

disposal (§ 761.20(c)(4)) without additional restriction. Higher concentration PCBs and PCB items may be processed and distributed in commerce for disposal in compliance with part 761 (which requires marking, manifesting, registration, recordkeeping, etc.). In issuing the PCB Import for Disposal Rule, EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5, p. 11097).

As this waste will be processed and, where required, disposed of at EPA-approved PCB disposal facilities, EPA finds that the import and disposal of this waste will not pose an unreasonable risk of injury to health or the environment. EPA approves all TSCA PCB disposal facilities on the basis of this standard, whether the unit be an incinerator, chemical waste landfill, or alternative process, such as a decontamination or chemical dechlorination operation. Similarly, EPA has previously determined that other disposal options for PCB waste at concentrations below 50 ppm, such as burning used oil for energy recovery in compliance with 40 CFR 761.20(e), pose no unreasonable risk to health or the environment.

Moreover, any risks inherent in transportation and disposal must be weighed against the risks of continued long-term storage. As DLA noted in its petition, Wake Island is a part of the United States and under TSCA it is entitled to the protection against unreasonable risk of injury to health or the environment. Generally, EPA considers long-term storage of PCB waste to pose an unacceptable risk due to threat of leaks and spills, and with certain limited exceptions, EPA limits storage for disposal of PCB waste to 1-year from the date the waste was generated (40 CFR 761.65(a)). As discussed at length by EPA in recent **Federal Register** documents (Refs. 7 and 8), the long-term storage of PCBs in U.S. territories and possessions outside the Customs Territory of the United States, such as Wake Island, often poses additional risks; examples of problems cited included risk of severe storms, sensitive ecosystems, limited available land, low elevation, and water resources that are vulnerable to contamination. For instance, while 40 CFR 761.65(b)(1)(v) stipulates that PCB waste storage sites should not be located below the 100-year flood water elevation, the highest elevation on Wake Island is only 6 meters above sea level. Therefore, EPA concludes that removal of this PCB material from Wake Island in the most expeditious manner possible

will reduce risk of injury to health and the environment.

Other benefits to the United States will be realized through the granting of this petition, as well. One of EPA's purposes in promulgating 40 CFR 761.99(c) was to address the inequitable treatment of the territories outside the Customs Territory of the United States that was inadvertently created by the manufacturing ban of TSCA section 6(e)(3) (Refs. 7 and 8). EPA believes that granting this exemption will likewise allow waste stored in the territories to be managed and disposed of in a manner similar to waste generated in other States, and it will prevent the Pacific Island territories of the United States from bearing any undue burden for the disposal of such waste. Furthermore, as this waste is the property of the U.S. Government, and it was generated by the U.S. Government while conducting its affairs abroad, EPA believes the U.S. Government has an obligation to allow this waste to be safely disposed of under its jurisdiction in the United States. A grant of this petition will allow the United States Government to solve one of its own toxic waste problems without relying on other countries' disposal resources. Thus, EPA finds that DLA has provided adequate justification for a finding that the activity proposed in this petition would not pose an unreasonable risk of injury to health or the environment.

EPA also finds that DLA has made good faith efforts to find alternatives to import into the Customs Territory of the United States. EPA agrees with DLA's contention in its petition that Wake Island is an unsuitable location for attempts at on-site disposal, due to its extremely remote location, small size, lack of facilities, and fragile environment. In addition, as DLA notes in its petition, decontamination procedures typical for this type of waste would not eliminate all PCBs and the concomitant need for an exemption. EPA also believes DLA has made good faith efforts to find disposal alternatives in other countries; indeed, the waste came to Wake Island as a result of an unsuccessful effort to dispose of it abroad. EPA is well aware of DLA's growing difficulty in disposing of its foreign-manufactured waste abroad, a problem outlined in DLA's report to Congress in 1999 (Ref. 33), and EPA has been aware of DLA's substantial efforts since April 2000 to identify options for disposal of this particular waste in a responsible manner, including disposal in another country. EPA accepts DLA's assessment that with the notoriety that is now attached to this particular waste shipment and the difficulty of satisfying

Basel Convention obligations, acceptance of this waste by another country for disposal is unlikely to ever occur. EPA further notes that disposal in a facility in the United States, but outside the Customs Territory of the United States, e.g., in another Pacific territory, is not an alternative because no suitable facilities exist. Finally, EPA also believes it relevant to the good faith issue that, as noted earlier, this waste was generated by the U.S. Government while conducting its affairs abroad, and thus the United States bears some obligation to provide for the safe disposal of this waste in the United States if it can not be easily disposed elsewhere.

For these reasons, EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and grants this petition.

2. *April 16, 2001, petition; EPA grants this petition.* As with the previous petition, EPA concurs with DLA's assessment that transportation of this waste will pose no unreasonable risk if conducted in accordance with all applicable laws and regulations. As noted in Unit IV.C.1., EPA permits the domestic processing and distribution in commerce of PCBs and PCB items for disposal in compliance with part 761, and in issuance of the PCB Import for Disposal Rule EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5, p. 11097). Also, as discussed in Unit IV.C.1. in regard to the Wake Island petition, EPA finds generally that the disposal of imported PCB waste at an EPA-approved PCB disposal facility poses no unreasonable risks as these facilities have been approved on the basis of that standard.

EPA believes that granting this petition will benefit the United States in several ways. As DLA notes in its petition, the continued long-term storage of PCB waste on U.S. military facilities in Japan poses risks of exposure to U.S. personnel and the environment—risks that can be mitigated through the action proposed in this petition. Also, the reduction of risk to Japanese citizens must be considered advantageous, especially in light of the heightened concerns over PCBs in that country and the sensitivities surrounding the U.S. military's presence in Japan. Currently, the U.S. military is in the awkward position of explaining to its Japanese hosts that it can not remove its toxic waste from their country because United States law does not allow the waste to be sent to the United States. As with the Wake Island petition, granting this