

**MEMORANDUM**

November 14, 1997

**SUBJECT:** Possible Violation of TSCA Section 8(e) inter alia

**FROM:** J. William Hirzy, Senior Scientist  
Existing Chemical Assessment Branch RAD/OPPT/OPPTS

**TO:** Steven A. Herman, Assistant Administrator  
Office of Enforcement and Compliance Assurance

I was recently contacted by Attorney David Concannon, Kohn, Swift and Graf, 2400 One Reading Center, 1101 Market Street, Philadelphia, PA., concerning a lawsuit against Shaw Industries in which he represented a plaintiff injured by emissions from a carpet manufactured by Shaw. Mr. Concannon contacted me because my name was mentioned in documents produced at discovery during the suit in connection with the "toxic carpet" incident here at EPA and its sequela, including EPA's Carpet Policy Dialogue.

In our conversations Mr. Concannon stated that he was in possession of ca. 4000 documents that were still under a sequestration order by the judge in the case, even though the case had been dismissed. Mr. Concannon also said that he had several hundred pages of material that had been released from sequestration, and he offered to send these to me, which he did.

In so far as he was able to tell me what is in the still sequestered material, he indicated that Shaw and the Carpet and Rug Institute maintained a coded file containing hundreds of health complaints about carpet emissions, and that a guidance document exists for use of Shaw employees (and perhaps others) in responding to people who call Shaw (and CRI) with complaints about carpet emissions, which document seems to instruct the Shaw employees responding to these calls to deflect callers' concerns and to deflect responsibility for any injuries away from the employer, Shaw. The documents, including those Mr. Concannon did send to me, also show that industry people who participated in the Carpet Policy Dialogue validated "Hirzy's bad batch theory" of how carpet can cause adverse health effects, and that industry's participation in the Dialogue was a cynical exercise in public image damage control rather than a serious attempt to understand carpet emissions and how they might be controlled to limit human exposure and attendant adverse effects.

Mr. Concannon conveyed to me that these sequestered documents contain more than one "smoking gun" with regard to the carpet industry's knowledge about and active concealment from EPA of adverse health effects from carpet. He is more than anxious to get the sequestered documents into the hands of an agency which can use the information to protect the public and ferret out what appears to be substantial wrong doing on the part of the carpet industry and perhaps its suppliers. At minimum, violation of Toxic Substances Control Act section 8(e) by Shaw and/or its suppliers seems to have occurred.

CRI and other industry representatives (which included chemical suppliers to the carpet

manufacturing firms) at the Carpet Policy Dialogue consistently and repeatedly claimed that they had no knowledge of any adverse health effects from carpet emissions. TSCA section 8(e) obligates those who manufacture, process or distribute in commerce a chemical substance or mixture (which the styrene-butadiene latex and stain-resist and soil-release chemicals used in manufacturing carpet are) to immediately inform the Administrator if they obtain information which reasonably supports the conclusion that the substance or mixture presents a substantial risk to health.

By this memorandum, I am asking that you subpoena the sequestered documents in Mr. Concannon's hands, investigate Shaw and CRI's actions and inactions (as well as those of the industry's chemical suppliers, such as Dow and Du Pont), and if indicated bring enforcement action against any malefactor.

Further, by copy of this memorandum, I am asking that the Office of Pollution Prevention and Toxics reinstate the TSCA section 21 petition filed in January 1990 by National Federation of Federal Employees Local 2050. When EPA denied that petition in April 1990, it did so for the stated reason that there was no conclusive evidence of adverse health effects from carpet emissions. Clearly that basis for denial will not stand in the face of documents referred to above and available to EPA by subpoena should the documents bear out Mr. Concannon's opinion of what they contain.

Given the many cases of adverse effects from carpet emissions experienced by children (one of which I submit as an attachment to the snail mail version of this memorandum, along with a recent article from "IEQ Strategies" newsletter about Mr. Concannon's sequestered material) and EPA's initiative on children's health protection, I believe it should be a high priority for the Agency to act quickly and decisively on this matter.

atts:

cc: Carol M. Browner  
Jonathan Z. Cannon  
Phillip Landrigan, M.D.  
Lynn R. Goldman, M.D.  
William H. Sanders, III  
David Concannon

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