


EPA's PCB Disposal Rulemaking: Overview and Implementation Considerations

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PCB Disposal Rulemaking: Timeline

- September 2017: USWAG submits draft analytical work plan for Subpart Q comparison study re: automated Soxhlet extraction to EPA
- March 2019: EPA ORCR webinar regarding extraction methods rulemaking
- September 2, 2021: Pre-publication version of proposal issued
- October 22, 2021: Proposal published in Federal Register
- January 20, 2022: Comment period closes
- August 23, 2023: Pre-publication copy of final rule issued
- August 29, 2023: Final rule published in Federal Register
- October 30, 2023: USWAG files petition for review in D.C. Circuit
- November 30, 2023: USWAG files non-binding statement of issues
- **February 26, 2024: Effective date of final rule**

Background: PCB Disposal Rulemaking

PCB Extraction Issue History

- ORCR received a letter from the Utility and Solid Waste Activities Group (USWAG) requesting to allow their members to use an alternate method, specifically Automated Soxhlet Extraction (EPA Method 3541).
- As part of our decision-making process, we explored not only USWAG's request to use Automated Soxhlet Extraction, but also how extraction methods for PCBs should be addressed in general for the regulated community.
- We analyzed the issue in depth and ultimately decided to pursue a regulatory change to allow for more flexibility in PCB Extraction Methods.

*From EPA webinar,
“PCB Cleanup &
Disposal Program
and the PCB
Extraction
Rulemaking”
(March 27, 2019)*

Key Components of Proposal: Focus of USWAG/Industry Comments

- USWAG's comments expressed support for many aspects of the proposal, including:
 - Updating of many technical (extraction/determinative) methods
 - Confirmation of medium-density plastics as “non-porous surfaces” (§761.3)
 - Authorization of temporary storage of PCB waste in non-leaking, covered containers (§761.65(c)(9))
- Technical Methods – *USWAG comments incorporated Environmental Standards report*
- Proposed Changes to PCB Remediation Waste Provisions
 - Self-Implementing Cleanup (§761.61(a))
 - ***Performance-Based Disposal (§761.61(b)) – addition of performance-based cleanup option***
- Regulatory Flexibility in Emergency Situations
 - PCB Spill Cleanup Policy
 - PCB remediation waste requirements (§761.61)
 - “Waiver” provision for emergency situations

Key Components of Proposal: Additional Proposed Changes

- Changes to extraction and analytical procedures
- Confirmation of medium-density plastics as non-porous surfaces
- Authorization of temporary storage of PCB waste in containers at site of generation (761.65(c)(9))
- Introduction of form for annual reports (§761.180)
- Clarification of sampling procedure for non-porous surfaces (§761.61(a); Subpart N - §761.267)
- Clarification regarding wipe sampling (§761.30(i)(4))
- Harmonization of General Disposal Requirements for PCB Remediation Waste
- Removal of regulatory provision allowing disposal of PCB bulk product waste as roadbed
- Revisions regarding applicability of deed restrictions
- Language modifications for financial assurance instruments
- Removal of manifest tracking numbers from annual reports
- Revision of categories of PCB waste on the manifest
- Harmonization of PCB concentration language regarding cap material
- Additional clerical, editorial, technical, or administrative changes

Confirmation of Medium-Density Plastics as “Non-Porous Surfaces”

Confirmation of Medium-Density Plastics as Non-Porous Surfaces

- Included under “Changes to Improve Regulatory Implementation”; consistent with existing EPA policy
 - December 2018: EPA interpretive letter to AGA finding that medium- and high-density polyethylene used in natural gas distribution piping meet the definition of “non-porous surface” under §761.3
 - EPA’s finding supported by NYSEARCH/National Grid study
- Amended definition of “non-porous surface” at §761.3:
 - *Non-porous surface* means a smooth, unpainted solid surface that limits penetration of liquid containing PCBs beyond the immediate surface. Examples are: smooth uncorroded metal; natural gas pipe with a thin porous coating originally applied to inhibit corrosion; smooth glass; smooth glazed ceramics; impermeable polished building stone such as marble or granite; and **medium- and high-density plastics, such as polycarbonates and melamines, that do not absorb solvents.**
- Significance (codifying existing EPA interpretation) –
 - Non-porous surfaces may be wipe sampled for waste profiling, decontamination, abandonment, disposal
 - Significantly expands opportunities for decontaminating per §761.79

Regulatory Flexibility for Emergency Situations

Definition of “Emergency Situation”

40 C.F.R. § 761.3

- “Adverse conditions caused by manmade or natural incidents that threaten lives, property, or public health and safety; require prompt responsive action from the local, State, Tribal, territorial, or Federal government; and result in **or are reasonably expected to result in:**
 - A declaration by either the President of the United States or Governor of the affected State of a natural disaster or emergency; or
 - An incident funded under the Federal Emergency Management Agency (FEMA) via a Stafford Act disaster declaration or emergency declaration.
- Examples:
 - Civil emergencies
 - Natural conditions – hurricanes, earthquakes, tornadoes

Additional Flexibilities in Emergency Situations: PCB Spill Cleanup Policy

➤ PCB Spill Cleanup Policy

- Clean up spill based on as-found PCB concentration when source concentration cannot readily be determined
- 24-hour notification requirement extended to **48 hours after adverse conditions preventing notification have ended**

➤ EPA had authority to provide this flexibility prior to rule change; the rule codifies these provisions to make them automatically available in “emergency situations” (not just approved on a case-by-case basis)

- Greater certainty for regulated entities

Additional Flexibilities in Emergency Situations: Waivers for Specific Cleanup/Disposal Activities

- New provision – 40 C.F.R. §761.66, “Emergency situations”
 - Allows request of a waiver of any requirement of the following, for cleanup/disposal of PCB release caused by “emergency situation”:
 - §761.60 (disposal requirements)
 - §761.61 (PCB remediation waste)
 - §761.62 (PCB bulk product waste)
 - §761.65 (storage for disposal)
- Requirements:
 - Request 7 days after discovery of release or implementation of temporary emergency procedures, as applicable
 - Request must contain description of emergency situation, spill and location details, plan for sampling/extraction/analysis/cleanup/storage/disposal alternative requested

Revisions to § 761.61(b) – Performance-Based Cleanup and Disposal

40 C.F.R. § 761.61 – Overview

- 40 CFR §761.61 addresses cleanup and disposal of PCB remediation waste
- Since 1998, three options to address PCB remediation waste under §761.61:
 - §761.61(a) – “self-implementing cleanup”
 - Prescribes method of cleanup and options for disposal
 - Requires EPA notification (30-day waiting period)
 - Allows for disposal of PCB remediation waste based on as-found concentration
 - §761.61(b) – “performance-based disposal”
 - Prescribes disposal options for (liquid/non-liquid) PCB remediation waste
 - Silent on cleanup methods/requirements; EPA: Clean up to < 1 ppm
 - *Final PCB Rule added new §761.61(b)(1), “performance-based cleanup”*
 - §761.61(c) – risk-based disposal approval
- Note that the PCB Spill Cleanup Policy is also available to address PCB spills < 72 hours old

40 C.F.R. § 761.61(b) – Previous (Post-Mega Rule) Regulatory Text

(b) *Performance-based disposal.* (1) Any person disposing of liquid PCB remediation waste shall do so according to §761.60(a) or (e), or decontaminate it in accordance with §761.79.

(2) Any person disposing of non-liquid PCB remediation waste shall do so by one of the following methods:

(i) Dispose of it in a high temperature incinerator approved under §761.70(b), an alternate disposal method approved under §761.60(e), a chemical waste landfill approved under §761.75, or in a facility with a coordinated approval issued under §761.77.

(ii) Decontaminate it in accordance with §761.79.

(3) Any person may manage or dispose of material containing <50 ppm PCBs that has been dredged or excavated from waters of the United States:

(i) In accordance with a permit that has been issued under section 404 of the Clean Water Act, or the equivalent of such a permit as provided for in regulations of the U.S. Army Corps of Engineers at 33 CFR part 320.

(ii) In accordance with a permit issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act, or the equivalent of such a permit as provided for in regulations of the U.S. Army Corps of Engineers at 33 CFR part 320.

Current EPA Guidance – Cleanup Requirements When § 761.61(b) Used for Disposal

- From the 1994 proposal to the Mega Rule:
 - §761.61(b) performance-based disposal option “could be used where all PCB remediation waste would be removed from the environment, or where remediation levels were established elsewhere in these rules.”
- From the EPA PCB Question & Answer Manual:
 - “Section 761.61(b) only addresses disposal of waste. [It] does not require removal of PCB remediation waste at any specified concentration **nor does this paragraph provide for procedures to demonstrate that cleanup at a site is complete. To be completely unregulated for disposal off-site without an approval from EPA, waste must contain <1 ppm [PCB],** and that concentration must not be the result of dilution during remediation”
- EPA regional PCB coordinators also confirmed interpretation in email correspondence.

40 C.F.R. § 761.61(b) – As Amended

- Retitled “Performance-based cleanup and disposal”
- Introductory language of applicability to entire subsection (b)
 - *Addressed in subsequent slides*
- New §761.61(b)(1) added – “Performance-based cleanup”
 - *Addressed in subsequent slides*
- Former §761.61(b) is now redesignated as §761.61(b)(2) – “Performance-based disposal”
- Only change to performance-based disposal **on the face of the regulatory text** is addition of option for disposal of non-liquid PCB remediation waste:
 - Specifically, in “a hazardous waste landfill permitted by EPA under section 3005 of RCRA, or by a State or territory authorized under section 3006 of RCRA”

Requirements of New § 761.61(b)(1) – Performance-Based Cleanup

- §761.61(b)(1)(i) – Applicability restrictions
- §761.61(b)(1)(ii) – Cleanup levels
- §761.61(b)(1)(iii) – Verification sampling
- §761.61(b)(1)(iv) – Recordkeeping requirements
- §761.61(b)(1)(v) – Post-cleanup notification

New Performance-Based Cleanup Requirements – Applicability Restrictions

➤ §761.61(b)(1) cleanup not available at locations blocked from §761.61(a) –

- Surface or ground waters
- Sediments in marine and freshwater ecosystems
- Sewers or sewage treatment systems
- Private or public drinking water sources or distribution systems
- Grazing (or agricultural) lands
- Vegetable gardens

➤ Also not allowed for use at –

- Site that is “adjacent to, contains, or is proposed to be redeveloped to contain” –
 - Schools, day care centers, playgrounds, parks
 - Residential dwelling, hospitals, nursing homes
 - Endangered species habitats, national wildlife refuges, estuaries, wetlands, surface waters
 - National parks, commercial fisheries, sport fisheries
- Sites within 100-year floodplain

“Adjacent To”

- Cannot be used where “cleanup site” is adjacent to sensitive area
- “Cleanup site” defined at 761.3
 - The areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of a cleanup of PCB remediation waste, regardless of whether the site is intended for management of waste.
- From Q&A:
 - “Whether the cleanup site includes areas surrounding a localized source of PCB contamination depends on such factors as whether the PCB contamination could have been spread or carried beyond the localized area of contamination. ... The Regional Administrator may approve or disapprove of your description of the site.” (Regarding 761.61(a))

New Performance-Based Cleanup – Additional Requirements

➤ Cleanup levels

- Bulk PCB remediation waste and porous surfaces – clean up to ≤ 1 ppm
- Liquids – concentrations specified in §761.79(b)(1) and (b)(2)
- Non-porous surfaces – concentrations specified in §761.79(b)(3)

➤ Verification sampling

- Subpart O for bulk PCB remediation waste and porous surfaces
- Subpart P for non-porous surfaces
- §761.269 for liquid PCB remediation waste

➤ Recordkeeping – Required in accordance with §761.125(c)(5)

➤ Cleanup completion notification – Within 30 days of sending final shipment off-site for disposal:

- Site identification/contact info; disposal facility info; manifest tracking number; waste quantity
- Summary of applicable components from §761.125(c)(5); and certification.

Cleanup Requirements: Self-Implementing vs. (New) Performance-Based

	Self-Implementing Cleanup - 761.61(a)	New Performance-Based Cleanup - 761.61(b)(1)
Applicability Restrictions	Yes	Yes <i>Includes 761.61(a) restrictions + 100-year floodplain Also excludes sites that are, or are adjacent to, or are proposed to be redeveloped as, variety of uses (e.g., parks, schools, residences)</i>
Site Characterization Requirement	Yes	No
Cleanup Notification	Yes <i>Required 30 days prior to cleanup</i>	Yes <i>Within 30 days after sending the final shipment of waste off-site</i>
Cleanup Levels	Yes <i>Based on kind of material, location (high- vs. low-occupancy); higher levels w/ certain conditions</i>	Yes <i>No distinction based on high vs. low occupancy</i>
Cleanup Verification/Sampling	Yes	Yes
Recordkeeping	Yes	Yes
Dispose based on as-found concentration?	Yes	No
Can EPA require more work?	Yes	No* <i>EPA can require additional info/work to meet cleanup levels</i>

40 C.F.R. § 761.61(b) – Introductory Text

➤ Amended regulation adds new introductory text applicable to all of §761.61(b)

(b) Performance-based cleanup and disposal. Any person may clean up and dispose of PCB remediation waste at a site in full compliance with the performance-based cleanup provisions of [§761.61(b)(1)] and disposal provisions of [§761.61(b)(2)].

Alternatively, any person may dispose of PCB remediation waste in accordance with [§761.61(b)(2)], but such disposal does not relieve them of cleanup and disposal obligations for any PCBs that remain on-site if the provisions of [§761.61(b)(1)] are not complied with.

Amendments to § 761.61(b) – Discussion in Preamble

- Preamble text regarding “severability” of §761.61(b)(2) mirrors language included in preamble to 2021 proposal:

EPA notes that [the changes] to 761.61(b) will not impact a responsible party’s ability to pair performance-based disposal under 761.61(b)(2) with on-site cleanup under 761.61(a), 761.61(c), or 761.77 (*e.g.*, a state-authorized cleanup under a coordinated approval). **The regulatory text explicitly preserves the ability to use 761.61(b)(2) solely as a disposal provision.** See introductory paragraph in 761.61(b).

Amendments to §761.61(b) – Statements from EPA’s Economic Assessment

➤ From EPA’s Economic Assessment for the final rule:

Some of the amendments to the §761.61(b) option are expected to lead to a small level of burden for the regulated community. The net effect of the final rule changes is expected to decrease burden on the regulated community.

... Responsible parties will still be able to use the disposal options in §761.61(b) **with no new constraints**. However, **for the site to be authorized for reuse, it must be cleaned up under either §761.61(a), (c), or the (b)(1) performance-based cleanup option.**

Selecting PCB Cleanup Approach, Post-Effective Date of 2023 PCB Disposal Rule

- When did the spill occur?
- When did you discover the spill?
- What areas were impacted by the spill?
- What was the source concentration of the spill (if known)? What is the as-found concentration of the spill?
- Considerations regarding EPA involvement (pre- and post-cleanup)
- Logistical considerations (timing pressures; achievability of different cleanup standards; transportation/related factors associated with different disposal options)

Questions?

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