JAN 29 1981

Monsanto

LAW DEPARTMENT

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January 28, 1981

PCB

Geraldine V. Cox, Ph.D.
Vice President and
Technical Director
Chemical Manufacturers Association
2501 M Street, N. W.
Washington, D. C. 20037

Dear Dr. Cox:

Your letter dated January 23, 1981, which briefly described present regulations involving the EPA, EDF and CMA, and which contained a proposed agenda for a February 11, 1981, meeting at CMA headquarters to discuss the situation, has been received. Monsanto will be represented at the February 11 meeting by John H. Craddock, Ph.D. and myself. We share the view expressed by Ken Burgess, whose January 12 letter was attached to your January 23 letter, that the regulatory dilemma created by the October 30, 1980 District of Columbia Circuit Court of Appeals decision is serious and requires an organized concentrated effort.

It should be pointed out that many of those familiar with the history of the Toxic Subtances Control Act are of the opinion that the EPA is misinterpreting Section 6(e). As you may know, Section 6(e) was added to the Act as an amendment during floor debate. It is clear from the Legislative History, and from recollections of discussions with EPA and Congressional staff personnel prior thereto, that Congress had in mind products such as Aroclors and Askarels, which were manufactured with the intention that they be PCBs. There was never any indication that Congress intended to adopt a Delaney-like approach and ban all materials containing one or more molecules of PCB.

(I recognize that, in infamous footnote 37, the DC Circuit Court stated that ". . . we can not find that Congress intended to exclude incidentally manufactured PCBs from the Act." This is at most dicta, since the specific question of Congressional intent was not before the Court, and at worst another erroneous conclusion by the DC Circuit. In any event, this is an issue

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which can and should be raised by a defendant in any proceeding in which the EPA attempts to base a prosecution on its erroneous interpretation of the statute.)

It would appear that the present dilemma could be resolved quickly and easily by a one sentence amendment to Section 6(e). It could be inserted at the end of paragraph 6(e)(5) and read "As used in this subsection, the term 'polychlorinated biphenyls' means any material containing more than one percent pure polychlorinated biphenyl." Any other wording which would accomplish the same result would be acceptable.

Regardless of the outcome of negotiations with the EPA and EDF, the desirability of moving forward with such a statutory amendment is overwhelming. I request that this subject be placed on the agenda for the February 11 meeting, and that the PCB Special Program Group, or another appropriate committee, be directed to support this amendment with Congress.

Yours very truly,

Phocion S. Park
Environmental Counsel

jf

cc: K. L. Burgess
J. H. Craddock

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