



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Tracy Alaimo Mattson
Director of Environmental Compliance
Institute of Scrap Recycling Industries, Inc.
1325 G Street, NW, Suite 1000
Washington, DC 20005-3104

Dear Ms. Mattson:

This is in response to your letter of November 13, 1998. That letter requests clarification of the PCB Disposal Amendments published June 29, 1998 (63 FR 35384) as they apply to PCB bulk product waste from the shredding of automobiles or household appliances from which PCB small capacitors have been removed (shredder fluff). Specifically, your letter asks that, where a facility has taken steps to ensure, so far as is practically possible, that no PCB capacitors are present in a material when processed, EPA deem the facility to be in compliance with §761.62(b)(1)(i).

The PCB Disposal Amendments defined a category of waste called "PCB bulk product waste" and created new options for its disposal. "PCB bulk product waste", as defined at 40 CFR 761.3, includes "PCB-containing wastes from the shredding of automobiles, household appliances, or industrial appliances." The options for disposal of PCB bulk product waste are set out at 40 CFR 761.62. Those options include, for the disposal of "non-liquid PCB bulk product waste from the shredding of automobiles or household appliances from which PCB small capacitors have been removed (shredder fluff)", disposal in a facility permitted licensed, or registered by a State as a municipal or non-municipal non-hazardous waste landfill. (See 40 CFR 761.62(b)(1)(i).)

As the preamble to the Disposal Amendments explains, the disposal option in §761.62(b)(1)(i) applies to PCB bulk product waste containing PCBs that are tightly bound in the matrix of the waste. If a capacitor containing PCBs is shredded, the PCBs are no longer enclosed within the capacitor and must be disposed of under §761.62(a) or (c). (See 63 FR 35411.)

Your letter describes ISRI's efforts to educate the metal recycling industry and ISRI's recommended processing guidelines to help the industry implement a source control program to limit the receipt of products with capacitors. Your letter states that these recommendations include educating suppliers, landfill operators and others about the facility's policy not to accept any white goods with intact capacitors; posting signs; or, in certain cases, requiring suppliers to certify that all capacitors have been removed from appliances prior to delivery. You urge EPA to adopt a flexible, rather than strict, approach to the capacitor removal issue, stating that "due to the large volumes handled by the industry and the state of the material upon delivery (most appliances and cars are delivered for recycling bundled and crushed) it is impractical to inspect each and every appliance to ensure that every capacitor has been removed."

We have considered the points raised in your letter and have discussed them with EPA's Toxics and Pesticides Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance. We are able to offer the following:

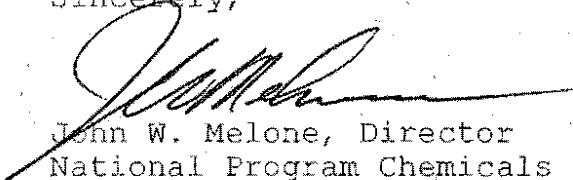
The Toxic Substances Control Act (TSCA), which provides the authority for the PCB Disposal Amendments, is a strict liability statute. Accordingly, a lack of intent to violate, and even a good faith effort to comply with, TSCA's requirements does not provide a defense to liability in the case of a violation. 15 U.S.C. §2614; In the Matter of Leonard Strandley, TSCA Appeal No. 89-4, 3 EAD 718, 722 (November 25, 1991). As your letter acknowledges, the source control program you describe cannot ensure that every capacitor is removed. Therefore, a metal recycling facility that relied on such a program, and that disposed of its shredder waste in accordance with §761.62(b)(1)(i), would be subject to enforcement action, including the assessment of civil penalties, for the capacitors that inevitably remained in the waste. A source control program (unless approved by EPA) is not a substitute for compliance with the PCB Disposal Amendments. Be aware that EPA will take good faith efforts to comply, including those beyond what is required by the regulations, into account when determining what type of enforcement action to take and, if called for, what amount of civil penalties to impose.

As noted above, performance-based disposal under §761.62(a), including incineration and chemical waste landfilling, and risk-based disposal under §761.62(c), are options for waste in which small capacitors have been shredded. If you wish, you may submit to EPA a request for a nation-wide approval of a source control program as a risk-based disposal option under §761.62(c). The request should describe the source control program in detail, including the steps a facility would use to remove or verify

removal of capacitors or other sources of PCBs; results of a pilot study verifying that the waste generated when the program is used does not pose an unreasonable risk to health or the environment, including underlying data; and a method for each facility relying on the program to identify itself to EPA and to identify the individual responsible for the facility's administration of and compliance with the source control program.

We appreciate the metal recycling industry's attention to the issue of PCBs in its waste stream and its continuing concern for compliance with the PCB disposal requirements.

Sincerely,



John W. Melone, Director
National Program Chemicals Division

cc: Regions 1 - 10