

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JAN - 4 1989

Mr. Timothy S. Hardy
 Kirkland & Ellis
 655 Fifteenth St., N.W.
 Washington, D.C. 20005

Dear Mr. Hardy:

This is in response to your letter of September 9, 1988 seeking written confirmation of your discussion with Tom Simons of my staff on August 23, 1988 concerning two clarifications he provided on the recent amendments to the "Uncontrolled rule."

First, you inquired as to why the Environmental Protection Agency (EPA) added to the definition of "Excluded PCB products" in 40 CFR 761.3 the phrase "source of the products." The proposed rule language simply says products containing < 50 ppm concentration PCBs that were legally manufactured, processed, distributed in commerce or used before October 1, 1984 would be excluded from regulation. The phrase, "source of the products," was added as a result of a comment from SoCalGas. It was added to clarify that included within the definition of "Excluded PCB products" are those products with PCBs < 50 ppm after October 1, 1984 (but did not exist prior to October 1, 1984) and the source of that contamination is from a product that itself is an excluded product or "legal" prior to October 1, 1984. Heat transfer and hydraulic equipment serve as a good example.

As you know, heat transfer and hydraulic systems were not authorized above 50 ppm PCBs after July 1, 1984. Prior to that date owners had to test and work to reduce the concentration of PCBs in these systems to less than 50 ppm PCBs. This meant draining these systems and filling them with non-PCB fluid to reduce the concentration to below 50 ppm. SoCalGas presented the following scenario: drained and "legal" systems i.e., tested at less than 50 ppm prior to October 1, 1984, are filled with non-detect oil after October 1, 1984. The residual low level concentrations of PCBs in these systems raises the concentration of this oil to above non-detect but below 50 ppm PCBs. SoCalGas read the proposed rule to mean that this oil, because it was "created" after October 1, 1984, would therefore not meet the definition of an excluded product and therefore not be authorized. This was not EPA's intent and to avoid any confusion, the language "source of the product" was added to the final codified section of the rule.

CONCURRENCES

SYMBOL	TS-798	TS-796					
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Your second inquiry concerns whether section 761.20(c)(5) which refers to decontaminated equipment and structures is intended to allow not only distribution in commerce (as stated) but also use (as is implied but not stated). As Tom stated in your previous conversation, it is clear in the preamble (53 FR 24209) and the PCB Spill Cleanup Policy (FR April 2, 1987) that EPA intends that the use of decontaminated materials is authorized.

I hope this helps to clarify the two issues you raise in your letter. If you have further questions or comments you may contact me or Tom Simons of my staff at 202-382-3933.

Sincerely,

Denise M. Keehner, Chief
Chemical Regulation Branch