



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

APR 4 2011

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Ms. Robin K. Wiener
President
Institute for Scrap Recycling Industries, Incorporated
1615 L Street, N.W., Suite 600
Washington, DC 20036-5610

Dear Ms. Wiener:

Steve Owens, Assistant Administrator for the Office of Chemical Safety and Pollution Prevention, has asked me to respond to your letter dated February 24, 2011. In this letter you ask for written confirmation that:

“ . . . separating plastics from automobile shredder aggregate for use and distribution in commerce, using processes that reduce any polychlorinated biphenyls (PCBs) that may be present to a level at or below which there is no unreasonable risk, is authorized under EPA’s TSCA regulations.”

EPA disagrees with your statement. EPA believes that the intent of Congress expressed in the Toxic Substances Control Act (TSCA) does not include allowing PCBs that were in use at the time the statute was enacted to be processed and reprocessed into new products. Such activity would actually prolong the presence of PCBs in commerce and the possibility that they would eventually enter the environment. Therefore, I cannot confirm your statement for the following reasons:

1. ***PCB waste which is regulated for disposal is not authorized for use.*** The PCBs that are found in automobile shredder waste derived from PCB products that are part of the shredder feedstock. These PCBs are no longer in use, and therefore already PCB waste, before the automobiles are shredded. The shredding of regulated PCB-containing products does not change the regulated status of the PCB waste. The shredded PCB waste could either be (a) PCB remediation waste, if the PCBs were there as the result of contamination from improperly disposed regulated sources of PCBs (particularly, but not limited to, PCB capacitors) or (b) PCB bulk product waste, if the PCBs were manufactured into the original products or automobile components, which were then shredded. To date, no one has provided EPA with accurate,

reliable, and reproducible scientific data characterizing any or all automobile shredder waste to demonstrate that it does not contain PCBs which are regulated for disposal.

2. *The shredding process dilutes any regulated PCB-containing waste with waste which does not contain PCBs, which are regulated for disposal.* Section 40 CFR 761.1(b)(5) states that “No person may avoid any provision specifying a PCB concentration by diluting the PCBs, unless otherwise specifically provided.” Since PCB-containing waste is not segregated from other shredder feedstock materials, any PCBs that do appear in shredder waste are necessarily diluted with non-PCB materials. So, shredders cannot avoid the PCB disposal regulations that applied to the PCB-containing materials in the feedstock by processing blended shredder waste into a new or recycled product to be distributed in commerce.

3. *The regulations concerning excluded manufacturing processes, excluded PCB products, and recycling PCB-containing wastes are not applicable to the scenario described in your letter.* In your letter, you suggested that certain provisions in 40 CFR Part 761 would already authorize the process and products you propose. However, EPA finds these provisions inapposite. The definitions in 40 CFR 761.3 for excluded PCB manufacturing process and excluded PCB products are for activities that are different from your letter’s proposal. The term “PCB excluded manufacturing process” only applies where PCBs are inadvertently generated in small quantities during the manufacture of a product, as described in the rule. In addition, although there is a definition of “Recycled PCBs” in the regulations, it applies to only a limited set of PCB-containing materials: “*Recycled PCBs* means those PCBs which appear in the processing of paper products or asphalt roofing materials from PCB-contaminated raw materials.” This rule simply does not apply to automobile shredder waste.

4. *Non-destructive reduction of PCBs in waste, which is regulated for PCB disposal, may be accomplished by physical separation of PCB-containing waste from waste which does not contain PCBs in accordance with the decontamination regulations at 40 CFR 761.79.*

Physical separation of the different materials (i.e. materials that contain PCBs at 50 ppm or greater and materials that do not) that make up shredder waste might present an option that would meet the regulatory requirements for decontamination of some of the regulated waste. There are two provisions in the regulations that might apply: (a) 40 CFR 761.79 (a) and (b) 40 CFR 761.79(h).

(a) 40 CRF 761.79(a) does not specify performance or measurement based standards, so that any non-liquid waste components which contain PCBs above the practical limit of quantitation must be separated from any waste components containing less than the practical limit of quantitation of 2 parts per million (ppm) PCBs. The waste components which contain PCBs above the practical limit of quantitation of 2 ppm PCBs must be disposed in accordance with 40 CFR 761.61 or 40 CFR 761.62, as applicable. Any waste components containing less than the practical limit of quantitation of 2 ppm are

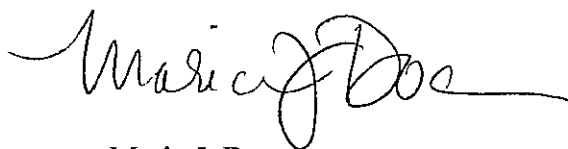
authorized for use and distribution in commerce in accordance with 40 CFR 761.20(c)(5) and 40 CFR 761.30 (u).

(b) 40 CFR 761.79(h) also does not specify performance or measurement based standards. This option requires a written approval from EPA. Depending on the process, the approval authority could either be the Office of Resource Conservation and Recovery (ORCR) or one of the EPA Regions. However, the decontamination process cannot include blending of regulated and non-regulated waste. Contaminated waste must be removed from uncontaminated waste. The standard for the degree of removal of PCB contaminated waste from the decontaminated waste can be based on a finding of no unreasonable risk of injury to health and the environment. To make this finding EPA would have to evaluate not only the potential risks from the decontamination process, but also the potential risks from the disposal of the contaminated waste, the processing of the decontaminated material, and use of the decontaminated material. The decontamination approval authority would be required to coordinate the evaluation of the risks from the processing of the decontaminated material, and use of the decontaminated material with the Office of Pollution Prevention and Toxics.

Also note that under either provision, the remaining PCB-containing materials must be disposed of pursuant to 40 CFR 761, Subpart D,

If you have any questions concerning this response, please contact Dr. John Smith of my staff at 202-566-0517.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria J. Doa", with a long horizontal flourish extending to the right.

Maria J. Doa
Director
National Program Chemicals Division