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 TITLE 40--PROTECTION OF ENVIRONMENT

 CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

PART 761--POLYCHLORINATED BIPHENYLS (PCBs)

MANUFACTURING, PROCESSING, DISTRIBUTION

IN COMMERCE, AND USE PROHIBITIONS

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 Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

 Subpart A--General

Sec. 761.1 Applicability.

 (a) This part establishes prohibitions of, and requirements for, the

manufacture, processing, distribution in commerce, use, disposal,

storage, and marking of PCBs and PCB Items.

 (b) This part applies to all persons who manufacture, process,

distribute

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in commerce, use, or dispose of PCBs or PCB Items. Substances that are

regulated by this rule include, but are not limited to, dielectric

fluids, contaminated solvents, oils, waste oils, heat transfer fluids,

hydraulic fluids, paints, sludges, slurries, dredge spoils, soils,

materials contaminated as a result of spills, and other chemical

substances or combination of substances, including impurities and

byproducts and any byproduct, intermediate or impurity manufactured at

any point in a process. Most of the provisions of this part apply to

PCBs only if PCBs are present in concentrations above a specified level.

For example, subpart D applies generally to materials at concentrations

of 50 parts per million (ppm) and above. Also certain provisions of

subpart B apply to PCBs inadvertently generated in manufacturing

processes at concentrations specified in the definition of ``PCB'' under

Sec. 761.3. No provision specifying a PCB concentration may be avoided

as a result of any dilution, unless otherwise specifically provided.

 (c) Definitions of the terms used in these regulations are in

subpart A. The basic requirements applicable to disposal and marking of

PCBs and PCB Items are set forth in subpart D--Disposal of PCBs and PCB

Items and in subpart C--Marking of PCBs and PCB Items. Prohibitions

applicable to PCB activities are set forth in subpart B--Manufacture,

Processing, Distribution in Commerce, and Use of PCBs and PCB Items.

Subpart B also includes authorizations from the prohibitions. Subparts C

and D set forth the specific requirements for disposal and marking of

PCBs and PCB Items.

 (d) Section 15 of the Toxic Substances Control Act (TSCA) states

that failure to comply with these regulations is unlawful. Section 16

imposes liability for civil penalties upon any person who violates these

regulations, and the Administrator can establish appropriate remedies

for any violations subject to any limitations included in section 16 of

TSCA. Section 16 also subjects a person to criminal prosecution for a

violation which is knowing or willful. In addition, section 17

authorizes Federal district courts to enjoin activities prohibited by

these regulations, compel the taking of actions required by these

regulations, and issue orders to seize PCBs and PCB Items manufactured,

processed or distributed in violation of these regulations.

 (e) These regulations do not preempt other more stringent Federal

statutes and regulations.

 (f) Unless and until superseded by any new more stringent

regulations issued under EPA authorities, or any permits or any

pretreatment requirements issued by EPA, a state or local government

that affect release of PCBs to any particular medium:

 (1) Persons who inadvertently manufacture or import PCBs generated

as unintentional impurities in excluded manufacturing processes, as

defined in Sec. 761.3, are exempt from the requirements of subpart B of

this part, provided that such persons comply with subpart J of this

part, as applicable.

 (2) Persons who process, distribute in commerce, or use products

containing PCBs generated in excluded manufacturing processes defined in

Sec. 761.3 are exempt from the requirements of subpart B provided that

such persons comply with subpart J of this part, as applicable.

 (3) Persons who process, distribute in commerce, or use products

containing recycled PCBs defined in Sec. 761.3, are exempt from the

requirements of subpart B of this part, provided that such persons

comply with subpart J of this part, as applicable.

 (4) Except as provided in Sec. 761.20 (d) and (e), persons who

process, distribute in commerce, or use products containing excluded PCB

products as defined in Sec. 761.3, are exempt from the requirements of

subpart B of this part.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979, as amended at 49 FR 28189, July 10, 1984; 53

FR 24220, June 27, 1988]

Sec. 761.3 Definitions.

 For the purpose of this part:

 Administrator means the Administrator of the Environmental

Protection Agency, or any employee of the Agency to whom the

Administrator may either herein or by order delegate his authority to

carry out his functions, or any

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person who shall by operation of law be authorized to carry out such

functions.

 Agency means the United States Environmental Protection Agency.

 Annual document log means the detailed information maintained at the

facility on the PCB waste handling at the facility.

 Annual report means the written document submitted each year by each

disposer and commercial storer of PCB waste to the appropriate EPA

Regional Administrator. The annual report is a brief summary of the

information included in the annual document log.

 Basel Convention means the Basel Convention on the Control of

Transboundary Movements of Hazardous Wastes and Their Disposal as

entered into force on May 5, 1992.

 Byproduct means a chemical substance produced without separate

commercial intent during the manufacturing or processing of another

chemical substance(s) or mixture(s).

 Capacitor means a device for accumulating and holding a charge of

electricity and consisting of conducting surfaces separated by a

dielectric. Types of capacitors are as follows:

 (1) Small capacitor means a capacitor which contains less than 1.36

kg (3 lbs.) of dielectric fluid. The following assumptions may be used

if the actual weight of the dielectric fluid is unknown. A capacitor

whose total volume is less than 1,639 cubic centimeters (100 cubic

inches) may be considered to contain less than 1.36 kgs (3 lbs.) of

dielectric fluid and a capacitor whose total volume is more than 3,278

cubic centimeters (200 cubic inches) must be considered to contain more

than 1.36 kg (3 lbs.) of dielectric fluid. A capacitor whose volume is

between 1,639 and 3,278 cubic centimeters may be considered to contain

less then 1.36 kg (3 lbs.) of dielectric fluid if the total weight of

the capacitor is less than 4.08 kg (9 lbs.).

 (2) Large high voltage capacitor means a capacitor which contains

1.36 kg (3 lbs.) or more of dielectric fluid and which operates at 2,000

volts (a.c. or d.c.) or above.

 (3) Large low voltage capacitor means a capacitor which contains

1.36 kg (3 lbs.) or more of dielectric fluid and which operates below

2,000 volts (a.c. or d.c.).

 Certification means a written statement regarding a specific fact or

representation that contains the following language:

 Under civil and criminal penalties of law for the making or

submission of false or fraudulent statements or representations (18

U.S.C. 1001 and 15 U.S.C. 2615), I certify that the information

contained in or accompanying this document is true, accurate, and

complete. As to the identified section(s) of this document for which I

cannot personally verify truth and accuracy, I certify as the company

official having supervisory responsibility for the persons who, acting

under my direct instructions, made the verification that this

information is true, accurate, and complete.

 Chemical substance, (1) except as provided in paragraph (2) of this

definition, means any organic or inorganic substance of a particular

molecular identity, including: Any combination of such substances

occurring in whole or part as a result of a chemical reaction or

occurring in nature, and any element or uncombined radical.

 (2) Such term does not include: Any mixture; any pesticide (as

defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when

manufactured, processed, or distributed in commerce for use as a

pesticide; tobacco or any tobacco product; any source material, special

nuclear material, or byproduct material (as such terms are defined in

the Atomic Energy Act of 1954 and regulations issued under such Act);

any article the sale of which is subject to the tax imposed by section

4181 of the Internal Revenue Code of 1954 (determined without regard to

any exemptions from such tax provided by section 4182 or section 4221 or

any provisions of such Code); and any food, food additive, drug,

cosmetic, or device (as such terms are defined in section 201 of the

Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or

distributed in commerce for use as a food, food additive, drug,

cosmetic, or device.

 Chemical waste landfill means a landfill at which protection against

risk of injury to health or the environment from migration of PCBs to

land, water, or the atmosphere is provided from PCBs and PCB Items

deposited therein by locating, engineering, and operating the landfill

as specified in Sec. 761.75.

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 Commerce means trade, traffic, transportation, or other commerce:

 (1) Between a place in a State and any place outside of such State,

or

 (2) Which affects trade, traffic, transportation, or commerce

described in paragraph (1) of this definition.

 Commercial storer of PCB waste means the owner or operator of each

facility which is subject to the PCB storage facility standards of

Sec. 761.65, and who engages in storage activities involving PCB waste

generated by others, or PCB waste that was removed while servicing the

equipment owned by others and brokered for disposal. The receipt of a

fee or any other form of compensation for storage services is not

necessary to qualify as a commercial storer of PCB waste. It is

sufficient under this definition that the facility stores PCB waste

generated by others or the facility removed the PCB waste while

servicing equipment owned by others. A generator who stores only the

generator's own waste is subject to the storage requirements of

Sec. 761.65, but is not required to seek approval as a commercial

storer. If a facility's storage of PCB waste at no time exceeds 500

liquid gallons of PCBs, the owner or operator is not required to seek

approval as a commercial storer of PCB waste.

 Designated facility means the off-site disposer or commercial storer

of PCB waste designated on the manifest as the facility that will

receive a manifested shipment of PCB waste.

 Disposal means intentionally or accidentally to discard, throw away,

or otherwise complete or terminate the useful life of PCBs and PCB

Items. Disposal includes spills, leaks, and other uncontrolled

discharges of PCBs as well as actions related to containing,

transporting, destroying, degrading, decontaminating, or confining PCBs

and PCB Items.

 Disposer of PCB waste, as the term is used in subparts J and K of

this part, means any person who owns or operates a facility approved by

EPA for the disposal of PCB waste which is regulated for disposal under

the requirements of subpart D of this part.

 Distribute in commerce and Distribution in Commerce when used to

describe an action taken with respect to a chemical substance, mixture,

or article containing a substance or mixture means to sell, or the sale

of, the substance, mixture, or article in commerce; to introduce or

deliver for introduction into commerce, or the introduction or delivery

for introduction into commerce of the substance, mixture, or article; or

to hold or the holding of, the substance, mixture, or article after its

introduction into commerce.

 Emergency Situation for continuing use of a PCB Transformer exists

when:

 (1) Neither a non-PCB Transformer nor a PCB-Contaminated transformer

is currently in storage for reuse or readily available (i.e., available

within 24 hours) for installation.

 (2) Immediate replacement is necessary to continue service to power

users.

 EPA identification number means the 12-digit number assigned to a

facility by EPA upon notification of PCB waste activity under

Sec. 761.205.

 Excluded manufacturing process means a manufacturing process in

which quantities of PCBs, as determined in accordance with the

definition of inadvertently generated PCBs, calculated as defined, and

from which releases to products, air, and water meet the requirements of

paragraphs (1) through (5) of this definition, or the importation of

products containing PCBs as unintentional impurities, which products

meet the requirements of paragraphs (1) and (2) of this definition.

 (1) The concentration of inadvertently generated PCBs in products

leaving any manufacturing site or imported into the United States must

have an annual average of less than 25 ppm, with a 50 ppm maximum.

 (2) The concentration of inadvertently generated PCBs in the

components of detergent bars leaving the manufacturing site or imported

into the United States must be less than 5 ppm.

 (3) The release of inadvertently generated PCBs at the point at

which emissions are vented to ambient air must be less than 10 ppm.

 (4) The amount of inadvertently generated PCBs added to water

discharged from a manufacturing site must be less than 100 micrograms

per resolvable gas chromatographic peak per liter of water discharged.

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 (5) Disposal of any other process wastes above concentrations of 50

ppm PCB must be in accordance with subpart D of this part.

 Excluded PCB products means PCB materials which appear at

concentrations less than 50 ppm, including but not limited to:

 (1) Non-Aroclor inadvertently generated PCBs as a byproduct or

impurity resulting from a chemical manufacturing process.

 (2) Products contaminated with Aroclor or other PCB materials from

historic PCB uses (investment casting waxes are one example).

 (3) Recycled fluids and/or equipment contaminated during use

involving the products described in paragraphs (1) and (2) of this

definition (heat transfer and hydraulic fluids and equipment and other

electrical equipment components and fluids are examples).

 (4) Used oils, provided that in the cases of paragraphs (1) through

(4) of this definition:

 (i) The products or source of the products containing < 50 ppm

concentration PCBs were legally manufactured, processed, distributed in

commerce, or used before October 1, 1984.

 (ii) The products or source of the products containing < 50 ppm

concentrations PCBs were legally manufactured, processed, distributed in

commerce, or used, i.e., pursuant to authority granted by EPA

regulation, by exemption petition, by settlement agreement, or pursuant

to other Agency-approved programs;

 (iii) The resulting PCB concentration (i.e. below 50 ppm) is not a

result of dilution, or leaks and spills of PCBs in concentrations over

50 ppm.

 Fluorescent light ballast means a device that electrically controls

fluorescent light fixtures and that includes a capacitor containing 0.1

kg or less of dielectric.

 Generator of PCB waste means any person whose act or process

produces PCBs that are regulated for disposal under subpart D of this

part, or whose act first causes PCBs or PCB Items to become subject to

the disposal requirements of subpart D of this part, or who has physical

control over the PCBs when a decision is made that the use of the PCBs

has been terminated and therefore is subject to the disposal

requirements of subpart D of this part. Unless another provision of this

part specifically requires a site-specific meaning, ``generator of PCB

waste'' includes all of the sites of PCB waste generation owned or

operated by the person who generates PCB waste.

 Importer means any person defined as an ``importer'' at

Sec. 720.3(l) of this chapter who imports PCBs or PCB Items and is under

the jurisdiction of the United States.

 Impurity means a chemical substance which is unintentionally present

with another chemical substance.

 In or Near Commercial Buildings means within the interior of, on the

roof of, attached to the exterior wall of, in the parking area serving,

or within 30 meters of a non-industrial non-substation building.

Commercial buildings are typically accessible to both members of the

general public and employees, and include: (1) Public assembly

properties, (2) educational properties, (3) institutional properties,

(4) residential properties, (5) stores, (6) office buildings, and (7)

transportation centers (e.g., airport terminal buildings, subway

stations, bus stations, or train stations).

 Incinerator means an engineered device using controlled flame

combustion to thermally degrade PCBs and PCB Items. Examples of devices

used for incineration include rotary kilns, liquid injection

incinerators, cement kilns, and high temperature boilers.

 Industrial building means a building directly used in manufacturing

or technically productive enterprises. Industrial buildings are not

generally or typically accessible to other than workers. Industrial

buildings include buildings used directly in the production of power,

the manufacture of products, the mining of raw materials, and the

storage of textiles, petroleum products, wood and paper products,

chemicals, plastics, and metals.

 Laboratory means a facility that analyzes samples for PCBs and is

unaffiliated with any entity whose activities involve PCBs.

 Leak or leaking means any instance in which a PCB Article, PCB

Container, or PCB Equipment has any

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PCBs on any portion of its external surface.

 Manifest means the shipping document EPA form 8700-22 and any

continuation sheet attached to EPA form 8700-22, originated and signed

by the generator of PCB waste in accordance with the instructions

included with the form and subpart K of this part.

 Manned Control Center means an electrical power distribution control

room where the operating conditions of a PCB Transformer are

continuously monitored during the normal hours of operation (of the

facility), and, where the duty engineers, electricians, or other trained

personnel have the capability to deenergize a PCB Transformer completely

within 1 minute of the receipt of a signal indicating abnormal operating

conditions such as an overtemperature condition or overpressure

condition in a PCB Transformer.

 Manufacture means to produce, manufacture, or import into the

customs territory of the United States.

 Manufacturing process means all of a series of unit operations

operating at a site, resulting in the production of a product.

 Mark means the descriptive name, instructions, cautions, or other

information applied to PCBs and PCB Items, or other objects subject to

these regulations.

 Marked means the marking of PCB Items and PCB storage areas and

transport vehicles by means of applying a legible mark by painting,

fixation of an adhesive label, or by any other method that meets the

requirements of these regulations.

 Market/Marketers means the processing or distributing in commerce,

or the person who processes or distributes in commerce, used oil fuels

to burners or other marketers, and may include the generator of the fuel

if it markets the fuel directly to the burner.

 Mineral Oil PCB Transformer means any transformer originally

designed to contain mineral oil as the dielectric fluid and which has

been tested and found to contain 500 ppm or greater PCBs.

 Mixture means any combination of two or more chemical substances if

the combination does not occur in nature and is not, in whole or in

part, the result of a chemical reaction; except that such term does

include any combination which occurs, in whole or in part, as a result

of a chemical reaction if none of the chemical substances comprising the

combination is a new chemical substance and if the combination could

have been manufactured for commercial purposes without a chemical

reaction at the time the chemical substances comprising the combination

were combined.

 Municipal solid wastes means garbage, refuse, sludges, wastes, and

other discarded materials resulting from residential and non-industrial

operations and activities, such as household activities, office

functions, and commercial housekeeping wastes.

 Non-PCB Transformer means any transformer that contains less than 50

ppm PCB; except that any transformer that has been converted from a PCB

Transformer or a PCB-Contaminated Transformer cannot be classified as a

non-PCB Transformer until reclassification has occurred, in accordance

with the requirements of Sec. 761.30(a)(2)(v).

 On site means within the boundaries of a contiguous property unit.

 PCB and PCBs means any chemical substance that is limited to the

biphenyl molecule that has been chlorinated to varying degrees or any

combination of substances which contains such substance. Refer to

Sec. 761.1(b) for applicable concentrations of PCBs. PCB and PCBs as

contained in PCB items are defined in Sec. 761.3. For any purposes under

this part, inadvertently generated non-Aroclor PCBs are defined as the

total PCBs calculated following division of the quantity of

monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

 PCB Article means any manufactured article, other than a PCB

Container, that contains PCBs and whose surface(s) has been in direct

contact with PCBs. ``PCB Article'' includes capacitors, transformers,

electric motors, pumps, pipes and any other manufactured item (1) which

is formed to a specific shape or design during manufacture, (2) which

has end use function(s) dependent in whole or in part upon its shape or

design during end use, and (3) which has either no change of chemical

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composition during its end use or only those changes of composition

which have no commercial purpose separate from that of the PCB Article.

 PCB Article Container means any package, can, bottle, bag, barrel,

drum, tank, or other device used to contain PCB Articles or PCB

Equipment, and whose surface(s) has not been in direct contact with

PCBs.

 PCB Container means any package, can, bottle, bag, barrel, drum,

tank, or other device that contains PCBs or PCB Articles and whose

surface(s) has been in direct contact with PCBs.

 PCB-Contaminated Electrical Equipment means any electrical

equipment, including but not limited to transformers (including those

used in railway locomotives and self-propelled cars), capacitors,

circuit breakers, reclosers, voltage regulators, switches (including

sectionalizers and motor starters), electromagnets, and cable, that

contain 50 ppm or greater PCB, but less than 500 ppm PCB. Oil-filled

electrical equipment other than circuit breakers, reclosers, and cable

whose PCB concentration is unknown must be assumed to be PCB-

Contaminated Electrical Equipment. (See Sec. 761.30(a) and (h) for

provisions permitting reclassification of electrical equipment

containing 500 ppm or greater PCBs to PCB-Contaminated Electrical

Equipment).

 PCB Equipment means any manufactured item, other than a PCB

Container or a PCB Article Container, which contains a PCB Article or

other PCB Equipment, and includes microwave ovens, electronic equipment,

and fluorescent light ballasts and fixtures.

 PCB Item is defined as any PCB Article, PCB Article Container, PCB

Container, or PCB Equipment, that deliberately or unintentionally

contains or has a part of it any PCB or PCBs.

 PCB Transformer means any transformer that contains 500 ppm PCB or

greater.

 PCB waste(s) means those PCBs and PCB Items that are subject to the

disposal requirements of subpart D of this part.

 Person means any natural or judicial person including any

individual, corporation, partnership, or association; any State or

political subdivision thereof; any interstate body; and any department,

agency, or instrumentality of the Federal Government.

 Posing an exposure risk to food or feed means being in any location

where human food or animal feed products could be exposed to PCBs

released from a PCB Item. A PCB Item poses an exposure risk to food or

feed if PCBs released in any way from the PCB Item have a potential

pathway to human food or animal feed. EPA considers human food or animal

feed to include items regulated by the U.S. Department of Agriculture or

the Food and Drug Administration as human food or animal feed; this

includes direct additives. Food or feed is excluded from this definition

if it is used or stored in private homes.

 Process means the preparation of a chemical substance or mixture,

after its manufacture, for distribution in commerce:

 (1) In the same form or physical state as, or in a different form or

physical state from, that in which it was received by the person so

preparing such substance or mixture, or

 (2) As part of an article containing the chemical substance or

mixture.

 Qualified incinerator means one of the following:

 (1) An incinerator approved under the provisions of Sec. 761.70. Any

level of PCB concentration can be destroyed in an incinerator approved

under Sec. 761.70.

 (2) A high efficiency boiler which complies with the criteria of

Sec. 761.60(a)(2)(iii)(A), and for which the operator has given written

notice to the appropriate EPA Regional Administrator in accordance with

the notification requirements for the burning of mineral oil dielectric

fluid under Sec. 761.60(a)(2)(iii)(B).

 (3) An incinerator approved under section 3005(c) of the Resource

Conservation and Recovery Act (42 U.S.C. 6925(c)) (RCRA).

 (4) Industrial furnaces and boilers which are identified in 40 CFR

260.10 and 40 CFR 279.61 (a)(1) and (2) when operating at their normal

operating temperatures (this prohibits feeding fluids, above the level

of detection, during either startup or shutdown operations).

 Quantifiable Level/Level of Detection means 2 micrograms per gram

from

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any resolvable gas chromatographic peak, i.e. 2 ppm.

 Recycled PCBs means those PCBs which appear in the processing of

paper products or asphalt roofing materials from PCB-contaminated raw

materials. Processes which recycle PCBs must meet the following

requirements:

 (1) There are no detectable concentrations of PCBs in asphalt

roofing material products leaving the processing site.

 (2) The concentration of PCBs in paper products leaving any

manufacturing site processing paper products, or in paper products

imported into the United States, must have an annual average of less

than 25 ppm with a 50 ppm maximum.

 (3) The release of PCBs at the point at which emissions are vented

to ambient air must be less than 10 ppm.

 (4) The amount of Aroclor PCBs added to water discharged from an

asphalt roofing processing site must at all times be less than 3

micrograms per liter (<greek-m>g/L) for total Aroclors (roughly 3 parts

per billion (3 ppb)). Water discharges from the processing of paper

products must at all times be less than 3 micrograms per liter

(<greek-m>g/L) for total Aroclors (roughly 3 ppb), or comply with the

equivalent mass-based limitation.

 (5) Disposal of any other process wastes at concentrations of 50 ppm

or greater must be in accordance with subpart D of this part.

 Retrofill means to remove PCB or PCB-contaminated dielectric fluid

and to replace it with either PCB, PCB-contaminated, or non-PCB

dielectric fluid.

 Rupture of a PCB Transformer means a violent or non-violent break in

the integrity of a PCB Transformer caused by an overtemperature and/or

overpressure condition that results in the release of PCBs.

 Sale for purposes other than resale means sale of PCBs for purposes

of disposal and for purposes of use, except where use involves sale for

distribution in commerce. PCB Equipment which is first leased for

purposes of use any time before July 1, 1979, will be considered sold

for purposes other than resale.

 Small quantities for research and development means any quantity of

PCBs (1) that is originally packaged in one or more hermetically sealed

containers of a volume of no more than five (5.0) milliliters, and (2)

that is used only for purposes of scientific experimentation or

analysis, or chemical research on, or analysis of, PCBs, but not for

research or analysis for the development of a PCB product.

 Storage for disposal means temporary storage of PCBs that have been

designated for disposal.

 Totally enclosed manner means any manner that will ensure no

exposure of human beings or the environment to any concentration of

PCBs.

 Transfer facility means any transportation-related facility

including loading docks, parking areas, and other similar areas where

shipments of PCB waste are held during the normal course of

transportation. Transport vehicles are not transfer facilities under

this definition, unless they are used for the storage of PCB waste,

rather than for actual transport activities. Storage areas for PCB waste

at transfer facilities are subject to the storage facility standards of

Sec. 761.65, but such storage areas are exempt from the approval

requirements of Sec. 761.65(d) and the recordkeeping requirements of

Sec. 761.180, unless the same PCB waste is stored there for a period of

more than 10 consecutive days between destinations.

 Transporter of PCB waste means, for the purposes of subpart K of

this part, any person engaged in the transportation of regulated PCB

waste by air, rail, highway, or water for purposes other than

consolidation by a generator.

 Transport vehicle means a motor vehicle or rail car used for the

transportation of cargo by any mode. Each cargo-carrying body (e.g.,

trailer, railroad freight car) is a separate transport vehicle.

 Treatability Study means a study in which PCB waste is subjected to

a treatment process to determine:

 (1) Whether the waste is amenable to the treatment process;

 (2) What pretreatment (if any) is required;

 (3) The optimal process conditions needed to achieve the desired

treatment;

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 (4) The efficiency of a treatment process for the specific type of

waste (i.e., soil, sludge, liquid, etc.); or,

 (5) The characteristics and volumes of residuals from a particular

treatment process. A ``treatability study'' is not a mechanism to

commercially treat or dispose of PCB waste. Treatment is a form of

disposal under this part.

 Waste Oil means used products primarily derived from petroleum,

which include, but are not limited to, fuel oils, motor oils, gear oils,

cutting oils, transmission fluids, hydraulic fluids, and dielectric

fluids.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[49 FR 25239, June 20, 1984, as amended at 49 FR 28189, July 10, 1984;

49 FR 29066, July 18, 1984; 49 FR 44638, Nov. 8, 1984; 50 FR 29199, July

17, 1985; 50 FR 32176, Aug. 9, 1985; 53 FR 24220, June 27, 1988; 53 FR

27327, July 19, 1988; 54 FR 52745, Dec. 21, 1989; 55 FR 26205, June 27,

1990; 58 FR 32061, June 8, 1993; 61 FR 11106, Mar. 18, 1996]

Sec. 761.19 References.

 (a) [Reserved]

 (b) Incorporations by reference. The following material is

incorporated by reference, and is available for inspection at the Office

of the Federal Register Information Center, 800 North Capitol Street,

NW., suite 700, Washington, DC. These incorporations by reference were

approved by the Director of the Office of the Federal Register. These

materials are incorporated as they exist on the date of approval and a

notice of any change in these materials will be published in the Federal

Register. Copies of the incorporated material may be obtained from the

TSCA Non-Confidential Information Center (NCIC) (7407), Office of

Pollution Prevention and Toxics, U.S. Environmental Protection Agency,

Room B-607 NEM, 401 M Street, SW., Washington, DC, 20460, between the

hours of 12 p.m. and 4 p.m. weekdays excluding legal holidays, or from

the American Society for Testing and Merials (ASTM), 1916 Race Street,

Philadelphia, PA 19103.

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 References CFR Citation

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ASTM D 93 - 90 Standard Test Sec. 761.60(a)(3)(iii)(B)(6); Sec.

 Methods for Flash Point by Pensky- 761.75(b)(8)(iii)

 Martens Closed Tester..

ASTM D 129-64 (Reapproved 1978) Sec. 761.60(a)(3)(iii)(B)(6)

 Standard Test Method for Sulfur in

 Petroleum Products (General Bomb

 Method)..

ASTM D 240-87 Standard Test Method Sec. 761.60(a)(3)(iii)(B)(6)

 for Heat of Combustion of Liquid

 Hydrocarbon Fuel by Bomb

 Calorimeter.

ASTM D 482-87 Standard Test Method Sec. 761.60(a)(3)(iii)(B)(6)

 for Ash from Petroleum Products.

ASTM D 524-88 Standard Test Method Sec. 761.60(a)(3)(iii)(B)(6)

 for Ramsbottom Carbon Residue of

 Petroleum Products.

ASTM D 808-87 Standard Test Method Sec. 761.60(a)(3)(iii)(B)(6)

 for Chlorine in New and Used

 Petroleum Products (Bomb Method).

ASTM D 923-86 Standard Test Method Sec. 761.60(g)(1)(ii); (g)(2)(ii)

 for Sampling Electrical Insulating

 Liquids.

ASTM D 923-89 Standard Methods of Sec. 761.60(g)(1)(ii); (g)(2)(ii)

 Sampling Electrical Insulating

 Liquids.

ASTM D 1266-87 Standard Test Method Sec. 761.60(a)(3)(iii)(B)(6)

 for Sulfur in Petroleum Products

 (Lamp Method).

ASTM D 1796-83 (Reapproved 1990) Sec. 761.60(a)(3)(iii)(B)(6)

 Standard Test Method for Water and

 Sediment in Fuel Oils by the

 Centrifuge Method (Laboratory

 Procedure).

ASTM D 2158-89 Standard Test Method Sec. 761.60(a)(3)(iii)(B)(6)

 for Residues in Liquified

 Petroleum (LP) Gases.

ASTM D 2709-88 Standard Test Method Sec. 761.60(a)(3)(iii)(B)(6)

 for Water and Sediment in

 Distillate Fuels by Centrifuge.

ASTM D 2784-89 Standard Test Method Sec. 761.60(a)(3)(iii)(B)(6)

 for Sulfur in Liquified Petroleum

 Gases (Oxy-hydrogen Burner or

 Lamp).

ASTM D 3178-84 Standard Test Sec. 761.60(a)(3)(iii)(B)(6)

 Methods for Carbon and Hydrogen in

 the Analysis Sample of Coke and

 Coal.

ASTM D 3278-89 Standard Test Sec. 761.75(b)(8)(iii)

 Methods for Flash Point of Liquids

 by Setaflash Closed-Cup Apparatus.

[[Page 503]]

ASTM E 258-67 (Reapproved 1987) Sec. 761.60(a)(3)(iii)(B)(6)

 Standard Test Method for Total

 Nitrogen Inorganic Material by

 Modified KJELDAHL Method.

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[47 FR 22098, May 21, 1982, as amended at 49 FR 29067, July 18, 1984; 49

FR 36648, Sept. 19, 1984; 53 FR 10391, Mar. 31, 1988; 53 FR 12524, Apr.

15, 1988; 53 FR 21641, June 9, 1988; 57 FR 13323, Apr. 16, 1992; 59 FR

33697, June 30, 1994; 60 FR 34465, July 3, 1995]

Subpart B--Manufacturing, Processing, Distribution in Commerce, and Use

 of PCBs and PCB Items

Sec. 761.20 Prohibitions.

 Except as authorized in Sec. 761.30, the activities listed in

paragraphs (a) and (d) of this section are prohibited pursuant to

section 6(e)(2) of TSCA. The requirements set forth in paragraph (c) of

this section and subpart F of this part concerning export and import of

PCBs and PCB Items for disposal are established pursuant to section

6(e)(1) of TSCA. Subject to any exemptions granted pursuant to section

6(e)(3)(B) of TSCA, the activities listed in paragraphs (b) and (c) of

this section are prohibited pursuant to section (6)(e)(3)(A) of TSCA. In

addition, the Administrator hereby finds, under the authority of section

12(a)(2) of TSCA, that the manufacture, processing, and distribution in

commerce of PCBs at concentrations of 50 ppm or greater and PCB Items

with PCB concentrations of 50 ppm or greater present an unreasonable

risk of injury to health within the United States. This finding is based

upon the well-documented human health and environmental hazard of PCB

exposure, the high probability of human and environmental exposure to

PCBs and PCB Items from manufacturing, processing, or distribution

activities; the potential hazard of PCB exposure posed by the

transportation of PCBs or PCB Items within the United States; and the

evidence that contamination of the environment by PCBs is spread far

beyond the areas where they are used. In addition, the Administrator

hereby finds, for purposes of section 6(e)(2)(C) of TSCA, that any

exposure of human beings or the environment to PCBs, as measured or

detected by any scientifically acceptable analytical method, may be

significant, depending on such factors as the quantity of PCBs involved

in the exposure, the likelihood of exposure to humans and the

environment, and the effect of exposure. For purposes of determining

which PCB Items are totally enclosed, pursuant to section 6(e)(2)(C) of

TSCA, since exposure to such Items may be significant, the Administrator

further finds that a totally enclosed manner is a manner which results

in no exposure to humans or the environment to PCBs. The following

activities are considered totally enclosed: distribution in commerce of

intact, nonleaking electrical equipment such as transformers (including

transformers used in railway locomotives and self-propelled cars),

capacitors, electromagnets, voltage regulators, switches (including

sectionalizers and motor starters), circuit breakers, reclosers, and

cable that contain PCBs at any concentration and processing and

distribution in commerce of PCB Equipment containing an intact,

nonleaking PCB Capacitor. See paragraph (c)(1) of this section for

provisions allowing the distribution in commerce of PCBs and PCB Items.

 (a) No persons may use any PCB, or any PCB Item regardless of

concentration, in any manner other than in a totally enclosed manner

within the United States unless authorized under Sec. 761.30, except

that:

 (1) An authorization is not required to use those PCBs or PCB Items

which consist of excluded PCB products as defined in Sec. 761.3.

 (2) An authorization is not required to use those PCBs or PCB Items

resulting from an excluded manufacturing process or recycled PCBs as

defined in Sec. 761.3, provided all applicable conditions of

Sec. 761.1(f) are met.

 (3) An authorization is not required to use those PCB Items which

contain or whose surfaces have been in contact with excluded PCB

products as defined in Sec. 761.3.

 (4) An authorization is not required to apply sewage sludges,

contaminated with PCBs below 50 ppm, to land when

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regulated by authorities under the Clean Water Act and the Resource

Conservation and Recovery Act.

 (b) No person may manufacture PCBs for use within the United States

or manufacture PCBs for export from the United States without an

exemption, except that: an exemption is not required for PCBs

manufactured in an excluded manufacturing process as defined in

Sec. 761.3, provided all applicable conditions of Sec. 761.1(f) are met.

 (c) No persons may process or distribute in commerce any PCB, or any

PCB Item regardless of concentration, for use within the United States

or for export from the United States without an exemption, except that

an exemption is not required to process or distribute in commerce PCBs

or PCB Items resulting from an excluded manufacturing process as defined

in Sec. 761.3, or to process or distribute in commerce recycled PCBs as

defined in Sec. 761.3, or to process or distribute in commerce excluded

PCB products as defined in Sec. 761.3, provided that all applicable

conditions of Sec. 761.1(f) are met. In addition, the activities

described in paragraphs (c) (1) through (5) of this section may also be

conducted without an exemption, under the conditions specified therein.

 (1) PCBs at concentrations of 50 ppm or greater, or PCB Items with

PCB concentrations of 50 ppm or greater, sold before July 1, 1979 for

purposes other than resale may be distributed in commerce only in a

totally enclosed manner after that date.

 (2) PCBs at concentrations of 50 ppm or greater, or PCB Items with

PCB concentrations of 50 ppm or greater may be processed and distributed

in commerce in compliance with the requirements of this Part for

purposes of disposal in accordance with the requirements of Sec. 761.60.

 (3) PCBs and PCB Items may be exported for disposal in accordance

with the requirements of subpart F of this part.

 (4) PCBs, at concentrations of less than 50 ppm, or PCB Items, with

concentrations of less than 50 ppm, may be processed and distributed in

commerce for purposes of disposal.

 (5) Equipment, structures, or other materials that were contaminated

with PCBs because of spills from, or proximity to, a PCB Item >50 ppm,

and which are not otherwise authorized for use or distribution in

commerce under this part, may be distributed in commerce, provided that

these materials were decontaminated in accordance with applicable EPA

PCB spill cleanup policies in effect at the time of the decontamination

or, if not previously decontaminated, at the time of the distribution in

commerce.

 (d) The use of waste oil that contains any detectable concentration

of PCB as a sealant, coating, or dust control agent is prohibited.

Prohibited uses include, but are not limited to, road oiling, general

dust control, use as a pesticide or herbicide carrier, and use as a rust

preventative on pipes.

 (e) In addition to any applicable requirements under 40 CFR part

279, subparts G and H, marketers and burners of used oil who market

(process or distribute in commerce) for energy recovery, used oil

containing any quantifiable level of PCBs are subject to the following

requirements:

 (1) Restrictions on marketing. Used oil containing any quantifiable

level of PCBs (2 ppm) may be marketed only to:

 (i) Qualified incinerators as defined in 40 CFR 761.3.

 (ii) Marketers who market off-specification used oil for energy

recovery only to other marketers who have notified EPA of their used oil

management activities, and who have an EPA identification number where

an identification number is required by 40 CFR 279.73. This would

include persons who market off-specification used oil who are subject to

the requirements at 40 CFR part 279 and the notification requirements of

40 CFR 279.73.

 (iii) Burners identified in 40 CFR 279.61(a)(1) and (2). Only

burners in the automotive industry may burn used oil generated from

automotive sources in used oil-fired space heaters provided the

provisions of 40 CFR 279.23 are met. The Regional Administrator may

grant a variance for a boiler that does not meet the 40 CFR 279.61(a)(1)

and (2) criteria after considering the criteria listed in 40 CFR 260.32

(a) through (f). The applicant must address the relevant criteria

contained in 40 CFR 260.32 (a) through (f) in an application to the

Regional Administrator.

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 (2) Testing of used oil fuel. Used oil to be burned for energy

recovery is presumed to contain quantifiable levels (2 ppm) of PCB

unless the marketer obtains analyses (testing) or other information that

the used oil fuel does not contain quantifiable levels of PCBs.

 (i) The person who first claims that a used oil fuel does not

contain quantifiable level (2 ppm) PCB must obtain analyses or other

information to support that claim.

 (ii) Testing to determine the PCB concentration in used oil may be

conducted on individual samples, or in accordance with the testing

procedures described in Sec. 761.60(g)(2). However, for purposes of this

part, if any PCBs at a concentration of 50 ppm or greater have been

added to the container or equipment, then the total container contents

must be considered as having a PCB concentration of 50 ppm or greater

for purposes of complying with the disposal requirements of this part.

 (iii) Other information documenting that the used oil fuel does not

contain quantifiable levels (2 ppm) of PCBs may consist of either

personal, special knowledge of the source and composition of the used

oil, or a certification from the person generating the used oil claiming

that the oil contains no detectable PCBs.

 (3) Restrictions on burning. (i) Used oil containing any

quantifiable levels of PCB may be burned for energy recovery only in the

combustion facilities identified in paragraph (e)(1) of this section

when such facilities are operating at normal operating temperatures

(this prohibits feeding these fuels during either startup or shutdown

operations). Owners and operators of such facilities are ``burners'' of

used oil fuels.

 (ii) Before a burner accepts from a marketer the first shipment of

used oil fuel containing detectable PCBs (2 ppm), the burner must

provide the marketer a one-time written and signed notice certifying

that:

 (A) The burner has complied with any notification requirements

applicable to ``qualified incinerators'' (Sec. 761.3) or to ``burners''

regulated under 40 CFR part 279, subpart G.

 (B) The burner will burn the used oil only in a combustion facility

identified in paragraph (e)(1) of this section and identify the class of

burner he qualifies.

 (4) Recordkeeping requirements. The following recordkeeping

requirements are in addition to the recordkeeping requirements for

marketers found in 40 CFR 279.72(b), 279.74(a), (b) and (c), and 279.75,

and for burners found in 40 CFR 279.65 and 279.66.

 (i) Marketers. Marketers who first claim that the used oil fuel

contains no detectable PCBs must include among the records required by

40 CFR 279.72(b) and 279.74(b) and (c), copies of the analysis or other

information documenting his claim, and he must include among the records

required by 40 CFR 279.74(a) and (c) and 279.75, a copy of each

certification notice received or prepared relating to transactions

involving PCB-containing used oil.

 (ii) Burners. Burners must include among the records required by 40

CFR 279.65 and 279.66, a copy of each certification notice required by

paragraph (e)(3)(ii) of this section that he sends to a marketer.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020, (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982,

and amended at 49 FR 25241, June 20, 1984; 49 FR 28190, July 10, 1984;

49 FR 44638, Nov. 8, 1984; 53 FR 12524, Apr. 15, 1988; 53 FR 24220, June

27, 1988; 58 FR 15435, Mar. 23, 1993; 58 FR 34205, June 23, 1993; 60 FR

34465, July 3, 1995; 61 FR 11106, Mar. 18, 1996]

Sec. 761.30 Authorizations.

 The following non-totally enclosed PCB activities are authorized

pursuant to section 6(e)(2)(B) of TSCA:

 (a) Use in and servicing of transformers (other than railroad

transformers). PCBs at any concentration may be used in transformers

(other than in railroad locomotives and self-propelled railroad cars)

and may be used for purposes of servicing including rebuilding these

transformers for the remainder of their useful lives, subject to the

following conditions:

 (1) Use conditions. (i) As of October 1, 1985, the use and storage

for reuse of PCB Transformers that pose an exposure risk to food or feed

is prohibited.

 (ii) As of October 1, 1990, the use of network PCB Transformers with

higher secondary voltages (secondary voltages

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equal to or greater than 480 volts, including 480/277 volt systems) in

or near commercial buildings is prohibited. Network PCB Transformers

with higher secondary voltages which are removed from service in

accordance with this requirement must either be reclassified to PCB

Contaminated or non PCB status, placed into storage for disposal, or

disposed.

 (iii) Except as otherwise provided, as of October 1, 1985, the

installation of PCB Transformers, which have been placed into storage

for reuse or which have been removed from another location, in or near

commercial buildings is prohibited.

 (A) The installation of PCB Transformers on or after October 1,

1985, however, and their use thereafter, is permitted either in an

emergency situation, as defined in Sec. 761.3, or in situations where

the transformer has been retrofilled and is being placed into service in

order to qualify for reclassification under paragraph (a)(2)(v) of this

section.

 (B) Installation of a PCB Transformer in an emergency situation is

permitted when done in accordance with the following:

 (1) Documentation to support the reason for the emergency

installation of a PCB Transformer must be maintained at the owner's

facility and completed within 30 days after installation of the PCB

Transformer. The documentation must include, but is not limited to:

 (i) The type of transformer, i.e., radial or lower or higher

network, that requires replacement.

 (ii) The type(s) of transformers, i.e., radial or lower or higher

network, that must be used for replacement.

 (iii) The date of transformer failure.

 (iv) The date of subsequent replacement.

 (v) The type of transformer, i.e., radial or lower or higher

network, installed as a replacement.

 (vi) A statement describing actions taken to locate a non-PCB or

PCB-Contaminated transformer replacement.

 (2) Such emergency installation is permitted until October 1, 1990,

and the use of any PCB Transformer installed on such an emergency basis

is permitted for 1 year from the date of installation or until October

1, 1990, whichever is earlier.

 (3) PCB Transformers installed for emergency purposes may be

subsequently reclassified; however, the transformer must be effectively

reclassified to a non-PCB or PCB-Contaminated status within 1 year after

installation or by October 1, 1990, whichever is earlier because the

transformer was initially installed in an emergency situation.

 (C) Installation of a retrofilled PCB Transformer for

reclassification purposes is permitted when it is done in accordance

with the following:

 (1) Those who installed transformers for reclassification purposes

must maintain on the owner's premises, completed within 30 days of

installation, the following information:

 (i) The date of installation.

 (ii) The type of transformer, i.e., radial or lower or higher

network, installed.

 (iii) The PCB concentration, if known, at the time of installation.

 (iv) The retrofill and reclassification schedule.

 (2) For purposes of this paragraph, the installation of retrofilled

PCB Transformers for purposes of reclassification under paragraph

(a)(2)(v) of this section is permitted until October 1, 1990.

 (i) However, the use of a retrofilled PCB Transformer installed for

reclassification purposes is limited to 18 months after installation or

until October 1, 1990, whichever is earlier.

 (ii) Retrofilled mineral oil PCB Transformers may be installed for

reclassification purposes indefinitely after October 1, 1990.

 (iii) Once a retrofilled transformer has been installed for

reclassification purposes, it must be tested 3 months after installation

to ascertain the concentration of PCBs. If the PCB concentration is

below 50 ppm, the transformer can be reclassified as a non-PCB

Transformer. If the PCB concentration is between 50 and 500 ppm, the

transformer can be reclassified as a PCB-Contaminated transformer. If

the PCB concentration remains at 500 ppm or greater, the entire process

must either be repeated until the transformer has been reclassified to a

non-PCB or PCB-

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Contaminated transformer in accordance with paragraph (a)(2)(v) of this

section or the transformer must be removed from service.

 (D) Owners who installed PCB Transformers in emergency situations or

for reclassification purposes between October 1, 1985 and September 1,

1988 must notify the Regional Administrator in writing by October 3,

1988 of such installation. The notification for emergency installation

must include the information in paragraph (a)(1)(iii)(B)(1) (i) through

(vi) of this section. The notification for reclassification must include

the information in paragraph (a)(1)(iii)(C)(1) (i) through (iv) of this

section. All PCB Transformers installed in an emergency situation or

installed for reclassification purposes are subject to the requirements

of this Part 761.

 (iv) As of October 1, 1990, all higher secondary voltage radial PCB

Transformers, in use in or near commercial buildings, and lower

secondary voltage network PCB Transformers not located in sidewalk

vaults in or near commercial buildings (network transformers with

secondary voltages below 480 volts) that have not been removed from

service as provided in paragraph (a)(1)(iv)(B) of this section, must be

equipped with electrical protection to avoid transformer ruptures caused

by high current faults. As of February 25, 1991, all lower secondary

voltage radial PCB Transformers, in use in or near commercial buildings,

must be equipped with electrical protection to avoid transformer

ruptures caused by high current faults.

 (A) Current-limiting fuses or other equivalent technology must be

used to detect sustained high current faults and provide for the

complete deenergization of the transformer (within several hundredths of

a second in the case of higher secondary voltage radial PCB Transformers

and within tenths of a second in the case of lower secondary voltage

network PCB Transformers), before transformer rupture occurs. Lower

secondary voltage radial PCB Transformers must be equipped with

electrical protection as provided in paragraph (a)(1)(iv)(E) of this

section. The installation, setting, and maintenance of current-limiting

fuses or other equivalent technology to avoid PCB Transformer ruptures

from sustained high current faults must be completed in accordance with

good engineering practices.

 (B) All lower secondary voltage network PCB Transformers not located

in sidewalk vaults (network transformers with secondary voltages below

480 volts), in use in or near commercial buildings, which have not been

protected as specified in paragraph (a)(1)(iv)(A) of this section by

October 1, 1990, must be removed from service by October 1, 1993.

 (C) As of October 1, 1990, owners of lower secondary voltage network

PCB Transformers, in use in or near commercial buildings which have not

been protected as specified in paragraph (a)(1)(iv)(A) of this section

and which are not located in sidewalk vaults, must register in writing

those transformers with the EPA Regional Administrator in the

appropriate region. The information required to be provided in writing

to the Regional Administrator includes:

 (1) The specific location of the PCB Transformer(s).

 (2) The address(es) of the building(s) and the physical location of

the PCB Transformer(s) on the building site(s).

 (3) The identification number(s) of the PCB Transformer(s).

 (D) As of October 1, 1993, all lower secondary voltage network PCB

Transformers located in sidewalk vaults (network transformers with

secondary voltages below 480 volts) in use near commercial buildings

must be removed from service.

 (E) As of February 25, 1991, all lower secondary voltage radial PCB

Transformers must be equipped with electrical protection, such as

current-limiting fuses or other equivalent technology, to detect

sustained high current faults and provide for the complete

deenergization of the transformer or complete deenergization of the

faulted phase of the transformer within several hundredths of a second.

The installation, setting, and maintenance of current-limiting fuses or

other equivalent technology to avoid PCB Transformer ruptures from

sustained high

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current faults must be completed in accordance with good engineering

practices.

 (v) As of October 1, 1990, all radial PCB Transformers with higher

secondary voltages (480 volts and above, including 480/277 volt systems)

in use in or near commercial buildings must, in addition to the

requirements of paragraph (a)(1)(iv)(A) of this section, be equipped

with protection to avoid transformer ruptures caused by sustained low

current faults.

 (A) Pressure and temperature sensors (or other equivalent technology

which has been demonstrated to be effective in early detection of

sustained low current faults) must be used in these transformers to

detect sustained low current faults.

 (B) Disconnect equipment must be provided to insure complete

deenergization of the transformer in the event of a sensed abnormal

condition (e.g., an overpressure or overtemperature condition in the

transformer), caused by a sustained low current fault. The disconnect

equipment must be configured to operate automatically within 30 seconds

to 1 minute of the receipt of a signal indicating an abnormal condition

from a sustained low current fault, or can be configured to allow for

manual deenergization from a manned on-site control center upon the

receipt of an audio or visual signal indicating an abnormal condition

caused by a sustained low current fault. Manual deenergization from a

manned on-site control center must occur within 1 minute of the receipt

of the audio or visual signal indicating an abnormal condition caused by

a sustained low current fault. If automatic operation is selected and a

circuit breaker is utilized for disconnection, it must also have the

capability to be manually opened if necessary.

 (C) The enhanced electrical protective system required for the

detection of sustained low current faults and the complete and rapid

deenergization of transformers must be properly installed, maintained,

and set sensitive enough (in accordance with good engineering practices)

to detect sustained low current faults and allow for rapid and total

deenergization prior to PCB Transformer rupture (either violent or non

violent rupture) and release of PCBs.

 (vi) As of December 1, 1985, all PCB Transformers (including PCB

Transformers in storage for reuse) must be registered with fire response

personnel with primary jurisdiction (that is, the fire department or

fire brigade which would normally be called upon for the initial

response to a fire involving the equipment). Information required to be

provided to fire response personnel includes:

 (A) The location of the PCB Transformer(s) (the address(es) of the

building(s) and the physical location of the PCB Transformer(s) on the

building site(s) and for outdoor PCB Transformers, the location of the

outdoor substation).

 (B) The principal constituent of the dielectric fluid in the

transformer(s) (e.g., PCBs, mineral oil, or silicone oil).

 (C) The name and telephone number of the person to contact in the

event of a fire involving the equipment.

 (vii) As of December 1, 1985, PCB Transformers in use in or near

commercial buildings must be registered with building owners. For PCB

Transformers located in commercial buildings, PCB Transformer owners

must register the transformers with the building owner of record. For

PCB Transformers located near commercial buildings, PCB Transformer

owners must register the transformers with all owners of buildings

located within 30 meters of the PCB Transformer(s). Information required

to be provided to building owners by PCB Transformer owners includes but

is not limited to:

 (A) The specific location of the PCB Transformer(s).

 (B) The principal constituent of the dielectric fluid in the

transformer(s) (e.g., PCBs, mineral oil, or silicone oil).

 (C) The type of transformer installation (e.g., 208/120 volt

network, 280/120 volt radial, 208 volt radial, 480 volt network, 480/277

volt network, 480 volt radial, 480/277 volt radial).

 (viii) As of December 1, 1985, combustible materials, including, but

not limited to paints, solvents, plastics, paper, and sawn wood must not

be stored within a PCB Transformer enclosure (i.e., in a transformer

vault or in a partitioned area housing a transformer);

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within 5 meters of a transformer enclosure, or, if unenclosed

(unpartitioned), within 5 meters of a PCB Transformer.

 (ix) A visual inspection of each PCB Transformer (as defined in the

definition of ``PCB Transformer'' under Sec. 761.3) in use or stored for

reuse shall be performed at least once every 3 months. These inspections

may take place any time during the 3-month periods: January-March,

April-June, July-September, and October-December as long as there is a

minimum of 30 days between inspections. The visual inspection must

include investigation for any leak of dielectric fluid on or around the

transformer. The extent of the visual inspections will depend on the

physical constraints of each transformer installation and should not

require an electrical shutdown of the transformer being inspected.

 (x) If a PCB Transformer is found to have a leak which results in

any quantity of PCBs running off or about to run off the external

surface of the transformer, then the transformer must be repaired or

replaced to eliminate the source of the leak. In all cases any leaking

material must be cleaned up and properly disposed of according to

disposal requirements of Sec. 761.60. Cleanup of the released PCBs must

be initiated as soon as possible, but in no case later than 48 hours of

its discovery. Until appropriate action is completed, any active leak of

PCBs must be contained to prevent exposure of humans or the environment

and inspected daily to verify containment of the leak. Trenches, dikes,

buckets, and pans are examples of proper containment measures.

 (xi) If a PCB Transformer is involved in a fire-related incident,

the owner of the transformer must immediately report the incident to the

National Response Center (toll-free 1-800-424-8802; in Washington, DC

202-426-2675). A fire-related incident is defined as any incident

involving a PCB Transformer which involves the generation of sufficient

heat and/or pressure (by any source) to result in the violent or non-

violent rupture of a PCB Transformer and the release of PCBs.

Information must be provided regarding the type of PCB Transformer

installation involved in the fire-related incident (e.g., high or low

secondary voltage network transformer, high or low secondary voltage

simple radial system, expanded radial system, primary selective system,

primary loop system, or secondary selective system or other systems) and

the readily ascertainable cause of the fire-related incident (e.g., high

current fault in the primary or secondary or low current fault in

secondary). The owner of the PCB Transformer must also take measures as

soon as practically and safely possible to contain and control any

potential releases of PCBs and incomplete combustion products into

water. These measures include, but are not limited to:

 (A) The blocking of all floor drains in the vicinity of the

transformer.

 (B) The containment of water runoff.

 (C) The control and treatment (prior to release) of any water used

in subsequent cleanup operations.

 (xii) Records of inspection and maintenance history shall be

maintained at least 3 years after disposing of the transformer and shall

be made available for inspection, upon request by EPA. Such records

shall contain the following information for each PCB Transformer:

 (A) Its location.

 (B) The date of each visual inspection and the date that leak was

discovered, if different from the inspection date.

 (C) The person performing the inspection.

 (D) The location of any leak(s).

 (E) An estimate of the amount of dielectric fluid released from any

leak.

 (F) The date of any cleanup, containment, repair, or replacement.

 (G) A description of any cleanup, containment, or repair performed.

 (H) The results of any containment and daily inspection required for

uncorrected active leaks.

 (xiii) A reduced visual inspection frequency of at least once every

12 months applies to PCB Transformers that utilize either of the

following risk reduction measures. These inspections may take place any

time during the calendar year as long as there is a minimum of 180 days

between inspections.

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 (A) A PCB Transformer which has impervious, undrained, secondary

containment capacity of at least 100 percent of the total dielectric

fluid volume of all transformers so contained or

 (B) A PCB Transformer which has been tested and found to contain

less than 60,000 ppm PCBs (after 3 months of in service use if the

transformer has been serviced for purposes of reducing the PCB

concentration).

 (xiv) An increased visual inspection frequency of at least once

every week applies to any PCB Transformer in use or stored for reuse

which poses an exposure risk to food or feed. The user of a PCB

Transformer posing an exposure risk to food is responsible for the

inspection, recordkeeping, and maintenance requirements under this

section until the user notifies the owner that the transformer may pose

an exposure risk to food or feed. Following such notification, it is the

owner's ultimate responsibility to determine whether the PCB Transformer

poses an exposure risk to food or feed.

 (xv) In the event a mineral oil transformer, assumed to contain less

than 500 ppm of PCBs as provided in Sec. 761.3, is tested and found to

be contaminated at 500 ppm or greater PCBs, it will be subject to all

the requirements of this Part 761. In addition, efforts must be

initiated immediately to bring the transformer into compliance in

accordance with the following schedule:

 (A) Report fire-related incidents, effective immediately after

discovery.

 (B) Mark the PCB transformer within 7 days after discovery.

 (C) Mark the vault door, machinery room door, fence, hallway or

other means of access to the PCB Transformer within 7 days after

discovery.

 (D) Register the PCB Transformer in writing with fire response

personnel with primary jurisdiction and with the building owner, within

30 days of discovery.

 (E) Install electrical protective equipment on a radial PCB

Transformer and a non-sidewalk vault, lower secondary voltage network

PCB Transformer in or near a commercial building within 18 months of

discovery or by October 1, 1990, whichever is later.

 (F) Remove a non-sidewalk vault, lower secondary voltage network PCB

Transformer in or near a commercial building, if electrical protective

equipment is not installed, within 18 months of discovery or by October

1, 1993, whichever is later.

 (G) Remove a lower secondary voltage network PCB Transformer located

in a sidewalk vault in or near a commercial building, within 18 months

of discovery or by October 1, 1993, whichever is later.

 (H) Retrofill and reclassify a radial PCB Transformer or a lower or

higher secondary voltage network PCB Transformer, located in other than

a sidewalk vault in or near a commercial building, within 18 months or

by October 1, 1990, whichever is later. This is an option in lieu of

installing electrical protective equipment on a radial or lower

secondary voltage network PCB Transformer located in other than a

sidewalk vault or of removing a higher secondary voltage network PCB

Transformer or a lower secondary voltage network PCB Transformer,

located in a sidewalk vault, from service.

 (I) Retrofill and reclassify a lower secondary voltage network PCB

Transformer, located in a sidewalk vault, in or near a commercial

building within 18 months or by October 1, 1993, whichever is later.

This is an option in lieu of installing electrical protective equipment

or removing the transformer from service.

 (J) Retrofill and reclassify a higher secondary voltage network PCB

Transformer, located in a sidewalk vault, in or near a commercial

building within 18 months or by October 1, 1990, whichever is later.

This is an option in lieu of other requirements.

 (2) Servicing conditions. (i) Transformers classified as PCB-

Contaminated Electrical Equipment (as defined in the definition of

``PCB-Contaminated Electrical Equipment'' under Sec. 761.3) may be

serviced (including rebuilding) only with dielectric fluid containing

less than 500 ppm PCB.

 (ii) Any servicing (including rebuilding) of PCB Transformers (as

defined in the definition of ``PCB Transformer'' under Sec. 761.3) that

requires the removal of the transformer coil from the transformer casing

is prohibited. PCB

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Transformers may be serviced (including topping off) with dielectric

fluid at any PCB concentration.

 (iii) PCBs removed during any servicing activity must be captured

and either reused as dielectric fluid or disposed of in accordance with

the requirements of Sec. 761.60. PCBs from PCB Transformers must not be

mixed with or added to dielectric fluid from PCB-Contaminated Electrical

Equipment.

 (iv) Regardless of its PCB concentration, dielectric fluids

containing less than 500 ppm PCB that are mixed with fluids that contain

500 ppm or greater PCB must not be used as dielectric fluid in any

electrical equipment. The entire mixture of dielectric fluid must be

considered to be greater than 500 ppm PCB and must be disposed of in an

incinerator that meets the requirements in Sec. 761.70.

 (v) A PCB Transformer may be converted to PCB-Contaminated

Electrical Equipment or to a non-PCB Transformer and a transformer that

is classified as PCB-Contaminated Electrical Equipment may be

reclassified to a non-PCB Transformer by draining, refilling and/or

otherwise servicing the transformer. In order to reclassify, the

transformer's dielectric fluid must contain less than 500 ppm PCB (for

conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm

PCB (for conversion to a non-PCB Transformer) after a minimum of three

months of in-service use subsequent to the last servicing conducted for

the purpose of reducing the PCB concentration in the transformer. In-

service means that the transformer is used electrically under loaded

conditions that raise the temperature of the dielectric fluid to at

least 50 deg. Centigrade. The Director, Chemical Management Division may

grant, without further rulemaking, approval for the use of alternative

methods that simulate the loaded conditions of in-service use. All PCBs

removed from transformers for purposes of reducing PCB concentrations

are subject to the disposal requirements of Sec. 761.60.

 (vi) Any dielectric fluid containing 50 ppm or greater PCB used for

servicing transformers must be stored in accordance with the storage for

disposal requirements of Sec. 761.65.

 (vii) Processing and distribution in commerce of PCBs for purposes

of servicing transformers is permitted only for persons who are granted

an exemption under TSCA 6(e)(3)(B).

 (b) Use in and servicing of railroad transformers. PCBs may be used

in transformers in railroad locomotives or railroad self-propelled cars

(``railroad transformers'') and may be processed and distributed in

commerce for purposes of servicing these transformers in a manner other

than a totally enclosed manner subject to the following conditions:

 (1) Use restrictions. (i) After July 1, 1983, the number of railroad

transformers containing a PCB concentration greater than 60,000 ppm (6.0

percent on a dry weight basis) in use by any affected railroad

organization may not exceed two-thirds of the total railroad

transformers containing PCBs in use by that organization on January 1,

1982.

 (ii) After January 1, 1984, the number of railroad transformers

containing a PCB concentration greater than 60,000 ppm in use by any

affected railroad organization may not exceed one-third of the total

railroad transformers containing PCBs in use by that organization on

January 1, 1982.

 (iii) After July 1, 1984, use of railroad transformers that contain

dielectric fluids with a PCB concentration greater than 60,000 ppm is

prohibited.

 (iv) After July 1, 1985, the number of railroad transformers

containing a PCB concentration greater than 1,000 ppm (0.1 percent on a

dry weight basis) in use by any affected railroad organization may not

exceed two-thirds of the total railroad transformers containing PCBs in

use by that organization on July 1, 1984.

 (v) After January 1, 1986, the number of railroad transformers

containing a PCB concentration greater than 1,000 ppm in use by any

affected railroad organization may not exceed one-third of the total

railroad transformers containing PCBs in use by that organization on

July 1, 1984.

 (vi) After July 1, 1986, use of railroad transformers that contain

dielectric fluids with a PCB concentration greater than 1,000 ppm is

prohibited.

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 (vii) The concentration of PCBs in the dielectric fluid contained in

railroad transformers must be measured:

 (A) Immediately upon completion of any authorized servicing of a

railroad transformer conducted for the purpose of reducing the PCB

concentration in the dielectric fluid in the transformer, and

 (B) Between 12 and 24 months after each servicing conducted in

accordance with paragraph (b)(1)(vii)(A) of this section;

 (C) The data obtained as a result of paragraphs (b)(1)(vii)(A) and

(B) of this section shall be retained until January 1, 1991.

 (2) Servicing restrictions. (i) If the coil is removed from the

casing of a railroad transformer (e.g., the transformer is rebuilt),

after January 1, 1982, the railroad transformer may not be refilled with

dielectric fluid containing a PCB concentration greater than 50 ppm;

 (ii) After January 1, 1982, railroad transformers may only be

serviced with dielectric fluid containing less than 60,000 ppm PCBs,

except as provided in paragraph (b)(2)(i) of this section;

 (iii) After January 1, 1984, railroad transformers may only be

serviced with dielectric fluid containing less than 1000 ppm PCB, except

as provided in paragraph (b)(2)(i) of this section;

 (iv) Dielectric fluid may be filtered through activated carbon or

otherwise industrially processed for the purpose of reducing the PCB

concentration in the fluid;

 (v) Any PCB dielectric fluid that is used to service PCB railroad

transformers must be stored in accordance with the storage for disposal

requirements of Sec. 761.65;

 (vi) After July 1, 1979, processing and distribution in commerce of

PCBs for purposes of servicing railroad transformers is permitted only

for persons who are granted an exemption under TSCA section 6(e)(3)(B).

 (vii) A PCB Transformer may be converted to a PCB-Contaminated

Transformer or to a non-PCB Transformer by draining, refilling, and/or

otherwise servicing the railroad transformer. In order to reclassify,

the railroad transformer's dielectric fluid must contain less than 500

ppm (for conversion to PCB-Contaminated Transformer) or less than 50 ppm

PCB (for conversion to a non-PCB Transformer) after a minimum of three

months of inservice use subsequent to the last servicing conducted for

the purpose of reducing the PCB concentration in the transformer.

 (c) Use in and servicing of mining equipment. PCBs may be used in

mining equipment and may be processed and distributed in commerce for

purposes of servicing mining equipment in a manner other than a totally

enclosed manner until January 1, 1982, subject to the following

conditions:

 (1) PCBs may be added to motors in mining equipment in mines or

mining areas until January 1, 1982;

 (2) PCB motors in loader-type mining equipment must be rebuilt as

air-cooled or other non-PCB-containing motors whenever the motor is

returned to a service shop for servicing;

 (3) PCB motors in continuous miner-type equipment may be rebuilt as

PCB motors until January 1, 1980;

 (4) Any PCBs that are on hand to service or repair mining equipment

must be stored in accordance with the storage for disposal requirements

of Sec. 761.65;

 (5) After July 1, 1979, processing and distribution in commerce of

PCBs for purposes of servicing mining equipment is permitted only for

persons who are granted an exemption under TSCA section 6(e)(3)(B).

 (d) Use in heat transfer systems. After July 1, 1984, intentionally

manufactured PCBs may be used in heat transfer systems in a manner other

than a totally enclosed manner at a concentration level of less than 50

ppm provided that the requirements of paragraphs (d)(1) through (5) of

this section are met.

 (1) Each person who owns a heat transfer system that ever contained

PCBs at concentrations above 50 ppm must test for the concentration of

PCBs in the heat transfer fluid of such a system no later than November

1, 1979, and at least annually thereafter. All test sampling must be

performed at least three months after the most recent fluid refilling.

When a test shows that the PCB concentration is less

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than 50 ppm, testing under this paragraph is no longer required.

 (2) Within six months of a test performed under paragraph (d)(1) of

this section that indicates that a system's fluid contains 50 ppm or

greater PCB (0.005% on a dry weight basis), the system must be drained

of the PCBs and refilled with fluid containing less than 50 ppm PCB.

Topping-off with heat transfer fluids containing PCB concentrations of

less than 50 ppm is permitted.

 (3) After November 1, 1979, no heat transfer system that is used in

the manufacture or processing of any food, drug, cosmetic or device, as

defined in section 201 of the Federal Food, Drug, and Cosmetic Act, may

contain transfer fluid with 50 ppm or greater PCB (0.005% on a dry

weight basis).

 (4) Addition of fluids containing PCB concentrations greater than 50

ppm is prohibited.

 (5) Data obtained as a result of paragraph (d)(1) of this section

must be retained for five years after the heat transfer system reaches

50 ppm PCB.

 (e) Use in hydraulic systems. After July 1, 1984, intentionally

manufactured PCBs may be used in hydraulic systems in a manner other

than a totally enclosed manner at a concentration level of less than 50

ppm provided that the requirements in paragraphs (e)(1) through (5) of

this section are met.

 (1) Each person who owns a hydraulic system that ever contained PCBs

at concentrations above 50 ppm must test for the concentration of PCBs

in the hydraulic fluid of each system no later than November 1, 1979,

and at least annually thereafter. All test sampling must be performed at

least three months after the most recent fluid refilling. When a test

shows that the PCB concentration is less than 50 ppm, testing under this

paragraph is no longer required.

 (2) Within six months of a test under paragraph (e)(1) of this

section that indicates that a system's fluid contains 50 ppm or greater

PCB (0.005% on a dry weight basis), the system must be drained of the

PCBs and refilled with fluid containing less than 50 ppm PCB. Topping-

off with hydraulic fluids containing PCB concentrations less than 50 ppm

to reduce PCB concentrations is permitted.

 (3) Addition of PCBs at concentrations of greater than 50 ppm is

prohibited.

 (4) Hydraulic fluid may be drained from a hydraulic system and

filtered, distilled, or otherwise serviced in order to reduce the PCB

concentration below 50 ppm.

 (5) Data obtained as a result of paragraph (e)(1) of this section

must be retained for five years after the hydraulic system reaches 50

ppm.

 (f) Use in carbonless copy paper. Carbonless copy paper containing

PCBs may be used in a manner other than a totally enclosed manner

indefinitely.

 (g) Pigments. Diarylide and Phthalocyanin pigments that contain 50

ppm or greater PCB may be processed, distributed in commerce, and used

in a manner other than a totally enclosed manner until January 1, 1982,

except that after July 1, 1979, processing and distribution in commerce

of diarylide or phthalocyanin pigments that contain 50 ppm or greater

PCB is permitted only for persons who are granted an exemption under

TSCA section 6(e)(3)(B).

 (h) Use in and servicing of electromagnets, switches and voltage

regulators. PCBs at any concentration may be used in electromagnets,

switches (including sectionalizers and motor starters), and voltage

regulators and may be used for purposes of servicing this equipment

(including rebuilding) for the remainder of their useful lives, subject

to the following conditions:

 (1) Use conditions. (i) After October 1, 1985, the use and storage

for reuse of any electromagnet which poses an exposure risk to food or

feed is prohibited if the electromagnet contains greater than 500 ppm

PCBs.

 (ii) A visual inspection of each electromagnet subject to paragraph

(h)(1)(i) of this section, shall be performed at least once every week

according to the conditions contained in Sec. 761.30(a)(1) (iii) and

(iv).

 (2) Servicing conditions. (i) Servicing (including rebuilding) any

electromagnet, switch, or voltage regulator with a PCB concentration of

500 ppm or greater which requires the removal and

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rework of the internal components is prohibited.

 (ii) Electromagnets, switches, and voltage regulators classified as

PCB-Contaminated Electrical Equipment (as defined in the definition of

``PCB-Contaminated Electrical Equipment'' under Sec. 761.3) may be

serviced (including rebuilding) only with dielectric fluid containing

less than 500 ppm PCB.

 (iii) PCBs removed during any servicing activity must be captured

and either reused as dielectric fluid or disposed of in accordance with

the requirements of Sec. 761.60. PCBs from electromagnets switches, and

voltage regulators with a PCB concentration of at least 500 ppm must not

be mixed with or added to dielectric fluid from PCB-Contaminated

Electrical Equipment.

 (iv) Regardless of its PCB concentration, dielectric fluids

containing less than 500 ppm PCB that are mixed with fluids that contain

500 ppm or greater PCB must not be used as dielectric fluid in any

electrical equipment. The entire mixture of dielectric fluid must be

considered to be greater than 500 ppm PCB and must be disposed of in an

incinerator that meets the requirements of Sec. 761.70.

 (v) An electromagnet, switch or voltage regulator with a PCB

concentration of at least 500 ppm may be converted to PCB-Contaminated

Electrical Equipment or to a non-PCB classification and PCB-Contaminated

Electrical Equipment may be reclassified to a non-PCB classification by

draining, refilling and/or otherwise servicing the equipment. In order

to be reclassified, the equipment's dielectric fluid must contain less

than 500 ppm PCB (for conversion to PCB-Contaminated Electrical

Equipment) or less than 50 ppm PCB (for conversion to a non-PCB

classification) after a minimum of three months of in-service use

subsequent to the last servicing conducted for the purpose of reducing

the PCB concentration in the equipment. In-service use means the

equipment is used electrically under loaded conditions. The Assistant

Administrator may grant, without further rulemaking, approval for the

use of alternative methods that simulate the loaded conditions of in-

service use. All PCBs removed from this equipment for purposes of

reducing PCB concentrations are subject to the disposal requirements of

Sec. 761.60.

 (vi) Any dielectric fluid containing 50 ppm or greater PCB used for

servicing electromagnets, switches, or voltage regulators must be stored

in accordance with the storage for disposal requirements of Sec. 761.65.

 (vii) Processing and distribution in commerce of PCBs for purposes

of servicing electromagnets, switches or voltage regulators is permitted

only for persons who are granted an exemption under TSCA 6(e)(3)(B).

 (i) Use in compressors and in the liquid of natural gas pipelines.

PCBs may be used indefinitely in the compressors and in the liquids of

natural gas pipelines at a concentration level of less than 50 ppm

provided that they are marked in accordance with Sec. 761.45(a).

 (j) Small quantities for research and development. PCBs may be used

in small quantities for research and development, as defined in

Sec. 761.3, in a manner other than a totally enclosed manner,

indefinitely. Manufacture, processing, and distribution in commerce of

PCBs in small quantities for research and development is permitted only

for persons who have been granted an exemption under TSCA section

6(e)(3)(B).

 (k) Microscopy mounting medium. PCBs may be used as a permanent

microscopic mounting medium in a manner other than a totally enclosed

manner indefinitely. Manufacture, processing, and distribution in

commerce of PCBs for purposes of use as a mounting medium are permitted

only for persons who are granted an exemption under TSCA section

6(e)(3)(B).

 (l) Use in capacitors. PCBs at any concentration may be used in

capacitors, subject to the following conditions:

 (1) Use conditions. (i) After October 1, 1988, the use and storage

for reuse of PCB Large High Voltage Capacitors and PCB Large Low Voltage

Capacitors which pose an exposure risk to food or feed is prohibited.

 (ii) After October 1, 1988, the use of PCB Large High Voltage

Capacitors and PCB Large Low Voltage Capacitors is prohibited unless the

capacitor is used within a restricted-access electrical substation or in

a contained and restricted-access indoor installation. A

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restricted-access electrical substation is an outdoor, fenced or walled-

in facility that restricts public access and is used in the transmission

or distribution of electric power. A contained and restricted-access

indoor installation does not have public access and has an adequate

roof, walls, and floor to contain any release of PCBs within the indoor

location.

 (2) [Reserved]

 (m) Use in and servicing of circuit breakers, reclosers and cable.

PCBs at any concentration may be used in circuit breakers, reclosers,

and cable and may be used for purposes of servicing this electrical

equipment (including rebuilding) for the remainder of their useful

lives, subject to the following conditions:

 (1) Servicing conditions. (i) Circuit breakers, reclosers, and cable

may be serviced (including rebuilding) only with dielectric fluid

containing less than 50 ppm PCB.

 (ii) Any circuit breaker, recloser or cable found to contain at

least 50 ppm PCBs may be serviced only in accordance with the conditions

contained in 40 CFR 761.30(h)(2).

 (2) [Reserved]

 (n) Microscopy immersion oil. PCBs may be used as an immersion oil

in fluorescence microscopy, in a manner other than a totally enclosed

manner indefinitely. Manufacture, processing, and distribution in

commerce of PCBs for purposes of use as a low fluorescence immersion oil

are permitted only for persons who are granted an exemption under TSCA

section 6(e)(3)(B).

 (o) Optical liquids. PCBs may be used as optical liquids in a manner

other than a totally enclosed manner indefinitely. Manufacture,

processing, and distribution in commerce of PCBs for purposes of use as

optical liquids are permitted only for persons who are granted an

exemption under TSCA section 6(e)(3)(B).

 (p) Analytical reference samples. PCB's in analytical reference

samples derived from waste materials may be used only when the samples

originated from a person who has been granted an exemption to process

and distribute in commerce such samples under TSCA section 6(e)(3)(B).

Once the use of such samples is completed, disposal of such samples is

governed by all applicable Federal, State, and local laws, including the

rules contained in this part.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020, 2025 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982,

and amended at 47 FR 37357, Aug. 25, 1983; 48 FR 135, Jan. 3, 1983; 49

FR 25241 and 25242, June 20, 1984; 49 FR 28190, and 28202, July 10,

1984; 50 FR 29199, July 17, 1985; 53 FR 12524, Apr. 15, 1988; 53 FR

24221, June 27, 1988; 53 FR 27328, July 19, 1988; 54 FR 28419, July 6,

1989; 55 FR 45804, Oct. 31, 1990; 55 FR 49045, Nov. 26, 1990; 58 FR

15809, Mar. 24, 1993; 58 FR 34205, June 23, 1993; 59 FR 16998, Apr. 11,

1994]

 Subpart C--Marking of PCBs and PCB Items

Sec. 761.40 Marking requirements.

 (a) Each of the following items in existence on or after July 1,

1978 shall be marked as illustrated in Figure 1 in Sec. 761.45(a): The

mark illustrated in Figure 1 is referred to as M<INF>L</INF> throughout

this subpart.

 (1) PCB Containers;

 (2) PCB Transformers at the time of manufacture, at the time of

distribution in commerce if not already marked, and at the time of

removal from use if not already marked. [Marking of PCB-Contaminated

Electrical Equipment is not required];

 (3) PCB Large High Voltage Capacitors at the time of manufacture, at

the time of distribution in commerce if not already marked, and at the

time of removal from use if not already marked;

 (4) Equipment containing a PCB Transformer or a PCB Large High

Voltage Capacitor at the time of manufacture, at the time of

distribution in commerce if not already marked, and at the time of

removal of the equipment from use if not already marked;

 (5) PCB Large Low Voltage Capacitors at the time of removal from

use;

 (6) Electric motors using PCB coolants (See also paragraph (e) of

this section).

 (7) Hydraulic systems using PCB hydraulic fluid (See also paragraph

(e) of this section);

 (8) Heat transfer systems (other than PCB Transformers) using PCBs

(See also paragraph (e) of this section);

 (9) PCB Article Containers containing articles or equipment that

must be

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marked under paragraphs (a) (1) through (8) of this section;

 (10) Each storage area used to store PCBs and PCB Items for

disposal.

 (b) As of October 1, 1978, each transport vehicle shall be marked on

each end and side with M<INF>L</INF> as described in Sec. 761.45(a) if

it is loaded with PCB Containers that contain more than 45 kg (99.4

lbs.) of PCBs in the liquid phase or with one or more PCB Transformers

(See also paragraph (e) of this section).

 (c) As of January 1, 1979, the following PCB Articles shall be

marked with mark M<INF>L</INF> as described in Sec. 761.45(a):

 (1) All PCB Transformers not marked under paragraph (a) of this

section [marking of PCB-Contaminated Electrical Equipment is not

required];

 (2) All PCB Large High Voltage Capacitors not marked under paragraph

(a) of this section

 (i) Will be marked individually with mark M<INF>L</INF>, or

 (ii) If one or more PCB Large High Voltage Capacitors are installed

in a protected location such as on a power pole, or structure, or behind

a fence; the pole, structure, or fence shall be marked with mark

M<INF>L</INF>, and a record or procedure identifying the PCB Capacitors

shall be maintained by the owner or operator at the protected location.

 (d) As of January 1, 1979, all PCB Equipment containing a PCB Small

Capacitor shall be marked at the time of manufacture with the statement,

``This equipment contains PCB Capacitor(s)''. The mark shall be of the

same size as the mark M<INF>L</INF>.

 (e) As of October 1, 1979, applicable PCB Items in paragraphs (a)

(1), (6), (7), and (8) of this section containing PCBs in concentrations

of 50 to 500 ppm and applicable transport vehicles in paragraph (b) of

this section loaded with PCB Containers that contain more than 45 kg

(99.4 lbs.) of liquid PCBs in concentrations of 50 ppm to 500 ppm shall

be marked with mark M<INF>L</INF> as described in Sec. 761.45(a).

 (f) Where mark M<INF>L</INF> is specified but the PCB Article or PCB

Equipment is too small to accomodate the smallest permissible size of

mark M<INF>L</INF>, mark M<INF>S</INF> as described in Sec. 761.45(b),

may be used instead of mark M<INF>L</INF>.

 (g) Each large low voltage capacitor, each small capacitor normally

used in alternating current circuits, and each fluorescent light ballast

manufactured (``manufactured'', for purposes of this sentence, means

built) between July 1, 1978 and July 1, 1998 that do not contain PCBs

shall be marked by the manufacturer at the time of manufacture with the

statement, ``No PCBs''. The mark shall be of similar durability and

readability as other marking that indicate electrical information, part

numbers, or the manufacturer's name. For purposes of this paragraph

marking requirement only is applicable to items built domestically or

abroad after June 30, 1978.

 (h) All marks required by this subpart must be placed in a position

on the exterior of the PCB Items or transport vehicles so that the marks

can be easily read by any persons inspecting or servicing the marked PCB

Items or transport vehicles.

 (i) Any chemical substance or mixture that is manufactured after the

effective date of this rule and that contains less than 500 ppm PCB

(0.05% on a dry weight basis), including PCB that is a byproduct or

impurity, must be marked in accordance with any requirements contained

in the exemption granted by EPA to permit such manufacture and is not

subject to any other requirement in this subpart unless so specified in

the exemption. This paragraph applies only to containers of chemical

substances or mixtures. PCB articles and equipment into which the

chemical substances or mixtures are processed, are subject to the

marking requirements contained elsewhere in this subpart.

 (j) PCB Transformer locations shall be marked as follows:

 (1) Except as provided in paragraph (j)(2) of this section, as of

December 1, 1985, the vault door, machinery room door, fence, hallway,

or means of access, other than grates and manhole covers, to a PCB

Transformer must be marked with the mark M<INF>L</INF> as required by

paragraph (a) of this section.

 (2) A mark other than the M<INF>L</INF> mark may be used provided

all of the following conditions are met:

 (i) The program using such an alternative mark was initiated prior

to August 15, 1985, and can be substantiated with documentation.

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 (ii) Prior to August 15, 1985, coordination between the transformer

owner and the primary fire department occurred, and the primary fire

department knows, accepts, and recognizes what the alternative mark

means, and that this can be substantiated with documentation.

 (iii) The EPA Regional Administrator in the appropriate region is

informed in writing of the use of the alternative mark by October 3,

1988 and is provided with documentation that the program began before

August 15, 1985, and documentation that demonstrates that prior to that

date the primary fire department knew, accepted and recognized the

meaning of the mark, and included this information in firefighting

training.

 (iv) The Regional Administrator will either approve or disapprove in

writing the use of an alternative mark within 30 days of receipt of the

documentation of a program.

 (3) Any mark placed in accordance with the requirements of this

section must be placed in the locations described in paragraph (j)(1) of

this section and in a manner that can be easily read by emergency

response personnel fighting a fire involving this equipment.

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982,

and amended at 47 FR 37359, Aug. 25, 1982; 50 FR 29201, July 17, 1985;

50 FR 32176, Aug. 9, 1985; 53 FR 12524, Apr. 15, 1988; 53 FR 27329, July

19, 1988]

Sec. 761.45 Marking formats.

 The following formats shall be used for marking:

 (a) Large PCB Mark--M<INF>L</INF>. Mark M<INF>L</INF> shall be as

shown in Figure 1, letters and striping on a white or yellow background

and shall be sufficiently durable to equal or exceed the life (including

storage for disposal) of the PCB Article, PCB Equipment, or PCB

Container. The size of the mark shall be at least 15.25 cm (6 inches) on

each side. If the PCB Article or PCB Equipment is too small to

accommodate this size, the mark may be reduced in size proportionately

down to a minimum of 5 cm (2 inches) on each side.

 (b) Small PCB Mark--M<INF>s</INF>. Mark M<INF>s</INF> shall be as

shown in Figure 2, letters and striping on a white or yellow background,

and shall be sufficiently durable to equal or exceed the life (including

storage for disposal) of the PCB Article, PCB Equipment, or PCB

Container. The mark shall be a rectangle 2.5 by 5 cm (1 inch by 2

inches). If the PCB Article or PCB Equipment is too small to accommodate

this size, the mark may be reduced in size proportionately down to a

minimum of 1 by 2 cm (.4 by .8 inches).

[GRAPHIC] [TIFF OMITTED] TC01AP92.000

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982]

 Subpart D--Storage and Disposal

 Note: This subpart does not require removal of PCBs and PCB Items

from service and disposal earlier than would normally be the case.

However, when PCBs and PCB Items are removed from service and disposed

of, disposal must be undertaken in accordance with these regulations.

PCBs (including soils and debris) and PCB Items which have been placed

in a disposal site are considered to be ``in service'' for purposes of

the applicability of this subpart. This subpart does not require PCBs

and PCB Items landfilled prior to February 17, 1978 to be removed for

disposal. However, if such PCBs or PCB

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Items are removed from the disposal site, they must be disposed of in

accordance with this subpart. Other subparts are directed to the

manufacture, processing, distribution in commerce, and use of PCBs and

may result in some cases in disposal at an earlier date than would

otherwise occur.

Sec. 761.60 Disposal requirements.

 (a) PCBs. (1) Except as provided in paragraphs (a)(2), (3), (4), and

(5) of this section, PCBs at concentrations of 50 ppm or greater must be

disposed of in an incinerator which complies with Sec. 761.70.

 (2) Mineral oil dielectric fluid from PCB-Contaminated Electrical

Equipment containing a PCB concentration of 50 ppm or greater, but less

than 500 ppm, must be disposed of in one of the following:

 (i) In an incinerator that complies with Sec. 761.70;

 (ii) In a chemical waste landfill that complies with Sec. 761.75 if

information is provided to the owner or operator of the chemical waste

landfill that shows that the mineral oil dielectric fluid does not

exceed 500 ppm PCB and is not an ignitable waste as described in

Sec. 761.75(b)(8)(iii);

 (iii) In a high efficiency boiler provided that:

 (A) The boiler complies with the following criteria:

 (1) The boiler is rated at a minimum of 50 million BTU hours;

 (2) If the boiler uses natural gas or oil as the primary fuel, the

carbon monoxide concentration in the stack is 50 ppm or less and the

excess oxygen is at least three (3) percent when PCBs are being burned;

 (3) If the boiler uses coal as the primary fuel, the carbon monoxide

concentration in the stack is 100 ppm or less and the excess oxygen is

at least three (3) percent when PCBs are being burned;

 (4) The mineral oil dielectric fluid does not comprise more than ten

(10) percent (on a volume basis) of the total fuel feed rate;

 (5) The mineral oil dielectric fluid is not fed into the boiler

unless the boiler is operating at its normal operating temperature (this

prohibits feeding these fluids during either start up or shut down

operations);

 (6) The owner or operator of the boiler:

 (i) Continuously monitors and records the carbon monoxide

concentration and excess oxygen percentage in the stack gas while

burning mineral oil dielectric fluid; or

 (ii) If the boiler will burn less than 30,000 gallons of mineral oil

dielectric fluid per year, measures and records the carbon monoxide

concentration and excess oxygen percentage in the stack gas at regular

intervals of no longer than 60 minutes while burning mineral oil

dielectric fluid.

 (7) The primary fuel feed rates, mineral oil dielectric fluid feed

rates, and total quantities of both primary fuel and mineral oil

dielectric fluid fed to the boiler are measured and recorded at regular

intervals of no longer than 15 minutes while burning mineral oil

dielectric fluid.

 (8) The carbon monoxide concentration and the excess oxygen

percentage are checked at least once every hour that mineral oil

dielectric fluid is burned. If either measurement falls below the levels

specified in this rule, the flow of mineral oil dielectric fluid to the

boiler shall be stopped immediately.

 (B) Thirty days before any person burns mineral oil dielectric fluid

in the boiler, the person gives written notice to the EPA Regional

Administrator for the EPA Region in which the boiler is located and that

the notice contains the following information:

 (1) The name and address of the owner or operator of the boiler and

the address of the boiler;

 (2) The boiler rating in units of BTU/hour;

 (3) The carbon monoxide concentration and the excess oxygen

percentage in the stack of the boiler when it is operated in a manner

similar to the manner in which it will be operated when mineral oil

dielectric fluid is burned; and

 (4) The type of equipment, apparatus, and procedures to be used to

control the feed of mineral oil dielectric fluid to the boiler and to

monitor and record the carbon monoxide concentration and excess oxygen

percentage in the stack.

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 (C) When burning mineral oil dielectric fluid, the boiler must

operate at a level of output no less than the output at which the

measurements required under paragraph (a)(2)(iii)(B)(3) of this section

were taken.

 (D) Any person burning mineral oil dielectric fluid in a boiler

obtains the following information and retains the information for five

years at the boiler location:

 (1) The data required to be collected under paragraphs (a)(2)(A) (6)

and (7) of this section; and

 (2) The quantity of mineral oil dielectric fluid burned in the

boiler each month;

 (iv) In a facility that is approved in accordance with

Sec. 761.60(e). For the purpose of burning mineral oil dielectric fluid,

an applicant under Sec. 761.60(e) must show that his combustion process

destroys PCBs as efficiently as does a high efficiency boiler, as

defined in paragraph (a)(2)(iii) of this section, or a Sec. 761.70

approved incinerator.

 (3) Liquids, other than mineral oil dielectric fluid, containing a

PCB concentration of 50 ppm or greater, but less than 500 ppm, shall be

disposed of:

 (i) In an incinerator which complies with Sec. 761.70;

 (ii) In a chemical waste landfill which complies with Sec. 761.75 if

information is provided to the owner or operator of the chemical waste

landfill that shows that the waste does not exceed 500 ppm PCB and is

not an ignitable waste as described in Sec. 761.75(b)(8)(iii);

 (iii) In a high efficiency boiler provided that.

 (A) The boiler complies with the following criteria:

 (1) The boiler is rated at a minimum of 50 million BTU/hour;

 (2) If the boiler uses natural gas or oil as the primary fuel, the

carbon monoxide concentration in the stack is 50 ppm or less and the

excess oxygen is at least three (3) percent when PCBs are being burned;

 (3) If the boiler uses coal as the primary fuel, the carbon monoxide

concentration in the stack is 100 ppm or less and the excess oxygen is

at least three (3) percent when PCBs are being burned;

 (4) The waste does not comprise more than ten (10) percent (on a

volume basis) of the total fuel feed rate;

 (5) The waste is not fed into the boiler unless the boiler is

operating at its normal operating temperature (this prohibits feeding

these fluids during either start up or shut down operations);

 (6) The owner or operator of the boiler must:

 (i) Continuously monitor and record the carbon monoxide

concentration and excess oxygen percentage in the stack gas while

burning waste fluid; or

 (ii) If the boiler will burn less than 30,000 gallons of waste fluid

per year, measure and record the carbon monoxide concentration and

excess oxygen percentage in the stack gas at regular intervals of no

longer than 60 minutes while burning waste fluid;

 (7) The primary fuel feed rate, waste fluid feed rate, and total

quantities of both primary fuel and waste fluid fed to the boiler must

be measured and recorded at regular intervals of no longer than 15

minutes while burning waste fluid; and

 (8) The carbon monoxide concentration and the excess oxygen

percentage must be checked at least once every hour that the waste is

burned. If either measurement falls below the levels specified in this

rule, the flow of waste to the boiler shall be stopped immediately.

 (B) Prior to any person burning these liquids in the boiler,

approval must be obtained from the EPA Regional Administrator for the

EPA Region in which the boiler is located and any persons seeking such

approval must submit to the EPA Regional Administrator a request

containing at least the following information:

 (1) The name and address of the owner or operator of the boiler and

the address of the boiler;

 (2) The boiler rating in units of BTU/hour;

 (3) The carbon monoxide concentration and the excess oxygen

percentage in the stack of the boiler when it is operated in a manner

similar to the manner in which it will be operated when low

concentration PCB liquid is burned;

 (4) The type of equipment, apparatus, and procedures to be used to

control

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the feed of mineral oil dielectric fluid to the boiler and to monitor

and record the carbon monoxide concentration and excess oxygen

percentage in the stack;

 (5) The type of waste to be burned (e.g., hydraulic fluid,

contaminated fuel oil, heat transfer fluid, etc.);

 (6) The concentration of PCBs and of any other chlorinated

hydrocarbon in the waste and the results of analyses using the American

Society of Testing and Materials (ASTM) methods as follows: Carbon and

hydrogen content using ASTM D-3178-84, nitrogen content using ASTM E-

258-67 (Reapproved 1987), sulfur content using ASTM D-2784-89, D-1266-

87, or D-129-64, chlorine content using ASTM D-808-87, water and

sediment content using either ASTM D-2709-88 or ASTM D-1796-83

(Reapproved 1990), ash content using D-482-87, calorific value using

ASTM D-240-87, carbon residue using either ASTM D-2158-89 or D-524-88,

and flash point using ASTM D-93-90.

 (7) The quantity of wastes estimated to be burned in a thirty (30)

day period;

 (8) An explanation of the procedures to be followed to insure that

burning the waste will not adversely affect the operation of the boiler

such that combustion efficiency will decrease.

 (C) On the basis of the information in paragraph (a)(3)(iii)(B) of

this section and any other available information, the Regional

Administrator may, at his discretion, find that the alternate disposal

method will not present an unreasonable risk of injury to health or the

environment and approve the use of the boiler;

 (D) When burning PCB wastes, the boiler must operate at a level of

output no less than the output at which the measurements required under

paragraph (a)(3)(iii)(B)(3) of this section were taken; and

 (E) Any person burning liquids in boilers approved as provided in

paragraph (a)(3)(iii)(C) of this section, must obtain the following

information and retain the information for five years at the boiler

location:

 (1) The data required to be collected in paragraphs (a)(3)(iii)(A)

(6) and (7) of this section;

 (2) The quantity of low concentration PCB liquid burned in the

boiler each month.

 (3) The analysis of the waste required by paragraph

(a)(3)(iii)(B)(6) of this section taken once a month for each month

during which low concentration PCB liquid is burned in the boiler.

 (iv) In a facility that is approved in accordance with

Sec. 761.60(e). For the purpose of burning liquids, other than mineral

oil dielectric fluid, containing 50 ppm or greater PCB, but less than

500 ppm PCB, an applicant under Sec. 761.60(e) must show that his

combustion process destroys PCBs as efficiently as does a high

efficiency boiler, as defined in Sec. 761.60(a)(2)(iii), or a

Sec. 761.70 incinerator.

 (4) Any non-liquid PCBs at concentrations of 50 ppm or greater in

the form of contaminated soil, rags, or other debris shall be disposed

of:

 (i) In an incinerator which complies with Sec. 761.70; or

 (ii) In a chemical waste landfill which complies with Sec. 761.75.

 Note: Except as provided in Sec. 761.75(b)(8)(ii), liquid PCBs shall

not be processed into non-liquid forms to circumvent the high

temperature incineration requirements of Sec. 761.60(a).

 (5) All dredged materials and municipal sewage treatment sludges

that contain PCBs at concentrations of 50 ppm or greater shall be

disposed of:

 (i) In an incinerator which complies with Sec. 761.70,

 (ii) In a chemical waste landfill which complies with Sec. 761.75;

or

 (iii) Upon application, using a disposal method to be approved by

the Agency's Regional Administrator in the EPA Region in which the PCBs

are located. Applications for disposal in a manner other than prescribed

in paragraph (a)(5) (i) or (ii) of this section must be made in writing

to the Regional Administrator. The application must contain information

that, based on technical, environmental, and economic considerations,

indicates that disposal in an incinerator or chemical waste landfill is

not reasonable and appropriate, and that the alternate disposal method

will provide adequate protection to health and the environment. The

Regional Administrator may request other information that he

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or she believes to be necessary for evaluation of the alternate disposal

method. Any approval by the Regional Administrator shall be in writing

and may contain any appropriate limitations on the approved alternate

method for disposal. In addition to these regulations, the Regional

Administrator shall consider other applicable Agency guidelines,

criteria, and regulations to ensure that the discharges of dredged

material and sludges that contain PCBs and other contaminants are

adequately controlled to protect the environment. The person to whom

such approval is issued must comply with all limitations contained in

the approval.

 (6) When storage is desired prior to disposal, PCBs at

concentrations of 50 ppm or greater shall be stored in a facility which

complies with Sec. 761.65.

 (b) PCB Articles--(1) Transformers. (i) PCB Transformers shall be

disposed of in accordance with either of the following:

 (A) In an incinerator that complies with Sec. 761.70; or

 (B) In a chemical waste landfill which complies with Sec. 761.75;

Provided, That the transformer is first drained of all free flowing

liquid, filled with solvent, allowed to stand for at least 18 hours, and

then drained thoroughly. PCB liquids that are removed shall be disposed

of in accordance with paragraph (a) of this section. Solvents may

include kerosene, xylene, toluene and other solvents in which PCBs are

readily soluble. Precautionary measures should be taken, however, that

the solvent flushing procedure is conducted in accordance with

applicable safety and health standards as required by Federal or State

regulations.

 (ii) [Reserved]

 (2) PCB Capacitors. (i) The disposal of any capacitor shall comply

with all requirements of this subpart unless it is known from label or

nameplate information, manufacturer's literature (including documented

communications with the manufacturer), or chemical analysis that the

capacitor does not contain PCBs.

 (ii) Any person may dispose of PCB Small Capacitors as municipal

solid waste, unless that person is subject to the requirements of

paragraph (b)(2)(iv) of this section.

 (iii) Any PCB Large High or Low Voltage Capacitor which contains 500

ppm or greater PCBs, owned by any person, shall be disposed of in

accordance with either of the following:

 (A) Disposal in an incinerator that complies with Sec. 761.70; or

 (B) Until March 1, 1981, disposal in a chemical waste landfill that

complies with Sec. 761.75.

 (iv) Any PCB Small Capacitor owned by any person who manufactures or

at any time manufactured PCB Capacitors or PCB Equipment and acquired

the PCB Capacitors in the course of such manufacturing shall be disposed

of in accordance with either of the following:

 (A) Disposal in an incinerator which complies with Sec. 761.70; or

 (B) Until March 1, 1981, disposal in a chemical waste landfill which

complies with Sec. 761.75.

 (v) Notwithstanding the restrictions imposed by paragraph

(b)(2)(iii)(B) or (b)(2)(iv)(B) of this section, PCB capacitors may be

disposed of in PCB chemical waste landfills that comply with Sec. 761.75

subsequent to March 1, 1981, if the Assistant Administrator for

Prevention, Pesticides and Toxic Substances publishes a notice in the

Federal Register declaring that those landfills are available for such

disposal and explaining the reasons for the extension or reopening. An

extension or reopening for disposal of PCB capacitors that is granted

under this subsection shall be subject to such terms and conditions as

the Assistant Administrator may prescribe and shall be in effect for

such period as the Assistant Administrator may prescribe. The Assistant

Administrator may permit disposal of PCB capacitors in EPA approved

chemical waste landfills after March 1, 1981, if in his opinion,

 (A) Adequate incineration capability for PCB capacitors is not

available, or

 (B) The incineration of PCB capacitors will significantly interfere

with the incineration of liquid PCBs, or

 (C) There is other good cause shown.

As part of this evaluation, the Assistant Administrator will consider

the impact of his action on the incentives to construct or expand PCB

incinerators.

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 (vi) Prior to disposal in a Sec. 761.75 chemical waste landfill, all

large PCB capacitors, and all small PCB capacitors described in

paragraph (b)(2)(iv) of this section, shall be placed in one of the

Department of Transportation specification containers identified in

Sec. 761.65(c)(6) or in containers that comply with 49 CFR 178.118

(specification 17H containers). Large PCB capacitors which are too big

to fit inside one of these containers shall be placed in a container

with strength and durability equivalent to the DOT specification

containers. In all cases, interstitial space in the container shall be

filled with sufficient absorbent material (such as sawdust or soil) to

absorb any liquid PCBs remaining in the capacitors.

 (3) PCB hydraulic machines. PCB hydraulic machines containing PCBs

at concentrations of 50 ppm or greater such as die casting machines may

be disposed of as municipal solid waste or salvage provided that the

machines are drained of all free-flowing liquid and the liquid is

disposed of in accordance with the provisions of paragraph (a) of this

section. If the PCB liquid contains 1000 ppm PCB or greater, then the

hydraulic machine must be flushed prior to disposal with a solvent

containing less than 50 ppm PCB under transformer solvents at paragraph

(b)(1)(i)(B) of this section and the solvent disposed of in accordance

with paragraph (a) of this section.

 (4) PCB-Contaminated Electrical Equipment. All PCB-Contaminated

Electrical Equipment except capacitors shall be disposed of by draining

all free flowing liquid from the electrical equipment and disposing of

the liquid in accordance with paragraph (a)(2) or (3) of this section.

The disposal of the drained electrical equipment is not regulated by

this rule. Capacitors that contain between 50 and 500 ppm PCBs shall be

disposed of in an incinerator that complies with Sec. 761.70 or in a

chemical waste landfill that complies with Sec. 761.75.

 (5) Other PCB Articles. (i) PCB articles with concentrations at 500

ppm or greater must be disposed of:

 (A) In an incinerator that complies with Sec. 761.70; or

 (B) In a chemical waste landfill that complies with Sec. 761.75,

provided that all free-flowing liquid PCBs have been thoroughly drained

from any articles before the articles are placed in the chemical waste

landfill and that the drained liquids are disposed of in an incinerator

that complies with Sec. 761.70.

 (ii) PCB Articles with a PCB concentration between 50 and 500 ppm

must be disposed of by draining all free flowing liquid from the article

and disposing of the liquid in accordance with paragraph (a)(2) or (3)

of this section. The disposal of the drained article is not regulated by

this rule.

 (6) Storage of PCB Articles. Except for a PCB Article described in

paragraph (b)(2)(ii) of this section and hydraulic machines that comply

with the municipal solid waste disposal provisions described in

paragraph (b)(3) of this section, any PCB Article, with PCB

concentrations at 50 ppm or greater, shall be stored in accordance with

Sec. 761.65 prior to disposal.

 (c) PCB Containers. (1) Unless decontaminated in compliance with

Sec. 761.79 or as provided in paragraph (c)(2) of this section, a PCB

container with PCB concentrations at 500 ppm or greater shall be

disposed of:

 (i) In an incinerator which complies with Sec. 761.70, or

 (ii) In a chemical waste landfill that complies with Sec. 761.75;

provided that if there are PCBs in a liquid state, the PCB Container

shall first be drained and the PCB liquid disposed of in accordance with

paragraph (a) of this section.

 (2) Any PCB Container used to contain only PCBs at a concentration

less than 500 ppm shall be disposed of as municipal solid wastes;

provided that if the PCBs are in a liquid state, the PCB Container shall

first be drained and the PCB liquid shall be disposed of in accordance

with paragraph (a) of this section.

 (3) Prior to disposal, a PCB container with PCB concentrations at 50

ppm or greater shall be stored in a facility which complies with

Sec. 761.65.

 (d) Spills. (1) Spills and other uncontrolled discharges of PCBs at

concentrations of 50 ppm or greater constitute the disposal of PCBs.

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 (2) PCBs resulting from the clean-up and removal of spills, leaks,

or other uncontrolled discharges, must be stored and disposed of in

accordance with paragraph (a) of this section.

 (3) These regulations do not exempt any person from any actions or

liability under other statutory authorities, including but not limited

to the Clean Water Act, the Resource Conservation and Recovery Act, and

the Comprehensive Environmental Response, Compensation, and Liability

Act of 1980.

 (e) Any person who is required to incinerate any PCBs and PCB Items

under this subpart and who can demonstrate that an alternative method of

destroying PCBs and PCB Items exists and that this alternative method

can achieve a level of performance equivalent to Sec. 761.70

incinerators or high efficiency boilers as provided in paragraphs

(a)(2)(iv) and (a)(3)(iv) of this section, may submit a written request

to either the Regional Administrator or the Director, Chemical

Management Division for an exemption from the incineration requirements

of Sec. 761.70 or Sec. 761.60. Requests for approval of alternate

methods that will be operated in more than one region must be submitted

to the Director, Chemical Management Division except for research and

development involving less than 500 pounds of PCB material (see

paragraph (i)(2) of this section). Requests for approval of alternate

methods that will be operated in only one region must be submitted to

the appropriate Regional Administrator. The applicant must show that his

method of destroying PCBs will not present an unreasonable risk of

injury to health or the environment. On the basis of such information

and any available information, the Regional Administrator or the

Director, Chemical Management Division may, in his discretion, approve

the use of the alternate method if he finds that the alternate disposal

method provides PCB destruction equivalent to disposal in a Sec. 761.70

incinerator or a Sec. 761.60 high efficiency boiler and will not present

an unreasonable risk of injury to health or the environment. Any

approval must be stated in writing and may contain such conditions and

provisions as the Regional Administrator or Director, Chemical

Management Division deems appropriate. The person to whom such waiver is

issued must comply with all limitations contained in such determination.

 (f)(1) Each operator of a chemical waste landfill, incinerator, or

alternative to incineration approved under paragraph (e) of this section

shall give the following written notices to the state and local

governments within whose jurisdiction the disposal facility is located:

 (i) Notice at least thirty (30) days before a facility is first used

for disposal of PCBs required by these regulations; and

 (ii) At the request of any state or local government, annual notice

of the quantities and general description of PCBs disposed of during the

year. This annual notice shall be given no more than thirty (30) days

after the end of the year covered.

 (iii) The Regional Administrator may reduce the notice period

required by paragraph (f)(1)(i) of this section from thirty days to a

period of no less than five days in order to expedite interim approval

of the chemical waste landfill located in Sedgwick County, Kansas.

 (2) Any person who disposes of PCBs under a paragraph (a)(5)(iii) of

this section incineration or chemical waste landfilling waiver shall

give written notice at least thirty (30) days prior to conducting the

disposal activities to the state and local governments within whose

jurisdiction the disposal is to take place.

 (g) Testing procedures. (1) Owners or users of mineral oil

dielectric fluid electrical equipment may use the following procedures

to determine the concentration of PCBs in the dielectric fluid:

 (i) Dielectric fluid removed from mineral oil dielectric fluid

electrical equipment may be collected in a common container, provided

that no other chemical substances or mixtures are added to the

container. This common container option does not permit dilution of the

collected oil. Mineral oil that is assumed or known to contain at least

50 ppm PCBs must not be mixed with mineral oil that is known or assumed

to contain less than 50 ppm PCBs to reduce the concentration of

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PCBs in the common container. If dielectric fluid from untested, oil-

filled circuit breakers, reclosers, or cable is collected in a common

container with dielectric fluid from other oil-filled electrical

equipment, the entire contents of the container must be treated as PCBs

at a concentration of at least 50 ppm, unless all of the fluid from the

other oil-filled electrical equipment has been tested and shown to

contain less than 50 ppm PCBs.

 (ii) For purposes of complying with the marking and disposal

requirements, representative samples may be taken from either the common

containers or the individual electrical equipment to determine the PCB

concentration, except that if any PCBs at a concentration of 500 ppm or

greater have been added to the container or equipment then the total

container contents must be considered as having a PCB concentration of

500 ppm or greater for purposes of complying with the disposal

requirements of this subpart. For purposes of this subparagraph,

representative samples of mineral oil dielectric fluid are either

samples taken in accordance with ASTM D 923-86 or ASTM D 923-89 or

samples taken from a container that has been thoroughly mixed in a

manner such that any PCBs in the container are uniformly distributed

throughout the liquid in the container.

 (2) Owners or users of waste oil may use the following procedures to

determine the PCB concentration of waste oil:

 (i) Waste oil from more than one source may be collected in a common

container, provided that no other chemical substances or mixtures, such

as non-waste oils, are added to the container.

 (ii) For purposes of complying with the marking and disposal

requirements, representative samples may be taken from either the common

containers or the individual electrical equipment to determine the PCB

concentration. Except, That if any PCBs at a concentration of 500 ppm or

greater have been added to the container or equipment then the total

container contents must be considered as having a PCB concentration of

500 ppm or greater for purposes of complying with the disposal

requirements of this subpart. For purposes of this paragraph,

representative samples of mineral oil dielectric fluid are either

samples taken in accordance with ASTM D 923-86 or ASTM D 923-89 or

samples taken from a container that has been thoroughly mixed in a

manner such that any PCBs in the container are uniformly distributed

throughout the liquid in the container.

 (h) Requirements for export and import of PCBs and PCB Items for

disposal are found in Subpart F of this part.

 (i) Approval authority for disposal methods. (1) The officials (the

Director, Chemical Management Division and the Regional Administrators)

designated in Secs. 761.60(e) and 761.70 (a) and (b) to receive requests

for approval of PCB disposal activities are the primary approval

authorities for these activities. Notwithstanding, the Director,

Chemical Management Division may, at his/her discretion, assign the

authority to review and approve any aspect of a disposal system to the

Office of Prevention, Pesticides and Toxic Substances or to a Regional

Administrator.

 (2) Except for activity authorized under Sec. 761.30(j), research

and development (R and D) into PCB disposal methods using a total of

less than 500 pounds of PCB material (regardless of PCB concentration)

will be reviewed and approved by the appropriate EPA Regional

Administrator and research and development using 500 pounds or more of

PCB material (regardless of PCB concentration) will be reviewed by the

approval authorities set out in Secs. 761.60(e) and 761.70 (a) and (b).

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979, as amended at 44 FR 54297, Sept. 19, 1979;

45 FR 20475, Mar. 28, 1980. Redesignated at 47 FR 19527, May 6, 1982,

and amended at 47 FR 37359, Aug. 25, 1982; 48 FR 5730, Feb. 8, 1983; 48

FR 13185, Mar. 30, 1983; 48 FR 15125, Apr. 7, 1983; 49 FR 28191, July

10, 1984; 49 FR 36648, Sept. 19, 1984; 53 FR 10391, Mar. 31, 1988; 53 FR

12524, Apr. 15, 1988; 53 FR 21641, June 9, 1988; 54 FR 22595, May 25,

1989; 57 FR 13323, Apr. 16, 1992; 58 FR 15809, Mar. 24, 1993; 61 FR

11107, Mar. 18, 1996]

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Sec. 761.65 Storage for disposal.

 This section applies to the storage for disposal of PCBs at

concentrations of 50 ppm or greater and PCB Items with PCB

concentrations of 50 ppm or greater.

 (a) Any PCB Article or PCB Container stored for disposal before

January 1, 1983, shall be removed from storage and disposed of as

required by this part before January 1, 1984. Any PCB Article or PCB

Container stored for disposal after January 1, 1983, shall be removed

from storage and disposed of as required by subpart D of this part

within one year from the date when it was first placed into storage.

 (b) Except as provided in paragraph (c) of this section, after July

1, 1978, owners or operators of any facilities used for the storage of

PCBs and PCB Items designated for disposal shall comply with the

following requirements:

 (1) The facilities shall meet the following criteria:

 (i) Adequate roof and walls to prevent rain water from reaching the

stored PCBs and PCB Items;

 (ii) An adequate floor which has continuous curbing with a minimum

six inch high curb. The floor and curbing must provide a containment

volume equal to at least two times the internal volume of the largest

PCB Article or PCB Container stored therein or 25 percent of the total

internal volume of all PCB Articles or PCB Containers stored therein,

whichever is greater;

 (iii) No drain valves, floor drains, expansion joints, sewer lines,

or other openings that would permit liquids to flow from the curbed

area;

 (iv) Floors and curbing constructed of continuous smooth and

impervious materials, such as Portland cement concrete or steel, to

prevent or minimize penetration of PCBs; and

 (v) Not located at a site that is below the 100-year flood water

elevation.

 (2) [Reserved]

 (c)(1) The following PCB Items may be stored temporarily in an area

that does not comply with the requirements of paragraph (b) of this

section for up to thirty days from the date of their removal from

service, provided that a notation is attached to the PCB Item or a PCB

Container (containing the item) indicating the date the item was removed

from service:

 (i) Non-leaking PCB Articles and PCB Equipment;

 (ii) Leaking PCB Articles and PCB Equipment if the PCB Items are

placed in a non-leaking PCB Container that contains sufficient sorbent

materials to absorb any liquid PCBs remaining in the PCB Items;

 (iii) PCB Containers containing non-liquid PCBs such as contaminated

soil, rags, and debris; and

 (iv) PCB Containers containing liquid PCBs at a concentration

between 50 and 500 ppm, provided a Spill Prevention, Control and

Countermeasure Plan has been prepared for the temporary storage area in

accordance with 40 CFR part 112. In addition, each container must bear a

notation that indicates that the liquids in the drum do not exceed 500

ppm PCB.

 (2) Non-leaking and structurally undamaged PCB Large High Voltage

Capacitors and PCB-Contaminated Electrical Equipment that have not been

drained of free flowing dielectric fluid may be stored on pallets next

to a storage facility that meets the requirements of paragraph (b) of

this section. PCB-Contaminated Electrical Equipment that has been

drained of free flowing dielectric fluid is not subject to the storage

provisions of Sec. 761.65. Storage under this subparagraph will be

permitted only when the storage facility has immediately available

unfilled storage space equal to 10 percent of the volume of capacitors

and equipment stored outside the facility. The capacitors and equipment

temporarily stored outside the facility shall be checked for leaks

weekly.

 (3) Any storage area subject to the requirements of paragraph (b) or

paragraph (c)(1) of this section shall be marked as required in subpart

C Sec. 761.40(a)(10).

 (4) No item of movable equipment that is used for handling PCBs and

PCB Items in the storage facilities and that comes in direct contact

with PCBs shall be removed from the storage facility area unless it has

been decontaminated as specified in Sec. 761.79.

 (5) All PCB Articles and PCB Containers in storage shall be checked

for leaks at least once every 30 days. Any

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leaking PCB Articles and PCB Containers and their contents shall be

transferred immediately to properly marked non-leaking containers. Any

spilled or leaked materials shall be immediately cleaned up, using

sorbents or other adequate means, and the PCB-contaminated materials and

residues shall be disposed of in accordance with Sec. 761.60(a)(4).

 (6) Except as provided in paragraph (c)(7) of this section, any

container used for the storage of liquid PCBs shall comply with the

Shipping Container Specification of the Department of Transportation

(DOT), 49 CFR 178.80 (Specification 5 container without removable head),

178.82 (Specification 5B container without removable head), 178.102

(Specification 6D overpack with Specification 2S(Sec. 178.35) or

2SL(Sec. 178.35a) polyethylene containers) or 178.116 (Specification 17E

container). Any container used for the storage of non-liquid PCBs shall

comply with the specifications of 49 CFR 178.80 (Specification 5

container), 178.82 (Specification 5B container) or 178.115

(Specification 17C container). As an alternate, containers larger than

those specified in DOT Specifications 5, 5B, or 17C may be used for non-

liquid PCBs if the containers are designed and constructed in a manner

that will provide as much protection against leaking and exposure to the

environment as the DOT Specification containers, and are of the same

relative strength and durability as the DOT Specification containers.

 (7) Storage containers for liquid PCBs can be larger than the

containers specified in paragraph (c)(6) of this section provided that:

 (i) The containers are designed, constructed, and operated in

compliance with Occupational Safety and Health Standards, 29 CFR

1910.106, Flammable and combustible liquids. Before using these

containers for storing PCBs, the design of the containers must be

reviewed to determine the effect on the structural safety of the

containers that will result from placing liquids with the specific

gravity of PCBs into the containers (see 29 CFR 1910.106(b)(1)(i)(f)).

 (ii) The owners or operators of any facility using containers

described in paragraph (c)(7)(i) of this section, shall prepare and

implement a Spill Prevention Control and Countermeasure (SPCC) Plan as

described in part 112 of this title. In complying with 40 CFR part 112,

the owner or operator shall read ``oil(s)'' as ``PCB(s)'' whenever it

appears. The exemptions for storage capacity, 40 CFR 112.1(d)(2), and

the amendment of SPCC plans by the Regional Administrator, 40 CFR 112.4,

shall not apply unless some fraction of the liquids stored in the

container are oils as defined by section 311 of the Clean Water Act.

 (8) PCB Articles and PCB Containers shall be dated on the article or

container when they are placed in storage. The storage shall be managed

so that the PCB Articles and PCB Containers can be located by the date

they entered storage. Storage containers provided in paragraph (c)(7) of

this section, shall have a record that includes for each batch of PCBs

the quantity of the batch and date the batch was added to the container.

The record shall also include the date, quantity, and disposition of any

batch of PCBs removed from the container.

 (9) Owners or operators of storage facilities shall establish and

maintain records as provided in Sec. 761.180.

 (d) Approval of commercial storers of PCB waste. (1) All commercial

storers of PCB waste shall have interim approval to operate commercial

facilities for the storage of PCB waste until August 2, 1990. Commercial

storers of PCB waste are prohibited from storing any PCB waste at their

facilities after August 2, 1990 unless they have submitted by August 2,

1990 a complete application for a final storage approval under paragraph

(d)(2) of this section. The period of interim approval shall continue

until the Regional Administrator (or the Director of the Chemical

Management Division (Director, CMD) in cases involving commercial

storage ancillary to a facility approved for disposal by the Director,

CMD) makes a final decision on the storage application at which time

such interim approval shall terminate.

 (2) The Regional Administrator for the region in which the storage

facility is located (or the Director, CMD, if the commercial storage

area is ancillary to a facility approved for disposal by the

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Director, CMD) shall grant written, final approval to engage in the

commercial storage of PCB waste upon a determination by the Regional

Administrator or the Director, CMD, that the criteria in paragraph

(d)(2)(i) through (d)(2)(vii) of this section have been met by the

applicant:

 (i) The applicant, its principals, and its key employees responsible

for the establishment or operation of the commercial storage facility

are qualified to engage in the business of commercial storage of PCB

waste.

 (ii) The facility possesses the capacity to handle the quantity of

PCB waste which the owner or operator of the facility has estimated will

be the maximum quantity of PCB waste that will be handled at any one

time at the facility.

 (iii) The owner or operator of the facility has certified compliance

with the storage facility standards in paragraphs (b) and (c)(7) of this

section.

 (iv) The owner or operator has developed a written closure plan for

the facility that is deemed acceptable by the Regional Administrator (or

the Director, CMD, if the commercial storage is ancillary to a disposal

facility permitted by the Director, CMD) under the closure plan

standards of paragraph (e) of this section.

 (v) The owner or operator has included in the application for final

approval a demonstration of financial responsibility for closure that

meets the financial responsibility standards of paragraph (g) of this

section.

 (vi) The operation of the storage facility will not pose an

unreasonable risk of injury to health or the environment.

 (vii) The environmental compliance history of the applicant, its

principals, and its key employees may be deemed to constitute a

sufficient basis for denial of approval whenever in the judgment of the

Regional Administrator (or Director, CMD) that history of environmental

civil violations or criminal convictions evidences a pattern or practice

of noncompliance that demonstrates the applicant's unwillingness or

inability to achieve and maintain compliance with the regulations.

 (3) Applicants for storage approvals shall submit a written

application that includes any relevant information bearing upon the

qualifications of the facility's principals and key employees to engage

in the business of commercial storage of PCB wastes. This information

shall include, but is not limited to:

 (i) The identification of the owner and the operator of the

facility, including all general partners of a partnership, any limited

partner of a partnership, any stockholder of a corporation or any

participant in any other type of business organization or entity who

owns or controls, directly or indirectly, more than 5 percent of each

partnership, corporation, or other business organization and all

officials of the facility who have direct management responsibility for

the facility.

 (ii) The identification of the person responsible for the overall

operations of the facility (i.e., a plant manager, superintendent, or a

person of similar responsibility) and the supervisory employees who are

or will be responsible for the operation of the facility.

 (iii) Information concerning the technical qualifications and

experience of the persons responsible for the overall operation of the

facility and the employees responsible for handling PCB waste or other

wastes.

 (iv) Information concerning any past State or Federal environmental

violations involving the same business or another business with which

the principals or supervisory employees were affiliated directly that

occurred within 5 years preceding the date of submission and which

relate directly to violations that resulted in either a civil penalty

(irrespective of whether the matter was disposed of by an adjudication

or by a without prejudice settlement) or judgment of conviction whether

entered after trial or a plea, either of guilt or nolo contendere or

civil injunctive relief and involved storage, disposal, transport, or

other waste handling activities.

 (v) A list of all companies currently owned or operated in the past

by the principals or key employees identified in paragraphs (d)(3)(i)

and (d)(3)(ii) of this section that are or were directly or indirectly

involved with waste handling activities.

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 (vi) The owner's or operator's estimate of maximum PCB waste

quantity to be handled at the facility.

 (vii) A written statement certifying compliance with paragraph (b)

or (c) of this section and containing a certification as defined in

Sec. 761.3.

 (viii) A written closure plan for the facility, as described in

paragraph (e) of this section.

 (ix) The current closure cost estimate for the facility, as

described in paragraph (f) of this section.

 (x) A demonstration of financial responsibility to close the

facility, as described in paragraph (g) of this section.

 (4) The written approval issued by the Regional Administrator (or

the Director, CMD, if the commercial storage area is ancillary to a

disposal facility approved by the Director, CMD) shall include, but not

be limited to, the following:

 (i) The determination that the applicant has satisfied the

requirements set forth in paragraph (d)(2) of this section, and a brief

statement setting forth the basis for the determination.

 (ii) Incorporation of the closure plan submitted by the facility

owner or operator and approved by the Regional Administrator (or the

Director, CMD, if the commercial storage area is ancillary to a disposal

facility approved by the Director, CMD).

 (iii) A condition imposing a maximum PCB storage capacity which the

facility shall not exceed during its PCB waste storage operations. The

maximum storage capacity imposed under this condition shall not be

greater than the estimated maximum inventory of PCB waste included in

the owner's or operator's application for final approval.

 (iv) Such other conditions as deemed necessary by the Regional

Administrator (or the Director, CMD, if the commercial storage area is

ancillary to a disposal facility approved by the Director, CMD) to

ensure that the operations of the PCB storage facility will not pose an

unreasonable risk of injury to health or the environment.

 (5) Storage areas at transfer facilities are exempt from the

requirement to obtain approval as a commercial storer of PCB waste under

this paragraph, unless the same PCB waste is stored at these facilities

for a period of time greater than 10 consecutive days between

destinations.

 (6) Storage areas at RCRA-permitted facilities may be exempt from

the separate TSCA storage approval requirements in this paragraph (d)

upon a showing to the Regional Administrator's satisfaction that the

facility's existing RCRA closure plan is substantially equivalent to

this rule's closure plan standards, and that such facility's closure

cost estimate and financial assurance demonstration account for maximum

PCB waste inventories, and the requirements of paragraph (d)(3)(i)

through (d)(3)(v) and (d)(3)(vii) of this section are met. A pay-in

period of longer than 3 years after approval of the storage facility

pursuant to this rule, will be acceptable to EPA if that pay-in period

has already been established for a valid RCRA facility or previously

approved TSCA facility.

 (7) Storage areas ancillary to TSCA-approved disposal facilities may

be exempt from a separate facility approval provided all of the

following conditions are met:

 (i) The current disposal approval contains an expiration date.

 (ii) The current disposal approval's closure and financial

responsibility conditions specifically extend to storage areas ancillary

to disposal.

 (iii) The current disposal approval's closure and financial

responsibility conditions provide for annual adjustments for inflation,

and for modification when changes in operation would affect closure

costs.

 (iv) The current disposal approval contains conditions on closure

and financial responsibility that are at least as stringent as those in

paragraphs (e) and (g) of this section. However, the provision for a 3-

year closure trust pay-in period, as specified in paragraph (g)(1)(i) of

this section, would be waived in a case in which an approved TSCA

facility or RCRA facility that covers PCB storage has a longer pay-in

period for the trust.

 (v) The current disposal approval satisfies the requirements of

paragraph (d)(3)(i) through (d)(3)(v) of this section.

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 (8) The approval of any existing TSCA-approved disposal facility

ancillary to a commercial storage facility that is deficient in any of

the conditions of paragraph (d)(7)(i) through (d)(7)(v) of this section

shall be called in by the Regional Administrator or the Director, CMD,

if it was the Director, CMD who issued it. The approval shall be

modified to meet the requirements of paragraph (d)(7) of this section

within 180 days of the effective date of this final rule, or a separate

application for approval of the storage facility may be submitted to the

Regional Administrator or the Director, CMD, in the cases where the

Director, CMD issued the approval.

 (e) Closure. (1) A commercial storer of PCB waste shall have a

written closure plan that identifies the steps that the owner or

operator of the facility shall take to close the PCB waste storage

facility in a manner that eliminates the potential for post-closure

releases of PCBs which may present an unreasonable risk to human health

or the environment. An acceptable closure plan must include, at a

minimum, all of the following:

 (i) A description of how the PCB storage areas of the facility will

be closed in a manner that eliminates the potential for post-closure

releases of PCBs into the environment.

 (ii) An identification of the maximum extent of storage operations

that will be open during the active life of the facility, including an

identification of the extent of PCB storage operations at the facility

relative to other wastes that will be handled at the facility.

 (iii) An estimate of the maximum inventory of PCB wastes that could

be handled at one time at the facility over its active life, and a

detailed description of the methods or arrangements to be used during

closure for removing, transporting, storing, or disposing of the

facility's inventory of PCB waste, including an identification of any

off-site facilities that will be used.

 (iv) A detailed description of the steps needed to remove or

decontaminate PCB waste residues and contaminated containment system

components, equipment, structures, and soils during closure in

accordance with the levels specified in the PCB Spills Cleanup Policy in

subpart G of this part, including a description of the methods for

sampling and testing of surrounding soils, and the criteria for

determining the extent of removal or decontamination.

 (v) A detailed description of other activities necessary during the

closure period to ensure that any post-closure releases of PCBs will not

present unreasonable risks to human health or the environment. This

includes activities such as ground-water monitoring, run-on and run-off

control, and facility security.

 (vi) A schedule for closure of each area of the facility where PCB

waste is stored or handled, including the total time required to close

each area of PCB waste storage or handling, and the time required for

any intervening closure activities.

 (vii) An estimate of the expected year of closure of the PCB waste

storage areas, if a trust fund is opted for as the financial mechanism.

 (2) A written closure plan determined to be acceptable by the

Regional Administrator (or the Director, CMD, if the commercial storage

area is ancillary to a disposal facility approved by the Director, CMD)

under this section shall become a condition of any approval granted

under paragraph (d) of this section.

 (3) A separate and new closure plan need not be submitted in cases

where a facility is currently covered by a TSCA approval or a RCRA

permit, upon a showing to the satisfaction of the Regional Administrator

(or the Director, CMD, if the commercial storage area is ancillary to a

disposal facility approved by the Director, CMD) that the existing

closure plan is substantially equivalent to closure plans required under

paragraphs (d) through (g) of this section, and that the plan adequately

accounts for PCB waste inventories.

 (4) The commercial storer of PCB waste shall submit a written

request to the Regional Administrator (or the Director, CMD, if he

approved the closure plan) for a modification to its storage approval to

amend its closure plan, whenever:

 (i) Changes in ownership, operating plans, or facility design affect

the existing closure plan.

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 (ii) There is a change in the expected date of closure, if

applicable.

 (iii) In conducting closure activities, unexpected events require a

modification of the approved closure plan.

 (5) The Regional Administrator or the Director, CMD, if he approved

the closure plan, may modify the existing closure plan under the

conditions described in paragraph (e)(4) of this section.

 (6) Commercial storers of PCB waste shall comply with the following

closure schedule:

 (i) The commercial storer shall notify in writing the Regional

Administrator or the Director, CMD if he approved the closure plan, at

least 60 days prior to the date on which final closure of its PCB

storage facility is expected to begin.

 (ii) The date when a commercial storer of PCB waste ``expects to

begin closure'' shall be no later than 30 days after the date on which

the storage facility received its final quantities of PCB waste. For

good cause shown, the Regional Administrator or the Director, CMD if he

approved the closure plan, may extend the date for commencement of

closure for an additional 30-day period.

 (iii) Within 90 days after receiving the final quantity of PCB waste

for storage, a commercial storer of PCB waste shall remove all PCB waste

in storage at the facility from the facility in accordance with the

approved closure plan. For good cause shown, the Regional Administrator

or the Director, CMD if he approved the closure plan, may approve a

reasonable extension to the period for removal of the PCB waste.

 (iv) A commercial storer of PCB waste shall complete closure

activities in accordance with the approved closure plan and within 180

days after receiving the final quantity of PCB waste for storage at the

facility. For good cause shown, the Regional Administrator or Director,

CMD if he approved the closure plan, may approve a reasonable extension

to the closure period.

 (7) During the closure period, all contaminated system component

equipment, structures, and soils shall be disposed of in accordance with

the disposal requirements of subpart D of this part, or, if applicable,

decontaminated in accordance with the levels specified in the PCB Spills

Cleanup Policy at subpart G of this part. When PCB waste is removed from

the storage facility during closure, the owner or operator becomes a

generator of PCB waste subject to the generator requirements of subpart

J of this part.

 (8) Within 60 days of completion of closure of each facility for the

storage of PCB waste, the commercial storer of PCB waste shall submit to

the Regional Administrator (or Director, CMD if he approved the closure

plan), by registered mail, a certification that the PCB storage facility

has been closed in accordance with the approved closure plan. The

certification shall be signed by the owner or operator and by an

independent registered professional engineer.

 (f) Closure cost estimate. (1) A commercial storer of PCB wastes

shall have a detailed estimate, in current dollars, of the cost of

closing the facility in accordance with its approved closure plan. The

closure cost estimate shall be in writing, be certified by the person

preparing it (using the certification defined in Sec. 761.3) and comply

with all of the following criteria:

 (i) The closure cost estimate shall equal the cost of final closure

at the point in the PCB storage facility's active life when the extent

and manner of PCB storage operations would make closure the most

expensive, as indicated by the facility's closure plan.

 (ii) The closure cost estimate shall be based on the costs to the

owner or operator of hiring a third party to close the facility, and the

third party shall not be either a corporate parent or subsidiary of the

owner or operator, or member in joint ownership of the facility.

 (iii) The owner or operator shall include in the estimate the

current market costs for off-site commercial disposal of the facility's

maximum estimated inventory of PCB wastes, except that on-site disposal

costs may be used if on-site disposal capacity will exist at the

facility at all times over the life of the PCB storage facility.

 (iv) The closure cost estimate may not incorporate any salvage value

that may be realized with the sale of wastes,

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facility structures or equipment, land, or other assets associated with

the facility at the time of closure.

 (2) During the active life of the PCB storage facility, the

commercial storer of PCB waste shall adjust annually for inflation the

closure cost estimate within 60 days prior to the anniversary date of

the establishment of the financial instruments used to demonstrate

financial responsibility for closure, except that owners or operators

who use the financial test or corporate guarantee shall adjust their

closure cost estimates for inflation within 30 days after the close of

the storer's fiscal year. The adjustment may be made by recalculating

the maximum costs of closure in current dollars, or by using an

inflation factor derived from the most recent Implicit Price Deflator

for Gross National Product published by the U.S. Department of Commerce

in its Survey of Current Business. The Implicit Price Deflator for Gross

National Product is included in a monthly publication titled Economic

Indicators, which is available from the Superintendent of Documents,

Government Printing Office, Washington, DC 20402. The inflation factor

used in the latter method is the result of dividing the latest published

annual Deflator by the Deflator for the previous year. The adjustment to

the closure cost estimate is then made by multiplying the most recent

closure cost estimate by the latest inflation factor.

 (3) Where the Regional Administrator (or the Director, CMD, if he

approved the closure plan) approves a modification to the facility's

closure plan, and that modification increases the cost of closure, the

owner or operator shall revise the closure cost estimate no later than

30 days after the modification is approved. Any such revision shall also

be adjusted for inflation in accordance with paragraph (f)(2) of this

section.

 (4) The owner or operator of the facility shall keep at the facility

during its operating life the most recent closure cost estimate,

including any adjustments resulting from inflation or from modifications

to the closure plan.

 (g) Financial assurance for closure. A commercial storer of PCB

waste shall establish financial assurance for closure of each PCB

storage facility that he owns or operates. In establishing financial

assurance for closure, the commercial storer of PCB waste may choose

from the following financial assurance mechanisms or any combination of

mechanisms:

 (1) The ``closure trust fund,'' as specified in Sec. 264.143(a) of

this chapter, except for paragraph (a)(3) of Sec. 264.143. For purposes

of this paragraph, the following provisions also apply:

 (i) Payments into the trust fund shall be made annually by the owner

or operator over the remaining operating life of the facility as

estimated in the closure plan, or over 3 years, whichever period is

shorter. This period of time is hereafter referred to as the ``pay-in

period.'' For an existing facility, the first payment must be made

within 30 calendar days after EPA has notified the facility of its

conditional approval. Interim approval to operate is canceled and the

application is denied if EPA does not receive verification that the

payment was made in that 30-day period.

 (ii) For a new facility, the first payment into the closure trust

fund shall be made before EPA grants final approval of the application

and before the facility may accept the initial shipment of PCB waste for

commercial storage. A receipt from the trustee shall be submitted by the

owner or operator to the Regional Administrator (or the Director, CMD,

if the commercial storage area is ancillary to a disposal facility

approved by the Director CMD) before this initial delivery of PCB waste.

The first payment shall be at least equal to the current closure cost

estimate, divided by the number of years in the pay-in period, except as

provided in paragraph (g)(7) of this section for multiple mechanisms.

Subsequent payments shall be made no later than 30 days after each

anniversary date of the first payment. The amount of each subsequent

payment shall be determined by subtracting the current value of the

trust fund from the current closure cost estimate, and dividing this

difference by the number of years remaining in the pay-in period.

 (iii) If an owner or operator of a facility existing on the

effective date of this paragraph establishes a trust fund

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to meet the financial assurance requirements of this paragraph, and the

value of the trust fund is less than the current closure cost estimate

when a final approval is granted for the facility, the amount of the

current closure cost estimate still to be paid into the trust fund shall

be paid in over the pay-in period as defined in paragraph (g)(1)(i) of

this section. Payments shall continue to be made no later than 30 days

after each anniversary date of the first payment made into the trust

fund. The amount of each payment shall be determined by subtracting the

current value of the trust fund from the current closure cost estimate,

and dividing this difference by the number of years remaining in the

pay-in period.

 (iv) The submission of a trust agreement with the wording specified

in Sec. 264.151(a)(1) of this chapter, including any reference to

hazardous waste management facilities, shall be deemed to be in

compliance with the requirement to submit a trust agreement under this

subpart.

 (2) The ``surety bond guaranteeing payment into a closure trust

fund,'' as specified in Sec. 264.143(b) of this chapter, including the

use of the surety bond instrument specified at Sec. 264.151(b) of this

chapter and the standby trust specified at Sec. 264.143(b)(3) of this

chapter. The use of the surety bonds, surety bond instruments, and

standby trust agreements specified in Sec. Sec. 264.143(b) and

264.151(b) of this chapter shall be deemed to be in compliance with this

subpart.

 (3)(i) The ``surety bond guaranteeing performance of closure,'' as

specified at Sec. 264.143(c) of this chapter, except for paragraph

(c)(5) of Sec. 264.143 of this chapter. The submission and use of the

surety bond instrument specified at Sec. 264.151(c) of this chapter and

the standby trust specified at Sec. 264.143(c)(3) of this chapter shall

be deemed to be in compliance with the requirements under this subpart

relating to the use of surety bonds and standby trust funds.

 (ii) For the purposes of this paragraph, and under the terms of the

bond, the surety shall become liable on the bond obligation when the

owner or operator fails to perform as guaranteed by the bond. Liability

is established by a final administrative determination pursuant to

section 16 of TSCA that the owner or operator has failed to perform

final closure in accordance with the closure plan and other approval or

regulatory requirements when required to do so.

 (4)(i) The ``closure letter of credit'' specified in Sec. 264.143(d)

of this chapter, except for paragraph (d)(8). The submission and use of

the irrevocable letter of credit instrument specified in Sec. 264.151(d)

of this chapter and the standby trust specified in Sec. 264.143(d)(3) of

this chapter shall be deemed to be in compliance with the requirements

of this subpart relating to the use of letters of credit and standby

trust funds.

 (ii) For the purposes of this paragraph, the Regional Administrator

(or the Director, CMD, if the commercial storage area is ancillary to a

disposal facility approved by the Director, CMD) may draw on the letter

of credit following a final administrative determination pursuant to

section 16 of TSCA that the owner or operator has failed to perform

final closure in accordance with the closure plan and other approval or

regulatory requirements when required to do so.

 (5) ``Closure insurance,'' as specified in Sec. 264.143(e) of this

chapter, utilizing the certificate of insurance for closure specified at

Sec. 264.151(e) of this chapter. The use of closure insurance as

specified in Sec. 264.143(e) of this chapter and the submission and use

of the certificate of insurance specified in Sec. 264.151(e) of this

chapter shall be deemed to be in compliance with the requirements of

this subpart relating to the use of closure insurance.

 (6) The ``financial test and corporate guarantee for closure,'' as

described in Sec. 264.143(f) of this chapter, including a letter signed

by the owner's or operator's chief financial officer as specified at

Sec. 264.151(f) of this chapter and, if applicable, the written

corporate guarantee specified at Sec. 264.151(h) of this chapter. The

use of the financial test and corporate guarantee specified in

Sec. 264.143(f) of this chapter, the submission and use of the letter

specified in Sec. 264.151(f) of this chapter, and the submission and use

of the written corporate guarantee specified at Sec. 264.151(h) of this

chapter shall be deemed to be in compliance with the

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requirements of this subpart relating to the use of financial tests and

corporate guarantees.

 (7) The use of multiple financial mechanisms, as specified in

Sec. 264.143(g) of this chapter is permitted.

 (h) Release of owner or operator. Within 60 days after receiving

certifications from the owner or operator and an independent registered

professional engineer that final closure has been completed in

accordance with the approved closure plan, the Regional Administrator or

the Director, CMD, if he approved the closure plan, will notify the

owner or operator in writing that the owner or operator is no longer

required by this section to maintain financial assurance for final

closure of the facility, unless the Regional Administrator or the

Director, CMD, if he approved the closure plan, has reason to believe

that final closure has not been completed in accordance with the

approved closure plan. The Regional Administrator or the Director, CMD,

if he approved the closure plan, shall provide the owner or operator

with a detailed written statement stating the reasons why he believed

closure was not conducted in accordance with the approved closure plan.

 (i) Laboratories and samples. (1) A laboratory is conditionally

exempt from the notification and approval requirements for a commercial

storer under Sec. 761.65 (d) through (h) when it stores samples held for

disposal in a facility that complies with the standards in Sec. 761.65

(b)(1)(i) through (b)(1)(iv).

 (2) A laboratory sample is exempt from the manifesting requirements

in Sec. 761.208 when:

 (i) The sample is being transported to a laboratory for the purpose

of testing.

 (ii) The sample is being transported back to the sample collector

after testing.

 (iii) The sample is being stored by the sample collector before

transport to a laboratory for testing.

 (iv) The sample is being stored in a laboratory before testing.

 (v) The sample is being stored in a laboratory after testing but

before it is returned to the sample collector.

 (vi) The sample is being stored temporarily in the laboratory after

testing for a specific purpose (for example, until conclusion of a court

case or enforcement action where further testing of the sample may be

necessary).

 (3) In order to qualify for the exemption in paragraph (i)(2)(i) and

(i)(2)(ii) of this section, a sample collector shipping samples to a

laboratory and a laboratory returning samples to a sample collector

must:

 (i) Comply with applicable U.S. Department of Transportation (DOT)

or U.S. Postal Service (USPS) shipping requirements, found respectively

in 49 CFR 173.345 and U.S. Postal Regulations 652.2 and 652.3.

 (ii) Assure that the following information accompanies the sample:

 (A) The sample collector's name, mailing address, and telephone

number.

 (B) The laboratory's name, mailing address, and telephone number.

 (C) The quantity of the sample.

 (D) The date of shipment.

 (E) A description of the sample.

 (iii) Package the sample so that it does not leak, spill, or

vaporize from its packaging.

 (4) When the concentration of the PCB sample has been determined,

and its use is terminated, the sample must be properly disposed. A

laboratory must either manifest the PCB waste to a disposer or

commercial storer, as required under Sec. 761.208, retain a copy of each

manifest, as required under Sec. 761.209, and follow up on exception

reporting, as required under Sec. 761.215 (a) and (b), or return the

sample to the sample collector who must then properly dispose of the

sample. If the laboratory returns the sample to the sample collector,

the laboratory must comply with the shipping requirements set forth in

paragraph (i)(3)(i) through (i)(3)(iii) of this section.

 (j) States and the Federal Government. States and the Federal

Government are exempt from the requirements of paragraphs (f) and (g) of

this section.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982,

and amended at 47 FR 37359, Aug. 8, 1982; 49 FR 28191, July 10, 1984; 53

FR 12524, Apr. 15, 1988; 54 FR 52746, Dec. 21, 1989; 55 FR 695, Jan. 8,

1990; 55 FR 26205, June 27, 1990; 58 FR 15809, Mar. 24, 1993; 58 FR

34205, June 23, 1993; 58 FR 59374, Nov. 9, 1993]

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Sec. 761.70 Incineration.

 This section applies to facilities used to incinerate PCBs required

to be incinerated by this part.

 (a) Liquid PCBs. An incinerator used for incinerating PCBs shall be

approved by an EPA Regional Administrator or the Director, Chemical

Management Division pursuant to paragraph (d) of this section. Requests

for approval of incinerators to be used in more than one region must be

submitted to the Director, Chemical Management Division, except for

research and development involving less than 500 pounds of PCB material

(see Sec. 761.60(i)(2)). Requests for approval of incinerators to be

used in only one region must be submitted to the appropriate Regional

Administrator. The incinerator shall meet all of the requirements

specified in paragraphs (a) (1) through (9) of this section, unless a

waiver from these requirements is obtained pursuant to paragraph (d)(5)

of this section. In addition, the incinerator shall meet any other

requirements which may be prescribed pursuant to paragraph (d)(4) of

this section.

 (1) Combustion criteria shall be either of the following:

 (i) Maintenance of the introduced liquids for a 2-second dwell time

at 1200 deg.C(<SUP>plus-minus</SUP>100 deg.C) and 3 percent excess

oxygen in the stack gas; or

 (ii) Maintenance of the introduced liquids for a 1\1/2\ second dwell

time at 1600 deg.C(<SUP>plus-minus</SUP>100 deg.C) and 2 percent excess

oxygen in the stack gas.

 (2) Combustion efficiency shall be at least 99.9 percent computed as

follows:

Combustion efficiency=

[Cco<INF>2</INF>/(Cco<INF>2</INF>+Cco)]100

where

Cco<INF>2</INF>=Concentration of carbon dioxide.

Cco=Concentration of carbon monoxide.

 (3) The rate and quantity of PCBs which are fed to the combustion

system shall be measured and recorded at regular intervals of no longer

than 15 minutes.

 (4) The temperatures of the incineration process shall be

continuously measured and recorded. The combustion temperature of the

incineration process shall be based on either direct (pyrometer) or

indirect (wall thermocouple-pyrometer correlation) temperature readings.

 (5) The flow of PCBs to the incinerator shall stop automatically

whenever the combustion temperature drops below the temperatures

specified in paragraph (a)(1) of this section.

 (6) Monitoring of stack emission products shall be conducted:

 (i) When an incinerator is first used for the disposal of PCBs under

the provisions of this regulation;

 (ii) When an incinerator is first used for the disposal of PCBs

after the incinerator has been modified in a manner which may affect the

characteristics of the stack emission products; and

 (iii) At a minimum such monitoring shall be conducted for the

following parameters:

 (a) O<INF>2</INF>; (b) CO; (c) CO<INF>2</INF>; (d) Oxides of

Nitrogen (NO<INF>x</INF>); (e) Hydrochloric Acid (HCl); (f) Total

Chlorinated Organic Content (RCl); (g) PCBs; and (h) Total Particulate

Matter.

 (7) At a minimum monitoring and recording of combustion products and

incineration operations shall be conducted for the following parameters

whenever the incinerator is incinerating PCBs:

 (i) O<INF>2</INF>; (ii) CO; and (iii) CO<INF>2</INF>. The monitoring

for O<INF>2</INF> and CO shall be continuous. The monitoring for

CO<INF>2</INF> shall be periodic, at a frequency specified by the

Regional Administrator or Director, Chemical Management Division.

 (8) The flow of PCBs to the incinerator shall stop automatically

when any one or more of the following conditions occur, unless a

contingency plan is submitted by the incinerator owner or operator and

approved by the Regional Administrator or Director, Chemical Management

Division. The contingency plan indicates what alternative measures the

incinerator owner or operator would take if any of the following

conditions occur:

 (i) Failure of monitoring operations specified in paragraph (a)(7)

of this section;

 (ii) Failure of the PCB rate and quantity measuring and recording

equipment specified in paragraph (a)(3) of this section; or

 (iii) Excess oxygen falls below the percentage specified in

paragraph (a)(1) of this section.

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 (9) Water scrubbers shall be used for HCl control during PCB

incineration and shall meet any performance requirements specified by

the appropriate EPA Regional Administrator or the Director, Chemical

Management Division. Scrubber effluent shall be monitored and shall

comply with applicable effluent or pretreatment standards, and any other

State and Federal laws and regulations. An alternate method of HCl

control may be used if the alternate method has been approved by the

Regional Administrator or the Director, Chemical Management Division.

(The HCl neutralizing capability of cement kilns is considered to be an

alternate method.)

 (b) Nonliquid PCBs. An incinerator used for incinerating nonliquid

PCBs, PCB Articles, PCB Equipment, or PCB Containers shall be approved

by the appropriate EPA Regional Administrator or the Director, Chemical

Management Division pursuant to paragraph (d) of this section. Requests

for approval of incinerators to be used in more than one region must be

submitted to the Director, Chemical Management Division, except for

research and development involving less than 500 pounds of PCB material

(see Sec. 761.60(i)(2)). Requests for approval of incinerators to be

used in only one region must be submitted to the appropriate Regional

Administrator. The incinerator shall meet all of the requirements

specified in paragraphs (b)(1) and (2) of this section unless a waiver

from these requirements is obtained pursuant to paragraph (d)(5) of this

section. In addition, the incinerator shall meet any other requirements

that may be prescribed pursuant to paragraph (d)(4) of this section.

 (1) The mass air emissions from the incinerator shall be no greater

than 0.001g PCB/kg of the PCB introduced into the incinerator.

 (2) The incinerator shall comply with the provisions of paragraphs

(a)(2), (3), (4), (6), (7), (8)(i) and (ii), and (9) of this section.

 (c) Maintenance of data and records. All data and records required

by this section shall be maintained in accordance with Sec. 761.180,

Records and monitoring.

 (d) Approval of incinerators. Prior to the incineration of PCBs and

PCB Items the owner or operator of an incinerator shall receive the

written approval of the Agency Regional Administrator for the region in

which the incinerator is located, or the Director, Chemical Management

Division. Approval from the Director, Chemical Management Division may

be effective in all ten EPA regions. Such approval shall be obtained in

the following manner:

 (1) Application. The owner or operator shall submit to the Regional

Administrator or the Director, Chemical Management Division an

application which contains:

 (i) The location of the incinerator;

 (ii) A detailed description of the incinerator including general

site plans and design drawings of the incinerator;

 (iii) Engineering reports or other information on the anticipated

performance of the incinerator;

 (iv) Sampling and monitoring equipment and facilities available;

 (v) Waste volumes expected to be incinerated;

 (vi) Any local, State, or Federal permits or approvals; and

 (vii) Schedules and plans for complying with the approval

requirements of this regulation.

 (2) Trial burn. (i) Following receipt of the application described

in paragraph (d)(1) of this section, the Regional Administrator or the

Director, Chemical Management Division shall determine if a trial burn

is required and notify the person who submitted the report whether a

trial burn of PCBs and PCB Items must be conducted. The Regional

Administrator or the Director, Chemical Management Division may require

the submission of any other information that the Regional Administrator

or the Director, Chemical Management Division finds to be reasonably

necessary to determine the need for a trial burn. Such other information

shall be restricted to the types of information required in paragraphs

(d)(1)(i) through (vii) of this section.

 (ii) If the Regional Administrator or the Director, Chemical

Management Division determines that a trial burn must be held, the

person who submitted the report described in paragraph

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(d)(1) of this section shall submit to the Regional Administrator or the

Director, Chemical Management Division a detailed plan for conducting

and monitoring the trial burn. At a minimum, the plan must include:

 (A) Date trial burn is to be conducted;

 (B) Quantity and type of PCBs and PCB Items to be incinerated;

 (C) Parameters to be monitored and location of sampling points;

 (D) Sampling frequency and methods and schedules for sample

analyses; and

 (E) Name, address, and qualifications of persons who will review

analytical results and other pertinent data, and who will perform a

technical evaluation of the effectiveness of the trial burn.

 (iii) Following receipt of the plan described in paragraph

(d)(2)(ii) of this section, the Regional Administrator or the Director,

Chemical Management Division will approve the plan, require additions or

modifications to the plan, or disapprove the plan. If the plan is

disapproved, the Regional Administrator or the Director, Chemical

Management Division will notify the person who submitted the plan of

such disapproval, together with the reasons why it is disapproved. That

person may thereafter submit a new plan in accordance with paragraph

(d)(2)(ii) of this section. If the plan is approved (with any additions

or modifications which the Regional Administrator or the Director,

Chemical Management Division may prescribe), the Regional Administrator

or the Director, Chemical Management Division will notify the person who

submitted the plan of the approval. Thereafter, the trial burn shall

take place at a date and time to be agreed upon between the Regional

Administrator or the Director, Chemical Management Division and the

person who submitted the plan.

 (3) Other information. In addition to the information contained in

the report and plan described in paragraphs (d)(1) and (2) of this

section, the Regional Administrator or the Assistant Administrator for

Prevention, Pesticides and Toxic Substances may require the owner or

operator to submit any other information that the Regional Administrator

or the Assistant Administrator for Prevention, Pesticides and Toxic

Substances finds to be reasonably necessary to determine whether an

incinerator shall be approved.

 Note: The Regional Administrator will have available for review and

inspection an Agency manual containing information on sampling methods

and analytical procedures for the parameters required in Sec. 761.70(a)

(3), (4), (6), and (7) plus any other parameters he/she may determine to

be appropriate. Owners or operators are encouraged to review this manual

prior to submitting any report required in Sec. 761.70.

 (4) Contents of approval. (i) Except as provided in paragraph (d)(5)

of this section, the Regional Administrator or the Director, Chemical

Management Division may not approve an incinerator for the disposal of

PCBs and PCB Items unless he finds that the incinerator meets all of the

requirements of paragraphs (a) and/or (b) of this section.

 (ii) In addition to the requirements of paragraphs (a) and/or (b) of

this section, the Regional Administrator or the Director, Chemical

Management Division may include in an approval any other requirements

that the Regional Administrator or the Director, Chemical Management

Division finds are necessary to ensure that operation of the incinerator

does not present an unreasonable risk of injury to health or the

environment from PCBs. Such requirements may include a fixed period of

time for which the approval is valid.

 (5) Waivers. An owner or operator of the incinerator may submit

evidence to the Regional Administrator or the Director, Chemical

Management Division that operation of the incinerator will not present

an unreasonable risk of injury to health or the enviroment from PCBs,

when one or more of the requirements of paragraphs (a) and/or (b) of

this section are not met. On the basis of such evidence and any other

available information, the Regional Administrator or the Director,

Chemical Management Division may in his/her discretion find that any

requirement of paragraphs (a) and (b) of this section is not necessary

to protect against such a risk, and may waive the requirements in any

approval for that incinerator.

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Any finding and waiver under this paragraph must be stated in writing

and included as part of the approval.

 (6) Persons approved. An approval will designate the persons who own

and who are authorized to operate the incinerator, and will apply only

to such persons, except as provided in paragraph (d)(8) of this section.

 (7) Final approval. Approval of an incinerator will be in writing

and signed by the Regional Administrator or the Director, Chemical

Management Division. The approval will state all requirements applicable

to the approved incinerator.

 (8) Transfer of property. Any person who owns or operates an

approved incinerator must notify EPA at least 30 days before

transferring ownership in the incinerator or the property it stands

upon, or transferring the right to operate the incinerator. The

transferor must also submit to EPA, at least 30 days before such

transfer, a notarized affidavit signed by the transferee which states

that the transferee will abide by the transferor's EPA incinerator

approval. Within 30 days of receiving such notification and affidavit,

EPA will issue an amended approval substituting the transferee's name

for the transferor's name, or EPA may require the transferee to apply

for a new incinerator approval. In the latter case, the transferee must

abide by the transferor's EPA approval until EPA issues the new approval

to the transferee.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982,

and amended at 48 FR 13185, Mar. 30, 1983; 49 FR 28191, July 10, 1984;

53 FR 12524, Apr. 15, 1988; 58 FR 15809, Mar. 24, 1993]

Sec. 761.75 Chemical waste landfills.

 This section applies to facilities used to dispose of PCBs in

accordance with the part.

 (a) General. A chemical waste landfill used for the disposal of PCBs

and PCB Items shall be approved by the Agency Regional Administrator

pursuant to paragraph (c) of this section. The landfill shall meet all

of the requirements specified in paragraph (b) of this section, unless a

waiver from these requirements is obtained pursuant to paragraph (c)(4)

of this section. In addition, the landfill shall meet any other

requirements that may be prescribed pursuant to paragraph (c)(3) of this

section.

 (b) Technical requirements. Requirements for chemical waste

landfills used for the disposal of PCBs and PCB Items are as follows:

 (1) Soils. The landfill site shall be located in thick, relatively

impermeable formations such as large-area clay pans. Where this is not

possible, the soil shall have a high clay and silt content with the

following parameters:

 (i) In-place soil thickness, 4 feet or compacted soil liner

thickness, 3 feet;

 (ii) Permeability (cm/sec), equal to or less than

1 x 10<SUP>-7</SUP>;

 (iii) Percent soil passing No. 200 Sieve, >30;

 (iv) Liquid Limit, >30; and

 (v) Plasticity Index >15.

 (2) Synthetic membrane liners. Synthetic membrane liners shall be

used when, in the judgment of the Regional Administrator, the hydrologic

or geologic conditions at the landfill require such a liner in order to

provide at least a permeability equivalent to the soils in paragraph

(b)(1) of this section. Whenever a synthetic liner is used at a landfill

site, special precautions shall be taken to insure that its integrity is

maintained and that it is chemically compatible with PCBs. Adequate soil

underlining and soil cover shall be provided to prevent excessive stress

on the liner and to prevent rupture of the liner. The liner must have a

minimum thickness of 30 mils.

 (3) Hydrologic conditions. The bottom of the landfill shall be above

the historical high groundwater table as provided below. Floodplains,

shorelands, and groundwater recharge areas shall be avoided. There shall

be no hydraulic connection between the site and standing or flowing

surface water. The site shall have monitoring wells and leachate

collection. The bottom of the landfill liner system or natural in-place

soil barrier shall be at least fifty feet from the historical high water

table.

 (4) Flood protection. (i) If the landfill site is below the 100-year

floodwater elevation, the operator shall provide surface water diversion

dikes around

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the perimeter of the landfill site with a minimum height equal to two

feet above the 100-year floodwater elevation.

 (ii) If the landfill site is above the 100-year floodwater

elevation, the operators shall provide diversion structures capable of

diverting all of the surface water runoff from a 24-hour, 25-year storm.

 (5) Topography. The landfill site shall be located in an area of low

to moderate relief to minimize erosion and to help prevent landslides or

slumping.

 (6) Monitoring systems--(i) Water sampling. (A) For all sites

receiving PCBs, the ground and surface water from the disposal site area

shall be sampled prior to commencing operations under an approval

provided in paragraph (c) of this section for use as baseline data.

 (B) Any surface watercourse designated by the Regional Administrator

using the authority provided in paragraph (c)(3)(ii) of this section

shall be sampled at least monthly when the landfill is being used for

disposal operations.

 (C) Any surface watercourse designated by the Regional Administrator

using the authority provided in paragraph (c)(3)(ii) of this section

shall be sampled for a time period specified by the Regional

Administrator on a frequency of no less than once every six months after

final closure of the disposal area.

 (ii) Groundwater monitor wells. (A) If underlying earth materials

are homogenous, impermeable, and uniformly sloping in one direction,

only three sampling points shall be necessary. These three points shall

be equally spaced on a line through the center of the disposal area and

extending from the area of highest water table elevation to the area of

the lowest water table elevation on the property.

 (B) All monitor wells shall be cased and the annular space between

the monitor zone (zone of saturation) and the surface shall be

completely backfilled with Portland cement or an equivalent material and

plugged with Portland cement to effectively prevent percolation of

surface water into the well bore. The well opening at the surface shall

have a removable cap to provide access and to prevent entrance of

rainfall or stormwater runoff. The well shall be pumped to remove the

volume of liquid initially contained in the well before obtaining a

sample for analysis. The discharge shall be treated to meet applicable

State or Federal discharge standards or recycled to the chemical waste

landfill.

 (iii) Water analysis. As a minimum, all samples shall be analyzed

for the following parameters, and all data and records of the sampling

and analysis shall be maintained as required in Sec. 761.180(d)(1).

Sampling methods and analytical procedures for these parameters shall

comply with those specified in 40 CFR part 136 as amended in 41 FR 52779

on December 1, 1976.

 (A) PCBs.

 (B) pH.

 (C) Specific conductance.

 (D) Chlorinated organics.

 (7) Leachate collection. A leachate collection monitoring system

shall be installed above the chemical waste landfill. Leachate

collection systems shall be monitored monthly for quantity and

physicochemical characteristics of leachate produced. The leachate

should be either treated to acceptable limits for discharge in

accordance with a State or Federal permit or disposed of by another

State or Federally approved method. Water analysis shall be conducted as

provided in paragraph (b)(6)(iii) of this section. Acceptable leachate

monitoring/collection systems shall be any of the following designs,

unless a waiver is obtained pursuant to paragraph (c)(4) of this

section.

 (i) Simple leachate collection. This system consists of a gravity

flow drainfield installed above the waste disposal facility liner. This

design is recommended for use when semi-solid or leachable solid wastes

are placed in a lined pit excavated into a relatively thick,

unsaturated, homogenous layer of low permeability soil.

 (ii) Compound leachate collection. This system consists of a gravity

flow drainfield installed above the waste disposal facility liner and

above a secondary installed liner. This design is recommended for use

when semi-liquid or leachable solid wastes are placed in a lined pit

excavated into relatively permeable soil.

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 (iii) Suction lysimeters. This system consists of a network of

porous ceramic cups connected by hoses/tubing to a vacuum pump. The

porous ceramic cups or suction lysimeters are installed along the sides

and under the bottom of the waste disposal facility liner. This type of

system works best when installed in a relatively permeable unsaturated

soil immediately adjacent to the bottom and/or sides of the disposal

facility.

 (8) Chemical waste landfill operations. (i) PCBs and PCB Items shall

be placed in a landfill in a manner that will prevent damage to

containers or articles. Other wastes placed in the landfill that are not

chemically compatible with PCBs and PCB Items including organic solvents

shall be segregated from the PCBs throughout the waste handling and

disposal process.

 (ii) An operation plan shall be developed and submitted to the

Regional Administrator for approval as required in paragraph (c) of this

section. This plan shall include detailed explanations of the procedures

to be used for recordkeeping, surface water handling procedures,

excavation and backfilling, waste segregation burial coordinates,

vehicle and equipment movement, use of roadways, leachate collection

systems, sampling and monitoring procedures, monitoring wells,

environmental emergency contingency plans, and security measures to

protect against vandalism and unauthorized waste placements. EPA

guidelines entitled ``Thermal Processing and Land Disposal of Solid

Waste'' (39 FR 29337, Aug. 14, 1974) are a useful reference in

preparation of this plan. If the facility is to be used to dispose of

liquid wastes containing between 50 ppm and 500 ppm PCB, the operations

plan must include procedures to determine that liquid PCBs to be

disposed of at the landfill do not exceed 500 ppm PCB and measures to

prevent the migration of PCBs from the landfill. Bulk liquids not

exceeding 500 ppm PCBs may be disposed of provided such waste is

pretreated and/or stabilized (e.g., chemically fixed, evaporated, mixed

with dry inert absorbant) to reduce its liquid content or increase its

solid content so that a non-flowing consistency is achieved to eliminate

the presence of free liquids prior to final disposal in a landfill. PCB

Container of liquid PCBs with a concentration between 50 and 500 ppm PCB

may be disposed of if each container is surrounded by an amount of inert

sorbant material capable of absorbing all of the liquid contents of the

container.

 (iii) Ignitable wastes shall not be disposed of in chemical waste

landfills. Liquid ignitable wastes are wastes that have a flash point

less than 60 degrees C (140 degrees F) as determined by the following

method or an equivalent method: Flash point of liquids shall be

determined by a Pensky-Martens Closed Cup Tester, using the protocol

specified in ASTM D 93-90, or the Setaflash Closed Tester using the

protocol specified in ASTM Standard D-3278-89.

 (iv) Records shall be maintained for all PCB disposal operations and

shall include information on the PCB concentration in liquid wastes and

the three dimensional burial coordinates for PCBs and PCB Items.

Additional records shall be developed and maintained as required in

Sec. 761.180.

 (9) Supporting facilities. (i) A six foot woven mesh fence, wall, or

similar device shall be placed around the site to prevent unauthorized

persons and animals from entering.

 (ii) Roads shall be maintained to and within the site which are

adequate to support the operation and maintenance of the site without

causing safety or nuisance problems or hazardous conditions.

 (iii) The site shall be operated and maintained in a manner to

prevent safety problems or hazardous conditions resulting from spilled

liquids and windblown materials.

 (c) Approval of chemical waste landfills. Prior to the disposal of

any PCBs and PCB Items in a chemical waste landfill, the owner or

operator of the landfill shall receive written approval of the Agency

Regional Administrator for the Region in which the landfill is located.

The approval shall be obtained in the following manner:

 (1) Initial report. The owner or operator shall submit to the

Regional Administrator an initial report which contains:

 (i) The location of the landfill;

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 (ii) A detailed description of the landfill including general site

plans and design drawings;

 (iii) An engineering report describing the manner is which the

landfill complies with the requirements for chemical waste landfills

specified in paragraph (b) of this section;

 (iv) Sampling and monitoring equipment and facilities available;

 (v) Expected waste volumes of PCBs;

 (vi) General description of waste materials other than PCBs that are

expected to be disposed of in the landfill;

 (vii) Landfill operations plan as required in paragraph (b) of this

section;

 (viii) Any local, State, or Federal permits or approvals; and

 (ix) Any schedules or plans for complying with the approval

requirements of these regulations.

 (2) Other information. In addition to the information contained in

the report described in paragraph (c)(1) of this section, the Regional

Administrator may require the owner or operator to submit any other

information that the Regional Administrator finds to be reasonably

necessary to determine whether a chemical waste landfill should be

approved. Such other information shall be restricted to the types of

information required in paragraphs (c)(1) (i) through (ix) of this

section.

 (3) Contents of approval. (i) Except as provided in paragraph (c)(4)

of this section the Regional Administrator may not approve a chemical

waste landfill for the disposal of PCBs and PCB Items, unless he finds

that the landfill meets all of the requirements of paragraph (b) of this

section.

 (ii) In addition to the requirements of paragraph (b) of this

section, the Regional Administrator may include in an approval any other

requirements or provisions that the Regional Administrator finds are

necessary to ensure that operation of the chemical waste landfill does

not present an unreasonable risk of injury to health or the environment

from PCBs. Such provisions may include a fixed period of time for which

the approval is valid.

The approval may also include a stipulation that the operator of the

chemical waste landfill report to the Regional Administrator any

instance when PCBs are detectable during monitoring activities conducted

pursuant to paragraph (b)(6) of this section.

 (4) Waivers. An owner or operator of a chemical waste landfill may

submit evidence to the Regional Administrator that operation of the

landfill will not present an unreasonable risk of injury to health or

the environment from PCBs when one or more of the requirements of

paragraph (b) of this section are not met. On the basis of such evidence

and any other available information, the Regional Administrator may in

his discretion find that one or more of the requirements of paragraph

(b) of this section is not necessary to protect against such a risk and

may waive the requirements in any approval for that landfill. Any

finding and waiver under this paragraph will be stated in writing and

included as part of the approval.

 (5) Persons approved. Any approval will designate the persons who

own and who are authorized to operate the chemical waste landfill, and

will apply only to such persons, except as provided by paragraph (c)(7)

of this section.

 (6) Final approval. Approval of a chemical waste landfill will be in

writing and will be signed by the Regional Administrator. The approval

will state all requirements applicable to the approved landfill.

 (7) Transfer of property. Any person who owns or operates an

approved chemical waste landfill must notify EPA at least 30 days before

transferring ownership in the property or transferring the right to

conduct the chemical waste landfill operation. The transferor must also

submit to EPA, at least 30 days before such transfer, a notarized

affidavit signed by the transferee which states that the transferee will

abide by the transferor's EPA chemical waste landfill approval. Within

30 days of receiving such notification and affidavit, EPA will issue an

amended approval substituting the transferee's name for the transferor's

name, or EPA may require the transferee to apply for a new chemical

waste landfill approval. In the latter case, the

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transferee must abide by the transferor's EPA approval until EPA issues

the new approval to the transferee.

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[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982,

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FR 12524, Apr. 15, 1988; 53 FR 21641, June 9, 1988; 57 FR 13323, Apr.

16, 1992]

Sec. 761.79 Decontamination.

 (a) Any PCB Container to be decontaminated shall be decontaminated

by flushing the internal surfaces of the container three times with a

solvent containing less than 50 ppm PCB. The solubility of PCBs in the

solvent must be five percent or more by weight. Each rinse shall use a

volume of the normal diluent equal to approximately ten (10) percent of

the PCB Container capacity. The solvent may be reused for

decontamination until it contains 50 ppm PCB. The solvent shall then be

disposed of as a PCB in accordance with Sec. 761.60(a). Non-liquid PCBs

resulting from the decontamination procedures shall be disposed of in

accordance with the provisions of Sec. 761.60(a)(4).

 (b) Movable equipment used in storage areas shall be decontaminated

by swabbing surfaces that have contacted PCBs with a solvent meeting the

criteria of paragraph (a) of this section.

 Note: Precautionary measures should be taken to ensure that the

solvent meets safety and health standards as required by applicable

Federal regulations.

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982]

 Subpart E--Exemptions

Sec. 761.80 Manufacturing, processing and distribution in commerce

 exemptions.

 (a) The Administrator grants the following petitioner(s) an

exemption for 1 year to process and distribute in commerce PCBs for use

as a mounting medium in microscopy:

 (1) McCrone Accessories Components, Division of Walter C. McCrone

Associates, Inc., 2820 South Michigan Avenue, Chicago, IL. 60616.

 (2) [Reserved]

 (b) The Administrator grants the following petitioner(s) an

exemption for 1 year to process and distribute in commerce PCBs for use

as a mounting medium in microscopy, an immersion oil in low fluorescence

microscopy and an optical liquid:

 (1) R.P. Cargille Laboratories, Inc., 55 Commerce Road, Cedar Grove,

N.J. 07009.

 (2) [Reserved]

 (c) The Administrator grants the following petitioner(s) an

exemption for 1 year to export PCBs for use in small quantities for

research and development:

 (1) Accu-Standard, New Haven, CT. 06503.

 (2) ManTech, Research Triangle Park, NC 27709.

 (d) The Administrator grants the following petitioner(s) an

exemption for 1 year to import (manufacture) into the United States,

small quantities of existing PCB fluids from electrical equipment for

analysis:

 (1) Unison Transformer Services, Inc., Tarrytown, N.Y. 10591,

provided each of the following conditions are met:

 (i) The samples must be shipped in 5.0 ml or less, hermetically

sealed vials.

 (ii) The exemption is limited to no more than 250 total samples per

year.

 (iii) Unison makes quarterly inspections of its laboratories to

ensure that proper safety procedures are being followed.

 (iv) Unison annually notifies and describes to EPA its attempts to

have samples analyzed abroad.

 (2) [Reserved]

 (e) [Reserved]

 (f) The Administrator grants the following petitioner(s) an

exemption for 1 year to manufacture PCBs for use in small quantities for

research and development:

 (1) California Bionuclear Corp., Sun Valley, CA 91352 (ME-13).

 (2) Foxboro Co., North Haven, CT 06473 (ME-6).

 (3) ULTRA-Scientific, Inc.,Hope, RI 02831 (ME-99.1).

 (4) Midwest Research Institute, Kansas City, MO 64110 (ME-70.1).

 (5) Pathfinder Laboratories, St. Louis, MO 63146 (A division of

Sigma

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Aldridge Corporation, St. Louis, MO, 63178 (ME-76).

 (6) Radian Corp., Austin, TX 78766 (ME-81.2).

 (7) Wellington Sciences USA, College Station, TX 77840 (ME-104.1).

 (8) Accu-Standard, 25 Science Park, New Haven, CT. 06503.

 (g) The Administrator grants a class exemption to all processors and

distributors of PCBs in small quantities for research and development

provided that the following conditions are met:

 (1) All processors and distributors must maintain records of their

PCB activities for a period of 5 years.

 (2) Any person or company which expects to process or distribute in

commerce 100 grams (.22 lb) or more PCBs in 1 year must report to EPA

identifying the sites of PCB activities and the quantity of PCBs to be

processed or distributed in commerce.

 (h) The Administrator grants the following petitioners an exemption

for 1 year to process and distribute in commerce PCBs for analytical

reference samples derived from actual waste materials:

 (1) R.T. Corporation, Laramie, WY 82070.

 (2) [Reserved]

 (i)-(l) [Reserved]

 (m) The Administrator grants the following petitioner(s) an

exemption for 1 year to process and export small quantities of PCBs for

research and development:

 (1) Chem Service, Inc., West Chester, PA 19380 (PDE-41).

 (2) Foxboro Co., North Haven, CT 06473 (ME-6).

 (3) PolyScience Corp., Niles, IL 60648 (PDE-178).

 (4) ULTRA-Scientific, Inc., Hope, RI 02831 (PDE-282.1).

 (5) Supelco, Inc., Bellefonte, PA 16823-0048 (PDE-41.2).

 (6) Radian Corp., Austin, TX 78766 (PDE-182.1).

 (7) Restek Corporation, Bellefonte, PA

 (n) The 1-year exemption granted to petitioners in paragraphs (a)

through (c)(1), (d), (f), and (m)(1) through (m)(6) of this section

shall be renewed automatically as long as there is no increase in the

amount of PCBs to be processed and distributed, imported (manufactured),

or exported, nor any change in the manner of processing and

distributing, importing (manufacturing), or exporting of PCBs. If there

is such a change, a new exemption petition must be submitted to EPA and

it will be addressed through an exemption rulemaking. In such a case,

the activities granted under the existing exemption may continue until

the new petition is addressed by rulemaking, but must conform to the

terms of the existing exemption approved by EPA. The 1-year exemption

granted to petitioners in paragraphs (c)(2), (h) and (m)(7) of this

section may be extended pursuant to 40 CFR 750.11(e) or 750.31(e).

 (o) The 1-year class exemption granted to all processors and

distributors of PCBs in small quantities for research and development in

paragraph (g) of this section shall be renewed automatically unless

information is submitted affecting EPA's conclusion that the class

exemption, or the activities of any individual or company included in

the exemption, will not pose an unreasonable risk of injury to health or

the environment. EPA will evaluate the information, issue a proposed

rule for public comment, and issue a final rule affecting the class

exemption or individuals or companies included in the class exemption.

Until EPA issues a final rule, individuals and companies included in the

class exemption will be allowed to continue processing and distributing

PCBs in small quantities for research and development.

[55 FR 38999, Sept. 24, 1990, as amended at 59 FR 16998, Apr. 11, 1994]

 Subpart F--Transboundary Shipments of PCBs for Disposal

 Source: 61 FR 11107, Mar. 18, 1996, unless otherwise noted.

Sec. 761.91 Applicability.

 This subpart establishes requirements under section 6 of TSCA

applicable to the transboundary shipments of PCBs and PCB Items into and

out of the United States for disposal. Nothing in this subpart is

intended to obviate or otherwise alter obligations applicable to

imported or exported PCBs and

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PCB Items under foreign laws, international agreements or arrangements,

other United States statutes and regulations, other sections of TSCA

(e.g., sections 13 and 14), or laws of the various States of the United

States. No provision of this section shall be construed to affect or

limit the applicability of any requirement applicable to transporters of

PCB waste under regulations issued by the U.S. Department of

Transportation (DOT) and set forth at 49 CFR parts 171-180.

Sec. 761.93 Import for disposal.

 (a) General provisions. (1) No person may import PCBs or PCB Items

for disposal without an exemption, except that:

 (i) PCBs and PCB Items at concentrations less than 50 ppm may be

imported for disposal.

 (ii) PCBs and PCB Items at concentrations of 50 ppm or greater may

be imported from United States territories or possessions outside the

customs territory of the United States into the customs territory of the

United States for disposal.

 (iii) PCBs and PCB Items at concentrations of 50 ppm or greater,

other than those described in paragraph (a)(1)(ii), may be imported for

disposal pursuant to paragraph (b) of this section.

 (iv) PCBs and PCB Items at concentrations of 50 ppm or greater may

be imported for analysis and disposal pursuant to paragraph (c) of this

section.

 (v) PCBs and PCB Items at concentrations of 50 ppm or greater may be

imported for evaluation of disposal technologies for PCB waste pursuant

to paragraph (d) of this section.

 (2) For purposes of paragraph (a)(1) of this section, PCBs and PCB

Items of unknown concentrations shall be treated as if they contain 50

ppm or greater.

 (3) All imports of PCBs and PCB Items at any concentration under

paragraph (a)(1) of this section must be in compliance with all

international agreements or arrangements that the United States has

entered into applicable to PCB waste imports. The United States retains

the authority to disallow any PCB waste import not in compliance with

these agreements or arrangements, or other international obligations of

the United States.

 (b) PCBs and PCB Items. PCBs and PCB Items at concentrations of 50

ppm or greater may be imported for disposal under paragraph (a)(1)(iii)

of this section only by a person who is an approved commercial storer or

disposer under subpart D of this part, and only if a PCB waste import

notice is submitted to EPA pursuant to this paragraph.

 (1) PCB waste import notice. (i) PCB waste import notices under this

paragraph must be submitted to EPA in writing. The complete PCB waste

import notice must be received by EPA at the mailing address or delivery

address set forth in this paragraph at least 45 days prior to the date

on which the initial shipment enters the United States. Each notice

shall be clearly marked ``PCB Waste Import Notice'' and shall be sent by

certified mail to: Attn: PCB Waste Import Notice, Office of Enforcement

and Compliance Assurance, Office of Compliance (2222A), U.S.

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Alternately, notices may be delivered by courier to the same office at

the Ariel Rios Building, room 5124, 1200 Pennsylvania Ave., NW.,

Washington, DC 20004.

 (ii) Each PCB waste import notice may cover an individual shipment

or a series of shipments extending over a period up to 12 months

beginning with the date on which the initial shipment enters the United

States. A new notice must be received by EPA every 12 months if import

for disposal will continue. A new notice must also be received by EPA at

any time that import will deviate from the terms described in the prior

notice, at least 45 days before the activity constituting the deviation

begins. Such notices should indicate that the notice is a revision, and

indicate what information has changed.

 (iii) Each PCB waste import notice shall contain the following

information:

 (A) Company name, name of a contact person, address, telephone

number, facsimile (FAX) number, and EPA identification number of the

importer of PCB waste.

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 (B) Company name, name of contact person, address (including

country), telephone number, and facsimile (FAX) number of the foreign

generator, countries of transit (if any), port of entry in the United

States, and method of transportation.

 (C) Types of PCBs and PCB Items to be imported (e.g., transformers,

capacitors, oil, soil), PCB concentrations of each type of PCB or PCB

Items, number and frequency of shipments, maximum shipment size, and

maximum total quantity to be imported during the designated import

period.

 (D) Projected dates of shipments, and period of time intended for

import activities addressed by the notice (not to exceed 12 months).

 (E) Name, contact name, address, telephone number, facsimile (FAX)

number, and EPA Identification Number of each TSCA-approved commercial

storage and disposal facility where the PCB waste will be stored and

disposed of.

 (F) Written certification from each TSCA-approved commercial storage

or disposal facility identified in paragraph (b)(1)(iii)(E) of this

section, including the importer, indicating that each facility has

agreed to accept the shipments of PCBs or PCB Items; has approval to

store or dispose of PCB waste under subpart D of this part; has

sufficient storage capacity available for imported PCB waste; and until

March 18, 1999, will not exceed the 70% capacity limit imposed on

imported PCB waste under paragraph (b)(2)(i) of this paragraph.

 (G) Written certification from the importer, stating: ``I certify

that I am a TSCA-approved commercial storer (disposer) of PCB waste, and

that I accept complete financial liability for the transportation,

storage, and disposal of all PCBs and PCB Items imported into the United

States under this notice.''

 (H) Written certification pursuant to Sec. 761.185(e), signed by the

importer identified in paragraph (b)(1)(iii)(A) of this section,

indicating that the information in the notice is complete and accurate.

 (iv) Some of the information required to be submitted in a PCB waste

import notice may also be required to be submitted to EPA pursuant to

certain international agreements. With the exception of information

required by paragraphs (b)(1)(iii) (F), (G), and (H) of this section,

importers may elect to include information in the PCB waste import

notice using the same form submitted under the international agreement

provided the form contains the information required by paragraphs

(b)(1)(iii) (A)-(E) of this section. Under all circumstances, the

specific certifications required by paragraphs (b)(1)(iii) (F), (G), and

(H) of this section must be included in each PCB waste import notice.

 (v) Notwithstanding the submission of a PCB waste import notice

pursuant to this subpart, EPA reserves the right to refuse entry into

the United States of individual shipments of PCBs or PCB Items that do

not comply with applicable Federal laws and regulations. EPA also

reserves the right to bring an enforcement action against an importer

whose past import of PCBs or PCB Items does not comply with applicable

Federal laws or regulations.

 (vi) Submission of a PCB waste import notice under paragraph

(b)(1)(i) of this section does not replace or satisfy other import

notice or consent requirements of applicable international agreements or

arrangements, of the Resource Conservation and Recovery Act (RCRA), of

other Federal statutes, or of TSCA section 13 (see 40 CFR 707.20).

 (vii) Confidential business information. (A) EPA believes that the

information requested in PCB waste import notices generally will not be

entitled to be treated as confidential business information (CBI)

pursuant to section 14 of TSCA. However, a person submitting a PCB waste

import notice may claim as CBI information the person believes to be

entitled to confidential treatment under TSCA section 14 and part 2 of

this chapter. If no claim is made at the time the notice is submitted,

the information in the notice shall be available to the public without

further notice to the submitter. If CBI claims are made, such claims

shall be made by marking the specific information in the notice that is

claimed CBI. In addition each claim should be accompanied, at the time

the claim is

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made, by a written justification substantiating each item of the claim

pursuant to 40 CFR 2.204(e). In accordance with the procedures set forth

in TSCA and part 2 of this chapter, EPA will routinely request such

substantiation from the importer if it does not accompany the claim of

confidentiality.

 (B) Any claim of confidentiality shall accompany the PCB waste

import notice at the time it is submitted to EPA. The importer shall

submit two copies of each PCB waste import notice if a claim of

confidentiality is made.

 (1) One copy of the notice shall contain all information required in

paragraph (b)(1)(iii) of this section. In this copy of the notice, the

submitter must clearly highlight or mark the specific items claimed as

confidential on each page, and identify each item with the label ``TSCA

Confidential Business Information.'' This notice shall be double

wrapped, and the inside envelope marked ``PCB Waste Import Notice--CBI

Claimed.'' The outside envelope shall be addressed to: TSCA Document

Processing Center (7407), Office of Pollution Prevention and Toxics,

U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC

20460. Substantiation of CBI claims should be sealed inside the inner

envelope and submitted with this copy.

 (2) The other copy shall contain all information required in

paragraph (b)(1)(iii) of this section, except that all information

claimed as confidential in the first copy must be deleted. This copy

must be sent to the address indicated in (b)(1)(i) of this section.

 (3) If the importer claims any information in the PCB waste import

notice as CBI, the PCB waste import notice is not considered complete

for purposes of this paragraph until both copies and the written

substantiation are received by EPA.

 (2) Storage and disposal. Imports of PCBs and PCB Items under

paragraph (a)(1)(iii) of this section are subject to the following

conditions, in addition to all other applicable provisions of this part.

 (i) No facility that stores or disposes of imported PCB waste shall

store at any time a combined quantity of imported PCB waste from all

sources in excess of 70% of the facility's approved maximum PCB storage

capacity, pursuant to Sec. 761.65(d)(4)(iii). This limit on the

acceptance of imported PCB waste shall expire on March 18, 1999.

 (ii) All PCBs and PCB Items imported for disposal under paragraph

(a)(1)(iii) of this section are PCB wastes subject to 40 CFR part 761,

subpart D and:

 (A) Shall be stored and disposed of in facilities which have

approval under subpart D of this part to store or dispose of the type of

PCB waste being imported.

 (B) Shall be marked in accordance with subpart C of this part, and

packaged and stored in accordance with subpart D of this part.

 (C) For purposes of compliance with the 1 year storage for disposal

limit under Sec. 761.65(a), the date of removal from service for

disposal for imported PCB waste shall be whichever of the following

dates occurs first:

 (1) The date the PCB waste enters the contiguous 48 States.

 (2) The date the PCB waste enters any State, if the PCB waste will

be disposed of in that State.

 (3) The date the PCB waste enters a State outside the contiguous 48

States, if the PCB waste is stored in that State for a period of more

than 10 consecutive days.

 (3) Recordkeeping and manifesting. (i) Importers, storers, and

disposers of imported PCBs and PCB Items under paragraph (a)(1)(iii) of

this section shall meet the requirements of subpart J of this part, with

the following modifications:

 (A) An importer who is not the initial commercial storer or disposer

of the imported PCB waste is considered to be the generator for purposes

of maintaining annual records under Sec. 761.180(a); the annual document

log maintained under Sec. 761.180(a)(2) must clearly distinguish between

imported and domestically generated waste.

 (B) Disposers and commercial storers of PCB waste must clearly

distinguish between imported and domestically generated waste in the

annual document log maintained under Sec. 761.180(b)(2), and in the

annual report submitted to EPA under Sec. 761.180(b)(3).

 (ii) Importers, storers, and disposers of PCBs and PCB Items under

paragraph (a)(1)(iii) of this section shall

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meet the requirements of subpart K of this part, with the following

modifications:

 (A) Imported PCB waste shall be manifested, even in cases where the

importer does not relinquish control of the shipment.

 (B) Imported PCB waste shall be manifested separately from domestic

PCB waste.

 (C) In place of the generator's name, address and EPA identification

number on the manifest, the name and address of the foreign generator

and the importer's name, address and EPA identification number shall be

used.

 (D) In place of the generator's signature on the manifest

certification statement, the importer shall sign and date the

certification and obtain the signature of the initial transporter.

 (E) The importer shall comply with all other requirements of subpart

K of this part which apply to the generator.

 (F) The date of removal from service for disposal shall be

determined according to paragraph (b)(2)(ii)(C) of this section.

 (c) PCB analytical samples. PCBs and PCB Items at concentrations of

50 ppm or greater may be imported into the United States by a

laboratory, commercial storer or disposer of PCB waste under paragraph

(a)(1)(iv) of this section, without prior notification, for purposes of

chemical analysis to determine the physical and chemical properties of

the PCBs and PCB Items, provided:

 (1) Quantities of PCBs and PCB Items imported by an individual

facility shall not exceed 200 kilograms annually for non-liquids, and 25

liters annually for liquids; individual samples cannot exceed 5

kilograms for non-liquids or 25 milliliters for liquids.

 (2) Unused and residual PCB waste remaining after analytical use is

completed shall be marked, stored, manifested, and disposed of in

accordance with subparts C, D, and K of this part.

 (3) PCB waste is handled by laboratories in compliance with

Sec. 761.65(i).

 (4) A TSCA PCB commercial storage approval is required for each

laboratory, unless a total volume of no more than 500 gallons (1.89

cubic meters) of PCB waste is in storage at any one time.

 (d) Treatability studies. PCBs and PCB Items at concentrations of 50

ppm or greater may be imported into the United States under paragraph

(a)(1)(v) of this section, without prior notification, for purposes of

evaluating the effectiveness of a disposal technology, provided:

 (1) The importer receiving the PCB waste is an approved disposer of

PCB waste under 40 CFR part 761, subpart D.

 (2) The quantity of PCB waste imported annually to a disposal

facility does not exceed a total volume of 500 gallons.

 (3) The imported PCB waste does not exceed a concentration of 10,000

ppm PCBs, and no more than 1 kilogram total of pure PCBs is imported

annually.

 (4) PCB waste imported under this paragraph must be marked, stored,

and manifested in accordance with subparts C and K of this part, and

must comply with paragraphs (b)(2)(ii) and (b)(3) of this section.

 (5) PCB waste imported under this paragraph, including residues from

any treatability study, must be disposed of in accordance with the terms

and conditions of the TSCA disposal approval for the facility performing

the treatability study.

Sec. 761.97 Export for disposal.

 (a) General provisions. No person may export PCBs or PCB Items for

disposal without an exemption, except that:

 (1) PCBs and PCB Items at concentrations less than 50 ppm may be

exported for disposal.

 (2) [Reserved]

 (b) [Reserved]

 Subpart G--PCB Spill Cleanup Policy

 Source: 52 FR 10705, Apr. 2, 1987, unless otherwise noted.

Sec. 761.120 Scope.

 (a) General. This policy establishes criteria EPA will use to

determine the adequacy of the cleanup of spills resulting from the

release of materials containing PCBs at concentrations of 50 ppm or

greater. The policy applies to spills which occur after May 4, 1987.

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 (1) Existing spills (spills which occurred prior to May 4, 1987, are

excluded from the scope of this policy for two reasons:

 (i) For old spills which have already been discovered, this policy

is not intended to require additional cleanup where a party has already

cleaned a spill in accordance with requirements imposed by EPA through

its regional offices, nor is this policy intended to interfere with

ongoing litigation of enforcement actions which bring into issue PCB

spills cleanup.

 (ii) EPA recognizes that old spills which are discovered after the

effective date of this policy will require site-by-site evaluation

because of the likelihood that the site involves more pervasive PCB

contamination than fresh spills and because old spills are generally

more difficult to clean up than fresh spills (particularly on porous

surfaces such as concrete). Therefore, spills which occurred before the

effective date of this policy are to be decontaminated to requirements

established at the discretion of EPA, usually through its regional

offices.

 (2) EPA expects most PCB spills subject to the TSCA PCB regulations

to conform to the typical spill situations considered in developing this

policy. This policy does, however, exclude from application of the final

numerical cleanup standards certain spill situations from its scope:

Spills directly into surface waters, drinking water, sewers, grazing

lands, and vegetable gardens. These types of spills are subject to final

cleanup standards to be established at the discretion of the regional

office. These spills are, however, subject to the immediate notification

requirements and measures to minimize further environmental

contamination.

 (3) For all other spills, EPA generally expects the decontamination

standards of this policy to apply. Occasionally, some small percentage

of spills covered by this policy may warrant more stringent cleanup

requirements because of additional routes of exposure or significantly

greater exposures than those assumed in developing the final cleanup

standards of this policy. While the EPA regional offices have the

authority to require additional cleanup in these circumstances, the

Regional Administrator must first make a finding based on the specific

facts of a spill that additional cleanup must occur to prevent

unreasonable risk. In addition, before a final decision is made to

require additional cleanup, the Regional Administrator must notify the

Director, Office of Pollution Prevention and Toxics at Headquarters of

his/her finding and the basis for the finding.

 (4) There may also be exceptional spill situations that requires

less stringent cleanup or a different approach to cleanup because of

factors associated with the particular spill. These factors may mitigate

expected exposures and risks or make cleanup to these requirements

impracticable.

 (b) Spills that may require more stringent cleanup levels. For

spills within the scope of this policy, EPA generally retains, under

Sec. 761.135, the authority to require additional cleanup upon finding

that, despite good faith efforts by the responsible party, the numerical

decontamination levels in the policy have not been met. In addition, EPA

foresees the possibility of exceptional spill situations in which site-

specific risk factors may warrant additional cleanup to more stringent

numerical decontamination levels than are required by the policy. In

these situations, the Regional Administrator has the authority to

require cleanup to levels lower than those included in this policy upon

finding that further cleanup must occur to prevent unreasonable risk.

The Regional Administrator will consult with the Director, Office of

Pollution Prevention and Toxics, prior to making such a finding.

 (1) For example, site-specific characteristics, such as short depth

to ground water, type of soil, or the presence of a shallow well, may

pose exceptionally high potential for ground water contamination by PCBs

remaining after cleanup to the standards specified in this policy.

Spills that pose such a high degree of potential for ground water

contamination have not been excluded from the policy under paragraph (d)

of this section because the presence of such potential may not be

readily apparent. EPA feels that automatically excluding such spills

from the scope of the policy could result in the delay of

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cleanup--a particularly undesirable outcome if potential ground water

contamination is, in fact, a significant concern.

 (2) In those situations, the Regional Administrator may require

cleanup in addition to that required under Sec. 761.125 (b) and (c).

However, the Regional Administrator must first make a finding, based on

the specific facts of a spill, that additional cleanup is necessary to

prevent unreasonable risk. In addition, before making a final decision

on additional cleanup, the Regional Administrator must notify the

Director of the Office of Pollution Prevention and Toxics of his finding

and the basis for the finding.

 (c) Flexibility to allow less stringent or alternative requirements.

EPA retains the flexibility to allow less stringent or alternative

decontamination measures based upon site-specific considerations. EPA

will exercise this flexibility if the responsible party demonstrates

that cleanup to the numerical decontamination levels is clearly

unwarranted because of risk-mitigating factors, that compliance with the

procedural requirements or numerical standards in the policy is

impracticable at a particular site, or that site-specific

characteristics make the costs of cleanup prohibitive. The Regional

Administrator will notify the Director of OPPT of any decision and the

basis for the decision to allow less stringent cleanup. The purpose of

this notification is to enable the Director of OPPT to ensure

consistency of spill cleanup standards under special circumstances

across the regions.

 (d) Excluded spills. (1) Although the spill situations in paragraphs

(d)(2) (i) through (vi) of this section are excluded from the automatic

application of final decontamination standards under Sec. 761.125 (b)

and (c), the general requirements under Sec. 761.125(a) do apply to

these spills. In addition, all of these excluded situations require

practicable, immediate actions to contain the area of contamination.

While these situations may not always require more stringent cleanup

measures, the Agency is excluding these scenarios because they will

always involve significant factors that may not be adequately addressed

by cleanup standards based upon typical spill characteristics.

 (2) For the spill situations in paragraphs (d)(2)(i) through (vi) of

this section, the responsible party shall decontaminate the spill in

accordance with site-specific requirements established by the EPA

regional offices.

 (i) Spills that result in the direct contamination of surface waters

(surface waters include, but are not limited to, ``waters of the United

States'' as defined in part 122 of this chapter, ponds, lagoons,

wetlands, and storage reservoirs).

 (ii) Spills that result in the direct contamination of sewers or

sewage treatment systems.

 (iii) Spills that result in the direct contamination of any private

or public drinking water sources or distribution systems.

 (iv) Spills which migrate to and contaminate surface waters, sewers,

or drinking water supplies before cleanup has been completed in

accordance with this policy.

 (v) Spills that contaminate animal grazing lands.

 (vi) Spills that contaminate vegetable gradens.

 (e) Relationship of policy to other statutes. (1) This policy does

not affect cleanup standards or requirements for the reporting of spills

imposed, or to be imposed, under other Federal statutory authorities,

including but not limited to, the Clean Water Act (CWA), the Resource

Conservation and Recovery Act (RCRA), and the Comprehensive

Environmental Response Compensation and Liability Act of 1980 (CERCLA)

as amended by the Superfund Amendments and Reauthorization Act (SARA).

Where more than one requirement applies, the stricter standard must be

met.

 (2) The Agency recognizes that the existence of this policy will

inevitably result in attempts to apply the standards to situations

within the scope of other statutory authorities. However, other statutes

require the Agency to consider different or alternative factors in

determining appropriate corrective actions. In addition, the types and

magnitudes of exposures associated with sites requiring corrective

action

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under other statutes often involve important differences from those

expected of the typical, electrical equipment-type spills considered in

developing this policy. Thus, cleanups under other statutes, such as

RCRA corrective actions or remedial and response actions under SARA may

result in different outcomes.

Sec. 761.123 Definitions.

 For purposes of this policy, certain words and phrases are used to

denote specific materials, procedures, or circumstances. The following

definitions are provided for purposes of clarity and are not to be taken

as exhaustive lists of situations and materials covered by the policy.

 Double wash/rinse means a minimum requirement to cleanse solid

surfaces (both impervious and nonimpervious) two times with an

appropriate solvent or other material in which PCBs are at least 5

percent soluble (by weight). A volume of PCB-free fluid sufficient to

cover the contaminated surface completely must be used in each wash/

rinse. The wash/rinse requirement does not mean the mere spreading of

solvent or other fluid over the surface, nor does the requirement mean a

once-over wipe with a soaked cloth. Precautions must be taken to contain

any runoff resulting from the cleansing and to dispose properly of

wastes generated during the cleansing.

 High-concentration PCBs means PCBs that contain 500 ppm or greater

PCBs, or those materials which EPA requires to be assumed to contain 500

ppm or greater PCBs in the absence of testing.

 High-contact industrial surface means a surface in an industrial

setting which is repeatedly touched, often for relatively long periods

of time. Manned machinery and control panels are examples of high-

contact industrial surfaces. High-contact industrial surfaces are

generally of impervious solid material. Examples of low-contact

industrial surfaces include ceilings, walls, floors, roofs, roadways and

sidewalks in the industrial area, utility poles, unmanned machinery,

concrete pads beneath electrical equipment, curbing, exterior structural

building components, indoor vaults, and pipes.

 High-contact residential/commercial surface means a surface in a

residential/commercial area which is repeatedly touched, often for

relatively long periods of time. Doors, wall areas below 6 feet in

height, uncovered flooring, windowsills, fencing, bannisters, stairs,

automobiles, and children's play areas such as outdoor patios and

sidewalks are examples of high-contact residential/commercial surfaces.

Examples of low-contact residential/commercial surfaces include interior

ceilings, interior wall areas above 6 feet in height, roofs, asphalt

roadways, concrete roadways, wooden utility poles, unmanned machinery,

concrete pads beneath electrical equipment, curbing, exterior structural

building components (e.g., aluminum/vinyl siding, cinder block, asphalt

tiles), and pipes.

 Impervious solid surfaces means solid surfaces which are nonporous

and thus unlikely to absorb spilled PCBs within the short period of time

required for cleanup of spills under this policy. Impervious solid

surfaces include, but are not limited to, metals, glass, aluminum

siding, and enameled or laminated surfaces.

 Low-concentration PCBs means PCBs that are tested and found to

contain less than 500 ppm PCBs, or those PCB-containing materials which

EPA requires to be assumed to be at concentrations below 500 ppm (i.e.,

untested mineral oil dielectric fluid).

 Nonimpervious solid surfaces means solid surfaces which are porous

and are more likely to absorb spilled PCBs prior to completion of the

cleanup requirements prescribed in this policy. Nonimpervious solid

surfaces include, but are not limited to, wood, concrete, asphalt, and

plasterboard.

 Nonrestricted access areas means any area other than restricted

access, outdoor electrical substations, and other restricted access

locations, as defined in this section. In addition to residential/

commercial areas, these areas include unrestricted access rural areas

(areas of low density development and population where access is

uncontrolled by either man-made barriers or naturally occurring

barriers, such as rough terrain, mountains, or cliffs).

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 Other restricted access (nonsubstation) locations means areas other

than electrical substations that are at least 0.1 kilometer (km) from a

residential/commercial area and limited by man-made barriers (e.g.,

fences and walls) to substantially limited by naturally occurring

barriers such as mountains, cliffs, or rough terrain. These areas

generally include industrial facilities and extremely remote rural

locations. (Areas where access is restricted but are less than 0.1 km

from a residential/commercial area are considered to be residential/

commercial areas.)

 Outdoor electrical substations means outdoor, fenced-off, and

restricted access areas used in the transmission and/or distribution of

electrical power Outdoor electrical substations restrict public access

by being fenced or walled off as defined under Sec. 761.30(l)(1)(ii).

For purposes of this TSCA policy, outdoor electrical substations are

defined as being located at least 0.1 km from a residential/commercial

area. Outdoor fenced-off and restricted access areas used in the

transmission and/or distribution of electrical power which are located

less than 0.1. km from a residential/commercial area are considered to

be residential/commercial areas.

 PCBs means polychlorinated biphenyls as defined under Sec. 761.3. As

specified under Sec. 761.1(b), no requirements may be avoided through

dilution of the PCB concentration.

 Requirements and standards means:

 (1) ``Requirements'' as used in this policy refers to both the

procedural responses and numerical decontamination levels set forth in

this policy as constituting adequate cleanup of PCBs.

 (2) ``Standards'' refers to the numerical decontamination levels set

forth in this policy.

 Residential/commercial areas means those areas where people live or

reside, or where people work in other than manufacturing or farming

industries. Residential areas include housing and the property on which

housing is located, as well as playgrounds, roadways, sidewalks, parks,

and other similar areas within a residential community. Commercial areas

are typically accessible to both members of the general public and

employees and include public assembly properties, institutional

properties, stores, office buildings, and transportation centers.

 Responsible party means the owner of the PCB equipment, facility, or

other source of PCBs or his/her designated agent (e.g., a facility

manager or foreman).

 Soil means all vegetation, soils and other ground media, including

but not limited to, sand, grass, gravel, and oyster shells. It does not

include concrete and asphalt.

 Spill means both intentional and unintentional spills, leaks, and

other uncontrolled discharges where the release results in any quantity

of PCBs running off or about to run off the external surface of the

equipment or other PCB source, as well as the contamination resulting

from those releases. This policy applies to spills of 50 ppm or greater

PCBs. The concentration of PCBs spilled is determined by the PCB

concentration in the material spilled as opposed to the concentration of

PCBs in the material onto which the PCBs were spilled. Where a spill of

untested mineral oil occurs, the oil is presumed to contain greater than

50 ppm, but less than 500 ppm PCBs and is subject to the relevant

requirements of this policy.

 Spill area means the area of soil on which visible traces of the

spill can be observed plus a buffer zone of 1 foot beyond the visible

traces. Any surface or object (e.g., concrete sidewalk or automobile)

within the visible traces area or on which visible traces of the spilled

material are observed is included in the spill area. This area

represents the minimum area assumed to be contaminated by PCBs in the

absence of precleanup sampling data and is thus the minimum area which

must be cleaned.

 Spill boundaries means the actual area of contamination as

determined by postcleanup verification sampling or by precleanup

sampling to determine actual spill boundaries. EPA can require

additional cleanup when necessary to decontaminate all areas within the

spill boundaries to the levels required in this policy (e.g., additional

cleanup will be required if postcleanup sampling indicates that the area

decontaminated by the responsible party, such as the spill area as

defined in this

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section, did not encompass the actual boundaries of PCB contamination).

 Standard wipe test means, for spills of high-concentration PCBs on

solid surfaces, a cleanup to numerical surface standards and sampling by

a standard wipe test to verify that the numerical standards have been

met. This definition constitutes the minimum requirements for an

appropriate wipe testing protocol. A standard-size template (10

centimeters (cm) x 10 cm) will be used to delineate the area of cleanup;

the wiping medium will be a gauze pad or glass wool of known size which

has been saturated with hexane. It is important that the wipe be

performed very quickly after the hexane is exposed to air. EPA strongly

recommends that the gauze (or glass wool) be prepared with hexane in the

laboratory and that the wiping medium be stored in sealed glass vials

until it is used for the wipe test. Further, EPA requires the collection

and testing of field blanks and replicates.

[52 FR 10705, Apr. 2, 1987; 52 FR 23397, June 19, 1987]

Sec. 761.125 Requirements for PCB spill cleanup.

 (a) General. Unless expressly limited, the reporting, disposal, and

precleanup sampling requirements in paragraphs (a) (1) through (3) of

this section apply to all spills of PCBs at concentrations of 50 ppm or

greater which are subject to decontamination requirements under TSCA,

including those spills listed under Sec. 761.120(b) which are excluded

from the cleanup standards at paragraphs (b) and (c) of this section.

 (1) Reporting requirements. The reporting in paragraphs (a)(1) (i)

through (iv) of this section is required in addition to applicable

reporting requirements under the Clean Water Act (CWA) or the

Comprehensive Environmental Response Compensation and Liability Act of

1980 (CERCLA). For example, under the National Contingency Plan all

spills involving 10 pounds or more by weight of PCBs must currently be

reported to the National Response Center (1-800-424-8802). The

requirements in paragraphs (a)(1) (i) through (iv) of this section are

designed to be consistent with existing reporting requirements to the

extent possible so as to minimize reporting burdens on governments as

well as the regulated community.

 (i) Where a spill directly contaminates surface water, sewers, or

drinking water supplies, as discussed under Sec. 761.120(d), the

responsible party shall notify the appropriate EPA regional office (the

Office of Prevention, Pesticides and Toxic Substances Branch) and obtain

guidance for appropriate cleanup measures in the shortest possible time

after discovery, but in no case later than 24 hours after discovery.

 (ii) Where a spill directly contaminates grazing lands or vegetable

gardens, as discussed under Sec. 761.120(d), the responsible party shall

notify the appropriate EPA regional office (the Office of Prevention,

Pesticides and Toxic Substances Branch) and proceed with the immediate

requirements specified under paragraph (b) or (c) of this section,

depending on the source of the spill, in the shortest possible time

after discovery, but in no case later than 24 hours after discovery.

 (iii) Where a spill exceeds 10 pounds of PCBs by weight and is not

addressed in paragraph (a)(1) (i) or (ii) of this section, the

responsible party will notify the appropriate EPA regional office

(Pesticides and Toxic Substances Branch) and proceed to decontaminate

the spill area in accordance with this TSCA policy in the shortest

possible time after discovery, but in no case later than 24 hours after

discovery.

 (iv) Spills of 10 pounds or less, which are not addressed in

paragraph (a)(1) (i) or (ii) of this section, must be cleaned up in

accordance with this policy (in order to avoid EPA enforcement

liability), but notification of EPA is not required.

 (2) Disposal of cleanup debris and materials. All concentrated

soils, solvents, rags, and other materials resulting from the cleanup of

PCBs under this policy shall be properly stored, labeled, and disposed

of in accordance with the provisions of Sec. 761.60.

 (3) Determination of spill boundaries in the absence of visible

traces. For spills where there are insufficient visible traces yet there

is evidence of a leak or spill, the boundaries of the spill are to be

determined by using a statistically based sampling scheme.

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 (b) Requirements for cleanup of low-concentration spills which

involve less than 1 pound of PCBs by weight (less than 270 gallons of

untested mineral oil)--(1) Decontamination requirements. Spills of less

than 270 gallons of untested mineral oil, low-concentration PCBs, as

defined under Sec. 761.123, which involve less than 1 pound of PCBs by

weight (e.g., less than 270 gallons of untested mineral oil containing

less than 500 ppm PCBs) shall be cleaned in the following manner:

 (i) Solid surfaces must be double washed/rinsed (as defined under

Sec. 761.123); except that all indoor, residential surfaces other than

vault areas must be cleaned to 10 micrograms per 100 square centimeters

(10 <greek-m>g/100 cm<SUP>2</SUP>) by standard commercial wipe tests.

 (ii) All soil within the spill area (i.e., visible traces of soil

and a buffer of 1 lateral foot around the visible traces) must be

excavated, and the ground be restored to its original configuration by

back-filling with clean soil (i.e., containing less than 1 ppm PCBs).

 (iii) Requirements of paragraphs (b)(1) (i) and (ii) of this section

must be completed within 48 hours after the responsible party was

notified or became aware of the spill.

 (2) Effect of emergency or adverse weather. Completion of cleanup

may be delayed beyond 48 hours in case of circumstances including but

not limited to, civil emergency, adverse weather conditions, lack of

access to the site, and emergency operating conditions. The occurrence

of a spill on a weekend or overtime costs are not acceptable reasons to

delay response. Completion of cleanup may be delayed only for the

duration of the adverse conditions. If the adverse weather conditions,

or time lapse due to other emergency, has left insufficient visible

traces, the responsible party must use a statistically based sampling

scheme to determine the spill boundaries as required under paragraph

(a)(3) of this section.

 (3) Records and certification. At the completion of cleanup, the

responsible party shall document the cleanup with records and

certification of decontamination. The records and certification must be

maintained for a period of 5 years. The records and certification shall

consist of the following:

 (i) Identification of the source of the spill (e.g., type of

equipment).

 (ii) Estimated or actual date and time of the spill occurrence.

 (iii) The date and time cleanup was completed or terminated (if

cleanup was delayed by emergency or adverse weather: the nature and

duration of the delay).

 (iv) A brief description of the spill location.

 (v) Precleanup sampling data used to establish the spill boundaries

if required because of insufficient visible traces, and a brief

description of the sampling methodology used to establish the spill

boundaries.

 (vi) A brief description of the solid surfaces cleaned and of the

double wash/rinse method used.

 (vii) Approximate depth of soil excavation and the amount of soil

removed.

 (viii) A certification statement signed by the responsible party

stating that the cleanup requirements have been met and that the

information contained in the record is true to the best of his/her

knowledge.

 (ix) While not required for compliance with this policy, the

following information would be useful if maintained in the records:

 (A) Additional pre- or post-cleanup sampling.

 (B) The estimated cost of the cleanup by man-hours, dollars, or

both.

 (c) Requirements for cleanup of high-concentration spills and low-

concentration spills involving 1 pound or more PCBs by weight (270

gallons or more of untested mineral oil). Cleanup of low-concentration

spills involving 1 lb or more PCBs by weight and of all spills of

materials other than low-concentration materials shall be considered

complete if all of the immediate requirements, cleanup standards,

sampling, and recordkeeping requirements of paragraphs (c) (1) through

(5) of this section are met.

 (1) Immediate requirements. The four actions in paragraphs (c)(1)

(i) through (iv) of this section must be taken as quickly as possible

and within no more than 24 hours (or within 48 hours for PCB

Transformers) after the responsible party was notified or became aware

of the spill, except that actions described in paragraphs (c)(1) (ii)

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through (iv) of this section can be delayed beyond 24 hours if

circumstances (e.g., civil emergency, hurricane, tornado, or other

similar adverse weather conditions, lack of access due to physical

impossibility, or emergency operating conditions) so require for the

duration of the adverse conditions. The occurrence of a spill on a

weekend or overtime costs are not acceptable reasons to delay response.

Owners of spilled PCBs who have delayed cleanup because of these types

of circumstances must keep records documenting the fact that

circumstances precluded rapid response.

 (i) The responsible party shall notify the EPA regional office and

the NRC as required by Sec. 761.125(a)(1) or by other applicable

statutes.

 (ii) The responsible party shall effectively cordon off or otherwise

delineate and restrict an area encompassing any visible traces plus a 3-

foot buffer and place clearly visible signs advising persons to avoid

the area to minimize the spread of contamination as well as the

potential for human exposure.

 (iii) The responsible party shall record and document the area of

visible contamination, noting the extent of the visible trace areas and

the center of the visible trace area. If there are no visible traces,

the responsible party shall record this fact and contact the regional

office of the EPA for guidance in completing statistical sampling of the

spill area to establish spill boundaries.

 (iv) The responsible party shall initiate cleanup of all visible

traces of the fluid on hard surfaces and initiate removal of all visible

traces of the spill on soil and other media, such as gravel, sand,

oyster shells, etc.

 (v) If there has been a delay in reaching the site and there are

insufficient visible traces of PCBs remaining at the spill site, the

responsible party must estimate (based on the amount of material missing

from the equipment or container) the area of the spill and immediately

cordon off the area of suspect contamination. The responsible party must

then utilize a statistically based sampling scheme to identify the

boundaries of the spill area as soon as practicable.

 (vi) Although this policy requires certain immediate actions, as

described in paragraphs (c)(1)(i) through (iv) of this section, EPA is

not placing a time limit on completion of the cleanup effort since the

time required for completion will vary from case to case. However, EPA

expects that decontamination will be achieved promptly in all cases and

will consider promptness of completion in determining whether the

responsible party made good faith efforts to clean up in accordance with

this policy.

 (2) Requirements for decontaminating spills in outdoor electrical

substations. Spills which occur in outdoor electrical substations, as

defined under Sec. 761.123, shall be decontaminated in accordance with

paragraphs (c)(2) (i) and (ii) of this section. Conformance to the

cleanup standards under paragraphs (c)(2) (i) and (ii) of this section

shall be verified by post-cleanup sampling as specified under

Sec. 761.130. At such times as outdoor electrical substations are

converted to another use, the spill site shall be cleaned up to the

nonrestricted access requirements under paragraph (c)(4) of this

section.

 (i) Contaminated solid surfaces (both impervious and non-impervious)

shall be cleaned to a PCB concentration of 100 micrograms (<greek-m>g)/

100 square centimeters (cm\2\) (as measured by standard wipe tests).

 (ii) At the option of the responsible party, soil contaminated by

the spill will be cleaned either to 25 ppm PCBs by weight, or to 50 ppm

PCBs by weight provided that a label or notice is visibly placed in the

area. Upon demonstration by the responsible party that cleanup to 25 ppm

or 50 ppm will jeopardize the integrity of the electrical equipment at

the substation, the EPA regional office may establish an alternative

cleanup method or level and place the responsible party on a reasonably

timely schedule for completion of cleanup.

 (3) Requirements for decontaminating spills in other restricted

access areas. Spills which occur in restricted access locations other

than outdoor electrical substations, as defined under Sec. 761.123,

shall be decontaminated in accordance with paragraphs (c)(3) (i) through

(v) of

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this section. Conformance to the cleanup standards in paragraphs (c)(3)

(i) through (v) of this section shall be verified by postcleanup

sampling as specified under Sec. 761.130. At such times as restricted

access areas other than outdoor electrical substations are converted to

another use, the spill site shall be cleaned up to the nonrestricted

access area requirements of paragraph (c)(4) of this section.

 (i) High-contact solid surfaces, as defined under Sec. 761.163 shall

be cleaned to 10 <greek-m>g/100 cm\2\ (as measured by standard wipe

tests).

 (ii) Low-contact, indoor, impervious solid surfaces will be

decontaminated to 10 <greek-m>g/100 cm\2\.

 (iii) At the option of the responsible party, low-contact, indoor,

nonimpervious surfaces will be cleaned either to 10 <greek-m>g/100 cm\2\

or to 100 <greek-m>g/100 cm\2\ and encapsulated. The Regional

Administrator, however, retains the authority to disallow the

encapsulation option for a particular spill situation upon finding that

the uncertainties associated with that option pose special concerns at

that site. That is, the Regional Administrator would not permit

encapsulation if he/she determined that if the encapsulation failed the

failure would create an imminent hazard at the site.

 (iv) Low-contact, outdoor surfaces (both impervious and

nonimpervious) shall be cleaned to 100 <greek-m>g/100 cm\2\.

 (v) Soil contaminated by the spill will be cleaned to 25 ppm PCBs by

weight.

 (4) Requirements for decontaminating spills in nonrestricted access

areas. Spills which occur in nonrestricted access locations, as defined

under Sec. 761.123, shall be decontaminated in accordance with

paragraphs (c)(4) (i) through (v) of this section. Conformance to the

cleanup standards at paragraphs (c)(4) (i) through (v) of this section

shall be verified by postcleanup sampling as specified under

Sec. 761.130.

 (i) Furnishings, toys, and other easily replaceable household items

shall be disposed of in accordance with the provisions of Sec. 761.60

and replaced by the responsible party.

 (ii) Indoor solid surfaces and high-contact outdoor solid surfaces,

defined as high contact residential/commercial surfaces under

Sec. 761.123, shall be cleaned to 10 <greek-m>g/100 cm\2\ (as measured

by standard wipe tests).

 (iii) Indoor vault areas and low-contact, outdoor, impervious solid

surfaces shall be decontaminated to 10 <greek-m>g/100 cm\2\.

 (iv) At the option of the responsible party, low-contact, outdoor,

nonimpervious solid surfaces shall be either cleaned to 10 <greek-m>g/

100 cm\2\ or cleaned to 100 <greek-m>g/100 cm\2\ and encapsulated. The

Regional Administrator, however, retains the authority to disallow the

encapsulation option for a particular spill situation upon finding that

the uncertainties associated with that option pose special concerns at

that site. That is, the Regional Administrator would not permit

encapsulation if he/she determined that if the encapsulation failed the

failure would create an imminent hazard at the site.

 (v) Soil contaminated by the spill will be decontaminated to 10 ppm

PCBs by weight provided that soil is excavated to a minimum depth of 10

inches. The excavated soil will be replaced with clean soil, i.e.,

containing less than 1 ppm PCBs, and the spill site will be restored

(e.g., replacement of turf).

 (5) Records. The responsible party shall document the cleanup with

records of decontamination. The records must be maintained for a period

of 5 years. The records and certification shall consist of the

following:

 (i) Identification of the source of the spill, e.g., type of

equipment.

 (ii) Estimated or actual date and time of the spill occurrence.

 (iii) The date and time cleanup was completed or terminated (if

cleanup was delayed by emergency or adverse weather: the nature and

duration of the delay).

 (iv) A brief description of the spill location and the nature of the

materials contaminated. This information should include whether the

spill occurred in an outdoor electrical substation, other restricted

access location, or in a nonrestricted access area.

 (v) Precleanup sampling data used to establish the spill boundaries

if required because of insufficient visible traces and a brief

description of the sampling methodology used to establish the spill

boundaries.

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 (vi) A brief description of the solid surfaces cleaned.

 (vii) Approximate depth of soil excavation and the amount of soil

removed.

 (viii) Postcleanup verification sampling data and, if not otherwise

apparent from the documentation, a brief description of the sampling

methodology and analytical technique used.

 (ix) While not required for compliance with this policy, information

on the estimated cost of cleanup (by man-hours, dollars, or both) would

be useful if maintained in the records.

[52 FR 10705, Apr. 2, 1987, as amended at 53 FR 40884, Oct. 19, 1988]

Sec. 761.130 Sampling requirements.

 Postcleanup sampling is required to verify the level of cleanup

under Sec. 761.125(c) (2) through (4). The responsible party may use any

statistically valid, reproducible, sampling scheme (either random

samples or grid samples) provided that the requirements of paragraphs

(a) and (b) of this section are satisfied.

 (a) The sampling area is the greater of (1) an area equal to the

area cleaned plus an additional 1-foot boundary, or (2) an area 20

percent larger than the original area of contamination.

 (b) The sampling scheme must ensure 95 percent confidence against

false positives.

 (c) The number of samples must be sufficient to ensure that areas of

contamination of a radius of 2 feet or more within the sampling area

will be detected, except that the minimum number of samples is 3 and the

maximum number of samples is 40.

 (d) The sampling scheme must include calculation for expected

variability due to analytical error.

 (e) EPA recommends the use of a sampling scheme developed by the

Midwest Research Institute (MRI) for use in EPA enforcement inspections:

``Verification of PCB Spill Cleanup by Sampling and Analysis.'' Guidance

for the use of this sampling scheme is available in the MRI report

``Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup.''

Both the MRI sampling scheme and the guidance document are available

from the Director, Environmental Assistance Division (7408), Office of

Pollution Prevention and Toxics, U.S. Environmental Protection Agency,

Room E-543B, 401 M St., SW., Washington, DC, 20460, Telephone: (202)

554-1404, TDD: (202) 544-0551. The major advantage of this sampling

scheme is that it is designed to characterize the degree of

contamination within the entire sampling area with a high degree of

confidence while using fewer samples than any other grid or random

sampling scheme. This sampling scheme also allows some sites to be

characterized on the basis of composite samples.

 (f) EPA may, at its discretion, take samples from any spill site. If

EPA's sampling indicates that the remaining concentration level exceeds

the required level, EPA will require further cleanup. For this purpose,

the numerical level of cleanup required for spills cleaned in accordance

with Sec. 761.125(b) is deemed to be the equivalent of numerical cleanup

requirements required for cleanups under Sec. 761.125(c) (2) through

(4). Using its best engineering judgment, EPA may sample a statistically

valid random or grid sampling technique, or both. When using engineering

judgment or random ``grab'' samples, EPA will take into account that

there are limits on the power of a grab sample to dispute statistically

based sampling of the type required of the responsible party. EPA

headquarters will provide guidance to the EPA regions on the degree of

certainty associated with various grab sample results.

[52 FR 10705, Apr. 2, 1987, as amended at 60 FR 34465, July 3, 1995]

Sec. 761.135 Effect of compliance with this policy and enforcement.

 (a) Although a spill of material containing 50 ppm or greater PCBs

is considered improper PCB disposal, this policy establishes

requirements that EPA considers to be adequate cleanup of the spilled

PCBs. Cleanup in accordance with this policy means compliance with the

procedural as well as the numerical requirements of this policy.

Compliance with this policy creates a presumption against both

enforcement action for penalties and the need for further cleanup under

TSCA. The Agency reserves the right, however, to initiate appropriate

action to compel

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cleanup where, upon review of the records of cleanup or EPA sampling

following cleanup, EPA finds that the decontamination levels in the

policy have not been achieved. The Agency also reserves the right to

seek penalties where the Agency believes that the responsible party has

not made a good faith effort to comply with all provisions of this

policy, such as prompt notification of EPA of a spill, recordkeeping,

etc.

 (b) EPA's exercise of enforcement discretion does not preclude

enforcement action under other provisions of TSCA or any other Federal

statute. This includes, even in cases where the numerical

decontamination levels set forth in this policy have been met, civil or

criminal action for penalties where EPA believes the spill to have been

the result of gross negligence or knowing violation.

 Subparts H-I [Reserved]

 Subpart J--General Records and Reports

Sec. 761.180 Records and monitoring.

 This section contains recordkeeping and reporting requirements that

apply to PCBs, PCB Items, and PCB storage and disposal facilities that

are subject to the requirements of the part.

 (a) PCBs and PCB Items in service or projected for disposal.

Beginning February 5, 1990, each owner or operator of a facility, other

than a commercial storer or a disposer of PCB waste, using or storing at

any one time at least 45 kilograms (99.4 pounds) of PCBs contained in

PCB Container(s), or one or more PCB Transformers, or 50 or more PCB

Large High or Low Voltage Capacitors shall develop and maintain at the

facility, or a central facility provided they are maintained at that

facility, all annual records and the written annual document log of the

disposition of PCBs and PCB Items. The written annual document log must

be prepared for each facility by July 1 covering the previous calendar

year (January through December). The annual document log shall be

maintained for at least 3 years after the facility ceases using or

storing PCBs and PCB Items in the quantities prescribed in this

paragraph. Annual records (manifests and certificates of disposal) shall

be maintained for the same period. The annual records and the annual

document log shall be available for inspection at the facility where

they are maintained by authorized representatives of EPA during normal

business hours, and each owner or operator of a facility subject to

these requirements shall know the location of these records. All records

and annual documents required to be prepared and maintained by this

section prior to February 5, 1990 shall continue to be maintained at the

facility for the same time as the annual records and the annual document

log. The annual document required for 1989 shall cover the period from

January 1, 1989 to February 5, 1990.

 (1) The annual records shall include the following:

 (i) All signed manifests generated by the facility during the

calendar year.

 (ii) All Certificates of Disposal that have been received by the

facility during the calendar year.

 (2) The written annual document log shall include the following:

 (i) The name, address, and EPA identification number of the facility

covered by the annual document log and the calendar year covered by the

annual document log.

 (ii) The unique manifest number of every manifest generated by the

facility during the calendar year, and from each manifest and for

unmanifested waste that may be stored at the facility, the following

information:

 (A) For bulk PCB waste (e.g., in a tanker or truck), its weight in

kilograms, the first date it was removed from service for disposal, the

date it was placed into transport for off-site storage or disposal, and

the date of disposal, if known.

 (B) The serial number (if available) or other means of identifying

each PCB Article (e.g., transformer or capacitor), the weight in

kilograms of the PCB waste in each transformer or capacitor, the date it

was removed from service for disposal, the date it was placed in

transport for off-site storage or disposal, and the date of disposal, if

known.

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 (C) A unique number identifying each PCB Container, a description of

the contents of each PCB Container, such as liquid, soil, cleanup

debris, etc., including the total weight of the material in kilograms in

each PCB Container, the first date material placed in each PCB Container

was removed from service for disposal, and the date each PCB Container

was placed in transport for off-site storage or disposal, and the date

of disposal (if known).

 (D) A unique number identifying each PCB Article Container, a

description of the contents of each PCB Article Container, such as

pipes, capacitors, electric motors, pumps, etc., including the total

weight in kilograms of the content of each PCB Article Container, the

first date a PCB Article placed in each PCB Article Container was

removed from service for disposal, and the date the PCB Article

Container was placed in transport for off-site storage or disposal, and

the date of disposal (if known.)

 (iii) The total number by specific type of PCB Articles and the

total weight in kilograms of PCBs in PCB Articles, the total number of

PCB Article Containers and total weight in kilograms of the contents of

PCB Article Containers, the total number of PCB Containers and the total

weight in kilograms of the contents of PCB Containers, and the total

weight in kilograms of bulk PCB waste that was placed into storage for

disposal or disposed during the calendar year.

 (iv) The total number of PCB Transformers and total weight in

kilograms of PCBs contained in the transformers remaining in service at

the end of the calendar year.

 (v) The total number of Large High or Low Voltage PCB Capacitors

remaining in service at the end of the calendar year.

 (vi) The total weight in kilograms of any PCBs and PCB Items in PCB

Containers, including the identification of container contents,

remaining in service at the facility at the end of the calendar year.

 (vii) For any PCBs or PCB item received from or shipped to another

facility owned or operated by the same generator, the information

required under paragraph (a)(2)(ii)(A) through (a)(2)(ii)(D) of this

section.

 (viii) A record of each telephone call, or other means of

verification agreed upon by both parties, made to each designated

commercial storer or designated disposer to confirm receipt of PCB waste

transported by an independent transporter, as required by Sec. 761.208.

 (b) Disposers and commercial storers of PCB waste. Beginning

February 5, 1990, each owner or operator of a facility (including high

efficiency boiler operations) used for the commercial storage or

disposal of PCBs and PCB Items shall maintain annual records on the

disposition of all PCBs and PCB items at the facility and prepare and

maintain a written annual document log that includes the information

required by paragraphs (b)(2) of this section for PCBs and PCB Items

that were handled as PCB waste at the facility. The written annual

document log shall be prepared by July 1 for the previous calendar year

(January through December). The written annual document log shall be

maintained at each facility for at least 3 years after the facility is

no longer used for the storage or disposal of PCBs and PCB Items except

that, in the case of chemical waste landfills, the annual document log

shall be maintained at least 20 years after the chemical waste landfill

is no longer used for the disposal of PCBs and PCB Items. The annual

records shall be maintained for the same period. The annual records and

written annual document log shall be available at the facility for

inspection by authorized representatives of the EPA. All records and

annual documents required to be prepared and maintained by this section

prior to February 5, 1990 shall continue to be maintained at the

facility for the same time as the annual records and the annual document

log. The annual document for 1989 shall cover the period from January 1,

1989 to February 5, 1990. From the written annual document log the owner

or operator of a facility must prepare the annual report containing the

information required by paragraphs (b)(3)(i) through (b)(3)(vi) of this

section for PCBs and PCB Items that were handled as PCB waste at the

facility during the previous calendar year (January through December).

The

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annual report must be submitted by July 15 of each year for the

preceding calendar year. If the facility ceases commercial PCB storage

or disposal operations, the owner or operator of the facility shall

provide at least 60 days advance written notice to the Regional

Administrator for the region in which the facility is located of the

date the facility intends to begin closure. d

 (1) The annual records shall include the following:

 (i) All signed manifests generated or received at the facility

during the calendar year.

 (ii) All Certificates of Disposal that have been generated or

received by the facility during the calendar year.

 (2) The written annual document log shall include the following:

 (i) The name, address, and EPA identification number of the storage

or disposal facility covered by the annual document log and the calendar

year covered by the annual document log.

 (ii) For each manifest generated or received by the facility during

the calendar year, the unique manifest number and the name and address

of the facility that generated the manifest and the following

information:

 (A) For bulk PCB waste (e.g., in a tanker or truck), its weight in

kilograms, the first date PCB waste placed in the tanker or truck was

removed from service for disposal, the date it was received at the

facility, the date it was placed in transport for off-site disposal (if

applicable), and the date of disposal, (if known ).

 (B) The serial number or other means of identifying each PCB

Article, not in a PCB Container or PCB Article Container, the weight in

kilograms of the PCB waste in the PCB Article, the date it was removed

from service for disposal, the date it was received at the facility, the

date it was placed in transport for off-site disposal (if applicable),

and the date of disposal (if known).

 (C) The unique number assigned by the generator identifying each PCB

Container, a description of the contents of each PCB Container, such as

liquid, soil, cleanup debris, etc., including the total weight of the

PCB waste in kilograms in each PCB Container, the first date PCB waste

placed in each PCB Container was removed from service for disposal, the

date it was received at the facility, the date each PCB Container was

placed in transport for off-site storage or disposal (as applicable),

and the date the PCB Container was disposed of (if known).

 (D) The unique number assigned by the generator identifying each PCB

Article Container, a description of the contents of each PCB Article

Container, such as pipes, capacitors, electric motors, pumps, etc.,

including the total weight in kilograms of the PCB waste in each PCB

Article Container, the first date a PCB Article placed in each PCB

Article Container was removed from service for disposal, the date it was

received at the facility, the date each PCB Article Container was placed

in transport for off-site storage or disposal (as applicable), and the

date the PCB Article Container was disposed of (if known).

 (E) Disposers of PCB waste shall include the confirmed date of

disposal for items in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(D) of

this section.

 (iii) For any PCB waste disposed at a facility that generated the

PCB waste or any PCB waste that was not manifested to the facility, the

information required under paragraph (b)(2)(ii)(A) through (b)(2)(ii)(E)

of this section.

 (3) The owner or operator of a PCB disposal or commercial storage

facility shall submit an annual report, which briefly summarizes the

records and annual document log required to be maintained and prepared

under paragraphs (b)(1) and (b)(2) of this section, to the Regional

Administrator of the EPA region in which the facility is located by July

15 of each year, beginning with July 15, 1991. The first annual report

submitted on July 15, 1991, shall be for the period starting February 5,

1990 and ending December 31, 1990. The annual report shall contain no

confidential business information. The annual report shall consist of

the information listed in paragraphs (b)(3)(i) through (b)(3)(vi) of

this section.

 (i) The name, address, and EPA identification number of the facility

covered by the annual report for the calendar year.

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 (ii) A list of the numbers of all signed manifests of PCB waste

initiated or received by the facility during that year.

 (iii) The total weight in kilograms of bulk PCB waste, PCB waste in

PCB Transformers, PCB waste in PCB Large High or Low Voltage Capacitors,

PCB waste in PCB Article Containers, and PCB waste in PCB Containers in

storage at the facility at the beginning of the calendar year, received

or generated at the facility, transferred to another facility, or

disposed of at the facility during the calendar year. The information

must be provided for each of these categories, as appropriate.

 (iv) The total number of PCB Transformers, the total number of PCB

Large High or Low Voltage Capacitors, the total number of PCB Article

Containers, and the total number of PCB Containers in storage at the

facility at the beginning of the calendar year, received or generated at

the facility, transferred to another facility, or disposed of at the

facility during the calendar year. The information must be provided for

each of these categories, as appropriate.

 (v) The total weight in kilograms of each of the following PCB

categories: bulk PCB waste, PCB waste in PCB Transformers, PCB waste in

PCB Large High or Low Voltage Capacitors, PCB waste in PCB Article

Containers, and PCB waste in PCB Containers remaining in storage for

disposal at the facility at the end of the calendar year.

 (vi) The total number of PCB Transformers, the total number of PCB

Large High or Low Voltage Capacitors, the total number of PCB Article

Containers, and the total number of PCB Containers remaining in storage

for disposal at the facility at the end of the calendar year.

 (vii) The requirement to submit annual reports to the Regional

Administrator continues until the submission of the annual report for

the calendar year during which the facility ceases PCB storage or

disposal operations. Storage operations have not ceased until all PCB

waste, including any PCB waste generated during closure, has been

removed from the facility.

 (4) Whenever a commercial storer of PCB waste accepts PCBs or PCB

Items at his storage facility and transfers the PCB waste off-site to

another facility for storage or disposal, the commercial storer of PCB

waste shall initiate a manifest under subpart K of this part for the

transfer of PCBs or PCB Items to the next storage or disposal facility.

 Note: Any requirements for weights in kilograms of PCBs may be

calculated values if the internal volume of PCBs in containers and

transformers is known and included in the reports, together with any

assumptions on the density of the PCBs contained in the containers or

tranformers. If the internal volume of PCBs is not known, a best

estimate may be used.

 (c) Incineration facilities. Each owner or operator of a PCB

incinerator facility shall collect and maintain for a period of 5 years

from the date of collection the following information, in addition to

the information required in paragraph (b) of this section:

 (1) When PCBs are being incinerated, the following continuous and

short-interval data:

 (i) Rate and quantity of PCBs fed to the combustion system as

required in Sec. 761.70(a)(3);

 (ii) Temperature of the combustion process as required in

Sec. 761.70(a)(4); and

 (iii) Stack emission product to include O<INF>2</INF>, CO, and

CO<INF>2</INF> as required in Sec. 761.70(a)(7).

 (2) When PCBs are being incinerated, data and records on the

monitoring of stack emissions as required in Sec. 761.70(a)(6).

 (3) Total weight in kilograms of any solid residues generated by the

incineration of PCBs and PCB Items during the calendar year, the total

weight in kilograms of any solid residues disposed of by the facility in

chemical waste landfills, and the total weight in kilograms of any solid

residues remaining on the facility site.

 (4) When PCBs and PCB Items are being incinerated, additional

periodic data shall be collected and maintained as specified by the

Regional Administrator pursuant to Sec. 761.70(d)(4).

 (5) Upon any suspension of the operation of any incinerator pursuant

to Sec. 761.70(a)(8), the owner or operator of such an incinerator shall

prepare a document. The document shall, at a minimum, include the date

and time of the suspension and an explanation of the circumstances

causing the suspension

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of operation. The document shall be sent to the appropriate Regional

Administrator within 30 days of any such suspension.

 (d) Chemical waste landfill facilities. Each owner or operator of a

PCB chemical waste landfill facility shall collect and maintain until at

least 20 years after the chemical waste landfill is no longer used for

the disposal of PCBs the following information in addition to the

information required in paragraph (b) of this section:

 (1) Any water analysis obtained in compliance with

Sec. 761.75(b)(6)(iii); and

 (2) Any operations records including burial coordinates of wastes

obtained in compliance with Sec. 761.75(b)(8)(ii).

 (e) High efficiency boiler facilities. Each owner or operator of a

high efficiency boiler used for the disposal of liquids between 50 and

500 ppm PCB shall collect and maintain for a period of 5 years the

following information, in addition to the information required in

paragraph (b) of this section:

 (1) For each month PCBs are burned in the boiler the carbon monoxide

and excess oxygen data required in Sec. 761.60(a)(2)(iii)(A)(8) and

Sec. 761.60(a)(3)(iii)(A)(8);

 (2) The quantity of PCBs burned each month as required in

Sec. 761.60(a)(2)(iii)(A)(7) and Sec. 761.60(a)(3)(iii)(A)(7); and

 (3) For each month PCBs (other than mineral oil dielectric fluid)

are burned, chemical analysis data of the waste as required in

Sec. 761.60(a)(3) (iii)(B)(6).

 (f) Retention of special records by storage and disposal facilities.

In addition to the information required to be maintained under

paragraphs (b), (c), (d) and (e) of this section, each owner or operator

of a PCB storage or disposal facility (including high efficiency boiler

operations) shall collect and maintain for the time period specified in

paragraph (b) of this section the following data:

 (1) All documents, correspondence, and data that have been provided

to the owner or operator of the facility by any State or local

government agency and that pertain to the storage or disposal of PCBs

and PCB Items at the facility.

 (2) All documents, correspondence, and data that have been provided

by the owner or operator of the facility to any State or local

government agency and that pertain to the storage or disposal of PCBs

and PCB Items at the facility.

 (3) Any applications and related correspondence sent by the owner or

operator of the facility to any local, State, or Federal authorities in

regard to waste water discharge permits, solid waste permits, building

permits, or other permits or authorizations such as those required by

Secs. 761.70(d) and 761.75(c).

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982,

and further redesignated at 47 FR 37360, Aug. 25, 1982; 49 FR 28191,

July 10, 1984; 53 FR 12524, Apr. 15, 1988; 54 FR 52750, Dec. 21, 1989;

55 FR 26205, June 27, 1990; 58 FR 34205, June 23, 1993]

Sec. 761.185 Certification program and retention of records by

 importers and persons generating PCBs in excluded

 manufacturing processes.

 (a) In addition to meeting the basic requirements of Sec. 761.1(f)

and the definition of excluded manufacturing processes at Sec. 761.3,

manufacturers with processes inadvertently generating PCBs and importers

of products containing inadvertently generated PCBs must report to EPA

any excluded manufacturing process or imports for which the

concentration of PCBs in products leaving the manufacturing site or

imported is greater than 2 micrograms per gram (2 <greek-m>g/g, roughly

2 ppm) for any resolvable gas chromatographic peak. Such reports must be

filed by October 1, 1984 or, if no processes or imports require reports

at the time, within 90 days of having processes or imports for which

such reports are required.

 (b) Manufacturers required to report by paragraph (a) of this

section must transmit a letter notifying EPA of the number, the type,

and the location of excluded manufacturing processes in which PCBs are

generated when the PCB level in products leaving any manufacturing site

is greater than 2 <greek-m>g/g for any resolvable gas chromatographic

peak. Importers required to report by paragraph (a) of this section must

transmit a letter notifying EPA of the concentration of PCBs in imported

products when the PCB concentration

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of products being imported is greater than 2 <greek-m>g/g for any

resolvable gas chromatographic peak. Persons must also certify the

following:

 (1) Their compliance with all applicable requirements of

Sec. 761.1(f), including any applicable requirements for air and water

releases and process waste disposal.

 (2) Whether determinations of compliance are based on actual

monitoring of PCB levels or on theoretical assessments.

 (3) That such determinations of compliance are being maintained.

 (4) If the determination of compliance is based on a theoretical

assessment, the letter must also notify EPA of the estimated PCB

concentration levels generated and released.

 (c) Any person who reports pursuant to paragraph (a) of this

section:

 (1) Must have performed either a theoretical analysis or actual

monitoring of PCB concentrations.

 (2) Must maintain for a period of three years after ceasing process

operations or importation, or for seven years, whichever is shorter,

records containing the following information:

 (i) Theoretical analysis. Manufacturers records must include: the

reaction or reactions believed to be generating PCBs; the levels of PCBs

generated; and the levels of PCBs released. Importers records must

include: the reaction or reactions believed to be generating PCBs and

the levels of PCBs generated; the basis for all estimations of PCB

concentrations; and the name and qualifications of the person or persons

performing the theoretical analysis; or

 (ii) Actual monitoring. (A) The method of analysis.

 (B) The results of the analysis, including data from the Quality

Assurance Plan.

 (C) Description of the sample matrix.

 (D) The name of the analyst or analysts.

 (E) The date and time of the analysis.

 (F) Numbers for the lots from which the samples are taken.

 (d) The certification required by paragraph (b) of this section must

be signed by a responsible corporate officer. This certification must be

maintained by each facility or importer for a period of three years

after ceasing process operation or importation, or for seven years,

whichever is shorter, and must be made available to EPA upon request.

For the purpose of this section, a responsible corporate officer means:

 (1) A president, secretary, treasurer, or vice-president of the

corporation in charge of a principal business function, or any other

person who performs similar policy or decision-making functions for the

corporation.

 (2) The manager of one or more manufacturing, production, or

operating facilities employing more than 250 persons or having gross

annual sales or expenditures exceeding $25,000,000 (in second quarter

1980 dollars), if authority to sign documents has been assigned or

delegated to the manager in accordance with corporate procedures.

 (e) Any person signing a document under paragraph (d) of this

section shall also make the following certification:

 I certify under penalty of law that this document and all

attachments were prepared under my direction or supervision in

accordance with a system designed to assure that qualified personnel

properly gather and evaluate information. Based on my inquiry of the

person or persons directly responsible for gathering information, the

information is, to the best of my knowledge and belief, true, accurate,

and complete. I am aware that there are significant penalties for

falsifying information, including the possibility of fines and

imprisonment for knowing violations.

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (f) This report must be submitted to the Document Control Office

(7407), Office of Pollution Prevention and Toxics, U.S. Environmental

Protection Agency, Room G-099, 401 M St., SW., Washington, DC., 20460,

ATTN: PCB Notification. This report must be submitted by October 1, 1984

or within 90 days of starting up processes or commencing importation of

PCBs.

 (g) This certification process must be repeated whenever process

conditions

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are significantly modified to make the previous certification no longer

valid.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[49 FR 28191, July 10, 1984; 49 FR 33019, Aug. 20, 1984, as amended at

53 FR 12524, Apr. 15, 1988; 58 FR 34205, June 23, 1993; 59 FR 33697,

June 30, 1994; 60 FR 34465, July 3, 1995]

Sec. 761.187 Reporting importers and by persons generating PCBs in

 excluded manufacturing processes.

 In addition to meeting the basic requirements of Sec. 761.1(f) and

the definition of excluded manufacturing process at Sec. 761.3, PCB-

generating manufacturing processes or importers of PCB-containing

products shall be considered ``excluded manufacturing processes'' only

when the following conditions are met:

 (a) Data are reported to the EPA by the owner/operator or importer

concerning the total quantity of PCBs in product from excluded

manufacturing processes leaving any manufacturing site in any calendar

year when such quantity exceeds 0.0025 percent of that site's rated

capacity for such manufacturing processes as of October 1, 1984; or the

total quantity of PCBs imported in any calendar year when such quantity

exceeds 0.0025 percent of the average total quantity of such product

containing PCBs imported by such importer during the years 1978, 1979,

1980, 1981 and 1982.

 (b) Data are reported to the EPA by the owner/operator concerning

the total quantity of inadvertently generated PCBs released to the air

from excluded manufacturing processes at any manufacturing site in any

calendar year when such quantity exceeds 10 pounds.

 (c) Data are reported to the EPA by the owner/operator concerning

the total quantity of inadvertently generated PCBs released to water

from excluded manufacturing processes from any manufacturing site in any

calendar year when such quantity exceeds 10 pounds.

 (d) These reports must be submitted to the Document Control Office

(7407), Office of Pollution Prevention and Toxics, U.S. Environmental

Protection Agency, Room G-099, 401 M St., SW., Washington, DC., 20460,

ATTN: PCB Notification.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[49 FR 28192, July 10, 1984, as amended at 53 FR 12524, Apr. 15, 1988;

58 FR 34205, June 23, 1993; 59 FR 33697, June 30, 1994; 60 FR 34465,

July 3, 1995]

Sec. 761.193 Maintenance of monitoring records by persons who import,

 manufacture, process, distribute in commerce, or use chemicals

 containing inadvertently generated PCBs.

 (a) Persons who import, manufacture, process, distribute in

commerce, or use chemicals containing PCBs present as a result of

inadvertent generation or recycling who perform any actual monitoring of

PCB concentrations must maintain records of any such monitoring for a

period of three years after a process ceases operation or importing

ceases, or for seven years, whichever is shorter.

 (b) Monitoring records maintained pursuant to paragraph (a) of this

section must contain:

 (1) The method of analysis.

 (2) The results of the analysis, including data from the Quality

Assurance Plan.

 (3) Description of the sample matrix.

 (4) The name of the analyst or analysts.

 (5) The date and time of the analysis.

 (6) Numbers for the lots from which the samples are taken.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[49 FR 28193, July 10, 1984, as amended at 58 FR 34205, June 23, 1993]

 Subpart K--PCB Waste Disposal Records and Reports

 Source: 54 FR 52752, Dec. 21, 1989, unless otherwise noted.

Sec. 761.202 EPA identification numbers.

 (a) General. Any generator, commercial storer, transporter, or

disposer of PCB waste who is required to have an EPA identification

number under this subpart must notify EPA of his/her PCB waste handling

activities, using the notification procedures and form described in

Sec. 761.205. EPA will confirm

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the EPA identification number of facilities already assigned one, and

will assign an EPA identification number to facilities that do not have

one.

 (b) Prohibitions. After June 4, 1990:

 (1) A generator of PCB waste shall not:

 (i) Process, store, dispose of, transport, or offer for

transportation PCB waste without having received an EPA identification

number from the Agency. A generator of PCB waste who is exempted from

notification under Sec. 761.205(c)(1) or who notifies EPA in a timely

manner under Sec. 761.205(c)(2)(i), but has not yet received a unique

identification number, shall be regarded as having received from EPA the

identification number ``40 CFR PART 761.''

 (ii) Offer the PCB waste to transporters, disposers, or commercial

storers of PCB waste who have not received an EPA identification number.

 (2) A transporter of PCB waste shall not:

 (i) Transport PCB waste without having received an EPA

identification number from EPA.

 (ii) Deliver PCB waste to transporters, disposers, or commercial

storers of PCB waste that have not received an EPA identification

number.

 (3) A commercial storer of PCB waste shall not accept any PCB waste

for storage without having received an EPA identification number from

EPA.

 (4) A disposer of PCB waste shall not accept any PCB waste for

disposal without having received an EPA identification number from EPA.

A disposer of PCB waste who owns more than one disposal facility or

mobile treatment unit shall not accept waste unless the disposer has

received an EPA identification number for each facility or mobile unit.

 (c) PCB waste handled prior to effective date of this subpart.

Generators (other than generators exempt from notification under

Sec. 761.205(c)(1)), commercial storers, transporters, and disposers of

PCB waste who are required to have EPA identification numbers under this

subpart, and who were engaged in PCB waste handling activities on or

prior to February 5, 1990, are not subject to the prohibitions of

paragraph (b) of this section if they have applied for an EPA

identification number in accordance with the applicable notification

procedures of Sec. 761.205. Such persons shall use the EPA

identification number ``40 CFR PART 761,'' or a number assigned to the

persons by EPA or a State under RCRA, until EPA issues to such persons a

specific identification number under Sec. 761.205(a), (b), or (c).

 (d) PCB waste first handled after effective date of this subpart.

Generators (other than generators exempt from notification under

Sec. 761.205(c)(1)), commercial storers, transporters, and disposers of

PCB waste who are required to have EPA identification numbers under this

subpart, and who first engage in PCB waste activities after February 5,

1990, are subject to the prohibitions in paragraph (b) of this section.

Sec. 761.205 Notification of PCB waste activity (EPA Form 7710-53).

 (a)(1) All commercial storers, transporters, and disposers of PCB

waste who were engaged in PCB waste handling activities on or prior to

February 5, 1990 shall notify EPA of their PCB waste activities by

filing EPA Form 7710-53 with EPA by no later than April 4, 1990. Upon

receiving the notification form, EPA will assign an EPA identification

number to each entity that notifies.

 (2) All generators (other than generators exempt from notification

under paragraph (c)(1) of this section), commercial storers,

transporters, and disposers of PCB waste who first engage in PCB waste

handling activities after February 5, 1990, shall notify EPA of their

PCB waste activities by filing EPA Form 7710-53 with EPA prior to

engaging in PCB waste handling activities.

 (3) Any person required to notify EPA under this section shall file

with EPA Form 7710-53. Copies of EPA Form 7710-53 are available from the

Operation Branch (7404), Office of Pollution Prevention and Toxics,

Environmental Protection Agency, 401 M St. SW, Washington, DC 20460.

Descriptive information and instructions for filling in the form are

included in paragraphs (a)(4) (i) through (vii) of this section.

 (4) All of the following information shall be provided to EPA on

Form 7710-53:

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 (i) The name of the facility, and the name of the owner or operator

of the facility.

 (ii) EPA identification number, if any, previously issued to the

facility.

 (iii) The facility's mailing address.

 (iv) The location of the facility.

 (v) The facility's installation contact and telephone number.

 (vi) The type of PCB waste activity engaged in at the facility.

 (vii) Signature of the signer of the certification statement, typed

or printed name and official title of signer, and date signed.

 (viii) EPA has determined that the information in paragraphs

(a)(4)(i) through (a)(4)(vii) of this section shall not be treated as

confidential business information. This information will be disclosed to

the public without further notice to the submitter unless the submitter

provides a written justification (submitted with the notification form)

which demonstrates extraordinary reasons why the information should be

entitled to confidential treatment.

 (b) Generators (other than those generators exempt from notification

under paragraph (c)(1) of this section), commercial storers,

transporters, and disposers of PCB waste who have previously notified

EPA or a State of hazardous waste activities under RCRA shall notify EPA

of their PCB waste activities under this part by filing EPA Form 7710-53

with EPA by no later than April 4, 1990. The notification shall include

the EPA identification number previously issued by EPA or the State and

upon receipt of the notification, EPA shall verify and authorize the use

of the previously issued identification number for PCB waste activities.

 (c)(1) Generators of PCB waste need not notify EPA and receive

unique EPA identification numbers under this section, unless their PCB

waste activities are described in paragraph (c)(2) of this section.

Generators exempted from notifying EPA under this paragraph shall use

the generic identification number ``40 CFR PART 761'' on the manifests,

records, and reports which they shall prepare under this subpart, unless

such generators elect to use a unique EPA identification number

previously assigned to them under RCRA by EPA or a State.

 (2) Generators of PCB waste who use, own, service, or process PCBs

or PCB Items shall notify EPA of their PCB waste activities only if they

own or operate PCB storage facilities subject to the storage

requirements of Sec. 761.65 (b) or (c)(7). Such generators shall notify

EPA in the following manner:

 (i) Generators storing PCB waste subject to the storage requirements

of Sec. 761.65 (b) or (c)(7) shall notify EPA by filing EPA Form 7710-53

with EPA by no later than April 4, 1990.

 (ii) Generators who desire to commence storage of PCB waste after

February 5, 1990 shall notify EPA and receive an EPA identification

number before they may commence storage of PCBs at their facilities

established under Sec. 761.65 (b) or (c)(7).

 (iii) A separate notification shall be submitted to EPA for each PCB

storage facility owned or operated by generators of PCB waste. Upon

receiving these notifications, EPA will assign generators unique EPA

identification numbers for each storage facility notifying EPA under

this section.

 (d) Persons required to notify under this section shall file EPA

Form 7710-53 with EPA by mailing the form to the following address:

Chief, Operation Branch (7404), Office of Pollution Prevention and

Toxics, Environmental Protection Agency, 401 M St., SW, Washington, DC

20460.

 (e) The requirements under this section to notify EPA and obtain EPA

identification numbers shall in no case excuse compliance by any person

subject to the 1-year limit on storage prior to disposal under

Sec. 761.65(a).

[54 FR 52752, Dec. 21, 1989, as amended at 58 FR 15809, Mar. 24, 1993;

58 FR 34205, June 23, 1993; 59 FR 33697, June 30, 1994]

Sec. 761.207 The manifest--general requirements.

 (a) A generator who relinquishes control over PCB wastes by

transporting, or offering for transport by his own vehicle or by a

vehicle owned by another person, PCB waste for commercial off-site

storage or off-site disposal shall prepare a manifest on EPA Form 8700-

22, and if necessary, a continuation sheet. The generator shall specify:

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 (1) For each bulk load of PCBs, the identity of the PCB waste, the

earliest date of removal from service for disposal, and the weight in

kilograms of the PCB waste.

 (2) For each PCB Article Container or PCB Container, the unique

identifying number, type of PCB waste (e.g., soil, debris, small

capacitors), earliest date of removal from service for disposal, and

weight in kilograms of the PCB waste contained.

 (3) For each PCB Article not in a PCB Container or PCB Article

Container, the serial number if available, or other identification if

there is no serial number, the date of removal from service for

disposal, and weight in kilograms of the PCB waste in each PCB Article.

 (b) EPA does not maintain supplies of printed copies of Form 8700-22

for public use, although printed copies of the manifest may be available

from State offices. Camera-ready copies of the form are available for

printing purposes from State offices, EPA Regional Offices, and EPA

Headquarters.

 (c) If the State to which the shipment is manifested (i.e.,

consignment State) supplies the manifest and requires its use, then the

generator must use that manifest.

 (d) If the consignment State does not supply the manifest, but the

State in which the generator is located (i.e., generator State) supplies

the manifest and requires its use, then the generator must use that

State's manifest.

 (e) If both the consignment State and the generator State supply

manifests and require their use, the generator must use the consignment

State's manifest.

 (f) If neither the generator State nor the consignment State

supplies the manifest, the generator may obtain the manifest from any

source.

 (g) A generator shall designate on the manifest one off-site

commercial storage or disposal facility approved under this part for the

commercial storage or disposal of the PCBs and PCB Items described on

the manifest.

 (h) If the transporter is unable to deliver the PCB waste to the

designated disposer or commercial storer, the transporter must contact

the generator of the PCB waste for instructions. The generator shall

either designate another approved disposer or commercial storer, or

instruct the transporter to return the PCB waste back to the generator.

 (i) The manifest which accompanies the PCB waste shall consist of at

a minimum the number of copies required to provide the generator, the

initial transporter, each subsequent transporter, and the owner or

operator of the designated commercial storage or disposal facility with

one legible copy each for their records, and one additional copy to be

returned to the generator by the owner or operator of the first

designated commercial storage or disposal facility.

 (j) The requirements of this section apply only to PCB wastes as

defined in Sec. 761.3. This includes PCB wastes with PCB concentrations

below 50 ppm where the PCB concentration below 50 ppm was the result of

dilution; these PCB wastes are required, under Sec. 761.1(b), to be

managed as if they contained PCB concentrations greater than 50 ppm. An

example of such a PCB waste is spill cleanup material containing less

than 50 ppm PCBs when the spill involved material containing greater

than 50 ppm.

Sec. 761.208 Use of the manifest.

 (a)(1) The generator of PCB waste shall:

 (i) Sign the manifest certification by hand.

 (ii) Obtain the handwritten signature of the initial transporter and

date of acceptance on the manifest.

 (iii) Retain one copy among its records in accordance with

Sec. 761.209(a).

 (iv) Give to the transporter the remaining copies of the manifest

that will accompany the shipment of PCB waste.

 (2) For bulk shipments of PCB waste within the United States

transported solely by water, the generator shall send three copies of

the manifest dated and signed in accordance with this section directly

to the owner or operator of the designated commercial storage or

disposal facility. Copies of the manifest are not required for each

transporter.

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 (3) For rail shipments of PCB waste within the United States which

originate at the site of generation, the generator shall send at least

three copies of the manifest dated and signed in accordance with this

section to:

 (i) The next non-rail transporter, if any.

 (ii) The designated commercial storage or disposal facility if

transported solely by rail.

 (4) When a generator has employed an independent transporter to

transport the PCB waste to a commercial storer or disposer, the

generator shall confirm by telephone, or by other means of confirmation

agreed to by both parties, that the commercial storer or disposer

actually received the manifested waste. The generator shall confirm

receipt of the waste by close of business the day after he receives the

manifest hand-signed by the commercial storer or disposer, in accordance

with paragraph (c)(1)(iv) of this section. If the generator has not

received the hand-signed manifest within 35 days after the independent

transporter accepted the PCB waste, the generator shall telephone, or

communicate with by some other agreed-upon means, the disposer or

commercial storer to determine whether the PCB waste has actually been

received. If the PCB waste has not been received, the generator shall

contact the independent transporter to determine the disposition of the

PCB waste. If the generator has not received a hand-signed manifest from

an EPA-approved facility within 10 days from the date of the telephone

call or other agreed upon means of communication, to the independent

transporter, the generator shall submit an exception report to the EPA

Regional Administrator for the Region in which the generator is located,

as specified in Sec. 761.215. The generator shall retain a written

record of all telephone or other confirmations to be included in the

annual document log, in accordance with Sec. 761.180.

 (b)(1) A transporter shall not accept PCB waste from a generator

unless it is accompanied by a manifest signed by the generator in

accordance with paragraph (a)(1) of this section, except that a manifest

is not required if any one of the following conditions exists:

 (i) The shipment of PCB waste consists solely of PCB wastes with PCB

concentrations below 50 ppm, unless the PCB concentration below 50 ppm

was the result of dilution, in which case Sec. 761.1(b) requires that

the waste be managed as if it contained PCBs at the concentration prior

to dilution.

 (ii) The PCB waste is accepted by the transporter for transport only

to a storage or disposal facility owned or operated by the generator of

the PCB waste.

 (2) Before transporting the PCB waste, the transporter shall sign

and date the manifest acknowledging acceptance of the PCB waste from the

generator. The transporter shall return a signed copy to the generator

before leaving the generator's facility.

 (3) The transporter shall ensure that the manifest accompanies the

PCB waste.

 (4) A transporter who delivers PCB waste to another transporter, or

to the designated commercial storer or disposer of PCB waste, shall:

 (i) Obtain the date of delivery and the handwritten signature of the

subsequent transporter of PCB waste, or of the owner or operator of the

designated commercial storage or disposal facility on the manifest.

 (ii) Retain one copy of the manifest in accordance with

Sec. 761.209(b).

 (iii) Give the remaining copies of the manifest to the accepting

transporter of PCB waste, or to the designated commercial storage or

disposal facility.

 (5) The requirements of paragraphs (b) (3) and (4) of this section

shall not apply to transporters of bulk shipments by water if all of the

following conditions are met:

 (i) The PCB waste is delivered by water (bulk shipment) to the

designated commercial storage or disposal facility.

 (ii) A shipping paper containing all the information required on the

manifest (excluding EPA identification number, generator certification,

and signatures) accompanies the PCB waste.

 (iii) The transporter delivering the PCB waste obtains the date of

delivery and handwritten signature of the owner or operator of the

designated

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commercial storage or disposal facility on either the manifest or the

shipping paper.

 (iv) The person delivering the PCB waste to the initial water (bulk

shipment) transporter obtains the date of delivery and signature of the

water (bulk shipment) transporter on the manifest and forwards it to the

designated facility.

 (v) A copy of the shipping paper or manifest is retained by each

water (bulk shipment) transporter in accordance with Sec. 761.209(b).

 (6) For shipments involving rail transportation, the requirements of

paragraphs (b)(3) and (b)(4) of this section shall not apply. Instead,

the requirements described at Sec. 263.20(f) of this chapter for the

rail transportation of hazardous waste apply to such shipments. The rail

transporter shall retain one copy of the manifest or rail shipping paper

in accordance with Sec. 761.209(b).

 (7) The transporter shall deliver the entire quantity of PCB waste

accepted from a generator or transporter to either of the following

destinations:

 (i) The designated commercial storage or disposal facility listed on

the manifest.

 (ii) The next designated transporter of PCB waste.

 (8) If the PCB waste cannot be delivered in accordance with

paragraph (b)(7) of this section, the transporter shall contact the

generator for further directions and shall revise the manifest and/or

return the PCB waste according to the generator's instructions.

 (9) No provision of this section shall be construed to affect or

limit the applicability of any requirement applicable to transporters of

PCB waste under regulations issued by the Department of Transportation

(DOT) and set forth at 49 CFR part 171.

 (c)(1) If a commercial storage or disposal facility receives an off-

site shipment of PCB waste accompanied by a manifest, the owner or

operator, or his agent, shall:

 (i) Sign and date each copy of the manifest to certify that the PCB

waste covered by the manifest was received.

 (ii) Note any significant discrepancies in the manifest (as defined

in Sec. 761.210(a)(1)) on each copy of the manifest.

 (iii) Immediately give the transporter at least one copy of the

signed manifest.

 (iv) Within 30 days after the delivery, send a copy of the manifest

to the generator.

 (v) Retain a copy of each manifest among the facility's records in

accordance with Sec. 761.209(d).

 (2) If a commercial storage or disposal facility receives PCB waste

from a rail or water (bulk shipment) transporter accompanied by a

shipping paper containing all the information required on the manifest

except the EPA identification numbers, generator's certification, and

signatures, the owner or operator, or his agent, shall:

 (i) Sign and date each copy of the manifest or shipping paper to

certify that the PCB waste covered by the manifest or shipping paper was

received.

 (ii) Note any significant discrepancies in the manifest or shipping

paper on each copy of the manifest or shipping paper.

 (iii) Immediately give the rail or water transporter at least one

copy of the manifest or shipping paper, if applicable.

 (iv) Within 30 days after the delivery, send a copy of the signed

and dated manifest to the generator; however, if the manifest has not

been received within 30 days after delivery, the owner or operator shall

send a copy of the shipping paper signed and dated to the generator.

 (v) Retain at the commercial storage or disposal facility a copy of

the manifest and shipping paper, if signed in lieu of the manifest, in

accordance with Sec. 761.209(d).

 (3) Whenever an off-site shipment of PCB waste is initiated from a

commercial storage or disposal facility, the owner or operator of the

commercial storage or disposal facility shall comply with the manifest

requirements that apply to generators of PCB waste.

Sec. 761.209 Retention of manifest records.

 (a) A generator of PCB waste shall keep a copy of each manifest

signed in accordance with Sec. 761.208(a)(1) until the

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generator receives a signed copy from the designated commercial storage

or disposal facility which received the PCB waste. The copy signed by

the commercial storer or disposer shall be retained for at least 3 years

from the date the PCB waste was accepted by the initial transporter. A

generator subject to annual document requirements under Sec. 761.180

shall retain copies of each manifest for the period required by

Sec. 761.180(a).

 (b)(1) A transporter of PCB waste shall keep a copy of the manifest

signed by the generator, transporter, and the next designated

transporter, if applicable, or the owner or operator of the designated

commercial storage or disposal facility. This copy shall be retained for

a period of at least 3 years from the date the PCB waste was accepted by

the initial transporter.

 (2) For shipments of PCB waste delivered to the designated

commercial storage or disposal facility by water (bulk shipment), each

water (bulk shipment) transporter shall retain a copy of the shipping

paper described in Sec. 761.208(b)(5)(ii) for a period of at least 3

years from the date the PCB waste was accepted by the initial

transporter.

 (3) For shipments of PCB waste by rail within the United States:

 (i) The initial rail transporter shall keep a copy of the manifest

and the shipping paper required to accompany the PCB waste for a period

of at least 3 years from the date the PCB waste was accepted by the

initial transporter.

 (ii) The final rail transporter shall keep a copy of the signed

manifest, or the required shipping paper if signed by the designated

facility in lieu of the manifest, for a period of at least 3 years from

the date the PCB waste was accepted by the initial transporter.

 (c) The owner or operator of a PCB commercial storage or disposal

facility that receives off-site shipments of PCB waste shall retain at

the facility for at least 3 years a copy of each manifest or shipping

paper that the owner or operator signs in accordance with Sec. 761.208

(c)(1) or (c)(3).

 (d) The periods of record retention required by this section shall

be extended automatically during the course of any outstanding

enforcement action regarding the regulated activity.

[54 FR 52752, Dec. 21, 1989, as amended at 58 FR 34205, June 23, 1993]

Sec. 761.210 Manifest discrepancies.

 (a) Manifest discrepancies are differences between the quantity or

type of PCB waste designated on the manifest or shipping paper and the

quantity or type of PCB waste actually delivered to and received by a

designated facility.

 (1) Significant discrepancies in quantity are:

 (i) Variations greater than 10 percent in weight of PCB waste in

containers.

 (ii) Any variation in piece count, such as a discrepancy of one PCB

Transformer or PCB Container or PCB Article Container in a truckload.

 (2) Significant discrepancies in type of PCB waste are obvious

differences which may be discovered by inspection or waste analysis,

such as the substitution of solids for liquids or the substitution of

high concentration PCBs (above 500 ppm) with lower concentration

materials.

 (b) Upon discovering a significant discrepancy, the owner or

operator of the designated commercial storage or disposal facility shall

attempt to reconcile the discrepancy with the waste generator or

transporter. If the discrepancy is not resolved within 15 days after

receiving the PCB waste, such owner or operator shall immediately submit

to the Regional Administrator for the Region in which the designated

facility is located a letter describing the discrepancy and attempts to

reconcile it, and a copy of the manifest or shipping paper at issue.

[54 FR 52752, Dec. 21, 1989, as amended at 58 FR 34205, June 23, 1993]

Sec. 761.211 Unmanifested waste report.

 (a) After April 4, 1990, if a PCB commercial storage or disposal

facility receives any shipment of PCB waste from an off-site source

without an accompanying manifest or shipping paper (where required in

place of a manifest), and any part of the shipment consists of any PCB

waste regulated for disposal, then the owner or operator of

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the commercial storage or disposal facility shall attempt to contact the

generator, using information supplied by the transporter, to obtain a

manifest or to return the PCB waste.

 (b) If the owner or operator of the commercial storage or disposal

facility cannot contact the generator of the PCB waste, he shall notify

the Regional Administrator of the EPA region in which his facility is

located of the unmanifested PCB waste so that the Regional Administrator

can determine whether further actions are required before the owner or

operator may store or dispose of the unmanifested PCB waste.

 (c) Within 15 days after receiving the unmanifested PCB waste, the

owner or operator shall prepare and submit a report to the Regional

Administrator for the Region in which the commercial storage or disposal

facility is located and to the Regional Administrator for the Region in

which the PCB waste originated, if known. The report may be submitted on

EPA Form 8700-13B, or by a written letter designated ``Unmanifested

Waste Report.'' The report shall include the following information:

 (1) The EPA identification number, name, and address of the PCB

commercial storage or disposal facility.

 (2) The date the commercial storage or disposal facility received

the unmanifested PCB waste.

 (3) The EPA identification number, name, and address of the

generator and transporter, if available.

 (4) A description of the type and quantity of the unmanifested PCB

waste received at the facility.

 (5) A brief explanation of why the waste was unmanifested, if known.

 (6) The disposition made of the unmanifested waste by the commercial

storage or disposal facility, including:

 (i) If the waste was stored or disposed by that facility, was the

generator identified and was a manifest subsequently supplied.

 (ii) If the waste was sent back to the generator, why and when.

[54 FR 52752, Dec. 21, 1989, as amended at 58 FR 34205, June 23, 1993]

Sec. 761.215 Exception reporting.

 (a) A generator of PCB waste, who does not receive a copy of the

manifest with the handwritten signature of the owner or operator of the

designated PCB commercial storage or disposal facility within 35 days of

the date the waste was accepted by the initial transporter, shall

immediately contact the transporter and/or the owner or operator of the

designated facility to determine the status of the PCB waste.

 (b) A generator of PCB waste shall submit an Exception Report to the

Regional Administrator for the Region in which the generator is located

if the generator has not received a copy of the manifest with the

handwritten signature of the owner or operator of the designated

facility within 45 days of the date the waste was accepted by the

initial transporter. The Exception Report shall include the following:

 (1) A legible copy of the manifest for which the generator does not

have confirmation of delivery.

 (2) A cover letter signed by the generator or his authorized

representative explaining the efforts taken to locate the PCB waste and

the results of those efforts.

 (c) A disposer of PCB waste shall submit a One-year Exception Report

to the Regional Administrator for the Region in which the disposal

facility is located whenever the following occurs:

 (1) The disposal facility receives PCBs or PCB Items on a date more

than 9 months from the date the PCBs or PCB Items were removed from

service for disposal, as indicated on the manifest or continuation

sheet; and

 (2) Because of contractual commitments or other factors affecting

the facility's disposal capacity, the disposer of PCB waste could not

dispose of the affected PCBs or PCB Items within 1 year of the date of

removal from service for disposal.

 (d) A generator or commercial storer of PCB waste who manifests PCBs

or PCB Items to a disposer of PCB waste shall submit a One-year

Exception Report to the Regional Administrator for the Region in which

the generator or commercial storer is located whenever the following

occurs:

 (1) The generator or commercial storer transferred the PCBs or PCB

Items

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to the disposer of PCB waste on a date within 9 months from the date of

removal from service for disposal of the affected PCBs or PCB Items, as

indicated on the manifest or continuation sheet; and

 (2) The generator or commercial storer either has not received

within 13 months from the date of removal from service for disposal a

Certificate of Disposal confirming the disposal of the affected PCBs or

PCB Items, or the generator or commercial storer receives a Certificate

of Disposal confirming disposal of the affected PCBs or PCB Items on a

date more than 1 year after the date of removal from service.

 (e) The One-year Exception Report shall include:

 (1) A legible copy of any manifest or other written communication

relevant to the transfer and disposal of the affected PCBs or PCB Items.

 (2) A cover letter signed by the submitter or an authorized

representative explaining:

 (i) The date(s) when the PCBs or PCB Items were removed from service

for disposal.

 (ii) The date(s) when the PCBs or PCB Items were received by the

submitter of the report, if applicable.

 (iii) The date(s) when the affected PCBs or PCB Items were

transferred to a designated disposal facility.

 (iv) The identity of the transporters, commercial storers, or

disposers known to be involved with the transaction.

 (v) The reason, if known, for the delay in bringing about the

disposal of the affected PCBs or PCB Items within 1 year from the date

of removal from service for disposal.

[54 FR 52752, Dec. 21, 1989, as amended at 55 FR 26205, June 27, 1990;

58 FR 34205, June 23, 1993]

Sec. 761.218 Certificate of disposal.

 (a) For each shipment of manifested PCB waste that the owner or

operator of a disposal facility accepts by signing the manifest, the

owner or operator of the disposal facility shall prepare a Certificate

of Disposal for the PCBs and PCB Items disposed of at the facility,

which shall include:

 (1) The identity of the disposal facility, by name, address, and EPA

identification number.

 (2) The identity of the PCB waste affected by the Certificate of

Disposal including reference to the manifest number for the shipment.

 (3) A statement certifying the fact of disposal of the identified

PCB waste, including the date(s) of disposal, and identifying the

disposal process used.

 (4) A certification as defined in Sec. 761.3.

 (b) The Certificate of Disposal shall be sent to the generator

identified on the manifest which accompanied the shipment of PCB waste

within 30 days of the date that disposal of the PCB waste identified on

the manifest was completed.

 (c) The disposal facility shall keep a copy of each Certificate of

Disposal among the records that it retains under Sec. 761.180(b).

 (d)(1) Generators of PCB waste shall keep a copy of each Certificate

of Disposal that they receive from disposers of PCB waste among the

records they retain under Sec. 761.180(a).

 (2) Commercial storers of PCB waste shall keep a copy of each

Certificate of Disposal that they receive from disposers of PCB waste

among the records they retain under Sec. 761.180(b).