CMA INTEROFFICE MEMO

TO: Carol Stack
Program Administrator Vinyl Chloride

FROM: Patrick C. Joyce
Staff Attorney

DATE: November 10, 1981

RE: Vinyl Chloride Contract with Environmental Health Associates

Based on our conversation of October 30, 1981, with Dick Davis of EHA and his lawyer, it is my recommendation that we communicate with the chairman of the Vinyl Chloride Panel on the status of our contract negotiations.

In August 1981, we believed there was agreement in principle with EHA on the terms of the contract to perform the update on the vinyl chloride study. On October 15, 1981, EHA proposed new and significant changes in the terms of the contract. The conversation Dr. Stack and I had with EHA on October 30, 1981, was intended to resolve my difficultities with those proposed changes. It was unsuccessful.

EHA insists that EHA be permitted to terminate the epidemiological study at some unknown time in the future if in the exclusive judgment of EHA the study should not be completed.

EHA has also taken the position that it cannot make a realistic estimate of the cost to complete this study. Therefore, EHA objects to our efforts to establish a maximum dollar amount for the completion of the study. EHA will not agree to a maximum cost even if CMA agrees to permit cost overruns beyond an estimated price.

EHA insists that CMA reimburse the contractor for the costs, as soon as they are incurred. Such a reimbursement arrangement is inconsistent with the conventional practice of reserving a significant percentage of the total contract price until the final report is presented and accepted by the program panel.

Obviously, EHA desires to have the type contract whereby CMA would be obligated to pay for all the costs, labor, and expenses incurred by EHA in the performance of this contract. However, under such circumstances there would be no means by which CMA could properly budget for this long term contract or exercise any meaningful control over cost overruns..

Accordingly, the standard practice at CMA is to award only fixed price contracts. Much leeway can be provided in fixed price contracts to provide for acceptable cost overruns without providing "blank checks" for the contractors.

It is my understanding that the vinyl chloride program panel is favorably impressed with the qualifications of EHA. It is also my understanding that the vinyl chloride panel found the estimate from EHA with some cost overruns acceptable. Since EHA has now withdrawn its estimate, I believe it advisable that the panel reconsider the value of EHA's services.

CMA can legally award a contract on a cost plus expense basis for EHA; however, the panel should be fully aware that many months from now CMA would have little control over EHA's cost overruns. Therefore, there are good policy reasons for not acceding to EHA's demands.

Other alternatives to a cost plus contract are available if EHA is sincerely interested in performing this study. As you know, EHA has requested a series of contracts so that the payments could be staggered. The difficulty with this approach is that it, like EHA's current proposal, could result in the expenditure of over $100,000 without any substantive workproduct being completed other than an improved data base. EHA would not be obligated to render any professional opinions.

If I can be of further service to the Panel or Dr. Torkelson, please advise.