Monsanto

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SUBJECT : NEW PCB REGULATIONS - INCIDENTAL GENERATION

REFERENCE :

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The EPA finally issued the second of three new PCB regulations resulting from the EDF lawsuit which deals with incidental generation of PCB's in manufacturing processes (attached).

This new rule will cause Monsanto and other manufacturers significant problems and expense if they take effect in the present form.

The rule establishes an exclusion for process categories defined as "closed manufacturing processes" and "controlled waste manufacturing processes."

However, EPA defines these processes as such that no quantifiable PCB's are released or are only released in "controlled" wastes. The conditions for the exclusion hinge on the EPA definitions of "no quantifiable" PCB's. This quantity will be defined by an as yet undefined and totally specified analytical method which will be based upon use of an electron impact mass spectrometer coupled with capillary column G.C. Details of work-up extract concentration, etc., will be "defined" later.

An alternative to analysis is an as yet undefined "theoretical calculation" to demonstrate that PCB levels would be non-quantifiable as defined.

The vague method has the distinct possibility of establishing several different cut-off levels for various products and process streams in the low ppb level, depending upon the final analytical protocol the EPA specifies.

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Other problem areas with the proposed rule are:

1. All waste from processes qualifying for the exclusion would have to be disposed of as PCB wastes (incineration, etc.) specified under TSCA.

   Example: A 1 ppb waste stream would have to incinerate 1 billion pounds of total material at $.50 to $1.00 per pound cost (plus freight, drumming costs, labor, etc.) to dispose of 1 pound of PCB.

2. The regulation requires "self-certification" by a "Corporate officer" that all provisions, including analysis and/or theoretical calculations, meet the requirements for an exclusion.

Due to vagaries of analytical methods employed for trace analyses of PCB's and sometimes broad ranges of precision of such results, certification for many streams may be difficult and result in other problems relating to safety factors, etc.

This rule dealing with incidental PCB's in process streams and wastes may be a harbinger of what to anticipate in the third rulemaking dealing with (1) incidental generation of PCB's in products and (2) establishment of a new regulatory cut-off to replace the 50 ppm cut-off struck down by the Court in EDF vs. EPA.

Certification of non-quantifiable PCB levels in products may open up all sorts of new product liability issues.

In addition, a new regulatory cut-off that will eventually creep into all PCB regulations may be established by the analytical black box precedent of the present rule.

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