

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAR 11 1994

F. SIMONStgs/OPPT-CMD-OB/03-09-94/7404/260-3991/Rm.NE1309/Disk#8 A:ANTARCT>IMP
 FILES:CMD/OB CHRON READING/SUBJECT: Import for Disposal / NSF

Arthur J. Brown, Head
 Safety, Environment, and Health Implementation Team
 Office of Polar Programs
 National Science Foundation
 4201 Wilson Blvd.
 Arlington, VA 22230

Re: Request to return PCBs in Antarctica to the United States for disposal

Dear Mr. Brown:

On March 7, 1994, the National Science Foundation requested that the United States Environmental Protection Agency allow the return of United States government-owned PCBs from Antarctica to the United States for disposal.

The EPA has decided that a federal government agency's right to return PCBs to the United States for disposal depends on the ownership status and the source of origin of the PCBs. The regulatory background and rationale for this determination follows.

The manufacture, processing, distribution in commerce, and use of PCBs is generally prohibited. Toxics Substances Control Act (TSCA), Section 6(e), 15 U.S.C. section 2605(e). In addition, TSCA section 6(e)(1)(A) requires that EPA set standards for the disposal of PCB wastes. Regulations implementing section 6(e) are contained in 40 CFR Part 761.

Manufacture of PCBs is defined to include importation, 40 CFR section 761.3. This definition is consistent with the definition of manufacture in TSCA section 3(7), 15 U.S.C. section 2602(7). The importation of PCBs for purposes of disposal was generally allowed until May 1, 1980. Since May 1, 1980, all PCB importation has been prohibited, except for PCBs at concentrations less than 50 ppm, which are allowed to be imported for disposal under 40 CFR 761.20(b).

CONCURRENCES

SYMBOL	7404	7404	7404					
SURNAME	SIMONS	Reynolds	Bray					
DATE	8/9/94	3/9/94	3/11/94					

The May 31, 1979 Federal Register notice explains that the importation of PCB wastes was limited until May 1, 1980 in order to create an incentive for other nations to develop PCB disposal facilities. 44 FR 31526. The EPA determined that other nations had not made as much progress as the United States in developing PCB disposal facilities, and, if this trend were to continue, the United States would receive a disproportionate share of international PCB wastes.

In a May 1, 1980, Federal Register notice, the Agency confirmed its policy on PCB importation, stating that, effective on that date, the importation of PCB wastes for disposal would be prohibited. 45 FR 29115. The primary rationale for this "Closed Border Policy" is that at that time, no other nation had developed any PCB disposal facilities.

With respect to PCB wastes owned by the Department of Defense (DOD), EPA determined that where government-owned PCBs purchased in the United States were shipped overseas under DOD control, it did not serve the purpose of the "Closed Border Policy" to prevent the wastes from being returned to the United States. In that situation, therefore, the shipment of the PCBs back to the United States was not considered to be an importation under TSCA, and the shipment was not barred by the Closed Border Policy. See February 7, 1984 letter from Donald Clay, Director, Office of Toxic Substances, EPA, to Colonel Joseph T. Cuccaro, Defense Logistics Agency, Department of Defense. However, the shipment to the United States by DOD of PCBs owned and controlled by a DOD contractor, or PCBs owned by DOD but purchased from a foreign firm or foreign subsidiary of a United States company is considered importation and is prohibited by the EPA PCB regulations.

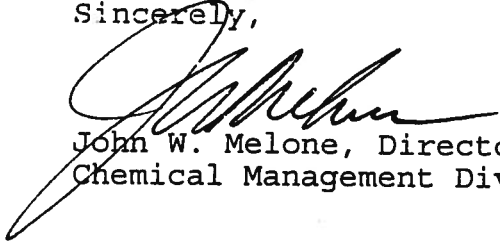
The same rationale was later applied to PCBs purchased in the United States by the United States Department of State, and used, under Department of State control, in United States embassies in foreign countries. Therefore, if the State Department-owned PCBs were procured from a company in the United States, were shipped overseas under Department of State control, and were under Department of State control since the date of procurement, the shipment of the PCBs to the United States for disposal is not considered an import and is not barred by the Closed Border Policy. See June 30, 1993 letter from John W. Melone, Director, Chemical Management Division, EPA to Harry N. Marinos, United States Department of State.

The EPA considers that the rationale outlined above for DOD and State Department-owned PCBs should also apply to any PCBs purchased by the Federal Government in the United States, taken overseas for use in United States Government facilities (including military facilities and embassies), and subsequently returned to the United States for disposal in an approved

facility. Therefore, the waiver of the Closed Border Policy which you have requested for the PCBs in Antarctica is not necessary. However, all other applicable PCB regulations apply to the transport and disposal of the PCBs.

The scope of this interpretation only applies to the importation of PCBs for disposal under 40 CFR Part 761. EPA's interpretation of the term "import" for all other purposes of TSCA is not affected.

Sincerely,



John W. Melone, Director
Chemical Management Division

Enclosures

cc: Michael Walker, EPA OE
Connie Musgrove, EPA OCM
PCB Coordinators, Regions I-X

FEB 7 1984

Colonel Joseph T. Cuccaro
Director
Directorate of Environmental Protection
Defense Logistics Agency
Defense Property Disposal Service
Federal Center
Battle Creek, Michigan 49016

Dear Colonel Cuccaro:

This responds to your letter of August 2, 1983, which requested the position of the U.S. Environmental Protection Agency (EPA) on the status under the Toxic Substances Control Act (TSCA), 15 U.S.C. section 2601 et seq., of polychlorinated biphenyl (PCB) fluid owned by the U.S. Department of Defense (DOD), located abroad, and returned to the United States for disposal. If these PCBs are considered to be "imported" PCBs, their shipment to the United States is prohibited under EPA regulations.

In addition, you requested EPA's opinion on the applicability of a letter dated November 13, 1980, from Ms. Pamela Moore of EPA, to the Assistant Counsel, Defense Logistics Agency, U.S. Defense Property Disposal Service. In her letter, Ms. Moore stated that EPA does not consider the return of these Government-owned PCBs to the United States as importation for disposal. This is at variance with a memorandum dated October 23, 1980, from the Office of the Judge Advocate General of the Navy to the Chief of Naval Operations, which states that the shipment of Government-owned property from a DOD facility in a foreign country to the United States is considered "importation" under other Federal statutes and, therefore, the same interpretation should apply under TSCA.

EPA has decided that DOD's right to import PCBs for purposes of disposal depends on the ownership status and the source of origin of the PCBs. The regulatory background and rationale for this determination follows.

Section 6(e) of TSCA, 15 U.S.C. section 2605(e), generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. In addition, section 6(e)(1)(A) requires that EPA set standards for the disposal of PCB wastes. Regulations implementing section 6(e) are contained in 40 CFR Part 761 (1983). These regulations were published in the Federal Register of May 31, 1979 (44 FR 31514) and were later recodified.

Part 761 of Agency PCB regulations under TSCA defines manufacture of PCBs to include importation, 40 CFR section 761.3(n). This definition is consistent with the definition of manufacture in the implemented statute. See TSCA section 3(7) of TSCA, 15 U.S.C. section 2602(7). Section 761.20(b) generally prohibits the manufacture of PCBs (and thus importation), but authorizes limited importation for purposes of disposal until May 1, 1980. See 40 CFR section 761.20(b)(1). Since May 1, 1980, all PCB importation has been prohibited.

The May 31, 1979, Federal Register notice explains the reason for limiting the importation of PCB wastes. See 44 FR 31526. EPA limited the authorized importation until May 1, 1980 in order to create an incentive for other nations to develop PCB disposal facilities. The Agency determined that other nations had not made as much progress as the United States in developing PCB disposal facilities and, if this trend were to continue, the United States would receive a disproportionate share of international PCB wastes.

In a May 1, 1980, Federal Register notice, the Agency confirmed its policy on PCB importation, stating that, effective on that date, the importation of PCB wastes for disposal would be prohibited. See 45 FR 29115. The primary rationale for this "Closed Border Policy" is that since 1979, no other nation had developed any PCB disposal facility.

With respect to DOD PCB wastes, EPA has determined that PCBs originating in other nations or shipped to other nations from the United States through commercial channels should not be authorized for disposal in the United States. In those situations where Government-owned PCBs were shipped overseas under DOD control, however, it does not serve the purpose of the "Closed Border Policy" to prevent the wastes from being returned to the United States. Through this action, the United States assumes responsibility for the return shipment and safe disposal of PCBs in the United States.

In accordance with these considerations, EPA has classified the different sources of PCBs that DOD may desire to ship back to the United States for disposal and has determined which would be classified as "imported" PCBs. Of course, importation of PCB wastes would be prohibited under EPA regulations.

There are three situations under which DOD may wish to ship PCBs back to the United States for disposal:

1. where Government-owned PCB wastes were procured from a company in the United States and have been under the control of DOD since the date of procurement;
2. where PCBs are owned and controlled by a DOD contractor; and,
3. where PCBs are owned by DOD and were purchased from a foreign firm or foreign subsidiary of a U.S. company.

Of these situations, only the first situation would not be considered importation. In this situation, DOD shipped PCBs to the foreign country and should be responsible for the proper disposal of the waste in the United States. This situation was the subject of the aforementioned Moore letter to DOD in November 1980. In the other two situations, however, importation for disposal would not be allowed.

The scope of this interpretation only applies to the importation of PCBs for disposal under 40 CFR Part 761. EPA's interpretation of the term "import" for all other purposes of TSCA is not affected.

The Agency is in the process of reexamining the Closed Border Policy. The policy will, however, only be changed after rulemaking proceedings conducted in accordance with the Administrative Procedure Act, 5 U.S.C. section 553. If you have any further questions on this matter, please contact David Dull, Chief, Chemical Regulation Branch, Exposure Evaluation Division at (202) 382-3935.

Sincerely,

(SIGNED) DON R. CLAY

Don R. Clay, Director
Office of Toxic Substances

Thursday, May 1, 1980

dependent upon the availability of acceptable disposal facilities in other nations. The experience of the last year has demonstrated that an extension of the Open Border Policy would be inappropriate because most other nations do not have proper disposal facilities.

Dated: April 29, 1980
Steven D. Jellinek
Assistant Administrator
Toxic Substances
(FR Doc. 80-1347 Filed 5-3-80)
BILLING CODE 6560-01-14

Although EPA has decided not to extend the Open Border Policy beyond May 1, 1980, within a month EPA will publish a Proposed Rule governing the export and import of PCBs for disposal and for use. At this time it is expected the proposed rule will include a mechanism by which other nations may enter a bilateral agreement or memorandum of understanding with the U.S., setting forth mutually agreed upon criteria for the transportation, storage, and disposal of PCBs. By means of entering into such agreements or memoranda of understanding with other nations, the Agency can be assured that disposal will be accomplished properly in those nations.

With respect to disposal activities... after May 1, 1980, no PCBs may be exported or imported for disposal until new rules are in effect. With respect to

export for use there has been no change in the requirements that must be met prior to export. Persons wishing to export for use must continue to file a TSCA Section 12 export notice and file an exemption petition in accordance with the requirements of § 761.20(c), for processing and distribution in commerce. No PCBs may be exported until and unless EPA grants an exemption to export. EPA may grant an exemption to export if the Agency finds pursuant to Section 6(e)(3) of TSCA (1) an unreasonable risk of injury to health or environment would not result, and (2) 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.

EPA will not grant an exemption unless the nation to which export is destined has proper disposal facilities for ultimate disposal. EPA also will not grant an exemption for export for a use not authorized in the United States. In the context of exports, good faith efforts to find a substitute means the burden is on the petitioner to show that there are no substitutes for the PCBs, produced by either the petitioner or a competitor, and that the petitioner proves that it has expended substantial amounts of time and money searching for a substitute.

ENVIRONMENTAL PROTECTION AGENCY

(FRL 1432-5; OPTS 62003 (PCB/PE))

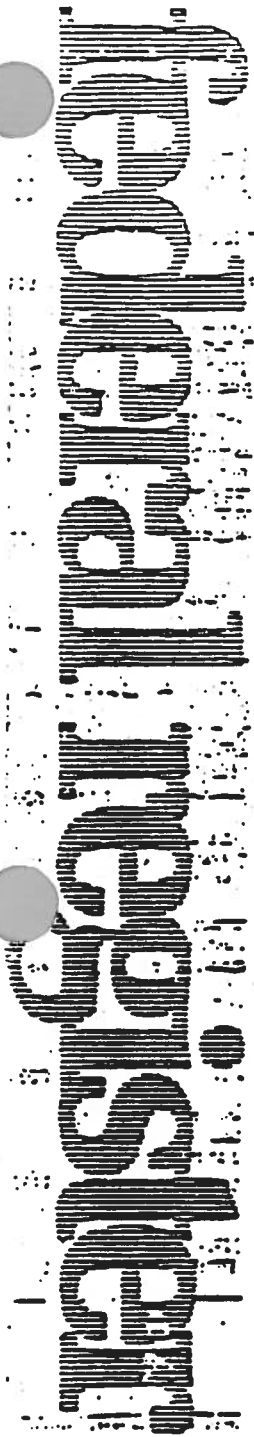
Polychlorinated Biphenyls (PCB's): Expiration of the Open Border Policy for PCB Disposal

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: The Open Border Policy for PCB disposal will expire on May 1, 1980. Exporting and importing of PCBs for disposal after May 1, 1980, will be prohibited.

FOR FURTHER INFORMATION CONTACT: Pamela A. Moore, Chemical Regulations Branch, Control Action Division (TS-794), Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 733-1188; or John B. Ritch, Jr., Director, Office of Industry Assistance (TS-799), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone toll free (800) 424-6063. (In Washington, D.C. Call 334-1404).

SUPPLEMENTARY INFORMATION: The Final PCB Processing, Distribution to Commerce, and Use Prohibition Rule (PCB Prohibition Rule) (40 CFR Part 761.20(b)) promulgated May 31, 1979 established an Open Border Policy permitting the export and import of PCBs for disposal until May 1, 1980. EPA has reviewed the results of this Policy and has decided not to extend the Open Border Policy. EPA is concerned that the improper disposal of PCBs will pose a threat to health or the environment. As the Agency pointed out in the Preamble to the Final PCB Prohibition Rule, the success of an Open Border Policy is





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

JUN 30 1993

OFFICE OF
PREVENTION PESTICIDES AND
TOXIC SUBSTANCES

Mr. Harry N. Marinos
Chief Electrical Engineer
United States Department of State
Room 474, SA-6
P.O. Box 12248, Rosslyn Station
Arlington, VA 22209-8244

Re: Request to return PCB Transformer in United States
embassy in Uruguay to the United States for disposal

Dear Mr. Marinos:

This letter responds to your June 8, 1993, letter to Michael Walker of EPA's Office of Enforcement, in which the Department of State requested that the United States Environmental Protection Agency (EPA) allow the return of a United States government-owned PCB Transformer from the United States Embassy in Montevideo, Uruguay to the United States for disposal.

The EPA has decided that the Department of State's right to return PCBs for disposal depends on the ownership status and the source of origin of the PCBs. The regulatory background and rationale for this determination follows.

The manufacture, processing, distribution in commerce, and use of PCBs is generally prohibited. Toxics Substances Control Act (TSCA), Section 6(e), 15 U.S.C. section 2605(e). In addition, TSCA section 6(e)(1)(A) requires that EPA set standards for the disposal of PCB wastes. Regulations implementing section 6(e) are contained in 40 CFR Part 761.

Manufacture of PCBs is defined to include importation, 40 CFR section 761.3. This definition is consistent with the definition of manufacture in TSCA section 3(7), 15 U.S.C. section 2602(7). The importation of PCBs for purposes of disposal was generally allowed until May 1, 1980. Since May 1, 1980, all PCB importation has been prohibited, except for PCBs at concentrations less than 50 ppm, which are allowed to be imported for disposal under 40 CFR 761.20(b).



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With respect to PCB wastes owned by the Department of Defense (DOD), EPA determined that where government-owned PCBs purchased in the United States were shipped overseas under DOD control, it did not serve the purpose of the "Closed Border Policy" to prevent the wastes from being returned to the United States. In that situation, therefore, the shipment of the PCBs back to the United States was not considered to be an importation under TSCA, and the shipment was not barred by the Closed Border Policy. See February 7, 1984 letter from Donald Clay, Director, Office of Toxic Substances, EPA, to Colonel Joseph T. Cuccaro, Defense Logistics Agency, Department of Defense. However, the shipment to the United States by DOD of PCBs owned and controlled by a DOD contractor, or PCBs owned by DOD but purchased from a foreign firm or foreign subsidiary of a United States company is considered importation and is prohibited by the EPA PCB regulations.

The EPA considers that the rationale outlined above for DOD-owned PCBs should also apply to PCBs owned by the Department of State and used in United States embassies in foreign countries. Therefore, if the State Department-owned PCBs were procured from a company in the United States, were shipped overseas under Department of State control, and have been under Department of State control since the date of procurement, the shipment of the PCBs to the United States for disposal is not considered an import and is not barred by the Closed Border Policy. Therefore, the waiver of the Closed Border Policy which you have requested for the transformer in Montevideo, Uruguay is not necessary. However, all applicable PCB regulations apply to the transport and disposal of the transformer.

The scope of this interpretation only applies to the importation of PCBs for disposal under 40 CFR Part 761. EPA's interpretation of the term "import" for all other purposes of TSCA is not affected.

Mr. Pedro Rivera, of your office, requested to know what generator number should be used for this transformer, since the Department of State does not have a PCB generator number. It would be best for the Department of State to apply for a generator number as detailed in 40 CFR 761.205. Any questions about the procedure for obtaining a generator number may be directed to Geraldine Hilton of my staff, at (202) 260-3992.

Sincerely,



John W. Melone, Director
Chemical Management Division

cc: Michael Walker, EPA OE
Michael Wood, EPA OCM
Tony Baney, EPA CMD

Attachment