



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

APR 06 2017

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

NOW THE  
OFFICE OF LAND AND  
EMERGENCY MANAGEMENT

Mr. Andrew Marshall  
SVP Regulatory Affairs  
US Ecology  
251 E Front Street Suite 400  
Boise, Idaho 83702

Dear Mr. Marshall:

This letter is in response to your November 28, 2016, letter, regarding the need for a TSCA approval to perform waste treatment activities on PCB-containing soil at a facility permitted under the Resource Conservation and Recovery Act (RCRA) that is neither the cleanup site nor the final disposal facility.

From the submitted letter and further discussions, we understand that you are interested in remediating soil that contains greater than 500 parts per million (ppm) polychlorinated biphenyls (PCB), and lead at 75 milligrams per liter (mg/L) as determined using the toxicity characteristic leaching procedure (TCLP). This soil would be classified as a PCB remediation waste under the Toxic Substances Control Act (TSCA) and a hazardous waste under RCRA. You intend to remove the contaminated soil from the cleanup site, transport it to a RCRA treatment, storage, or disposal facility (TSDF) for microencapsulation in order to meet the RCRA Land Disposal Restrictions (LDR), and then transport it to a RCRA Subtitle C landfill for disposal. Furthermore, the treatment activities would occur at an intermediary TSDF that is not currently covered by a TSCA approval or self-implementing activity or any other approval or permit addressing PCBs and that the treatment activities are not otherwise permitted under the TSCA PCB regulations.

The proposed waste treatment activities at a RCRA-permitted intermediary facility<sup>1</sup> would qualify as processing activities under 40 CFR 761.20(c)(2)(ii) and would require a TSCA PCB disposal approval or a RCRA permit that contains treatment or disposal conditions applicable to PCB-containing soil. We provided below a review of the relevant regulatory citations and how they apply to this specific instance.

**Processing activities associated with and facilitating treatment must be done under an approval.**

Under 40 CFR 761.20(c)(2)(ii), processing activities which are primarily associated with and facilitate treatment (as defined in § 260.10) or disposal require a TSCA PCB disposal approval unless they are part of an existing approval, are part of a self-implementing activity under §§ 761.61(a) or 761.79(b) or (c), or are otherwise specifically allowed under 40 CFR part 761, subpart D.

**The proposed activities are considered microencapsulation.**

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<sup>1</sup> EPA does not believe that the RCRA permit for the intermediary facility contains treatment or disposal conditions applicable to PCB-containing soil.

The letter stated that PCB-contaminated waste soil that exhibits the RCRA toxicity characteristic would be treated for lead through the addition of a reagent to reduce leachability of the metals in the soil in order to meet applicable RCRA land disposal requirements prior to disposal. EPA considers this type of waste treatment to be microencapsulation for purposes of 40 CFR 761.20(c)(2)(ii) (see, e.g., 40 CFR 268.45).

**Microencapsulation is considered a processing activity associated with and facilitating treatment.**

Microencapsulation for lead or other heavy metals would be a processing activity associated with and facilitating treatment and/or disposal within the meaning of § 761.20(c)(2)(ii). The preamble to the June 29, 1998, PCB disposal regulations, which provides background on processing activities covered under § 761.20(c)(2), specifically lists microencapsulation as an example of a processing activity that must be covered by an approval (63 FR 35384, 35392). Further, the waste treatment activities are associated with and facilitate a “process... designed to change the physical, chemical, or biological character or composition of any hazardous waste...so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume” within the meaning of “treatment” in § 260.10. Although the waste treatment may not change the character or composition of the PCB within the waste, it will change other characteristics of the waste, and “treatment” covers changes to any physical, chemical, or biological character or composition of hazardous waste. Even though the waste treatment activities are intended to affect non-PCB compounds in the waste and will be done for RCRA purposes, the purpose behind the treatment does not alter the fact that the waste as a whole will be changed.

**The proposed treatment activities are not covered by the self-implementing cleanup option at the cleanup site or the disposal approval at the waste disposal facility.**

The proposed waste treatment activities described in US Ecology’s letter would not fall within any exception in § 761.20(c)(2)(ii), including the exception for activities that are part of a self-implementing cleanup under § 761.61(a). Since the treatment activity does not occur at the cleanup or disposal site, 40 CFR 761.61(a) is not applicable. Furthermore, § 761.61(a)(5)(i)(B)(2)(iii), which was cited in US Ecology’s letter, only provides for off-site disposal of bulk PCB remediation waste, not interim waste treatment, and only provides for disposal at a RCRA-permitted landfill or TSCA PCB disposal facility. From the submitted letter and further discussions, EPA also does not have reason to believe that the proposed waste treatment would be part of an existing approval or “otherwise specifically allowed” under 40 CFR part 761, subpart D.

Therefore, the proposed waste treatment activities described in US Ecology’s letter would require a TSCA PCB disposal approval or a RCRA permit that contains treatment or disposal conditions applicable to PCB-containing soil.

If you have any questions regarding this letter, please contact Karen Swetland-Johnson of my staff by email at [swetland-johnson.karen@epa.gov](mailto:swetland-johnson.karen@epa.gov) or by phone at (703) 308-8421.

Sincerely,  
  
Barnes Johnson, Director  
Office of Resource Conservation and Recovery

cc: PCB Regional Coordinators