

Amendments to PCB Regulations

Fact Sheet: Flexible Provisions for Emergency Situations

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This fact sheet¹ describes changes to the federal polychlorinated biphenyl (PCB) regulations at 40 Code of Regulations (CFR) part 761 that went into effect on February 26, 2024, which address the cleanup and disposal of PCBs during emergency situations under the Toxic Substances Control Act (TSCA) ([88 Federal Register 59662](#); August 29, 2023). Prior to these regulatory changes, EPA issued emergency guidance for PCBs on a case-by-case basis. These regulations take the place of that process, to allow for faster and more flexible emergency responses.

EPA made the following changes with respect to emergency situations in the PCB regulations:

- Added a new definition of “emergency situation” at 40 CFR Sections 761.3 and 761.123;
- Expanded flexibilities in the PCB Spill Cleanup Policy in 40 CFR part 761, subpart G, for emergency situations; and
- Added a new option at Section 761.66 for responsible parties to request a waiver from applicable PCB sampling, extraction, analysis, cleanup, storage, disposal, and other regulatory requirements for emergency situations.

New Definition of “Emergency Situation”

EPA added a definition for “emergency situation” to Sections 761.3 and 761.123. Emergency situation means “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: (1) A declaration by either the

Polychlorinated Biphenyls (PCBs)

PCBs were domestically manufactured from 1929 until 1979 and used extensively in many applications such as coolants in hydraulic systems and as dielectric fluids in electrical equipment. Most manufacturing, processing, distribution in commerce, and use of PCBs was banned under TSCA after 1979. However, PCBs may still be present in products and materials produced before 1979 or in excluded manufacturing processes, as defined in 40 CFR Section 761.3, and can still be released into the environment, where they do not readily break down. PCBs have been identified as probable human carcinogens and shown to cause a variety of non-cancer health effects (<https://www.epa.gov/pcbs/learn-about-polychlorinated-biphenyls#healtheffects>).

¹ The statutory provisions and EPA regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based upon the circumstances.

President of the United States or Governor of the affected State of a natural disaster or emergency; or, (2) an incident funded under FEMA via a Stafford Act disaster declaration or emergency declaration. Examples of emergency situations may include civil emergencies or adverse natural conditions, such as hurricanes, earthquakes, or tornados.”

Expanded Flexibilities Under the PCB Spill Cleanup Policy for Spills Caused by Emergency Situations

EPA expanded the existing flexibilities in the PCB Spill Cleanup Policy in 40 CFR part 761, subpart G, to be available in all emergency situations, rather than on a case-by-case basis. Under Section 761.120(c)(2)(i), responsible parties are now allowed to clean up a spill caused by an emergency situation based on the as-found PCB concentration when the source concentration cannot readily be determined, as is common in emergency situations.

EPA also added flexibility to the timeframe for completing notification under the PCB Spill Cleanup Policy for emergency situations. Under Section 761.120(c)(2)(ii), when the Policy is used for cleanup activities undertaken directly in response to spills caused by emergency situations, the responsible party must notify EPA as soon as possible but no later than 48 hours after the adverse conditions that prevented communication have ended. For example, if internet and phone lines are down due to an emergency situation, notification to EPA is required within 48 hours of communications being restored.

These flexibilities are expected to result in a net benefit in protection of health and the environment, given that they allow those conducting responses to spills caused by emergency situations to assess and dispose of waste more quickly and to prioritize time-sensitive remedial actions.

Waiver From Various Sampling, Extraction, Analysis, Cleanup, Storage, and Disposal Requirements in Emergency Situations

EPA created a new option at Section 761.66 that allows a person managing the cleanup and/or disposal of PCB waste caused by an emergency situation to apply for a waiver from applicable PCB sampling, extraction, analysis, cleanup, storage, disposal, and other regulatory requirements when compliance with the existing regulatory requirements (e.g., timeframes, sampling protocols) are impracticable due to the nature of the emergency situation. Cleanup and disposal activities often cannot be initiated promptly in emergency situations, such as hurricanes or wildfires, due to necessary emergency response actions taking place. Therefore, under the new provisions at Section 761.66, responsible parties can request a waiver of any of the requirements in Section 761.60 (Disposal requirements), Section 761.61 (PCB remediation waste), Section 761.62 (Disposal of PCB bulk product waste), and Section 761.65 (Storage for disposal). Any person conducting activities pursuant to a waiver under Section 761.66 is also responsible for determining and complying with all other applicable Federal, State, and local laws and regulations.

Waiver Request

Under Section 761.66(b), any person intending or planning to sample, extract, analyze, clean up, store, and/or dispose of PCBs pursuant to a waiver must submit a waiver request to the Regional Administrator in the EPA Region where the activity would occur, in writing and/or by email no

later than seven days after discovery of the release or implementation of any temporary emergency measures, as applicable. The requestor must also send a copy of the waiver request to the Director of the State or Tribal environmental agency where the activity would occur. If the activity would be conducted in more than one Region, then the waiver request must be submitted, in its entirety, to the Regional Administrators for all affected Regions.

If requesting a waiver under Section 761.66, it is helpful to structure the request in the order it is outlined in the regulation, to allow for a prompt determination on the waiver. A waiver request must include the following information:

- Contact information for the person requesting the waiver.
- Location(s) of the release(s).
- A description of the emergency situation, including information about adverse conditions and the incident(s) that caused them.
- The type(s) of material(s) that are contaminated and the source of the release, if known.
- The as-found PCB concentrations in the PCB waste unless the materials are being managed as if they contain greater than or equal to (\geq) 500 ppm PCBs. If actual PCB concentrations have not yet been determined, then estimated concentrations may be provided in the request. Actual PCB concentrations must be determined before disposal activities commence unless the waste is being managed as if it contains \geq 500 ppm PCBs.
- The provisions of Sections 761.60, 761.61, 761.62, or 761.65 that the person requests to waive or modify (or to use alternative procedures for) and an explanation of why compliance with the existing provisions would be impracticable as a result of the emergency situation.
- The plan for how the requested activity would be conducted if the waiver were granted. The plan must provide information to support how the activity would not pose an unreasonable risk of injury to health or the environment. This plan must be based on the as-found PCB concentrations in the materials unless waste is being managed as if it contains PCBs \geq 500 ppm.
- Whether or not the PCB waste is near, or likely to impact, surface waters, ground waters, drinking water sources or distribution systems, wells, sediments, sewers or sewage treatment systems, grazing lands, vegetable gardens, residential dwellings, hospitals, schools, nursing homes, playgrounds, parks, day care centers, endangered species habitats, estuaries, wetlands, national parks, national wildlife refuges, commercial fisheries, or sport fisheries and how those areas and potential impacts will be addressed. To make changes to the information submitted in a waiver request, the requestor must submit the new information to the EPA Regional Administrator(s) in writing and/or by email. Changes must also be sent to the Director of the State or Tribal environmental agency or agencies where the request is applicable.

Waiver Request Approval

Under Section 761.66(c), the EPA Regional Administrator may approve the waiver request, request additional information, approve the waiver request with specified changes or additional conditions, or deny the waiver request, in writing, by telephone, or by email. An approval will be based on the Regional Administrator's finding that compliance with the regulatory requirements for which the waiver is requested is impracticable, and the requested activity will not pose an

unreasonable risk of injury to health or the environment. At any point, EPA may impose additional requirements or require the activity to be delayed to ensure that there will be no unreasonable risk of injury to health or the environment.

Steps After Waiver Request Approval

Under Section 761.66(d), sampling, extraction, analysis, cleanup, storage, and disposal activities as described in the waiver request may begin after the EPA Regional Administrator responds with approval of the waiver request. All activities must be conducted in compliance with the approval and with all applicable provisions of the PCB regulations that are not expressly waived by the approval.

As-Found Concentration

Under Section 761.66(e), sampling, extraction, analysis, cleanup, storage, and disposal activities conducted pursuant to a waiver must be based on the as-found concentration of the PCB waste unless the materials are being managed as if they contain ≥ 500 ppm PCBs. “As-found concentration” is defined in Section 761.3 and means, in part, “the concentration measured in samples collected in-situ (i.e., prior to being moved or disturbed for cleanup and/or disposal) from environmental media or material, unless otherwise specifically provided.”

Records, Manifests, and Certification

Under Section 761.66(f), recordkeeping and certification are required in accordance with Section 761.125(c)(5).

The manifesting and reporting requirements in 40 CFR part 761, subpart K (PCB Waste Disposal Records and Reports) apply to waste disposed of pursuant to a waiver. If Section 761.205 requires a notification of PCB activity and the person requesting a waiver has not previously submitted one, the person must submit the notification within ten business days of their waiver request. The requestor does not have to wait to obtain their EPA identification number before initiating cleanup and/or disposal activities described in their approved waiver request and may use the generic identification “40 CFR PART 761” or, if they have one, an EPA identification number previously obtained from EPA or a state or territory under an authorized Resource Conservation and Recovery Act (RCRA) program. Once the person receives an EPA identification number, they must use it on manifests for PCB waste.

More Information on PCB Policy and Guidance

<https://www.epa.gov/pcbs/policy-and-guidance-polychlorinated-biphenyl-pcbs>

Contact your Regional PCB Coordinator

If you have concerns about PCB contamination or need more information, consult your EPA Regional PCB Coordinator at <https://www.epa.gov/pcbs/epa-regional-polychlorinated-biphenyl-pcb-programs> or EPA Headquarters at ORCRPCBs@epa.gov.