

PATTON BOGGS, L.L.P.
2550 M STREET, N.W.
WASHINGTON, D.C. 20037-1350
(202) 457-6000

FACSIMILE: (202) 457-6315

WRITER'S DIRECT DIAL

(202) 457-6457

July 27, 1995

The Honorable Anne K. Bingaman
Assistant Attorney General
U.S. Department of Justice
Antitrust Division, Room 3101
10th & Constitution Ave., N.W.
Washington, D.C. 20530

Dear Ms. Bingaman:

In response to my letter request dated April 19, 1993 on behalf of the Halon Recycling Corporation ("HRC"), you issued a business review clearance letter confirming that the Department of Justice had no current intention of challenging the operations of HRC's proposed information exchange and marketing system for recycled halon-1301 as described in my request. Your clearance letter was originally issued on July 27, 1993 and amended slightly by letter dated August 6, 1993. (For your convenience I enclose a copy of my letter dated April 19, 1993, and your responses dated July 27, 1993 and August 6, 1993.) HRC now wishes to extend its recycling program to include another form of halon (halon-1211), and respectfully seeks clearance under 28 C.F.R. § 50.6 to do so.

As described in my previous letter request, halons are low-toxicity chemically-stable compounds that have been used for many years for fire and explosion suppression in especially dangerous situations. Halons are used in liquid and gaseous forms and have proven remarkably effective and generally safe for limited human exposure. As my letter pointed out, the need to recycle existing stocks of halon for critical uses arose because the Clean Air Act Amendments of 1990 and the Montreal Protocol on Substances That Deplete the Ozone Layer, to which the United States is a party, resulted in the complete cessation of production of all forms of halon as of January 1, 1994. The phaseout of halon production took place before effective substitutes and alternatives were available for all critical halon uses. There remain fire and explosion risk situations for which current technology cannot provide adequate protection without the use of halon extinguishants. For this reason, the United Nations Environment Programme (UNEP) has strongly urged the establishment of recycling "banks" in all nations that are party to the Montreal Protocol to aid in the transfer of existing halons to critical uses. UNEP Report of the Halon Fire Extinguishing Agents Technical Options Committee, December, 1994 ("UNEP Report"), at p. 95.

The Honorable Anne K. Bingaman

July 27, 1995

Page 2

My April 1993 letter request sought a business review clearance for HRC's plan to establish an information exchange and marketing system to encourage the recovery, recycling and transfer of existing stocks of halon-1301. This form of halon is primarily used in total flooding systems for suppressing and controlling fires and explosions in industrial and military applications where there may be a significant risk to life or the environment. HRC did not seek to include halon-1211 in its initial recycling program because the critical usages for halon-1211 were not perceived to be as compelling as for halon-1301. However, as explained below, there are some vital uses of halon-1211 for which adequate substitutes have yet to be developed. Accordingly, HRC now believes that the establishment of a recycling program for halon-1211 is essential in order to assure future supplies of halon-1211 until equivalent substitutes are available.

Halon-1211 has been used primarily in portable fire extinguishers. In commercial and industrial applications, halon-1211 portable fire extinguishers have been used for fire suppression in computer rooms, museums, art galleries and in offices for the protection of equipment. Large capacity, manually applied halon-1211 extinguishant is also used by some military organizations for fire fighting during aircraft ground support operations. Portable fire extinguishers containing halon-1211 are likewise carried on-board virtually all commercial aircraft. Indeed, Federal Aviation Administration regulations require commercial passenger airplanes to carry portable fire extinguishers containing halon-1211 "or equivalent." See 14 C.F.R. §§ 25.851(a)(6) and 121.309(c)(7). Many military aircraft also carry halon-1211 portable extinguishers.

For most purposes, adequate substitutes for halon-based extinguishants do exist, particularly multi-purpose dry-chemical fire extinguishers. However, for some uses there does not appear to be any equally effective substitute for halon-1211 available at this time. UNEP Report at p. 5. As noted above, halon-1211 extinguishers are considered essential for aviation purposes because of their effectiveness in completely extinguishing fires and safety for limited human exposure, combined with the extreme risks posed by in-flight fires. There have been instances of potentially fatal hidden fires beneath the floors or behind wall panels of aircraft (which are inaccessible in-flight) which have been successfully extinguished with halon-1211; it is doubtful whether other fire suppressing agents would have done the job. UNEP Report at p. 37. Achieving a performance equivalent to halon-1211 under these conditions is perceived as essential for any potential replacement agent in addition to the normal requirements for portable extinguishers. To date, however, no non-halon product has been shown to meet these standards.¹¹

¹¹ While hydrochlorofluorocarbon ("HCFC") blends are available for some uses, environmental concerns and their lower effectiveness when measured in terms of the relative lighter weight of portable equipment using halon-1211 have discouraged their use. Water mist portable fire extinguishers are still being developed, but are not yet commercially available.

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July 27, 1995

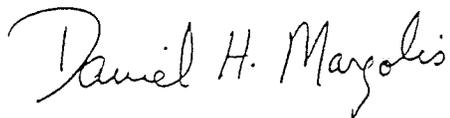
Page 3

In sum, there is, and will continue to be, a need for halon-1211 for these limited, critical purposes. Although halons can no longer be produced, the quantities of halons stored in existing containers, portable fire extinguishers and mobile units is far greater than the quantities that were produced annually in the past. These existing stocks of halons slowly become available for "recycling" as the useful life of extinguishers expires or alternative fire protection measures are introduced. As recommended by UNEP, halon recycling "banks" such as that proposed by HRC are a "valuable asset" for assuring "that halon will be available for many years to come."

For these reasons HRC believes that it would be in the public interest for its information exchange and marketing program to be extended to include halon-1211 in addition to halon-1301. HRC proposes to operate its halon-1211 program in exactly the same manner as described in my letter of April 19, 1993 with respect to halon-1301, and with the same antitrust precautions.

Accordingly, on behalf of HRC I hereby request a statement of the present enforcement intentions of the Department of Justice with respect to an expanded halon information exchange and marketing procedure that would include halon-1211. This request is made pursuant to the procedure for issuance of business review letters set forth in 28 C.F.R. § 50.6. Because of the substantial public interest in the prompt implementation of this expanded halon recycling program, I respectfully request that this request be given expedited consideration in accordance with the Department's procedures announced December 1, 1992.

Sincerely,

A handwritten signature in cursive script that reads "Daniel H. Margolis". The signature is written in dark ink and is positioned above the printed name.

Daniel H. Margolis

Enclosures