

TESTIMONY OF THE
CHEMICAL MANUFACTURERS ASSOCIATION,
UTILITIES SOLID WASTES ACTIVITIES GROUP
AND NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

ON H.R. 3070

Before the
House Subcommittee on
Transportation, Tourism and Hazardous Materials

November 18, 1987

INTRODUCTION

The Chemical Manufacturers Association (CMA), Utilities
Solid Wastes Activities Group (USWAG) and ^{the} National Electri-
cal Manufacturers Association (NEMA) appreciate the opportu-
nity to appear here this morning. As members of the PCB
Consensus Group, we have worked closely with EPA to develop
sound regulations under the Toxic Substances Control Act
(TSCA) for control of activities involving PCBs. Through
the efforts of the Consensus Group, whose members also in-
clude representatives of the Environmental Defense Fund and
Natural Resources Defense Council, the TSCA PCB regulations
have become a sound framework through which the Congression-
al goal of ¹⁹⁷² controlled use and disposal ^{of PCBs} is being successfully
implemented.

Along with other members of the PCB Consensus Group -- both the environmental groups and other industry organizations including the American Association of Railroads and Hazardous Waste Treatment Council -- we have over the past year been addressing a variety of issues related to PCB disposal. The PCB Consensus Group proposed to EPA this August specific regulatory language to amend the TSCA disposal rules in the areas of manifesting, intermediate activity permitting, and financial responsibility -- the same areas that are addressed in H.R. 3070. ^{In August,} ~~We~~ encouraged the Agency to work expeditiously to adopt such changes ^{under TSCA} and thus welcome the Agency's announcement ⁱⁿ that ^{TSCA} rulemaking is now planned. Insert B

BACKGROUND OF THE PCB DISPOSAL
ISSUES ADDRESSED IN H.R. 3070

^a Because ~~of the~~ sound framework ^{was} established in the existing PCB TSCA disposal rules, we believe the vast majority of all PCB-containing wastes in this country are currently being handled responsibly and safely. ^{Because} ~~Because~~ the rules have been in effect for more than a decade and have become well-understood by the regulated community, ^{compliance} ~~compliance~~ with the rules is the norm. In addition, the stability of the rules has encouraged investment in technologies that, consistent with the rules, encourage and accelerate safe disposal methods.

Although there have been incidents of improper PCB disposal -- some of them well-publicized -- we do not believe

the cause of such incidents was an inadequate regulatory framework. In each of those instances, existing rules were being violated, EPA was aware of the violations, and the fault, if fault is to be found, is that enforcement for such violations was not swift and comprehensive.

We nonetheless agree with the concerns expressed by the sponsors of H.R. ⁷⁰³⁰~~3070~~ that some changes in the TSCA PCB disposal rules would be appropriate to ^{en}~~assure~~ that sound management and ~~regulatory~~ practices currently employed for most PCB disposal activities ^{be regulated, and used}~~are employed~~ universally. ~~Our August~~ ^{these} ~~proposal to EPA reflected these changes.~~

We also believe it important, as do the sponsors of H.R. 3070, that any such changes be implemented through TSCA rules rather than through transferring PCB disposal regulation to the Resource Conservation ^{and}~~Recovery~~ Act (RCRA) framework. As EPA found when it was reviewing the possibility of moving PCB disposal to RCRA, the TSCA framework was specifically adopted to handle the unique features of disposal of ^{PCB}~~this chemical~~ and equipment in which ^{PCBs are}~~it is~~ contained, and much would be lost if the current workable framework were eliminated.

← The PCB Consensus Group's ^{August} proposal to EPA for TSCA rule amendments ^{reflects these changes.}~~addresses the three~~ issues also addressed in H.R. 3070.

First, ~~it would require~~ manifesting of PCB wastes between generators and disposal. ^{would be required} Most PCB disposal is currently ^{voluntarily} manifested, ^{or} and a requirement to that effect seems reasonable to ^{en} assure all such wastes are tracked.

Second, ~~it would require~~ ^{permitting of} intermediate activities ^{would go} to be ~~permitted~~. ^{permitted} ^{permits are required for} Persons currently involved in treatment or disposal of PCBs ~~are required to be permitted~~; extending such requirements to other persons involved in the disposal system seems appropriate.

Third, ~~the Consensus Group proposal calls for~~ financial responsibility requirements ^{would be required for} in any TSCA PCB treatment, intermediate activity or disposal permit. EPA has been imposing such requirements in permits for PCB disposal activities; ^{en} ~~assuring~~ that such requirements are uniformly imposed seems appropriate.

The Consensus Group proposal also addresses two issues ⁱⁿ not ~~addressed~~ by H.R. 3070. It would require notification to EPA of the location of commercial areas storing PCBs for disposal. It would also ^{require} ~~call for~~ public notice of requests for permits.

Note:
Believe
this
will be
eliminated

In proposing amendments to the TSCA disposal rules, the Consensus Group recognized ~~there were~~ a number of detailed questions ~~that needed to be~~ ^{ad} resolved ^{ution} in order to develop meaningful regulations. For example, there is a need to determine at what point in the disposal chain the manifesting requirements begin; exactly which ^{actions} ~~persons~~ should be

classified as intermediate activities; and what types of financial responsibility requirements make sense for each type of intermediate activity, treatment and disposal activity. EPA, too, recognized the need to look closely at these and other issues in ^{its} ~~their~~ September 18 response to the Consensus Group. ^(Attached)

THE MERITS OF LEGISLATION
ON PCB DISPOSAL REGULATION

EPA has already announced the initiation of a program that will lead to manifesting and notification requirements for PCB disposal activities. The Agency has further indicated it will be providing uniform guidance for financial responsibility requirements in permitting. Should EPA act expeditiously to accomplish these programs, ^{goals of} ~~there would be~~ ^{would be accomplished.} ~~no need for passage of H.R. 3070 to accomplish its underlying goals.~~ ^{introduction of}

^{While H.R. 3070 probably encouraged EPA to pursue these issues under the} ~~statutes,~~ ^{He} ~~we are concerned that passage of H.R. 3070 could slow~~ ^{at this time} ~~down progress toward TSCA regulatory changes.~~ As noted above, a number of questions exist about how manifesting, permitting and financial responsibility requirements should be implemented. We believe ~~it quite likely~~ ^{that,} even were H.R. 3070 enacted, ~~there would be a need for~~ ^{would still} EPA regulations ~~clarifying and detailing~~ ^{needed to} the statutory mandates.

We do not want ~~the Agency, and hope EPA does not con-~~ ^{to} ~~template,~~ ^{and} ~~stopping work~~ ^{awaiting} a determination of whether

and what it may mandate
legislation is ~~to be~~ forthcoming. Rather, we ~~would~~ hope
TSCA regulatory amendments of the type we proposed ~~would~~ ^{will} is-
sue soon, ~~and Congress, the regulated community and others participants~~ ^{we are also concerned that the time frame for}
~~implementation mandated in H.R. 3070 may be too ambitious and cause~~
~~could all feel that they had contributed toward causing the~~
~~reputable firms to close and thus slow down ordering & timely disposal~~
~~Agency to enact these changes expeditiously. + movement of PCBs,~~
from the Agency. ~~We therefore believe that action~~
of H.R. 3070 ~~be~~ ^{postponed} and EPA be encouraged to
act ^{in an a reasonable time frame} ~~under the current statute~~, If proposed amendments to TSCA
are not forthcoming, then passage of H.R. 3070 may
be appropriate.

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SPECIFIC CHEMICAL MANUFACTURERS ASSOCIATION
COMMENTS ON THE LANGUAGE OF H.R. 3070

The Chemical Manufacturers Association (CMA) PCB Program Panel understands that the intent behind H.R. 3070 is not to change existing definitions and regulatory controls under the Toxic Substances Control Act (TSCA) regulations for PCB disposal, 40 C.F.R. Part 761, but rather to supplement those regulations. Supplementary regulations would be enacted in three areas: (1) manifesting, (2) permitting of intermediate activities, and (3) financial responsibility requirements for permittees. In furtherance of this aim, we would like to bring to the Committee's attention three areas of clarification.

First, we assume that the exception from the manifest requirement in Section 1(a)(6)(C) would cover not only the defined generators but also transporters of materials from such generators.

Second, we would recommend that the provision in Section 1(a)(8)(E) allowing already-permitted activities to continue without obtaining additional permits should cover persons with approval from the Administrator to "treat or" dispose covered polychlorinated biphenyls. The addition of the phrase "treat or" would clarify that this provision covers all persons EPA has granted TSCA PCB disposal permits whether the activity is considered treatment or disposal. EPA has under TSCA used its disposal permitting authority to cover both types of activities and, on occasion, has even indicated that incineration is treatment rather than disposal.

Third, we would recommend that the definition of "covered polychlorinated biphenyls" in Section 1(a)(9)(A) be worded in terms of "polychlorinated biphenyls that are subject to the disposal regulations issued by the Administrator as of July 1, 1987." This wording clarifies that the PCBs subject to the disposal rules both now and after the legislation passes are those materials with concentrations of 50 ppm or greater.