

APPENDIX A
EPA ENFORCEMENT LETTER

Enforcement
Discretion Letter
2003



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

MAY 22 2003

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. James E. Caponiti
Associate Administrator for National Security
Maritime Administration
400 Seventh Street, S.W.
Washington, DC 20590

Re: Request for Enforcement Discretion for Export of Ships to Teesside, England

Dear Mr. Caponiti:

I am replying to your letter of May 7, 2003, requesting that the Environmental Protection Agency (EPA) exercise enforcement discretion to allow the Maritime Administration (MARAD) to export thirteen vessels in the James River Reserve Fleet to the AbleUK facility in Teesside, England for dismantling and recycling. As Assistant Administrator for the Office of Enforcement and Compliance Assurance, I have been delegated the authority to make this determination on behalf of EPA. Based on the findings and subject to the conditions below, I hereby grant MARAD's request.

PURPOSE

1. This letter supersedes the letter of enforcement discretion issued from the EPA to MARAD on November 30, 1995, and the Agreement Between the Maritime Administration and the United States Environmental Protection Agency titled EXPORT OF NATIONAL DEFENSE RESERVE FLEET (NDRF) VESSELS THAT MAY CONTAIN POLYCHLORINATED BIPHENYLS FOR SCRAPPING OUTSIDE THE UNITED STATES, November 7, 1997.
2. This letter is intended to specify the manner and conditions under which MARAD, its agents, and the contractors for disposal of non-retention NDRF vessels (hereinafter NDRF vessels) may export NDRF vessels for scrapping under the Pilot Program directed by the Defense Authorization Act for Fiscal Year 2003. This Agreement does not eliminate legal requirements which may be applicable to the actions covered by the letter.

COVERED MATTERS

3. This letter establishes the conditions under which MARAD, its agents, and contractors for disposal of NDRF vessels may export vessels that possibly contain polychlorinated biphenyls (PCBs) for scrapping. Export of these vessels is intended to be a Pilot Program pursuant to Section 7 (c)(1)(A) of the National Defense Authorization Act for Fiscal Year 2003, which directs the Secretary of Transportation, the Secretary of State, and the Administrator of the Environmental Protection Agency to jointly carry out one or more pilot programs through the Maritime Administration to explore the feasibility and advisability of various alternatives for exporting non-retention vessels in the National Defense Reserve Fleet for purposes of the dismantlement and recycling of such vessels.

4. This letter applies to the transfer and export of NDRF vessels that may contain PCBs, including in the following uses: (1) shipboard PCB-impregnated felt material, applications of which include, but are not limited to, gaskets in the joints of ventilation ducts, faying or insulating material between dissimilar metals, and machinery mount insulation; and (2) other PCB uses, including uses as plasticizers or flame retardants in insulation, dried paints, adhesives, rubber mounts, non-metallic components of electrical wire cable systems, PCBs used as dielectric fluid in transformers, capacitors, and other electrical equipment, PCBs used as hydraulic fluid and heat transfer fluids, and other PCB uses discovered during the term of this letter. If MARAD discovers any additional significant use of PCBs, defined as more than 3 pounds of PCB on any NDRF vessel, it shall inform the Director, Federal Facilities Enforcement Office (2261 A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, D.C. 20460, who will determine, in consultation with MARAD, the extent to which the terms of the letter cover the newly discovered use.

DEFINITIONS

5. The following definitions shall apply to this letter:

a. "NDRF vessels" means any non-retention vessel exported for scrapping that is (1) owned by MARAD or (2) purchased from MARAD, its agents, or subsequent transferees after the date this Agreement becomes effective.

b. "Export for scrapping" means export to a facility approved by EPA for the purpose of the complete demolition of a vessel outside the United States to recover metal and other valuable materials after the date this Agreement becomes effective.

c. "Purchasers, purchase, and purchased" cover participants in any transaction in which a NDRF vessel is transferred.

d. "Readily removable" means the PCBs or PCB item can be removed in a cost effective and efficient fashion without significant risks to human health and the environment, and without

compromising ship integrity or seaworthiness. Objects are not readily removable if the objects must be removed by heat, chemical stripping, scraping, abrasive blasting, or similar process.

e. "Operated in a seaworthy manner" means the operation of the vessel with water tight integrity, stability, buoyancy, and such propulsion, navigation, water, electrical, air conditioning, firefighting, habitation, and hydraulic systems as are required to deliver the vessel to the destination of overseas scrapping.

STATEMENT OF FACTS

6. MARAD has provided the following information.

a. MARAD is responsible for the operation and maintenance of the NDRF, including non-retention vessels. The National Defense Authorization Act of 2001, P.L. 106-398, Oct. 30, 2000, requires MARAD to dispose of all vessels in the NDRF that are not assigned to the Ready Reserve Force or otherwise designated for a specific purpose by September 30, 2006. In addition, MARAD is the disposal agent for the United States for all vessels over 1500 gross tons that are capable of conversion to merchant use. Section 510(l) of the Merchant Marine Act, 1936, 46 APP. U.S.C. §1160(l), specifically authorizes MARAD to export vessels for scrap.

b. NDRF vessels, like the vessels of other vessel-exporting nations, may contain polychlorinated biphenyls (PCBs) in some solid materials, added as plasticizers or fire retardants during the manufacturing process. The types of materials in which such PCBs may be found include, but are not limited to, paints, rubber products, felt gaskets and machinery mounts, adhesives, and electrical cable insulation. The United States no longer allows the manufacture of products to which PCBs have been intentionally added.

c. NDRF vessels may also contain PCBs in transformers, high and low voltage capacitors, and hydraulic fluids and heat transfer fluids.

d. Many items that contain PCBs are in locations accessible only by dismantling the vessel's structure. Often, such items are integral to the continuing function of the vessel as a vessel or to maintaining the watertight and structural integrity of the vessel.

7. Under section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2605(e), and its implementing regulations at 40 CFR 761.97, no person may process or distribute in commerce any PCB, or any PCB item at levels greater than or equal to 50 ppm, for export from the United States for disposal. Most of the obsolete NDRF vessels contain PCBs in concentrations above 50 ppm, therefore their export for scrapping may constitute a violation of TSCA.

AbleUK, TEESSIDE, ENGLAND

8. EPA and MARAD met with representatives from AbleUK in Teesside, England February 23-26, 2003. The meetings consisted of presentations by AbleUK and tours of AbleUK, Teesside Environmental Reclamation and Recycling Facility (TERRC), Seaton Meadows Landfill and Shanks Liquid Treatment Facility. The following findings support EPA's determination that AbleUK will be capable of meeting the requisite standard of Environmentally Sound Management:

a. AbleUK has experience in deconstruction and demolition of large off-shore structures such as oil rigs and floating storage platforms, power plants and the recycling, resale and reuse of materials. The facility has a 24 acre basin that can be sealed and drained similar to a dry dock.

b. TERRC is located at the mouth of the River Tees. The area is comprised of heavy industry, including powerplants, petrochemical and chemical and local trash recycling and transfer stations. The nearest residential area is approximately 1-2 km away. TERRC is permitted to manage and store hazardous materials by the UK's Environment Agency.

c. Seaton Meadows Landfill is owned by AbleUK and is permitted by the Environment Agency to receive and dispose of domestic and regulated wastes, including PCBs of the types and concentrations similar to those found on MARAD vessels:

d. AbleUK will contract with Shanks Liquid Treatment Facility to dispose of any liquid wastes they cannot handle themselves with the exception of liquid PCBs.

e. Management of PCBs in the UK is very similar to that in the United States. The UK has two incinerators permitted to take both liquid and solid PCB wastes. There should be no liquid PCBs onboard the MARAD vessels, but should any be discovered, liquid PCBs will be incinerated. Solid materials suspected of containing PCBs will be landfilled at Seaton Meadows. Cabling will be sent to a reclamation facility which will strip out the copper and return the debris to AbleUK for landfilling.

f. The majority of metal cutting will be done using cold cutting techniques, but if hot cutting of metal is necessary, AbleUK will remove a four inch strip of any paints/coatings containing PCBs using blasting prior to cutting.

g. All employees are trained either by AbleUK or by a contractor and issued appropriate protective equipment, including respiratory protection and tools for their assigned jobs.

CONDITIONS

9. MARAD, its agents and subsequent purchasers of any vessels identified for this Pilot Program shall not export any vessels that may contain PCBs for scrapping unless such actions are carried out in accordance with the requirements of this Agreement.

10. Exports of Vessels for Scrapping. Vessels that may contain PCBs may be exported for scrapping if all of the following conditions are met:

a. MARAD may export only those vessels listed in the Appendix, unless MARAD provides notice in advance of a need to substitute a vessel or vessels after completion of a towing survey.

b. Prior to the proposed export, the following items shall be removed and stored and/or disposed of in accordance with the requirements of the PCB Regulations, 40 CFR Part 761 and EPA shall be notified in writing of such removal:

(1) All transformers and large high and low voltage capacitors that contain dielectric fluids with PCBs ≥ 50 ppm and all hydraulic and heat transfer fluids containing PCBs ≥ 50 ppm.

(2) Solid items containing PCBs ≥ 50 ppm, when such solid items are readily removable and their removal does not jeopardize the structural integrity of the ship or the ability of the ship to be operated in a seaworthy manner for delivery to the location where it will be scrapped.

c. Prior to export, MARAD shall provide to EPA the name and location of the towing company and certification of towability and seaworthiness from the Coast Guard.

d. EPA inspectors shall be allowed access to all parts of vessels intended for scrapping under this Agreement.

e. Notice of export of these ships shall be provided to the UK Environment Agency in accordance with the Organization of Economic Cooperation and Development (OECD) agreement on the transboundary movement of wastes for recovery. Consent of the UK Environment Agency to the import of the ships must be provided to EPA.

f. Prior to export, MARAD, its agent or the purchaser must provide written notice to the United Kingdom that a specific vessel or vessels are proposed to be exported to the United Kingdom for scrapping, including specific information about the hazardous materials that may be found on the vessel(s) being exported.

g. PCBs shall be disposed of in the appropriate facilities as described in paragraph 8.c above.

h. Four vessels will be dismantled and recycled in the pilot phase of this program. Provided the hazardous materials remediation and dismantling processes conducted on those vessels are satisfactory to MARAD and EPA, the remaining vessels may be dismantled and recycled.

11. All contracts between MARAD or its agents and any purchaser of a NDRF vessel under this Pilot Program shall include a copy of this Agreement and a certification by the purchaser that (1) the purchaser has read the Agreement and agrees not to export any vessel for scrapping except in accordance with the Agreement's requirements; (2) the purchaser understands that failure to comply with the Agreement's requirements could result in EPA taking an enforcement action against the purchaser for violating the regulatory ban on the export of PCBs (at concentrations of 50 ppm or greater) for disposal; and (3) that the purchaser understands that he may not resell the vessel except to carry out the purposes of this Agreement (that is, for scrapping at AbleUK, Teesside, England). All contracts between MARAD or its agent and the purchaser of a vessel for export for scrapping shall require the purchaser to include this information in any subsequent sales contract for that vessel.

OVERSIGHT AND TECHNICAL ASSISTANCE

12. It is the expectation of the parties, pursuant to the National Defense Authorization Act of Fiscal Year 2003, that the overseas dismantling of obsolete vessels in the NDRF will be accomplished in a manner that appropriately addresses concerns regarding worker health and safety and the environment.

a. Periodically during this Pilot Program for scrapping/recycling AbleUK will be monitored by MARAD or a contractor hired by MARAD or its agent to be agreed on by EPA.

b. Prior to export, MARAD agrees to notify EPA regarding the entity which will be conducting oversight and the frequency of oversight.

c. EPA shall have the right, during the course of any pilot project, to visit the site for purposes of oversight of the pilot scrapping project.

BREACH

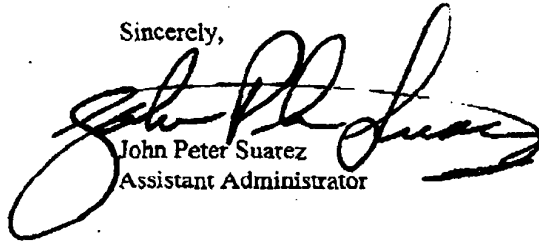
13. If the requirements of this letter are breached by MARAD or any subsequent transferee, EPA may determine that the letter is void as to that party, and EPA reserves the right to bring an enforcement action for violation of the TSCA export ban.

TERMINATION

14. EPA may terminate this letter at any time, for cause, in writing from the EPA signatory or his successor, to the MARAD signatory or his successor.

If you have any questions regarding this letter, please contact me at 564-2440, or your staff may contact Elliott Gilberg, Associate Director, Federal Facilities Enforcement Office, at 564-2510.

Sincerely,



John Peter Suarez
Assistant Administrator

APPENDIX

NDRF Vessels to be Exported to AblcUK Facility
in Teesside, England for Dismantling and Recycling

- MORMACWAVE
- SANTA CRUZ
- MARINE FIDDLER
- DONNER
- AMERICAN BANKER
- MORMACMOON
- PROTECTOR
- RIGEL
- COMPASS ISLAND
- CANISTEO
- CALOOSAHATCHEE
- SANTA ISABEL
- AMERICAN RANGER