

Consolidated Comments:

Technical Guidance for Determining the Presence of Polychlorinated Biphenyls (PCBs) at Regulated Concentrations on Vessels (Ships) to be Reflagged

U.S. Environmental Protection Agency

**Office of Pollution Prevention and Toxics (OPPT) / National Program Chemicals Division and
Office of Resource Conservation and Recovery (ORCR) / Materials Recovery and Waste
Management Division**

Contents

A. Purpose 3

B. Background 3

C. EPA Solicitation for Comments 3

 1. Other Ship Activities..... 4

 2. Shipboard Material Population Size for Non-discrete Items 4

 3. Cable Sampling 5

 4. Vessel Construction Cut-off Date 5

D. TSCA Liability 6

E. Sampling Burden and Cost 6

F. Other Comments..... 7

A. Purpose

On January 31, 2013, the United States Environmental Protection Agency (EPA) made available to the public for review a draft technical guidance document entitled, "Draft Technical Guidance for Determining the Presence of Polychlorinated Biphenyls (PCBs) at Regulated Concentrations on Vessels (Ships) to be Reflagged," and provided a 60-day public comment period. Today's document serves to consolidate public comments received on the draft technical guidance and to provide information to those who commented on the draft, as well as other interested parties, regarding the development of the final technical guidance document based on the comments received. Additionally, in today's document EPA summarizes and provides further information to the most substantive comments received.

Please note we received several suggested corrections and clarifications to the draft technical guidance. Where appropriate, we made the suggested edits in the final technical guidance. The majority of these types of comments, where EPA agreed with the public comment and made the corresponding change to the final technical guidance, are not listed in this document.

B. Background

EPA developed technical guidance to assist ship owners to determine whether shipboard materials containing regulated levels of PCBs are present on their vessels so that appropriate removal of PCBs can occur, if necessary, prior to exporting the vessel to be reflagged to a foreign flag. The final guidance titled, "Technical Guidance for Determining the Presence of Polychlorinated Biphenyls (PCBs) at Regulated Concentrations on Vessels (Ships) to be Reflagged," can assist ship owners in completing the self-certification specified under the U.S. Department of Transportation's Maritime Administration (MARAD) procedures to transfer a U.S. flagged ship to a foreign flag prior to the export of the vessel. PCBs, which are regulated under the Toxic Substance Control Act (TSCA), are very toxic and can be found in a number of shipboard materials such as paint, electrical cable, and gaskets. The comprehensive technical guidance will assist in protecting human health and the environment by helping vessel owners comply with the PCB regulations and the requirements of TSCA when exporting vessels to be reflagged to a foreign flag. The technical guidance is not a regulation or policy document.

C. EPA Solicitation for Comments

During the public comment period, EPA solicited comments on the entire document, and requested comments on specific topics. These topics included the following:

- The question of whether elements of the proposed draft technical guidance could be applied to ship-related activities other than the reflagging process.
- The proposed approaches to:
 - Composite sampling,
 - Logical groupings (subgroup approach),
 - Cable sampling, and

- Determining category population size for non-discrete items.
- The question of whether there is an appropriate date of a vessel's construction after which it could be assumed ship board materials would not contain regulated levels of PCBs (PCB concentrations of ≥ 50 ppm).

1. Other Ship Activities

What EPA solicited comments on: EPA's final technical guidance titled, "Technical Guidance for Determining the Presence of Polychlorinated Biphenyls (PCBs) at Regulated Concentrations on Vessels (Ships) to be Reflagged," is intended to assist ship owners in determining whether their vessel contains regulated levels of PCBs prior to reflagging and to complete the self-certification required by the MARAD Clarification (76 FR 37280). When soliciting public comments, EPA asked about the potential utility of applying this technical guidance to ship activities other than reflagging.

Public Comments Received:

The comments EPA received on whether the technical guidance could be applicable for ship activities other than reflagging ranged from not using the technical guidance for ship activities other than reflagging without thorough vetting to using the technical guidance for all other transfer of title or disposal activities for ships, as well as applying the guidance to "building demolition/disposal and disposal of any other vehicle/mode of transportation including rail cars, trucks, cars, airplanes, etc."

Further Information Provided by EPA:

EPA believes this guidance could be useful for other ship activities where the user is seeking a statistical confidence that the ship does not contain PCBs above a specified concentration and in instances when determining whether a vessel contains regulated levels of PCBs when attempting to achieve the requirements of TSCA and its implementing regulations.

2. Shipboard Material Population Size for Non-discrete Items

What EPA solicited comments on: Of the shipboard material types identified in this technical guidance that could contain regulated levels of PCBs, paint and caulk may be difficult if not impossible to define into discrete items. Without being able to itemize a material, one cannot use the statistical methods described in the technical guidance. To address this, EPA recommended that every 400 square feet of painted surface on the ship be treated as one item of paint, because one gallon of paint, which is a typical unit for painting, covers approximately 400 square feet. This means that the inventory population used to determine the number of samples would be the entire square footage of painted surfaces on the vessel divided by 400. In regard to caulk, if caulk is not found as discrete items on a vessel, then EPA recommends using every 10 linear feet of caulk to be treated as one item of caulk. EPA solicited comments on whether these size selections for paint and caulk are practical when incorporated into the statistical methods of this technical guidance.

Public Comments Received:

All comments received regarding the use of 400 sq ft to itemize paint objected to itemizing paint with that unit of measurement. Only one commenter provided an alternative unit of measurement of 5 gallons instead of one gallon, because the commenter felt that 5 gallons is a more appropriate unit for interior work on ships.

Further Information Provided by EPA Reply:

EPA agrees that 5 gallons is a more suitable assumption for a typical unit of paint used on a vessel. Typically, vessels would be painted with large batches of paint for both initial construction and maintenance. As a result, we changed the value to itemize paint from 400 to 2000 square feet, based on 1 gallon providing 400 square feet of paint when applied on a vessel.

3. Cable Sampling

What EPA solicited comments on: In the draft technical guidance, EPA recommended the following when sampling an electrical cable: cut a cross section of the cable, separate out all metal materials and remove them from the sample, and homogenize and extract the remaining non-metal portions of the sample. EPA solicited public comments on this sampling/collection approach.

Public Comments Received:

One commenter stated a better approach is to obtain a sample from each of the cables' constituent parts at the end of a cable run. For example, where the cable terminates, it may be possible to collect a small section of insulation from each conductor (red, white, gray, etc.) as well as any protective sheaths/coverings. This means that a cable may represent several material samples. This is a better, more efficient and safer means to sample the constituent parts of an electrical cable and can be accomplished with the power secured and the circuit tagged out.

Further Information Provided by EPA:

EPA's proposed cross section method for sampling cable in the draft technical guidance is safe for the sampling crew and minimizes destruction to the cable. Regardless, after consideration of public comments received, we updated the final technical guidance to broaden the recommendation for sampling cable to include either a cross section sample or multiple samples based on constituent parts.

4. Vessel Construction Cut-off Date

What EPA solicited comments on: Ships often take several years to construct, which means a portion of a vessel could have been constructed prior to Toxic Substances Control Act (TSCA) going into effect, yet the construction of the ship in its entirety could have been completed after TSCA came into effect, which was July 2, 1979. EPA solicited comments on whether there is an appropriate date of vessel construction after which it could be assumed that all the shipboard materials included on a vessel built in the U.S. do not contain PCBs in the initial construction.

Public Comments Received:

- One commenter recommended the vessel construction cut-off date should be 1985, based on U.S. Coast Guard data from the Rand Report titled “Disposal Options for Ship” (Disposal Options for Ships, Prepared for the U.S. Navy by Rand’s National Defense Research Institute, 2001. See page 78).
- Another commenter recommended a cut-off date of January 1, 1980, after which vessels built or repaired in the U.S. can be assumed to not have shipboard materials containing PCBs.
- Another commenter recommended the same cutoff date of January 1, 1980 for US ship builds. However, the commenter noted that repairs and maintenance in foreign countries should take into account the laws and regulations for PCBs in that country.
- One commenter stated that “one may assume that any vessel with drawing dates after July 2, 1979 (761.2 PCB concentration assumptions for use) is without regulated PCB.”

Further Information Provided by EPA:

MarAd’s FR Clarification (76 FR 37280) states that vessels built in the U.S. after 1985 shall be exempted from the self-certification requirements to verify that no shipboard materials with PCB concentrations ≥ 50 ppm are present on vessels to be reflagged to a foreign country. Because PCB components could be added to a ship during repair or maintenance (especially in some foreign countries), EPA recommends that vessel owners not assume that ships built in the U.S. after 1985 are entirely free of regulated levels of PCBs. More information on this point can be found in Section IV of the guidance.

D. TSCA Liability

Public Comments Received:

Several commenters stated that the technical guidance is inadequate because it does not provide a ‘safe harbor’ from potential violations of TSCA even if the guidance is followed and the vessel is appropriately remediated as necessary.

Further Information Provided by EPA:

The relevant provisions of TSCA section 6(e) impose a standard of strict liability. Following the technical guidance and appropriately remediating the vessel as necessary does not guarantee that shipboard materials remaining on the vessel do not contain regulated levels of PCBs. For this reason, EPA cannot promise that no violations of TSCA may still exist. By the same token, a decision by a ship owner not to follow the approaches described in this guidance does not create any assumption or presumption that the ship may have shipboard materials that contain regulated levels of PCBs.

E. Sampling Burden and Cost

Public Comments Received:

Several commenters stated that collecting and analyzing the number of samples shown in the technical guidance’s examples could be costly and time-consuming. One commenter stated, “the statistical sampling approach recommended in the Draft

Guidance is a process that, at its upper level of confidence, is so excessive that it can prove totally infeasible. The purported protection provided by this statistical approach, therefore, is illusory.”

Further Information Provided by EPA:

In the technical guidance we recommend several approaches which can lower the total number of samples needed to achieve a specified level of confidence. From that perspective, using this technical guidance to achieve an upper level of confidence can be feasible, especially if combining approaches such as using historical documents/existing information, along with composite sampling and logical groupings of items in a material category.

The technical guidance provides EPA’s technical judgment as to sampling approaches and the use of historical documents/existing information to achieve specified levels of certainty. The technical guidance does not impose any requirements or burden. The ship owners, if they choose to follow the technical guidance, also have the ability to choose the statistical level of confidence (which will reflect the number of samples) they wish to obtain.

F. Other Comments

1. Public Comment Received:

One commenter stated that exports of continued uses of PCBs from continued use authorizations (found in 40 CFR 761.20 and 761.30) on a vessel would pose no unreasonable risk to health or the environment. The commenter further stated that the PCB use authorizations, found in 40 C.F.R. Part 761 that continue to apply after export, appears to be in conflict with the MarAd requirement that a vessel owner certify that a ship to be reflagged for export contain no regulated levels of PCBs (*i.e.*, ≥ 50 ppm). The commenter said that to avoid creating regulatory confusion in the ship reflagging context and in other export scenarios, EPA should clarify in the final technical guidance how such continued use of PCBs ≥ 50 ppm, in compliance with the use authorizations set forth at 40 C.F.R. Part 761, is consistent with the MarAd certification requirement for reflagging vessels to a foreign country.

Further Information Provided by EPA:

EPA notes that this technical guidance document is intended to provide EPA’s current best technical judgment as to sampling approaches that can achieve specified confidence levels when determining whether a vessel to be reflagged to a foreign country has materials containing PCBs in concentrations of ≥ 50 ppm. This is not a policy or interpretive document. For information purposes, however, we added a brief section to the final technical guidance titled ‘Regulated Levels of PCBs’, which identifies and summarizes regulatory provisions for both disposal and continued use, as well as incorporating the relevant PCB concentrations..

2. Public Comment Received:

One commenter stated that only providing a description of the blind statistical sampling approach and not including a description of sampling based on judgment and expertise in ship construction is a deficiency of the draft technical guidance. The commenter also recommended an iterative approach in which the sampler's experience with ship construction and maintenance is drawn upon to identify zones of a vessel in which similar materials (e.g., paint or insulation) would be used.

Further Information Provided by EPA:

As shown in the recommended process flowchart (Chart III.A) provided in the draft technical guidance, EPA envisions the ship owner to use historical documents to eliminate some items from sampling, then using blind sampling on the remaining items. We appreciate the use of judgmental sampling and acknowledge instances in which it can be employed, which is why we included a section on judgmental sampling. However, EPA is not confident that giving guidance to rely more heavily on judgmental sampling, such as that suggested by the commenter, would achieve a standard specified confidence level, due to the varying levels of expertise by the samplers..

As for how the zones are established, the user can establish zones to meet their sampling needs.

3. Public Comment Received:

EPA received comments to change several areas of the draft technical guidance to emphasize the use of dates when PCB bans took place in foreign countries should historical records be used to help determine if a foreign built or maintained ship contains regulated levels of PCBs.

Further Information Provided by EPA:

Where appropriate, we made edits to the draft guidance to further clarify the use of historical records that provide dates when PCB bans took place in foreign countries. Without fully understanding the nature of all PCB bans in foreign countries, EPA is hesitant to give more specific guidance on the use of historical records based on such bans.

4. Public Comment Received:

One commenter stated "the requirement to 'normalize' the results by multiplying the final concentration by the number of individual samples will in many instances lead to a gross overestimation of the actual PCB concentration of the material at issue, often requiring materials to be managed as PCB contaminated when in fact they are not." The Guidance states that when evaluating the results for composite samples, the result for each individual sample added to the composite should be assumed to be the concentration of the composite sample multiplied by the number of individual samples, which is highest possible concentration for any one of the individual samples in the composite sample.

Further Information Provided by EPA:

The approach to composite sampling listed in the guidance is a recommendation and not a requirement. Also, as indicated in the guidance language quoted below, EPA is not suggesting that all of the individual samples added to a composite could actually be at the concentration derived from multiplying; rather, the approach acknowledges that any one of the samples could in fact be at that concentration. This conservative approach avoids the possibility that high-concentration samples are diluted by low-concentration samples.

Here is the language in the guidance describing the recommendation:

“When evaluating the results, EPA recommends the result for each individual sample added to the composite be assumed to be the concentration of the composite sample multiplied by the number of individual samples. For example, if 9 individual samples were combined into one composite sample, and the analytical result of the composite sample is 12 ppm, then all 9 individual samples should be assumed to be 108 ppm (9 samples x 12ppm). This is a conservative approach, which does not reflect the true statistical probability of even one of the samples reaching the upper bound (108 ppm in the case of the example above). However, this conservative approach fits the purpose of this guidance, which is to determine the presence of any PCBs in concentrations ≥ 50 ppm on a vessel”.

5. Public Comment Received:

EPA received one comment that the draft technical guidance language describing the sampling approaches could be misconstrued to indicate that the sampling approaches are required instead of recommended.

Further Information Provided by EPA:

The technical guidance does offer a non-sampling approach, in which a vessel's historical records could be of use when determining whether a vessel to be reflagged to a foreign country has shipboard materials containing PCBs in concentrations of ≥ 50 ppm.

In addition, this is a technical guidance document, not a regulation or policy document. This technical guidance document does not impose any requirements or obligations on EPA or the regulated community, nor does it release any party from liability for any violation of TSCA or its implementing regulations. We edited the final technical guidance to further clarify that this is a voluntary technical guidance document and, as such, is not required.

6. Public Comment Received:

EPA received a comment that the discussion in the draft technical guidance regarding how to resolve potential PCB contamination in unsafe or inaccessible areas is confusing. In particular, EPA's recommendation that owners avoid

inaccessible or unsafe areas when sampling seems of little use or significance in light of EPA's subsequent discussion of the need to remediate those same areas. Further, the commenter stated that the discussion provided in the draft technical guidance pertaining to remediating inaccessible and unsampled areas inappropriately implies that owners should assume materials to contain regulated levels of PCBs in the absence of sampling that may demonstrate otherwise. The commenter believes this can be resolved by providing a fuller discussion regarding options for evaluating whether remediation of an unsafe or inaccessible location (where the extent of PCB contamination, if any, is unknown) is appropriate or warranted. In addition, this discussion in the final guidance should avoid any inappropriate suggestion regarding assumptions of PCB contamination (and the presence of regulated levels of PCBs) in the absence of analytical data.

Further Information Provided by EPA:

Upon consideration of the comments received, we provided in the final guidance language indicating that we do not encourage sampling or remediation of unsafe areas, unless there is a reason to suspect the presence of regulated levels of PCBs in those areas. In which case, EPA recommends that the ship owner determine a way to safely sample or remediate unsafe areas. By not sampling or remediating unsafe areas that contain regulated levels of PCBs prior to export, the ship owner assumes the risk of being in violation of TSCA. EPA does not intend in the technical guidance to address assumptions or presumptions with the respect to the possibility of PCB contamination, and nothing in the technical guidance should be read as making suggestions in this regard. Any reference to "assumptions" in the technical guidance refers to factual assumptions EPA believes are appropriate for sampling purposes, not to regulatory assumptions.

7. Public Comments Received:

EPA received a few comments stating that the recommended extraction methods and extraction holding times specified in the draft technical guidance are misleading..

Further Information Provided by EPA:

We updated the technical guidance to reflect the extraction methods cited in the PCB regulations. We also updated the technical guidance to accurately reflect the specifications of the methods under SW-846.

8. Public Comment Received:

EPA received a comment that the use of replaceable/disposable blades is not feasible for obtaining paint samples, due to the quality of most disposable paint scrapers.

Further Information Provided by EPA:

In the draft technical guidance, we recommended disposable blades because the use of disposable blades would reduce the need to decontaminate the tools

between samples. We changed the final technical guidance to recommend either non-disposable or disposable scrapers.

9. Public Comment Received:

One commenter stated that the sample area specified for collecting paint samples will not produce enough material for PCB analysis. The commenter recommends a sample area of one square meter as an alternate.

Further Information Provided by EPA:

In the draft technical guidance, we recommended a paint sample area of 30 cm by 30 cm, which is based on EPA's experience in collecting paint samples on vessels. We are retaining 30 cm by 30 cm in the final technical guidance. Additionally, the final technical guidance now states that the ship owner should work with the laboratory to determine the exact amount needed for an effective PCB analysis.

10. Public Comment Received:

One commenter had several issues with EPA's assumptions and recommendations in the draft technical guidance on PCB spills and liquid PCBs. The concerns revolved around two main issues: 1) the draft technical guidance sampling approaches appearing as required and not voluntary, and 2) the draft technical guidance information contradicting existing regulations or policy.

Further Information Provided by EPA:

The guidance is just a technical guidance document; as such, it does not create any requirements. Where appropriate, we have further avoided in the final technical guidance any appearance of contradicting existing regulations or policy.

11. Public Comment Received:

One commenter suggested that EPA should make clear in the final technical guidance that, in addition to the categories and subgroups of shipboard materials that may contain regulated levels of PCBs, as suggested in the draft technical guidance, owners may use their own knowledge and judgment to create subgroups of shipboard materials based on other factors.

Further Information Provided by EPA:

The final technical guidance states that the user can create any category of shipboard materials that may contain regulated levels of PCBs that meets his/her needs. This is noted in the final technical guidance following List II.A "Categories of Shipboard Material that May Contain PCBs in Concentrations \geq 50 ppm."

12. Public Comment Received:

One commenter stated, "the flag that a vessel (ship, barge, or marine structure) operates under has nothing to do with the manufacture of the vessel that might have PCB's above 50 parts per million (ppm), the threshold that TSCA sets for management of the hazardous material that was commonly integrated into U.S.

and foreign build ship manufacture from body paint to transformers. This analytical flaw must be corrected.”

Further Information Provided by EPA:

We agree with the commenter in that the flag of the vessel does not relate to the absence or presence of regulated levels of PCBs on the vessel, which is why in Section IV ‘Non-Sampling Approach’ we recommend using the country of build instead of the country of flag when gathering maintenance and manufacturing documentation on the vessel.

13. Public Comment Received:

One commenter stated that EPA's suggestion that ship owners should sample water that shows no visible traces of oil lacks foundation in either the regulations or common sense.

Further Information Provided by EPA:

The commenter is referring to following paragraph from the technical guidance:

“There may be a number of areas on the vessel with standing water or small pools of rain and/or sea water that do not appear to contain oils which could contain PCBs. Ship owners should consider the potential for such water to have been in contact with or impacted by materials containing PCBs when determining whether to test these areas for PCBs”.

We do not agree with this assessment of the guidance.

14. Public Comment Received:

One commenter stated that, as a general matter, shipboard items should be “considered to be homogenous with respect to the spatial distribution of PCBs within a given item.” However, the commenter said EPA should clarify in the final technical guidance that the owner’s experience, information, and judgment will play a critical role in determining the likelihood that PCBs are evenly distributed in any shipboard item.

Further Information Provided by EPA:

In practice, we have generally seen that the spatial distribution of PCBs in a given shipboard item is homogenous. Without this assumption, we believe the guidance would be impractical to implement. For this reason, no additional revisions to the technical guidance are needed in response to this comment.

15. Public Comment Received:

One commenter disagrees that for paint the sample population from a zone should be proportional to the surface area of that zone. The commenter felt that other criteria, such as zones for different areas of ship construction and maintenance could be used as a basis for establishing zones.

Further Information Provided by EPA:

We updated the draft technical guidance to reflect the additional factors that we believe are technically appropriate for use in selecting zones. These revisions include additional factors such as establishing zones based on areas of construction and maintenance of the vessel.

16. Public Comment Received:

One commenter stated that in the final technical guidance, EPA should clarify that, in addition to, or in the absence of, relevant historical records, a ship owner can use other knowledge, information, or judgment to evaluate the likelihood of regulated levels of PCBs in equipment, instead of employing destructive sampling.

Further Information Provided by EPA:

This document describes sampling approaches that EPA believes can achieve specified confidence levels as to the presence of regulated levels of PCBs on vessels to be reflagged. Ship owners may use other approaches, which may entail greater risk of unlawful export.

17. Public Comment Received:

One commenter stated that EPA should clarify if a given vessel may necessitate a more comprehensive review over another vessel. For example, a vessel built in the US prior to implementation of TSCA may necessitate a more extensive review and analysis than a similar vessel constructed in Japan in 1985. In this example, the U.S. built vessel would have been built before the U.S. banned PCBs, while the other vessel was built in Japan 5 years after a total ban on PCBs was imposed by the Japanese government. These subtleties should be explained in more detail in the final technical guidance, so vessel owners can better understand the options and processes involved, as well as the related costs, in determining whether a vessel to be reflagged to a foreign country is free of regulated levels of PCBs.

Further Information Provided by EPA:

In general, we agree with the commenter. However, because the relevant TSCA provisions impose a standard of strict liability, we are hesitant to recommend a more thorough review of one vessel over another.

18. Public Comment Received:

One commenter stated that EPA should include a section in the technical guidance on the penalties of violating TSCA. The commenter described the penalties as a 'risk factor' for ship owner's assessing their vessel for regulated levels of PCBs prior to reflagging to a foreign country.

Further Information Provided by EPA:

This is a technical guidance document. A discussion of the financial penalties under TSCA is beyond the scope of this technical guidance.

19. Public Comment Received:

One commenter stated that counting separate cable runs will artificially increase the population size, since many cables will all come from the same spool during initial construction or maintenance. The commenter also said that painted cable and gaskets all look the same, respectively.

Further Information Provided by EPA:

Regarding the cables coming from the same spool, this can be addressed by using historical documentation and/or 'Logical Groupings of Items in a Material Category'. As for painted cables and gaskets looking the same, we feel that the original color of the cable insulation and gaskets can be easily determined even when these items are painted, although the paint covering these items may have regulated levels of PCBs, which the user should also take into account.

20. Public Comment Received:

One commenter stated that if a cable contains liquid, there should be no need to sample – it should be assumed to have regulated levels of PCBs.

Further Information Provided by EPA:

According to 40 CFR 761.2(a)(2) it must be assumed that PCB concentrations in liquid-filled cables manufactured before July 2, 1979 are greater than or equal to 50 ppm (if the actual PCB concentration is not known). However for the purposes of this technical guidance, EPA recommends that the ship owner consider all liquid applications as potentially containing regulated levels of PCBs, unless otherwise specified in existing EPA guidelines and regulations.

21. Public Comment Received:

One commenter stated that self-regulation will not work. The commenter went on to say that EPA should take an active role in providing oversight and that EPA has the authority under TSCA to require ship owners to adhere to the processes described in the draft technical guidance. The commenter believes such a requirement would add real evidence that ship owners are indeed exercising reasonable due diligence as they would be required to furnish relevant documentation of such efforts.

Further Information Provided by EPA:

The technical guidance provides information on sampling approaches that can achieve specified levels of certainty as to whether regulated levels of PCBs are present on a vessel to be reflagged to a foreign country. This document is not a regulation and therefore does not require adherence to the processes described in the technical guidance.

22. Public Comment Received:

One commenter stated that MarAd is knowingly ignoring TSCA and thus creating an inequity between domestic scrappers and exporters.

Further Information Provided by EPA:

This technical guidance provides information on sampling approaches that can achieve specified levels of certainty as to whether regulated levels of PCBs are present on a vessel to be reflagged in a foreign country. EPA does not believe that MarAd is ignoring TSCA. It is beyond the scope of the guidance to discuss the implications of TSCA for domestic ship scrappers vs. foreign scrappers.

23. Public Comment Received:

Two commenters made separate arguments for why US built ships should be scrapped in the US instead of being allowed to be reflagged and exported.

Further Information Provided by EPA:

This technical guidance provides information on sampling approaches that can achieve specified levels of certainty as to whether regulated levels of PCBs are present on a vessel to be reflagged in a foreign country. It is beyond the scope of the guidance to discuss whether ships should be kept in the US for scrapping.

24. Public Comment Received:

One commenter stated that EPA should propose draft legislation to Congress allowing imports of ships with regulated levels of PCBs for scrapping in the US, but that the export ban on ships containing concentrations of 50 ppm or more of PCBs should not be relaxed.

Further Information Provided by EPA:

This technical guidance provides information on sampling approaches that can achieve specified levels of certainty as to whether regulated levels of PCBs are present on a vessel to be reflagged in a foreign country. It is beyond the scope of the guidance to discuss potential legislation.

25. Public Comment Received:

One commenter stated that the 1995 PCB sampling guidance should remain the baseline for sampling ships.

Further Information Provided by EPA:

The guidance referred to by the commenter was revoked by EPA in 2006.

26. Public Comment Received:

One commenter stated that many of the products on the vessel that may contain regulated levels of PCBs would fall under bulk product waste. It was suggested that this should be explained in the final technical guidance, as well as explaining the different disposal options for bulk product waste containing regulated levels of PCBs.

Further Information Provided by EPA:

This technical guidance provides information on sampling approaches that can achieve specified levels of certainty as to whether regulated levels of PCBs are present on a vessel to be reflagged in a foreign country. We are not providing

more detail regarding waste disposal other than what is already provided in the 'Waste Disposal' section of the final technical guidance.