PCB Manifesting, Tracking, and Disposal Requirements

BACKGROUND:	**The Environmental Protection Agency (EPA) published a *Federal Register* notice on December 21, 1989, which established requirements for all facilities generating polychlorinated biphenyl (PCB) waste to track the disposal process in a manner similar to the "cradle-to-grave" system of the Resource Conservation and Recovery Act (RCRA). The final rule became effective on February 5, 1990. As part of the EH-231 response to the final rule, a series of questions were posed to the EPA requesting clarification on the impact of the rule to Department of Energy (DOE) facilities storing PCB waste. This Information Brief will review the final rule and the EPA response to the request for clarification.**
STATUTE:	**Toxic Substances Control Act (TSCA).**
REGULATIONS:	**40 CFR 761.**
REFERENCES:	**Final rule: 54 FR 52716, December 21, 1989; Correction: 55 FR 26204, June 27, 1990; EH-231 Memorandum, February 5, 1990, subject: PCB Notification and Manifesting Final Rule; EH-231 Letter to the EPA, February 16, 1990, subject: Clarification on PCB Final Rule; EPA Letter to EH-231, August 2, 1990, subject: Response to Request for Clarification on PCB Final Rule.**

General:

The new TSCA regulations require generators of PCB waste to notify the EPA of their activities and to implement a manifest system for tracking disposal of PCB waste. The regulations also require commercial storers of PCB waste to obtain EPA approval for such storage, develop closure plans, and demonstrate financial responsibility [Sect. 761.65(d)].

Definitions (Sect. 761.3):

"***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.

"***Commercial storer of PCB waste***" means the owner or operator of each facility which is subject to the PCB storage facility standards of Sect. 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 Sect. 761.65, but is not required to seek approval as a commercial (PCB) storer. If a facility's storage of PCB waste at no time exceeds 500 liquid gallons of PCBs, the owner or operator is not required to seek approval as a commercial storer of PCB waste.

Clarification on Definition of "Commercial Storer":

Is a DOE facility which receives only PCB waste from other DOE facilities considered a commercial storer of PCB waste?

No, for purposes of this rule, DOE facilities receiving waste from other DOE facilities will

be considered to be receiving it from a "related company" and therefore will not be considered to be commercially storing PCB waste. However, it is important to note that while the facility may not be a commercial storer of PCB waste subject to Sect. 761.65(d), it must still meet the storage facility standards in Sects. 761.65(a)-(c), where applicable.

Is a DOE facility which receives PCB waste from federal facilities other than DOE considered a commercial storer of PCB waste?

Yes, receiving waste from other federal facilities would ***not*** be considered as receiving wastes from a "related company." Therefore, DOE would be a commercial storer in this scenario if it receives more than 500 gallons of PCB wastes. As a commercial storer, DOE would be required to obtain EPA approval of such storage and to develop a closure plan. However, the Federal Government is exempt from the closure cost estimates and financial assurance requirements [Sect. 761.65(j)].

Is a DOE-owned and contractor-operated PCB waste storage facility required to have a closure plan when the quantity of PCBs on site exceeds 500 gallons regardless of whether the DOE facility is considered a commercial PCB waste facility?

In this scenario, the only time the DOE-owned and contractor-operated facility would be considered a commercial storer and need to have a closure plan would be when it stores PCB waste exceeding 500 gallons from other than another DOE facility, as discussed in the answer to the second question.

In addition, according to the EPA, while the contractor may be operating the facility, they are operating it under DOE control and oversight, essentially as employees of DOE; therefore, the answers to the questions above apply equally to the contractor. For example, if the contractor accepts PCB waste exceeding 500 gallons from other than a DOE facility, DOE is a commercial storer of PCB waste and would need to seek an approval as such from the EPA and develop a closure plan.

Relation to RCRA:

The EPA regulates the storage and disposal of PCBs under TSCA section 6(e)(1) authority, rather than under Subtitle C of RCRA, unless the PCB waste also meets the definition of RCRA hazardous waste. However, to better manage PCB waste, the EPA has promulgated requirements for a tracking system that is similar to the "cradle-to-grave" tracking system for hazardous wastes under the RCRA Subtitle C program.

Summary:

The final rule was published in the *Federal Register* on December 21, 1989, is effective on February 5, 1990, and includes the following requirements:

- ❑ The transportation of PCB waste must be properly manifested similar to the "cradle-to-grave" concept of RCRA.
- ❑ Generators must notify the EPA of their PCB waste activities.
- ❑ Generators must obtain a unique identification number from the EPA.
- ❑ DOE facilities can receive PCB waste from other DOE sources without being considered a commercial storage facility, even if the amount exceeds 500 gallons.
- ❑ For purposes of defining "commercial storer," DOE operating contractors are, in effect, considered as employees of DOE and, therefore, what applies to DOE also applies to DOE operating contractors.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-231 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Kathleen Schmidt, RCRA/ CERCLA Division, EH-231, (202) 586-5982.