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July 17, 1992

Via Hand Delivery

Steven A. Book, Ph.D.
Interim Director
Office of Environmental Health Hazard Assessment
Cal EPA, 601 North 7th Street
Sacramento, California 94234-7320

Re: Proposed Rulemaking:
Safe Drinking Water and Toxic Enforcement Act of 1986.
Amendments to Title 22 Cal Code of Reg. §§ 12705(c)(2).
Hearing Date: July 17, 1992.

Dear Dr. Book:

I am writing on behalf of the Utility Solid Waste Activities Group (USWAG) and the National Electrical Manufacturers Association (NEMA) with regard to OEHHA's proposal to set a "specific regulatory level posing no significant risk" for polychlorinated biphenyls (PCBs).

In 1987, USWAG and NEMA presented data and testimony concerning PCBs to the Governor's Proposition 65 Scientific Advisory Panel (SAP). As Secretary to the SAP, you will recall that after reviewing a considerable body of evidence, and considering the views of both State and industry scientists, the SAP specifically limited its listing recommendation to only those PCBs mixtures that contained "60 or more percent chlorine by molecular weight." That recommendation was reflected in a January 1, 1988 agency action adding "PCBs containing 60 or more percent chlorine by molecular weight" to the list of chemicals known to the State to cause cancer.

In 1989, the SAP designated the U.S. Environmental Protection Agency (EPA) and the International Agency for Research on Cancer (IARC) as "authoritative bodies" for Prop. 65 purposes. Chemicals identified as carcinogens by those "authoritative bodies" were then incorporated onto the Governor's [Prop. 65] List by operation of law. Since then, the Governor's List has had two

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separate listings for polychlorinated biphenyls: the 10/1/89 entry simply lists PCBs without distinguishing among the different mixtures, while the 1/1/88 entry reflects the SAP's express determination to limit the PCB listing to mixtures at "60 or more percent chlorine by molecular weight."

Many in the regulated community already have called upon OEHHA to remedy this anomaly. They have suggested that when ". . .the SAP specifically finds that a chemical should or should not be listed, their views should be given effect."[1] Now, a proposed amendment to Title 22 Cal Code of Reg. § 12705 threatens to compound the confusion. OEHHA's proposal to set a single "no-significant risk" number for all PCBs fails to distinguish among PCBs, a family of many mixtures with different properties and toxicities. The proposed regulation is inconsistent with the SAP's express finding that only PCBs at >60% chlorination are known carcinogens and also violates the provisions of § 12703(a), which require that a risk assessment for a chemical be based on standards and evidence comparable to the scientific standards and evidence used in making the initial listing decision.[2]

Common sense and OEHHA's own regulations dictate that the scientific standards and evidence used in a quantitative risk assessment be consistent with the standards and evidence relied on in determining whether the chemical was carcinogenic in the first place. In making its PCB listing decision, the SAP expressly determined that it was necessary to distinguish among PCB mixtures and that any listing should be limited to >60% chlorination PCBs. In light of that determination, a regulation that would set a single "no significant risk" number for all PCBs simply cannot withstand judicial scrutiny.

For these reasons, we would ask that OEHHA withdraw its proposed

[1] See e.g. February 19, 1992 memo concerning Cal EPA's Review of Proposition 65 Implementation to Charles Shulock of Cal EPA from the American Electronics Association, the California Chamber of Commerce, the California Farm Bureau, the California League of Food Processors, the California Manufacturers Association, the California Retailers Association, the Chemical Industry of America, the Grocery Manufacturers Association, the Western Agricultural Chemical Association, the Western Growers Association, and the Western State Petroleum Association.

[2] A quantitative risk assessment "shall be based on evidence and standards of comparable scientific validity to the evidence and standards which formed the scientific basis for listing the chemical as known to the State to cause cancer." Title 22 Cal. Code of Reg. § 12703(a).

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amendment to § 12705(c)(2) concerning PCBs, and propound a new standard that would distinguish among PCB mixtures and make it clear that it is only the >60% chlorination PCBs that are "known to the State to cause cancer."

Respectfully submitted,

Robin M. Shapiro

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