



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
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April 7, 1977

ATG:DWE
90-5-2-3-808

Mr. George A. Fisher
Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001

Dear Mr. Fisher:

Re: Environmental Defense Fund, Inc. v.
Russell E. Train, (C.A.D.C., No. 76-2045)

Enclosed herewith for filing in the above-captioned case are the original and three copies of Respondent's Reply to Intervenor's Responses to Joint Motion to Dismiss.

As indicated by the certificate of service, counsel have been served.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Donald W. Fowler
Attorney, Pollution Control Section

Enclosure

cc: All counsel on service list
Ronald S. Naveen, Esquire



SPI-08031

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-2045

ENVIRONMENTAL DEFENSE FUND INC.,

Petitioner,

v.

RUSSELL E. TRAIN,

Respondent,

and

THE SOCIETY OF THE PLASTICS
INDUSTRY, INC., et al.,

Intervenors.

RESPONDENT'S REPLY TO INTERVENORS'
RESPONSES TO JOINT MOTION TO DISMISS

The Society of the Plastics Industry, Inc. (SPI), and Goodyear Tire & Rubber Company (Goodyear), intervenors in this case, have responded to the joint motion to dismiss filed by petitioner, Environmental Defense Fund (EDF), and respondent, Russell E. Train (EPA), by urging immediate dismissal on the grounds that the controversy between petitioner and respondent is now moot, by asserting that this Court has been asked to approve the proposed regulatory amendments, and by claiming that any new rulemaking proceedings cannot be fair because of a press release.

SPI-08032

Respondent will not address the mootness claim, but wishes to correct errors in the other two claims.

Goodyear's opposition is premised on their assertion that the joint motion to dismiss seeks this Court's approval of the terms of the amendments which EPA has agreed to propose. It follows, Goodyear asserts, that this Court should deny the motion since no need for the amendments has been demonstrated. Goodyear's premise is simply incorrect. The joint motion does not seek this Court's approval of the terms of the proposed amendments. It simply establishes a procedure for dismissing this case. This Court's approval of the motion will not reflect in any way on the merits of the amendments. Goodyear's arguments as to the need for the amendments should be made to the Agency during the rulemaking and to this Court when final amendments, if any, are adopted.

The basis for SPI's unfairness claim is that EDF issued a press release stating that EPA has agreed to promulgate (not simply to propose) the regulations containing revised emission limits and that EPA has supposedly "declined to deny or clarify EDF's press release." SPI is in error. Counsel for EPA denied the "promulgation story" directly to SPI on March 25, and counsel for EDF sent an explanatory letter to SPI on March 28 confirming its views that "the Agency has only made a commitment to propose regulations incorporating the settlement." (Emphasis added.) SPI would

apparently have preferred that EPA's press office issue a press release or statement correcting the mistaken EDF press release, but they were told by that office on March 25 that correcting the mistakes of others is not a policy of the press office. Nevertheless, the EPA attorney assigned to this case made a statement to a Washington newspaper on March 25 denying the promulgation story. ^{1/}

SPI's implication that EPA may have agreed to promulgate changes in the regulations is clearly in error. Lest there be any remaining doubt, however, EPA again wishes to state that the agreement for stipulated dismissal only commits the Agency to propose certain emission limits, which the Agency could have done without such an agreement in any case. It does not commit the Agency to promulgate any changes in the standards. If EPA promulgates any changes, SPI will be free to bring a legal challenge in this Court; if EPA refuses to promulgate such changes, EDF will be free to bring such a challenge. Such an agreement clearly protects the rights of all parties.

^{1/} "What we proposed is not necessarily what will come out of the wash next year." Washington Star, March 25.

The joint motion to dismiss this case should be granted.

Respectfully submitted,

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Assistant Attorney General

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Chief, Pollution Control Section

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
Respondent's Reply to Intervenor's Response to Joint Motion
to Dismiss has been mailed, first class postage prepaid,
this 14th day of April, 1977 to the following counsel:

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