



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 24 1998

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Kathleen Petrilli, Esq.
Lester J. Taufen, Esq.
Elf Atochem North America, Inc.
2000 Market Street
Philadelphia, PA 19103-3222

Re: Letter dated July 23, 1997

Dear Ms. Petrilli and Mr. Taufen:

This is in response to your letter of July 23, 1997, in which you seek the Agency's clarification of the definition of "excluded manufacturing process" as found in the PCB regulations at 40 CFR § 761.3. Specifically, you asked whether that definition applies to the dielectric fluid that you import which was found in January 1997 to contain PCBs above 2 ppm but less than 25 ppm. You stated that the source of the PCBs was the nitrogen network in a subcontractor's plant that previously serviced facilities that handled PCBs. You stated further that the nitrogen is used to establish an inert pad above the contents of the storage tanks and shipping containers. Based on this information, we conclude that the nitrogen was added to the tanks and containers after the production of the dielectric fluid was complete.

The Environmental Protection Agency (EPA), acting pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, determined in 1979 that section 6(e) of TSCA applies when PCBs are generated inadvertently as unintentional byproducts or impurities during the manufacture of other substances (44 FR 31514, May 31, 1979). On July 10, 1984, EPA issued a final rule (49 FR 28172) excluding certain low level inadvertently generated PCBs from the ban on manufacture, processing and distribution in commerce if the PCBs were generated during the manufacture of other substances. The effect of the rule was to exempt chemical manufacturers who inadvertently generate PCBs and importers who import chemicals the production of which inadvertently generated PCBs from the ban on manufacture and import of PCBs, provided certain conditions were met.

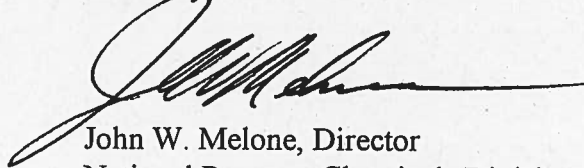
PCBs inadvertently manufactured domestically or abroad are treated in the same manner by this regulation, except for the restrictions on releases to air and water, and the disposal of other process wastes above 50 ppm. These restrictions relate to the manufacturing process and have no relevance to already manufactured imported products. To qualify for the exemption, the source of the PCBs in a product must have been the manufacture of the product itself. The term

"generated" refers to the creation of the impurity in the product's manufacturing process. It does not refer to the addition of pre-existing contaminants (in this case from the nitrogen network). Since the PCBs in the dielectric fluid in your situation were added after the manufacture of the final product during a step to facilitate storage and transport and were not inadvertently generated during the production of the final product, the Agency does not consider your import of the contaminated dielectric fluid to be allowed by 40 CFR §§ 761.1(f) and 761.3.

If your argument were correct, products manufactured abroad would have a decided advantage over those manufactured domestically. Any products unintentionally contaminated with low levels of PCBs could be imported and sold, while similar products manufactured in the U.S. and accidentally contaminated in the same manner could not be sold. In promulgating this regulation, EPA did not intend to treat imported products differently from domestic products with respect to inadvertently manufactured PCBs.

If you have any further questions or comments concerning this determination, you may contact Tom Simons of my staff at 202-260-3991.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Melone", with a long horizontal flourish extending to the right.

John W. Melone, Director
National Program Chemicals Division

cc: David Greenlaw, Region II
Geraldine Gardner, OECA
Andrea Medici, OGC