

DLA proposes in its January 19, 2001, petition to ship the materials to an EPA-approved PCB disposal facility. While DLA initially identified Trans Cycle Industries, Inc. (TCI) in Pell City, Alabama as the receiving facility, it amended its petition on September 28, 2001, to include any EPA-approved PCB disposal facility as a potential receiving facility, indicating that it is premature to specify which approved facility would be contracted to treat and dispose of the waste. DLA would treat and dispose of all material in compliance with the U.S. PCB regulations at 40 CFR part 761. Generally, DLA indicates its intention is to recycle all metal components that can be decontaminated; if they are not decontaminated they would be buried in a chemical waste landfill or incinerated. Used oils or liquids would be decontaminated by dechlorination or sent for energy recovery as fuel. Non-recyclable material will be disposed of as residual solid waste. DLA also notes that EPA-approved alternative disposal methods may also be used. (Note that while DLA is proposing to send this material to a TSCA-approved facility for initial processing, this is not normally required for materials containing less than 50 ppm PCBs that have not been subject to dilution.)

A detailed summary of this petition can be found in Unit IV.A.1 of the September 17, 2002, proposal to this rule (Ref. 38)

2. *April 16, 2001, petition to import PCBs located in Japan.* On April 16, 2001, DLA submitted a second petition; this petition sought a 1-year exemption to import PCBs and PCB items currently in temporary storage on U.S. military installations in Japan. In revised figures provided in June 2001, DLA estimates that as much as 4,293,621 pounds, or approximately 1,952 metric tons of waste containing PCBs could be generated in Japan through the year 2006 and beyond; however, much of this material is currently still in use, and will not become waste requiring disposal for several years. Exactly how much waste can be imported under this exemption will depend on what is available for shipment for disposal while the exemption is in effect, as the exemption is limited to a 1-year maximum. The material in Japan consists of liquids, electrical transformers, capacitors, switches, circuit breakers, other miscellaneous items, and debris (rags, small parts, and packaging materials). PCB concentrations of the waste include amounts at all concentrations; however, most of the waste is at concentrations below 50 ppm PCB. Details of particular amounts and concentrations are

provided in Appendix 1 (Refs. 10 and 11).

DLA proposes to package and transport, treat, and dispose of this PCB waste in the same manner as waste identified in the previous petition. DLA states it would handle and dispose of all PCBs in conformance with the PCB regulations at 40 CFR part 761. DLA notes that it has "considerable experience and expertise in awarding and administering disposal contracts for PCB waste in the United States" and that it will only "use contracts with commercial firms providing such services in accordance with all applicable Federal procurement statutes and the Federal Acquisition Regulations (FAR)." DLA states that it has not yet identified the specific companies that would receive the waste, but that only Federal and State-permitted facilities would be used. Proposed treatment would be in accordance with the options allowed by 40 CFR part 761, including landfilling, incineration, decontamination and recovery of metal, decontamination or burning of used oil, and alternative disposal technologies where allowed.

A detailed summary of this petition can be found in Unit IV.A.2 of the September 17, 2002, proposal to this rule (Ref. 38)

B. Comments On the Proposed Rule

On September 17, 2002, EPA published a notice in the **Federal Register** proposing to grant both of DLA's petitions (Ref. 38). The notice also solicited comments on the proposed action and offered an opportunity for a public hearing if requested. Two comments were received on the proposed action; no person requested a public hearing.

Both comments supported the Agency's proposed decision to grant the petitions. One commenter, Perry & Spann (Ref. 39), urged EPA to grant the applicant's petition as "...the best manner to control and eliminate PCBs and any potential toxic contamination." The other commenter, Environmental Technology Council (Ref. 40), noted "...not only is there no unreasonable risk ... the risks to public health and the environment will be decreased by importing this waste for proper disposal." Additionally, this commenter questioned the need for persons wishing to import PCB waste for disposal to demonstrate "good faith efforts" under TSCA section 6(e)(3)(B)(ii). In light of the fact that the Agency has determined that the DLA petitions meet this "good faith" test, no response to this comment is necessary at this time. However, the Agency does note that it does not agree

with the comment, and continues to believe it appropriate to examine whether there are good reasons that disposal of PCB wastes should occur in the United States when reviewing petitions for exemptions under TSCA section 6(e)(3) that would authorize import of PCB wastes for disposal in this country.

C. EPA's Final Decision on Petitions

1. *January 19, 2001, petition; EPA grants this petition.* EPA agrees with DLA's reasoning in its petition that this waste, being primarily and perhaps exclusively at concentrations below 50 ppm PCBs, has little inherent potential to pose an unreasonable risk to health or the environment. Even more germane to this waste than the "Excluded PCB Products" processing, distribution, and use standards referred to by DLA in the petition are the disposal regulations at 40 CFR part 761, subpart D, that do not require waste below 50 ppm PCBs be disposed of in a TSCA or RCRA approved facility, provided the concentration was not affected by dilution. EPA notes the prohibition on import of PCBs at concentrations less than 50 ppm stems from the TSCA ban on "manufacture" of PCBs and is not based on any specific finding of EPA that importing PCBs at concentrations less than 50 ppm for disposal presents any unreasonable risk. Prior to 1997, EPA allowed such imports for disposal without restriction. (EPA authorized the import for disposal of PCBs at concentrations of less than 50 ppm in 1984 (Ref.37), at 40 CFR 761.20(b)(2), using the authority of TSCA section 6(e)(1). This import provision was recodified from § 761.20(b) to § 761.93(a)(1)(i) as part of the March 18, 1996, PCB Import for Disposal Rule (Ref. 5). On July 7, 1997, the U.S. Court of Appeals for the Ninth Circuit overturned the PCB Import for Disposal Rule, on the grounds that EPA could not rely, as it did, on TSCA section 6(e)(1) to authorize imports of PCBs for disposal. *Sierra Club v. EPA*, 118 F 3d 1324 (9th Cir. 1997). EPA amended § 761.93 on June 29, 1998 (Ref.6) to reflect the Sierra Club decision, by changing it to state that no person may import PCBs or PCB items for disposal without a TSCA section 6(e)(3) exemption.)

EPA also concurs with DLA's assessment in its petition that transportation of this waste poses no significant risk if conducted in accordance with all applicable laws and regulations. Domestically, EPA permits the processing and distribution in commerce of PCBs and PCB items at concentrations less than 50 ppm for