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ON S. 2693

Before the Subcommittee on Hazardous
Wastes & Toxic Substances
of the Committee on Environment and
Public Works

INTRODUCTION

The Chemical Manufacturers Association (CMA) appreciates the opportunity to appear here this morning. As members of the PCB Consensus Group, the CMA PCB Panel has worked closely with EPA for a decade to develop sound regulations under the Toxic Substances Control Act (TSCA) for activities involving PCBs. Through the efforts of the Consensus Group, whose members also include representatives of the Environmental Defense Fund, Natural Resources Defense Council, the National Electrical Manufacturers Association (NEMA) and Utility Solid Waste Activities Group (USWAG), the TSCA PCB regulations have become a sound framework through which the 1976 Congressional goal of controlled use and disposal of PCBs is being successfully implemented.

Along with other members of an expanded PCB coalition -- that includes the environmental groups, USEPA, NEMA, the Association of American Railroads, and the

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Hazardous Waste Treatment Council -- we have over the past two years been addressing a variety of PCB disposal issues. The PCB coalition proposed to EPA in August 1987 specific regulatory language to amend the TSCA disposal rules in the areas of manifesting, intermediate activity and storage permitting, and financial responsibility -- the same substantive areas that are addressed in S. 2693.

We are here today to support Section 2 of S. 2693, which parallels H.R. 3070 that has already passed the House. We oppose, however, Section 3, which would apparently require EPA to shift regulation of PCB disposal to the Resource Conservation and Recovery Act ^{RCRA} ~~(RCA)~~. I would like to explain our efforts to assist EPA in improving the regulation of PCB disposal activities to explain why we take this position.

BACKGROUND OF THE PCB DISPOSAL ISSUES

Because a sound framework is established in the existing PCB TSCA disposal rules, we believe the vast majority of all PCB-containing wastes in this country are currently being handled responsibly and safely. The rules have been in effect for nearly a decade and have become well-understood by the regulated community. Compliance with the rules is the norm. The stability of the rules has encouraged investment in technologies that encourage and accelerate safe disposal.

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Although there have been incidents of improper PCB disposal -- some of them well-publicized -- we do not believe the cause of such incidents was an inadequate regulatory framework. In each of those instances, existing rules were being violated, EPA was aware of the violations, and the fault, if fault is to be found, is that enforcement was not swift and comprehensive.

We nonetheless agree with the concerns expressed by the sponsors of S. 2693 that some changes in the TSCA PCB disposal rules would be appropriate to ensure that sound management practices currently used for most PCB disposal activities are employed universally and enforcement can be more swift.

The PCB coalition's TSCA rule amendment proposal to EPA in August 1987 reflected all three of the specific substantive issues addressed in S. 2693.

First, manifesting of PCB wastes between generators and disposal would be required. Most PCB disposal is currently manifested. A requirement to that effect seems reasonable to ensure all such wastes are tracked.

Second, permitting of intermediate activities would be required. Permits are now required for persons involved in treatment or disposal of PCBs. Extending such requirements to other persons involved in the disposal system, particularly persons who store other persons' PCB wastes on their way to disposal, seems appropriate.

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Third, financial responsibility would be required in any TSCA PCB treatment, intermediate activity or disposal permit. EPA has been imposing such requirements in permits for PCB disposal activities; ensuring that such requirements are uniformly imposed seems appropriate.

In proposing amendments to the TSCA disposal rules, the PCB coalition recognized there were a number of detailed questions that needed resolution to develop meaningful regulations. For example, there is a need to determine: at what point in the disposal chain the manifesting requirements begin; exactly which activities should be permitted; and what types of financial responsibility requirements make sense for each type of activity. EPA, too, recognized the need to look closely at these and other issues in its September 18, 1987, response to the PCB coalition. In August 1987, we encouraged the Agency to work expeditiously to adopt such changes under TSCA. We welcome the Agency's Federal Register announcement that such rulemakings will issue soon. We believe the fact EPA is already working on these issues means that the deadlines in S. 2693 can be met.

THE UNDESIRABILITY OF REGULATING PCB WASTE UNDER RCRA

We further believe it important that changes in PCB rules be implemented through TSCA rather than through transferring PCB disposal regulation to the Resource

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Conservation and Recovery Act (RCRA), as Section 3 contemplates. As EPA found when it was reviewing the possibility of moving PCB disposal to RCRA, the TSCA framework was specifically adopted to handle the unique features of PCB disposal; much would be lost if the current workable framework were eliminated.

PCBs, unlike other materials currently regulated under RCRA are unique in that manufacture has been banned. The basic issue to be addressed for PCBs is thus not how to manage a stream of continuously generated hazardous waste, but rather how to expedite final disposal of a chemical no longer commercially produced. Since the amount of PCBs to be disposed of is continually declining, new or modified controls on PCB disposal should be structured to expedite rather than impede disposal in an environmentally sound manner.

Industry has spent ten years developing the technology and systems needed to implement TSCA regulations designed to eliminate PCBs from the environment. Industry has worked with EPA, the states, and environmental groups to hammer out the details of the TSCA disposal rules, and by now these rules are broadly and well understood. One of the most important developments under TSCA has been the permitting of various alternative destruction methods. TSCA has the flexibility to assure close review and control of many types of facilities. Mobile facilities, for example, have been

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instrumental in expediting the elimination of PCBs from the environment. This process literally could come to a halt if PCBs become a RCRA hazardous waste.

This is not to say that the RCRA program is irrelevant to PCB disposal. In fact, a number of elements from the RCRA regulatory scheme already have been adopted for use in the TSCA program and some states already regulate PCB waste under their RCRA programs. EPA in recent years, for example, has customarily required RCRA-type financial responsibility and closure planning in TSCA permits issues to PCB treatment and disposal facilities.

It is important to recall, however, that TSCA has worked at least as effectively for PCBs as RCRA has for other materials. At the same time, the TSCA program has taken into account the unique nature of PCB disposal and has reflected the determination of Congress in 1976 to single out PCBs for comprehensive regulation under TSCA. Some gaps in the TSCA scheme, real or perceived, have emerged in recent years; but each can be accommodated within the TSCA framework. Most important, such accommodation can be achieved much faster through targeted revisions of the TSCA rules, than through a wholesale shift of the PCBs rules into the RCRA rules. It could take two to three years, perhaps even longer, to assure that the transfer of PCB disposal regulation into RCRA retains the most effective aspects of each program.

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As the House found when it passed H.R. 3070;

The Committee further understands that general factors contributed to EPA's preference of retaining regulation of PCB waste under TSCA. The agency concluded that a transfer of PCB regulation to the RCRA program would be very complex and too disruptive to the ongoing PCB waste disposal process. The agency did not believe that the necessary regulating amendments to RCRA could be accomplished in time to address the expected peak demand for PCB waste disposal, which EPA expects to occur during the next several years.

CONCLUSION

CMA thus urges that this Committee approve Section 2 of S. 2693, but delete Section 3. We fail to find any important deficiency in the regulation of PCB wastes that cannot be more expeditiously remedied through amendment and improvement of the TSCA rules. We fear that continued attempts to shift across-the-board the PCB disposal businesses of this country into an entirely different regulatory system are destined only to cause confusion that will slow this country's progress toward complete and safe elimination of PCB risks.