KIRKLAND & ELLIS

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

TO: CMA PCB Panel and MegaRule Team
Dr. Leah Porter

FROM: Tim Hardy

DATE: May 22, 1995

RE: **QUICK SUMMARY OF COMMENTS 103-154**

Here's what others are saying. Most of the comments are congruent with our views -- I have put in *italics* all the items that are new or contrary, or just interesting. Those of you making oral presentations may want to look at such items in your area:

103 Roy Weston: Waste segregation should be allowed before disposal to allow different concentration wastes to go different places.

104 Mexican Group: Seeks permission to import to U.S. for disposal.

105 Shell Oil: Agrees with a number of our positions *re* (q) requirements, not equating wipe tests with PCB-contaminated, leaving pre-1978 to CERCLA, landfilling not being a release to the environment, the Green Lights program, too much recordkeeping (they are complaining that too much needs to go into the PCB log), storage limitations, and transformer registration.

106 Cherryland Electric: Opposes the PCB Transformer definition presumption.

107 U.S. Navy: Estimates rule will cost Navy $1 billion in first year and $563 million each year thereafter.

PP. 1-14: Strongly opposes (like us) the (q) authorization requirements -- including one we did not emphasize, i.e., *that solids meeting the TCLP test still have to be transported and manifested as PCB waste. But would continue to allow requirements for reporting to EPA and cleaning the materials.*
PP. 15-21: Wants to be able to export for disposal merely by notifying EPA.

P. 22: Seeks elimination of requirement of U.S. origin of PCBs for imports for disposal of Government PCBs.
P. 23: Agrees with us EPA has no authority over *re* pre-1978 spills.
PP. 25-26: Wants to be able to clean concrete.
P. 27: Interprets rule to allow smelting of PCB-painted metal.
PP. 28-29: Like us, wants coordinated approval to dispense with requirement of TSCA approval.
PP. 30-31: Like us, objects to some part of the .79 (e)and (f) decontamination procedures that do not require verification.
P. 32: 3-year storage for reuse limitation should not apply to the Navy.
P. 33: Wants to be able to develop its own Appendix III sampling protocols.
P. 34: *Objects to small transformer presumptions; suggests all transformers with insulating material weighing less than 3 pounds and all transformers in or near commercial buildings (did they leave a "not" out???) be exempt from the presumption that they are PCB transformers.*
P.35: Wants to be able to take all risk-based approval applications to EPA HQ.
P. 36: Wants to eliminate upper limit on analytical lab waste disposal in .64.
P. 37: Opposes new transformer registration.
P. 38: Clarification sought *re* sale of business and commercial storers.
P. 39: Wants 100μg wipe standard for non-porous surfaces *except in living spaces.*
P. 40: Is worried EPA may be requiring marking of small capacitors.
P. 41: Wants a presumption against enforcement for self-implemented clean up.
P. 42: Organic liquid decontamination standard (.79(h)) should be mg/kg, not mg/l.
PP. 43-45: Miscellany...

108 Cytec Industries: *Opposes universal clean up standards -- wants all criteria to be risk/site specific.* Says EPA must be careful to say 1987 spill policy 1 ppm residential requirement is not a clean up standard. Wants to be able to clean concrete. ANSI 16.1 is the way to measure microencapsulation effectiveness -- not TCLP. Appendix II is wrong in saying an entire site must be resampled when part flunks.

109 EPA Region VIII: *Wants all PCB articles (including capacitors and transformers) phased out in 5 years!!!*

110 Comite des Utilisateurs: Seems to support the petition process for import and export for disposal.

110 Assn of Am Railroads: Comments *re* marking under .40(d); like us, opposes proposed new definition of PCB Transformer.

111 Union Electric: Agrees with us *re* pre-TSCA spills, self-implementation revisions, PCB equipment definitions, porous surface cleaning, pipeline cleanup, transformer registration, (q) authorization requirements, CERCLA reporting, etc., etc. *The only item I*

PCB-ARCH-EXT0371454

noticed that may be different is their comment (p.5) about continuing to allow landfilling of liquids that have been stabilized on site.

112 Peoples Natural Gas: Seven pages of detailed comments on pipelines that appear consistent with us -- but I leave the details to others.

113 Trans-Cycle Industries: *(1) Says retrofilled transformers do not stay below 50 or 500 ppm -- thus argues for a requirement of retesting before disposal and/or requiring disposal based on original concentration!!! (2) Says no liquid-filled device should be allowed to be land-filled -- including small transformers. (3) EPA should end practice of shipping for repair/reuse without PCB manifests. (4) Many post-1979 transformers have PCBs, so transformers should be assumed not to contain PCBs only if manufactured after 1988. (5) Agrees electrical cable with PCBs should be presumed above 50 ppm -- 34% of the cable they have handled had PCBs in it. (6) Industrial burning requirements are too strict. (7) Should not allow gas pipelines to be capped in place or reused. (8) .79 decontamination procedures will allow all sorts of dilution that should not be allowed.*

114 Commonwealth Edison: Supports us *re* anti-dilution clarity, changes in electrical equipment definitions, storage issues and use of 1987 spill policy standards.

115 Water Environment Federation: Wants proposal changed to allow continued beneficial land application of municipal sewage sludge (biosolids) with detectable PCBs.

116 Oceana Electric Coop: Like us, opposes redefinition of PCB transformers.

117 National Institute of Ecology: Mexican group wants to import to U.S. for disposal.

118-119 Kentucky Power/Appalachian Power: Lengthy comments that support us *re* a multitude of electrical equipment issues *and (p. 19) raise an issue re certificates of disposal being required within 30 days of each shipment -- not within 30 days of each date of removal from service.*

120 Twin Valley Public Power: Objects to PCB Transformer redefinition.

121 S D Myers: 12 pages all about allowing import for disposal; also wants simpler R & D requirements (p. 15). Has an argument about 50-500 ppm PCB transformer disposal that I do not understand (pp. 12-13).

122 Northwest Public Power Assn: Detailed comments that support us on numerous electrical equipment issues *but also (1) make legal arguments that EPA needs to prepared an unfunded mandate statement, an environmental impact statement, a quantitative risk assessment and an improved RIA. Also raises as issues (a) the need to distinguish definitionally waste oil from used oil and (b) (p. 53)the desirability of eliminating certificate of disposal exception requirements.*

PCB-ARCH-EXT0371455

123 Upjohn: General support for the rule, plus seeks extending TCLP criterion for disposing of all wastes.

124 Washington Suburban Sanitary Cmmn: Re biosolids.

125 Pacific Corp: Comments *re* various electric utility issues that seem to be modeled on our comments.

126 Regulatory Compliance Services: Opposes electrical equipment definition changes; supports pallet storage.

127 Texas Dept. of Health: Sees no need for 761.1(g); *asks for definition of "PCB-free;" lists tradenames that indicate a transformer contains PCBs.*

128 Lewis County Public Utility District: Supports Northwest Public Power.

129 Matanuska Electric Assn: Supports NWPP.

130 California Dept. of Toxic Substances Control: *Rule should address dioxin-like congeners; newer analytical methodologies should be mentioned and various other analytical issues I do not follow; questions how EPA will make risk-based decisions; self-implemented cleanup standards may be too high and in violation of CERCLA or State standards -- favors using those standards rather than TSCA standards. California wants to know anytime shredder waste is disposed. Explains how California handles ballasts and attaches some analyses of potting material for PCBs.*

131 Eastman Chemical: Opposes (q) requirements; says disposal of all (q) materials should be exempt as if they were household waste. Includes detailed suggestions *re* Appendix II.

132 Al-Jon Inc., United Division: They make furnaces and thus object to some of the industrial furnace requirements.

133 Sierra Club: *Strong opposition to sending PCBs to boilers and industrial furnaces.*

134 INGAA: I leave these detailed pipeline comments to others.

135 Williston Basin Pipeline: Ditto.

136 Northern States Power: Supports many of our electrical equipment issues *and argues for elimination of any requirement for decontaminating collection pans used in equipment cleaning.*

PCB-ARCH-EXT0371456

137 OxyChem: Supports us on concrete, anti-dilution and Transformer registration.

138 G & S Motor Equipment: *This industrial furnace operator objects to the proposed requirements and proposes its own.* Also opposes 48-hour draining.

139 Army Corps of Engineers: Lengthy individual comments from four different individuals. Like us, objects to new electrical equipment definitions, (q) requirements, calling chemical analyses R & D, the need for EPA approval of coordinated approvals. *Includes detailed comments on the .64 analytical lab requirements (p. 8) and on the applicability of the (q) requirements to paint and coatings containing PCBs (pp. 10-17).*

140 Florida Power and Light: *Detailed comments all about industrial furnaces.* Also oppose 48 hour draining.

141 N.J. Auto and Materials Recycling Assn: The fluff people want their automobile shredder residue (ASR) to be TSCA exempt if it meets the TCLP test and also have comments on Appendix III.

142 CRA Consulting Engineers: Like us, want TCLP criterion to be available for all waste disposal, like us have problems with microencapsulation definition, treatment of concrete, specification of kerosene, Appendix II.

143 General Services Administration: Want it clear there is no obligation to look for (q) materials; want (q) requirements modified; say the limit on ballast disposal in local landfills should be raised to 300/month.

144 Cooperative Power: Short comments supporting us on electrical equipment issues.

145 N.H. Rural Electric Coop Assn: Ditto.

146 Northern Indiana Service Co.: Generally consistent with us except: *finds some value in classifying equipment by wipe test results, wants PCB-contaminated equipment not to be TSCA-regulated for disposal, says voltage regulators can be regulated like transformer. Also has some details re small transformers.*

147 Dept. of Energy: 106 pages single-spaced comments on innumerable issues, including:

P. 5: Allow use of AEA landfills for mixed radioactive/PCB waste.
P. 7: Use performance standards for storage areas -- nix 6" curbs.
P. 8: Re (q) materials, no need to look.
P. 9: Equate 10 μg to 2 (not 50) ppm, and 100 μg to 50 ppm.
P. 12: More storage options needed for large volume waste.

PCB-ARCH-EXT0371457

P. 13: Nix risk-based disposal options (.61 and .62 (c)); leave all such decisions to CERCLA.
PP. 14-37: Like us, many objections to restrictions on self-implementation clean up.
P. 38: Allow concrete clean up.
P. 38: Like us, asks that Appendix II be replaced by a performance sampling standard as in 1987 policy.
P. 41: Pumps, pipes, etc. used in clean up should not need to be decontaminated to be reused.
PP. 44-47: All about radioactive waste.
PP. 48-53: Objections to (q) requirements.
P. 53: Cable should be unregulated for use.
PP. 56-60: All about .64 analytic lab waste disposal.
PP. 61-65: All about R & D.
PP. 67-69: Objections to electrical eqpt definition changes.
P. 69: Nix 48 hour drains.
PP. 73-75: Nix storage for reuse restrictions.
PP. 85-88: Coordinated approvals too clumsy.
P. 91: Nix transformer registration.

148 Am Iron and Steel Institute: Supports us on a number of definitional and clean up issues. *Main addition is argument that regulating drained PCB equipment will interfere with scrap recycling.*

149 Bridgestone/Firestone: Like pre-1978 presumption, *but argues TSCA clean-up levels should not be presumptive at old sites and that EPA should prefer site-specific risk assessments. Argues 1987 standards should apply only to new spills.*

150 Specialty Steel Industry of North America: Supports pre-1978 presumption, self-implementing disposal options, procedure for decontaminating concrete, new anti-dilution policy; opposes transformer registration and wants an exemption for small transformer from use requirements. *Argues costs should be considered in risk-based disposal assessments.*

151 Steel Manufacturers Assn: Almost identical to Specialty Steel comments, but also includes comments on Appendix III and includes an alternative proposal for shredder residue sampling.

152 ???:

153 Dept. of Energy: Their RCRA comments.

154 Tenneco Gas: The Walsh/ENVIRON Comments.

PCB-ARCH-EXT0371458

Westinghouse: *Don't allow any of the new clean up criterion to be applied retroactively to already cleaned sites.* Like us, objects to a number of the limitations on .61 clean up. RCRA trigger should be 25 ppm. Concrete should be non-porous. Need to be able to store radioactive wastes 5 years. Objects to (q) requirements "vehemently." And numerous other comments that seem consistent with us.

Automobile Manufacturers Assn: Endorses our comments and emphasizes need to do away with restrictions on self-implemented clean up, need to allow import for disposal, and problems with (q) requirements.

PCB-ARCH-EXT0371459