    - (a) SPI Spokesman
    - (b) SPI Technical Committee
    - (c) Company Statements
- E. Legal Issues