BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	)	
	)	
Environmental Protection Services, Inc.	)	TSCA Appeal No. 06-01
	)	
	)	
Docket No. TSCA-03-2001-0331	)	

U.S. EPA, Region III's Response to EAB Request During Oral Argument

During the oral argument on December 13, 2006 in the above-captioned matter, the Environmental Appeals Board requested the U.S. Environmental Protection Agency, Region III, ("Appellee" or the "Region") to research and provide additional guidance and policy statements by the Agency regarding the significance of ownership in determining who is the "generator" of polychlorinated biphenyl ("PCB") waste under the PCB rule at 40 C.F.R. Part 761.

The Region, in consultation with EPA Headquarters, is unaware of any policy document or guidance containing a definition of the term" owner" under the PCB rule. As requested, the Region submits two documents in which the terms "owner" and "generator" of PCB waste are explained: (1) a page from the Preamble to the *Proposed Rule: Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities*, 53 Fed. Reg. 37436 at 37438 (Sept. 26, 1988), Attachment A, and (2) two pages from the Preamble to the *Final Rule: Polychlorinated Biphenyls: Notification and Manifesting for PCB Waste Activities*, 54 Fed. Reg. 52716 at 52717-52718 (Dec. 21, 1989), Attachment B.[1]

The proposed rule provides that the term:

"generator of PCB waste" would be defined as any person whose act or process

[1] The Final Rule in its entirety is set forth as Attachment C.

> produces PCBs that are regulated for disposal under TSCA, or ***whose act first causes*** a "PCB" or "PCB Item" to become subject to the Subpart D disposal requirements of 40 CFR Part 761. ***For example, the "owners" or "users" of the PCB fluids and PCB Items regulated for disposal under TSCA are, or will become, the typical generators of PCB wastes, at such time as they retire their regulated materials (50 ppm or greater) from service.***

53 Fed. Reg. at 37438 [Emphasis Added].

As set forth in the Final Rule, in pertinent part:

> The question of who is the generator of the PCB waste arises when the decision is made to dispose of, rather than repair the equipment.
> To clarify the distinction of who is the generator of the PCB waste in the different servicing contexts, EPA has expanded the definition in the final rule to include ***a person "whose decision causes a PCB material still under his physical control to become subject to subpart D disposal requirements."*** Under the definition in the final rule, ***an owner of the PCB material would be the generator when the owner:***
> ***1. ships electrical equipment off-site to be disposed of or serviced for reclassification, since these activities will produce regulated PCB waste.***
> ***2. Causes, that is, the owner drains or hires a service company to drain, on- or off-site, fluids containing PCBs at a concentration of 50 ppm or more to be shipped off-site for disposal . . . .***
> 3. . . .
> ***In these three cases, the owner is the generator because he either performs the operation that produced the PCB waste himself or hires someone to perform the waste-producing operation, understanding that disposal of PCBs will occur.***

54 Fed. Reg. at 52717 [Emphasis Added].

As stated at oral argument, contractual transfer of ownership alone, of PCB waste, does not control the regulatory status of such waste. In the context of this case, the utility company customers had already made the determination that the materials being sent to Environmental Protection Services, Inc. are waste for disposal.

In addition, the preamble of the Final Rule further clarifies that "[t]he owner is not a generator of PCB waste when he ships PCB-containing equipment off-site for servicing, but has not yet made a decision whether to repair the equipment or to dispose of it . . . . If either the

servicing facility or the owner decides that the equipment cannot be serviced, the equipment becomes PCB waste and the servicer or processor becomes the generator of the PCB waste . . . ." *Id.*[2]

Respectfully submitted,

Cheryl Lynn Jamieson
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U.S. Environmental Protection Agency
Region III

Of Counsel:

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[2] These principles are repeated in the Agency's PCB Q and A Manual (1994 and 2001 ed.), Attachment D. *See* www.epa.gov/pcb, and in two letters written by the Agency in 1990, Attachment E.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, I served the ***U.S. Environmental Protection Agency, Region III's Response to EAB Request During Oral*** **Argument** in the above-captioned matter on the following persons in the manner set forth below:

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Cheryl Lynn Jamieson
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B. Generation of PCB Wastes

In this proposal, the term generator of PCB waste is defined and used in order to maintain consistency with the RCRA tracking system for hazardous wastes, which forms the model for much of today's proposal. The generator concept is fundamental to the RCRA hazardous waste management system, and the term has gained such familiarity over the years among those connected with waste management, that its use in this proposed rule is virtually a necessity. However, the term "generator" itself nowhere appears in the current TSCA disposal regulations for PCBs, although the concept of generating waste applies as much to PCB wastes as to any other material.

For purposes of this proposal, "generator of PCB waste" would be defined as any person whose act or process produces PCBs that are regulated for disposal under TSCA, or whose act first causes a "PCB" or "PCB Item" to become subject to the Subpart D disposal requirements of 40 CFR Part 761. For example, the "owners" or "users" of the PCB fluids and PCB Items regulated for disposal under TSCA are, or will become, the typical generators of PCB wastes, at such time as they retire their regulated materials (50 ppm or greater) from service.

In other circumstances, the term generator connotes broader coverage than mere owner or user of PCBs or PCB Items. For example, a transporter who cleans up PCBs that spill from a transport vehicle may be a generator of PCB waste. Likewise, a disposal facility may at times be a generator of PCB waste, such as when it physically separates PCBs from dielectric fluids, and transports the separated phase (e.g., stillbottoms or sludges) containing PCBs to an approved incinerator for destruction. So, beyond the typical case where an owner or user of PCBs removes PCBs or PCB Items from service, PCB waste may also be "generated" by those who respond to PCB spills, those who drain PCB fluids from PCB Articles during servicing or disposal operations, those who process or distribute in commerce PCB wastes in a form other than that previously manifested, and those who remove PCBs from existing disposal sites, including disposal sites that pre-date the Subpart D disposal requirements for PCBs.

This definition is similar to the RCRA definition of "generator" at 40 CFR 260.10, but it differs from the RCRA definition in one important respect. In the context of this proposal, the term "generator of PCB waste" generally refers to the "person" (see 40 CFR 761.3) who creates PCB wastes, and not, as would be the case under RCRA, to the individual sites where particular PCBs or PCB Items were used before they became wastes.

Section 761.3 defines "person" to include individuals, government entities, corporations, and other business associations, so the effect of the proposed definition of "generator of PCB waste" generally would be to consolidate all of the PCB waste created by a given "person" under one generator identification, regardless of the number of sites that "person" might use, own, or control. The only exception is where another regulation expressly calls for a site-specific meaning of the term "generator of PCB waste." In such a case, the more specific requirement controls. The only site-specific reference to generator proposed here is the requirement that the users, owners, or processors of PCBs or PCB Items who maintain their own § 761.65(b) storage facilities for PCBs must submit unique generator notifications to EPA for each of their PCB storage facilities. In cases where the "generator" owns or operates storage facilities, each site of storage would be a unique "generator of PCB waste" for purposes of this regulation. As such, PCB wastes transported from the storage facilities would be manifested from the storage sites, and the manifests would reference the storage facilities' unique EPA identification numbers. The proposal to treat users' and owners' storage facilities as unique generators is discussed further in Unit IV.B.2. of this preamble. Otherwise, all PCB waste generated by a given individual or company would be identified with the one consolidated generator.

Defining "generator of PCB waste" in this manner for TSCA purposes departs from the RCRA Subtitle C approach. This distinction is made necessary by attributes of the PCB waste universe that set it apart from the RCRA universe. Under RCRA, the typical generator of hazardous waste is an industrial facility that regularly produces waste streams that are fairly predictable from the standpoint of both volumes generated and their composition. The generation of these waste streams is a regular occurrence associated with the manufacturing and processing activities engaged in at the specific facilities or sites. In this context, a site-specific definition of "generator" is sensible.

PCBs, on the other hand, are widely dispersed among millions of "sites" involving end use of electrical equipment and similar articles. In this context, a site-specific definition of "generator" would result in an unwieldy waste tracking system that would be neither workable nor cost-effective. For example, if each site where electrical equipment is used were to be treated as a unique generation site, the utilities could be required to submit unique notifications for each of the more than 12 million mineral oil-filled distribution transformers which they own or operate. This result would overwhelm both EPA and the regulated community. Requiring unique notifications would be inefficient administratively, since significant resource burdens would be associated with issuing for each site a unique identification number, which would be used only one time to track the movement of one item of waste.

The consolidated definition of "generator of PCB waste" proposed here will promote greater regulatory efficiency, without the loss of information that EPA would find highly useful. For example, under the proposal, the 12 million individual distribution transformers would be dispersed among 3,320 utility system generators, a far more reasonable and workable result than would be accomplished under a site-specific definition based on site of use. Greater regulatory efficiency is also anticipated for non-utility entities, such as the non-utility industrial users of PCB Transformers and PCB Capacitors, and those who use PCB Transformers in commercial building installations.

EPA requests specific comments on the extent of consolidation that the proposal will accomplish in terms of defining users or owners of PCBs as generators. To what extent will this proposed definition of "generator of PCB waste" reduce the actual number of generator notifications that EPA will receive under this rule? Further, how will the consolidated definition of generator of PCB waste affect the costs associated with manifesting waste shipments and records retention? Will the proposed definition cause conflicts with State hazardous waste programs that currently regulate PCBs, and if so, how could those conflicts be minimized? Alternative definitions of "generator" are also solicited by the Agency.

C. The Universe of PCB Waste

The PCB regulatory universe is not characterized to any significant degree by sites of new manufacture or processing of PCBs as a part of a facility's regular industrial operations. In fact, the amount of regulated PCB wastes associated with "new" manufacturing by chemical manufacturers and processors (see

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have programs that do not mesh perfectly with the TSCA program, commentors stated that, for the most part, State programs would be aided by this rule in their efforts to track PCB waste beyond their borders. As explained in the proposal, the rule does not preempt State laws and deferred to all more stringent State-imposed requirements. Also, the final rule, as proposed, essentially adopts the same kind of identification numbers used under RCRA and requires use of the uniform manifest, to minimize conflicts with State requirements.

Commentors supported the proposed rule's emphasis on adopting approval requirements for commercial storers, including closure plan and financial responsibility requirements. Commentors also supported the definition of PCB waste generators in a manner that promotes consolidation of PCB waste from individual sites of use to users' storage yards. Also, commentors generally supported EPA's decision to limit the generator notification requirements only to generators who operate their own storage areas, and to use a relinquishment of control criterion to define when a generator must manifest waste. Commentors agreed with the decision to require approvals only for commercial storers, and not for all storage facilities. Coupled with comments that generally approved of the provisions of the proposed rule, were requests and suggestions to improve the regulation by clarifying its coverage and reducing the regulated community's paperwork burdens.

B. Generation of PCB Waste

The proposed rule defined and used the term generator of PCB waste in a manner to maintain as much consistency as possible with the RCRA tracking system for hazardous wastes, which forms the model for much of this rule.

The proposed rule defined "generator of PCB waste" as any person whose act or process produces PCBs that are regulated for disposal under TSCA, or whose act first causes a "PCB" or "PCB Item" to become subject to the subpart D disposal requirements of 40 CFR part 761. See the preamble to the proposed rule (53 FR 37438) for a discussion of which entities could qualify as generators under this definition.

The proposed definition is similar to the RCRA definition of "generator" at 40 CFR 260.10, but it differs from the RCRA definition in one important respect. In the context of the proposed rule, the term "generator of PCB waste" generally referred to the "person" (see 40 CFR 761.3) who creates PCB wastes, and not, as would be the case under RCRA, to the individual sites where particular PCBs or PCB Items were used before they became PCB waste.

Section 761.3 defines "person" to include individuals, government entities, corporations, and other business associations, so the intent of the proposed definition of "generator of PCB waste" generally was to promote the consolidation of all of the PCB waste created by a given "person" under one generator identification, regardless of the number of sites, i.e., each location where that "person" might use, own, or control items of electrical equipment. The only exception is where another regulation expressly calls for a site-specific meaning of the term "generator of PCB waste." In such a case, the site-specific requirement controls. The only site-specific reference to generator in the proposed rule is the requirement that the users, owners, or processors of PCBs or PCB Items who maintain their own § 761.65(b) storage facilities for PCBs must submit unique generator notifications to EPA for each of their PCB storage facilities. In cases where the "generator" owns or operates storage facilities, each site of generator storage is treated as a unique "generator of PCB waste" for purposes of this regulation. As such, PCB waste transported from the storage facilities would be manifested from the storage sites, and the manifests would reference the storage facilities' unique EPA identification numbers. Separate storage areas owned by the same generator on the same property would not require separate identification. The treatment of users' and owners' storage facilities as unique generators in the final rule is discussed further in Unit III.I.2.b. Otherwise, all PCB waste generated by a given individual or company is identified with the one consolidated generator who has a single unique identification number.

EPA received many comments on the definition of "generator of PCB waste." Most commentors approved of the definition. Particularly, they supported the definition to allow consolidation of PCB waste from a user's sites. Clarification is needed, they stated, to spell out the distinction between "use" activities and "waste" activities. There was also concern expressed that the proposal was unclear as to who was the generator when electrical equipment underwent servicing, both in the disposal and repair contexts.

The concept of "use" has not changed with this rule. PCBs and PCB-containing material are not "waste" until they are no longer used for the purpose they were intended for and the decision to dispose of them has been made. When equipment that has failed is shipped offsite for repair, it is still considered to be in use and remains in use while it is being serviced. The question of who is the generator of the PCB waste arises when the decision is made to dispose of, rather than repair the equipment.

To clarify the distinction of who is the generator of the PCB waste in the different servicing contexts, EPA has expanded the definition in the final rule to include a person "whose decision causes a PCB material still under his physical control to become subject to subpart D disposal requirements." Under the definition in the final rule, an owner of the PCB material would be the generator when the owner:

1. Ships electrical equipment off-site to be disposed of or serviced for reclassification, since these activities will produce regulated PCB waste.

2. Causes, that is, the owner drains or hires a service company to drain, on-or off-site, fluids containing PCBs at a concentration of 50 ppm or more to be shipped off-site for disposal, or for processing of equipment or fluid that will reduce its concentration, since regulated PCB waste will result. If a contractor drains the fluid on-site, the manifest would describe the fluid containers as PCB waste. If a contractor drains the fluid off-site, the owner's manifest would describe the equipment containing the fluid as PCB waste.

3. Causes PCB-containing treatment residuals to be generated on-site during servicing or processing for disposal operations conducted on-site by the owner or by a contractor.

In these three cases, the owner is the generator because he either performs the operation that produces the PCB waste himself or hires someone to perform the waste-producing operation, understanding that disposal of PCBs will occur. As a generator, the owner must manifest the PCB Item or equipment. The residuals generated during the processing, however, are generated by the processor. Thus the processor must manifest the PCB-containing residuals or fluids generated by the processing and continue the manifest chain for the equipment, if it is still regulated for disposal after processing.

The owner is not a generator of PCB waste when he ships PCB-containing equipment off-site for servicing, but has not yet made a decision whether to repair the equipment or to dispose of it. Thus, the owner need not manifest the equipment. There is no waste at this point as the equipment is still in use. Typically, the equipment must be

inspected before a decision can be made that the equipment will be disposed of or repaired for use. If either the servicing facility or the owner decides that the equipment cannot be serviced, the equipment becomes PCB waste and the servicer or processor becomes the generator of the PCB waste, (both the equipment and any residuals), and must manifest the PCB waste.

One commentor recommended the RCRA policy of allowing the parties involved in a transaction to determine who would be the responsible generator for compliance requirements. EPA is rejecting this policy for PCBs for the sake of uniformity of its PCB regulations. It is simpler for EPA to enforce this rule if it uses a general definition of responsibility for manifesting PCB waste.

A commentor suggested the term "shipment originator" rather than "generator" be used for a firm that commingles PCBs from different sources for shipment. This terminology would allegedly avoid the liability connotation of generator. EPA does not consider it advisable to introduce another definition since the term "generator" accurately describes the commingler. A shipment originator, who combines PCB waste from different sources into a new commingled shipment, is a generator of PCB waste under this rule and must manifest the commingled PCB waste.

Several comments raised the question of the status of laboratories and the samples they use for analysis. This issue will be discussed in Unit III.D.

As previously stated, the commentors supported the definition of generator which would promote the consolidation of waste from a user's different sites. Thus, one utility commented, it would be required to submit only 1 notification instead of 80. However, some large industrial commentors felt that since all facilities with their own storage areas would have to notify, the consolidation definition was meaningless. In that commentor's case, all 165 facilities have storage areas and all facilities would be required to notify EPA. As stated earlier in this unit, consolidation is employed as a tool to make the number of notifying generators manageable; however, tracking the shipment of PCB waste from storage areas is an essential feature of the cradle-to-grave tracking system. Most storage areas that meet the requirements in 40 CFR 761.65 store large quantities of PCBs in an ongoing manner and, therefore, remain in the category of those PCB waste facilities that the rule covers. While there may be limited exceptions where small quantities will be stored at such facilities, or where one company may operate many such facilities, EPA has decided to retain the notification requirement, as proposed, for generators with PCB storage facilities.

One large corporation wanted clarification that its subsidiaries had the option to notify EPA individually, and that not all were required to use the same identification number. This option exists. Any entity that requests it is given its own unique identification number.

Another comment suggested that where several companies occupy the same site, the site should be treated as one generator for purposes of the rule. These generators share a common storage facility, where their PCB waste is commingled, and feel that a single EPA identification number for the site would be environmentally acceptable and would not interfere with the tracking of the PCB waste generated from that site. EPA accepts this site-oriented treatment with the understanding that a site that stores PCB waste generated by unrelated generators is a commercial storage facility. The facility address would be issued an individual identification number in any event, since the EPA Identification Number system would identify the facility on the basis of the facility's address. The financial assurance demonstration for the common storage facility would have to incorporate adequate financial responsibility by all members of the agreement or one designated member to ensure adequate coverage if any of the participants decided to withdraw from the agreement.

C. Commercial Storers of PCB Waste

As was proposed, "Commercial Storer of PCB waste" means the owner or operator of a storage facility which is subject to the storage facility standards of 40 CFR 761.65 (a), (b), and (c) and which engages in storage activities involving PCB waste generated or owned by others. Commercial storers of PCB waste generally perform PCB waste storage services in exchange for a fee or other compensation, but the receipt of compensation is not necessary to qualify a storage facility as a commercial storer of PCB waste. It is sufficient that the facility stores PCB waste generated or owned by others. Commercial storers of PCB waste are required to comply with the § 761.65 facility standards, the storage facility approval requirements of § 761.65(d), the recordkeeping requirements of § 761.180, and the applicable requirements of the tracking system for PCB waste in this rule.

The definition of commercial storers received many comments regarding when service companies are commercial storers, whether storage of PCBs belonging to an affiliated or subsidiary company makes a facility a commercial storage facility, whether there should be a time or quantity cut-off consideration, the status of laboratories and their samples, and the status of natural gas distribution companies that collect PCB-containing liquids from their customers' equipment.

EPA has modified the definition of commercial storer in three ways in the final rule to address these comments. First, in the final rule, the "owned by others" criterion has been dropped in favor of language that limits coverage to PCB waste generated by others and PCB waste that is removed during servicing of others' electrical equipment and brokered for disposal. Second, EPA has added a de minimis quantity standard, so that a facility that stored 500 gallons or less of PCBs at any time would not require approval. Third, the definition in the final rule states that a generator who stores his own waste is not required to seek approval as a commercial storer unless the PCB waste was removed while servicing the equipment owned by others and brokered for disposal. The definition also states that those storage facilities that do not require approval under § 761.65(d) are still subject to the storage requirements of § 761.65(a), (b), and (c), where applicable.

The small quantity exception exempts from the commercial storage approval requirements those entities which acquire small quantities of PCB waste which others may have generated. This specific exception is consistent with EPA's decision to eliminate the "owned by others" language from the definition of commercial storer of PCB waste. These changes address many of the concerns raised by commentors that waste storage that was a small and incidental part of an entity's business would be subject to the burdens of the approval process. For example, comments suggested that the proposed definition would require approvals from companies performing remedial actions at Superfund sites, or from natural gas distribution companies who removed small quantities of condensates from their customers' equipment. These commentors pointed out that including such storage within the scope of the definition of commercial storage would not be consistent with EPA's avowed intention of improving its oversight over the activities of the commercial facilities that are in the business of brokering or storing waste. The final rule reflects EPA's agreement with these comments.

While comments suggested several alternative quantities and time limits for a small quantity/short time cut-off, EPA selected less than 500 gallons as a reasonable benchmark that would distinguish the merely incidental storage of PCB waste from storage that is more characteristic of a larger, commercial activity. Thus, the exception is for any facility whose total PCB waste holdings do not exceed 500 gallons at any time. The 500 gallon cut-off corresponds roughly to the contents of two medium-sized electrical transformers, or ten 55-gallon drums. EPA does not believe that it would be cost-effective to require the smaller, incidental storers to bear the significant costs of preparing storage approval applications. In addition, EPA believes that the resources which EPA will commit to the approval process would be more effectively utilized if focused on the larger commercial operations (*e.g.*, brokers) which were identified as the greatest problems in the oversight investigations by GAO.

Moreover, EPA does not believe that the potential risks associated with this exemption are great relative to the costs of extending the approval process to cover these facilities. Such facilities are nevertheless subject to the requirement to store the PCB waste in proper facilities described in 40 CFR 761.65 and to dispose of a container of PCB waste within 1 year from the date when the first quantity of the PCB waste in the container was removed from service for disposal.

EPA agrees with the comment that a service company is a commercial storer when it drains and stores for disposal a customer's fluid that has been determined to be PCB waste. EPA has expanded the definition of commercial storer in the final rule to clarify that the storage of PCB fluids (greater than 50 ppm) removed for disposal while servicing the equipment of others is an activity that makes one a commercial storer. EPA also agrees with the comment that a service company is not a commercial storer when it buys equipment for resale and subsequently drains the oil from the equipment for disposal. When the buyer drains the oil, the buyer is a generator of PCB waste, and the drained fluid must be stored in an area that meets the requirements in § 761.65 for storage for disposal. Also, service companies that drain customers' fluids for disposal are exempted from commercial storage approval requirements if they qualify for the small quantity exemption, that is, storage of less than 500 gallons of PCB fluid at any time.

The issue of storage between parent-subsidiaries, sibling companies, member companies of public power associations, and companies held by common holding companies has been reviewed. For the purposes of the final rule, storage of one company's PCB waste "by a related company" is not commercial storage. Therefore, storage between "related companies" is exempt in the final rule from "commercial storer" status. "Related companies" include a parent company and its subsidiaries, sibling companies owned by the same parent company, companies owned by a common holding company, and members of electric cooperatives. EPA assumes that a company will be self-protective enough to ensure that a related entity using its facility will have a role in the financial assurance for the storage area. "Related" does not include voluntary membership in the same trade association since there is no financial or managerial relationship between the entities. Common storage among non-related companies is commercial storage, as was discussed in Unit III.B.

Commentors pointed out that, under the proposed rule, natural gas distribution companies would be considered commercial storers requiring approval because they store waste collected from their customers' equipment or waste "owned by others." With the modification of the definition that eliminates the "owned by others" criterion, natural gas distribution companies will, for the most part, no longer be subject to the approval requirements. The fact that the waste is collected or "generated" by the natural gas distribution company and subsequently stored by them no longer makes them a commercial storer of PCB waste under the modified definition of commercial storer in this final rule. As long as the natural gas distribution company is the generator of the PCB waste and does not store PCB waste generated by others it will not be subject to the approval requirements for commercial storers of PCB waste.

D. Laboratories and Samples

Comments requested clarification of the status of laboratories which handle PCB sample material. The proposed rule did not address this issue. A comment suggested that samples should be tracked but treated less rigorously than other PCB wastes, by using a receipt from a laboratory rather than a manifest. Another comment suggested excluding laboratory samples altogether, as is done under RCRA, if certain conditions are met. Another comment urged that this regulation be consistent with EPA's interpretation that PCB samples being analyzed for enforcement cases are still in use, and therefore, not a waste.

EPA has considered these suggestions and is adopting an approach similar to RCRA's for handling laboratory samples, i.e., to exclude samples from regulation, until the sample is determined to be of a concentration greater than 50 ppm and its analytical use has ended. Since certain PCB requirements hinge on PCB concentration, testing is required to establish PCB concentration. Consequently, laboratory samples are implicitly authorized for use, as opposed to being under the disposal regulations, and are considered to remain in use until their use for analysis or for an enforcement case has ended. Under the RCRA approach, samples are not regulated as hazardous waste when they are being shipped to a laboratory, if requirements for packaging and accompanying information are met. The RCRA approach exempts temporary storage by collectors and laboratories prior to testing and also after testing for a "specific purpose" use, such as until the conclusion of a court case or enforcement action where further testing of a sample may be necessary. Thus, during this time there would be handling requirements to be met but no manifesting, and the laboratory would be exempt from the § 761.65 storage for disposal requirements for samples until their "use" authority ended. At this time the PCB waste would have to be manifested when shipped off-site for storage or disposal. Also, to prevent commingling of PCB waste generated by servicing activities, EPA will exempt laboratories from "commercial storer" approval requirements only when they are separate facilities, unaffiliated with any entity whose activities involve PCBs including servicing shops, and not when they are laboratory facilities at service operations. EPA will exempt an independent laboratory from "commercial storer" approval when the laboratory stores samples held for disposal in a facility complying with § 761.65(b)(1) (i) through (iv) standards and the laboratory complies with requirements to manifest off-site shipments of accumulated PCB waste. EPA has added § 761.65(i) to the final rule to clarify the status of independent laboratories and the samples of PCBs and PCB Items they handle.

E. Transfer Facility

"Transfer facility" was defined in the proposed rule as any transportation related facility, including loading docks, parking areas, storage areas and other

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62059B; FRL 3607-5]

RIN 2070-AB83

Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing amendments to its disposal and storage regulations for polychlorinated biphenyls (PCBs). This document contains (1) notification requirements for certain entities that handle PCB waste, (2) requirements for certain entities to prepare and carry a manifest for purposes of tracking the disposal of PCB waste, and (3) requirements that a commercial storer of PCB waste, (i) obtain approval from the EPA Regional Administrator or from the Director of the Exposure Evaluation Division (Director, EED), Office of Pesticides and Toxic Substances, for a commercial storage facility that is part of a disposal facility for which the Director, EED issued the approval for disposal, (ii) develop closure plans for their facilities, and (iii) demonstrate financial responsibility for closure. Also, this notice amends the PCB recordkeeping requirements.

EFFECTIVE DATE: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight on January 4, 1990. These amendments shall be effective February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0557.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule under the authority of section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(1), which was published in the Federal Register of September 26, 1988 (53 FR 37436), to amend its PCB storage and disposal regulations, which are codified in subpart D, 40 CFR part 761. The comment period was extended to end on November 25, 1988. A public hearing was requested and was held on December 13, 1988. Comments on the proposed rule were submitted by 62 entities. All comments were considered in the preparation of the final rule. A detailed analysis of these comments and EPA's response to them, titled "Response to Comments on the Proposed Notification and Manifesting Rule" is in the public record for this rule.

The preamble to the proposed rule included a description of the legal authority for the rule, background of the PCB disposal problems, Congressional concerns, definitions, description of persons affected by the rule, a discussion of the issues involved, and a summary of the economic consequences of the rule (53 FR 37436).

I. Overview of the Rulemaking

EPA regulates the disposal and storage for disposal of PCBs under its TSCA section 6(e)(1) authority, rather than its authority to regulate the management of hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA), unless the PCB waste also meets the definition of RCRA hazardous waste. EPA has identified several areas where improvements are needed in its TSCA program for PCB waste, and these improvements require the promulgation of additional disposal and storage requirements. EPA has concluded that the most pressing of the needed program improvements are the addition of an effective tracking system for PCB waste and the addition of an approval mechanism for the commercial storers who act as intermediate storers of PCB waste prior to its disposal.

This rule adds to the PCB disposal requirements a tracking system for PCB waste akin to the "cradle-to-grave" tracking system for hazardous wastes which EPA promulgated under RCRA Subtitle C. The rule includes a requirement that certain entities among those who handle (generate, transport, store and/or broker, or dispose) regulated PCB waste must notify EPA of their PCB-waste activities, so that the Agency may obtain basic information about the nature, location, and extent of these activities. The rule further requires that each such entity notifying EPA obtain from the Agency a unique identification number which will identify that entity in the shipping documents (manifests) and other records and reports that constitute the PCB waste tracking system. The rule also describes the manifest system that will be implemented to track the movement of PCB waste from the point of generation to the point of disposal, and it describes the recordkeeping and reporting requirements that complete the tracking system.

This rule also adds to the PCB storage regulations an approval mechanism for the commercial storers of PCB waste. The rule requires, among other things, that all commercial storers of PCB waste prepare closure plans for their facilities, and demonstrate their financial responsibility for the closure of their PCB storage areas. Storers of PCB waste who cannot demonstrate compliance with the rule's financial assurance for closure requirements will be required to cease operations and close their facilities.

II. Authority

This rule is issued pursuant to section 6(e)(1) of TSCA. Section 6(e)(1)(A) gives the Administrator the authority to promulgate rules prescribing the methods for disposal of PCBs. (15 U.S.C. 2605(e)(1)(A)). Furthermore, TSCA section 6(e)(1)(B) provides broad authority for EPA to promulgate rules that would:

> (B) * * * require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities. (15 U.S.C. 2605(e)(1)(B))

Consistent with this authority, EPA is implementing a waste tracking system for PCB waste which consists of shipping documents (manifests) and other records and reports under TSCA section 6(e)(1). Tracking requirements are necessary for effective management of PCB disposal by EPA, and the manifests contain warnings and instructions to be followed by others in connection with the processing, transport, and disposal of PCB waste. Therefore, promulgation of the tracking system for PCB waste is clearly authorized by TSCA section 6(e)(1).

EPA also regulates the storage of PCB waste prior to disposal under its TSCA section 6(e)(1) disposal authority for PCBs. The current requirements for PCB storage facilities are codified at 40 CFR 761.65. Therefore, these amendments to the storage regulations in § 761.65 are also promulgated under section 6(e)(1) of TSCA.

III. Discussion of the Rule and Comments Made on the Proposal

A. General Reaction to Proposed Rule

In general, the comments received on the proposed rule supported EPA's handling of the issues. There was strong support for retaining disposal of PCBs under TSCA rather than shifting the program to RCRA, and for adopting a PCB waste tracking system similar to the RCRA notification and manifesting process. Although some comments registered concern that a few States

have programs that do not mesh perfectly with the TSCA program, commentors stated that, for the most part, State programs would be aided by this rule in their efforts to track PCB waste beyond their borders. As explained in the proposal, the rule does not preempt State laws and deferred to all more stringent State-imposed requirements. Also, the final rule, as proposed, essentially adopts the same kind of identification numbers used under RCRA and requires use of the uniform manifest, to minimize conflicts with State requirements.

Commentors supported the proposed rule's emphasis on adopting approval requirements for commercial storers, including closure plan and financial responsibility requirements. Commentors also supported the definition of PCB waste generators in a manner that promotes consolidation of PCB waste from individual sites of use to users' storage yards. Also, commentors generally supported EPA's decision to limit the generator notification requirements only to generators who operate their own storage areas, and to use a relinquishment of control criterion to define when a generator must manifest waste. Commentors agreed with the decision to require approvals only for commercial storers, and not for all storage facilities. Coupled with comments that generally approved of the provisions of the proposed rule, were requests and suggestions to improve the regulation by clarifying its coverage and reducing the regulated community's paperwork burdens.

B. Generation of PCB Waste

The proposed rule defined and used the term generator of PCB waste in a manner to maintain as much consistency as possible with the RCRA tracking system for hazardous wastes, which forms the model for much of this rule.

The proposed rule defined "generator of PCB waste" as any person whose act or process produces PCBs that are regulated for disposal under TSCA, or whose act first causes a "PCB" or "PCB Item" to become subject to the subpart D disposal requirements of 40 CFR part 761. See the preamble to the proposed rule (53 FR 37438) for a discussion of which entities could qualify as generators under this definition.

The proposed definition is similar to the RCRA definition of "generator" at 40 CFR 260.10, but it differs from the RCRA definition in one important respect. In the context of the proposed rule, the term "generator of PCB waste" generally referred to the "person" (see 40 CFR 761.3) who creates PCB wastes, and not, as would be the case under RCRA, to the individual sites where particular PCBs or PCB Items were used before they became PCB waste.

Section 761.3 defines "person" to include individuals, government entities, corporations, and other business associations, so the intent of the proposed definition of "generator of PCB waste" generally was to promote the consolidation of all of the PCB waste created by a given "person" under one generator identification, regardless of the number of sites, i.e., each location where that "person" might use, own, or control items of electrical equipment. The only exception is where another regulation expressly calls for a site-specific meaning of the term "generator of PCB waste." In such a case, the site-specific requirement controls. The only site-specific reference to generator in the proposed rule is the requirement that the users, owners, or processors of PCBs or PCB Items who maintain their own § 761.65(b) storage facilities for PCBs must submit unique generator notifications to EPA for each of their PCB storage facilities. In cases where the "generator" owns or operates storage facilities, each site of generator storage is treated as a unique "generator of PCB waste" for purposes of this regulation. As such, PCB waste transported from the storage facilities would be manifested from the storage sites, and the manifests would reference the storage facilities' unique EPA identification numbers. Separate storage areas owned by the same generator on the same property would not require separate identification. The treatment of users' and owners' storage facilities as unique generators in the final rule is discussed further in Unit III.I.2.b. Otherwise, all PCB waste generated by a given individual or company is identified with the one consolidated generator who has a single unique identification number.

EPA received many comments on the definition of "generator of PCB waste." Most commentors approved of the definition. Particularly, they supported the definition to allow consolidation of PCB waste from a user's sites. Clarification is needed, they stated, to spell out the distinction between "use" activities and "waste" activities. There was also concern expressed that the proposal was unclear as to who was the generator when electrical equipment underwent servicing, both in the disposal and repair contexts.

The concept of "use" has not changed with this rule. PCBs and PCB-containing material are not "waste" until they are no longer used for the purpose they were intended for and the decision to dispose of them has been made. When equipment that has failed is shipped offsite for repair, it is still considered to be in use and remains in use while it is being serviced. The question of who is the generator of the PCB waste arises when the decision is made to dispose of, rather than repair the equipment.

To clarify the distinction of who is the generator of the PCB waste in the different servicing contexts, EPA has expanded the definition in the final rule to include a person "whose decision causes a PCB material still under his physical control to become subject to subpart D disposal requirements." Under the definition in the final rule, an owner of the PCB material would be the generator when the owner:

1. Ships electrical equipment off-site to be disposed of or serviced for reclassification, since these activities will produce regulated PCB waste.

2. Causes, that is, the owner drains or hires a service company to drain, on-or off-site, fluids containing PCBs at a concentration of 50 ppm or more to be shipped off-site for disposal, or for processing of equipment or fluid that will reduce its concentration, since regulated PCB waste will result. If a contractor drains the fluid on-site, the manifest would describe the fluid containers as PCB waste. If a contractor drains the fluid off-site, the owner's manifest would describe the equipment containing the fluid as PCB waste.

3. Causes PCB-containing treatment residuals to be generated on-site during servicing or processing for disposal operations conducted on-site by the owner or by a contractor.

In these three cases, the owner is the generator because he either performs the operation that produces the PCB waste himself or hires someone to perform the waste-producing operation, understanding that disposal of PCBs will occur. As a generator, the owner must manifest the PCB Item or equipment. The residuals generated during the processing, however, are generated by the processor. Thus the processor must manifest the PCB-containing residuals or fluids generated by the processing and continue the manifest chain for the equipment, if it is still regulated for disposal after processing.

The owner is not a generator of PCB waste when he ships PCB-containing equipment off-site for servicing, but has not yet made a decision whether to repair the equipment or to dispose of it. Thus, the owner need not manifest the equipment. There is no waste at this point as the equipment is still in use. Typically, the equipment must be

inspected before a decision can be made that the equipment will be disposed of or repaired for use. If either the servicing facility or the owner decides that the equipment cannot be serviced, the equipment becomes PCB waste and the servicer or processor becomes the generator of the PCB waste, (both the equipment and any residuals), and must manifest the PCB waste.

One commentor recommended the RCRA policy of allowing the parties involved in a transaction to determine who would be the responsible generator for compliance requirements. EPA is rejecting this policy for PCBs for the sake of uniformity of its PCB regulations. It is simpler for EPA to enforce this rule if it uses a general definition of responsibility for manifesting PCB waste.

A commentor suggested the term "shipment originator" rather than "generator" be used for a firm that commingles PCBs from different sources for shipment. This terminology would allegedly avoid the liability connotation of generator. EPA does not consider it advisable to introduce another definition since the term "generator" accurately describes the commingler. A shipment originator, who combines PCB waste from different sources into a new commingled shipment, is a generator of PCB waste under this rule and must manifest the commingled PCB waste.

Several comments raised the question of the status of laboratories and the samples they use for analysis. This issue will be discussed in Unit III.D.

As previously stated, the commentors supported the definition of generator which would promote the consolidation of waste from a user's different sites. Thus, one utility commented, it would be required to submit only 1 notification instead of 80. However, some large industrial commentors felt that since all facilities with their own storage areas would have to notify, the consolidation definition was meaningless. In that commentor's case, all 165 facilities have storage areas and all facilities would be required to notify EPA. As stated earlier in this unit, consolidation is employed as a tool to make the number of notifying generators manageable; however, tracking the shipment of PCB waste from storage areas is an essential feature of the cradle-to-grave tracking system. Most storage areas that meet the requirements in 40 CFR 761.65 store large quantities of PCBs in an ongoing manner and, therefore, remain in the category of those PCB waste facilities that the rule covers. While there may be limited exceptions where small quantities will be stored at such facilities, or where one company may operate many such facilities, EPA has decided to retain the notification requirement, as proposed, for generators with PCB storage facilities.

One large corporation wanted clarification that its subsidiaries had the option to notify EPA individually, and that not all were required to use the same identification number. This option exists. Any entity that requests it is given its own unique identification number.

Another comment suggested that where several companies occupy the same site, the site should be treated as one generator for purposes of the rule. These generators share a common storage facility, where their PCB waste is commingled, and feel that a single EPA identification number for the site would be environmentally acceptable and would not interfere with the tracking of the PCB waste generated from that site. EPA accepts this site-oriented treatment with the understanding that a site that stores PCB waste generated by unrelated generators is a commercial storage facility. The facility address would be issued an individual identification number in any event, since the EPA Identification Number system would identify the facility on the basis of the facility's address. The financial assurance demonstration for the common storage facility would have to incorporate adequate financial responsibility by all members of the agreement or one designated member to ensure adequate coverage if any of the participants decided to withdraw from the agreement.

C. Commercial Storers of PCB Waste

As was proposed, "Commercial Storer of PCB waste" means the owner or operator of a storage facility which is subject to the storage facility standards of 40 CFR 761.65 (a), (b), and (c) and which engages in storage activities involving PCB waste generated or owned by others. Commercial storers of PCB waste generally perform PCB waste storage services in exchange for a fee or other compensation, but the receipt of compensation is not necessary to qualify a storage facility as a commercial storer of PCB waste. It is sufficient that the facility stores PCB waste generated or owned by others. Commercial storers of PCB waste are required to comply with the § 761.65 facility standards, the storage facility approval requirements of § 761.65(d), the recordkeeping requirements of § 761.180, and the applicable requirements of the tracking system for PCB waste in this rule.

The definition of commercial storers received many comments regarding when service companies are commercial storers, whether storage of PCBs belonging to an affiliated or subsidiary company makes a facility a commercial storage facility, whether there should be a time or quantity cut-off consideration, the status of laboratories and their samples, and the status of natural gas distribution companies that collect PCB-containing liquids from their customers' equipment.

EPA has modified the definition of commercial storer in three ways in the final rule to address these comments. First, in the final rule, the "owned by others" criterion has been dropped in favor of language that limits coverage to PCB waste generated by others and PCB waste that is removed during servicing of others' electrical equipment and brokered for disposal. Second, EPA has added a de minimis quantity standard, so that a facility that stored 500 gallons or less of PCBs at any time would not require approval. Third, the definition in the final rule states that a generator who stores his own waste is not required to seek approval as a commercial storer unless the PCB waste was removed while servicing the equipment owned by others and brokered for disposal. The definition also states that those storage facilities that do not require approval under § 761.65(d) are still subject to the storage requirements of § 761.65(a), (b), and (c), where applicable.

The small quantity exception exempts from the commercial storage approval requirements those entities which acquire small quantities of PCB waste which others may have generated. This specific exception is consistent with EPA's decision to eliminate the "owned by others" language from the definition of commercial storer of PCB waste. These changes address many of the concerns raised by commentors that waste storage that was a small and incidental part of an entity's business would be subject to the burdens of the approval process. For example, comments suggested that the proposed definition would require approvals from companies performing remedial actions at Superfund sites, or from natural gas distribution companies who removed small quantities of condensates from their customers' equipment. These commentors pointed out that including such storage within the scope of the definition of commercial storage would not be consistent with EPA's avowed intention of improving its oversight over the activities of the commercial facilities that are in the business of brokering or storing waste. The final rule reflects EPA's agreement with these comments.

While comments suggested several alternative quantities and time limits for a small quantity/short time cut-off, EPA selected less than 500 gallons as a reasonable benchmark that would distinguish the merely incidental storage of PCB waste from storage that is more characteristic of a larger, commercial activity. Thus, the exception is for any facility whose total PCB waste holdings do not exceed 500 gallons at any time. The 500 gallon cut-off corresponds roughly to the contents of two medium-sized electrical transformers, or ten 55-gallon drums. EPA does not believe that it would be cost-effective to require the smaller, incidental storers to bear the significant costs of preparing storage approval applications. In addition, EPA believes that the resources which EPA will commit to the approval process would be more effectively utilized if focused on the larger commercial operations (*e.g.*, brokers) which were identified as the greatest problems in the oversight investigations by GAO.

Moreover, EPA does not believe that the potential risks associated with this exemption are great relative to the costs of extending the approval process to cover these facilities. Such facilities are nevertheless subject to the requirement to store the PCB waste in proper facilities described in 40 CFR 761.65 and to dispose of a container of PCB waste within 1 year from the date when the first quantity of the PCB waste in the container was removed from service for disposal.

EPA agrees with the comment that a service company is a commercial storer when it drains and stores for disposal a customer's fluid that has been determined to be PCB waste. EPA has expanded the definition of commercial storer in the final rule to clarify that the storage of PCB fluids (greater than 50 ppm) removed for disposal while servicing the equipment of others is an activity that makes one a commercial storer. EPA also agrees with the comment that a service company is not a commercial storer when it buys equipment for resale and subsequently drains the oil from the equipment for disposal. When the buyer drains the oil, the buyer is a generator of PCB waste, and the drained fluid must be stored in an area that meets the requirements in § 761.65 for storage for disposal. Also, service companies that drain customers' fluids for disposal are exempted from commercial storage approval requirements if they qualify for the small quantity exemption, that is, storage of less than 500 gallons of PCB fluid at any time.

The issue of storage between parent-subsidiaries, sibling companies, member companies of public power associations, and companies held by common holding companies has been reviewed. For the purposes of the final rule, storage of one company's PCB waste "by a related company" is not commercial storage. Therefore, storage between "related companies" is exempt in the final rule from "commercial storer" status. "Related companies" include a parent company and its subsidiaries, sibling companies owned by the same parent company, companies owned by a common holding company, and members of electric cooperatives. EPA assumes that a company will be self-protective enough to ensure that a related entity using its facility will have a role in the financial assurance for the storage area. "Related" does not include voluntary membership in the same trade association since there is no financial or managerial relationship between the entities. Common storage among non-related companies is commercial storage, as was discussed in Unit III.B.

Commentors pointed out that, under the proposed rule, natural gas distribution companies would be considered commercial storers requiring approval because they store waste collected from their customers' equipment or waste "owned by others." With the modification of the definition that eliminates the "owned by others" criterion, natural gas distribution companies will, for the most part, no longer be subject to the approval requirements. The fact that the waste is collected or "generated" by the natural gas distribution company and subsequently stored by them no longer makes them a commercial storer of PCB waste under the modified definition of commercial storer in this final rule. As long as the natural gas distribution company is the generator of the PCB waste and does not store PCB waste generated by others it will not be subject to the approval requirements for commercial storers of PCB waste.

D. Laboratories and Samples

Comments requested clarification of the status of laboratories which handle PCB sample material. The proposed rule did not address this issue. A comment suggested that samples should be tracked but treated less rigorously than other PCB wastes, by using a receipt from a laboratory rather than a manifest. Another comment suggested excluding laboratory samples altogether, as is done under RCRA, if certain conditions are met. Another comment urged that this regulation be consistent with EPA's interpretation that PCB samples being analyzed for enforcement cases are still in use, and therefore, not a waste.

EPA has considered these suggestions and is adopting an approach similar to RCRA's for handling laboratory samples, i.e., to exclude samples from regulation, until the sample is determined to be of a concentration greater than 50 ppm and its analytical use has ended. Since certain PCB requirements hinge on PCB concentration, testing is required to establish PCB concentration. Consequently, laboratory samples are implicitly authorized for use, as opposed to being under the disposal regulations, and are considered to remain in use until their use for analysis or for an enforcement case has ended. Under the RCRA approach, samples are not regulated as hazardous waste when they are being shipped to a laboratory, if requirements for packaging and accompanying information are met. The RCRA approach exempts temporary storage by collectors and laboratories prior to testing and also after testing for a "specific purpose" use, such as until the conclusion of a court case or enforcement action where further testing of a sample may be necessary. Thus, during this time there would be handling requirements to be met but no manifesting, and the laboratory would be exempt from the § 761.65 storage for disposal requirements for samples until their "use" authority ended. At this time the PCB waste would have to be manifested when shipped off-site for storage or disposal. Also, to prevent commingling of PCB waste generated by servicing activities, EPA will exempt laboratories from "commercial storer" approval requirements only when they are separate facilities, unaffiliated with any entity whose activities involve PCBs including servicing shops, and not when they are laboratory facilities at service operations. EPA will exempt an independent laboratory from "commercial storer" approval when the laboratory stores samples held for disposal in a facility complying with § 761.65(b)(1) (i) through (iv) standards and the laboratory complies with requirements to manifest off-site shipments of accumulated PCB waste. EPA has added § 761.65(i) to the final rule to clarify the status of independent laboratories and the samples of PCBs and PCB Items they handle.

E. Transfer Facility

"Transfer facility" was defined in the proposed rule as any transportation related facility, including loading docks, parking areas, storage areas and other

similar areas where shipments of PCB waste are held during the normal course of transportation. In the final rule, the words "storage area" were removed from the first sentence of the definition since storage areas are specifically dealt with in the third sentence of the definition. There are no further changes. As was proposed, PCB waste storage areas at transfer facilities are required to comply with the storage facility standards of § 761.65, but they are exempt from the approval requirements of § 761.65(d), unless they store the same PCB waste for a period longer than 10 consecutive days. 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. If transport vehicles are used for storage they must meet the requirements of § 761.65 (b) or (c)(7).

There were some requests for clarification of the definition of transfer facilities. Railroad facilities and "intermodal facilities," like other transfer facilities, are subject to § 761.65 storage facility standards in areas where they have a segregated area to store PCBs. However, a loading area, an area in which a trucked-in trailer is moved onto a railroad flatcar, an example given in one comment, is not a storage area. The 10-days of consecutive storage limitation is allowed to provide trains, trucks, and other transport vehicles a period in which to unload the PCB waste and hold it until the PCB waste can be loaded onto the next connecting transport vehicle. While the 10-day storage period exempts the transfer facility from storage approval requirements, it has no effect on the 1-year storage until disposal requirement. The 1-year limitation clock on storage prior to disposal continues to run during the period of time the PCB waste is at the transfer facility. Another commentor asked whether transporters with storage facilities must maintain annual documents. Only those transporters who hold PCB waste in storage for more than 10 days would have to maintain annual documents, and they would be required to comply with the recordkeeping requirements of § 761.180(b).

F. Transporter of PCB Waste

In the proposed rule "transporter of PCB waste" was defined to include any person engaged in the off-site transportation of regulated PCB waste by air, rail, highway, or water. Comments indicated concern that this definition could inadvertently include transportation of PCB waste for consolidation purposes by a generator prior to transportation to a commercial storer or disposer. EPA agrees. To avoid this possibility, EPA is changing the definition in the final rule to read "* * * any person engaged in the off-site transportation of regulated PCB waste for purposes other than consolidation by a generator * * *."

Other comments asked whether the owner or operator of a facility with an EPA identification number who also transports PCB waste from that storage facility to an affiliated commercial storer or disposer needs a separate identification number as a transporter. The answer is no. Only an independent transporter requires an identification number since the parent organization has not lost control of the PCB waste when an employee transports the PCB waste in a company vehicle. Also, the PCB waste can be tracked through the parent organization's identification number.

G. PCB Waste

The definition of PCB waste in the proposed rule is "* * * those PCBs and PCB Items that are subject to the disposal requirements of subpart D." Implicit in this definition are the answers to some of the questions asked in comments. PCBs and PCB Items become subject to disposal requirements under subpart D when it has been determined that they no longer serve their intended purpose and are to be disposed. Items unregulated for disposal, such as intact, non-leaking small capacitors and drained PCB-Contaminated equipment are not subject to subpart D disposal requirements and, therefore, are not included in this definition. As discussed in Unit III.D, laboratory samples do not become PCB waste until they are no longer used for analytical or enforcement purposes, and are to be disposed. Disposal of material that results from the cleanup of a spill of PCBs at a concentration of 50 ppm or greater is regulated and included in the definition. Dilution of waste material to bring its PCB concentration down to below 50 ppm to avoid any disposal requirements is prohibited under 40 CFR 761.1(b).

One comment suggested using waste codes to identify PCB waste streams to avoid a multiplicity of State waste codes assigned by States that regulate PCBs under RCRA. Some States plan to share a database and prefer to use a simplified waste code system. EPA accepts this suggestion since it will be helpful to States for tracking PCB waste to disposal. The two PCB waste codes to be used are PCB1 for PCB Articles, tranformers, capacitors, etc., and PCB2 for PCB Containers. Use of these waste codes does not preempt a State's right to use its own waste code system if it prefers. Use of these waste codes is intended to facilitate data exchange among cooperating States.

A commentor suggested that "disposer of PCB waste" be redefined to include the owner or operator of a "mobile technology approved by EPA for disposal of PCB wastes." This change is not necessary because the definition includes any facility, whether it is mobile or stationary, incinerator or alternative technology, approved by EPA for the disposal of PCBs.

H. Tracking System

The tracking system for PCB waste serves several objectives aimed at improving the management and enforcement of the national disposal program for PCBs. First, the notification requirement will provide EPA with basic information on the location of and activities engaged in by many of those persons who handle (generate, store, transport, or dispose of) PCB waste.

Second, the collection of this information will facilitate compliance monitoring and enforcement under TSCA by EPA inspectors. A database of PCB waste handlers will provide EPA with a basis for targeting facilities for site inspections.

Third, the submission of notifications by PCB waste handlers will be a prerequisite to the issuance by EPA of identification numbers to the notifying entities. Upon receipt of notifications, EPA will issue unique identification numbers to all entities required to notify under this rule, unless they have previously been issued numbers by EPA or by State agencies under RCRA hazardous waste authority. The use of the EPA identification numbers will be required in the manifests and the associated reports which together constitute the waste tracking system. When this rule is effective, generators of PCB waste may turn over their PCB waste only to commercial storers, transporters, and disposers of PCB waste who have notified EPA of their PCB waste activities and received EPA identification numbers and any required approvals. Likewise, commercial storers, transporters, and disposers of PCB waste may accept PCB waste only from generators, other commercial storers, transporters, and disposers who have notified EPA of their PCB waste activities and received identification numbers.

Fourth, by implementing the notification and manifesting requirements, EPA will be able to track shipments of PCB waste from the point of generation, through the commercial

storage facilities and other intermediate waste handlers, to the TSCA-permitted disposal units. This tracking device creates clear lines of accountability among PCB waste handlers. While owners and operators of storage and disposal facilities are required under the current PCB regulations to keep some records on their overall disposition of PCB waste, the preparation and retention of manifests among facilities' records will provide more uniform and detailed information on the handling of particular PCB waste shipments as they are moved from generator to ultimate disposal sites.

Fifth, the use of a manifest system will foster the proper handling of PCB waste while it is in transport for disposal. The information on the manifest will augment the marking and placarding requirements for containers and transport vehicles in the existing PCB regulations. The information recorded on the manifest will promote protection of health and the environment by serving a notice function for persons handling PCB waste as well as emergency response personnel.

There was general agreement among commentors that tracking is urgently needed during the peak period of PCB disposal and that tracking is appropriate for Federal regulation. Some comments indicated concern about the duplication of notification and manifesting requirements in States where PCBs are treated as hazardous PCB waste and under whose RCRA requirements generators are regulated and storers have permits. Some States also felt they would be burdened by requests for information on the TSCA rules and that they would be sent notification forms and copies of manifests.

EPA is aware that there may be some overlap in States that regulate PCBs and has attempted to minimize these differences. For example, where a PCB waste handler has been issued an identification number by EPA or a State under the RCRA program, EPA will use the same identification number, after verification, when that PCB waste handler notifies EPA of its PCB activity. Also, EPA is giving explicit instructions as to where notification forms and annual reports must be sent. EPA thinks that these problems are temporary and not very significant in comparison to the problems that the rule solves.

I. Notification

As proposed, certain persons who generate, store commercially, transport, or dispose of regulated PCB waste must notify EPA of such activities and receive an EPA identification number. This notification requirement would apply to brokers of PCB disposal services to the extent that they qualify as transporters, disposers, or as storers of PCB waste subject to the storage facility requirements of 40 CFR 761.65. There was strong support for the proposed notification requirement, the use of previously issued identification numbers, and the temporary use of a generic number until EPA issues a unique identification number. The final rule adopts the proposed notification requirements.

A comment inquired about what database the information received from the notifications will be placed on, who will have access to the database, and how the information will fit into the enforcement scheme. A contractor for EPA has set up the database for the information EPA receives from the notifications. EPA Headquarters, EPA regional offices, and the EPA contractor will have access to the database. Enforcement of this rule will be by the EPA regional offices either alone, or in conjunction with the States.

EPA proposed that the TSCA notification process be linked to manifesting under TSCA, which is another part of this rulemaking. This is similar to the system imposed under RCRA.

1. *Identification number.* To maintain consistency with the RCRA notification procedures already in place, and to avoid subjecting those who may already possess RCRA identification numbers to the burden of being assigned multiple numbers, EPA proposed to use the numbering system adopted under RCRA for this rule.

The RCRA numbering system currently assigns each notifier a 12-digit number. The first 2 characters indicate the State in which the facility is located; the remaining 10 characters are the Dun and Bradstreet Data Universal Numbering (DUN) system numbers. The DUN system provides a comprehensive listing of U.S. businesses. Federal agencies, which are not included in the DUN system, would be assigned their General Services Administration Real Property Number. State and local government installations would also be assigned unique numbers. Where notifications are submitted by mobile disposal facilities, EPA will issue each a unique number that ties it to the business' corporate headquarters or other business location identified in Item III of the notification form.

Upon notification and verification, persons will be issued a unique EPA identification number. As of June 4, 1990, it will be illegal to receive regulated PCB waste from a person who does not have an EPA identification number. Also, on this same date, it will be illegal to deliver any regulated PCB waste to another waste handler who does not have an identification number. Generators of PCB waste who are exempted from notification requirements under § 761.205(c)(1) will be deemed as having received by rule the identification number "40 CFR PART 761." In the event a person notified EPA within the 60-day period provided for notification, and EPA does not issue or confirm an identification number for that person, the person is entitled to use either the number "40 CFR PART 761" or a specific number assigned to that person by EPA or a State under RCRA, until EPA assigns or confirms the use of an identification number under this rule.

EPA received several comments on the identification numbers. One commentor suggested that the definition of "EPA identification number" be changed to mean the number assigned to a facility or "mobile technology." EPA is not making this change, since it is the individual generator, transporter, commercial storer, or disposer that receives an identification number and not a technology. Each mobile facility, i.e., unit, will receive a unique identification number.

Several comments questioned the use of the generic identification "40 CFR PART 761" for generators exempted from acquiring a unique identification number, and suggested leaving a blank, or allowing the use of one company number for all points of origin. EPA disagrees that the generic number serves no purpose. Filling in a number gives evidence that the manifester is aware of the rules and has consciously decided that the company does not require a unique identification number, if it is an exempted generator, or that it has not yet received its identification number, if it is a generator/storer, commercial storer, transporter, or disposer. A company that has a State or federally issued RCRA identification number must report that number, and EPA will confirm the use of that number for TSCA PCB disposal purposes, provided adequate information is submitted to enable EPA to verify the existing number.

A company seeking separate identification numbers for its different sites asked how to get them. The answer is that each site should request its own number, being careful to give that site's address. This answer also applies to a question concerning transformer service companies and salvage companies that do not maintain § 761.65 (b) or (c)(7) storage areas. Any facility that may have PCB waste manifested to it must

have an EPA number. Therefore, any such facility must notify EPA of its PCB waste activity, to receive an identification number.

The question arose in comments as to which State's manifest form a generator should use when there are conflicting requirements between the State in which the PCB waste was generated and the State to which the PCB waste was being transported. In particular, the Arkansas Department of Pollution Control and Ecology was concerned there might be a problem since Arkansas requires generators, from any State, that ship wastes to Arkansas to use its pre-printed manifests with a State-controlled document number. This requirement poses no problem. Any company shipping PCB waste to a State (the consignment State) that supplies and requires use of its manifest must use that State's manifest. If the consignment State does not require use of its own manifest, and the State in which the PCB waste was generated (the generator State) supplies and requires the use of its own manifest, the company shipping the PCB waste must use the generator State's manifest. If both States require use of their manifests, the manifest of the consignment State must be used. If neither the consignment State nor the generator State requires use of its own manifest, the shipping company should use the universal manifest. These requirements are in § 761.207 (b) through (f) of the final rule. This provision is identical to that used under RCRA for determining the State whose manifest should be used.

2. *Who must file notifications.* This rule requires certain generators and all disposers, transporters, and commercial storers of regulated PCB waste to file a notification form identifying their PCB waste facilities and activities. Each generator, transporter, disposer, and commercial storer of PCB waste who notifies under this rule will receive from EPA a unique identification number identifying each facility involved with the handling of PCB wastes. The only generators who must notify EPA as unique facilities under this rule are generators who store the PCB waste they generate at storage facilities which they own or operate, and which are subject to § 761.65 (b) or (c)(7) storage facility standards.

Generators, commercial storers, transporters, and disposers of PCB waste must check the appropriate box, or boxes on the form identifying their type of PCB waste activity.

a. *Facilities that have notified previously under RCRA.* In instances where facilities have previously been issued RCRA identification numbers, the facility must indicate on the space provided in Item II of the form their RCRA identification numbers. After verification, EPA will use for TSCA purposes the same identification numbers previously issued to facilities by EPA or States under RCRA. However, EPA emphasizes that facilities which have previously notified under RCRA are required to notify EPA again for purposes of identifying under TSCA the location and nature of their PCB waste activities, as well as the identification numbers previously issued to them.

b. *Notification by generators.* This rule adopts an approach which is different from that used under RCRA regarding the notification requirements that apply to generators of PCB waste. EPA has concluded that it would not be efficient to require separate notifications by all persons who generate PCB waste. The universe of PCB waste generators is dominated by many thousands of end users of PCB electrical equipment. While some of these users may possess substantial inventories of PCBs and PCB Items, and therefore routinely generate PCB waste, many of these users possess only a few PCB articles that would potentially be subject to TSCA disposal requirements. The utility to EPA of a database that contained information on the one-time or sporadic generators of PCB waste would be far outweighed by the costs of submitting and processing the information.

Therefore, EPA is requiring a modification of the RCRA approach for generators to focus upon the larger volume users, owners, and processors of PCBs who store PCB waste which they generate at their own § 761.65 storage facilities. These are the generators who may be expected to utilize PCB disposal services on a fairly regular and/or large-scale basis, and for whom it is administratively efficient to require particular information about their PCB waste generation activities. It is appropriate that these generator/storers be a part of EPA's database of regular handlers of PCB waste.

In submitting their notifications to EPA, members of this class of generator/storers will submit a notification form for each of their storage areas that is subject to § 761.65. EPA will issue a unique identification number to each notifying storage facility, and this identification number will correspond to the physical location of the facility. EPA anticipates that this class of generators will consist primarily of utilities and other heavy industrial users of PCB electrical equipment. These users typically operate storage and maintenance yards where PCB waste is likely to be generated or consolidated prior to off-site disposal. Also, members of the transformer service and repair industry are likely to be members of this class, because of the significant volumes of PCB waste which they may generate during the routine servicing, rebuilding, repairing, retrofilling, or salvaging of electrical equipment.

Although there was general support for EPA's universe of reporting entities, comments included various suggestions, such as including a "small quantity generator" exemption; excluding utilities, since they are all presumed to handle PCBs and already have RCRA numbers; requiring notification from any large quantity generator, regardless of whether the facility had a § 761.65(b) storage facility; and exempting permitted disposers from notifying.

EPA disagrees with these comments and has not made the requested changes for the following reasons:

A generator who has a § 761.65 storage area is rarely a "small quantity generator." EPA considers it more likely that generators of significant quantities of PCB waste will have § 761.65 facilities, while sporadic generators of small quantities of PCBs will not.

While utilities may usually handle PCBs and already have RCRA identification numbers (which will be used for PCB purposes after notification to and verification by EPA), EPA has determined that the rule does not impose so large a burden on any entity by requiring it to notify as to warrant making such an exemption.

Similarly, the burden associated with notification does not warrant creating an exemption for permitted disposal facilities.

c. *Generators who need not notify.* Other generators of PCB waste who do not maintain storage areas subject to the § 761.65 storage facility standards are exempt from the requirements to notify EPA and obtain unique identification numbers. These exempt generators will instead use the generic identification number "40 CFR PART 761" on their manifests in lieu of a unique facility identification number.

This exemption operates only as an exemption from the generator notification requirement; it does not exempt these generators from the obligation to prepare manifests to accompany their shipments of PCB wastes. As explained more fully in Unit III.J, this rule requires that all shipments involving PCB waste be fully manifested, if any part of the shipment contains PCBs at levels equal to or exceeding 50 ppm or less than 50 ppm as a result of dilution from greater than 50

ppm PCBs. Any generator initiating such a PCB waste shipment must initiate a manifest under this rule.

3. *Notification process.* EPA proposed a sample notification form and instructions for all those who were required to notify. Members of the public affected by the final rule were encouraged to obtain or make copies of the rule and the sample Notification Form, and to distribute them to the other generators, commercial storers, transporters, and disposers with whom they deal so that all may be in compliance with the requirement to file a notification form within 60 days of the final rule's effective date.

4. *When to notify.* The final rule provides for a 60-day period after the rule's effective date for notifications to be received by EPA.

EPA recognizes that this expedited schedule poses some potential for confusion among the generators desiring to procure PCB disposal services, as they will need to be certain that they are dealing with transporters, commercial storers, and disposers who have in fact complied with the notification requirements. Therefore, to facilitate an orderly notification process, EPA recommended that entities who perceived that they were likely to be affected by these notification requirements notify EPA during the 90-day period immediately after publication of the proposed rule. The sample notification form in the proposed rule was to be used to submit an early notification to EPA. EPA will process these early notifications first on a priority basis. These entitites should have no difficulty in demonstrating to their customers compliance with the requirement to submit a notification no later than 60 days after the final rule's effective date.

EPA believes that it will be able to process most of the notifications within 120 days of the final rule's effective date. However, EPA may not be able to issue all identification numbers within the 120-day period. Accordingly, in the event a person has notified EPA within the 90-day period provided in the proposed rule or the 60-day period provided in the final rule, and EPA has not issued or confirmed an identification number for that person within the 120-day period provided, the person is entitled to use either the number "40 CFR PART 761" or a specific number previously assigned to that person by EPA or a State under RCRA. The person is entitled to use this number only until EPA assigns or confirms the use of an identification number under this rule. Thus, no person who has notified EPA in a timely fashion will be prevented from continuing his PCB waste activities for lack of an identification number. EPA encourages persons to include a date-stamp and return copy and a self-addressed envelope, along with their notifications, to ensure proof of timely notification.

In addition, any non-exempt generator, commercial storer, transporter, or disposer of PCB waste who begins PCB waste activities after the effective date of the final rule is required, prior to handling any PCB waste, to notify EPA and receive an EPA identification number in accordance with this rule. Such new entrants into the regulated community will not be allowed to operate until they receive an identification number. In the case of disposers of PCB waste and commercial storers of PCB waste, new entrants into these businesses are required to obtain both EPA identification numbers and approvals before they commence disposal or storage operations. EPA recommends that applicants for TSCA disposal or storage approvals submit their notification forms during the period of review of their disposal or storage approval applications. EPA emphasizes that in no case will the requirements to notify and obtain identification numbers excuse non-compliance by any entity with the 1-year limit on storage prior to disposal under § 761.65(a).

A commentor asked that a 30-or 60-day grace period be given to a generator to obtain an identification number when he decides to convert to § 761.65(b) storage. EPA is not making this change because EPA is confident that there is sufficient time between the time a generator decides to include a § 761.65(b) storage facility at his site and the time the facility is actually ready to operate for the generator to notify EPA and get an identification number in time to operate the facility.

5. *Where to notify.* There are numerous Federal officials responsible for distinct areas of the PCB disposal program, and some States also regulate PCB disposal under their own regulatory programs. EPA believes that the notification process can work well only if administered centrally. Therefore, notifications by PCB waste handlers must be submitted to EPA Headquarters at the following address: Chief, Chemical Regulation Branch, Office of Toxic Substances (TS-798), Rm. NE-117, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

6. *Information required for notification.* The proposed notification form was set out at § 761.205(a)(3) of the proposed rule, with the note that it would not be reprinted in the final rule. However, since some changes were made in the form in response to comments by the Office of Management and Budget (OMB) and others, the form is reprinted here in the preamble to the final rule and may be used to notify EPA of PCB waste handling activities. It does not appear in the codified text.

The proposed form was based on existing EPA Form 8700-12, "Notification of Hazardous Waste Activity." The form was tailored to the requirements specified under this rule for notification under TSCA. However, the general format of the Hazardous Waste Activity form was preserved as far as possible, to facilitate compliance and data entry.

There were some comments on the proposed notification form, and those suggestions which clarified the form have been incorporated into the final rule. However, no one who used the proposed form need notify again. Instructions in § 761.205(a)(4) now specify an area on the form in which to name the owner of the facility. Also, the burden box which estimates the public reporting burden for this collection of information, which did not appear on the form itself, is now on the form. The instructions on the form have been changed in Items III and IV, as suggested, to substitute "mobile facility" for "mobile incinerator," since not only incinerators, but all other approved alternative disposal systems also require notification to EPA. Also, in Item VI.A of the instructions on the form for a generator with an on-site storage facility, the references have been corrected to cite § 761.65 (b) or (c)(7).

An area at the top of the form is labeled "For Official Use Only." This unnumbered section is to be completed by EPA officials. In this space, EPA will enter any comments, the notifier's EPA identification number, an approval code, and the date on which EPA receives the notification form.

Items to be filled out by the respondent are numbered I through VII. The name of the facility and the name of the owner of the facility submitting the notification are to be indicated in Item I, and if the facility has already received an EPA identification number under RCRA, that number is to be supplied in Item II.

Item III requests the mailing address of the respondent, while Item IV asks for the actual location of the installation, since the location (a physical address) may not be the same as the mailing address. In the case of mobile disposal facilities, the respondent is instructed to write "mobile" on the space in Item IV, and to supply on the space in Item III, the mailing address of the facility's

installation contact identified in Item V. A commentor asked whether separate notification would be required for each mobile unit, or one notification for the process. Since notification is to facilitate tracking of PCB waste, not for a technology, each mobile unit must have its own identification number. Each unit must be identified on the form so that each can be assigned a unique number that is related to the parent organization.

Item V, Installation Contact, asks for the name of an individual at the facility who can be contacted by EPA to clarify information on the notification form or provide information in the event of a spill or other emergency. The individual's telephone number should be specified here as well.

Item VI, Type of PCB Waste Activity, asks the respondent to indicate whether the facility to which the notification applies is a generator, commercial storer, transporter, or approved disposer of PCB waste. "Commercial storer of PCB waste" here refers to those storage facilities which store PCB waste generated by others or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal. The term does not apply to the storage sites maintained by the owners or users of PCBs who initially generate PCB waste when they remove PCBs from service. Where transporters and disposers also maintain storage facilities for PCB waste subject to § 761.65(b) or (c)(7), they should check both the commercial storer box and the relevant transporter or disposer box in this section.

The final section of the form, Item VII, Certification, must be signed and dated by the owner, operator, or authorized representative of the installation. An "authorized representative" is a person responsible for the overall operation of the facility. A commentor requested that the certification statement be replaced with the one required under the National Pollutant Discharge Elimination System program, which is based on the certifier's knowledge and belief. EPA has included a stringent certification to ensure that when a corporate manager makes the certification, the manager has personally ensured that the persons upon whom the manager has relied have themselves certified that the information is true. As EPA's system of regulating disposal of PCB waste depends on the accuracy of information submitted on the notification form, EPA finds submission of inaccurate information unacceptable. This certification is similar to that required under RCRA. The proposed certification remains in the final rule.

The revised Notification Form (EPA Form 7710-53) follows:

BILLING CODE 6560-50-M

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notification of PCB Activity

Form Approved
OMB No. 2070-0112
Approval expires 12-31-92

No information on this form may be claimed as TSCA CBI.

Return To:

Chemical Regulation Branch
Office of Toxic Substances TS-798
U.S. Environmental Protection Agency
401 M St., SW
Washington, DC 20460

For Official Use Only

TSCA PCB ID Number

I. Name of Facility

Name of Owner of Facility

II. EPA Identification Number *(If already assigned under RCRA)*

III. Facility Mailing Address *(Street or PO Box, City, State, & ZIP Code)*

IV. Location of Facility *(No. & Street, City, State, & ZIP Code)*

V. Installation Contact *(Name and Title)*

Telephone Number *(Area Code and Number)*

VI. Type of PCB Activity *(Mark 'X' in appropriate box. See Instructions.)*

- ☐ A. Generator with onsite storage facility
- ☐ B. Storer *(Commercial)*
- ☐ C. Transporter
- ☐ D. Permitted Disposer

VII. Certification

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.

Signature	Name and Official Title *(Type or print)*	Date Signed

Paperwork Reduction Act Notice

The public reporting burden for this collection of information is estimated to average 1.5 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information to the Chief, Information Policy Branch (PM-223), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ATTENTION: Desk Officer for EPA.

EPA Form 7710-53(12-89)

Item-by-Item Instructions for Completing EPA Form 7710-53

Return completed form to:

Chemical Regulation Branch
Office of Toxic Substances
TS-798
U.S. Environmental Protection Agency
401 M St., SW
Washington, DC 20460

No information on the form may be claimed confidential.

Type or print in black ink all items, except Item VII, "Certification". If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies. In the area marked "For Official Use Only" enter the name of the owner of the facility in the box provided.

Item I - Name of facility: Enter name of the facility.

Item II - EPA identification number (if already assigned under RCRA): Enter the identification number the facility was assigned under the RCRA hazardous waste notification regulations. If no identification number has been assigned, leave this space blank.

Items III and IV - Facility mailing address and location: Complete Items III and IV. Please note that the address you give in Item IV, "Location of Facility", must be a physical address, not a post office box or route number. If the mailing address and physical location are the same, you may enter "Same" i Item IV. If the facility is a mobile facility, you may enter "mobile" in Item IV, and provide the mailing address for the installation contact in Item III.

Item V - Installation contact: Enter the name, title, and business telephone number of the person who should be contacted regarding information submitted on this form.

Item VI - Type of PCB activity: Mark the appropriate box(es) to show which PCB activities are taking place at this facility.

A. Generator with onsite storage facility: You are a generator with an onsite storage facility under this notification requirement if you are a user, owner, or processor of PCBs or PCB items and you maintain your own storage facilities subject to 40 CFR 761.65(b) or (c)(7) for PCBs. If you are a generator with an onsite storage facility, mark an "X" in this box.

B. Commercial storer: You are a commercial storer if you own or operate a storage facility which is subject to the storage facility standards of 40 CFR 761.65(b) or (c)(7), and which engages in offsite storage activities involving the PCB waste generated by others. Most commercial storers of PCB waste perform waste storage services in exchange for a fee or other compensation, but the receipt of compensation is not necessary for your storage facility to qualify as a commercial storer of PCB wastes under this notification requirement. It is sufficient that your facility stores PCB wastes generated by others. See definition of commercial storer in 40 CFR 761.3. If you are a commercial storer, mark an "X" in this box.

C. Transporter: If you move PCBs by air, rail, highway, or water, then mark an "X" in this box.

D. Permitted disposer: If you currently hold a valid EPA permit to dispose of PCBs in concentrations exceeding 50 ppm in a landfill, through alternative technology or incineration, mark an "X" in this box.

Item VII - Certification: This certification must be signed by the owner, operator, or an authorized representative of the facility. An "authorized representative" is a person responsible for the overall operation of the facility (i.e., a plant manager or superintendent, or a person of equal responsibility). All notifications must include this certification to be complete.

BILLING CODE 6560-50-C

7. *Claims of confidentiality.* TSCA section 14 addresses the confidentiality of business information reported to EPA, or otherwise obtained by EPA, in administering TSCA. (15 U.S.C. 2613(a)). EPA's rules implementing section 14 appear in 40 CFR part 2.

While information submitted in a reporting form may ordinarily be claimed as confidential, EPA has purposely designed the notification form so that its preparation will not require the submission of any data that EPA believes would be confidential business information (CBI) under TSCA. The form merely asks for the most basic of information regarding the name, location, and general description of PCB waste handling activities engaged in by notifying entities. It does not ask for information on quantities processed, technical processes, financial information, or for any other information which, when linked to a company's name, could adversely affect a company's competitive position.

EPA has determined that the following information will not be treated as confidential business information: the name of the facility, other EPA identification numbers issued to the facility, the facility's mailing address, the name of the owner of the facility, the location of the facility, the facility's installation contact, or the type of PCB activities engaged in at the facility. The reasons for this determination are:

a. The information is reasonably available from other sources.

b. If disclosed, it is unlikely to affect adversely the submitter's competitive position.

c. The information is neither commercial nor financial information protected from disclosure under TSCA or the Freedom of Information Act.

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 information) which demonstrates extraordinary reasons why the information is entitled to confidential treatment.

EPA received no comments indicating a need for the submission of confidential business information.

8. *Relationship to CERCLA notifications.* In addition, EPA emphasizes that the notification requirements contained in this rule are in no way related to and do not affect the independent notification requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The rule does not alter the responsibilities of a person in charge of an onshore or offshore facility or vessel to notify the National Response Center of the release of a reportable quantity (RQ) or more of PCBs or any other hazardous substance as defined under CERCLA.

Under CERCLA sections 103(a) and (b), any person in charge of an offshore or onshore facility or vessel is required to report to the National Response Center as soon as he or she has knowledge of any release of a hazardous substance that is equal to or greater than the RQ. However, as stated in a final rule published on April 4, 1985 (50 FR 13461) regarding RQs, disposal of hazardous substances at a disposal facility in accordance with EPA regulations is not subject to the CERCLA notification requirements. Thus, if PCB waste is properly disposed of in a TSCA-approved facility, and this is properly documented through manifests and other records, CERCLA notification is not required. However, spills and accidents which occur during disposal activities, and which result in releases of an RQ or more of PCB waste, must be reported to the National Response Center. Additionally, any PCB releases (as opposed to proper disposal) of an RQ or more from a TSCA storage or disposal facility must be reported under CERCLA.

J. Manifesting

The proposed rule discussed in detail the use of a manifest system by EPA under RCRA, and Congress' concern that the system be used for the disposal of PCBs (53 FR 37445, September 26, 1988).

1. *Uniform Manifest.* EPA proposed to require the use of the Uniform Hazardous Waste Manifest (Uniform Manifest) form by the handlers of PCB waste. The use of the Uniform Manifest for PCB waste shipments will facilitate compliance with both TSCA and RCRA, and it will avoid the confusion and expense that would arise from the requirement of any other document. EPA believes that the Uniform Manifest can be adapted fairly easily to PCB wastes, with only slight interpretive changes, and a slight change in the copy distribution requirements.

The final rule adopts the use of the Uniform Hazardous Waste Manifest as proposed.

2. *Who must originate a manifest.* EPA proposed that all generators of PCB waste at concentrations of 50 ppm or greater manifest their waste, and rejected the use of any "small quantity generator" exclusion. The proposed rule contained no small quantity cutoff provision because so much of the PCB universe consists of small quantities of relatively high concentration PCB waste, such a provision could lead to manifesting by utilities and large industrial users only and leave occasional disposal of high concentration PCB waste untracked.

There was little comment on the lack of distinction in the proposed rule between large and small quantity generators, and the final rule is not different from the proposed rule in this case.

EPA proposed to require manifests for shipments containing regulated PCB waste at the 50 to 499 ppm level, as well as for shipments containing higher concentration PCB waste at the 500 ppm or greater level. EPA solicited comment on the incremental burdens and cost effectiveness of requiring manifests at the 50 ppm level as compared with using 500 ppm as the trigger.

There was only one comment that opposed manifesting at the 50 rather than the 500 ppm level. This commentor felt that the 500 ppm level would significantly reduce the paperwork burden of those utilities which own only equipment containing less than 500 ppm. The commenter also suggested that the 32 States which do not currently require manifests for PCBs would probably follow EPA's lead and also use the 500 ppm level, thus making 500 ppm the level used by the majority.

EPA understands that raising the level for manifesting could ease the burden in some instances, but since the States that now do require manifests at the 50 ppm level would probably continue to do so, doubts that there would be much of an overall advantage. Since no commentors specifically challenged EPA's assertion in the proposed rule that overall, the environmental benefits of manifesting wastes greater than 50 ppm far outweighed the administrative costs, and since all other comments approved of the 50 ppm level for manifesting, there is no reason to change the requirement in the final rule, and the 50 ppm level remains.

Some of those who approved of the 50 ppm level requested some clarifications to make certain that items whose disposal is not regulated by the current regulations would not now require manifesting. Any PCB or PCB item that is not subject to disposal requirements is not subject to manifesting. Examples of these are drained PCB-Contaminated carcasses for salvage, decontaminated PCB Containers and drained PCB-Contaminated containers, and small capacitors; these items do not require manifesting. Shipments of empty waste containers, the concern of another commenter, do not require manifesting if the containers are to be continued to be

used and are not to be disposed. When the decision is made that they are no longer to be used and are to be disposed, the containers become PCB waste that must be manifested and disposed, unless decontaminated in accordance with procedures set out in § 761.79. As discussed in Unit III.D, PCB samples do not have to be manifested for disposal until the laboratory determines that their use for analytical or enforcement purposes has ended, at which time they become PCB waste stored for disposal.

This rule requires the manifest to be prepared by the generator at that time when the PCB waste is first introduced into commerce in a manner that will cause the waste to leave the generator's control. This latter condition will generally be triggered when the generator turns its PCB waste over to a transporter for delivery to an off-site storage or disposal facility. The condition will also be satisfied when the PCB waste is placed on the generator's own transport vehicle for shipment to a commercial off-site storage or disposal facility, since the PCB waste is then being introduced into commerce in a manner that will cause the generator to lose control of the waste. A manifest need not accompany the shipment via transport vehicle of PCB wastes to a storage or disposal facility owned or operated by the end user of PCBs and PCB Items, because these generators have not yet relinquished control over the PCB waste. This exception applies to both transport via the generator's vehicles and transport by an independent transporter, since, in the latter case, the transporter is presumed to be acting pursuant to the generator's instructions. Apart from the exception for shipments between the end user's own facilities, EPA construes the provision regarding when PCB waste leaves the generator's control strictly, so that the manifest requirements will have the broadest possible scope.

EPA emphasizes that this rule applies only to the Federal manifesting requirements for the transport of PCB wastes that are regulated for disposal under TSCA. No provision or exception contained in this rule is construed to alter or limit the applicability of any requirement in existing DOT regulations pertaining to the transport of hazardous materials, including PCBs.

3. *Information required on the manifest.* The manifest which generators will originate is designed to include only the information necessary to identify accurately the persons handling the PCB waste, and the nature and quantity of the waste. These information requirements consist essentially of the Federal Information Requirements described in the March 20, 1984 regulation which announced the adoption of a Uniform Manifest (49 FR 10497). Use of the manifest does not supersede any other requirements for PCB waste under 40 CFR part 761.

a. *Manifest document number.* The EPA identification number and the manifest document number consists of the generator's EPA 12-digit identification number, plus a unique suffix of up to 5 digits which the generator adds to ensure the uniqueness of the manifest document number for each shipment from each site of generation during a calendar year. The 12-digit identification number consists of the generator's unique identification number issued after notification to EPA, or the 12-digit reference "40 CFR PART 761" for those generators who are not required to notify specifically under this rule.

b. *Page number.* Generators are required to identify on the first page of a manifest the total number of pages in that manifest, i.e., the first page (EPA Form 8700-22) plus the number of continuation sheets, if any. For example, if the manifest consists of only one page, and there is no continuation sheet, then the correct entry would be "Page 1 of 1." If the manifest consists of one front page (Form 8700-22) and one continuation sheet, the correct entry is "Page 1 of 2."

c. *Generator name and address.* The address to be entered here is the mailing address of the generator facility to which the designated storage or disposal facility must return promptly a completed copy of the manifest. The generator enters the mailing address of the location that will administer the returning manifest forms, which could be the company's billing office, corporate headquarters, or the site of generation. While the address entered here need not identify the particular site of generation, the generator's manifest records will be maintained so that unique waste shipments (identified by the unique manifest document number assigned by the generator) can be identified with the actual sites of generation.

d. *Generator's telephone number.* This is the number of a person who can provide information about the shipment in the event of an emergency, such as when a transporter cannot deliver the PCB waste to the designated disposer or commercial storer.

e. *Transporter #1: company name and EPA ID number.* The name and U.S. EPA 12-digit identification number of the initial transporter of the waste is entered.

f. *Transporter #2: company name and EPA ID number.* The name and U.S. EPA 12-digit identification number of the second transporter, if applicable, is entered. Space for additional intermediate transporters is provided on the continuation sheet for entry in the order they are used.

g. *Designated facility name, site address, and U.S. EPA ID number.* The definition of "designated facility" has not been changed in the final rule. The generator enters the name, site address, and EPA 12-digit identification number of the off-site commercial storage or disposal facility which the generator has designated to receive its PCB waste. The site address is necessary to inform the transporter where the shipment must be delivered. The designated facility must always be an approved facility for the disposal of PCBs, or an off-site commercial storage facility with either interim or final approval under § 761.65(d). Ordinarily, transfer facilities and other temporary storage facilities used by transporters for storage of PCB waste during ordinary transport would not be listed here as designated facilities, unless the PCB waste will remain in storage at such a site for greater than 10 days. Likewise, an end user's own storage facility would not ordinarily be listed here as the designated facility, unless the laws of a State or local government require manifests for shipments between the generator's own facilities.

h. *Container number and type.* The generator indicates both the number of containers, and, using the instructions in Table 1 of the form instructions, the type of containers for each shipment.

i. *U.S. DOT description (including: proper shipping name, hazard class, and ID number).* The generator completes this section consistent with DOT's Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 179). However, only those packages containing PCBs that meet the definition of hazardous substance in 49 CFR 171.8 are subject to the HMR. The DOT does not consider PCBs subject to the Uniform Hazardous Waste Manifest (UHWM) as specified in todays rulemaking as a hazardous waste. The DOT regulates as hazardous waste only those materials that are subject to the UHWM as specified in 40 CFR part 262 (see the definition of hazardous waste in 49 CFR 171.8). In accordance with the HMR, the generator has the option of using either of the following descriptions when the PCBs meet the definition of hazardous substance at 40 CFR 171.8: "RQ,

Hazardous substance, liquid *or* solid, n.o.s., ORM-E, NA9188 (Polychlorinated biphenyls *or* PCBs)" or "RQ, ORM-E, liquid *or* solid, n.o.s., NA9188, (Polychlorinated biphenyls *or* PCBs)". Section 172.203(c)(2) of 49 CFR allows the Letters "RQ" to be placed at either the beginning or the end of the DOT basic description.

Commentors also pointed out that the shipping description "Polychlorinated biphenyls, 9 (ORM#E), UN2315" is used only for international transportation. According to DOT, this description is occasionally used for transportation solely within the United States when shipments of PCBs are offered for transportation in accordance with either the "International Civil Aviation Organization Technical Instructions For Safe Transport of Dangerous Goods by Air" or the "International Maritime Dangerous Goods Code" (see 49 CFR 171.11 and 171.12). Though this is an acceptable shipping description for transportation by air or water repectively, the use of this description is not to be construed as an exemption from EPA to import or export PCBs. Compliance with the applicable provisions of the HMR, including subpart C of 49 CFR part 172 which deals with shipping paper requirements (e.g., the UHWM), is required for the transportation of hazardous materials.

When packages of PCBs do not meet the DOT definition of hazardous substance in 49 CFR 171.8, i.e., are not regulated by DOT as a hazardous material, the generator must use either of the following phrases in lieu of the DOT description: (1) "polychlorinated biphenyls"; or (2) "PCBs".

The generator also enters here the total quantity and unit of measure (volume or weight) of the shipment. This measurement would be gross weight when the waste container is to be discarded (e.g., a drum containing waste), and net weight when it is not discarded (e.g., bulk shipments by tank truck). The quantity description does not include fractions.

j. *Special handling instructions and additional information—date of removal from service for disposal.* This section is used by the generator for several purposes. For example, ICC Bill of Lading information, placarding and marking information required by EPA or DOT, or emergency response telephone numbers may be included on this space. The PCB waste code number, PCB1 or PCB2, as discussed in Unit III.G, should be entered here. However, the primary purpose of this space in the rule is to record the identification numbers and date of removal from service for disposal for the PCB Articles, PCB Containers, and PCB Article Containers contained in the PCB waste shipment.

The question has arisen whether the date of removal from service for disposal is different from the date the PCB waste is placed into storage for disposal. At the time § 761.65(a) was promulgated, EPA assumed that in the great majority of cases when an item was designated for disposal it went directly into a storage-for-disposal facility and there was no time lag between the date removed from service for disposal and the date it was placed into storage for disposal. Thus, the intent of § 761.65(a) was that PCB waste be disposed of within 1 year from the date it was designated for disposal, i.e., the date taken out of service for disposal.

If this space is not adequate for entering all the relevant dates, the generator must attach a typewritten continuation sheet to the manifest. The continuation sheet lists the PCBs and PCB Items contained in the shipment and their dates of removal from service for disposal.

Recording the date of removal from service for disposal on the manifest generated many comments. The requirement was proposed because the date of removal from service for disposal must be relayed to other handlers of the PCB waste to ensure that disposal takes place within 1 year of storage for disposal. This requirement appeared to be the simplest way to relay dates through middlemen and onto subsequent manifests in the chain of documents leading to a disposal facility. Comments called the requirement duplicative and burdensome, particularly, since the dates then had to be transposed to a facility's annual records. The requirement was also criticized for imposing EPA's enforcement responsibilities on generators and disposers. It was felt to be especially burdensome if each individual item and each item in a container was to be marked, resulting in a significant number of items and numbers being logged several ways.

EPA understands these concerns, but insists that including the dates of removal from service for disposal is essential to the tracking system. However, the system of date recording applies only to distinct PCB Articles, PCB Containers, and PCB Article Containers identified on a manifest, and not to the individual items in a PCB Container or PCB Article Container. The earliest date of removal from service for disposal applies to the entire contents of a container. To respond to claims of duplication, however, although the final rule requires that the dates be transferred to the annual document log, the final rule does not require transposing the dates to the annual report which must be submitted to the Regional Administrator.

The proposed rule did not specify that the date referred to for removal from service on the manifest was the date of removal for disposal, but that is the intended meaning for this date and the date to be used. Several comments indicated concern that the codified language did not include the date of removal from service for disposal as a requirement. The space provided for additional information on the form allows the use of the form for different purposes. The requirement to enter the date of removal from service for disposal appears at § 761.207(a) (1) through (3).

k. *Generator certification.* The generator is required to read, sign, and date the certification statement at the initiation of each PCB waste shipment. To the extent that the form requires a generator of PCB waste to certify to waste minimization efforts, the requirement is satisfied as long as the generator has not increased the volume of waste by any act that contravenes the dilution prohibition of the PCB disposal regulations. Generators whose generation of PCBs qualify as "excluded manufacturing processes" or "recycled PCB processes" could certify as long as they are in compliance with the PCB release restrictions set forth for these processes at § 761.3. Comments on the certification language included a preference for the kind of statement used for the National Pollution Discharge Elimination System. The decision to use the proposed certification language is discussed in Unit III.I.6.

l. *Acknowledgment of acceptance by transporter.* A transporter is required to acknowledge on the manifest the acceptance of the PCB waste shipment by signing the manifest and recording the date of acceptance, as was proposed.

m. *Discrepancy indication space.* The Discrepancy Indication Space is used for recording significant discrepancies, as defined below in Unit III.K.5, between the PCB waste described on the manifest and the PCB waste actually received by the designated PCB storage or disposal facility, as was proposed.

n. *Acknowledgment of acceptance by designated facilities.* The owner or operator of the designated commercial storage or disposal facility is required to acknowledge here the acceptance of the PCB waste shipment by signing the

manifest and recording the date of acceptance, as was proposed.

o. *Optional information required by States.* In addition, the Uniform Manifest form includes optional information spaces to meet the basic information requirements which States have the option of imposing. The optional State information items appear at the upper right portion of the manifest form, and they are shaded and headed by letters (rather than numbers) to set them apart.

4. *Copies of the form.* EPA will not print copies or sets of the manifest form for public use. Generators and others needing copies of the form should first contact their State office to determine if their State has printed copies available. If forms are not available from the State, camera-ready copies of the form for printing purposes can be obtained from the State, or the EPA Regional Office, or EPA Headquarters.

See the discussion in Unit III.I.1 to determine which State's manifest form a generator should use when there are conflicting requirements between the State in which the PCB waste was generated and the State to which the PCB waste is being transported.

5. *Use of the manifest.* The manifest under RCRA consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated storage or disposal facility with one copy each for their records, and another copy to be returned to the generator. EPA proposed that manifests for PCB waste under TSCA also include sufficient copies for the generator, the initial transporter, each intermediate transporter, the designated commercial storage or disposal facility, and another copy to be returned to the generator by the designated facility. These requirements remain in the final rule.

In addition, the proposed rule would have required that generators of PCB waste prepare one additional copy of the manifest. The generator was to send this additional copy directly to the designated facility by Registered Mail, Return Receipt Requested, immediately after the consignment of the PCB waste to the initial transporter. This advance manifest copy was to have been sent to the designated facility independently of the delivery of the PCB waste. Under the proposed rule, the generator's obligation to send an advance copy of the manifest to the designated facility was to have been a non-delegable obligation which only the generator of PCB waste could perform.

EPA proposed this additional copy requirement on generators as a means of ensuring further the integrity of the manifest system. As previously indicated, the CAO report on detection of illegal hazardous waste disposal activities highlighted several instances in which transporters had forged the designated facility's copy of the manifest and returned it to the generator. The return of the forged copy signified to the generator that the PCB waste had arrived at the designated facility, when in fact, the transporter had dumped the PCB waste or otherwise handled it improperly. The transporter profited by retaining both the shipping fee and the disposal fee, rather than passing the disposal fee on to the designated disposal facility.

The submission of an advance copy of the manifest directly to the designated facility was expected to deter transporters or brokers from acting improperly with respect to the PCB waste. Disposers and commercial storers would have been alerted to expect the delivery of the PCB waste, and generators would have obtained a preliminary verification (the signed Return Receipt) of the disposal arrangements from the designated facility that was independent of the transporter's efforts.

In response to EPA's request for comment on the appropriateness and feasibility of this additional verification requirement, EPA received many more opposing than approving reactions. It was felt that this requirement would not solve the problems that inspired it for a number of reasons including, among others, that PCB waste could arrive before the advance copy of the manifest, that the generator might change his mind and ship the PCB waste to a different designated facility without notifying the original designated facility, that there were sufficient safeguards built in by the 45-day exception reports and final liability by the generator, and that it was unnecessarily burdensome.

EPA partially accepts these arguments and has eliminated the requirement from the final rule; however, the concern still remains for assuring the delivery of PCB waste to the designated facility. Therefore, EPA has substituted in the final rule a requirement that generators who use independent transporters verify receipt of the PCB waste by the designated facility with a telephone call, or other means of verification agreed upon by both parties, after receiving the signed copy of the manifest acknowledging acceptance of the shipment. EPA is requiring those generators to list confirmation calls in the annual document log. Thus, generators who use their own transportation vehicles or those of the designated facility will have no further verification obligation after sending the PCB waste out. Users of independent transporters will have only to make a telephone call, or use other agreed-upon verification, and keep a record of the call or other verification. In this way, the purpose of the advance copy of the manifest will have been served without causing any confusion or much extra effort.

The manifest system for PCB waste now parallels the operation of the manifest under the RCRA tracking system for hazardous waste. The generator signs the manifest certification by hand, and obtains the handwritten signature of the initial transporter (who must have an EPA ID Number) and the date of acceptance on all copies of the manifest. The generator retains a copy of the manifest for his records, and gives the remaining copies of the manifest to the initial transporter.

The transporter then carries the manifest with the PCB waste to the designated facility. If delivery to the designated facility is not possible, the transporter contacts the generator for further instructions, which are entered in the space provided for additional instructions. If intermediate transporters are involved, an additional copy of the manifest is prepared by the generator for each additional transporter that will handle the PCB waste. The initial transporter delivers the entire quantity of PCB waste to the designated subsequent transporter, and obtains the subsequent transporter's signature and the date of delivery on the manifest. A copy of the manifest is retained as a record by the initial transporter, and the remaining copies accompany the PCB waste. The subsequent transporter delivers the entire quantity of PCB waste to the designated storage or disposal facility, or to the next transporter, according to the instructions on the manifest. Until the signature of the designated facility or subsequent transporter is obtained, the PCB waste is considered to be in the custody of the transporter who last signed the manifest.

When the PCB waste is finally delivered to the designated PCB storage or disposal facility, the owner or operator of the designated facility (or his agent) signs and dates each copy of the manifest to certify that the PCB waste covered by the manifest was received at the facility. In addition, the designated facility notes on each copy of the manifest any significant discrepancies between the quantity or type of PCB waste identified on the manifest and the quantity or type of PCB waste received at its facility. For bulk waste, significant

discrepancies are variations greater than 10 percent in weight, and for batch waste, they are any variation in piece count, such as a discrepancy of one drum or other article in a truckload. Significant discrepancies in type are obvious differences which are discovered by inspection or analysis, such as when soil or other solids are substituted for liquids, or when PCB waste greater than 500 ppm is substituted for PCB waste below 500 ppm. The designated facility keeps one copy of the manifest for its records, and immediately gives the transporter at least one copy of the signed manifest. Within 30 days after the delivery, the designated facility sends a copy of the signed manifest to the generator at the mailing address indicated on the manifest. This transmission of the signed copy of the manifest to the generator signifies the proper completion of the disposal delivery transaction. As already discussed, whenever a generator uses an independent transporter, the generator confirms the authenticity of the signed copy he receives by contacting the designated facility.

Consistent with RCRA requirements, for shipments of PCB waste within the United States solely by water (bulk shipments only), the generator sends three copies of the manifest, each one dated and signed, to the owner or operator of the designated PCB facility. Copies of the manifest are not required for each transporter.

For shipments of PCB waste by rail within the United States that originate at the site of generation, the generator sends at least three copies of the manifest, dated and signed, to the next non-rail transporter, if any, or the designated facililty.

The manifest requirements for shipments by rail or water parallel existing RCRA manifest requirements for these transportation industries. The rail and water transporters were exempted from manifesting under RCRA to avoid confusion and duplication of effort, since both industries have their own complex tracking systems that render additional tracking documentation unnecessary.

The preparation of sufficient copies of the manifest is the responsibility of the generator who initiates the PCB waste shipment. All copies of the manifest supplied by the generator are required to be legible. It is a violation of these requirements to ship PCB waste accompanied by a manifest or continuation sheet for which any copy or part is not legible. These TSCA provisions for manifesting PCB waste vary slightly from the current RCRA manifest requirements and in no way alter the existing RCRA manifest provisions.

K. Recordkeeping and Reporting

While notification and manifesting requirements form the core of the PCB waste tracking system, the tracking function is aided by several recordkeeping and reporting requirements. EPA proposed that PCB waste handlers comply with recordkeeping and reporting requirements which are based largely upon the existing TSCA and RCRA requirements. All recordkeeping and reporting requirements of this rule apply prospectively and do not require revision of past documents.

1. *Retention of manifests as records.* In the proposed rule, EPA solicited comments as to whether the 5-year record retention requirement for § 761.180(a) and § 761.180(b) should be changed to a 3-year recordkeeping requirement. Although there were few comments on the use of manifests as records, in the final rule EPA has changed the 5-year retention period to 3 years for recordkeeping, including manifests. Therefore, the final rule makes retention of manifests a 3-year requirement.

As was proposed, the originator of the manifest (i.e., generator) keeps his copy of each manifest until he receives the signed copy from the designated facility that received the PCB waste. This signed copy is retained as a record for at least 3 years from the date the PCB waste was accepted by the initial transporter who took the PCB waste off-site from the generator. If, however, the generator is subject to the § 761.180(a) annual document log requirement, he will retain his signed copies of manifests for the period required under § 761.180(a). The generator will retain his manifest records at the business location identified for records retention on his manifests. This location is also the site where the generator shall keep his § 761.180(a) annual document log, since the preparation of the annual document log is facilitated by including manifests. A commentor suggested that the company should determine where to maintain its records, and EPA agrees that a generator may choose the site at which he will maintain his records. The regulations require that all records for a facility be maintained in the same central place, since all the records must be available for inspection in the same place.

Likewise, the transporter must keep among his records a copy of the manifest signed by the generator and either the next transporter, if applicable or the commercial PCB storage or disposal facility that is designated for the delivery of the waste. The initial transporter must retain this copy among his records for at least 3 years from the date that he accepted the PCB waste.

The owner or operator of the designated commercial storage or disposal facility likewise must retain at his facility copies of manifests. The manifest copies must be retained for the same periods as required under § 761.180(b) for the facility's annual document logs. These records must be retained at the same location where the facility maintains its annual document logs.

In addition, EPA is requiring, as proposed, that the periods of retention for manifests by all PCB waste handlers be automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

2. *Exception reporting.* Following the RCRA model, this rule requires, as proposed, Exception Reporting by all generators who must manifest their PCB waste. Any time a generator does not receive a copy of the manifest signed by the authorized representative of the designated storage or disposal facility within 35 days of the date the waste was accepted by the initial transporter, the generator is required to contact the transporter and/or the owner or operator of the disposal facility to determine the status of the PCB waste. If the problem is not reconciled within 45 days from the date the PCB waste was accepted by the initial transporter, the generator must file an Exception Report with the EPA Regional Administrator for the Region in which the waste generation site is located. The Exception Report must be filed if the generator has not received within the prescribed period of time a copy of the manifest signed by the authorized representative of the designated facility. The Exception Report includes:

a. A legible copy of the manifest for which the generator does not have confirmation of delivery.

b. A cover letter signed by the authorized representative of the generator explaining the efforts taken to locate the PCB waste and the results of those efforts.

EPA requested comments on whether there should be further tightening of the generator's recordkeeping requirements to ensure that generators do in fact perform their essential oversight role concerning the operation of the manifest system. The February 1985 GAO Report on problems with detection of illegal disposal of hazardous waste found that there had been very few Exception

Reports filed by generators under RCRA. The GAO concluded that the infrequency with which Exception Reporting has occurred is due largely to non-compliance by generators with the requirement to match their filed manifest copies with the signed copies they later receive from commercial storers and disposers. The GAO Report found that some generators were collecting both copies of the manifest, but were not keeping the copies in the same file location, or otherwise physically matching the manifest copies. The GAO Report also suggested that the miniscule number of Exception Reports may be attributed to a reluctance on the part of generators to "turn in" the low-bid transporters who haul away their waste.

EPA did not receive many suggestions on ways to improve the proposed requirements to ensure that the manifest system receives the attention from generators that is necessary to keep the system credible. There was a negative reaction to the possibility of requiring a generator to attach the signed designated facility copy to the generator's original copy, and to retain the matched copies in its files for 3 years as proof that the transaction was indeed verified. Although EPA considers this an excellent practice and strongly recommends that the regulated community adopt this approach, EPA has not added this as a requirement under the rule.

3. *One-year Exception Reporting.* Indefinite storage of waste at approved commercial storage facilities is not an acceptable form of PCB waste management. Section 761.65(a) of the TSCA storage rules for PCB waste limits the storage of PCB waste prior to disposal to a period of up to 1 year. Under EPA's existing compliance monitoring policies, the 1-year storage period is allocated between storage at approved disposal facilities and storage prior to receipt at the approved disposal facility. The initial generators of PCB waste (i.e., the PCB user, owner, or processor who first removes PCBs or PCB Items from service for disposal) are presumed to be in compliance with the 1-year limit on storage if they can demonstrate that the storage period prior to delivery to a disposal facility did not exceed 9 months.

EPA proposed an additional tracking device to facilitate its ability to track compliance with the 1-year storage restriction for PCB waste.

First, under the proposed rule, generators would be required to record the dates when their PCBs or PCB Items were removed from service on the manifests that accompany their PCB waste to commercial storage and disposal facilities. The dates when PCBs were removed from service and when placed into storage for disposal are existing record requirements in the § 761.180(a) annual document for such generators. The proposal required that the date of removal from service for disposal for each PCB or PCB Item contained in a waste shipment be recorded on the section of the manifest reserved for "Special Handling Instructions and Additional Information." As discussed in Unit III.J.3.j, the required date is the date the first item was placed in a container, while individual dates are required for separate items such as transformers and large capacitors. If this space is not adequate for entry of all the relevant dates, the generator would be required to attach to the manifest a typewritten continuation sheet containing this information. This information would then accompany the waste until it reaches the designated facility, thereby providing notice to waste handlers of the time by which lawful disposal must occur.

Under the proposed rule, when manifested PCB waste is received by commercial storers of PCB waste, the commercial storer would note the dates of removal from service for disposal in the facility's § 761.180(b)(2)(iii) annual document. At such time as the commercial storer initiates a waste shipment containing the PCBs or PCB Items to another storage or disposal facility, he would prepare a manifest which includes the dates of removal from service for disposal for individual PCB Articles and the first date PCB waste was placed in a PCB Article Container or a PCB Container. In this manner, the PCB waste would ultimately arrive at an approved disposal facility accompanied by the essential information on removal from service for disposal. The disposer of PCB waste would then enter the date of removal from service for disposal for each PCB or PCB Item in the facility's annual document which also requires the recording of the date of disposal.

The proposed rule would have required the submission of One-year Exception Reports under two types of circumstances. First, disposers would submit such Exception Reports when they receive PCBs or PCB Items on a date more than 9 months after their removal from service, as indicated on the manifest cover or continuation sheet, and because of other disposal commitments, the disposer could not dispose of the affected PCBs or PCB Items within 1 year of their removal from service for disposal.

Second, generators and commercial storers of PCB waste who transfer PCBs or PCB Items directly to disposers would file One-year Exception Reports under other circumstances. Such a Report would be submitted when the generator or commercial storer of PCB waste transferred PCBs or PCB Items to a disposer prior to the expiration of 9 months from their date of removal from service for disposal, but had not received a Certificate of Disposal confirming the disposal of the affected PCBs or PCB Items within 13 months of their removal from service for disposal. The proposal specified a 13-month period in this instance out of recognition that disposers are allowed 30 days from the date of disposal to forward their Certificates of Disposal. So, generators or commercial storers may receive confirmation of proper disposal as late as 1 year and 30 days after the date the PCB waste items were removed from service. Also, such an Exception Report would be required when a Certificate of Disposal confirmed a date of disposal for PCBs or PCB Items more than 1 year from their placement into storage for disposal.

EPA requested comments on the requirement to submit "One-year Exception Reports" in the manner proposed. Comments ranged from saying the proposal did not impose a significant burden, to suggestions that EPA placed too much significance on the 1-year storage limitation. Some commentors supported reporting by generators only, and others felt it was not clear when a disposer would be required to report: e.g., when the disposer suspects that he will not be able to dispose within 1 year, or when he reasonably believes he cannot dispose within 1 year, or when he actually has not disposed of the PCB waste within 1 year.

EPA has decided to retain the 1-year reporting requirement, as proposed. Although EPA agrees that ideally it should not be necessary to require this reporting, it is not realistic to expect that there will be adequate resources available to monitor compliance effectively without the reports. Therefore, all the proposed requirements for the 1-year reporting have been retained in the final rule. If the PCB waste was received later than 9 months from the date it was removed from service for disposal and other disposal commitments of the disposer prevented the timely disposal of the PCB waste, a disposer shall initiate a 1-year exception report when he has not actually disposed of the PCB waste within 1 year. A disposer should be able to

estimate accurately the facility's disposal schedule and consequently plan disposal in a manner that minimizes the facility's physical inability to dispose of PCB waste on time.

4. *Certificates of Disposal.* EPA further proposed and requested comments on a requirement that disposal facilities prepare written Certificates of Disposal. EPA is aware that many disposal facilities are already providing such certificates as a service to their PCB disposal clients. PCB waste generators desire the certificates to rebut any accusation that they have not acted properly with respect to their PCB waste. It must be noted that generators of PCB waste do not extinguish their potential liability for PCB disposal violations by merely entering into contracts with disposers to perform disposal services. However, a document containing the disposal facility's certification that disposal of specific PCB waste has occurred may be relevant in establishing the good faith of the generator's conduct.

As proposed, the Certificate of Disposal would become a uniform feature of the PCB disposal regulations. In addition to specifying the content of a proper Certificate, the proposal made the Certificate of Disposal the final step in the PCB waste tracking system. In particular, the Certificate of Disposal would be returned by the disposal facility one step back to the generator or commercial storer, if he generated the PCB waste, responsible for manifesting the PCB waste shipment to the disposer. While the disposer's return copy of the manifest confirms only the fact of arrival of PCB waste at a disposal facility, the Certificate of Disposal would confirm the fact of disposal itself. Thus, the Certificate of Disposal would be the final element in the tracking loop to ensure that disposal occurs within 1 year from the date that PCBs or PCB Items are stored for disposal. The Certificate of Disposal would be the basis for One-year Exception Reporting by generators and commercial storers, and it would remain as a record of disposal in the record collections of the disposers and the facilities (in some cases the original owner or user, in other cases a broker or storer) that receive them. From the Certificate of Disposal the PCB waste could be tracked back, if need be, to the original owner of the waste. While that original owner would not necessarily be the one to whom the Certificate is returned, tracking could be done through the manifest numbers included on the Certificate, and the records of any intermediate facility involved in the transaction.

The use and content of the Certificate of Disposal generated comments which varied from approval of the use, request for clarification and/or minor changes, to opposition to its use. The approvals indicated the Certificate is a better record of disposal than is the manifest. One comment supported the use of the Certificate but felt it was meaningless unless the effect was to place liability on the disposer, not the generator, if the certificate was untrue or the disposal was not proper. Another supporting comment questioned the requirement to retain the Certificate in the same location as the annual records. Suggestions for improving the Certificate included requiring a commercial storer, who received the Certificate as the generator of the final consolidated shipment, to break down the Certificate into individual certificates that would go back to the original generator(s) with necessary adjustments in timing of exception reports to allow another 30 days. A further suggestion was to allow the Certificate to record only the latest disposal date for items in a shipment, instead of separate dates for all in order to shorten the document.

EPA is retaining the Certificate of Disposal, as proposed. EPA thinks the Certificate of Disposal will perform a valuable function in tracking the disposal of large quantities of PCB waste and in enforcing the disposal regulations, despite imperfections in particular cases where commingling of waste may complicate complete tracking.

5. *Discrepancy reporting.* The proposed rule would also have required that PCB commercial storage and disposal facilities that receive off-site shipments of PCB waste comply with a Discrepancy Reporting requirement. Manifest discrepancies are differences between the quantity or type of PCB waste designated on the manifest and the quantity or type of PCB waste that a designated facility actually receives. These discrepancies were described above in the discussion in Unit III.J.5 of this preamble dealing with the use of the manifest. EPA proposed that, upon the discovery of a significant discrepancy by a designated storage or disposal facility, the owner or operator of the designated facility would attempt to reconcile the discrepancy with the appropriate party (e.g., generator or transporter). If the discrepancy is not resolved within 15 days after receiving the PCB wastes, the owner or operator of the designated facility would immediately submit to the Regional Administrator in the Region where its facility is located a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest at issue. EPA maintains this requirement in the final rule.

EPA received a comment on discrepancy reporting that suggested bulk waste discrepancy reporting should be triggered by 10 percent in weight or volume, not just weight. EPA has rejected this suggestion because it is simpler to weigh a drum than to attempt to measure the contents by volume.

6. *Unmanifested waste reporting.* EPA also proposed to incorporate into this rule another feature of the RCRA tracking system—the Unmanifested Waste Report. The proposed rule would have required a report from the owner or operator of a designated PCB storage or disposal facility whenever the designated facility received from an off-site source any PCB waste that was subject to manifesting requirements but which was not accompanied by the required manifest. The proposed rule would have required the owner or operator to submit a copy of the report to the Regional Administrator within 15 days after receiving the PCB waste. The Unmanifested Waste Report would include the following information:

a. The EPA identification number, name, and address of the designated facility.

b. The date the facility received the PCB waste.

c. The EPA identification number, name, and address of the generator, and transporter, if available.

d. A description of the quantities and types of PCB waste included in the unmanifested shipment.

e. The method of storage or disposal for the PCB wastes.

f. The certification signed by the owner or operator of the designated facility or his authorized representative.

g. A brief explanation of why the PCB waste was unmanifested, if known.

EPA emphasized that the preparation of an Unmanifested Waste Report should not be a frequent event for these facilities, since the proposed regulation would otherwise prohibit the acceptance by any transporter, off-site commercial storer, or disposer, of any unmanifested PCB waste for which these regulations require a manifest to accompany the PCB waste.

A comment questioned the need for such a report, since existing DOT regulations make it unlawful to transport PCBs (any hazardous substance) without the necessary shipping paper or manifest. Another comment objected to allowing a facility

to accept unmanifested waste. Another comment suggested sending the report to the Regional Administrator where the reporting facility is located, rather than where the disposer is located, since a disposer might not yet have been chosen.

Although it is unlikely that there will be a great quantity of unmanifested PCB waste received at either a storage or disposal facility, § 761.211 of the final rule has been modified to include the options available for the storage or disposal facility that receives such unmanifested PCB waste. A requirement to notify the Regional Administrator in the EPA region where the receiving facility is located has been added so that a Regional Administrator may determine whether the unmanifested PCB waste may be disposed. Otherwise the information required in the unmanifested PCB waste report has not changed from what was proposed, but the unmanifested PCB waste report must be sent both to the Regional Administrator in the region the receiving facility is located and the EPA region in which the PCB waste was generated, if known, within 15 days of receipt of the waste.

Depending on the type of facility that receives the unmanifested PCB waste, the owner or operator of that facility may opt to store or dispose of the PCB waste (unless its disposal is prohibited by the Regional Administrator) or send it back to its point of origin. The owner or operator of the facility should make all possible effort to find out from the transporter where the PCB waste originated and notify the generator that the PCB waste was illegally unmanifested, and have the generator determine whether it should be stored for disposal, disposed, or returned to the generator. The report to the Regional Administrators will include the decisions made on the disposition of the PCB waste.

7. *Annual documents and reports.* The existing PCB regulations impose annual document requirements on facilities that use and store their own PCBs or PCB Items (40 CFR 761.180(a)) and on disposal and storage facilities (40 CFR 761.180(b)). The user's annual document provides a summary for each calendar year of the total amounts of PCBs that were either in use or designated for disposal, as well as information about where and when PCB waste was shipped. For the storage and disposal facilities, the annual document constitutes a summary of the types and quantities of PCB waste received during the previous calendar year, the sources of the PCB waste, and the dates the PCB waste was received and either disposed of at the facility or transferred to another facility. The current regulations require each facility to have available, by July 1 of each year, the annual document summarizing the previous calendar year's (January through December) PCB activity. The documents are currently retained at the facilities, and thus are only available to EPA during facility inspections.

a. *Proposed amendments to 40 CFR 761.180(a).* EPA proposed several amendments to the annual document requirements in § 761.180(a). These amendments were intended to facilitate the tracking of PCB waste, to foster consistency with the RCRA tracking system for hazardous wastes, and to provide EPA with up-to-date information on the quantities and types of PCBs and PCB Items that are in service, or disposed, or projected for disposal. Significantly, the proposal required that commercial storers and disposers of PCB waste submit copies of their annual documents, by July 15 of each year, to the Regional Administrator in the EPA Region where the facility is located. It was determined that this proposed provision would have a minimal impact on the regulated facilities. These facilities are already required to prepare and retain the documents on-site, and the only additional cost incurred under the proposed rule would be the cost of copying the report and mailing it to the EPA. These minimal costs were judged to be greatly outweighed by the value of the information which EPA would have available each year and cumulatively about the PCB waste universe.

First, the annual document would be required to clearly identify the facility by name, owner, EPA identification number, and address. The owner or operator of multiple facilities could still elect to keep the annual documents for all of his facilities at one facility which he designates. The location of the annual document must be identified at each facility. The owner or operator who elected to maintain all of his annual documents at one facility was reminded that this option does not allow him to aggregate all of his use and storage data in one document; a distinct, written annual document would be prepared and maintained for each distinct facility. Also, where an owner or operator of multiple facilities designated one location for the retention of his annual documents, he would designate the same location identified as the location of his manifest records.

Second, § 761.180(a) was proposed to be amended so that the information required in the document included the EPA identification number, name, and address of each PCB disposal facility and commercial storage facility to which PCB waste was shipped off-site during the year. This information would be supplied for each PCB or PCB Item identified as removed from service for disposal.

Third, the proposed amendments would have also required that users who generated PCB waste and transfered it directly to disposers record the date of disposal for each PCB or PCB Item, as indicated on the Certificate of Disposal returned to them by disposers of PCB waste. These generators would also have kept copies of the Certificates of Disposal among their § 761.180(a) records, as an aid to verifying disposal and tracking violations of the 1-year limitation on storage of PCB wastes.

Also, the annual document would also have included the name and EPA identification number of each transporter used during the calendar year for off-site shipments of PCBs and PCB Items to disposal facilities or commercial storage facilities.

b. *Proposed amendments to 40 CFR 761.180(b).* The existing annual document requirement of § 761.180(b) applies to the owners and operators of storage facilities and approved PCB disposal facilities. The proposed rule would retain the basic information requirements already specified at § 761.180(b) for PCB waste received at each disposal or storage facility. The proposed amendments would require several additional items of information to facilitate the PCB waste tracking function, and would rearrange the information requirements into groupings that would facilitate the tracking of the storage and disposal histories of specific PCBs and PCB Items handled as waste during the calendar year.

First, the annual document would be required to identify clearly the disposal or storage facility by EPA identification number, name, owner, and address. The calendar year covered by the document would also be identified.

Second, in identifying any facility (i.e., generator, commercial storer, or other disposer) from which a PCB or PCB Item was received during the previous calendar year, the facility would be identified by its name, owner, and EPA identification number.

Third, where § 761.180(b) currently requires the owner or operator of a facility to identify any PCBs or PCB Items that were transferred to other storage or disposal facilities, the identification of the other storage or disposal facilities would include the

facilities' names, addresses, and EPA identification numbers. The identity of the PCBs and PCB Items transferred would be clearly stated, along with the dates of the transfers.

Fourth, facilities subject to § 761.180(b) would record for each PCB or PCB Item handled as waste during the calendar year the date of removal from service for disposal as indicated on the manifest cover or continuation sheet that accompanied the PCB waste when it was delivered to the facility. This record entry would enable commercial storage facilities to reenter this important information on their manifests which they prepare when the affected PCBs or PCB Items are later transferred to another storage or disposal facility. Disposal facilities would likewise enter the dates of removal from service for disposal among their § 761.180(b) records. These dates of removal from service for disposal could then be compared with the dates of disposal to determine compliance with the 1-year limit on storage of PCB wastes. These record entries, in addition to the requirement to retain copies of Certificates of Disposal, would provide the basis for the submission of One-year Exception Reports by commercial storers and disposers of PCB wastes.

The proposed amendments to § 761.180 were intended to clarify certain ambiguities in the existing annual document requirements that apply to storage facilities. The existing regulation imposes an annual document requirement at § 761.180(a) on PCB users, who are required to record information on both PCB use and storage at their facilities. Section 761.180(b), however, requires a distinct annual document to be prepared by storage and disposal facilities. Clearly, one annual document should suffice to summarize the PCB waste activities of the PCB users who store their PCBs at their own facilities for disposal. However, the existing regulation is not clear in specifying which types of storage facilities are subject to § 761.180(a), as opposed to § 761.180(b).

The proposed rule would clarify the scope of the annual document requirements by limiting the coverage of § 761.180(b) to disposal facilities and commercial storage facilities. The proposed amendment would codify the distinction between the storage facilities of a PCB user who is a "generator of PCB waste" and commercial storers facilities who store PCB waste generated by others. The user's storage sites would be subject only to § 761.180(a), regardless of whether the user chose to store at or contiguous to the site of use, or, at one of his storage facilities located off-site from the site of use. The commercial storage facilities ("Commercial storers of PCB waste") would be subject to the § 761.180(b) annual document requirements. Examples of the commercial storage facilities are storage facilities owned or operated by disposers, transporters, waste brokers, and electrical equipment service companies that drain PCBs from equipment which others own.

The proposed annual document required to be prepared and maintained by commercial storage and disposal facilities under § 761.180(b) would be a distinct written document which summarizes the facilities' PCB waste activities during the previous calendar year (January to December). The document would be prepared by July 1 of each year, and under the proposed rule, storage and disposal facilities would be required to submit a copy of their annual documents to the Regional Administrator by no later than July 15 of each year. The obligation to submit annual documents would continue until the submission of the annual document for the calendar year during which the facility ceases PCB storage or disposal operations.

Because some data contained in these annual documents might qualify as TSCA CBI, the proposed rule would have required that submitters follow the procedures set forth at 40 CFR 704.7 for asserting CBI claims with respect to their annual documents. Significantly, these procedures would require the submission of a complete copy (for internal use) indicating those parts claimed to be CBI, and a second copy from which any material alleged to be CBI has been deleted.

c. *Response to comments on proposed annual documents.* EPA received many comments on the burdens imposed by the additions to the annual document and the requirement to send a copy of them to the appropriate Regional Administrator, as proposed in § 761.180(b). In response to these comments, EPA has made some changes to the annual document requirements in the final rule. EPA is requiring the same information but minimizing duplication, so that physical records are maintained at a facility along with logs summarizing the PCB waste movement in some detail, and only generalized totals and information are to be submitted as annual reports by commercial storers and disposers.

The final rule requires owners or operators of facilities that are neither a commercial storer or disposer under § 761.180(a) to retain "records" and "annual document logs" but does not require submission of an annual report. Records are manifests and certificates of disposal of the PCB Containers, PCB Articles, and PCB Article Containers shipped for storage and disposal. The written annual document log includes the facility's EPA Identification number, manifest numbers of PCB waste disposed during the year, and a summary of other data. This is the same information that was included in the proposed rule. This collection of information on the year's PCB activities, augmented by other data on quantities of PCBs on hand and disposed during the year, will be retained at the individual facility or the designated facility and available for inspection by EPA.

Section 761.180(b) applies to disposers and commercial storers. Each facility will compile from the annual document log a brief summary of each category of information, and then submit only the brief summary as the annual report. The annual report does not duplicate annual log information, it is a brief summary of that information. If clarification of the brief summary is needed, the information on the document log will be available to EPA inspectors. In response to concerns about preparing a duplicate annual report which did not contain any confidential business information, EPA has decided that the annual report submitted to the Regional Administrator should not contain any confidential business information. Financial information, for example, will not appear in the annual report.

The annual reports received by the Regional Administrator from commercial storers and disposers will enable the Regional Administrator to determine the adequacy of PCB waste storage for disposal and disposal activity in that Region. From these reports EPA will be able to determine how well PCBs are being managed on a nationwide basis, and to prepare census-type data on the quantities of PCBs in commerce for disposal during each calendar year.

L. Approvals for Commercial Storers of PCB Waste

1. *Background.* Prior to this final rule the PCB storage and disposal regulations did not contain any permitting or approval authority for commercial PCB storage facilities. For this reason EPA was the subject of Congressional criticism, particularly as it related to the brokers and other intermediate handlers of PCB waste who engaged in off-site, commercial storage of PCB waste prior to the delivery of the

PCB waste to approved disposal facilities. Also, in the case of the storage areas associated with approved PCB disposal facilities, there were no specific approval conditions and closure plans for their commercial storage operations.

Commercial storers of PCB waste have been subject to the storage facility requirements of 40 CFR 761.65 without additional oversight enabling the EPA both to pass on the qualifications of the facility's principals, and impose appropriate facility standards in the facility's conditions of approval. There was no established procedure for EPA to grant or withhold approval to conduct commercial storage operations on the basis of a facility's ability to close properly its commercial PCB storage sites, or to ensure that adequate funds would be available to meet the anticipated closure costs. Since such facilities operated outside of an approval process, the approval revocation and suspension sanctions which may have operated as deterrents to regulatory and approval violations could not be utilized. Congressional hearings in August of 1986 highlighted these shortcomings in EPA's ability to oversee effectively the activities of the commercial storers of PCB waste and Congress further directed EPA to take the appropriate steps in alleviating these shortcomings.

The proposed rule proposed an approval mechanism for commercial storers to enable EPA to evaluate the qualifications and financial responsibility of those entities who engage in the commercial storage of PCB waste, i.e., PCB waste generated or owned by others. Comments on the proposed approval process were generally favorable towards the use of such a mechanism but asked that EPA limit and clarify some aspects of the process, most notably, the reporting of past violations, the definition of principals and key employees, inquiries into other businesses outside of waste handling, the approval/disapproval process and enforcement procedures, and the types of facilities required to submit applications. In addition, while commentors did not oppose the requirement that a commercial storer of PCB waste prepare an acceptable closure plan and demonstrate the financial resources necessary to close the facility, they did request that EPA make certain clarifications and changes to the proposed language. Today's final rule modifies the proposal in response to substantive comments received on the proposed rule.

2. *Principals and key employees.* The proposed rule stated that to receive approval from the Regional Administrator to operate a storage for disposal facility, the owner must meet the requirements of § 761.65 and submit relevant information bearing upon the qualifications of the facility's principals and key employees to engage in the business of commercial storage of PCB waste. Relevant considerations included not only the technical qualifications of the principals and key employees, but also previous experience in waste handling activities and any past State and Federal environmental violations involving the same business or other businesses with which they were associated.

A number of commentors requested that EPA use more objective definitions of the terms principals and key employees so as to clear up the ambiguity as to whether they applied to those responsible for the facility's operation or management, or to other persons in the parent corporation. In addition, numerous commentors said that the reporting of past violations should be limited in time and scope. Comments indicated that environmental violations should be limited to those that were finally determined by judicial decision or consent order or on which either a civil or criminal fine or criminal penalty had been or is being levied. Commentors also suggested that reporting of past violations should have some time limitation, i.e., 3, 5, or 10 years prior to submitting the application and that EPA limit its inquiries on a business' past environmental violations to those related to PCB waste or hazardous waste transportation, storage, and disposal.

In today's final rule EPA has included in § 761.65(d)(3) language suggested by two commentors that clearly indicates from whom and how far back EPA is seeking information. The language sets clear parameters on how far up the corporate ladder EPA is seeking information. EPA is limiting the scope of those included as principals and key employees to include the owner or 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 who owns or controls, directly or indirectly, more than 5 percent of such a partnership, corporation or other business organization and all officials with direct management responsibility for the facility. Direct management responsibility includes the person or persons responsible for the overall operations of the facility (i.e., a plant manager or a superintendent or a person of equal responsibility) and any other supervisory employees who are or will be responsible for the operation of the facility. In addition, applicants need only supply the EPA with information on environmental violations that occurred within 5 years of the day the application is submitted. By limiting the scope of inquiry for principals and key employees to those that are affiliated with the overall operation of the facility, and limiting the information required to State and Federal environmental violations associated with waste handling activities that occurred within 5 years of submitting the application, EPA reduces the burden on the regulated community while still receiving the relevant information it needs to assess adequately the qualifications and history of the submitting party prior to granting or denying an approval.

In addition to decreasing the burden for applicants, EPA resources are better utilized by limiting inquiries to those associated with the handling of waste over a specified period of time. There was some concern that EPA would be overtaxing its resources if it attempted to review thoroughly and accurately all the information applicants would have been required to submit under the provisions of the proposed rule. The changes made in response to the comments will focus the scope of inquiry on a more narrow and relevant base of information, making the approval process less burdensome on applicants and EPA. This approach also ensures there will be an adequate number of storage facilities promptly approved to handle the expected increase in PCB waste slated for disposal over the next few years.

3. *Facilities subject to approval process.* The proposed rule stated that, on the effective date of the final rule, existing storers of PCB waste would have interim approvals for 180 days if the owner or operator had applied for final approval during the 180-day period. The 180-day period of interim approval may be extended until EPA makes a final determination to grant or deny the application. The proposal did not address, however, existing approved disposal operations under TSCA or RCRA that have storage areas. Numerous commentors suggested that EPA not require approval, additional approval, or modification of existing permits for the following types of storage operations: those incidental or ancillary to approved disposal facilities, facilities approved for research and development (R&D) activities, or

treatment facilities that have a small amount of waste stored for use in treatability studies.

EPA agrees that it would be burdensome to require the submission of duplicative information from a storage facility that has an existing RCRA or TSCA disposal approval. However, these facilities and their existing approvals must be evaluated on a case-by-case basis by the Regional Administrator or the Director, EED, if a disposal approval had been issued by the Director, EED, before they are allowed to operate under the auspices of the storage for disposal approval outlined here in today's final rule.

For example, PCB storage areas at RCRA-permitted facilities may be exempt from obtaining a separate TSCA storage approval upon a showing to the Regional Administrator's satisfaction that the existing RCRA closure plan and financial assurance demonstration account for their PCB inventories. The closure plan must meet the spirit of TSCA closure requirements, even if they are not exactly the same as those required under TSCA. However, the technical qualifications and backgrounds of principals and key employees and closure plan as integral parts of the plan must be addressed and deemed acceptable by the Regional Administrator.

In addition, EPA would waive any technical differences between financial responsibility requirements in a RCRA permit and those in the TSCA rule, if the cost estimates clearly take PCB costs into account and the financial demonstration is already approved under RCRA. For example, EPA would accept a RCRA permit with a 10-year pay-in period, rather than the 3-year pay-in period unless the RCRA pay-in period were due to expire in less than 3 years, in which case, the 3-year pay-in period would apply. EPA would also accept the longer pay-in period under RCRA in cases where the RCRA approval did not include financial assurance for PCB inventories and such assurance is now required under this rule.

EPA, with this limited exemption, does not wish to review a RCRA permit for purposes of complying with similar criteria for PCB waste under TSCA. If the RCRA permittee has fulfilled RCRA financial responsibility requirements and those requirements provide for commercial storage of PCBs, no further financial assurance will be required. For this reason EPA strongly encourages the submission of one integrated closure plan and financial demonstration for dual RCRA/TSCA-authorized facilities.

Many commentors point out that numerous TSCA disposal authorizations already require closure plans and financial responsibility as a condition of approval, and that to require an additional separate approval for storage sites ancillary to TSCA-authorized disposal facilities is unnecessary and overly burdensome. EPA agrees and will exempt such facilities if the following conditions exist:

First, the current TSCA PCB disposal authorization's closure and financial responsibility conditions must specifically extend to storage areas ancillary to disposal. Second, the current disposal authorization's closure and financial responsibility conditions must provide for annual adjustments for inflation, and for modification when changes in operations would affect closure costs. Third, the current disposal authorization must contain conditions on closure and financial responsibility that are at least as stringent as those in this final rule. However, EPA will waive, as is the case for existing RCRA facilities, the 3-year PCB closure trust pay-in period when there are existing pay-in provisions already approved for a TSCA-approved facility. Last, the existing disposal authorization must contain an expiration date. Any existing TSCA disposal authorization, for a facility ancillary to a commercial storage facility, that is deficient in any of these four conditions will be called in and modified by EPA within 180 days of the effective date of this final rule, or the owner or operator may exercise the option of submitting a separate application for approval, which includes the information required in § 761.65 (d) through (h) for the storage for disposal facility.

The call-in requirement for disposal approvals will allow EPA to provide equivalent storage closure plan and financial responsibility requirements through one consolidated approval, and avoid the burden of dual approvals. In addition, the requirement that a disposal approval have an expiration date is relevant to the expected date of closure of the storage areas.

4. *Closure plans.* Closure refers to the period in a facility's existence that begins when PCB waste is no longer accepted for storage, and during which the owners or operators of the storage facility are required to remove all PCB waste from the facility and decontaminate their equipment, structures, and land. Under this final rule, facility owners or operators are required to prepare detailed closure plans that identify the steps necessary to bring about final closure. The closure plan will be an essential condition of approval for those facilities that apply for and receive a storage approval. These closure plans must identify in detail the means by which the facility will close in a manner that will eliminate or minimize the post-closure escape of PCBs to the environment.

The preparation of a detailed closure plan is necessary to ensure that owners and operators analyze their future closure responsibilities and bring their present operating practices into line with those responsibilities. Further, a detailed closure plan is essential to accurate cost estimates and adequate financial assurance. EPA's experience with closure plans under RCRA demonstrates that poorly detailed plans have been accompanied by inadequate cost estimates. Thus, acceptable closure plans must be sufficiently detailed to enable a third party to conduct closure in accordance with the plan in the event the owner or operator fails to do so.

The closure plan contents specified in this final rule are derived from the RCRA experience and regulations. The RCRA closure plan standards were first published on January 12, 1981 (46 FR 2851), and amended in regulations issued by EPA and published in the Federal Register on May 2, 1986 (51 FR 16422). The 1986 amendments were a response to litigation and several years' experience under the existing subpart G closure standards of 40 CFR parts 264 and 265. The purpose of the 1986 amendments was to clarify the required content of closure plans for RCRA facilities. EPA believes that the revised RCRA closure plan standards are an appropriate framework for the closure plan standards that this final rule requires as part of the TSCA approval process for commercial storers of PCB waste.

The core requirements of acceptable closure plans are specified in § 761.65(e)(1). First, the closure plan must describe with particularity the means by which the PCB storage areas of the facility will be closed in a manner that eliminates the potential for post-closure releases of PCBs which would present unreasonable risks to human health or the environment. This threshold requirement is essentially the performance standard that governs all closure operations. Closure may occur with respect to the entire facility or with respect to distinct storage areas contained in the facility. Where such distinct storage areas are closed, the closure is referred to as partial closure.

Second, the extent of projected PCB storage activities during the facility's active life must be identified. The active

life of a facility would extend until the time when the completion of closure is certified to the Regional Administrator, or to the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, under § 761.65(e)(8).

For each PCB storage area, and the facility overall, the owner or operator must identify the extent of PCB storage that will occur relative to other wastes, and the maximum projected inventory of PCB wastes that will ever be handled at one time. This information is essential, because it bears upon the facility's ability to demonstrate that it in fact has the capacity to store PCB waste in accordance with the § 761.65 storage requirements. Further, the maximum projected inventory of PCB wastes forms the basis for designating a maximum storage capacity for the facility, and for estimating the costs of closure. Financial assurance would be demonstrated in an amount sufficient to close the facility when closure costs would be at a maximum, and that eventuality would usually correspond to the maximum allowed inventory of stored PCB waste.

Third, the facility owner or operator must identify in detail the methods and arrangements that will be used during closure for actually removing PCB waste from the facility, and providing for its transportation off-site to other commercial storage or disposal facilities. The commercial storer of PCB waste that removes PCBs in accordance with his closure plan would then be a generator of PCB waste.

Fourth, the closure plan must identify with particularity the steps that the owner or operator will follow during closure to remove PCB residues presenting unreasonable risks to human health or the environment, if any, from the facility's equipment and structures and from the soil surrounding the facility. Unlike RCRA closure plans, where decontamination goals and sampling methods are to be developed as elements of the closure plan, the commercial storer of PCB waste under TSCA would identify the steps needed, such as cleanup methods, cleanup goals, and sampling methods, to accomplish compliance with the levels specified in the risk-based, nationwide PCB Spills Cleanup Policy, which was published in the Federal Register of April 2, 1987 (52 FR 10688). This description would include any other activities, e.g., ground water monitoring, run-on and run-off control, and facility security, that will be necessary during closure to ensure compliance with the closure performance standard.

In addition, for each § 761.65 (b) and (c)(7) PCB storage area at a commercial storage facility, the closure plan must include a schedule for closure that identifies the total time required to complete closure, and the time required for the various intervening activities entailed by final closure. The closure plan must include a closure cost estimate which bears upon the amount paid each year of the "pay-in" period for funding the trust.

Finally, the final rule includes provisions specifying the criteria and procedures for modifying a facility's closure plan. These provisions describe what action may be initiated by either the facility owner or operator, or the Regional Administrator or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, when cause exists to believe that changed circumstances will affect the closure plan, the time for closure, or the closure costs. The changed circumstances that would justify a closure plan modification are described at 40 CFR 761.65(e) (4) and (5).

The final rule also includes a closure schedule for when certain closure events must occur and when required notices must be given. Generally, the commencement of closure would be preceded by written notice to the Regional Administrator, or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, at least 60 days prior to the date when final closure is expected to begin. The date when closure is expected to begin would ordinarily be no later than 30 days after the receipt of the last shipment of PCB waste for storage at the facility. This date may be extended for good cause by the Regional Administrator, or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED.

The timetable in § 761.65(e)(6) requires that all PCB waste that was in commercial storage at the facility be removed in accordance with the closure plan within 90 days of the receipt of the last quantities of PCB waste. All closure activities must be completed within 180 days, and the facility must certify the completion of closure (or partial closure) in a written notice to the Regional Administrator within 60 days of the date that closure is completed. The certification that closure has been completed in accordance with the closure plan must be signed by an independent professional engineer, as well as the facility's owner or operator. The deadlines in § 761.65(e)(6) may be extended by the Regional Administrator, or the Director, EED, if the storage facility is ancillary to a disposal facility approved by the Director, EED, for reasonable periods where good cause for the delay is shown.

EPA solicited and received comments on its proposal to require closure plans as part of its approval criteria for commercial storers of PCB waste. These commentors asked EPA to clarify certain issues such as the appropriateness of using the Spill Cleanup Policy for closure standards and the need for an additional closure plan for approved disposal facilities that have existing closure plans for their storage areas.

Comments addressing the appropriateness of the use of the Spills Cleanup Policy for closure standards will be addressed in the Support Document, "Response to Comments on the Proposed Notification and Manifest Rule, August 1989." The comments centered on historic spills and spills cleaned up prior to the policy. The final rule includes the use of the Spill Cleanup Policy for closure standards as proposed.

5. *Financial assurance of closure.* The final rule includes at § 761.65(f) a procedure for preparing a written estimate of the cost measured in current dollars of closing the PCB storage areas of the facility in accordance with the closure plan. The current closure cost estimate which will be kept at the facility is the closure cost estimate adjusted annually for the effects of inflation and any approved modifications to the closure plan. The closure cost estimate must assume that closure occurs during that time when the closure costs would be most expensive. The cleanup cost estimate must assume closure by a third party not related in any way to the commercial storer, using current market costs for disposal, storage, and decontamination.

The final rule requires that the commercial storers of PCB waste demonstrate financial responsibility for closure by passing specific financial tests or by acquiring specific financial instruments that will make available adequate funds to meet the closure cost estimates. The final rule allows owners or operators to choose from a number of mechanisms, including trust funds, surety bonds, letters of credit, corporate guarantees, insurance policies, and the financial test. EPA justifies the imposition of these requirements based upon the several instances in which facilities that went out of business or were forced to close possessed insufficient resources at the time of closure to provide for an adequate cleanup. If the expenditure of public resources is to be avoided, it is incumbent that owners and operators of

approved facilities make provision for closure funds during the active life of their facilities.

The financial assurance mechanisms in today's final rule for commercial storers of PCB wastes are essentially the same as the mechanisms allowed under RCRA regulations at 40 CFR parts 264 and 265, subpart H. The development of these mechanisms and the specifics of their operation have been discussed in numerous RCRA-related rule documents which EPA has issued and which were published in the **Federal Register**. The reader is referred to the following **Federal Register** documents for a detailed discussion of these mechanisms: 45 FR 33260, May 19, 1980; 46 FR 2821, January 12, 1981; 47 FR 15032, April 7, 1982; and 51 FR 16422, May 2, 1986. This preamble only briefly describes the financial mechanisms, with particular attention to any changes from the RCRA mechanisms.

To determine the costs of financial assurance for the purposes of this rule, several assumptions were made. Financial assurance costs would be incurred by facilities that do not currently have financial assurance. These costs are assumed to be equal to the difference between the costs these facilities would have incurred in the baseline of proper closure and the costs they incur in the course of complying with the financial assurance requirements. The magnitude of the financial assurance costs is affected by three variables: the total amount needed to close the site; the time lag between the set-aside of the closure funds and closure; and the difference between the rate at which funds must be borrowed and the rate at which they can be loaned (opportunity cost of capital).

Because financial assurance costs are based on the differenc between the present values of two alternative methods of funding future closure costs, estimates of closure costs are required. For this analysis, costs for closure were based on estimates of costs for a similar facility under RCRA. A typical facility was assumed to have a laboratory, a truck facility, a storage building, and two storage tanks. Costs for closure were estimated as follows:

Laboratory	$10,000
Truck facility (ramps, loading docks, etc.)	15,000
Storage building (500 drum capacity)	100,000
Tanks (two 15 to 20,000 gal. capacity)	20,000
Inspection, soil sampling, etc.	100,000
10 Percent contingency	24,500
Total	269,500

For this analysis, a facility that does not currently have financial assurance is assumed to face baseline costs for closure equal to a constant stream of payments for 23 years, accumulated at the firm's private rate of discount (7 percent), that is just sufficient to pay for these closure costs. That is, each facility is assumed to amortize the closure costs over the expected lifetime of the facility (23 years) in the baseline.

Because not all facilities will necessarily remain solvent throughout the 23 years between the present and the expected time of future closure, the financial assurance requirement is designed to ensure that the funds required for proper closure will be available regardless of the financial health of the facility in the future. Consequently, this analysis assumes that each facility makes a single payment into a fund that accumulates at the government (risk-free) rate of interest (assumed to be 3 percent) until the end of the useful life of the facility. This single payment will be due 3 years from the date of promulgation of the rule. Hence, under the financial assurance requirement modeled in this analysis, instead of making a stream of payments for 23 years that accumulates at 7 percent, facilities make a single lump-sum payment 3 years from the present that accumulates (with certainty) at the lower, risk-free government rate.[1]

Finally, regardless of the discount rate assumption used for deriving present values of these cash flows, the 7 percent and 3 percent rates underlying the cash flow do not change. This causes incremental costs of the one-time payment strategy required under financial assurance relative to the 23-year stream of payments assumed to be made in the baseline to rise as the discount rate rises. This occurs because the present value of the baseline costs fall more rapidly as the discount rate rises than does the present value of the one-time payment within 3 years of the rule's promulgation.

The difference between the present values of these two alternative methods of financial closure costs measures the costs to these firms of the financial assurance requirement. This construction of the costs of a financial assurance requirement has intuitive appeal. First, because facilities already must comply with proper closure procedures, the cost of financial assurance itself must be less than the costs of closure. Second, the construction used here assumes that all facilities assume that they will pay these closure costs in the future. Thus, the baseline consists of facilities that intend to comply with the preexisting rules concerning proper closure. Finally, this definition of the cost of financial assurance captures the incremental cost to industry and to society of funding future closure activities earlier and with greater certainty relative to the baseline funding plans that would be followed by the facilities. Indeed, it is precisely because some facilities may be insolvent 23 years from the present that the expected rate of return is assumed to be 7 percent rather than 3 percent—the financial markets require compensation for the risk of insolvency. But the fact that some facilities may be insolvent in the future means that the future value of all of the facilities' "ear-marked" accounts for closure will be less than the total necessary to properly close all of the facilities. Consequently, funding these costs earlier and with certainty eliminates this possibility.

The incremental cost of financial assurance derived in this way differs depending on the discount rate used to derive the present values of these alternative payment streams.

Discount rate (%)	Baseline cost	One-time cost	Incremental cost
0	$115,998	$149,216	$33,218
3	82,932	136,553	53,621
7	56,850	121,805	64,955
10	44,802	112,108	67,306

As shown above, the incremental cost for financial assurance for a facility is $33,218 (0 percent), $53,621 (3 percent), $64,955 (7 percent), and $67,307 (10 percent). The cost of financial assurance increases as the discount rate rises because the present value of the stream of amortization payments assumed to be made in the baseline falls at a much faster rate than the present value of the payment required under the financial assurance requirement. Although somewhat counterintuitive, the result is correct given that the 3 percent and the 7 percent rates of interest underlying the alternative cash flow scenarios for funding future closure costs remain

[1] Since it is unlikely that firms will be able to obtain insurane for closure, this analysis assumes that financial assurance would be provided by an instrument similar to a trust fund. The present value of closure (at a discout rate of 7 percent) must be paid into a trust fund within 3 years of promulgation of the rule.

constant despite a changing social discount rate assumption.

Several comments were made in response to the estimated costs of financial assurance as described in the proposed rule. Commentors suggested that EPA had seriously underestimated the costs associated with closure. The Hazardous Waste Treatment Council (HWTC) estimated the cost of closure for a full scale authorized facility to be $3 to $5 million. Another commentor provided data that showed closure costs for a single, middle-sized storage facility to be slightly less than $600,000. Claiming that EPA may have underestimated the cost for closure, commentors argued that the associated trust pay-in period should be extended beyond the 3 years proposed by the EPA. Commentors suggested anywhere from a 5- to 10-year pay-in period to be more consistent with RCRA's 10-year pay-in period.

EPA rejects HWTC's cost estimates because it includes the costs for closure of a disposal facility as well as the storage facility. The cost for closure is not the same as the cost for financial assurance. Accepting this higher cost of closure estimate of $600,000 for a middle-sizes storage facility, EPA agrees that typical facilities' closure costs will probably fall within the $270,000 to $600,000 range. The associated costs of financial assurance for closure costs of $270,000 to $600,000 would be $33,000 to $73,000 (undiscounted) or $65,000 to $144,000 at a discount rate of 7 percent. This is the real cost to the facility, i.e., the cost to obtain financial assurance. The Regulatory Impact Analysis for the proposed rule estimated that a typical facility would spend approximately $33,000 (undiscounted) in complying with the financial assurance requirements. EPA does not agree, however, that the trust pay-in period should be extended beyond 3 years and accordingly retains that timeframe in this final rule. This issue will be discussed further in Unit III.L.5.b.

a. *Financial test.* The financial test consists of criteria that compare the closure cost estimate to specific ratios composed of net worth, net income, total liabilities, current assets and liabilities, net working capital, and current bond issuance ratings. These ratios are specified at 40 CFR 264.143(f)(7)(i). Once the elements are identified in the firm's financial statements, the calculation of the test ratios is straightforward. The demonstration of financial assurance capability is presented in a letter from the firm's chief financial officer, which would be supported by reports from the firm's independent certified public accountant. The financial test is not intended as a test of potential insolvency; rather, it is designed to ensure that those who pass the test will have adequate resources to pay in full the cost of closure. Should the firm in subsequent years fail the test, the firm must exercise one of the alternative forms of financial assurance.

EPA, in today's final rule, is utilizing the same financial test criteria that are currently in effect for hazardous waste facilities under 40 CFR 264.143(f). Also, the demonstration of financial assurance would be satisfied by a letter from the firm's chief financial officer containing wording similar to that specified at 40 CFR 264.151(f). The only variations from the RCRA requirements are language changes intended only to make the provisions conform to TSCA statutory and regulatory authorities. The financial test mechanism will be satisfied when a parent corporation which meets the test's criteria guarantees that it will perform closure or establish a closure trust fund in the event that its subsidiary corporation fails to perform in accordance with its closure plan. In addition to meeting the financial test criteria, the guarantor corporation would submit a written corporate guarantee with the wording specified at 40 CFR 264.151(h), modified only to conform to the TSCA statutory and regulatory authorities.

In cases where a storage facility is jointly owned or operated by two or more unrelated companies, a decision must be made by the parties involved with respect to who will be responsible for the financial assurance of the facility. The chosen party will be responsible for complying with all the provisions of § 761.65 (d) through (h) of this final rule.

b. *Closure trust fund.* Under this mechanism, the owner or operator (or entity designated in a jointly owned facility) of the commercial PCB storage facility would enter into a written trust agreement appointing a trustee to manage a fund established by the owner(s) or operator(s) of the storage facility for the benefit of EPA. The fund would be established to meet the costs of closure, and the trust instrument would set forth the powers and obligations of the trustee with respect to the management and use of the fund. When instructed by the Regional Administrator or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, the trustee would reimburse the owner(s) or operator(s), or other persons, for expenditures made in closing the facility, in the amounts directed by the Regional Administrator or the Director, EED. The "corpus" of the trust would consist of the annual payments made by the owner(s) or operator(s) to the fund during the "pay-in" period, and these amounts would be invested or otherwise managed by the trustee.

In the final rule, owners or operators of commercial PCB storage facilities may satisfy their financial assurance obligations by establishing a closure trust fund under the conditions described in 40 CFR 264.143(a), utilizing a trust instrument with the wording specified at 40 CFR 264.151(a). This rule modifies the RCRA language to the extent of conforming it to TSCA statutory and regulatory authorities.

In the proposed rule, EPA proposed a pay-in period for commercial storers of PCB waste to be a period not exceeding 3 years. Commentors requested that EPA extend this trust pay-in period to a period anywhere between 5 to 10 years. The reasons for requesting an extended pay-in period were many, including: EPA's underestimation of closure costs; the argument that accelerated pay-in would force the abandonment of some facilities; service companies, which are primarily small businesses, would need at least 5 years for pay-in to build up the necessary funds; and the need for a more equitable and less burdensome approach of retaining an option of pay-in keyed to the planned closure date or a maximum 10-year pay-in, whichever came first.

The proposed pay-in period differs from the maximum 10-year period system used under RCRA because of the difference between the types of storage facilities regulated under RCRA and under this rule. Under RCRA, storage facilities for the management of hazardous wastes can include land disposal units (e.g., landfills or surface impoundments), while under the TSCA PCB rules, PCB storage facilities are locations where PCB Articles and PCB Containers are stored for less than 1 year prior to disposal. RCRA trust funds allow for an extended pay-in period because of a concern for the substantial costs associated with such measures as capping and securing the facility at closure, as well as the continuing costs of conducting long-term ground water monitoring for a closed landfill or surface impoundment. In the case of closing a PCB storage area, however, one need not typically take into account the post-closure care associated with these types of land disposal units. Once the PCB storage facility has been closed according to the standards set forth in this rule, there should be no long-term

costs. Thus, there is no compelling case for extending the "pay-in" period for the 10 or more years allowed for "pay-in" under RCRA, and EPA believes that 3 years represents a sufficient period of time to fund a commercial storage facility's closure trust fund.

EPA agrees it may have underestimated the cost of closure in the Regulatory Impact Analysis for the proposed rule and that closure of a typical facility will likely cost between $300,000 and $600,000. EPA does not agree, however, that these revised amounts warrant extending the pay-in period. EPA is maintaining the 3-year trust pay-in period in this final rule for the above reasons and it is EPA's policy that any company intending to enter, or currently engaged in the business of commercially storing PCB waste, should be sufficiently viable, either through current assets or loans, to cover the cost associated with the 3-year trust pay-in period.

In the case of existing facilities that opt for the use of a closure trust fund, the first payment into that fund must be made within 30 calendar days after the facility has received a notice of conditional approval from EPA. This notice of conditional approval states that the application to commercially store PCBs has been reviewed by EPA but final approval to operate will not be granted until EPA has received notice that the first payment into the trust fund has been made within the 30-day period. EPA will send a notice to the facility after receipt of verification of payment into the trust fund that the facility has been granted final approval. If this payment is not made within this 30-day period final approval will be denied and interim approval to operate will be canceled.

In the case of new facilities that opt for the use of the closure trust fund, EPA will also provide the facility with a notice of conditional approval; final approval will be granted once EPA receives verification that the first payment has been made into the trust fund.

c. *Surety bonds.* This final rule also incorporates two additional RCRA financial assurance mechanisms that allow surety companies to act as guarantors of closure obligations. The first is a surety bond that guarantees the payment of the "penal sum of the bond" into a standby closure trust fund, in the event the owner or operator of the facility fails to perform the guaranteed closure obligations. The second is a surety bond under which the surety company guarantees that upon the owner's or operator's breach of his closure obligations, it will either perform closure as guaranteed by the bond, or, deposit the amount of the "penal sum of the bond" into a standby trust fund.

In this final rule, commercial storers of PCB waste under TSCA, including those with jointly owned facilities, may satisfy their financial assurance obligations by obtaining surety bonds conforming to the requirements of either 40 CFR 264.143(b) (guaranteeing payment into trust funds) or 40 CFR 264.143(c) (guaranteeing performance of closure). The only modifications to the RCRA language are those necessary to cause the requirements and instruments to conform to TSCA statutory and regulatory authorities.

d. *Closure letter of credit.* Consistent with §§ 264.143(d) and 264.151(d) of the RCRA regulations, commercial storers of PCB waste under TSCA may choose to demonstrate financial assurance for closure by obtaining an irrevocable letter of credit from their bank or other financial institution. The irrevocable letter of credit instrument assures that the financial institution that issues it will make available a specific sum of money over a specific time period on behalf of its customer (the facility owner or operator) for the benefit of the party in whose favor the letter is written. The beneficiary can draw on the credit by presenting the sight drafts or other documents specified in the letter. The financial institution would issue the letter in favor of the appropriate Regional Administrator or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, and the facility owner or operator would establish the account in the amount of the current closure cost estimate. The funds shall be paid into a standby closure trust fund from which closure expenditures will be reimbursed.

Irrevocable letters of credit for closure under TSCA must comply with the requirements specified for these instruments under RCRA, modified only to the extent necessary to conform to TSCA and its implementing regulations.

e. *Closure insurance.* To the extent such insurance is available to cover a PCB storage facility's closure obligations, this final rule allows closure insurance, as described at 40 CFR 264.143(e), as another means of satisfying the financial responsibility obligations under TSCA. This final rule includes only those modifications to the §§ 264.143(e) and 264.151(e) language as are necessary to conform to TSCA statutory and regulatory authorities. As required under RCRA, the face amount of the policy must equal at least the current closure cost estimate, and the policy must guarantee the availability of funds up to the face amount to cover closure expenditures. The insurer would reimburse persons who present itemized bills to the Regional Administrator or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, for closure expenditures which are determined by the Regional Administrator or the Director, EED, to be in accordance with the closure plan or otherwise justified.

f. *Combination of mechanisms.* In today's final rule, the owner or operator of a commercial PCB storage facility could meet his financial assurance obligations by establishing more than one mechanism for his facility. The combination would be limited to trust funds, letters of credit, insurance policies, and surety bonds guaranteeing payment into trusts. The combined instruments would meet the financial responsibility requirements of TSCA if the combination of mechanisms provides financial assurance in an amount at least equaling the current closure cost estimate. The Regional Administrator, or the Director, EED, if the commercial storage is ancillary to a disposal facility approved by the Director, EED, shall seek recourse from any or all of the instruments to provide for closure of the facility.

6. *Approval/disapproval process and enforcement procedures.* In today's final rule EPA has narrowed the definition of principals and key employees and limited its review of the history of environmental violations to 5 years. In addition, violation history will be limited to those violations which resulted in either a civil or criminal fine or a criminal penalty, or civil injunctive relief, and which involved storage, disposal, transport, or other waste handling activities. By narrowing the scope of inquiry, EPA can better utilize its resources during its review of the application and focus its attention on the most relevant information.

EPA received comments on the fact that the proposed rule does not speak to the issue of the approval/disapproval process or enforcement procedures relating to the applicants seeking approval of commercial storage facilities.

EPA has developed a guidance document, which is part of the rulemaking record, titled "TSCA Guidance Manual for Review of Commercial PCB Storage Facility Applications," October 1989. The guidance document may be used by both EPA application reviewers and the regulated community. For the EPA application reviewer, it is a useful tool

to assist in the review of incoming applications in order to ensure completeness. For those in the regulated community who submit applications for approval to EPA, this document serves to explain further what EPA expects in a completed application. The guidance document also addresses the closure plan and financial responsibility requirements that are essential components of the approval process. EPA retains the discretion to approve or disapprove an application for approval for a commercial PCB storage facility based on factors which include but are not limited to, a poor enforcement history, misrepresentation of enforcement history or technical qualifications on the application, inadequate closure plan or financial responsibility documents, and falsification of financial assurance or other application documents. EPA maintains enforcement and compliance data bases that were created for its environmental protection statutes that will be used to verify an applicant's representations regarding compliance history.

After the regional office has received the application and reviewed it for completeness, it will provide the names of the principals and key employees and other information on the applicant to EPA Headquarters. This information will then be published in the Federal Register and sent to the EPA regional offices and appropriate State offices for local publication. The public will be given an opportunity to comment on issues like the firm's past environmental enforcement history as well as any relevant information on the principals and key employees of the firm. This public input will supplement EPA's database searches on the applicant's past compliance history.

The regional office will coordinate with Headquarters on the review of applications. Based on the results of this review and any public comments received by EPA, the Regional Administrator, or the Director, EED, if the commercial storage is ancillary to a disposal facility authorized by the Director, EED, will approve or deny the application. EPA will ultimately publish the list of approved PCB commercial storers in the Federal Register.

Specific actions which may result in the denial of an applicant's request for approval include criminal activities by the firm, principal or key employee; or civil/judicial administrative actions resulting in either a consent agreement or final order and which involved major violations. EPA could issue a denial, an approval with appropriate conditions or a time limit on the approval in those cases where the violations were not so serious as to warrant automatic denial, or, where prior conduct appears to have been rehabilitated. These criteria for approval or denial are discussed in more detail in the guidance document.

7. *States and the Federal Government.* EPA received a comment which recommended that States and the Federal Government be exempted from closure cost estimates and financial assurance requirements as they have been under the RCRA permitting requirements of 40 CFR 264.140(c). EPA agrees and has added the exemption in § 761.65(j) of the final rule. EPA recognizes that, because Federal and State government entities are permanent and stable institutions that exist to safeguard health and welfare, they have the requisite financial strength and incentives to cover the costs of closure. EPA believes, therefore, that it is not necessary to impose closure cost estimate and financial assurance requirements on Federal and State entities. This exemption is consistent with the approach adopted under RCRA under 40 CFR 264.140(c). While EPA recognizes that many local governments, like Federal and State governments, are permanent entities and act to secure the well-being of their citizens, EPA is concerned that local governments cannot provide the same guarantee that they will be able to access adequate funds to pay for environmental costs in a timely manner. For that reason, EPA has chosen not to exempt local governments from the closure cost estimate and financial assurance requirements.

IV. Relationship to State Law

Unlike the RCRA program for hazardous wastes, the TSCA section 6(e)(1) disposal program for PCB waste is fundamentally a Federal program, administered by the EPA Regional Administrators and the Director of the Exposure Evaluation Division, Office of Pesticides and Toxic Substances. The enforcement of the Federal program has been delegated to the Regional Administrators, while the authority to issue approvals for PCB disposal processes is currently shared by the Regional Administrators and the Director of the Exposure Evaluation Division. At the same time, the States may concurrently regulate PCB disposal within their jurisdictions, without supplanting or being supplanted by the Federal requirements. As of May 1989, at least 18 States have elected to regulate various aspects of PCB disposal, often pursuant to their authorized RCRA hazardous waste programs.

A major component of this rule is the requirement imposed on certain generators, transporters, commercial storers, and disposers of PCB waste to notify EPA of their PCB waste handling activities and obtain identification numbers to use on their manifests and other records. This TSCA requirement is independent of any requirement under State or local law or under a State-administered RCRA program. Thus, a generator exempt from the notification requirements imposed by this rule may be independently required to obtain and use a unique identification number by a State or local government. Any such State or local requirement is not preempted by these Federal requirements.

Persons subject to this rule and to State-administered RCRA programs will be able to use the same identification number for the manifesting and recordkeeping requirements of both programs. The identification numbers to be used under this rule, as well as those used under State-administered RCRA programs, are the Dun and Bradstreet Data Universal Numbering (DUN) system numbers. Persons subject to notification under this rule who have already been issued an identification number under a State-administered RCRA program are required to supply EPA with the previously issued number in their TSCA notifications. EPA will verify that these numbers are unique and conform to the DUN system, and authorize as far as possible the use for TSCA purposes of previously issued identification numbers. Under this process, regulated persons will benefit from the administrative convenience of using the same number for both State and TSCA purposes. EPA will issue such persons a distinct TSCA identification number only in those cases where a previously issued number does not conform to the DUN system, or is not unique.

This rule also requires PCB waste handlers to comply with manifesting requirements for the regulated PCB waste which they handle. This rule utilizes the RCRA Uniform Manifest to facilitate implementation of this requirement throughout the United States. The Uniform Manifest includes optional information spaces to meet basic information requirements which States have the option of imposing. The optional State information items appear at the upper right portion of the manifest form, and they are shaded and headed by letters (rather than numbers) to set them apart.

As required by Department of Transportation (DOT) regulations issued under section 112 of the Hazardous Materials Transportation Act, 49 U.S.C. 1811(a), States are not permitted to require any information on the space of the Uniform Manifest specified for "special handling instructions and additional information," on the back of the form, or on any continuation sheet, as a condition of transportation.

Since PCB waste generators may obtain pre-printed or camera-ready copies of the Uniform Manifest from State agencies, it should be noted that the instructions which may accompany these manifests do not reflect all the requirements which EPA has included in the final rule. Specifically, the following elements of the PCB waste tracking system under TSCA are not covered on the pre-printed instructions accompanying the Uniform Manifest:

(1) One-Year Exception Reporting and the related requirement to note dates of removal from service for disposal of PCBs, PCB Containers, PCB Articles, and PCB Article Containers on manifests.

(2) Requirements related to Certificates of Disposal for PCB waste.

It is essential that all PCB waste handlers understand fully any deviations from the RCRA tracking requirements that appear in the final rule, since reliance upon pre-printed instructions issued by States with the Uniform Manifest will not excuse their responsibility to comply fully with TSCA requirements for PCB waste.

This rule also imposes new TSCA approval requirements for commercial storers of PCB waste who store PCB waste generated by others at storage facilities subject to the storage facility standards specified at 40 CFR 761.65. The rule requires, among other things, that commercial storers of PCB waste develop closure plans and financial responsibility mechanisms similar to those required of facilities which manage hazardous waste under RCRA. In those States which regulate PCB storage and disposal practices under their State-administered RCRA programs, the new TSCA approval requirements for commercial storers are independent of the State requirements. Thus, the fact that a facility storing PCB waste commercially may have a RCRA permit or RCRA interim status would not excuse the requirement to obtain a Federal approval under TSCA to store PCB waste commercially. Likewise, the fact that such a facility is already covered by a State's RCRA closure plan and financial responsibility requirements would not excuse the new TSCA requirements to develop closure plans and demonstrate financial responsibility for closure. However, the burden of these concurrent State and Federal approval requirements should be mitigated, since in many cases, compliance with the RCRA closure and financial responsibility standards shall be sufficient to establish compliance with the similar TSCA approval standards.

V. Economic Impact

EPA analyzed the economic impacts associated with the notification, manifesting, recordkeeping and reporting, and storage approval requirements in the proposed rulemaking. The Regulatory Impact Analysis for the proposed rule is available for review in the public docket. This unit summarizes the economic impacts of compliance with the provisions of the proposed rule, as presented in the Regulatory Impact Analysis, and discusses changes made in response to comments. A revised Regulatory Impact Analysis, reflecting new data EPA received, was prepared for the final rule and is also in the public docket.

1. *Notification.* This rule states that storers, transporters, and disposers handling PCBs at concentrations at or above 50 ppm must notify EPA of their PCB activities. EPA estimates that 5,651 facilities will be required to notify EPA at a cost to industry of $290,000.

2. *Manifesting.* In development of the manifest requirements, EPA consulted with States which regulate PCB disposal and with the operators of TSCA-approved disposal facilities. EPA found that each of the approved disposal facilities required a manifest to accompany any shipment of regulated PCB waste, regardless of PCB concentration. These disposal firms require manifests for the PCB waste they accept as a means of preserving records of firms potentially responsible for contributing toward any remedial actions which might arise at the disposal site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Also, among the 18 States that currently require a manifest to accompany PCB waste, all but one require a manifest for PCB waste containing PCBs at the 50 to 500 ppm level. Because current practice is consistent with the 50 ppm trigger for manifesting, there does not appear to be a significant incremental burden to industry associated with the requirement.

3. *Submission of annual reports.* EPA currently requires that annual reports be maintained by generators, storers, and disposal firms handling PCB wastes. This rule requires commercial storers and disposers handling PCBs at concentrations at or above 50 ppm to submit annual reports to EPA. The estimated number of firms expected to comply with this provision of the rule is 130. EPA did not receive any information with which to revise this estimate. The incremental costs of submitting these reports to EPA is estimated to be minimal. At the suggestion of OMB, EPA is estimating 1 hour for the preparation of the annual report at a cost of $21.94 per report.

4. *Storage approvals.* EPA is also requiring that all commercial storers of PCB waste obtain EPA approval. To obtain approval, commercial storage firms must, among other things, develop closure plans for their facilities and meet financial assurance requirements.

EPA estimates the cost to industry for the development and submission of the closure plan will be $35,000 for a facility that is not permitted under RCRA and $25,000 for a facility with a RCRA permit.

EPA estimates the costs for financial assurance to be between $33,000 and $73,000 (undiscounted) per typical facility which has not already met the requirements. These costs are costs of financial assurance and not closure costs. The cost of closing a typical facility is estimated to be between $270,000 and $600,000. A typical facility was assumed to have a laboratory, a truck facility, a storage building, and two storage tanks.

5. *Total economic impacts.* EPA estimates that the total costs to industry associated with this rule, undiscounted, would be between $3.2 million and $5.6 million, of which, between $2.59 million and $4.78 million represents the total cost to industry of complying with the approval requirements for commercial storers of PCB waste. EPA also estimates that the total costs to the U.S. Government would be between $1.95 million and $2.84 million.

VI. Official Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA established the record of this rulemaking with the proposed rule. This record includes basic information considered by EPA in developing the proposed rule, including appropriate Federal Register notices, reports prepared by the General Accounting Office (GAO), testimony from Congressional committee hearings, communications before proposal, and economic analyses of the proposal, and now includes the proposed rule,

comments on the proposed rule, and other material that has been added since publication of the proposed rule.

Any Confidential Business Information (CBI) that is a part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection at the TSCA Public Docket Office, in Room NE-G004, 401 M St., SW., Washington, DC. The following documents for this final rule are in the public record:

(1) Official Rulemaking Record from "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities." Proposed Rule, Docket No. OPTS-62059, 53 FR 37436, September 26, 1988.

(2) 53 FR 27322, July 19, 1988, USEPA, "Polychlorinated Biphenyls in Electrical Transformers."

(3) 53 FR 45288, November 9, 1988, USEPA, "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities; Extension of Public Comment Period."

(4) Transcript of Hearings on the Proposed Notification and Manifest Rule held on December 13, 1988, in Washington D.C.

(5) USEPA, EED, CRB, "Response to Comments on the Proposed Notification and Manifesting Rule" (August 1989).

(6) Memo from OMB to Sandy Farmer, IRSD, OPPE, USEPA, Denial of Approval of Proposed ICR, November 18, 1988.

(7) USEPA, OPTS, EED, CRB, "TSCA Guidance Manual for Review of Commercial PCB Storage Facility Applications" (October 1989).

(8) USEPA, OPTS, ETD, "Regulatory Impact Analysis in Support of the Final Notification and Manifesting Rule," (May 1989, revised October 1989).

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as the term is defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be less than $100 million; it will not cause a major increase in costs or prices for any section of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets.

This rule may in fact result in substantial economic benefits in the long run. The purpose of the rule is to ensure proper disposal of PCB waste. There have been historical cases of improper storage or disposal of PCB waste which have resulted in the creation of Superfund sites. Because the cleanup of these sites is often extremely expensive, this rule has the potential to benefit the economy as well as the environment.

The rule was submitted to the Office of Management and Budget (OMB) prior to publication as required by the Executive Order.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (5 U.S.C. 603 et seq. Pub. L. 96-354, September 19, 1980), requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small entities, no such regulatory impact analysis is required.

EPA lacks information about the universe of PCB generators, storers, transporters, and disposers. This lack of information is a major reason for issuing the rule. Because EPA lacks such knowledge about the degree to which this rule would affect small business, it could not determine whether a regulatory flexibility analysis was necessary. Using what data were available, EPA performed a Regulatory Impact Analysis for the proposed rule, which is in the public record. EPA received no comments on the effect the proposed rule would have, if promulgated, on small business entities; therefore, EPA now concludes that the rule will not have a significant impact on a substantial number of small business entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping and reporting requirements of this rule constitute a "collection of information" as defined at 44 U.S.C. 3502(4).

EPA submitted the proposed information collection requirements to OMB for approval. OMB did not approve them. OMB's reasons for disapproval and EPA's responses in the final rule follow.

1. The burden box did not appear on the Notification Form (EPA No. 7710-53). This was the only reason for non-approval of the form. The burden box followed the form in the Federal Register. EPA has adjusted the form so that the burden box now is on the form.

2. OMB felt that the requirement to submit annual reports to EPA, instead of just maintaining them for inspection when requested, might not be the least burdensome approach as required by 5 CFR 1320.4(b)(1), and that the exception and discrepancy reports give EPA much more critical information for targeting inspections. OMB also felt that the burden of 1 hour should be attributed to submitting an annual report, rather than the de minimis expenditure EPA attributed to it. EPA has retained submission of the annual reports in the final rule since experience with the requirement to maintain the information at a facility proved conclusively to EPA that submission of the information was what was needed to target inspections for best results with the limited resources available. Further, EPA has found from experience under RCRA that so few exception or discrepancy reports are submitted to EPA that such reports would be inadequate for use in targeting inspections. EPA accepts OMB's suggestion that a small amount of time be added to the reporting burden for submission of the annual report and is adding 1 hour to the reporting burden estimate for submitting an annual report.

In addition, OMB instructed EPA to respond to public comments and consider alternatives to the closure plan and financial responsibility requirements in the proposed rule that might be less burdensome yet still create incentives for proper disposal and/or hold commercial storers responsible for cleanup. In particular, OMB suggested considering requiring storage facilities to disclose their closure plans and financial assurance mechanism plans during contract negotiations with PCB generators. EPA always gives consideration to comments received on a proposed rule, and in response to comments has made some adjustments to the closure plan and financial assurance requirements which are retained in the final rule. Most comments supported the closure plans and financial assurance requirements; none of them suggested that EPA involve itself in contract negotiations between generators and commercial storers or disposers. The closure plan requirements and financial assurance remain in the final rule.

The information collection requirements of this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and have been approved under OMB control number 2070–0112.

The public reporting burden for this collection of information is estimated to average 1.5 hours per response for the notification requirements, 3 hours per response for the Exception and Discrepancy Reporting requirements, 1 hour for the annual report, and 325 to 460 hours per response (for only an estimated 75 of the total 5,651 respondents) for the financial assurance and closure requirements. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Information Policy Branch (PM–223), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ATTENTION: Desk Officer for EPA.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 29, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, part 761 is amended as follows:

1. The authority citation for part 761 is revised to read as follows:

PART 761—[AMENDED]

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

2. In § 761.3 by adding and alphabetically inserting definitions for "annual document log," "annual report," "certification," "commercial storer of PCB waste," "designated facility," "disposer of PCB waste," "EPA identification number," "generator of PCB waste," "laboratory," "manifest," "PCB waste(s)," "transfer facility," and "transporter of PCB waste" to read as follows:

§ 761.3 Definitions.

* * * * *

"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.

* * * * *

"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.

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"Commercial storer of PCB waste" means the owner or operator of each facility which is subject to the PCB storage facility standards of § 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 § 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 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.

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"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.

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"EPA identification number" means the 12-digit number assigned to a facility by EPA upon notification of PCB waste activity under § 761.205.

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"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.

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"Laboratory" means a facility that analyzes samples for PCBs and is unaffiliated with any entity whose activities involve PCBs.

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"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.

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"PCB waste(s)" means those PCBs and PCB Items that are subject to the disposal requirements of subpart D of this part.

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"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 § 761.65, but such storage areas are exempt from the approval requirements of § 761.65(d) and the recordkeeping requirements of § 761.180, unless the same PCB waste is stored there for a period of more than 10 consecutive days between destinations.

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"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.

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3. In § 761.65 by adding paragraphs (d), (e), (f), (g), (h), and (i) and the OMB control number to the end of the section to read as follows:

§ 761.65 Storage for disposal.

* * * * *

(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 [insert date 224 days after date of publication in the **Federal Register**]. Commercial storers of PCB waste are prohibited from storing any PCB waste at their facilities after [insert date 224 days after date of publication in the **Federal Register**] unless they have submitted by [insert date 224 days after date of publication in the **Federal Register**] 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 Exposure Evaluation Division (Director, EED) in cases involving commercial storage ancillary to a facility approved for disposal by the Director, EED) 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, EED, if the commercial storage area is ancillary to a facility approved for disposal by the Director, EED) shall grant written, final approval to engage in the commercial storage of PCB waste upon a determination by the Regional Administrator or the Director, EED, 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, EED, if the commercial storage is ancillary to a disposal facility permitted by the Director, EED) 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 shall be deemed to constitute a sufficient basis for denial of approval whenever in the judgment of the Regional Administrator (or Director, EED) two or more related civil violations or a single environmental criminal conviction evidence a pattern or practice of non compliance that demonstrate the applicant's unwillingness or inability to achieve and maintain its operations in a compliance status.

(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.

(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 § 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, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) 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, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED).

(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, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) 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.

(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, EED, if it was the Director, EED 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, EED, in the cases where the Director, EED 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, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) 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, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) 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, EED, 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.

(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, EED, 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, EED 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, EED 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, EED 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, EED 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, EED 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 § 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, 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, EED, 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 § 264.143(a) of this chapter, except for paragraph (a)(3) of § 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, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director EED) 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 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 § 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 § 264.143(b) of this chapter, including the use of the surety bond instrument specified at § 264.151(b) of this chapter and the standby trust specified at § 264.143(b)(3) of this chapter. The use of the surety bonds, surety bond instruments, and standby trust agreements specified in § § 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 § 264.143(c) of this chapter, except for paragraph (c)(5) of § 264.143 of this chapter. The submission and use of the surety bond instrument specified at § 264.151(c) of this chapter and the standby trust specified at § 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 § 264.143(d) of this chapter, except for paragraph (d)(8). The submission and use of the irrevocable letter of credit instrument specified in § 264.151(d) of this chapter and the standby trust specified in § 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, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) 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 § 264.143(e) of this chapter, utilizing the certificate of insurance for closure specified at § 264.151(e) of this chapter. The use of closure insurance as specified in § 264.143(e) of this chapter and the submission and use of the certificate of insurance specified in § 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 § 264.143(f) of this chapter, including a letter signed by the owner's or operator's chief financial officer as specified at § 264.151(f) of this chapter and, if applicable, the written corporate guarantee specified at § 264.151(h) of this chapter. The use of the financial test and corporate guarantee specified in § 264.143(f) of this chapter, the submission and use of the letter specified in § 264.151(f) of this chapter, and the submission and use of the written corporate guarantee specified at § 264.151(h) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of financial tests and corporate guarantees.

(7) The use of multiple financial mechanisms, as specified in § 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, EED, 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, EED, 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, EED, 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 § 761.65 (d) through (h) when it stores samples held for disposal in a facility that complies with the standards in § 761.65(b)(1)(i) through (b)(1)(iv).

(2) A laboratory sample is exempt from the manifesting requirements in § 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 (d)(2)(i) and (d)(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 § 761.208, retain a copy of each manifest, as required under § 761.209, and follow up on exception reporting, as required under § 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.

(Approved by the Office of Management and Budget under control number 2070–0112)

Subpart J—General Records and Reports

4. By revising the heading for subpart J to read as set forth above.

5. By revising paragraphs (a) and (b) and adding the OMB control number to the end of § 761.180 to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(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.

(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 was placed in each PCB Container 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 contents of each PCB Article Container, the first date a PCB Article was placed into each PCB Article Container for disposal, the total weight of the PCB Articles in kilograms in each PCB Article Container, 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 § 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 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.

(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 the following information:

(A) For bulk PCB waste (*e.g.*, in a tanker or truck), its weight in kilograms, the first date PCB waste was placed in the tanker or truck 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 was placed in each PCB Container for disposal, 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 (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 was placed in each PCB Article Container for disposal, 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 (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.

(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.

* * * * *

(Approved by the Office of Management and Budget under control numbers 2070-0061 and 2070-01112

6. By adding a subpart K, consisting of §§ 761.202 through 761.218, to read as follows:

Subpart K—PCB Waste Disposal Records and Reports

Sec.

Subpart K—PCB Waste Disposal Records and Reports

§ 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 § 761.205. EPA will confirm 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 § 761.205(c)(1) or who notifies EPA in a timely manner under § 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 § 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 § 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 § 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 § 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.

§ 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 Chemical Regulation Branch (TS-798), Office of Toxic Substances, 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:

(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 § 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 § 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 § 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, Chemical Regulation Branch (TS–798), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–117, 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 § 761.65(a).

(Approved by the Office of Management and Budget under control number 2070–0112.)

§ 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:

(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 § 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 § 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.

§ 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 § 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.

(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 § 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 § 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 § 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 § 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 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 § 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 § 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 § 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 § 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 § 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 § 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.

§ 761.209 Retention of manifest records.

(a) A generator of PCB waste shall keep a copy of each manifest signed in accordance with § 761.208(a)(1) until the 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 § 761.180 shall retain copies of each manifest for the period required by § 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 § 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 § 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.

(Approved by the Office of Management and Budget under control number 2070–0112)

§ 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.

(Approved by the Office of Management and Budget under control number 2070–0112)

§ 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 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.

(Approved by the Office of Management and Budget under control number 2070–0112)

§ 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 to the disposer of PCB waste on a date more than 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.

(Approved by the Office of Management and Budget under control number 2070-0112)

§ 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 § 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 § 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 § 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 the retain under § 761.180(b).

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D

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

--- PCB Q & A MANUAL ---

An EPA TSCA assistance document designed to provide the regulated community with Agency interpretations to frequently posed questions.*

Prepared by:

OPERATIONS BRANCH
CHEMICAL MANAGEMENT DIVISION
OFFICE OF POLLUTION PREVENTION AND TOXICS

1994 EDITION

* This publication is an informal document, and persons are directed to the PCB final rules at Title 40 of the Code of Federal Regulations part 761 (40 CFR part 761) except where otherwise noted for specific legal requirements. This document provides information on the regulatory requirements for polychlorinated biphenyls that have been reflected in <u>final</u> regulations published through December 31, 1990. Any past versions of this document either final or in draft form are now obsolete.

EPA is requiring that the same manifest document used in connection with RCRA hazardous waste--the Uniform Manifest--be the shipping document for tracking PCB waste. The existing Uniform Manifest is designed to elicit basic information identifying the persons handling the waste, as well as the nature and quantity of the waste. This format lends itself well to the tracking of PCB waste.

The rule requires that manifests be used in connection with the off-site transport of PCB wastes at the 50 ppm or greater level (see 761.207(j) for a discussion of manifesting and anti-dilution). The 50 ppm threshold for manifesting matches the existing cut-off for the disposal of PCBs under the TSCA PCB regulations. The 50 ppm threshold also corresponds to the level at which a number of States require manifests under their hazardous waste programs, and it corresponds to the level at which disposers are currently requiring manifests as a means of limiting their liabilities.

Q4: When states require the use of a manifest for shipping PCB waste, which form should I use?

A4: If both the consignment state and the generator state require the use of a specific manifest for use in their state, the PCB rules require that the consignment state's manifest must be used. EPA suggests that both manifests be prepared, but only the consignment state's manifest be retained in the TSCA annual PCB records, when any state is unwilling to use a form of manifest used in another state.

Q5: Do I need to manifest drained PCB-Contaminated Transformers?

A5: No. Since drained PCB-Contaminated Transformers are not subject to the disposal requirements of Subpart D, 40 CFR Part 761, they are not subject to the manifesting requirements.

Q6: If a generator owns two storage facilities which have different EPA identification numbers and ships PCB waste from one facility to another for purposes of consolidation, must the waste be manifested?

A6: No. The PCB waste has not left the generator's control and, therefore, need not be manifested at this time.

Q7: I own a transformer service shop. Am I considered the generator of the residual oils that are collected during repair and servicing operations?

A7: Yes. You are the generator of this waste because you have physical control of the equipment when the oil was removed. If the residuals were generated on-site at the owner's facility, the owner would be the generator of this waste.

Q8: A transformer is shipped off-site for purposes of inspection and repair. It is determined by the repair shop that the cost of repair would exceed the cost of replacing the unit. The repair shop contacts the owner of the unit for instructions on how to proceed and is instructed by the owner to dispose of the unit. Who is the generator? If it is the repair shop, how would the transformer show up on the annual records of the original owner and how would the original owner ensure receipt of a Certificate of Disposal (CD)?

A8: The repair shop is the generator of the waste (i.e., transformer) because it "has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and is subject to the disposal requirements,"(40 CFR 761.3 -- definition of "Generator of PCB Waste"). The day that the original owner made the decision to dispose of rather than repair the unit is the day the unit is considered to be "removed from service for disposal." This information is required to be recorded in the repair shop's annual document log as per 40 CFR 761.180(a)(2)(ii)(B). The original owner would not receive a CD because he was not the generator of the waste, but he could make arrangements with the repair shop to receive a copy of the CD when the repair shop gets its copy from the disposer. Likewise, the repair shop could not "return" the waste oil to the original owner unless that owner was a commercial storer or disposer who had notified the Agency of such activities.

Q9: In which of the following situations is a generator required to make a confirmation telephone call to the designated facility to confirm receipt of PCB waste?

a. The designated facility provides transportation services with vehicles owned and operated by them.

b. The designated facility provides transportation through a wholly-owned subsidiary.

c. Through a contract with the generator, the designated facility is responsible for the transportation and chooses an independent company.

A9: The only time a confirmation telephone call need be made is

The final rule contains a small quantity exemption from the definition of "commercial storer" for facilities that store less than 500 gallons of PCBs at any time. Such facilities need not seek approvals to operate under 761.65(b). At the time of this printing, the Agency is considering proposing a similar small quantity exemption for solid PCB waste.

Q15: Does the small quantity exemption for applying for a commercial storage approval apply only to less than 500 gallons of liquid PCB waste?

A15: In the Federal Register of June 27, 1990, EPA clarified this exemption by stating that one need not apply for a commercial storage approval if the facility's storage of PCB waste at no time exceeds 500 liquid gallons of PCBs. Pending publication of a final amendment in the Federal Register, EPA will not bring enforcement actions against facilities storing less than 70 cubic feet of solid PCB waste, provided such facilities notify EPA of their waste activities and comply with all other TSCA and PCB regulations.

Q16: I operate the central PCB storage facility which is owned by and accepts waste from members of our public power association. Am I considered a commercial storer and therefore required to submit a commercial storage application?

A16: No. Storage of one company's PCB waste by a "related company" is not commercial storage. Therefore, storage between "related companies" is exempt from commercial storer status. Storage of any waste generated by a non-affiliated organization would change this status to that of a commercial storer. "Related companies" include a parent company and its subsidiaries, sibling companies owned by the same parent company, companies owned by a common holding company and members of an electric cooperative. The test is whether the "related" companies have a financial or managerial relationship that would provide for a mutual role in the financial assurance for the storage area. By this definition, companies are not related if they merely belong to the same trade association.

Q17: Would all Department of Defense (DOD) facilities be considered "related" under this rule?

A17: Yes. DOD facilities are considered related so there will be

no commercial storage involved when one DOD facility stores PCB waste that is generated by another DOD facility. However, storage of PCBs at a DOD facility generated by another Federal, State, or local government departments/agencies, or other (i.e., private) facilities will constitute commercial storage.

Q18: Are independent laboratories required to get commercial storage approval?

A18: No. As long as they are independent (i.e., separate from any firm whose activities involve PCB waste handling) and store their waste in an area that complies with 40 CFR 761.65(b)(i)-(iv), such facilities are not required to get commercial storage approvals.

Q19: A power marketing agency has contracts with its customers to operate and maintain equipment that the customer owns. The agency may operate a customer's equipment located either on the customer's property or the agency's property. Is the power marketing agency a commercial storer if it stores PCB waste owned by its customers?

A19: Yes. The power marketing agency is providing a service for a fee. That is not the same interwoven managerial or financial interest that exists between electrical cooperatives, sibling corporations, or other relationships where there would be a mutual role in financial assurance for the storage area.

September 2001 Version

Revisions to the PCB Q and A Manual

(September 2001)

About the PCB Question and Answer Manual: The PCB Q and A manual is a living document and is periodically revised and updated. The updates are posted on the EPA PCB web site at www.epa.gov/pcb for our customer's use. It is recommended that our customers periodically check this web page for updates instead of relying solely on a single hard copy. Each update or revision will be dated. This date will appear as a header on each page of the manual and will also appear on the web site.

Revisions -

1. Added questions 6-11 to Section 761.62 - Shredder Waste

commercial storers in Subparts J and K, including notification, recordkeeping, and reporting.

2. Q: ***If a facility's storage of PCB waste generated by others does not exceed 500 gallons, does the storage facility need to meet the structural requirements of §761.65(b)?***

   A: Yes. A facility that stores no more than 500 gallons of PCB waste generated by others is not required to obtain approval as a commercial storer. The storage facility must nonetheless comply with the requirements of §761.65(b).

3. Q: ***If a facility's storage of PCB waste generated by others does not exceed 500 gallons, and the facility experiences a PCB leak, does the facility have to follow the PCB rules when cleaning up the spill?***

   A: Yes. A facility that stores no more than 500 gallons of PCB waste generated by others is not required to obtain approval as a commercial storer. All other provisions of the PCB rules apply.

Related company

1. Q: ***A rural electric cooperative is owned by its members. If the cooperative stores leaking small capacitors generated by farmers who are members of the cooperative, is the cooperative a commercial storer?***

   A: No. The definition of "commercial storer of PCB waste" states that storage of one company's waste by a related company is not considered commercial storage. Members of electric cooperatives are considered related companies. Therefore, the cooperative may store the PCB waste of its members without engaging in commercial storage.

2. Q: ***If one government agency stores waste for another government agency, is the first agency a commercial storer?***

   A: Entities within the same executive agency may store each others' waste without being considered commercial storers. However, if one executive agency stores the waste of another executive agency, this constitutes commercial storage.

3. Q: ***If a utility has a contract to service customer-owned equipment, is***

the utility a commercial storer?

A: It depends. A commercial storer of PCB waste is a facility that engages in storage activities involving PCB waste generated by others. Some examples of waste generated by the utility's customers are PCBs removed from equipment sold to the utility for salvage rather than repair (the customer has made the decision to dispose of the equipment, so any PCBs it contains are considered a waste), and PCB waste resulting from a type of servicing that the customer knows will generate PCB waste, such as reclassification of a transformer. If the customer sends the equipment to the utility for servicing not knowing whether the servicing will produce a PCB waste, the customer is not the generator of PCB waste. Any waste that does result from the servicing is generated by the utility. For more information contact your EPA Regional Office.

4. Q: Can a company accept PCB wastes from an affiliated company, for purposes of consolidation prior to disposal, without becoming a "commercial storer" of PCBS?

A: Yes, provided the "affiliated company" qualifies as a "related company" as discussed in the definition of "commercial storer" in §761.3.

§761.65(a)(1) Storage limitations

1. Q: The Disposal Amendments provide that PCB/radioactive waste removed from service for disposal is exempt from the 1-year time limit for storage for disposal, provided certain records are kept. Does this apply to non-DOE PCB/radioactive waste?

A: Yes.

§761.65(a)(2) One-year extension

1. Q: If an article was taken out of service, but is stuck in litigation prior to disposal beyond one year storage for disposal, what happens?

A: Contact the EPA Regional Administrator to request an extension of the one-year storage limit.

§761.65(b) Storage Containers/Units

§761.65(b)(2) Non-65(b) areas

E

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

MAY -7 1990

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCE

Ms. Kenda J. Brown
PCB Document Administrator
Transformer Inspection Retrofill Corp.
2704 Normandy Road
Royal Oak, Michigan 48073

Dear Ms. Brown:

Mr. Elkins has asked me to respond to your letter of February 22, 1990, in which you asked questions about definitions of certain terms in the Notification and Manifesting of Polychlorinated Biphenyls (PCBs) Rule. Your questions and the Environmental Protection Agency's (EPA's) responses follow.

You asked if Company A's activities in the following two situations are legal:

> Company A, a service company, removes a PCB transformer carcass and 700 gallons of fluid from a customer's facility. Company A transports the PCB material to their facility, stores it properly, and within ten days, Company B, the designated facility, picks up the waste for disposal.
>
> Company A performs a retrofill on a customer's PCB transformer, removing 300 gallons of PCB oil. Company A transports the waste back to its facility planning to dispose of it within nine months, being that it is within the small quantity exemption requirements.

The activities are legal in both cases, subject to the following conditions and assumptions: the owner is the original generator of the PCB waste, and must manifest the waste to Company A, which is the commercial storer of all of the waste. Company A may store the waste at its facility for approximately 9 months since the waste must be disposed of with a year of its removal from service for disposal. Thirty days of temporary storage is permitted only to generators, not storers, of PCB waste. As a commercial storer of PCB waste generated by others, Company A must notify EPA, and also submit a closure plan,

financial assurance, and information on its key personnel, as required by 40 CFR 761.65. Only if Company A at no time stores a total of more than 500 gallons of PCBs and no PCB items, would it qualify for the small quantity exemption, that is, not be required to submit a closure plan and financial assurance.

> You also asked "Can Company A be a transfer facility, removing waste within ten days, if they go beyond the small quantity exemption requirements?"

Company A is not a transfer facility since its business is the inspection and retrofilling of transformers and commercial storage of PCB waste, not waste handling for transportation purposes only. (Company A should, however, indicate on its notification form that it also engages in transportation of PCB waste.) Thus, the 10-day period a transfer facility is allowed to hold waste without being considered as engaging in commercial storage is not relevant to Company A's activities.

> You asked, "Also, if a service company qualifies for the small quantities exemption, such as Company A in the second situation above, would the waste be manifested as if Company A were a commercial storer?"

There is no difference in the manifesting requirements between those for a commercial storer who stores more than 500 gallons of PCBs and a commercial storer who stores less than 500 gallons of PCBs. The only difference between the two is that a closure plan and financial assurance are not required in the latter case, provided the commercial storer never stores solid PCB waste, such as drained PCB Transformers. Waste is manifested to all commercial storers.

You also submitted for approval a continuation sheet to be used with a manifest. EPA does not require a particular format for continuation sheets. The only requirement is that it contain the necessary information and be legible. Yours appears to meet the requirement.

I hope you find this information useful.

Sincerely yours,

for Elizabeth F. Bryan
Joseph J. Merenda, Director
Exposure Evaluation Division

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

APR 25 1990

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

Mr. Daniel J. Young
Environmental Scientist
Environmental Resource Center
3679 Rosehill Road
Fayetteville, North Carolina 28311

Dear Mr. Young:

This is in response to the questions you raised in your letter of January 30, 1990, addressed to Mr. Robert Stryker at Region 4 of the Environmental Protection Agency (EPA). While the questions relate to the date used for recordkeeping purposes and annual report requirements, there are other areas of concern raised by the activities described in your letter that this response will also address.

Your letter states that Transformer Salvage, Inc., buys drained PCB-Contaminated Transformers from power companies in the Southeast. Upon receipt, Transformer Salvage opens the transformers, collects the residual oil, removes the core and coil which are burned in an approved incinerator, and recovers the copper and other metals. The residual oil is collected in 55-gallon drums, stored for 30-60 days in a 40 CFR 761.65(b) storage area and then returned to the power companies who originally sold the drained transformers.

Based on the facts stated in your letter, EPA agrees that Transformer Salvage, Inc., is the generator of the PCB waste oil that it removes from PCB-Contaminated Transformers that it buys from the power companies. However, when a PCB-Contaminated Transformer is drained for disposal, the oil containing PCB concentrations of between 50 and 500 ppm, including residual oil, must be disposed of in a TSCA-approved landfill, a TSCA-approved incinerator, or an industrial boiler that meets the requirements of 40 CFR 761.60(a)(2)(iii) or (a)(2)(iv). The residual oil cannot be "returned" to the power company who sold the transformer unless it is a commercial storer or a disposer.

If the power company is a commercial storer, the residual oil can be manifested back to it only if the original owner has a 40 CFR 761.65(b) storage area, notifies EPA by April 4, 1990 that he is engaged in commercial storage of PCB waste, and applies for and receives EPA approval to be a commercial storer. If the original owner never stores at his facility more than 500 gallons

of PCBs generated by others, he is exempt from the financial assurance and closure plan requirements of 40 CFR 761.65(e), (f), and (g).

If the original owner notifies EPA that he is a disposer of PCB waste, he may dispose of PCB-contaminated oil (concentration between 50 and 500 parts per million) in his industrial boiler in accordance with 40 CFR 761.60(a)(2)(iii).

Transformer Salvage, Inc., should check with the power companies it does business with to be sure they are legally entitled to receive the residual oil it wishes to return to them.

As your letter states, the date on a container of PCB waste oil should be the first date on which oil was placed in the container. When the transformer's coil and core are removed and residual oil is drained out, the date that residual oil is placed in a container is the date used for the one-year disposal requirement date. If oil was placed in a container for disposal on more than one date, the first such date starts the year for that container.

EPA agrees that, as described in your letter, Transformer Salvage, Inc. is acting as a generator, not a commercial storer of PCB waste. As a generator, Transformer Salvage, Inc., must maintain records and an annual document log, but is not required to submit an annual report to EPA pursuant to 40 CFR 761.180(b). Should Transformer Salvage undertake activities which define it as a commercial storer, it would be required to obey all regulations pertaining to commercial storers.

I hope this information is helpful. If you have further questions, I suggest you contact Mr. Stryker at (404)-347-3864.

Sincerely,

Charles L. Elkins, Director
Office of Toxic Substances