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November 8, 1979

BY HAND

Mr. Herbert J. Rowe
Staff Vice President
Parts Division
Electronic Industries Association
2001 Eye Street, N.W.
Washington, D.C. 20006

Dear Herb:

You requested that I prepare a short synopsis of the basic issues raised by the Environmental Defense Fund (EDF) in its brief filed with the United States Court of Appeals for the District of Columbia Circuit. As you are aware, EDF is seeking to overturn the PCB regulations issued by EPA on May 31, 1979.

EDF's brief essentially makes four points:

1. EDF first contends that EPA disregarded the congressional intent in enacting the section of the Toxic Substances Control Act which deals specifically with PCBs. EDF argues that Congress intended that all PCBs be regulated and seems to be suggesting that Congress wanted EPA to regulate the use of PCB capacitors and transformers in the hands of the ultimate consumer. It has always been our position that Congress never intended EPA to regulate these "totally enclosed" uses.

2. EDF further contends that EPA unlawfully refused to regulate PCB mixtures which contain less than 50 ppm PCB. In other words, EDF believes that anything containing even the most minute amounts of PCBs must be regulated by EPA and cannot be used unless EPA has provided permission for its continued use or sale.

3. EDF contends that EPA improperly classified PCB transformers, capacitors, and electromagnets as enclosed uses. It appears to be their argument that since each

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of these pieces of equipment has a potential to leak or rupture, it cannot be considered a totally enclosed use but must instead be subject to the stricter limitations enacted by Congress with respect to non-totally enclosed uses.

4. Finally, EDF argues that the authorizations for continued non-enclosed uses of PCBs, contained in EPA's regulation of May 31, 1979, were unlawful both in their scope and duration. EDF criticizes EPA's reliance on the severe economic impact of a failure to grant the authorizations and contends that such cost considerations should be given little, if any, weight by EPA.

I hope this brief summary of the major contentions in the EDF brief will be of assistance to you. Please be assured that I stand ready to provide you any further information you may request.

Sincerely,

Steven S. Rosenthal

Steven S. Rosenthal

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