CITY OF CAMBRIDGE

INTEROFFICE CORRESPONDENCE

To Mr. Robert W. Healy
City Manager

Date March 27, 1984

From Russell B. Higley, Esq.
City Solicitor

Reference

Subject Arthur D. Little, Inc. v. Chalfen

I appeared in Court on March 27 for the hearing before Mitchell, J. on ADL's request for a preliminary injunction.

At this hearing, Thomas Bracken, Esq., representing ADL, submitted an Affidavit of R. Scott Stricoff, ADL's Director of Health and Safety, in which Mr. Stricoff states (paragraph 3): "The physical design of ADL's laboratory and the operating procedures employed meet, and in most instances exceed, the safety and security specifications of DOD (Dept. of Defense) for chemical surety material laboratories."

The following are attached to the Affidavit:

A. DOD's specifications for the design of such laboratories.

B. Table of Contents for ADL's Safety and Security Plan for the laboratory. (The Affidavit states that the Plan itself "is classified by DOD as 'Confidential'").

C. DOD's Plan approvals.

The Affidavit (8 pages) also goes into some detail regarding the design and physical layout of the laboratory, its safety features and the procedures for conducting experiments.

I enclose copies of the following:

1. Stricoff's Affidavit.

2. Affidavit of Judith C. Harris (ADL), including letter from Walter J. Majerle of the Dept. of the Army.

3. ADL's Motion for Preliminary Injunction.

4. Memorandum of Law on behalf of Dr. Chalfen.

Judge Mitchell seemed to be very impressed by the Stricoff Affidavit, but stated that he would give the City an opportunity to rebut it.

It was agreed that the parties would appear again before Judge Mitchell on April 3.

RBH/jl
Encs.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION
NO. 84-1529

ARTHUR D. LITTLE, INC.

V

MELVIN H. CHALFEN, M.D.

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S REQUEST FOR PRELIMINARY INJUNCTION

The four requisites to a grant of a preliminary injunction are:

1. Irreparable Harm.

2. A substantial likelihood that the threatened injury to Plaintiff outweighs the threatened harm the injunction may do to Defendant.

3. Likelihood of Success of Plaintiff on the Merits.

4. Public Interest.

See 31 M.P.S., Nolan, Equitable Remedies, §129 (1983 supp.); 8A M.P.S., Smith and Zobel, Rules Practice, §65.4 (1981); 43 CJS, Injunctions, §17 (1978).

The first three factors must be discussed together. See Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 616-618 (1980).

To obtain a preliminary injunction, "the moving party must show that, without the requested relief, it may suffer a loss of rights that cannot be vindicated should it prevail after a full hearing on the merits." Id. at 616.

When asked to grant a preliminary injunction, "the judge initially evaluates in combination the moving party's claim of injury and chance of success on the merits. If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue." Id. at 617.

1. Irreparable Harm to ADL

In the context of a preliminary injunction, "the only rights which may be irreparably lost are those not capable of vindication by a final judgment.... Irreparable harm is absent if trial on the merits can be conducted before the injury occurs." Id. at 617, n. 11. Thus, the only harm Plaintiff will suffer if the preliminary injunction is not granted is the harm which will be caused by a temporary shutting down of its research and testing activities pending the outcome of a trial on the merits. We submit that this harm will be minimal.

Furthermore, it must be remembered that Plaintiff has the burden of proof on the issue of irreparable harm, as well as all the other prerequisites to issuance of a preliminary injunction. 43A CJS, Injunctions, §210, p. 449 (1978).

The items of irreparable harm claimed by Plaintiff are summarized in Plaintiff's Motion for Temporary Restraining Order and Protective Order, para. 1. We will discuss these individually.

(a) Destruction of valuable chemicals and other materials.

It is true that Dr. Chalfen's regulation of March 13 prohibits the "testing, storage, transportation and disposal" of certain chemicals within the City. However, the Defendant is willing to permit the continued storage of chemicals which are already on the site, pending the outcome of the trial on the merits, with the understanding that, during this period, no testing would take place and no new chemicals would be transported into the City. Thus, pending the outcome of the trial on the merits, no chemicals would need to be destroyed.

(b) Loss of five months' research work product valued at $163,288.

This item of alleged irreparable injury is explained in para. 8 of the Affidavit of Judith C. Harris (3-15-84), where Ms. Harris states that this injury would occur "(i)f ADL complied with the March 13, 1984 Order, by destroying or disposing of the chemical surety materials owned by DOD...." We assume that this injury would not result if, as suggested above, ADL were not required to destroy or dispose of chemicals presently on the site pending the outcome of the trial on the merits.

(c) Loss of use of a laboratory having a capital cost of $873,653.

Here again, with the understanding set forth in para. (a) above, we suggest that ADL's only injury will be the loss of use of the laboratory for the relatively short period of time

which will elapse before the outcome of the trial on the merits.

(d) Delay of the completion of research.

This item of alleged harm has no dollar figure attached to it, and it is not explained in the Harris Affidavit. We submit that a delay of research pending the outcome of the trial on the merits would result in minimal harm.

(e) Loss to ADL of future business with DOD.

We submit that ADL will not lose future business with DOD if the status quo is maintained pending the outcome of the trial on the merits. This injury might result only if Dr. Chalfen's Order is fully implemented after such a trial.

(f) Exposure of ADL to potential civil and criminal penalties.

In its Motion, ADL alleges that it would be exposed to potential civil and criminal penalties "under its contract with DOD and under federal statutes which prohibit the destruction of government property...."

Since we have not been furnished a copy of ADL's contract with DOD, we are unable to comment on its terms. Regarding federal statutes, the only statute which ADL has brought to our attention is 18 U.S.C., §1361, which provides that anyone who willfully injures or commits any depredation against any property of the United States shall be punished. See Complaint, para. 9. Under the understanding set forth in para. (a) above, ADL would not be required to destroy any chemicals, and, therefore, would not be subject to the penalties in §1361.

In summary, we submit that, during the time before the trial on the merits, ADL would not suffer irreparable harm if it is

allowed to store the chemicals which are now on the site but is not allowed to perform research or testing or transport additional chemicals into the City.

Furthermore, "an injunction will not be granted where the remedy at law for the injury complained of is full, adequate and complete." 43 CJS, Injunctions, §30(a) (1978). See Amory v. Assessors of Boston, 310 Mass. 199, 202 (1941). We submit that the right of appeal provided by G.L. c. 111, §§143 and 147 is such a remedy.

2. Harm to the City

As noted above, "If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party." Packaging Industries Group, Inc. v. Cheney, supra, at 617. We have already argued that the harm to ADL would be negligible if Dr. Chalfen's Order of March 13 is limited in the way we have suggested.

Against the risk to ADL must be balanced the risk of irreparable harm to the people who live and work in Cambridge, who are represented by Dr. Chalfen. And it must be remembered that, as a practical matter, Dr. Chalfen also represents those who live and work in Arlington and Belmont in close proximity to ADL, since those towns are not parties in this action.

The information contained in Dr. Chalfen's Affidavit of March 15 indicates that, although the ADL research is done in an appropriate high containment laboratory, in the event of an

accident resulting in the dispersion of the chemical materials in the air, those living and working in the densely populated residential, commercial and industrial areas near ADL could be seriously in danger. We submit that this risk outweighs the slight harm which would be caused to ADL if the Order, as limited, remains in effect until the outcome of the trial on the merits.

In Packaging Industries Group, Inc. v. Cheney, supra, at 616, the Court states:

> ... Since the judge's assessment of the parties' lawful rights at the preliminary stage of the proceedings may not correspond to the final judgment, the judge should seek to minimize the "harm that final relief cannot redress"...by creating or preserving, in so far as possible, a state of affairs such that after the full trial, a meaningful decision may be rendered for either party.

We submit that the risk of an accident which might subject large numbers of people to the risk of injury or loss of life is a risk of "harm that final relief cannot redress." Against this is to be balanced only the slight harm to ADL caused by a short delay in its research.

3. The Public Interest

Closely related to the risk of harm to the people of Cambridge, Arlington and Belmont is the question of where the public interest lies. "Where an important public interest would be prejudiced, the reasons for denying an injunction may be compelling." Godard v. Babson-Dow Manuf. Co., 313 Mass. 280, 288 (1943). See 42 Am. Jur. 2d, Injunctions, §59 (1969); 43 CJS, Injunctions, §37 (1978).

In Yakus v. United States, 321 U.S. 414, 440-441 (1944),

the Court stated:

> "But where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff.... This is but another application of the principle, declared in Virginian Ry. Co. v. System Federation, 300 U.S. 515, 552, that 'courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'

Although ADL attempts to argue that there will be harm to the national defense and to the health of American soldiers, we submit that the gist of ADL's complaint is financial harm to itself. See ADL's Motion for Temporary Restraining Order and Protective Order, p. 2. We contend that the public interest lies with Dr. Chalfen, who is responsible for the health and safety of the people who live and work in proximity to ADL.

4. Likelihood of Plaintiff's Success on the Merits

"A preliminary injunction is an extraordinary remedy which will not be granted unless there is a clear showing of probable success of the plaintiff.... All presumptions and ambiguities are taken against the party who is seeking to obtain a (preliminary) injunction." 42 Am. Jur. 2d, Injunctions, §15 (1969).

"A preliminary injunction will not ordinarily be granted if the parties are in dispute concerning their legal rights, until such rights are established, especially if the legal and equitable claims asserted raise questions of a doubtful or unsettled character.... The reason for the rule lies in the fact

that so drastic a remedy as (a preliminary) injunction should be withheld when the law is in doubt and no opportunity is afforded for a full study of the matter by both sides." Id. at 745.

A preliminary injunction should not issue, where there is "substantial doubt" that Plaintiff "will ultimately succeed on the merits." School Committee of Boston v. Mayor of Boston, 10 Mass. App. Ct. 840 (1980) (rescript); 43 CJS, Injunctions, §20(b) (1978). "An applicant for a preliminary...injunction carries the burden of showing both his right to, and need for, the issuance of the injunction." 43A CJS, Injunctions, §210, p. 449 (1978).

Accordingly, Plaintiff "has the burden of proving the traditional prerequisites, including substantial likelihood that the moving party will prevail on the merits, irreparable injury, for which there is no adequate remedy at law, overriding harm to plaintiff relative to defendant...and the public interest served...." Id. See Doran v. Salem Inn, Inc., 422 US 922, 931 (1975). We submit that ADL has not successfully carried this burden as to its likelihood of success on the merits or, indeed, as to any of the prerequisites.

The Commissioner of Health and Hospitals in Cambridge has the same powers as a Board of Health. St. 1976, c. 201, §2. These include the power to issue "reasonable health regulations." G.L. c. 111, §31. This power is extensive. Section 31 "provided a comprehensive, separate, additional source of authority for health regulations." Board of Health of Woburn v. Sousa, 338 Mass. 547, 550 (1959). Such regulations may be "more stringent

than the general law." Brielman v. Commissioner of Public Health, 301 Mass. 407, 410 (1938).

The Commissioner also has the power, under G.L. c. 111, §143, to prohibit any "trade or employment which may result in a nuisance or be harmful to the inhabitants, injurious to their estates (or) dangerous to the public health..." Persons aggrieved by the action of the Commissioner may appeal to the Department of Environmental Quality Engineering. Appeal may also be had to the Superior Court with a jury. G.L. c. 111, §147. We submit that the research and testing of ADL is such a "trade or employment."

The Police Power

These powers of the Commissioner are examples of the police power, which is power vested in the Legislature and delegated to municipalities by G.L. c. 111, §§31 and 143 and other statutes. The police power was defined by Chief Justice Shaw in Commonwealth v. Alger, 7 Cush. 53, 85 (1853) as

> ...the power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.

See 16 CJS, Constitutional Law, §174, 175 (1956).

The police power is based chiefly on the Latin maxims, "salus populi suprema lex"—the welfare of the people is the first law, Beer Co. v. Massachusetts, 97 U.S. 25, 33 (1877), and "sic utere tuo ut alienum non laedas"—so use your property

as not to injure the rights of another, Baker v. Boston, 12 Pick. 183, 193 (1831).

"A distinguishing characteristic of the police power is that it is a reasonable preference of public over private interests." 6 McQuillin, Municipal Corporations, §24.05; Miller v. Schoene, 276 U.S. 272, 279-280 (1928); Art Neon Co. v. City and County of Denver, 488 F. 2d 118, 122 (10th Cir., 1973).

The police power is dynamic. In other words, the "field for the legitimate exercise of the police power is coextensive with the changing needs of society." Massachusetts Commission Against Discrimination v. Colangelo, 344 Mass. 387, 393 (1962).

In 6 McQuillin, Municipal Corporations, §24.28 (1980), it is stated:

> An exercise of the police power is valid where the subject to which the regulation relates is within the scope of the legislative power, the ends sought to be attained are appropriate, and the regulations prescribed are reasonable and have a rational basis.

"A measure enacted purportedly under the police power is presumably valid, and the burden of proof of the contrary is on one asserting it." Id. The same presumption of constitutionality applies equally to statutes and municipal regulations. Colella v. State Racing Commission, 360 Mass. 152, 155-6 (1971).

"The safeguarding of public health is a most important municipal function, and the municipality has both the right and the duty to use its police power for the preservation of public health." 62 CJS, Municipal Corporations, §133 (1949). See 7 McQuillin, Municipal Corporations, §§24.219 - 24.222. Courts

"will interfere with an exercise of discretion by a municipal corporation, as to health measures, only where they are entirely without a reasonable basis." Id., §24.222. "The right to engage in business must yield to the paramount right of government to protect the public health by any rational means." Druzik v. Bd. of Health of Haverhill, 324 Mass. 129, 139 (1949).

It is clear that under §143 the Commissioner has the power, in appropriate cases, to prohibit the carrying on of a particular business within the city. See Moysenko v. Bd. of Health of North Andover, 347 Mass. 305 (1964)(piggeries); Revere v. Blaustein, 315 Mass. 93 (1943)(painting truck bodies); Bd. of Health of Wareham v. Marine By-Products Company, 329 Mass. 174 (1952)(manufacturing fish by-products); Revere v. Riceman, 280 Mass. 76 (1932)(slaughtering fowl); Waltham v. Mignosa, 327 Mass. 250 (1951)(cows, swine, goats, roosters, fowl, ducks, pigeons and rabbits).

In Moysenko v. Bd. of Health of North Andover, 347 Mass. 305, it appeared that, on February 24, 1960, the Board of Health adopted, after a public hearing, regulations relative to the keeping of pigs. The first regulation stated: "No person, firm or corporation shall keep a piggery within the Town of North Andover." On January 27, 1961, the Moysenkos were served with an order of prohibition under G.L. c. 111, §§149, 150. The jury affirmed the order of the Board and the Moysenkos appealed.

In affirming the action of the Board of Health, the Court held that the Board's regulation and order were enforceable against the Moysenkos, even though the Board issued the order

without investigating the premises and without having any knowledge of the method of operation of the piggery, and even though there had been no complaints and State health officers "always found the premises fit and satisfactory for the operation of a piggery." Id. at 306. The Court concluded that, "The sole reason for the...prohibition was because the board wanted no pigs in the town." Id.

The Court stated (at p. 308):

> ... In regulating an occupation a board may not act "in an unreasonable, arbitrary, whimsical, or capricious manner."... But under §143 an entire occupation may be prohibited if "it is conceivable that there might be circumstances where...(the exercise of that occupation) might become...(a nuisance)." Waltham v. Mignosa, 327 Mass. 250, 252 (1951). Clearly "the trade or employment need not in fact be a nuisance or attended by noisome and injurious odors before the power of prohibition arises." Id.

In Revere v. Blaustein, 315 Mass. 93 (1943), it appeared that the Board of Health, after inspecting defendant's premises, "passed a vote" prohibiting the painting of truck bodies on the premises. In upholding the Board's action, the Court stated that the Board was not required to give defendant notice or a hearing before making the order. The Court stated:

> ... That order was of a preliminary nature and was not conclusive. The defendant could contest the validity of the order and could secure an annulment or modification of it by the verdict of a jury upon a petition filed in accordance with G.L. c. 111, §147. Ryder v. Board of Lexington, 273 Mass. 177 (1930)(piggery).

Id. at 95.

The Court also said, "If the defendant was the only one affected

by the order, that would not render it invalid." Id. at 96.

It is clear that municipal officials exercising the police power may anticipate danger and do not have to wait for a crisis. "Regulations may be enacted in anticipation of an emergency...." 62 CJS, Municipal Corporations, §133, p. 279 (1949). The "police power with reference to health...regulations is...a power to anticipate and to prevent dangers to come and to exercise an earnest and active effort to protect the inhabitants of the community." 7 McQuillin, Municipal Corporations, §24.222 (1981).

The Supreme Judicial Court expressed this idea when it stated: "...an entire occupation may be prohibited if it is conceivable that there might be circumstances where the exercise of that occupation might become a nuisance." Moysenko v. Bd. of Health of North Andover, 347 Mass. 305, 308 (1964). See also Commonwealth v. Hudson, 315 Mass. 335, 340 (1943), where the Court, in discussing the police power, stated: "The fact that in the present case the evil to be avoided is one feared rather than one presently existing is no reason for denying legislative authority to guard against it."

The same idea is expressed in Town of North Hempstead v. Exxon Corp., 53 N.Y. 2d 747, 439 N.Y.S. 2d 342, 421 N.E. 2d 834, 837 (1981)(Fuchsberg, J., concurring), as follows:

> ...it is entirely proper for a Legislature to anticipate a danger and to provide against it before it materializes (citations omitted)...specific legislative findings as to need were not required for, if any state of facts, known or hypothesized, could justify the law, the court's power of inquiry ended (United States v. Caroline Prods. Co., 304 U.S. 144, 151, 82 L. Ed. 1234, 1241 (1938)...

Action was brought challenging a town ordinance prohibiting the operation of self-service gas stations. The Court held that the ordinance had a rational basis and was not unconstitutional.

Supremacy Clause and Federal Preemption

ADL argues that, "The United States Government has established a comprehensive...scheme for regulating toxic materials and specifically has assumed total control over the chemicals covered in the...March 13, 1984 regulation. Accordingly, the federal Government has preempted the entire field...and the Commissioner has no authority to issue a regulation pertaining to those chemicals. Complaint, para. 12.

Here, we repeat that Plaintiff has the burden of proving that there is a substantial likelihood that it will prevail on the merits. 43A CJS, Injunctions, §210, p. 449 (1978). Since ADL has not cited a single federal statute or regulation which might be part of a "comprehensive scheme" for regulating the subject chemicals, we submit that it has not carried its burden in this regard. Furthermore, ADL's failure to cite any legal authority on this question leaves the question in doubt, and a preliminary injunction should be withheld. See 42 Am. Jur. 2d, Injunctions, §15, p. 745 (1969). We submit that ADL should be required to make a very strong case for federal preemption before a court holds that a reasonable local health and safety regulation has been preempted.

"Numerous Supreme Court decisions have made it clear that the commerce clause does not, by itself, exclude the states from legislating on matters relating to the health, life and safety of their citizens even though such legislation might indirectly affect interstate commerce." Cohen v. Bredehoeft,

290 F. Supp. 1001, 1003 (1968, S.D. Tex.). See, e.g., Head v. New Mexico Board, 374 U.S. 424, 427-429 (1963). "In the exercise of its police power, a state and its political subdivisions may enact legislation reasonably appropriate to the accomplishment of legitimate ends provided that such legislation does not conflict directly with an act of Congress...." Cohen v. Bredehoeft, supra, at 1003.

Alleged Defects in Regulation

The same arguments apply to the allegations in paragraphs 13-18 of the Complaint. For example, ADL alleges that the testing, etc. of these chemicals "poses no risk of public exposure when adequate measures are taken to insure that such activities will not subject the public to exposure..." (para. 13); that ADL's laboratory "is being operated in accordance with all federal and state requirements..." (para. 14); that Dr. Chalfen's regulation "bears no reasonable relationship to any potential health hazard..." and is "unreasonable and arbitrary" and "in excess of the authority of defendant..." (paras. 17, 18).

All of these statements are mere allegations and conclusions, and do not satisfy ADL's burden of proof. Nor, we submit, is this burden satisfied by the self-serving statements in the affidavit of ADL's Manager of Chemical and Food Sciences, Judith C. Harris. Since these matters are in doubt, the preliminary injunction should not issue, and these questions should be resolved at the trial on the merits.

Alleged Procedural Defects in Adoption of Regulation

In paragraphs 19 and 20 of the Complaint, ADL alleges that the March 13 regulation is defective, because it was issued without notice to the public, without any public hearing and

without any inquiry into the potential health hazards involved in the operation of the laboratory. There is no merit in this allegation. As noted above, Revere v. Blaustein, 315 Mass. 93 (1943), held that a Board of Health can forbid a particular business without notice to the defendant himself. And Moysenko v. Bd. of Health of North Andover, 347 Mass. 305 (1964), held that a Board of Health could make such an order without investigating the premises and without having any knowledge of the method of operation of the business.

ADL is incorrect when it alleges, in paragraph 23 of the Complaint, that "the public record contains no finding...that the trade of laboratory research on certain chemicals...may... be harmful to the inhabitants of Cambridge...dangerous to the public health...as required by Mass. G.L. c. 111, §143...." The regulation of March 13 itself contains such a finding.

Reasonableness of the Regulation

We agree that any Order or Regulation issued by the Commissioner must be reasonable. ADL argues that due process has been violated because the Regulation of March 13 was adopted without any inquiry into the potential health hazards. Complaint, paragraph 19. We submit that it is eminently reasonable for Dr. Chalfen to impose a moratorium on this testing until an independent committee has been able to study the situation and make a recommendation to him.

SUMMARY

In summary, the Defendant argues:

1. If the Regulation of March 13 is limited so as to permit ADL to store existing chemicals on the site, ADL will not suffer irreparable harm if a preliminary injunction is not

issued.

2. If the Regulation of March 13 is limited as stated above, ADL does not need an injunction, because it has an adequate remedy at law, i.e., its appeal under G.L. c. 111, §§143 and 147.

3. The possibility of harm to those who live and work in Cambridge, Arlington and Belmont near ADL if a preliminary injunction is issued outweighs the slight harm which ADL may suffer if it is not issued.

4. The public interest here lies on the side of the Defendant, who, as Commissioner of Health and Hospitals, is responsible for the health and safety of those who live and work in Cambridge, as opposed to ADL, which is asserting essentially its own private interests.

5. ADL has not sustained its burden of making a clear showing of its probable success on the merits. This is so because of the following factors:

a) The Commissioner (Defendant) has extensive powers under G.L. c. 111, §§31 and 143, which delegate the police power of the Commonwealth to him.

b) If the Regulation of March 13 is limited as discussed above, ADL has an adequate remedy at law, i.e., its appeal under G.L. c. 111, §§143 and 147.

c) The public interest lies on the side of the Defendant.

d) ADL has failed to indicate under what authority the U.S. Government has "preempted the entire field" (Complaint, para. 12) with respect to these chemicals, nor has it cited a single statute or regulation which might be part of a "compre-

hensive...scheme for regulating toxic materials" (Id.).

CONCLUSION

For the above reasons, Defendant, Dr. Melvin Chalfen, Commissioner of Health and Hospitals of the City of Cambridge, prays that this Court

1. Deny Plaintiff's application for a preliminary injunction.

2. Direct that Plaintiff pursue its appeal under G.L. c. 111, §147.

3. Order that Defendant's Regulation of March 13 remain in effect pending the hearing of Plaintiff's appeal pursuant to G.L. c. 111, §147, provided that Plaintiff be allowed to store chemicals presently on the site during that period.

4. Award Defendant his costs incurred in this action, including reasonable attorneys' fees.

5. Award Defendant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Russell B. Higley
City Solicitor

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8

CITY OF CAMBRIDGE

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

April 2, 1984

To the Honorable, the City Council:

I enclose herewith a copy of a memorandum from Russell B. Higley, City Solicitor, relative to the hearing of March 27 on Arthur D. Little's request for a preliminary injunction. Also enclosed is a copy of the "Memorandum of Law on behalf of Dr. Chalfen". Other documentation relative to this hearing is available in the Law Department.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Agenda Item Number Eight

S-217

Re: enclosing a copy of a memorandum from Russell B. Higley, City Solicitor Re: a hearing on March 27, 1984 on Arthur D. Little's request for a preliminary injunction.

In City Council,

April 2, 1984

-4/8/1984-

Placed on File