(202) 828-1324

January _, 1990

William K. Reilly
Administrator
Mail Code A-100
United States Environmental
Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Reilly:

Attached is a petition pursuant to Section 21 of the Toxic Substances Control Act ("TSCA") seeking amendment of the regulations governing the disposal of polychlorinated biphenyls ("PCBs") (40 C.F.R. § 761.60) ("Petition"). The purpose of this proposed amendment is to clarify that lagoon sediments containing PCB concentrations greater than 500 ppm may also be disposed of by, inter alia: (1) landfilling; or (2) an alternative disposal method that is more cost-effective than incineration, yet is health protective. This Petition also requests that EPA issue an interpretative rule or declaratory order construing the existing PCB disposal regulations as providing such disposal options. The Petition is filed on behalf of a number of companies who are named as potentially responsible parties ("PRPs") at the Bridgeport Oil and Rental Services ("BROS") Superfund site ("Site"). (see Attachment to the Petition for a list -- "Petitioners").

This proposed amendment is necessary because EPA has not interpreted its PCB regulations consistently in its decisions at Superfund sites, and other sites containing PCBs. For example, Region II of EPA issued a Superfund Record of Decision ("ROD") at the BROS Superfund Site that required excavation and incineration of 60,000 cubic yards or more of sediment from a lagoon. EPA's rationale for selecting this remedy was that: (1) the material contained an average PCB concentration greater than

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500 ppm; (2) the portion of this lagoon sediment containing PCB concentrations greater than 500 ppm was required to be incinerated, as a matter of law; and (3) even if some of the sediments contained PCB concentrations of less than 500 ppm, it was more cost-effective to incinerate the entire 60,000 cubic yards than incinerate a small portion of the sediment and landfill offsite the other portion.

The 60,000 cubic yard volume in the ROD was increased in EPA's remedial action contract to 80,000 cubic yards and in a change order to in excess of 100,000 cubic yards, thereby increasing the remedial costs to $70 million (without explanation, public comment or the other procedures required by general principles of administrative law and EPA guidance).

Data taken after the ROD was signed, but prior to the issuance of the remedial contract and the change order, indicate that less, probably much less, than 1,000 cubic yards of the lagoon sediments (located in one "hot spot") contains PCB concentrations greater than 500 ppm, and, in fact, over 77% of the sediment contains PCB concentrations of less than 10 ppm (EPA's PCB soil cleanup level for residential areas). Also, only 10% of the PCBs at the BROS Site are located in the 100,000 cubic yards of sediment containing PCB concentrations of less than 500 ppm, although incineration of this portion of the sediment results in the vast majority of the $70 million remedial costs.

At the BROS Superfund Site, EPA's extremely expensive remedial decision is based on a misinterpretation of the PCB regulations. As a result of this misinterpretation, EPA rejected other, more cost-effective, yet health protective, remedial alternatives for the lagoon sediments. The PCB regulations need to be clarified in order to make clear that the interpretation adopted in the BROS situation is incorrect and to ensure that such costly mistakes are not repeated. Superfund resources are too limited to be "wasted" in this manner.

In December 1989, the BROS PRPs sent a draft of this Petition to Douglas Blazey (EPA, Region 2, Regional Counsel), Daniel Kraft (EPA, Region 2, TSCA Office) and Barbara Ostrow (EPA, Office of Toxic Substances), as part of the preconsultation process recommended by EPA's Section 21 Petition guidance. Based on conversations with EPA personnel, the

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Petitioners have concluded that no further pre-filing consultations would be productive. However, the Petitioners remain willing to discuss the issues raised in this Petition with EPA at any mutually convenient time.

Sincerely yours,

William J. Walsh
On behalf of the Petitioners

WJW/dsw

cc: Linda Fisher, Assistant Administrator for Pesticides and Toxic Substances, EPA
Don Clay, Assistant Administrator for Solid Wastes and Emergency Responses
Douglas Blazey, Regional Counsel, Region 2, EPA
John H. Smith, Section Chief, Disposal Section, Office of Pesticide and Toxic Substances EPA
Barbara Ostrow, Chief, Chemical Regulation Branch, EPA
Daniel Kraft, TSCA Office, Region 2, EPA
William H. Hyatt, Pitney, Hardin, Kipp & Szuch

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