TESTIMONY OF THE HONORABLE JOHN D. DINGELL BEFORE THE OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE OF THE INTERSTATE AND FOREIGN COMMERCE COMMITTEE, FEBRUARY 28, 1980, ON EPA IMPLEMENTATION OF THE PCB BAN PROVISIONS OF THE TOXIC SUBSTANCE CONTROL ACT (TSCA), SECTION 6(e).

Mr. Chairman, I applaud your continuing pursuit of the pervasive health and environmental threat posed by PCBs. I welcome your invitation to address this distinguished Subcommittee on an aspect of the PCB problem which is of the utmost significance to the protection of the health, environmental resources, and wildlife of our nation. I refer specifically to the statutory ban on the manufacture, processing, distribution, and use of PCBs mandated by Section 6(e) of the Toxic Substance Control Act (TSCA)----a Section that former Congressman Gilbert Gude and I sponsored as a floor amendment to the House-passed version of TSCA.

That section, which was overwhelmingly approved by the Congress in 1976, provides, with limited exception, for an expeditious phase-out of manufacturing, processing, distribution, and use of any PCBs other than those that are used in a totally enclosed manner. That section also creates incentives for the development and use of PCB substitutes, and provides a presumption against continued PCB use in lieu of the health and environmental benefits that would accrue to such a ban. The point I would like to emphasize is that the PCB ban set in force by section 6(e) of TSCA was intended to be phased, yet expeditious, and one with limited exceptions. Yet, we sit here four years later with an EPA Ban Regulation (44 Federal Register 31514 ff. May 14, 1979) that requires the phase-out of a mere one percent of PCBs in use today. This action is a fresh exercise in regulatory illiteracy, for it is rare that Congress will single out a specific chemical for such swift legislative action.

It was recognized in 1976 as it is today that PCBs require individual attention and expeditious phase-out. The reasons require no lengthy recital at this time, except to say that the concerns and hazards of 1976 have been fully confirmed by additional study and substantial evidence. Most notably, recent reports by the National Academy of Sciences, Council on Environmental Quality, and the Office of Technology Assessment, not only have verified widespread human exposure and environmental dissemination of PCBs, but have shed new light on its environmental interactions. PCBs are environmentally persistent and mobile. They not only bioaccumulate, but biomagnify up the food chain as well. Numerous laboratory tests have confirmed the carcinogenic, teratogenic and mutagenic potential of PCBs.

In addition, we continue to witness experiments of nature with inadvertent but predictable PCB

contaminations of the human food chain occurring on a regular basis. I speak specifically to the Western States' incident last fall where PCBs leaked from an improperly managed transformer. A major contamination of the human food chain subsequently ensued, and it is of utmost significance that these same PCBs escape the current EPA Ban Regulations.

In light of the growing body of evidence on PCBs and the well based concern with contamination incidents which continue to proliferate, Congress enacted section 6(e) with the desire of preventing future human exposure to PCBs. However, EPA regulations that have been promulgated to phase out PCBs are at best lip service and at worst a flagrant breach of the intent of Congress to prevent such occurrences.

While some will proffer that Congressional intent is an ambiguous and etharal concept, section 6(e) is clear and unwaivering. Congressional intent is amply

evident in the Legislative History of TSCA even from the most cursory perusal of the presentations of myself, Gilbert Gude and Senator Gaylord Nelson, the Senate sponsor of section 6(e). The amendment was offered and adopted with the intent of phasing out within one year of the effective date of TSCA, any PCB used in any manner except those used in a totally enclosed manner and explicitly forces the development and use of PCB substitute fluids. It was and still is my belief that we must terminate the self-perpetuating state of inaction with regard to the use of PCB substitutes.

The fact is that I did not fight to include a special section of TSCA to implement a comprehensive and prompt ban on PCBs so that the EPA could four years hence interpret that to mean that only one percent of all PCBs in use today should be phased out. Moreover, the language of section 6(e) unmistakably establishes a presumption against the use of PCBs by exempting

rulemaking under section 6(e) from the risk-benefit criteria of section 6(c), which apply to the balance of rulemaking under section 6.

Given the abundance of supporting language in the legislative history, and the clear presumption of the statutory language for an expeditious ban with limited exceptions, what has EPA done?

EPA has determined that all PCB transformers, capacitors and electromagnets should be classified as "totally enclosed" uses. Of the 750 million pounds of PCBs currently in commercial use, these uses comprise 745 million pounds or 99.3 percent of the PCBs in use. This broad and invalid interpretation of "totally enclosed" uses was made in the face of contravening legislative language which states that use in a "totally enclosed" manner means any manner which will ensure that any exposure of human beings to PCB will be insignificant. Yet, EPA's own support document for the Ban Regulations

states that any exposure to PCB is indeed significant!

Furthermore, EPA ignored much of the expert testimony in the hearing record from industry and government alike, which acknowledged the potential and actual contaminations resulting from uses classified as totally enclosed. In fact a recent GSA status report on PCBs found that of the 822 PCB transformers in the National Capital Region, 494 are leaking or show signs of past leaks, and 20 transformers required diking to reduce the possibility of environmental contamination. I would hardly characterize these as totally enclosed uses.

Moreover, the Agency failed to include one shred of evidence in its Support Document to substantiate the determination that all PCB transformers, capacitors and electromagnets are "totally enclosed" uses. In short, the Agency established a presumption in favor of totally enclosed uses without supporting evidence.

In keeping with the permissive nature of promulgation, the nature and duration of the continued use authorizations for PCBs under these regulations are excessive and contrary to the intent of section 6(e). Although the Agency acknowledges limited discretion in the timing for implementation of the PCB ban, it asserts that continued use of PCBs in a non-totally enclosed use manner may be granted for any time period the EPA finds appropriate. Furthermore, EPA has determined that the totally-enclosed uses may continue indefinitely. Such passive interpretation of section 6(e) is not in keeping with the statutory language requiring the expeditious phase-out of the use of PCB.

But, perhaps the most startling deficiency in these Ban Regulations is that they do not require nor even encourage the use of PCB substitutes when transformers are serviced. This fact in light of

the availability of substitutes and the favorable Japanese experience with PCB substitutes makes this a totally untenable position. But, EPA goes one step further, by noting in its Support Document that the use of substitutes for topping off or refilling PCB transformers is optional. This failure to encourage the use of substitute fluids when viewed in conjunction with the generous continuing use authorizations that have been granted spells out one clear expectation----unless a change is forthcoming the vast majority of all PCBs currently in the system will remain there for the useful life of the equipment in which it operates. For PCB transformers, the major reservoir of PCBs, this is 30 to 40 years.

In short, Mr. Chairman, EPA has not promulgated a PCB ban, but rather has perpetrated a PCB sham. These regulations effectively nullify the timely and

comprehensive phase-out of PCB use, mandated by section 6(e).

I strongly urge the EPA to narrow its interpretation of "totally enclosed" to more adequately reflect the realities of transformer performance and integrity. Second, in light of the evidence presented, which shows that a substantial portion of PCB equipment is anything but totally enclosed, the Agency should require increased and closer monitoring for PCB leaks and establish procedures for containment and diking of those transformers that do leek. Third, the Agency should pay particular heed to those uses of PCBs which might precipitate those situations where PCBs have the potential to cause contamination of the food chain.

Lastly, the Agency must not only encourage but require the use of PCB substitute fluids, particularly during the normal service periods of PCB equipment.

In closing, Mr. Chairman, I would like to impress upon the Agency that section 6(e) does not call upon EPA to make a fresh determination as to whether PCBs pose an unreasonable risk. That was determined by this body and, in the affirmative, by the very nature of 6(e). Rather, the Agency has been requested to implement a general ban on PCBs and additionally to determine whether certain limited exemptions are appropriate.

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