

**Utility Solid Waste Activities Group**

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U S W A G

**BY HAND DELIVERY**

October 27, 2009

The Honorable Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code: 1101A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

RE: Environmental Justice Notice of Intent to Sue Under TSCA

Dear Administrator Jackson:

I write on behalf of the Utility Solid Waste Activities Group (“USWAG”)<sup>1</sup> to respond to some of the inaccurate statements contained in the March 26, 2009 letter that was sent to you by Environmental Justice and New York Lawyers for the Public Interest (collectively, “Environmental Justice”) informing EPA of Naomi Gonzalez’s intent to sue the New York City Department of Education and New York School Construction Authority under the citizen’s action provision of the Toxic Substances Control Act (“TSCA,” 15 U.S.C. § 2601 *et seq.*)<sup>2</sup> We know that EPA’s professional staff will recognize certain of the inaccurate statements contained in the Environmental Justice letter. However, we believe it is imperative to address the letter’s flawed statement regarding regulatory standards for materials with concentrations of less than 50 ppm PCBs, and its reference to incomplete scientific data regarding the health effects of PCBs.

First, Environmental Justice incorrectly characterizes the regulations governing PCBs at concentrations of less than 50 ppm by asserting that materials containing such concentrations are not authorized for use. This is incorrect. EPA’s PCB regulations expressly authorize the use of “PCBs or PCB items which consist of excluded PCB products.” 40 C.F.R. § 761.20(a)(1); *see also* 40 C.F.R. § 761.1(f)(4). The term “excluded PCB products” is defined to include “PCB materials which appear at concentrations less than 50 ppm.” Therefore, contrary to the assertion of Environmental Justice, the federal PCB regulations allow for the use of caulk and similar materials containing less than 50 ppm PCBs.

Further, Environmental Justice misstates the outcome of *Environmental Defense Fund v. EPA*, 636 F.2d 1267 (D.C. Cir. 1980). While it is true that the U.S. Court of Appeals for the

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<sup>1</sup> USWAG is a trade association of over 100 energy industry operating companies and associations including the Edison Electric Institute (“EEI”) and the National Rural Electric Cooperative Association (“NRECA”). EEI is the principal national association of investor-owned electric power and light companies. NRECA is the national association of rural electric cooperatives. Together, USWAG members represent more than 85% of the total electric generating capacity of the U.S., servicing more than 95% of the nation’s consumers of electricity.

<sup>2</sup> Ms. Gonzalez filed suit in the United States District Court for the Southern District of New York on September 9, 2009.

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District of Columbia Circuit remanded EPA's original rule to the Agency, ordering EPA to craft a more "finely tailored" exclusion, the subsequent proposal by EPA which has now been codified in part at 40 C.F.R. §§ 761.1(f)(4) & 761.20(a)(1), included a "generic exclusion" for the manufacture, processing, distribution in commerce, and use of materials containing less than 50 ppm PCBs, "provided these products were legally manufactured, processed, distributed in commerce, or used prior to October 1, 1984." 53 Fed. Reg. 24206, 24206-08 (June 27, 1988). In the Preamble to the Final Rule, EPA explained that EPA based this exclusion "upon its determination that activities involving products containing less than 50 ppm PCB generally do not present an unreasonable risk of injury to human health or the environment." *Id.* at 24208.

Second, Environmental Justice references incomplete scientific data to support some of its claims regarding the health and environmental effects of PCBs, and fails to offer support for other claims. Attached to the Environmental Justice letter is the introduction from an outdated version of the EPA PCB Q&A Manual, published fifteen years ago. Rather than dispute each of the misstatements included in Environmental Justice's letter regarding the potential risk of PCB exposure, we encourage EPA to review a 2009 study<sup>3</sup> by Robert Golden and Renate Kimbrough that reviews, updates, and confirms the findings of a 2003 study that found "that the weight of the evidence does not support a causal association for PCBs and human cancer." We hope that you will review this article as it represents one of the most recent and comprehensive analyses of PCB risk studies performed over the years.

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We appreciate your attention to these issues. Please call me at 202-508-5645 if you have questions regarding this letter.

Sincerely,



James R. Roewer, Executive Director  
Utility Solid Waste Activities Group

Enclosure

cc: George Pavlou, Acting Administrator, EPA Region 2  
Eric Schaaf, Counsel, EPA Region 2  
Lynn Vendinello, Chief, Fibers and Organics Branch, USEPA Office of Pollution Prevention and Toxic Substances  
Peter Grannis, Commissioner, New York State Department of Environmental Conservation  
Joel I. Klein, Chancellor, New York City Department of Education

JRR/ADF/vbl

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<sup>3</sup> Robert Golden & Renate Kimbrough, *Weight of Evidence Evaluation of Potential Human Cancer Risks from Exposure to Polychlorinated Biphenyls: An update based on studies published since 2003*, CRITICAL REV. IN TOXICOLOGY, April 2009, 299-331 (abstract enclosed).

# Weight of Evidence Evaluation of Potential Human Cancer Risks from Exposure to Polychlorinated Biphenyls: An Update Based on Studies Published Since 2003

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## Abstract

Drawing on all data available in 2003, the WoE of the human epidemiological data for polychlorinated biphenyls (PCBs) demonstrates that exposure to a mixture of PCBs (i.e. Aroclors) did not pose a cancer risk to humans (Golden et al. (2003). This evaluation was based on criteria established by the US Environmental Protection Agency (EPA) as well as on a different methodology used by the Agency for Toxic Substances and Disease Registry (ATSDR). Subsequently, at least 15 more studies on the potential cancer risks (both incidence and mortality) of PCBs have been published. All studies published since 2003 are critically reviewed using the criteria established by the EPA (2005) and ATSDR (2000). None of the studies published since 2003 change the conclusions drawn by Golden et al. (2003): "that the weight of evidence does not support a causal association for PCBs and human cancer". This conclusion pertains to all cancers combined, as well as to the various cancers that have been sporadically reported in the occupational cohort mortality studies. With respect to breast cancer risk, the WoE is compelling that environmental exposure to PCBs is not etiologically implicated in breast-cancer risk. This conclusion is supported by the consistently negative findings for increased breast-cancer mortality in occupational studies, which now involve almost 9,000 women occupationally exposed to PCBs. Similarly, the incidence studies in which PCB background levels are reported to be associated with increased risk of non-Hodgkin's lymphoma or prostate, testicular, and intestinal cancer are not corroborated by occupational cohort studies with PCB exposures far in excess of

environmental exposures. The most likely explanation for these discordant findings is discussed in this review. Finally, the recent elucidation of the mode of action by which PCBs promote liver tumors in rats, combined with the demonstration that none of the key events in the mode of action occurred until substantial tissue accumulation of total PCBs had occurred, casts further doubt that PCB exposure at environmental or occupational levels poses a carcinogenic risk to humans. The dramatic differences between rodents and humans in sensitivity to PCB-mediated induction of *CYP1A1* suggests that even occupational exposures to PCBs have never resulted in PCB body burdens approaching the levels required to initiate the sequence of events involved in the promotion of liver tumors in rodents.

**Keywords:** Cancer; humans; polychlorinated biphenyls (PCBs); polymorphisms; weight of evidence

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