

September 22, 1989

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Smoking*

MEMORANDUM

TO: Charles H. Powers  
FROM: John Lyons  
RE: Mitchell Bill and TI's Allies

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You requested draft copy on federal indoor air legislation and TI's corresponding third-party activities to insert in your remarks for the Jim Johnston briefing. Although you asked me to keep the copy brief, it seems the subject is too complex and too elegant to be explained in a brief description.

[As Bob explained ... or whatever appropriate transition] One of the more recent and difficult threats to confront the industry is federal indoor air legislation introduced in the Senate by Majority Leader Mitchell and in the House by Congressman Joe Kennedy.

These companion bills are particularly troublesome for several reasons. Most important, they would give EPA broad jurisdiction, including some new regulatory authority, over indoor air issues. Both bills also call on EPA to conduct research on individual indoor air contaminants and to issue advisories warning the public of indoor air hazards.

Although the bills themselves are not direct attacks on tobacco, EPA has proved to be an aggressive and hostile agency. In June, the agency published its so-called "Fact Sheet" on ETS, claiming that ETS is the most significant indoor air contaminant, and asserting that ventilation is not an effective ETS mitigation strategy. EPA staff testified during House hearings in support of an airline smoking ban, and the agency is currently conducting a risk assessment on ETS. By vesting indoor air authority in EPA and giving the agency a research and public education mandate, the bills are engraved invitations for EPA to step up its anti-tobacco campaign.

Despite these concerns, we can not publicly oppose the bills. For the past five years we have been urging legislators to address indoor air quality problems rather than pass smoking restrictions. It would be extremely hypocritical for the industry to oppose legislation that, at least superficially, responds to our indoor air quality arguments.

Page Two

The good news, however, is that we are not the only ones with concerns about the bills. Through organized labor and another trade group, we are able to comment on and, to some degree, influence Congress with respect to these bills, without being visible.

Through the Labor Management Committee, we were able to persuade the AFL-CIO to form a working group to develop a position on the Mitchell and Kennedy bills. The working group consisted of representatives from Labor Management Committee unions and other unions with whom we have worked, including the American Federation of Government Employees, whose national vice president was appointed Labor's spokesperson on the issue.

The AFL-CIO reached a consensus calling for substantial changes in the bill for three reasons. The first is jurisdiction. Labor does not want EPA to have substantial jurisdiction over indoor air issues. Labor wants to change the bills to vest workplace jurisdiction in the Department of Labor and OSHA.

The second reason has to do with approach. Labor believes sick building syndrome is a real threat to office workers and that a building systems approach -- improvements in ventilation and filtration -- is the most time-efficient and effective way to clean up indoor air.

The final reason is jobs. A building systems approach would likely mean jobs for union contractors involved in retrofitting or upgrading ventilation systems.

Labor was active on these bills before developing its formal position. Last spring, AFGE testified on the Mitchell before Senator Lautenberg's subcommittee. And over the summer, AFGE testified on the Kennedy bill before Congressman Scheuer's subcommittee in the House. In each case, through the Labor Management Committee we were able to assist AFGE with its testimony, ensuring that our fundamental concerns were addressed.

Congressman Scheuer is conducting additional hearings on the Kennedy bill today. Another organization with which we have a longstanding relationship -- the National Energy Management Institute or NEMI -- is testifying. NEMI, a labor-management organization created by the unionized sheet metal industry, will express the AFL-CIO position on the bill.

Nearly a year ago, we helped establish and began working with a new trade group -- the Business Council on Indoor Air. BCIA represents several major chemical manufacturers and firms specializing in indoor air analysis. The chemical companies share our concerns about EPA being given jurisdiction to research and pass judgment on individual components of indoor air.

Page Three

We are not members of BCIA -- the chemical companies said they would not participate if tobacco was involved -- but we are able to wield substantial influence over the direction of the group. We pay several of our indoor air consultants to be members of the organization seats on the board of directors. In addition, we make public relations and legal and legislative counsel available to BCIA.

The executive director of BCIA has been extremely helpful. He has provided timely intelligence and advice on developments at EPA. He has also appeared before the EPA Science Advisory Board to criticize in strong terms a report the agency produced on indoor air research needs that called for extensive pollutant-by-pollutant research.

Like AFGE, BCIA testified last spring before Senator Lautenberg. BCIA opposed vesting EPA with sole authority over any federal indoor air program, urging Congress to create an interagency committee to oversee the issue. BCIA urged a building systems approach to the problem rather than a source-by-source witch hunt. BCIA also argued that, despite the claims of its author, the Mitchell bill would greatly expand EPA's regulatory authority. We were able to comment on BCIA's draft testimony.

Since then, BCIA has effectively raised jurisdictional questions at the CPSC, which traditionally has been responsible for hazards in the home, and at OMB, which opposes expansion of EPA's turf but has been reluctant to challenge EPA since losing a couple of policy battles. BCIA's efforts may be paying off: It has been reported that today, before the Scheuer subcommittee, EPA is going to testify against an expanded federal indoor air research program.

BCIA is also appearing before Congressman Scheuer today. And again our views will be represented but without our fingerprints.