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December 3, 1976

Richard L. Rollins
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Dear Dick:

The PCB proceeding at the Environmental Protection Agency has concluded its evidentiary stage and we are in the process of preparing our initial brief, which is to be filed on December 22. In this letter we will review the progress of the hearing, and outline the arguments we intend to make in our brief to the Administrator. We are anxious to receive any comments you or other members of the Ad Hoc Committee may have on these arguments. Although we will review the brief with Roger Wills and yourself before filing, it may be difficult to get draft copies to all members of the Committee due to the short period of time in which we must complete the document. Accordingly, we attach a detailed outline of the brief for the information of all members of the Committee and for their review.

Progress of the Hearing

In our letter of October 8 we reviewed the EPA witnesses' testimony. Some of the witnesses presented by the agency made poor witnesses, and the great bulk of the evidence presented related to Aroclors other than Aroclor 1016. Some evidence on the toxicity of 1016 was presented,

but the agency's case rests significantly on the alleged toxic comparability of 1016 and 1242.

We focused our evidence on 1016. Through the testimony of Dr. Gerald Lauer, an acquatic biologist, we undertook to prove that Aroclor 1016 had different acquatic bioaccumulation tendencies and that the data presented by the EPA served to establish a marked difference in bioaccumulation in acquatic organisms between 1016 and all other Aroclors. Dr. Lauer testified that the maximum bioaccumulation factor for 1016 which has a good scientific basis is between 50,000 and 73,300. Using the established 5 ppm FDA standard for PCB content in food (which applies generally to all PCB, and thus would provide a substantial margin of safety due to the toxicological differences between Aroclor 1016 and the more highly chlorinated Aroclors), Dr. Lauer stated that an ambient water criterion for Aroclor 1016 should be between 0.1 ug/l and 0.068 ug/l. Using the EPA's own dispersion factor of approximately 1000 to adjust ambient standards to standards at the pipe, this would mean 68 to 100 parts per billion at the pipe.

The EPA and the environmentalists can be expected to challenge this testimony in several ways, attacking both the validity of the bioaccumulation factors used by Dr. Lauer, and the validity of the 5 ppm standard. The agency had presented evidence of substantially higher bioaccumulation factors based on both laboratory and field studies, and the evidence is in conflict as to whether these higher factors may be accurate. Further, because he was not a mammalian toxicologist, Dr. Lauer could not independently support the 5 ppm standard. In his testimony Dr. Lauer explained that he was merely using it as a reference point. The record shows that some evidence of toxicological effects in mammals has been found for Aroclor 1016 at levels lower than 5 ppm.

Dr. Mueller who testified for us is a chemist doing primate research on the metabolic effects of PCB isomers on mammals. He testified that in his opinion Aroclor 1016 was substantially different in its chemical composition from any of the other commercial compounds of PCB, and that its lower chlorinated isomers should not have

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the toxic effects of the other more highly chlorinated Aroclors. He discussed at length the differences between 1016, 1242, 1248 and other PCBs used in the mammal studies relied upon by the EPA. Taken together, the testimony of our two scientists, if accepted by the Administrator, would support a discharge standard of 68 to 100 parts per billion.

We also presented evidence that measuring for PCB levels in industrial effluent is extremely difficult, and that test reports at levels of 1 part per billion and lower are unreliable and non-reproducible. Dr. Eunice Moore of EUC presented the results of the survey she conducted on our behalf, showing the experience with commercial test laboratories of all the companies which are members of the Ad Hoc Committee. These data demonstrated that no company has been able to obtain reliable and reproducible test reports from commercial laboratories on identical samples of effluent. Dr. Moore's survey was conducted very ably, and she was able to answer in detail all questions put to her by EPA counsel.

Mr. James Laubscher, who is the director of the Woodson-Tenent Laboratory in Memphis, Tennessee, testified concerning the technical reasons why laboratories are unable to agree as to PCB content down to 1 part per billion or lower. During the heavy cross-examination by the EPA, Mr. Laubscher testified that the testing methodologies and equipment available today cannot reliably test to such low levels, and that testing at 1 part per billion would result in variances ranging from 100 to 400 percent. As to testing to 1 part per trillion, a standard suggested by the environmentalists, Mr. Laubscher testified that the range of reasonable variations at this level would be by factors of 25 to 50.

John Hutzler of Aerovox Industries, Phil Murray of Cornell-Dubilier, and Ray Clark of Universal Manufacturing all testified for the Ad Hoc Committee. They explained the problems the industry would face if the 1 part per billion limitation were imposed on Aroclor 1016, and the significant hazards of fire presented by all known substitutes. John Hutzler discussed the thirty years' effort of the industry to develop a substitute for PCB. He testified that no substitute exists which is a satisfactory replacement for Aroclor 1016. Phil Murray testified as to the effects of

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the proposed toxic effluent regulations on C-D. Because he was the first witness for the EIA, Mr. Murray was exposed to a wide range of questions which went beyond the scope of his prepared statement--all of which he handled well. Ray Clark was also questioned at length concerning the nature and use of capacitors, the problems the industry has faced with measurement of PCB levels in industrial effluent, and the difficulties of locating a substitute. All three witnesses did an outstanding job of presenting the industry's position.

We are pleased with the testimony presented by our witnesses, although we must recognize that few of the facts we sought to establish are undisputed and in most cases the record contains conflicting evidence which might permit a range of different decisions by the Administrator.

The Environmental Defense Fund's only witness was a NIOSH representative who sponsored the Mobil Oil 1254 cancer study. We believe that the final decision by the Administrator will not, in all likelihood, be based on the Mobil Oil Paulsboro study. Dr. Roscoe Moore of NIOSH was ill-prepared to support the Mobil study and testified (a) it was a preliminary report, (b) it was based on an extremely small sample, (c) Mobil refused to give additional records to the epidemiologist conducting the study to permit development of a control group or to attempt to determine whether other chemical agents might have caused the effects, and (d) he personally would have conducted the study differently had he been given the assignment.

The Environmental Protection Agency also faced some similar difficulties with their witness who introduced and supported the agency's economic impact assessment. Dr. Ernest Mosbaek of Jack Faucett, Inc., a consulting firm, was unable to answer most of our questions concerning the report, and on the stand revised a number of conclusions contained in the report. He made a very poor witness, and the economic impact document was shown to be an unreliable and poorly prepared study, although this will not have a direct bearing on the issues before the Administrator.

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Arguments To Be Made in Our Brief

The attached outline of our proposed brief explains in greater detail the arguments we intend to make concerning regulation of Aroclor 1016 effluent. After establishing the factual background of the case including (a) the nature of Aroclor 1016 and its important differences from other PCB, (b) the nature of capacitors and the importance of Aroclor 1016 to capacitor production and (c) the problems of replacing PCB, we intend to make two principal arguments. First, we intend to take the position that the facts and law do not support regulation of Aroclor 1016. We will contend that the Toxic Substances Control Act effectively preempts the field, and establishes the Congressional intent to supplant EPA regulation in the area with the Congressional TSCA program of PCB regulation. We also intend to argue that notwithstanding the TSCA, the evidence establishes that a uniform national PCB standard does not make sense because local conditions vary so greatly that site-by-site regulation is required.

Our second argument will assume that some regulation of Aroclor 1016 is to be established, and will focus on what level of effluent regulation should be adopted. As we described earlier, taken in the light most favorable to our position, the evidence suggests that a toxic discharge limitation of 68 to 100 parts per billion at the pipe is appropriate. Such a discharge level is arguably consistent with the scientific evidence on toxicity and bioaccumulation, and probably provides an ample margin of safety since it is based on a 5 ppm FDA standard which applies equally to the much more highly chlorinated compounds such as 1254 and 1260. Finally, we will argue that the 68/100 standard permits a reasonable basis for regulation because testing at that level can be done accurately and reliably.

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Any comments you would have on these arguments would be appreciated.

Best regards,

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Steven S. Rosenthal
John Michael Clear

jlf

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