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PCB

PROPOSED HANDOUT TO COMMERCE COMMITTEE MEMBERS

At the October 24 Hearings of the Subcommittee on the Environment, Senator Tunney and Dr. John Buckley, consultant to EPA, engaged in a lengthy colloquy concerning the environmental dangers posed by PCBs. Dr. Buckley pointed out that PCBs may reach the environment in many fashions: as effluents into water, as emissions into the air, as solid waste, as leakage from products containings PCBs during their transportation, disposal, and use.

No one -- whether it be Senator Tunney, Dr. Buckley, or members of the chemical industry -- questions the serious problems that PCBs present to the environment. But even Dr. Buckley, when asked by Senator Tunney, flatly stated that the complete banning of all PCB production at the present time was an unfeasible solution, since there are no known substitutes for certain vital PCB uses.

The real issue raised by the dialogue -- the issue which MCA and its members have been attempting to address for several years -- is the extent to which existing federal legislation already authorizes broad and comprehensive federal control over the various exposures to substances which Dr. Buckley enumerated with regard to PCBs. Before a new and massive federal law is enacted in the form of a Toxic Substances Act, it seems beyond argument that this issue should be squarely confronted, and not passed off with generalities. The following existing statutory authorities are offered for consideration:

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(1) Under the Occupational Safety and Health Act, the Secretary of Labor may promulgate that safety and health standard which most adequately assures that no employee will suffer material impairment of health. 29 U.S.C. § 655 (b)(5). Such a standard may even mandate zero exposure. If the Secretary determines that a grave danger exists he may issue a standard immediately. 29 U.S.C. § 655(c)(1).

(2) No person may deposit into ocean waters any material, including chemical substances, unless authorized by the Administrator of EPA. 33 U.S.C. § 1411(a). Such permits may issue only when the Administrator finds that human health and the environment will not be endangered. 33 U.S.C. § 1412(a).

(3) The Administrator of EPA has authority to develop standards for plant effluents into navigable waters with regard to existing pollution sources, 33 U.S.C. §§ 1313, 1314(a), and has the authority to set pollution standards for new effluent sources, 33 U.S.C. §§ 1316, 1317. A person who discharges into waters without a permit issued either by a state with an approved program, or by the EPA, is subject to $10,000 per day penalties, 33 U.S.C. § 1319(d).

(4) The Administrator has the authority to seek an injunction for any emission into the air which he believes presents an imminent and substantial health danger, 42 U.S.C. § 1857h-1.

(5) The Secretary of Transportation has recently been given authority to regulate the transportation of materials which he finds to pose an unreasonable risk to health, P.L. 93-633, Sec. 104. If an imminent danger is found to exist, the Secretary may seek an immediate injunction to enjoin transportation of such substances, P.L. 93-633, Sec. 111(b).

This portion seems moot in view of Sec 9(g)

(6) The Secretary of Health, Education and Welfare has the authority to seek an injunction to enjoin the sale of food which is adulterated by dangerous chemical exposure, and order such food seized, 21 U.S.C. §§ 322(a), 334(a).

Federal Food Drug, and Cosmetic Act

(7) The Consumer Product Safety Commission is authorized to mandate warnings or instructions with regard to any consumer product, 15 U.S.C. § 2056(a)(2), and may ban completely a hazardous product from the market if it finds that no safety standard would adequately protect the public from unreasonable risk of injury. 15 U.S.C. § 2057.

Even the above is far from an exhaustive list of existing federal authorities which can presently be implemented with regard to PCBs or similar substances. Rather, it is a sketch of some of the more relevant statutory provisions which form the arsenal of the Executive Branch and independent agencies. Surely the Committee must consider to what extent existing problems with toxic substances relate to duplicating authorities, agency laxity, or good-faith substantive differences regarding risk. And, it is submitted that this issue must be resolved before entirely new and comprehensive legislation is enacted which duplicates much existing authority.

In short, the members of the Committee are urged to search and define the statutory gaps, if any, and to direct their legislative efforts toward that end.

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