



ASSISTANT ADMINISTRATOR FOR CHEMICAL SAFETY AND POLLUTION PREVENTION

WASHINGTON, D.C. 20460

April 4, 2024

Ms. Laura Watson
Director
State of Washington, Department of Ecology
P.O. Box 47600
Olympia, Washington 98504

Re: PET-001870 - Toxic Substances Control Act Section 21 Petition Concerning Polychlorinated Biphenyls in Consumer Products – EPA Response

Dear Ms. Watson:

The U.S. Environmental Protection Agency is responding to your petition submitted on January 4, 2024, and filed pursuant to section 21 of the Toxic Substances Control Act. The petition requests the EPA to safeguard public health against polychlorinated biphenyls in consumer products.

TSCA section 21 provides for the submission of a petition to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8, or to issue an order under TSCA section 4, 5(e), or 5(f). The petition requests that the EPA take five actions related to the authorized limits for inadvertently generated PCBs in consumer products: (1) commence rulemaking to reassess limits on allowable inadvertent PCBs found in consumer products; (2) adopt a new rule that identifies use of pigments containing PCBs as a “use” of PCBs; (3) in collaboration with state and tribal governments, establish new, lower limits on allowable inadvertent PCBs in consumer products; (4) in collaboration with state and tribal governments, establish priority consumer products that will be subject to lower allowable limits of inadvertent PCBs at an earlier date; and (5) in collaboration with state and tribal governments, reassess limits on all allowable PCBs found in commercial products, as detailed in 40 CFR 761, et seq., and establish a rulemaking schedule for the adoption of revised regulations. The EPA is interpreting these requests generally and collectively as requesting the Agency to initiate a proceeding for the amendment of a rule under TSCA section 6(e), the 1984 final rule “Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations” (49 FR 28172; July 10, 1984).

The Agency has reviewed the information submitted in your petition. Based on this review and after careful consideration of your specific requests, the EPA is denying the request to initiate a proceeding for the amendment of a rule under TSCA section 6(e) because, although the EPA shares the petitioner’s

concerns regarding risks to human health and the environment posed by PCBs, the petition failed to point with any specificity to deficiencies in the Agency's promulgation of the 1984 final rule and determination of no unreasonable risk under TSCA section 6(e). As a result, the petitioner has not provided adequate justification – based on the rulemaking process and record for the 1984 final rule, as well as information provided or otherwise available to the Agency – for the requested actions. Thus, the EPA finds that the petition is insufficiently specific and that the petitioner did not meet their burden under TSCA section 21(b)(1) of establishing that it is necessary to amend the 1984 final rule under TSCA section 6(e). Therefore, after careful consideration, the EPA has denied the petition for the reasons set forth in this notice. As necessary and appropriate to supplement ongoing Agency efforts, the EPA may consider information gathering activities under TSCA (e.g., TSCA sections 4 or 8) to collect data needed to better understand and characterize exposure and risk associated with inadvertently generated PCBs.

The Agency's reasons for denying the petition will be published in a forthcoming edition of the *Federal Register*. A pre-publication copy of that *Federal Register* document is enclosed.

Under TSCA section 21, within 60 days of a denial, the petitioner has the right to appeal the Agency's denial of its TSCA section 21 petition by commencing a civil action in a U.S. district court to compel initiation of the requested proceeding. If you would like to discuss this matter further, please contact Tom Groeneveld at (202) 566-1188 groeneveld.thomas@epa.gov.

Sincerely,

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Michal Freedhoff

Enclosure:

Pre-Publication Copy of the ***Federal Register*** document entitled: "Polychlorinated biphenyls (PCBs); TSCA Section 21 Petition for Rulemaking under TSCA Section 6; Reasons for Agency Response; Denial of Requested Rulemaking" (FRL-11666-01-OCSP).