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October 8, 1976

Mr. Richard L. Rollins
Vice President-Engineering
Jard Company, Inc.
Bennington, Vermont 05201

Dear Dick:

After our meeting on Tuesday with Roger Wills and yourself, we discussed the progress of the EPA proceeding with Peter Nickles and have made some tentative conclusions about how best to proceed with preparing our witnesses' direct testimony. This letter is a summary of the proceeding thus far and indicates the directions in which we intend to proceed.

As you are aware eight witnesses have now been cross-examined during the first five days of hearings. One witness, Dr. Donald I. Mount was excused after consultation with you and other members of the Ad Hoc Committee. These opening witnesses presented evidence in support of EPA in the following areas:

Toxicity and bioaccumulation of PCBs in fresh water organisms (Veith, Nebeker) and estuarine organisms (Hansen, Nimmo);

measurement and sampling methods and capabilities (Veith, Munson);

dispersion and dilution following discharge from the plant (Calloway, Brungs); and

the feasibility and availability of activated carbon as a controlled technology (Rizzo).

The principal conclusions of Dr. Allen Nebeker concerning the toxicity and bioaccumulation of Aroclor 1016 in fresh water organisms were subjected to close detailed cross-

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examination. Dr. Nebeker found it difficult to defend either his testimony or his supporting bioassays and tables. As a result, the evidence as to fresh water organisms now points to a much lower toxicity for Aroclor 1016 than for the more highly chlorinated aroclors. Moreover, the remaining credible portion of Dr. Nebeker's testimony, together with Dr. Veith's testimony, appears to support a bioaccumulation factor of 50,000 for fresh water organisms. Turning to salt water organisms, an even lower bioaccumulation factor (of approximately 28,000) was established by Dr. Hansen's testimony. Similarly, according to Dr. Hansen, the toxicity level for Aroclor 1016 was 100 times lower than the level of Aroclor 1254, even for highly sensitive estuarine organisms.

Further as a result of the cross-examination of EPA's witnesses, significant questions have been raised as to the accuracy and practicality of EPA's proposed measurement and sampling techniques. Considerable question was also raised as to the testimony of Mr. Joseph Rizzo because of the substantial pecuniary interest of Calgon in a finding that its activated carbon system provides a feasible treatment method for PCBs. Because Messrs. Calloway and Brungs presented testimony that was helpful to industry's position on the dispersion and dilution of PCBs, they were therefore subjected to only light cross-examination. However, one or more of the environmental organizations that are parties to the proceedings conducted a vigorous cross-examination of these two witnesses.

The hearings will resume next Tuesday, October 12, and will continue until all remaining witnesses, with the exception of Louis DuPuis (who will testify after EPA has had its economic impact statement cleared by the Office of Management and Budget), have been cross-examined. Based upon recent conversations with Ridgeway Hall the following will be the expected line-up of witnesses:

Tuesday and Wednesday,
October 12 and 13

- David Young
Robert K. Ringer
David Armstrong

Thursday, October 14

- Robert Risebrough
Charles E. Mauk
Harry Gelboin

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Friday, October 15	- Wilbur McNulty James R. Allen
Monday, October 18	- Renate Kimbrough, M.D. Robert Squire
Tuesday, October 19	- Ian C. T. Nisbet Leonard J. Guarraia
Wednesday, October 20	- Donald Sargent

Although we discussed on Tuesday the possibility of excusing Dr. Squire, on the basis of our discussion with Dr. Brown yesterday we have decided not to excuse him.

It is my understanding that you have arranged for the following experts to review the relevant affidavits and to provide us with an appropriate briefing. Steve Jinks of Ecological Analysts will review the testimony of Young and Risebrough and will be present for their testimony to assist in the cross-examination. Drs. Scott Tucker and Jim Meuire of Monsanto will provide a critique of Armstrong's testimony but will not be permitted to be present during the actual cross-examination. Dr. Wolfgang Mueller of the International Center for Environmental Safety will provide critiques on the testimonies of McNulty, Allen, Squire, Gelboin, Kimbrough and Ringer and Roger Wills is arranging for him to be present at the cross-examination beginning Friday, October 15. We have also been given assistance by Dr. John Brown of GE Research and Development Lab in Schnectady, New York, with whom we met yesterday. You have agreed to review the criteria document and the Sargent testimony and have agreed to be present during the cross-examination of Nisbet, Guarraia, and Sargent.

As you know, we will be working under some time pressure due to the necessity of completing the record in the proceeding in time to permit the EPA Administrator to make his final decision by January 23. We expect that our witnesses must be prepared to submit their affidavits by the first week of November, and within two or three weeks thereafter be prepared to submit to cross-examination. Michael Clear will be working closely with Peter in preparing these affidavits and presenting the witnesses in the hearing. It is our understanding that the Ad Hoc Committee has engaged the following witnesses to testify on our behalf at the proceeding:

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1. Dr. Gerald Lauer

Testimony will concern: (i) whether Aroclor 1016 is toxic to freshwater or saltwater aquatic organisms; (ii) the lower toxicity of lower chlorinated aroclors; and (iii) the bioaccumulation factors he has found for aquatic organisms. Dr. Lauer will comment on the affidavits of Nebeker, Veith, Hansen and Nimmo.

2. Dr. Wolfgang Mueller

Testimony will concern: (i) whether Aroclor 1016 is toxic to mammals; (ii) the lower toxicity of lower chlorinated aroclors; and (iii) the lower toxicity of aroclors which do not contain furines, and the furines contained in 1016. Dr. Mueller will comment on the affidavits of Kimbrough, McNulty, Allen, Squire, Gelboin and Ringier.

3. Dr. Eunice Moore and/or
4. Dr. George Wallace

Testimony will concern the reliability and accuracy of the EPA measurement and sampling technique, including: (i) whether reliable measurement can be made down to one part per billion in ordinary industrial effluent (as contrasted with distilled water or spiked samples); (ii) whether the EPA methodology is precise and reproducible; and (iii) whether the Gas Chromatography Electron Capture method is reliable. Dr. Moore or Dr. Wallace will comment on the industry data supplied, and on the affidavits of Veith and Munson

5. Mr. John Hutzler

Testimony will concern the problem of finding substitutes for PCBs, and the PCB uses for which no substitutes have been found, including:

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(i) general review of non-PCB substitutes, their characteristics and their limitations; (ii) present status of U.L. on non-PCB containing capacitors; (iii) problem of reliability of interrupting device; and (iv) metallized polypropylene film capacitors and their limitations.

6. Mr. Ray Clark

Testimony will concern: (i) the nature and uses of capacitors; (ii) the nature and uses of PCBs in the industry; (iii) the difficulty of locating substitutes for PCBs; (iv) the economic effects of an elimination of PCBs; and (v) the present industry use of 1016, and the storage capacity of Monsanto guaranteeing a supply of 1016 for x months after termination of production.

7. Mr. Phillip Murray

effect of EPA regulation on Cornell Dubilier

8. Mr. Fred Windover

effect of EPA regulation on Sprague Electric

As we discussed yesterday, the Ad Hoc Committee will also engage an economist to testify concerning the effects of the proposed EPA regulation on the capacitor industry (including costs of compliance, effects on employment and production, etc.)

It is our understanding that Dr. Lauer and Messrs. Clark, Murray and Windover have received the basic information they need from us to prepare their testimony, and that the testimony of these four witnesses could be prepared almost immediately. Dr. Moore and Dr. Wallace are awaiting receipt of industry data and the Veith and Munson affidavits before one or the other undertakes to analyze the measurement and sampling issues. Finally we understand that Dr. Mueller has received most of the affidavits he will need to prepare his testimony, but that he still requires the Ringer affidavit. Mr. Hutzler will testify concerning an issue which was not covered by the EPA's direct case, but will comment on the Dow proposed substitute for 1016.

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Based on the following, we propose to write the seven witnesses whose testimony has been confirmed to propose the following schedules of preparing their testimony. As we discussed yesterday in Schenectady when we met at General Electric, we will immediately send these letters to Lauer and Mueller, but will delay sending the others until the end of next week to permit you to confirm their testimony and notify them that such a letter will be forthcoming.

1. Dr. Lauer Preparation of an outline of proposed testimony by October 15; following telephone conversations and/or meetings with counsel, preparation of affidavit with exhibits by October 27.
2. Dr. Mueller Preparation of an outline of proposed testimony by October 22; following telephone conversations and/or meetings with counsel, preparation of affidavit with exhibits by October 31.
3. Dr. Moore and/or
 Dr. Wallace Receipt of industry data no later than October 12; preparation of outline of testimony no later than October 22; following telephone conversations and/or meetings with counsel, preparation of affidavits with exhibits by October 31.
4. Mr. Hutzler Preparation of outline of testimony October 15; following telephone conversations and/or meetings with counsel, preparation of affidavit with exhibits by October 27.
5. Mr. Clark Preparation of outline of testimony by October 15; following telephone conversations and/or meetings with counsel, preparation of affidavit and exhibits by October 27.

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6. Mr. Murray

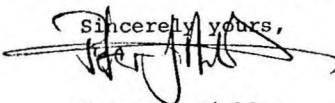
Preparation of outline of testimony by October 15; following telephone conversations and/or meetings with counsel, preparation of affidavit and exhibits by October 22.

7. Mr. Windover

Preparation of outline of testimony by October 15; following telephone conversations and/or meetings with counsel, preparation of affidavit and exhibits by October 22.

In reviewing the case, we discovered that several other topics were covered in the EPA's direct case which might warrant rebuttal testimony from one of our witnesses. These other areas are: (i) a witness on the persistence issue; (ii) a witness on the carbon adsorption process; and (iii) a witness on the present status of Canadian regulation of PCBs. We should discuss promptly whether to attempt to engage these other witnesses. We wish to emphasize that we must have a final list of our witnesses by October 15, for submission on that date to the EPA.

Sincerely yours,



Peter J. Nickles
Steven S. Rosenthal
John Michael Clear

srj

cc: Messrs. Wood
Wills
Nourse
Tuttle

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