



MEMORANDUM

Date: October 10, 2007

To: Members of the Section of Environment, Energy, and Resources and other interested persons

From: Lynn L. Bergeson
Bergeson & Campbell, P.C.

James C. Chen
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Mark N. Duvall
The Dow Chemical Company

Re: SEER Project on Nanotechnology: Phase II

The Committee on Pesticides, Chemical Regulation, and Right-to-Know of the American Bar Association (“ABA”) Section of Environment, Energy, and Resources (“SEER”) is launching Phase II of its Nanotechnology Project. As discussed below, SEER recently completed successfully Phase I, which included the preparation of seven white papers and the completion of the Nano Quick Teleconference (“QT”) Track. The purpose of this memorandum is to outline Phase II and to invite your involvement in Phase II.

Background

Recently, SEER completed Phase I of the Section’s Nanotechnology Project. SEER launched the project in March 2006, after meeting with the U.S. Environmental Protection Agency (“EPA”) in November of 2005, to assess EPA’s interest in having SEER brief EPA lawyers and staff on nanotechnology and the core environmental statutes. Approximately 100 SEER lawyers organized into seven teams to prepare seven briefing documents. Each team had a team leader, with six of the teams responsible for a particular statute, and an additional team addressing environmental management systems. The topics and the briefing teams included the following:

<u>Team Leader</u>	<u>Title of Paper</u>	<u>Briefing Team</u>
Mary Elles Ternes	CAA Nanotechnology Briefing Paper	Ken Meade David Friedland Lynn L. Bergeson
Chris McCormack	CERCLA Nanotechnology Issues	Richard M. Fil Lynn L. Bergeson
Pamela E. Barker	CWA Nanotechnology Briefing Paper	Steven Ziesmann Jim Wedeking Lynn L. Bergeson
Richard M. Fil Lee Paddock	EMS/Innovative Regulatory Approaches	Lee Paddock Greg Mandel Lynn L. Bergeson
Mark N. Duvall	The Adequacy of FIFRA to Regulate Nanotechnology-Based Pesticides	James Chen Warren Lehrenbaum Lynn L. Bergeson
Tracy Hester	RCRA Regulations of Wastes from the Production, Use, and Disposal of Nanomaterials	Joseph Guida Christopher Bell Lynn L. Bergeson
Christopher Bell	Regulation of Nanoscale Materials under the Toxic Substances Control Act	Mark N. Duvall James Chen Christopher Bell Lynn L. Bergeson

Each paper was presented to Ann Klee, then EPA General Counsel, other Office of General Counsel lawyers, and various EPA program managers, staff, and lawyers in 90-minute briefing sessions conducted from May through July of 2006. The papers, which are posted on the Section's website, are cited frequently and continue to be reference by a range of interested stakeholders, including government agencies, industry, and non-governmental organizations.

As part of continuing the interest generated by the papers and to reach a broader audience, the Section launched the Nano Quick Teleconference ("QT") Track in October 2006. The series consisted of eight QTs, one on each of the seven issue papers described above, and a QT on a general introduction to nanotechnology. The last QT was conducted on July 11, 2007.

Nano Project: Phase II

The Committee is now launching Phase II of the Nanotechnology Project. This phase is intended to address important legal topics not covered in Phase I. These include:

- The Food Quality Protection Act (“FQPA”)
- The Federal Food, Drug, and Cosmetic Act (“FFDCA”)
- The National Environmental Policy Act (“NEPA”)
- The Endangered Species Act (“ESA”).

Committee Chair Lynn Bergeson and Committee Vice Chairs Mark Duvall and James Chen serve as co-chairs of this project.

Phase II will analyze these statutes for three reasons. First, lawyers within EPA and the Food and Drug Administration (“FDA”) have inquired about whether SEER intends to prepare briefing documents on these laws and have noted a need for them. Second, SEER believes that briefing documents on these statutes are particularly important given the direction the legal debate has taken over the past year. This is particularly true of the many issues that FDA is now confronting. Third, we expect Congressional interest in these areas and believe the Section, through the Congressional Relations Task Force, could play an important role in identifying legal issues, contributing to the body of law in these areas.

As with Phase I, teams will prepare issue papers on these topics, which would also be provided to EPA’s Office of General Counsel and FDA’s Office of General Counsel. We will also arrange with those Offices to make presentations based on the issue papers. The teams are now forming.

Nanotechnology Teleconference Series

As a supplement to Phase II efforts, the Committee also plans to convene a Nano QT Track structured along lines similar to the first Nano QT Track. We propose initiating the series in the first or second quarter of 2008 to coincide with the issuance of the new briefing documents.

Next Steps

We have received permission from SEER to initiate Phase II, and we are now getting started. Accordingly, at this time we are soliciting interested attorneys to volunteer to work on one or more of the teams. There will be team for each statute: FQPA, FFDCA, NEPA, ESA.

We would be glad to discuss this with you further. Please contact Lynn Bergeson, Jim Chen, or Mark Duvall to volunteer to serve on or more teams:

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