



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

MAY 3 1999

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Mr. Stephen Spencer
American Trade Fair Ship, Inc.
814 Pacific Street
Brooklyn, NY 11238

Dear Mr. Spencer:

This letter is in response to your referral by Mr. William Frank of the Environmental Protection Agency's (EPA's) Office of Enforcement and Compliance Assurance (OECA) and a subsequent telephone conversation with Ms. Reynolds of my staff regarding the acquisition from the Maritime Administration (MARAD) of the Guam, a decommissioned naval vessel which is to be transferred to MARAD in October 1999. You indicate the American Trade Fair Ship, Inc. is a non-profit organization which intends to use the vessel (a baby helicopter, flat top aircraft carrier) to sail around the world for the purpose of exhibiting American-made products.

One of the issues associated with the transfer, donation or sale (e.g., distribution in commerce) of decommissioned naval vessels is the presence of polychlorinated biphenyls (PCBs) which have not been authorized for use and distribution in commerce. Section 6(e) of the Toxic Substances Control Act (TSCA; see enclosed excerpt) addresses the manufacture, processing, distribution in commerce, use, marking and disposal of PCBs. Section 6(e)(2) of TSCA places restrictions on the manufacture, processing, distribution in commerce and use of PCBs. Section 6(e)(3) further bans the manufacture, processing and distribution in commerce of PCBs unless the Administrator, in response to a petition, has granted a 1-year exemption from those prohibitions.

There are numerous applications (i.e., uses) of PCBs on board naval vessels that are not authorized by the PCB regulations in the Code of Federal Regulations (CFR) at 40 CFR Part 761. If those applications are not present on the vessel at the time of its transfer to MARAD, there would not be a TSCA PCB issue blocking MARAD's subsequent transfer, sale, or donation of the vessel. However, if the unauthorized PCBs are not removed, or cannot be removed, TSCA



Recycled/Recyclable
Printed with Soy/Canola Ink on paper that
contains at least 50% recycled fiber

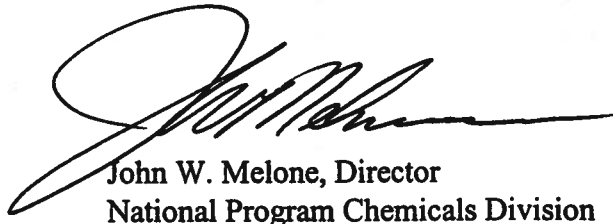
requires the Administrator to make a finding that there will not be an unreasonable risk of injury to health or the environment associated with, in this instance, the unauthorized use and/or distribution in commerce of the PCBs.

In order for the Administrator to make a "no unreasonable risk" finding, the Agency must have data for each of the unauthorized PCB uses on board these naval vessels (e.g., bulk, wipe and air sample results for each specific use). Even though these data needs have been communicated to the various Federal maritime agencies over the past several years, EPA has yet to receive the data it needs to make the no unreasonable risk finding. Therefore, EPA is currently unable to remedy the unauthorized use problem with a regulatory solution. Further, if the PCB uses have not been authorized, an exemption to allow their distribution in commerce is not possible if those PCBs are intended for continued use. (No exemptions are needed to distribute PCBs in commerce for the purpose of disposal.)

You should also be aware that many of these unauthorized applications have a PCB concentration of 50 parts per million (ppm) or greater. Therefore, when the useful life of the vessel has ended, any PCBs at concentrations of 50 ppm or greater would be subject to the disposal requirements found at 40 CFR Part 761 (e.g., an approved chemical waste landfill; a TSCA PCB incinerator or an equivalent, approved technology). Once the PCBs have been removed, these vessels can be salvaged for scrap metal. Unfortunately, in the absence of data which identify all of the various PCB components on board these vessels, worthwhile guidance cannot be developed which would ensure the salvaging of these vessels has resulted in the successful removal of regulated levels of PCBs, thereby rendering the owner of the vessel free of any future environmental liability.

A *Federal Register* notice is expected to be published in May 1999 which will solicit data on the various unauthorized non-liquid PCB uses that have been identified to date, many of them found on board naval vessels, and will identify the types of information that are required by the Agency in order to promulgate a rule authorizing their use. Therefore, at this time, my office is not able to assist you in your endeavor. If you are still interested in acquiring the Guam or some other decommissioned naval vessel, you may wish to discuss with MARAD the legal liabilities you will be assuming. If you have any further questions regarding this matter, please contact either Ms. Reynolds at (202) 260-3965 or Ms. McGurk at (202) 260-1107 for assistance.

Sincerely,



John W. Melone, Director
National Program Chemicals Division

Enclosure
Section 6(e) of TSCA

cc: W. Frank, OFFE/OECA

(e) **POLYCHLORINATED BIPHENYLS.**—(1) Within six months after the effective date of this Act the Administrator shall promulgate rules to— Rules.

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities.

Requirements prescribed by rules under this paragraph shall be consistent with the requirements of paragraphs (2) and (3).

(2) (A) Except as provided under subparagraph (B), effective one year after the effective date of this Act no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

(C) For the purposes of this paragraph, the term "totally enclosed manner" means any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule. "Totally enclosed manner."

(3) (A) Except as provided in subparagraphs (B) and (C)—

(i) no person may manufacture any polychlorinated biphenyl after two years after the effective date of this Act, and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date.

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that— Petition for exemption.

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than one year from the date it is granted) as the Administrator may prescribe. Terms and conditions.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one half years after the date of enactment of this Act.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with paragraphs (2), (3), and (4) of subsection (c).

(5) This subsection does not limit the authority of the Administrator, under any other provision of this Act or any other Federal law, to take action respecting any polychlorinated biphenyl.