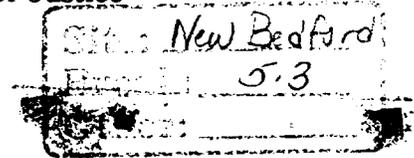


DTB:EMM  
90-11-2-32

Washington, D.C. 20530

December 4, 1987

OFFICE OF REGIONAL COUNSEL

Paul B. Galvani  
Ropes & Gray  
225 Franklin Street  
Boston, Massachusetts 02110Re: United States v. AVX Corp. et al., Civ. No.  
83-3882-Y (D. Mass.)

Dear Mr. Galvani:

This is in response to your letter to Evan Slavitt of June 29, concerning your request for "production by the government of sampling data on Battelle's computer". In your letter of December 7, 1986, you requested "ion chromatograms" for the "tetra" and "penta" isomer groups in Battelle's samples.

We must reiterate what should long since have been clear to you -- the materials which you are requesting do not exist. EPA never contracted with Battelle to produce chromatograms of this sort (selected ion chromatograms) and such work was never done. Battelle's computer tapes contain raw outputs from a mass spectrometer; i.e., it contains data about the mass and relative abundance of each detected ion in each full scan of the instrument. To produce the chromatograms you request would require extensive original computer analyses to reduce the data to specific selected ions. This would involve using a computer to sort the mass data, select the specific ions requested, compute their abundance through time and execute the graphics for the chromatograms. It would also be necessary to do extensive data analysis in order to identify the desired samples and relate the computed values for the selected ions in the analyte injected into the gas chromatograph to original sample volumes and similar information in order to compute actual values. These tasks would pose the same \$60,000 cost to the government as quoted to you by Battelle. This is not a matter of simply asking a computer to print existing "files".

EPA's data was produced by programming the computer to analyze for homolog groups, the appropriate output given the way the samples were prepared and run, and given the standards used. Different and more complex software would have to be used to identify separate peaks within the homolog groups, and compute the abundance of the individual ions. The government is not obliged to perform such original computer analyses in response to

a discovery request, any more than we would be obliged to prepare an extract from a stored sample and put it through a gas column.

We have produced all of the documents from the analyses which we did perform on these samples. We have also agreed to allow Battelle to perform your requested analysis of these samples. In addition, in order to resolve this issue, we are willing to allow Battelle to provide you with copies of the computer tapes (some 50 to 100 tapes), if you agree to reimburse them for the expenses. You should note, however, that computer processing of these tapes, even by your own consultant, could prove to be more expensive and time consuming than if processed by Battelle. Therefore, we suggest that, before determining how you wish to proceed, you make a long overdue effort to understand precisely what it is you are requesting.

Please contact me or Charles Bering if you have any further inquiries on this matter.

Sincerely,

Assistant Attorney General  
Land and Natural Resources Division

By:



Ellen M. Mahan  
Attorney, Environmental Enforcement  
Section

cc: Charles Bering  
Lee Breckenridge  
William D. Brighton