COVINGTON & BURLING
888 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20006

TELEPHONE: (202) 452-6000
WRITER'S DIRECT DIAL NUMBER
452-6412

TWX: 710 822-0005
TELEX: 89-593
CABLE: COVLING

EDWIN S. COHEN
OF COUNSEL

NEWELL W. ELLISON
H. THOMAS AUSTERN
HOWARD C. WESTWOOD
CHARLES A. HORSKY
DONALD H. BOS
JOHN T. SAPIENZA
JAMES H. McGLOTHLIN
ERNEST W. JENNES
STANLEY L. TEMKO
JAMES C. McKAY
JOHN W. DOUGLAS
HAMILTON CAROTHERS
J. RANDOLPH WILSON
ROBERT B. OWEN
EDGAR F. CZARRA, JR.
WILLIAM H. ALLEN
DAVID B. ISBELL
JOHN R. JONES, JR.
PAUL R. DUKE*
PHILIP R. STANSBURY
CHARLES A. MILLER
RICHARD A. BRADY
ROBERT E. O'MALLEY
EUGENE I. LAMBERT
JOHN VANDERSTAR
NEWMAN T. HALVORSON, JR.
HARVEY M. APPLEBAUM
MICHAEL B. HORNE
JONATHAN D. BLAKE
CHARLES E. BUFTON
ROBERT N. SAYLER
T. EDWARD BRUCE
DAVID N. BROWN
PAUL J. TAGLIABUE
ANDREW W. SINGER
DAVID H. MICKMAN
RUSSELL H. CARPENTER, JR.
NICHOLAS W. FELS
THEODORE L. GARRETT

JOHN G. LAYLIN
FONTAINE C. BRADLEY
EDWARD BURLING, JR.
JOEL BARLOW
J. HARRY COVINGTON
W. CROSBY ROPER, JR.
DANIEL M. GRIBBON
HARRY L. SHNIDERMAN
DON W. HARRIS, JR.
WILLIAM STANLEY, JR.
WEAVER W. DUNNAN
EDWIN M. ZIMMERMAN
JEROME ACKERMAN
HENRY P. SAILER
JOHN H. SCHAFER
ALFRED H. MOSES
JOHN LEMOYNE ELLICOTT
DAVID E. McGIFFERT
H. EDWARD DUNKELBERGER, JR.
BRICE McADOO CLAGETT
JOHN S. KOCH
PETER BARTON HUTT
HERBERT DYM
CYRIL V. SMITH, JR.
MARK A. WEISS
HARRIS WEINSTEIN
JOHN B. DENNISTON
PETER J. NICKLES
MICHAEL BOUDIN
BINGHAM B. LEVERICH
ALLAN J. TOPOL
VIRGINIA G. WATKIN
RICHARD D. COPAKEN
CHARLES LISTER
PETER D. TROOBOFF
WESLEY S. WILLIAMS, JR
DORIS D. BLAZEK
WILLIAM D. IVERSON

*NOT MEMBER D. C. BAR

January 6, 1977

MEMORANDUM TO PCB AD HOC COMMITTEE MEMBERS

We are enclosing herewith a copy of the reply brief we filed yesterday on your behalf with the EPA in the PCB toxic pollutant proceeding. As of this morning, we have received the reply briefs of EPA, EDF and NRDC. With one exception, none of these briefs include anything worthy of special comment. Recognizing the merits of our argument that the proposed credit for the presence of PCBs in the effluent was unduly arbitrary, the EPA staff recommended in its reply brief a new section that would permit a credit for PCBs in the influent even if the influent is from a body of water different from that into which the plant discharged PCBs, provided that the PCB concentrations in the intake water did not exceed the concentrations in the receiving waters. A copy of this new proposed section is attached.

As we did with the opening briefs, we are forwarding copies of all the briefs to Mr. Richard Rollins and will forward any one or all of the briefs to any of you upon request.

Prior to filing our reply brief, the Administrator issued his final ruling in the Aldrin/Dieldrin, DDT, Endrin and Toxaphene toxic pollutant proceedings. In his opinion the Administrator rejected virtually all the arguments made by the industrial concerns seeking higher discharge standards for Endrin and Toxaphene, the only two contested pollutants. It appears that the Administrator adopted almost completely the position proposed by EPA's staff. Although our position in this

PCB-ARCH0746871

proceeding is somewhat different from that taken by the industrial parties in the Aldrin proceeding, the Administrator's decision is not a favorable sign for our case. This fact, together with the evidence proving that some higher chlorinated PCB mixtures are toxic as well as carcinogenic, causes us concern that an adverse ruling may be rendered in this case as to all PCB mixtures. Therefore, immediate consideration must be given to the question whether judicial review should be sought in the event of an adverse ruling. We will be communicating with you in more detail on that question shortly.

Peter J. Nickles
Steven S. Rosenthal
John Michael Clear

cc: Messrs. Tyler Nourse
David Wood