

JOSEPH E. KELLER
JEROME H. HECKMAN
CHARLES M. MEEHAN
WILLIAM H. BORGHESE, JR.
ROBERT R. TIERNAN
WAYNE V. BLACK
DAVID L. HILL
MARTIN W. BERCOVICI
PETER M. NEMKOV
JOSEPH E. HADLEY, JR.
CAROLE C. HARRIS
PETER THOMAS SMITH
MICHAEL F. MORRONE
LARRY S. SOLOMON
JOHN B. DUBECK
CHRISTINE A. MEAGHER

LAW OFFICES
KELLER AND HECKMAN
1150 17TH STREET, N. W.
SUITE 1000
WASHINGTON, D. C. 20036
June 21, 1977

TELEPHONE
202 457-1100
CABLE ADDRESS "KELMAN"
WRITERS DIRECT DIAL NUMBER
(202) 457-1116

RECEIVED JUN 23 1977

To: Polyvinyl Chloride Safety Group
PVC Manufacturing Technology Committee

Re: SPI--VCM/PVC--EPA

Gentlemen:

The purpose of this letter is to transmit to you copies of communications recently received from Associate Counsel for Environmental Protection Agency (EPA) matters.

The first item is a reproduction of a letter Gary Baise handed out to those attending the June 15, 1977 Lawyers Committee Meeting. This letter, the substance of which was also discussed at the June 16, 1977 meeting of the Manufacturing Technology Committee, addresses EPA's new policies governing contacts between Agency personnel and industry representatives. As is explained in the letter and the memoranda attached to it, EPA's new approach to rule making was prompted by a recent Court decision which severely criticized a Federal agency where the informal industry contacts were so pervasive that the agency's independence of judgment was questioned. As a result, EPA has adopted the position that it will only engage in "on the record" discussions with non-Agency personnel relative to the substance of any rule making.

Item two is a report on the issues considered at the Lawyers Committee Meeting. The memorandum discussed therein has, because of its length, only been sent to members of the Lawyers Committee.

Should you have any questions, comments or suggestions relative to any matter discussed herein or in the attachments, or if there is anything further we can do to be of assistance to you, please do not hesitate to let us know.

Cordially yours,

[Handwritten signature]

Enclosures

SPI-07933

LAW OFFICES
BEVERIDGE, FAIRBANKS & DIAMOND
ONE FARRAGUT SQUARE SOUTH
WASHINGTON, D. C. 20006

HENRY L. DIAMOND
RICHARD M. FAIRBANKS, III
ALBERT J. BEVERIDGE, III
GARY H. BARNES
JAMES BARNES
HAROLD H. GOODRICH
CHRISTOPHER H. BUCKLEY, JR.
KEVIN M. FOLEY
JONATHAN Z. CANNON
ANDREW E. M. SKIN
CHARLES A. PATRIZIA
SUSSEEN M. S. BRONS
SCOTT W. BOWEN

TELEPHONE
(202) 638-7800

CARLE EARLEY
OF COUNSEL
CABLE ADDRESS
"INDLAW"

June 21, 1977

Jerome H. Heckman, Esquire
Keller & Heckman
Suite 1000
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Dear Jerry:

On May 24, 1977, Mr. D. C. Nuechterlein appointed a Lawyer's Subcommittee for the PVC Safety Committee. The Subcommittee is composed of Jim Murray (Union Carbide), Gary Ford (Stauffer), Harold Fast (Goodrich), Leonard Castillo (Dow), and Alan Topol. The Subcommittee held its first meeting on June 15, 1977, in Washington and enclosed is a copy of the agenda for the meeting. Also in attendance were Bob Hill (Diamond) and Harvey Rosenzweig (Borden).

We discussed each of the procedural matters listed under "I" and you should be advised of one item. Regarding item "D," Executive Committee, it was determined that Joe Hadley, Alan Topol and I would be members of this committee.

Regarding the substantive issues, the following action was taken:

A. Ex parte contracts with EPA —

We provided a copy of our June 14, 1977 letter to you discussing Home Box Office v. FCC, No. 75-1280 (D.C. Cir. 3/25/77). It was suggested that all counsel advise their company technical personnel to be cautious in dealing with EPA from this point forward because EPA officials will prepare a memorandum on all conversations they have with anyone from SPI or its members. Company personnel should prepare

SPI-07934

Jerome H. Heckman, Esquire
June 21, 1977
Page 2

their own memos on all conversations with EPA staff. Some may wish to send letters to the agency setting forth their understanding of what was discussed so the public record will not contain only EPA's recollection.

B. Status of EDF v. Train —

The Court has not acted on the motions to dismiss. As you know, there is no obvious explanation for why a court fails to act. We reviewed all the steps which had been taken to get the Court to rule. The Lawyers Committee concluded that nothing more could be done at this time.

C. Legal action to prohibit the pending rule-making —

Frustration was expressed by all over EPA's present course of action. We explained that based upon a series of court decisions, relief was not promising in the present situation because we are not yet dealing with "final action" by EPA. The Committee requested a memorandum of law on this issue and it is attached.

D. SPI's Freedom of Information request —

We have filed another request with EPA for additional information on the Vinyl Chloride situation and it has yet to respond. We discussed the reasons for filing and the goals to be achieved — primarily production of documents not previously supplied — and everyone agreed with the action.

E. SPI's request for a public hearing —

We reviewed the reasons why SPI requested a hearing and proceeded to discuss the type of hearing which will be most beneficial to

Jerome H. Heckman, Esquire
June 21, 1977
Page 3

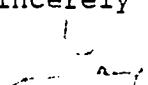
SPI. We suggested the possibility of a "hybrid type" hearing — enunciated by the courts to mean a combination of general comments and adjudicatory-cross examination methods on certain issues. This would be worth considering if the VCM/PVC Technology Committee raises major issues which it believes need to be explored through cross examination of EPA officials. Some committee members felt we have sufficient record for appeal at this point because of the information obtained under our original Freedom of Information Act request which was quite favorable to the industry. There are risks involved in cross examination of EPA witnesses, because they could "rehabilitate" themselves. EPA would also have the right to cross examine many industry witnesses. A preliminary vote was taken on whether to pursue the request for a "hybrid-type" hearing. The vote was a virtual tie with Joe Hadley and me abstaining. It was agreed that I should have the option of seeking a "hybrid-type" hearing if technical issues warrant it. We will confer by phone with the Committee before a final decision is made.

F. Potential challenge to the proposed amendments —

We discussed the several grounds available to attack the proposed amendments once it is promulgated. It was concluded there are several solid grounds for attack but that we must await EPA promulgation of the final regulation.

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

Sincerely yours,


Gary H. Baise

GHB:cl

Enclosure

SPI-07936

AGENDA
SPI LAWYERS COMMITTEE
June 15, 1977

I. LAWYERS COMMITTEE ORGANIZATION

- A. Role
- B. Communication
- C. Membership
- D. Executive Committee

II. SUBSTANTIVE ISSUES

- A. Ex parte contacts with EPA
- B. Status of EDF v. Train
- C. Legal action to prohibit the pending rulemaking
- D. SPI's Freedom of Information request
- E. SPI's request for a public hearing
- F. Potential challenges to the proposed amendments
 - 1. Whether there is an evidentiary base for the proposed amendments.
 - 2. Whether there is legal authority for the following:
 - a. Process standard
 - b. Separate emission requirements for existing and new sources
 - c. Offset requirement
 - d. Three year compliance period
 - 3. Whether there is adequate consideration of the environmental and economic impacts.

SPI-07937