DEFENSE LOGISTICS AGENCY
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APR 23 2013

Document Control Officer
Office of Resource Conservation and Recovery (5305P)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460-001

Dear Sir or Madam:

The Defense Logistics Agency (DLA), a component of the Department of Defense, respectfully submits the enclosed petition for an exemption to import polychlorinated biphenyls (PCBs) and PCB items into the United States for purposes of disposal. Granting this exemption will allow DLA to safely dispose of PCB-containing waste while giving the United States the means to take responsibility for waste generated by its military activities overseas.

This petition is submitted in accordance with 40 Code of Federal Regulations Part 750, Subpart B, Interim Procedural Rules for manufacturing Exemption, and pursuant to Section 6(e)(3)(B) of the Toxic Substance Control Act.

Point of contact for this is Phil Dawson, Staff Director, Environmental Management, (703) 767-6173, or email phil.dawson@dla.mil.

David Rodriguez
Director
DLA Installation Support

Enclosure
PCB Petition

PETITION TO THE
ADMINISTRATOR, UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
FOR EXEMPTION UNDER THE
TOXIC SUBSTANCES CONTROL ACT
TO IMPORT AND DISPOSE OF PCBs AND PCB ITEMS
OWNED BY THE UNITED STATES

(1) Petitioner: Petitioner is Mr. David Rodriguez, Director, Installation Support, on behalf of the Defense Logistics Agency (DLA), a component of the United States Department of Defense (DOD).[1] Petitioner is located at:

Defense Logistics Agency
DLA Installation Support
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(2) Exemption Requested: DLA requests an exemption from the Administrator, United States Environmental Protection Agency (USEPA or EPA), under the Toxic Substances Control Act (TSCA), 15 United States Code (U.S.C.), Section 2605(e)(3)(B). The requested exemption would allow DLA to import foreign-manufactured polychlorinated biphenyls (PCBs) that the Department of Defense (DOD) currently owns in Japan for disposal at the EPA-permitted storage, treatment and disposal facilities in the United States.

PCBs include items such as transformers (drained and un-drained), large and small capacitors, voltage regulators, switches, electromagnets, circuit breakers, reclosers, electrical cable, electric light ballasts, used dielectric fluids containing PCBs, and PCB-contaminated soil and debris (*e.g.*, rags, small parts, packaging materials).

These PCBs and PCB items are currently in temporary storage on the DOD military installations in Japan or are scheduled to be removed from service sometime before the expiration of an exemption granted pursuant to this petition.[2] The United States military forces in Japan generate this material when the PCB articles are taken out of service on the DOD installations in Japan. DLA believes that most of the PCBs and PCB items in the DOD-owned inventory in Japan were originally manufactured or acquired outside the United States.

(3) Manufacturing sites requiring exemption: None. DLA requests exemption for import and disposal of PCB and PCB items generated by the United States military forces located in Japan.

(4) Length of time requested for exemption: 12 months.

(5) Estimated Amount of PCBs and PCB items to be imported for disposal: DLA has estimated the United States forces in Japan will have generated approximately 1,014,222 pounds of PCB and PCB items through CY 2014. Table 1 in Attachment 1 provides further details on the inventory of the items to be imported for disposal in the United States through CY 2014.[3]

The inventory contains items with various concentrations of PCBs, as determined using the gas chromatography analytic technique for each item, which range from non-detect (ND) or from less than 2 ppm to greater than 500 ppm. DLA anticipates that, at a minimum, at least 94% of the estimated quantity included within this petition request would be material containing or contaminated with PCBs at a level lower than that regulated level domestically in the United States, *i.e.*, <50ppm.[4] However, nearly all this material would be considered regulated PCBs in Japan.[5]

DLA intends to utilize this exemption to allow for compliant disposal of PCB items in DOD's inventory in Japan, either currently in storage or being removed from service during the exemption period for a couple of reasons: (1) equipment continues to come out of service at the end of its service life and (2) equipment also continues to be pulled out of service earlier than its service life expiration whenever feasible. This is in accordance with the Overseas Environmental Baseline Guidance Document, DOD 4715.05-G, May 1, 2007, providing guidance to DOD installations overseas to eliminate the use of PCB-containing equipment and products as a best management practice. In accordance with that guidance, PCB equipment also continues to be pulled out of service earlier than its service life expiration whenever feasible.

(6) Risk of injury to health or environment: Allowing the DOD to return PCB containing items from its inventory in Japan for compliant disposal in the United States presents no unreasonable risk of injury or health to humans or to the environment. The EPA had previously found, in response to DLA's previous petitions, that compliant disposal in the United States presents "no unreasonable risk."[6] DLA has also gained valuable experience in successfully executing proper disposal under those initially granted exemptions.

DLA submits the following discussion evaluating the risks of the proposed import of PCBs and PCB items for disposal in the United States and balances them with the available alternatives to DLA.

a. Evaluation of Risk for Import for Disposal in the United States

1. PCB Concentrations.

Table 2 in Attachment 1 provides the concentration ranges of PCBs and PCB items under the purview of this exemption request. Foreign-manufactured PCBs and PCB items do not differ in chemical composition from domestically-manufactured PCBs and PCB items, and they present the same risks to human health and the environment as domestic PCBs and PCB items. As noted in Section 5 above, the vast majority of this material would not qualify as PCB waste under 40 C.F.R. Part 761, Subpart D.

2. Packaging and Transportation.

In shipping PCBs and PCB items or wastes from Japan, DLA follows packaging, marking, labeling and shipping papers that conform to the applicable modal and inter-modal (sea, air, land) national and/or international regulations. Such packaging is in accordance with the United Nations (UN) Performance Oriented Packaging (UNPOP) standards. Compliance is required also with modal or intermodal regulatory requirements outlined in the International Maritime Danger Goods (IMDG) Code/International Maritime Organization (IMO); International Civil aviation Organization (ICAO) Technical Instructions; requirements of the International Air Transport Association (IATA); UN Recommendations on the Transport of Dangerous Goods Code, and provisions of the Hazardous Materials Regulations at 49 C.F.R. 100-199.

DLA policy and procedures implementing these standards are found in DOD Joint regulations DLAD 4145.41/AR 700-143/AFJI 24-201/NAVSUPINST 4040.55/MCO 4030.40A. Proper handling and shipping include blocking, bracing, overpacking and the inclusion of secondary spill containment devices as required by applicable transportation regulations.

3. Treatment and Disposal in Compliance with the United States Laws and PCB Regulations.

DLA has gained considerable experience and expertise in awarding and administering disposal contracts for PCB waste in the United States. DLA has also been safely returning PCB items, generated by the DOD forces overseas, for compliant disposal in the United States for many years. Additionally, the Agency has successfully imported for disposal approximately 3.6 million pounds of foreign-manufactured PCB and PCB items pursuant to previously granted exemptions under TSCA Section 6(3)(e), one covering the period April 18, 2003 to April 17, 2004 and another exemption covering the period January 7, 2008 to January 6, 2009.[7] DLA has returned "U.S.-manufactured" PCB items (i.e., not foreign-acquired or -manufactured) through import to the United States from

overseas locations for a number of years, with approximately 65,019 lbs. being returned for compliant treatment and disposal in the last 2 years.[8]

On approval of this petition, as requested, DLA will contract with commercial firms[9] in accordance with all applicable Federal procurement statutes and the Federal Acquisition Regulations (FAR). Only companies with the required Federal and/or state-permitted transportation, storage, treatment and disposal facilities for dealing with PCBs and PCB items would be considered as eligible for award of such contracts.

Specifically, upon approval of this petition under TSCA 6(e), the PCB items will be imported in accordance with the regulations issued under the authority of TSCA 13(b), (15 U.S.C. 2612(b)) and all applicable United States customs regulations. Upon arrival in the United States, the material will be transported, handled, treated, and disposed of in conformance with the EPA's PCB regulations at 40 C.F.R., Part 761.

The PCB regulations set out specific treatment and disposal methods for PCBs and PCB items depending on the types of item and the concentrations of PCBs in the item or liquids/fluids. The foreign-manufactured PCBs and PCB items described in this petition are no different in chemical makeup than domestically manufactured PCBs and PCB items. Their disposal, therefore, is treated the same way as under the EPA regulations. These materials will be subject to either recycling of the metal components once an item is decontaminated, burial in a chemical waste landfill, or if not decontaminated, incineration. Used oils will be treated and disposed of either by dechlorination or sent for energy recovery as fuels. Non-recyclable material will be disposed of as residual solid waste.

As noted above, DLA and its contractors have extensive experience in safely returning PCBs and PCB items not manufactured in Japan to the United States for treatment and disposal. During the past fifteen years, DLA has returned several million pounds of PCBs and PCB items for compliant disposal in the United States, including 3.6 million pounds of foreign-manufactured PCBs imported under the two previously granted exemptions. Throughout the course of this experience, DLA has used the same standards and procedures discussed above without spills or safety problems affecting human health or the environment.

b. Evaluation of Risks of Long Term Storage in Japan

The EPA has determined that long term storage of PCBs and PCB contaminated materials presents risks associated with the potential for damage to containers, degradation of packaging materials, impact of floods, earthquakes or other natural or man-made disasters.[10] The EPA and the environmental protection agencies world-wide acknowledge that PCBs present unacceptable risks to human health and the

environment if inadvertently released, ingested by humans or animals, introduced into the food supply or in commerce. Recent natural events in Japan highlight the risks inherent in long term storage as a strategy for managing any PCB waste stream.

1. Lack of Permitted PCB Disposal Facilities in Japan Able to Process DOD Waste.

Japan has had insufficient treatment and disposal capacity to handle PCBs or PCB-contaminated items and its development of disposal capacity has lagged behind that of the United States. A report by the United Nations Environmental Program (UNEP) Agency has noted this lack of disposal facilities.[11] The shortfall in disposal capacity has already raised concerns in Japan as reported by the Japan Times and other Japanese media.[12]

In 2001, the Japanese Diet passed legislation designed to facilitate the development of PCB disposal capacity, known as the "Law Concerning Special Measure Against PCB Waste."[13] To date, DLA is unaware of any foreign-manufactured PCBs that have been treated and disposed of within Japan as the local disposal only accommodates PCB wastes generated by "Japanese concerns." Based on the purposes of the laws and informal discussions with Japanese officials, DLA still does not believe that "non-Japanese" PCB wastes will be eligible for disposal at the public facilities before the backlog of Japanese generated PCBs has been processed. Precise estimates on the backlog of PCB waste inventories currently existing in Japan are not readily available. However, Japan has had a ban on PCB production since 1974 before which very significant quantities of pure PCBs were produced and utilized in various electrical and insulating capacities.[14] Japanese law requires disposal or treatment of these PCBs in Japanese owned facilities by 2016.[15]

Some private disposal capacity might become available within the next several years in Japan if local Japanese firms are granted permits to develop PCB treatment and disposal capacities. In 2011, the public affairs officials with the United States forces in Japan and the DLA environmental program officials received informal inquiries regarding DLA's interest in such disposal capacity. As part of its efforts to assess disposal availability for United States forces in Japan wastes, DLA conducted market research to pursue such opportunities on behalf of the United States military forces.[16]

The market research identified one private Japanese firm that indicated a capability to process a number of PCB waste streams managed by DLA. However, due to a number of factors, DLA does not anticipate this possible in-country disposal option could have a significant impact on its need to import PCBs for disposal within the next four years. These factors include the fact that only one facility identified the potential capability and interest in treating the PCB waste streams and the capability was identified for less than 20% of the waste by weight. However, most importantly, the current permit status of the responding firm was not clear; the United States Government has not been able to inspect the

facility or validate with the Government of Japan that the firm has authorization to treat wastes generated by DOD in Japan.

If DLA were successful in developing an in-country disposal avenue in Japan, it is possible the amount it would need to import could be decreased by as much as 20% from the total overall estimates provided in this petition. However, given the lead time required in developing these options and the uncertainty related to these facilities becoming permitted and being able to provide compliant treatment and disposal on acceptable terms, the United States forces in Japan and the DLA believe it is necessary to keep DOD's entire estimated inventory of PCBs within the scope of this petition.

In contrast to the current lack of PCB disposal services available to non-Japanese entities in Japan, DLA reviewed the UN reports referenced above and searched the EPA web site to identify disposal facilities permitted to handle PCB waste in the United States.[17] This effort indicated there were currently a significant number of United States facilities permitted to dispose of PCB wastes in a compliant manner presenting no unreasonable risk to human health or the environment.

2. Extremely Limited Storage Capacity for DOD in Japan.

Since Japan has no disposal or permitted storage capacity for PCB waste generated by the United States forces in Japan, the DOD units in Japan are required to accumulate PCB wastes in their long and short term storage pending more final disposal solutions. At the time of DLA's previous petitions, DOD's storage space had been severely impacted in Japan. Storage space that would have otherwise been devoted to more direct mission support was being utilized to store PCBs and PCB items inside in order to mitigate the environmental risks as much as possible.

DLA successfully removed several million pounds of PCBs from this storage under prior EPA-granted exemptions for the United States forces in Japan. Due to the increasing mission demands, much of this storage has reverted to previous uses providing more direct support to the fundamental missions of the United States forces in Japan.

DOD's current storage capacity limits are being reached. Without the benefit of an exemption from the TSCA import ban, PCBs and PCB items from smaller temporary storage locations will eventually have to be moved and transported over public roads in Japan to the larger storage areas for indefinite, permanent storage until disposal can be affected. Also, non-PCB property currently in certain storage areas would need to be moved to allow that space to revert to PCB storage. PCBs and property around them will be subject to increased movement and handling. All of these factors heighten the risk of long term storage as a strategy for DOD's management of its PCBs in Japan and support the rationale behind allowing these items to be returned for compliant disposal in the United States

3. Risks of Long-Term Storage of PCBs and PCB Items Increase with Time.

Although significant progress has been made in drawing down the DOD's inventory of PCBs and PCB items located in Japan, the continuing lack of in-country disposal capacity in Japan does not allow for regular reductions of the remainder of DOD's foreign-manufactured PCB inventory. Absent a waiver to the import ban, DOD will be dependent on long term "on-installation" storage as a means to manage its PCB waste.

Continued accumulations and indefinite storage increase the risk of exposure to United States military personnel, to people living in and around the DOD installations where the PCBs are stored, and to the environment. Spills are likely to occur due to human error, unforeseen severe weather such as typhoons, or seismic events such as earthquakes. Storage containers deteriorate with time, increasing the likelihood of exposure to PCBs to personnel who must monitor such items and repack them if they suspect leakage. Long-term storage increases the DOD's liability and results in huge clean-up costs if unintended spills occur due to accidental spills as well.

All these factors result in increased potential of exposure to United States personnel, local citizens, and contamination of ground and water. Each time an item is handled, another opportunity for a spill or exposure is created. The situation is exacerbated in Japan because the United States military installations where these materials are located are relatively small, storage space is at a premium, and the surrounding civilian communities are located in very close proximity to the stored PCBs. Moreover, the situations for the DOD is further complicated because of the perception of the local communities, as addressed in section 4 below.

As recent events in Japan so tragically illustrate, it is an area of the world subject to severe weather and seismic activity such as typhoons, earthquakes, and tsunamis. In such a catastrophic event, severe damage to storage areas and other buildings could be easily expected, increasing the potential for spills and DOD's liability for subsequent environmental clean-up or damage to human health. PCBs and PCB items in indefinite storage abroad, therefore, present a greater risk to human health and the environment than PCBs temporarily stored for timely disposal in the United States

EPA has previously noted the risks inherent in extended storage in its 1996 PCB Import for Disposal Final Rule:

> "EPA believes that PCB wastes which are not disposed of for extended periods of time or which are not disposed of in facilities providing equivalent protection from release to the environment may pose an unreasonable risk of injury to health and the environment."[18]

The same Rule also underscored the benefit of prompt disposal in the United States:

> "Based on the persistence of PCBs in the global environment and EPA's finding that any exposure to human beings or the environment may be significant, EPA believes that the safe disposal of PCBs in approved United States facilities poses less risk of injury to health or the environment in the United States than the continued presence of PCBs in other countries, since proper disposal in this country provides protection against possible hazards from improper disposal elsewhere."[19]

The EPA affirmed its positions regarding the risks of long term storage abroad and the benefits of prompt disposal in its Final Rule addressing DLA's previous petitions.[20] Moreover, this position is consistent with the position of the United States Government regarding the proper management of PCBs as expressed in multilateral arrangements and international conventions. Please see, for example, the Stockholm Convention on Persistent Organic Pollutants (POPs), entry into effect 17 May, 2004,[21] an Organization for Economic Cooperation and Development (OECD) Decision (C(73)1) on the "Protection of the Environment by the Control of PCBs, 2/13/73, and an OECD Decision (C(87)2(final)) on "Further Measures for the protection of the environment by control of PCBs, 2/13/87."[22] Very generally stated, these arrangements require or recommend ban on production or new uses of PCBs and advocate "accelerated" disposal of PCBs and PCB items currently in use, whenever possible.

4. PCB Disposal Issues Can Strain United States-Japanese Relations.

The Administrator should also take into consideration the potential harm to the United States interests resulting from a delay in DOD's ability to import for domestic disposal PCB waste the United Statesitself generated through its military activities overseas. Regardless of manufacturing origin, the failure of the United States to permit disposal of waste it generates overseas in furtherance of its national interest strains relations at the national Government level. Should the ability of the United States to move these PCB items, when needed, be disrupted, it would not only strain relations at the national level but also exacerbate tension between the United States military installations with such materials and the local community. Japan already faces heavy disposal burdens in cleaning up in the aftermath of the earthquake, tsunami, and massive radiation releases. Any change in United States Government's longstanding position that it will take responsibility to dispose of the wastes it generates within Japan via import for treatment in the United States, would not likely be well received within the local community.

The tragic poisonings in Western Japan in the late 1960s have been detailed in earlier DLA petitions.[23] These incidents have had an impetus toward the banning of persistent organic pollutants, like PCBs through national legislation, such as the Toxic Substances Control Act in the United States, the Law Concerning Extraordinary Measures for Promotion of Proper Management

of Polychlorinated Biphenyl Waste (Law no. 65, June 22, 2001) in Japan, and international treaties such as the Stockholm Convention. Because of their historical experience, Japanese citizens exhibit particular sensitivity to PCB issues. Delicate United States-Japan relations over the presence and operation of DOD installations could be adversely affected by denial of this petition or significant changes in DOD's ability to return the PCB wastes it generates to the United States for disposal.

The presence of PCBs on DOD installations in Japan has in the past attracted significant adverse attention from Japanese politicians, the Japanese press, Japanese environmental groups, and local citizens.[24] Regular surveillance of DOD's PCB storage in Sagami and demands for inspections and sampling have occurred since at least 1992 after a member of Congress released a report outlining the storage and presence of PCBs and other hazardous materials on United States military bases in Japan.[25]

DOD's removals of PCBs from Japan under the previous exemptions were favorably received by Japan. However, these successes have only heightened Japanese expectations that the United States Government will continue to remove and dispose of the PCBs it has generated.[26] The Government of Japan continues to make occasional inquiries to monitor volumes of PCB waste disposed of under previous exemptions, and amounts of PCB items and waste remaining. Any perception that the DOD would return to stockpiling and long term storage of these materials invites unwarranted claims that the United States military is neglecting its environmental responsibilities.

5. Summary. Allowing PCB material to remain in extended, indefinite storage, in light of the natural and other risks cited above, may lead to degradation of storage containers and releases of PCBs into the environment from the materials at temporary or permanent storage facilities. PCBs released into the environment through natural disasters, accidents or other events can present significant exposure risks. The PCB material is currently stored on crowded DOD installations in close proximity to the living quarters of both DOD military and civilian personnel, as well as the local community. Since there are no permitted PCB disposal facilities available to DOD in Japan, and because of the unique environmental conditions in Japan, the potential for PCB contamination via leaks from the aging containers or accidental spills is higher at these locations than at disposal facilities in the United States.

c. Balancing Risks and Interests.

The benefits of prompt disposal of PCB material in the United States, which eliminates the risks inherent in storage, far outweigh any risk associated with the DLA's proposed course of action. Granting this petition presents no unreasonable risks and will serve to mitigate or lessen the risk of injury to human health and the environment of Japan and the United States posed by indefinite storage in Japan. Approval of this petition will demonstrate environmentally responsible behavior by the United States and

further its interests by maintaining good relations with a valued ally, as it will significantly reduce the risk of injury to the health of persons of both nations and to the environment in Japan.

Additionally, as noted above, allowing DOD to manage these PCB wastes in a compliant manner by returning these foreign-manufactured items to the United States for disposal is consistent with United States interests and obligations. These obligations are already expressed in the OECD Decisions regarding management and treatment of PCBs; the Basel and Stockholm Conventions; and the Toxic Substance Control Act itself. The DLA petition envisions removing these items from Japan where suitable disposal cannot be obtained, and ensuring that suitable long-term disposal occurs in a manner consistent with the United States regulations. Accordingly, this application meets the statutory standard that "no unreasonable risk" may result from the grant of an exemption under TSCA Section 6(e) authority.

(7) Substitutes for Disposal in the United States: TSCA Section 6(e)(3)(B)(ii) requires the Administrator to find that "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 PCBs." To satisfy the requirement in the context of a petition for an exemption to import, EPA looks at why such activity should occur in the United States including what steps the petitioner has taken to find an alternative to importing the PCBs for disposal.[27] The EPA noted in the final rule granting the previous petition, that the more relevant "good faith" issue for an exemption request such as this was "whether the waste could and/or should occur outside the United States." 72 FR 53153, Sept. 18, 2007. DLA submits that despite its good faith efforts to find alternatives to disposal in the United States by import from Japan, DLA has no reasonable avenues for local disposal in Japan. The PCBs wastes generated by DOD in Japan need to be returned to the United States for disposal in a compliant manner.

a. Alternative Treatment and Disposal on U.S Installations in Japan.

Previous DLA petitions have documented the significant legal (i.e., permitting requirements), technological, and political or public relations impediments to disposing of DOD generated PCBs on United States military installations using a mobile technology. These impediments are not fully restated here. While there may exist certain mobile technology capable of treating some of the PCB wastes generated by United States military forces in Japan, there are also significant impediments to obtaining the permits that would be required to have that technology approved for use on United States military installations. Residual wastes and metals would still need to be taken off-installation for disposal.

As noted above, DLA's market research suggested a potential could exist for disposal of some limited waste streams in newly permitted Japanese facilities (i.e., "off-installation" disposal). However, DLA has not been able to identify any relaxation in Japanese law nor the existence of any properly permitted vendor or technology that would be currently available to properly treat the DOD generated PCB wastes within the confines of the United States installations in Japan. Accordingly, on-site treatment does not present a reasonable alternative to the import of these wastes for proper disposal in the United States in compliance with the TSCA Section 6(e)(3).

b. Feasibility of Third Country Disposal.

The lack of suitable alternatives for disposal of PCBs generated by the United States military forces overseas has been an ongoing concern and was explored in a 1999 DOD report to Congress.[28] Since PCBs are covered by the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal (Basel Convention), the DLA contractor hired to arrange disposal was required to comply with the notice and consent regime under that Convention. [29]

Prior to its previous petitions, DLA and its primary disposal contractor made extensive contacts over a period of several years with Japanese officials and disposal facilities in numerous locations outside the United States in an effort to identify firms who could dispose of such PCB waste items while satisfying the Basel Convention requirements. At that time, the DOD also consulted at length with the State Department officials in Japan and in the United States whose responsibilities included international environmental matters. The variety of problems identified in these contacts regarding overseas disposal of certain PCB items resulted in a consensus that use of existing facilities in other developed countries was not a reasonable alternative. Even if other countries had the physical capacity to accept these wastes, non-governmental organizations might be expected to oppose the DOD's disposal of its waste in third countries because the United States has the technical capability to properly dispose of the hazardous materials itself.[30]

The EPA has noted, in findings made relative to DLA's previous petitions, the difficulties with exporting to third countries.[31] The findings noted the United States was not a party to the Basel Convention; had no bi-lateral arrangements in the region; and Japan had not expressed a willingness to provide export notices to third countries in order to facilitate disposal in third countries in accord with the Basel Convention. They all remain true today.

DLA will continue to explore the possibility of developing in-country disposal options for some low level waste streams should private treatment facilities become permitted in Japan. However, DLA's successful experience under the previous exemption is likely to have affirmed the perspective of Japanese officials that DOD installations in Japan should dispose of these foreign-manufactured PCBs items in the United States.

Neither country's interests in environmental stewardship will be served by foreclosing the option of PCB waste imports to the United States for DOD in light of DLA's successful experience in assuming accountability for responsible disposition of DOD generated PCBs from Japan and arranging compliant disposal in the United States under previously granted exemptions. DLA has no options for developing new processes for disposing of all such wastes in Japan or elsewhere as such actions would likely introduce new risks and uncertainties into the process and extend storage timeframes.

DLA's diligent but so far unsuccessful attempts to locate appropriate disposal sites outside the United States demonstrate its good faith efforts to pursue alternatives to disposal within the United States and fulfill the requirements of TSCA 6(e)(3)(B).[32] Moreover, DOD and DLA will continue to explore the potential that Japanese PCB disposal capacity may become available to the United States at some time in the future.

Should such disposal become available in the future, it will be considered by the DOD as a possible means to mitigate the risks associated with additional handling and shipping of PCBs and PCB items as well the cost involved with ocean shipping of large amounts of PCB cargo.

(8) Economic consequences if petition is denied: The broad economic consequences of denying this petition are not readily susceptible to objective quantification. For example, there is no reliable way to assess the potential economic consequences to DOD stemming from any international criticism or non-cooperation that would result from a the Administrator's decision not to allow import for domestic disposal in the United States of PCB wastes generated through DOD activities overseas. During DLA's previous efforts to find alternative disposal sites for PCB material outside the United States, non-Governmental organizations and foreign government representatives frequently objected on these grounds.

Similarly, it is difficult to estimate the economic consequences of continued storage of the material in Japan. The attendant exposure risks to United States and Japanese personnel and the local environment continue to increases over time. These potential indirect consequences, while difficult to quantify, are of potentially greater magnitude than the direct costs already incurred or to be incurred for continued storage in Japan.

(9) Conclusion: The United States military forces overseas remain an indispensable and highly visible instrument of the United States foreign policy. Through our military presence overseas, the United States exerts influence on the global community. This influence is manifested in our approach to security arrangements, alliances, and international arrangements ranging from the non-proliferation of weapons of mass destruction to trade and the environment. However, this presence overseas unavoidably results in the generation of wastes, some of it hazardous and some of it related to PCBs manufactured before their hazards were recognized or their distribution banned. The DOD's commitment to environmental security requires disposition of such materials in a compliant manner, regardless of the location in which the wastes are generated.

The Administrator should find granting of this exemption meets the statutory requirement for relief under TSCA, 15 U.S.C. 2605(e)(3)(B). The treatment and disposal facilities DLA proposes to use operate in compliance with the United States laws and regulations. The proposed import would not result in an "unreasonable risk of injury" to health or the environment. Granting this petition to permit DLA to dispose of these DOD generated PCBs and PCB items would eliminate the risks inherent in continued storage of these materials in Japan in a manner that avoids exposing the United States to international criticism for not owning up to its PCB wastes. Approval of this petition will provide relief to burdens upon Japanese industrial waste disposal capacity already significantly impacted by the recent crises in the aftermath of the earthquake, tsunami and nuclear reactor accidents. Additionally, the DLA has made every reasonable effort to locate appropriate disposal sites outside the United States as a substitute to making this request.

For all the foregoing reasons, the DLA respectfully requests that the Administrator grant the proposed exemption.

David Rodriguez
Director
DLA Installation Support

ATTACHMENT 1

As of August 2012, the United States forces in Japan had approximately 213,423 pounds of PCBs awaiting treatment and disposal. In addition, DLA has estimated additionally 800,799 pounds of PCBs coming out of service through CY 2014. This provides an estimated total of 1,014,222 pounds of PCB and PCB items for import exemption as listed in Table 1. The estimated concentration ranges appear at Table 2 for the amount of PCBs and PCB items in this petition. The amount and the concentration ranges may vary slightly and will need to be adjusted upward or downward slightly later on.

Table 1. Foreign-Manufactured PCBs Under Control of Department of Defense in Japan

DOD Unit	Estimated PCB Generation Targeted For Disposal Through CY 2014			
	In Storage (Pounds)	Projected for removal in 2013 (Pounds)	Projected for removal in 2014 (Pounds)	Total Requested for Disposal (Pounds)
Army	15,511	1,953	1.146	18,610
Air Force	151,699	102.391	100,641	354,731
Marine Corps	25,450	34,574	37,169	97,193
Navy	20,763	505,650	17,275	543,688
Total for DOD	213,423	644,568	156,231	1,014,222

Table 2. Estimated PCB Concentration by Weight (Pounds) for PCBs For Import

Requested Exemption Period	Requested Amount for DOD	Estimated Weights (Pounds) By PCB Concentrations (PPM*)		
		<50	50-499	>500
12 months	1,014,222	947,857	215	66,150

*PPM = Parts Per Million

[1] DLA is the DOD defense agency that provides supplies and services to the United States' military forces at more than 500 sites in all 50 states and more than 25 foreign countries. DLA manages more than four million consumable items and processes more than 30 million distribution actions annually. When the military no longer needs an item, DLA arranges for its reutilization or ultimate disposition through the Disposition Services, a DLA primary field activity.

[2] For purposes of this petition, DLA's estimates of quantities generated are based on the total of CY 2012 through CY 2014 generations for the approximate effective period of any exemption granted. Generation estimates may need to be adjusted lower or higher depending on the actual exemption period. See attachment 1.

[3] Report to Congress, Status of Foreign-Manufactured Polychlorinated Biphenyls Under the Control of Department of Defense Outside the United States, Feb. 2013.

[4] See attachment 1 for waste stream categories which inventory the material by type and PCB concentration as reported to Congress. The percentage of material containing or contaminated at the <50 ppm may actually be higher than the estimate given because in categorizing inventory, certain waste streams like contaminated soil and debris are not broken into ranges by ppm PCBs. They were excluded from the calculations of property that would not be regulated domestically. The <50 ppm contract line item numbers (CLINs) used in the calculations are 7004, 7005, 7012, 7013, 7022, 7023, 7024, and 7025. For CY 2012 total <50ppm estimated was 14,020 lbs and for CY 2013, 837,831 lbs.

[5] In Japan, as in the United States PCB imports are regulated differently than domestic uses. Under the Law Concerning the Examination and Regulation on Manufacture, etc. of Chemical Substances, and related Japanese legislation, use and distribution of material containing PCBs above 0.5 ppm is strictly regulated and new production banned. However, Disposition Services personnel have been advised by officials at the Japan Ministry of Environment that "no" material containing "any levels" of PCBs may be recycled, sold or otherwise transferred into the Japanese economy because such transfers would be considered imports, as are other transfers of property from US Government control to private Japanese parties. Furthermore, an Import Response from the Government of Japan published under the Rotterdam Convention on Prior Consent indicates that no PCBs may be imported without permission from the Japan Minister of International Trade and Industry (MITI) and that no such permissions have been granted. Prior Informed Consent Import Responses, as of July 2004, (CAS number 1336-36-3).

[6] 68 Fed. Reg. 4938.

[7] 72 Fed. Reg. 53152, Sept. 18, 2007.

[8] DLA Environmental Reporting System,, HIN Summary report showing data from 1 Jan, 2010, to 1 Jan, 2012.

[9] DLA currently has an existing PCB disposal contract that is used for disposal of PCBs returned from overseas. The contract is held by Clean Harbors, of Norwell, MA. Clean Harbors utilizes its Coffeyville, Kansas Treatment Storage and Disposal Facility for PCB transformer decontaminating/decommissioning performance. Clean Harbors facilities are permitted to perform chemical dechlorination, chemical waste landfilling and incineration.

[10] See 61 FR 11096, as cited at 72 FR 53153.

[11] United Nations Environmental Programme (UNEP), August 2000. "survey of Currently Available Non-Incineration PCB Destruction Technologies," Annex. 2.

[12] "Cabinet Set to Approve Two Bills on PCB Disposal," Feb. 22, 2001, Japan Times, formerly available at http://www.japantimes.co.jp/contact.htm. The article explained that once the Diet approves construction of

facilities under this bill, it would be another five to ten years before facilities are able to operate and take care of the backlog of items for disposal.

[13] Effective date Jul. 15, 2001. English translation from Japan Environmental Safety Corporation (JESCO) website. The JESCO (formerly known as JEC)is the quasi-governmental organization charged with the construction and operation of PCB disposal facilities as mandated by the law. The law requires the central government to develop a framework to develop capacity to dispose or consign disposal of current PCB inventories by 2016. Under the law, prefectures establish plans under the national framework and waste holders report PCB storage and disposal at the prefectural level, consigning disposal in accordance with their plans. An overview of the law can be found at www.jesconet.co.jp/eg/pcblaw.htm An overview of the domestic PCB waste treatment program can be found at www.jesconet.co.jp/eg/pcb.htm.

[14] See "PCB Treatment in Japan," International Business Strategies, Jan. 2002. Based on a report and survey by Japan's Ministry of Health, Labor and Welfare (MHLW) in 1998, approximately 54,000 tons of PCBs were consumed domestically prior to the 1974 ban. This is not the weight of material containing PCBs or contaminated by PCBs, but the actual weight of the manufactured PCBs themselves. This volume of PCBs will yield considerably greater volumes of PCB items or material contaminated by PCBs. For example, if you had a million lbs of used oil/dielectric fluid contaminated at 50 ppm, you would have approx. 50 lbs. of actual PCBs (although the whole one million lbs of oil would need to be treated).. If the items were transformers (where the PCB containing fluids or contamination are considerably less than the total weight of the item), a million lbs. would likely yield even less PCBs (at the same ppm level) by weight. The same report notes that there is currently in storage in Japan, approximately 126,000 tons of PCB contaminated insulation oil. Manufactured PCBs used in heat conducting insulation oil, for example, accounted for considerably less PCB production (8585 tons) than did electrical power equipment uses (approx 37, 156 tons). While reliable data on the stockpile of PCB contaminated fluids and material (by weight) is not readily available, the MHLW report listed the following stockpiles: High voltage transformers/condensers: 390,000 units in use or storage; Low voltage transformers/condensers:712,000 units; PCB bearing waste pressure sensitive paper: 27 tons; PCB waste: 778 kilolitres; Waste, polluted materials: 6300 tons: pole mounted transformers: 4,026,000 units.

[15] See footnote 12.

[16] Disposition Services "Sources Sought" notice posted to FedBizOps on Dec 1, 2011 with a closing date of Dec. 7, 2011. The responsible Contracting Officer, Del-Rosario Simmons also sent the notice to 10 waste disposal firms in Japan with whom DLA was familiar, or which had expressed an interest to Disposition Service's environmental staff. One response was received from a firm in Tokyo. That firm indicated a capability and interest in treating wastes which would comprise less than 20% off the waste streams included in this petition.

[17] www.epa.gov/opptintr/pcb/stordisp.html.

[18] 61 Fed. Reg. 11099.

[19] *Id.*

[20] 68 Fed.Reg. 4937.

[21] The United States has signed, but not ratified this convention. Under Art 18 of the Vienna Convention on the Law of Treaties, signatories to treaties are expected not to take actions to "frustrate" the purpose of the Treaty.

[22] With this decision OECD member countries, including the US, committed themselves to ban virtually all new uses for PCBs, and recommended members "accelerate" the phasing out of PCBs from existing uses, control PCBs in existing products, articles or equipment, and ensure appropriate disposal methods for wastes containing PCBs."

[23] See "Petition to the Administrator, United States Environmental Protection Agency, for an Exemption Under the Toxic Substances Control Act to Import PCBs, from VADM Keith W. Lippert, Director, DLA," 21 June 2005, at pp. 5-6[hereafter, "previous petition."]

[24] See, *Defense Agency will Inspect PCB Storage,* The Yomiuri Shimbun (Tokyo), Aug.20, 2000, at 2; *Pollution at Okinawa Bases Cannot be left Uncorrected,* Asahi Shimbun Jan 14, 1999; David Armstrong, *United States Presence on Foreign Soil is Tainted,* Boston Globe, Nov. 15, 1999; Danielle Knight, *Environment: Asian Women Demand Cleanup of United States Military Bases*, Inter Press Service, Oct. 16, 1998; *Probe Fails to Confirm Source of Pollutant at Kadena Air Base*, Kyodo News Service, Sept. 28, 1998; *High Level of PCB Detected in Okinawa,* Jiji Press Ticker Service, Feb. 21, 1997; *Toxic PCB Detected at Ex-United States Facility,* Jiji Press Ticker Service, Oct. 2, 1996.

[25] See, *MOFA, Environment agency to Investigate Base PCB Dumping,* Ryuku Shimpo, Aug. 19, 1998; *Editorial: Probe Pollution at United States Bases,* Ryuku Shimpo, Aug. 18, 1998; *United States Base Pollution*, Ryuku Shimpo, Aug. 28, 1998; *United States Rejects Request for PCB Test at Kadena*, Japan Economic Newswire, No. 25, 1998. The DLA has also received several requests for information under the Freedom of Information Act from members of the Sagamihara City Council seeking copies of delivery orders and other documentation of hazardous materials containing PCBs at the Sagami Depot.

[26] See previous petition, footnote 22 at 6.

[27] 68 Fed. Reg. 4936, statement regarding the applicable test from the EPA Final Rule granting DLA's earlier petitions requesting an exemption to import PCBs from United States installations in Wake Island and Japan for disposal.

[28] The National Defense Authorization Act for Fiscal Year 1999, section 324, directed the Secretary of Defense to submit a report to the Congress regarding foreign –manufactured PCB waste under control overseas. The EPA concurred in its release, noting that it looked forward to working with DOD to ensure all PCB wastes are handled in an compliant manner. The report stated in pertinent part:

> "Shrinking access to adequate disposal facilities overseas is an impediment to the compliant disposal of foreign-manufactured PCB wastes. Most of the facilities that can dispose of PCBs in accordance with DLA standards are located in Europe of North America. Over the past several years, the European Union (EU) member States have been revising their waste policies to restrict transboundary movements of hazardous waste. Currently, EU law prohibits imports into the EI of waste for disposal, except for parties to the Basel Convention. However, Base; parties wishing to export waste into the EI for final disposal must obtain prior approval from the importing country and must affirmatively show that they do not have and cannot acquire facilities to dispose of the waste in an compliant manner domestically. It is not easy to obtain the cooperation of both the importing and exporting countries and the approval process is very time consuming."

(Report to Congress, Foreign Manufactured PCBs at United States Military Installations Overseas, p. 15, Mar. 1999).

[29] Since that time two more international conventions addressing international trade or controls in toxic chemical have come into effect, the Stockholm Convention on Persistent Organic Pollutants (POPS), entry into force 17 May 2004, and the Rotterdam Convention on Prior Informed Consent, (PIC), entry into force, June, 2004. Like the Basel Convention, the United States has signed by not ratified these conventions.

[30] At the time of the last official request seeking Japanese approval to sign export notifications under Basel, (prior to DLA's previous petition) Japan asserted that it could not do so due to the United States' non-Party status and technical capability to treat its wastes. See DLA's previous petition, footnote 22 above, at p. 9.

[31] 72 FR 53156

[32] In addition to DLA's efforts, it should be noted that the Department of Defense has consistently sought to obtain relief from the situation DLA faces when trying to obtain disposal resources overseas in host nations without sufficient capacity. DOD's 1999 Report to Congress, see footnote 27, requested legislation amending the TSCA import ban thus allowing the United States to return PCBs its military generates overseas for disposal in the US or requesting ratification of the Basel Convention. Despite continuous DOD requests and various legislative efforts aimed at implementing Basel, DOD has not obtained the legislative relief requested.