

practicable (followed by flushing with water and again emptying) and removing from the hulls other pollutants and all readily detachable materials capable of creating debris or contributing to chemical pollution. Thus, while the permit requires appropriate measures to remove to the maximum extent practicable all materials that may degrade the marine environment, the permit also recognizes that it may be impracticable to remove some materials.

In a letter dated August 2, 1999 from EPA to the Navy, EPA provided its interpretation of the MPRSA general permit requirement to "remove to the maximum extent practicable all materials that may degrade the marine environment" as including polychlorinated biphenyls (PCB) containing materials, such as ship components containing PCBs. See Letter from Robert H. Wayland, Director of the Office of Wetlands, Oceans and Watersheds, to Elsie L. Munsell, Deputy Assistant Secretary of the Navy (Aug. 2, 1999). This letter states that:

Before engaging in a SINKEX, the Navy must conduct an inventory of each SINKEX vessel to ascertain the presence of PCBs. This inventory and list of items removed prior to sinking must be provided to EPA in the annual report \* \* \*. Before sinking a SINKEX vessel, qualified personnel at a Navy or other approved facility shall:

- Remove all transformers containing 3 pounds or more of dielectric fluid and all capacitors containing 3 pounds or more of dielectric fluid.
- Use all reasonable efforts to remove any capacitors and transformers containing less than 3 pounds of dielectric fluid from the vessel. Reasonable efforts include, but are not necessarily limited to, the removal of capacitors from electrical and control panels by using hand tools such as wire or bolt cutters or a screw driver.
- Drain and flush hydraulic equipment, heat transfer equipment, high/low pressure systems, cutting power machinery which uses cooling or cutting oil, and containers containing liquid PCBs at greater than or equal to 50 parts per million (ppm).

In the August 2, 1999 letter from EPA to the Navy, EPA noted that "it is often practicable to remove non-liquid PCB-containing materials, including: air handling system gaskets; rubber; plastic; dried applied paint that is flaked-off; electrical cable insulation; and other non-liquid coatings and material, before sinking the vessel." To the extent that their removal is practicable, EPA explained that "these non-liquid PCB-containing materials are required to be removed under the MPRSA permit. However, when such objects cannot be practicably removed or their removal threatens the structural integrity of the

vessels so as to impede the SINKEX, the Navy may leave such items in place (e.g., felt materials that are bonded in bolted flanges or mounted under heavy equipment, certain paints, and adhesives)." EPA further noted that "objects may be considered not capable of practicable removal if equipment must be disassembled or removed for access to the objects, if the objects must be removed by heat, chemical stripping, scraping, abrasive blasting or similar process, or if removal would endanger human safety or health even when conducted with protective equipment and reasonable safety measures." Further, the August 2, 1999 letter states that the Navy shall report annually to EPA, the effort taken to clean each vessel prior to SINKEX and provide an estimate of the weight of PCBs present onboard at the time of sinking.

### III. Today's Action

EPA is providing the opportunity for public comment on the two petitions received that request EPA amend the MPRSA general permit as it relates to removal of PCBs from ships used in Navy's SINKEX program. The first petition, dated June 2011, and submitted by the Sierra Club and the Basel Action Network, requested that EPA:

Amend the MPRSA general permit for SINKEX to comply with the MPRSA by reflecting the latest scientific knowledge about the amount of PCBs disposed through the SINKEX program and about leaching of PCBs from sunken ships. At a minimum, the permit should be amended to require:

- a. Materials containing PCBs to be removed from ships to the "maximum extent practicable" with the best current techniques; and
- b. Prior to sinking, remediate ships to the London Convention's "trace contaminant" requirement.

The second petition, dated April 2012, and submitted by the Basel Action Network, Sierra Club, and the Center for Biological Diversity, again requested that EPA amend the existing MPRSA permit for SINKEX:

1. Effective immediately, requiring all PCB-contaminated materials in concentrations of 50 ppm or greater to be removed from SINKEX vessels prior to sinking;
2. Requiring all PCB-contaminated materials in concentrations of less than 50 ppm to be removed from SINKEX vessels prior to sinking to the maximum extent practicable; and
3. Requiring additional studies to determine whether PCB-contaminated materials in concentrations of less than 50 ppm constitute "trace" contaminants, such that their dumping will not cause undesirable effects including the possibility of bioaccumulation. Such additional studies should include the most recent data on the

toxicity, persistence, and bioaccumulation of PCBs and should include monitoring at multiple recent sink sites. Studies should also assess the releases of other potentially hazardous pollutants into the marine environment from the SINKEX program including heavy metals, asbestos and radioactive substances.

Technical studies and data that accompanied the petitions are included in the docket for this proceeding. As noted above, EPA has not made the copyrighted material available on the Internet, but that material is publicly available in hard copy form via the Public Reading Room in EPA's Docket Center.

Dated: March 28, 2013.

**Nancy Stoner,**

*Acting Assistant Administrator, Office of Water.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA-HQ-OPPT-2012-0902; FRL-9382-9]**

### **Polychlorinated Biphenyls (PCBs); Recycling Plastics from Shredder Residue**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing an interpretation of its regulations that will generally allow for the recycling of plastic separated from shredder residue under the conditions described in the Voluntary Procedures for Recycling Plastics from Shredder Residue, relying principally on the regulatory provisions for excluded PCB products. The interpretation described in this notice responds to questions EPA has received about the applicability of the excluded PCB products regulations.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2012-0902, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information

about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Peter Gimlin, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; email address: [gimlin.peter@epa.gov](mailto:gimlin.peter@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

This notice is directed to the public in general, and may be of interest to a wide range of stakeholders, including private citizens, Federal, tribal, state and local governments, environmental consulting firms, industry representatives, environmental organizations and other public interest groups. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may have interest in this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

EPA is interpreting its regulations to generally allow for recycling of plastic separated from shredder residue under the conditions described in the Voluntary Procedures for Recycling Plastics from Shredder Residue (Ref. 1), relying principally on the regulatory provision for excluded PCB products at 40 CFR part 761.

**II. Background**

EPA was approached by the Institute of Scrap Recycling Industries, Inc. (ISRI), regarding separation, recycling, use, and distribution of recycled plastics from shredder residue recovered from metals recycling facilities (referred to by ISRI as automobile shredder residue (ASR) aggregate). In a February 24, 2011 letter, ISRI requested “written confirmation that separating plastics from ASR aggregate for use and distribution in commerce, using processes that reduce any PCBs that may be present to a level at or below which there is no unreasonable risk, is authorized” under regulations promulgated pursuant to the Toxic Substances Control Act (TSCA) (see 16 U.S.C. 2605(e)) (Ref. 2). ISRI stated that:

\* \* \* analysis shows that the separation, recycling, distribution in commerce, and reuse of plastics from shredder aggregate is consistent with existing authorizations that allow the use and distribution in commerce of products that contain low levels of PCBs, including provisions for “excluded PCB

products” and “excluded PCB manufacturing processes” (as defined in 40 CFR 761.3).

ISRI also stated that resolving regulatory uncertainty could lead to investments and further development in innovative methods to separate plastics from ASR aggregate that would produce broad environmental benefits and increase global competitiveness (Ref. 2).

ISRI developed a set of voluntary procedures designed to prevent the introduction of PCBs that are regulated for disposal into recycled plastics recovered from shredder residue generated by metal recycling facilities. The Voluntary Procedures for Recycling Plastics from Shredder Residue (Ref. 1) includes development and implementation of a documented materials management system through:

1. Documented source control programs aimed at preventing the introduction of PCBs regulated for disposal into the shredder feedstock materials that contribute to any shredder residue from which plastics will be recovered for recycling; and

2. Documented output control programs for facilities processing producing/recycling plastics from shredder residue. The Voluntary Procedures for Recycling Plastics from Shredder Residue and supporting materials are available in the docket at docket ID number EPA–HQ–OPPT–2012–0902.

On December 12, 2012, EPA published a notice of request for public comments in the **Federal Register**, entitled Polychlorinated Biphenyls (PCBs); Recycling Plastics From Shredder Residue (77 FR 74006). Additional background information on recycling activities that would be affected by this interpretation, including potential environmental and economic benefits, is provided in the December 12, 2012 notice and supporting materials are available in the docket at docket ID number EPA–HQ–OPPT–2012–0902. In response to this notice, 27 unique public comment submissions were received by the Agency. Of these, some 23 were supportive of the interpretation the Agency explained in the notice. In general, these commenters emphasized the environmental and economic benefits that recycling of plastic from shredder residue would provide, and concurred with EPA's assessment of the facts and interpretation of the PCB regulations as they applied to shredder residue and the use of plastics recovered from that residue. Two submissions, including a consolidated submission submitted on behalf of nine environmental organizations, objected to the Agency's

adoption of this interpretation on a number of points, such as environmental justice, the adequacy of the underlying data and analysis, as well as the legal basis for the Agency's interpretation. Finally, one commenter suggested changes to the Voluntary Procedures for Recycling Plastics from Shredder Residue and another commenter submitted an administrative request regarding the comment period. All public comments received in response to the notice are available in the docket, as is a Response to Comments Document developed by EPA (Ref. 3). After review and consideration of the comments received, EPA has decided to adopt the interpretation discussed in the December 12, 2012 notice and summarized in Unit III. of this notice.

**III. Summary of Interpretation**

The interpretation will generally allow for the recycling of plastic separated from shredder residue under the conditions described in the Voluntary Procedures for Recycling Plastics from Shredder Residue (Ref. 1), relying principally on the regulatory provisions for excluded PCB products.

TSCA section 6(e) generally prohibits the manufacture, processing, distribution in commerce and use of PCBs. However, EPA has by regulation excluded certain materials, including excluded PCB products, from these prohibitions. Excluded PCB products are defined as follows:

*Excluded PCB products* means PCB materials which appear at concentrations less than 50 ppm, including but not limited to:

(1) Non-Aroclor inadvertently generated PCBs as a byproduct or impurity resulting from a chemical manufacturing process.

(2) Products contaminated with Aroclor or other PCB materials from historic PCB uses (investment casting waxes are one example).

(3) Recycled fluids and/or equipment contaminated during use involving the products described in paragraphs (1) and (2) of this definition (heat transfer and hydraulic fluids and equipment and other electrical equipment components and fluids are examples).

(4) Used oils, provided that in the cases of paragraphs (1) through (4) of this definition:

(i) The products or source of the products containing < 50 ppm concentration PCBs were legally manufactured, processed, distributed in commerce, or used before October 1, 1984.

(ii) The products or source of the products containing < 50 ppm concentrations PCBs were legally manufactured, processed, distributed in commerce, or used, i.e., pursuant to authority granted by EPA regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs;

(iii) The resulting PCB concentration (i.e. below 50 ppm) is not a result of dilution, or

leaks and spills of PCBs in concentrations over 50 ppm.

#### 40 CFR 761.3.

EPA regulations allow the use, processing, and distribution in commerce of excluded PCB products. 40 CFR 761.20(a) and (c). Except as otherwise provided, the regulations do not restrict the forms of use, processing and distribution that are allowed. EPA specifically identified, as one likely source of PCBs in excluded PCB products, “contamination during recycling activities involving” historic PCBs. 52 FR 25838, 25844 (July 8, 1987). EPA believes that it is reasonable to interpret the regulations as generally allowing the recycling of excluded PCB products. Accordingly, under the interpretation, to the extent that the feedstock (scrap materials) to a shredder consists of these kinds of materials, the plastics separated from the resulting residue can be recycled (and the resulting recycled product is also an excluded PCB product that can be processed, used and distributed in commerce, including being further recycled), provided the PCB concentration in any resulting product is below 50 parts per million (ppm).

The burden of demonstrating that a regulatory exclusion applies rests with the party seeking that exclusion. EPA believes that, for shredders and their suppliers that follow the Voluntary Procedures for Recycling Plastics from Shredder Residue, it is appropriate to generally treat the feedstock as consisting of excluded PCB products unless there is information specifically indicating that the feedstock does not qualify. If shredders and suppliers do not follow the Voluntary Procedures for Recycling Plastics from Shredder Residue, they will need to be able to otherwise demonstrate that the feedstock and residue meet the exclusion. Clearly if the feedstock materials or residue contain PCBs at concentrations  $\geq$  50 ppm, the materials cannot qualify as excluded PCB products.

EPA acknowledges uncertainty as to the source of the PCBs in shredder residue. However, EPA believes the procedures, as explained in the Voluntary Procedures for Recycling Plastics from Shredder Residue, can prevent the introduction of PCBs at levels  $\geq$  50 ppm. EPA may periodically evaluate the processes and procedures involved in recycling plastics recovered from shredder residue. In addition, EPA believes it is likely that the number of potential sources of PCBs at levels  $\geq$  50 ppm has declined since the TSCA section 6(e) prohibitions went into

effect. If PCBs in the feedstock material are  $<$  50 ppm, it is plausible that the sources of PCBs in the residue are excluded PCB products. The information available to EPA indicates that the PCBs found associated with plastics separated from residue are Aroclor PCBs. Aroclors were intentionally manufactured PCB mixtures, not inadvertently generated PCBs. Since PCBs in general and Aroclors more specifically have not been intentionally produced in the United States since the prohibitions in TSCA section 6(e) became effective, the Aroclor identity of the PCBs found associated with plastics separated from shredder residue suggests that they were manufactured prior to 1984.

In promulgating the excluded PCB product rule, EPA described the provision as follows: EPA is adopting the generic 50 ppm exclusion for the processing, distribution in commerce, and use, based on the Agency’s determination that the use, processing, and distribution in commerce of products with less than 50 ppm PCB concentration will not generally present an unreasonable risk of injury to health or the environment. EPA could not possibly identify and assess the potential exposures from all the products which may be contaminated with PCBs at less than 50 ppm. \* \* \* EPA has concluded that the costs associated with the strict prohibition on PCB activities are large and outweigh the risks posed by these activities. 53 FR 24210 (June 27, 1988).

EPA has further stated, with respect to the excluded PCB products rule: “These amendments have excluded the majority of low-level PCB activities (less than 50 ppm) from regulation” (Ref. 4). Given the difficulty of determining the precise source of PCBs, EPA believes the purpose of excluding “old” PCBs under the excluded products rule is best effectuated in these circumstances by treating  $<$  50 ppm materials entering a shredder as excluded PCB products unless there is information specifically indicating that the materials do not qualify.

After reviewing the comments received, EPA has weighed the competing considerations and decided to adopt, through this notice, the interpretation discussed in the December 12, 2012 notice. 77 FR 74006 (December 12, 2012). This interpretation is not a legislative rule because it does not impose any binding requirements on either EPA or the regulated community.

#### IV. References

As indicated under **ADDRESSES**, a docket has been established for this

notice under docket ID number EPA-HQ-OPPT-2012-0902. The following is a listing of the documents that are specifically referenced in this notice. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. ISRI. Voluntary Procedures for Recycling Plastics from Shredder Residue, October 24, 2012.
2. ISRI. Letter from Robin K. Weiner to Steve Owens, February 24, 2011.
3. EPA. Agency Response to Comments—Polychlorinated Biphenyls (PCBs); Recycling Plastics From Shredder Residue, March 2013.
4. EPA. PCB Q & A Manual: An EPA TSCA assistance document designed to provide the regulated community with Agency interpretations to frequently posed questions, 1994, available at <http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/manual.pdf>.

#### List of Subjects

Environmental protection, Hazardous substance, PCBs, Plastic, Polychlorinated biphenyls, Recycling, Shredder residue.

Dated: March 29, 2013.

**James Jones,**

*Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

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#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-9798-9]

**Notice of Proposed CERCLA Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser; All Metals Processing Company Site, San Fernando Valley Area 2 Superfund Site, Glendale Chromium Operable Unit, 264 W. Spazier Ave., Burbank, California**

**ACTION:** Notice; request for public comment.

**SUMMARY:** Notice is hereby given pursuant to Section 122(i), of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended (CERCLA) that the United States Environmental Protection Agency (EPA) has reached a