

US EPA ARCHIVE DOCUMENT



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

MAR 06 2008

MEMORANDUM

SUBJECT: Administration of PCB Program

FROM:

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TO: Managers & Staff Responsible for PCB Programs

The Administrator has delegated the authority to manage the polychlorinated biphenyl (PCB) disposal and cleanup program to the Office of Solid Waste and Emergency Response (OSWER), while the authority to manage the use and manufacture of PCBs remains with the Office of Prevention, Pesticides, and Toxic Substances (OPPTS). Certain portions of the PCB program have been jointly delegated to both offices. The purpose of this memorandum is twofold: first, it interprets the new delegation and second, it establishes an approach to be used where the delegation provides for joint authority. The table below outlines the new division of labor in the management of PCBs, and the discussion of authorities in Part II provides further guidance for managing the PCB program, particularly for those areas that are jointly delegated.

I. BACKGROUND

The Toxic Substances Control Act (TSCA) Section 6(e) gives EPA various authorities to regulate PCB manufacture, processing, distribution, use, disposal, marking, and other related actions. Before the new delegation, all delegated authorities under TSCA Section 6(e) were delegated to OPPTS or the Regional Administrators. In an effort to improve program and administrative efficiencies, EPA has now transferred management of the PCB cleanup program and the PCB disposal program to OSWER.¹ OSWER is the office within EPA that primarily manages most cleanup and disposal activities, so moving PCB cleanup and disposal activities to

¹ OPPTS will still be responsible for the open burning of PCBs definition and requirements in the rules (see definition at 40 CFR 761.3 and 40 CFR 761.50(a)(1)). In addition, OPPTS will continue to oversee PCB issues relating to use and manufacturing.

OSWER is a natural fit. OSWER already provides policy guidance and direction for safely managing waste; preparing for and preventing chemical and oil spills; responding to accidents and emergencies; and cleaning up and reusing contaminated property.

II. AUTHORITIES

The new delegation for the PCB program is not typical in that it divides between two AAships the responsibility for an existing set of regulations that was previously administered by one of them. Many of the affected provisions are interdependent and how they are applied and interpreted by one AAship may have implications for provisions administered by the other AAship. Because of this unusual situation, this memorandum provides more specific and complete guidance as to the division of the existing regulatory program. It also provides for an approach for administering areas that are delegated jointly. OPPTS and OSWER believe this is the most appropriate approach to ensure a smooth transition and facilitate communication and work-sharing between the two AAships.

All relevant authorities are contained in the table below, entitled, "Authorities under Section 6(e) of the Toxic Substances Control Act." The table goes beyond the delegation itself to clarify which office will be administering each regulatory provision. Where a provision is administered by OPPTS, OSWER, or both, the authority to interpret that provision is included. The table also reflects certain decision points that have been delegated to the Regional Administrators (RAs). The delegations to the RAs remain unchanged from the previous delegation, but are reflected here in order to provide a more complete picture of the PCB program. RA delegations are limited to the authority to make decisions or take certain actions as described in the regulations. The authority to interpret the substance of all regulatory provisions, as well as make regulatory changes or the preparation of guidance rests with OPPTS, OSWER, or both, as reflected in the table.

This memorandum also lists the redelegation authorities provided by the delegation. The specified activity will not necessarily be redelegated as far down as the redelegation column specifies, but it can be redelegated to that level if the individual who is delegated that authority so chooses. The new delegation provides the same redelegation authorities to the RAs as the previous delegation. Generally, approval authorities that reside with the RA may be redelegated to the Division Director in the Region if the approval is based upon a risk-based determination. Decisions that are more administrative in nature may be redelegated from the RA to the Branch Chief in the Region. Each Region has a separate internal redelegation, so it is important to verify the redelegation authority in each Region.

Generally, when OPPTS and OSWER are singly delegated separate authorities within the same statutory or regulatory provision, OPPTS is delegated those authorities solely "related to use" and OSWER is delegated those authorities solely "related to disposal."² These limitations are provided for in the delegation and reflected in the Table below. "Related to use" also includes: storage for use or reuse, manufacture, processing related to manufacture and use, and distribution in commerce related to use or processing for use. "Related to disposal" also

² As noted previously, OPPTS will still be responsible for the open burning of PCBs definition and requirements in the rules.

includes: cleanup, storage for disposal, processing related to disposal, distribution in commerce related to disposal or processing for disposal, and decontamination. To the extent that some provisions are "related to use" **and** "related to disposal," the delegation provides for joint OSWER and OPPTS authority with respect to those provisions.

The delegation provides that, with respect to jointly delegated authorities, "neither the Assistant Administrator for Prevention, Pesticides, and Toxic Substances nor the Assistant Administrator for Solid Waste and Emergency Response may exercise these authorities without approval of the other, unless other procedures for the exercise of these authorities are established by mutual agreement." This memorandum hereby establishes that, on a case-by-case basis, both OSWER and OPPTS will come to agreement on which Office has the decision-making or interpretive authority. In some cases, both Offices may need to retain decision-making authority. Where both offices retain decision-making authority, concurrence will be required by both Offices on any decisions made.

For the purpose of the delegation and this memorandum, all terms, such as "disposal," have the meaning given to them under TSCA. Specifically, any definitions in 40 CFR § 761.3 apply. Any conflicting language in the table below should be resolved in favor of the more specific designation.

cc: Regional PCB Program Managers

Authorities under Section 6(e) of the Toxic Substances Control Act

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
TSCA § 6(e)(2)(B)	Authorizations for manufacture, processing, distribution or use	OPPTS	none	Solely related to use.*
		OSWER	none	Solely related to disposal.**
		OPPTS and OSWER	none	Related to both use and disposal.***
TSCA § 6(e)(3)(B)	Exemptions	OPPTS	Division Director	Solely related to use.*
		OSWER	Division Director	Solely related to disposal.**
		OPPTS and OSWER	Division Director in both OPPTS and OSWER	Related to both use and disposal.***
40 CFR 750 Subpart B	Interim Procedural Rules for Manufacturing Exemptions	OPPTS	Division Director	Solely related to use.*
		OSWER	Division Director	Solely related to disposal.**
		OPPTS and OSWER	Division Director in both OPPTS and OSWER	Related to both use and disposal.***
40 CFR 750 Subpart C	Interim Procedural Rules for Processing and Distribution in Commerce Exemptions	OPPTS	Division Director	Solely related to use.*
		OSWER	Division Director	Solely related to disposal.**
		OPPTS and OSWER	Division Director in both OPPTS and OSWER	Related to both use and disposal.***

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
40 CFR 761 Subpart A § 761.1-§761.19	General			
40 CFR 761.1	Applicability	OPPTS	Division Director	Solely related to use.*
		OSWER	Division Director	Solely related to disposal.**
		OPPTS and OSWER	Division Director in both OPPTS and OSWER	Related to both use and disposal.***
40 CFR 761.2	Assumptions for use	OPPTS	Division Director	
40 CFR 761.3 except the definition of open burning	Definitions	OPPTS	Division Director	Solely related to use.*
		OSWER	Division Director	Solely related to disposal.**
		OPPTS and OSWER	Division Director in both OPPTS and OSWER	Related to both use and disposal.***
40 CFR 761.3, definition of "Open burning"	Definition of "Open burning"	OPPTS	Division Director	
40 CFR 761.19	References	OPPTS and OSWER	Division Director in both OPPTS and OSWER	
40 CFR 761 Subpart B §761.20-§761.35 except as specifically identified in the Table		OPPTS	Division Director	

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
40 CFR 761.20(c)(2)	Processing and distribution in commerce for disposal	OSWER	Division Director	
40 CFR 761.20(c)(3)	Export for disposal	OSWER	Division Director	
40 CFR 761.20(c)(4)	Excepted processing and distribution in commerce for <50 ppm waste	OSWER	Division Director	
40 CFR 761.20(d)	Prohibitions on uses of waste oil	OSWER	Division Director	
40 CFR 761.20(e) except for 761.20(e)(1)(iii)	Exception to the ban on processing, distribution in commerce, testing and disposal of waste oil	OSWER	Division Director	
40 CFR 761.20(e)(1)(iii)	Variances	RA	Division Director	Limited to granting and denying variances and those authorities necessary to make such decisions.
40 CFR 761.30(p)	Continued use of porous surfaces	OPPTS and OSWER	Division Director in both OPPTS and OSWER	
40 CFR 761.30(u)	Use of decontaminated materials	OPPTS and OSWER	Division Director in both OPPTS and OSWER	
40 CFR 761.35(b)	Approval of extension of storage period	RA	Branch Chief	Limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761 Subpart C §761.40-§761.45	Marking	OPPTS	Division Director	Solely related to use.*
		OSWER	Division Director	Solely related to disposal.**

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
40 CFR 761 Subpart D §761.50-§761.79 except as specifically identified in the Table	Storage and Disposal	OSWER	Division Director	
40 CFR 761.50(a)(1)	Implementation of the prohibition on open burning of PCBs	OPPTS	Division Director	
40 CFR 761.60(e)	Alternate destruction approvals	OSWER	Division Director	Sites in more than one region, except for R&D with less than 500 pounds of PCB material
		RA	Division Director	Sites within a single region; limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761.60(i)	R&D approvals	OSWER	Division Director	Except as provided for in 40 CFR 761.60(j), except for R&D with less than 500 pounds of PCB material
		RA	Division Director	Except as provided for in 40 CFR 761.60(j), < 500 pounds of waste only; limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761.60(j)(2) and (3)	R&D approvals	RA	Branch Chief	Limited to granting or denying the specified approvals and those authorities necessary to make such decisions.
40 CFR 761.61(a)	Approvals and authority to request additional information on the nature and extent of contamination	RA	Branch Chief	Limited to granting or denying approvals, requesting specified information, and those authorities necessary to carry out such actions.

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
40 CFR 761.61(c)	Risk-based PCB remediation waste disposal approvals	OSWER	Division Director	Sites in more than one Region
		RA	Division Director	Sites within a single Region; limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761.62(c)	Risk-based PCB bulk product waste disposal approvals	OSWER	Division Director	Sites in more than one Region
		RA	Division Director	Sites within a single Region; limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761.65(a)(2)	Storage limitations	RA	Branch Chief	Limited to allowing or denying automatic exemptions and those authorities necessary to make such decisions.
40 CFR 761.65(a)(3)-(4)	Storage extensions	OSWER	Division Director	For sites in more than one Region
		RA	Branch Chief	For sites in one Region; limited to granting or denying extensions and those authorities necessary to make such decisions.
40 CFR 761.65(d)-(g)	Commercial storage approvals, closure, closure cost estimates, and financial assurance for closure	OSWER	Division Director	For sites in more than one Region
		RA	Division Director	For sites in one Region; limited to described decision points, and those authorities necessary to make such decisions.
40 CFR 761.65(h) and (j)	Release of owner or operator and changes in ownership or operational control	OSWER	Division Director	For sites in more than one Region
		RA	Branch Chief	For sites in one Region; limited to described decision points, and those authorities necessary to make such decisions.

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
40 CFR 761.70(d)	Incineration approvals	OSWER	Division Director	For sites in more than one region
		RA	Division Director	For sites in one Region; limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761.71(b)(3)	High efficiency boiler approval	RA	Division Director	Limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761.72(c)(3)	Scrap metal recovery ovens and smelters approval	RA	Division Director	Limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761.75	Chemical waste landfill approvals	RA	Division Director	Limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761.77	Coordinated approval	RA	Division Director	Limited to granting and denying approvals and those authorities necessary to make such decisions.

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
40 CFR 761.79 (except as below)	Decontamination standards and procedures	OPPTS and OSWER	Division Director in both OPPTS and OSWER	
40 CFR 761.79(h)	Alternate decontamination or sampling approval	OSWER	Division Director	Mobile decontamination or sampling activities at sites in more than one Region
		RA	Division Director	Activities within a single Region; limited to granting and denying approvals and those authorities necessary to make such decisions.
40 CFR 761 Subpart E §761.80	Exemptions for manufacture, processing and distribution in commerce	OPPTS	Division Director	
40 CFR 761 Subpart F §761.91-§761.99	Transboundary Shipments of PCBs for disposal	OSWER	Division Director	
40 CFR 761 Subpart G §761.120-§761.135	Spill cleanup policy	OSWER	Division Director	
40 CFR 761 Subpart J §761.180-§761.193 (except as below)	General Records and Reports	OSWER	Division Director	
40 CFR 761.180(a)	Records and reports: PCBs in service or projected for disposal.	OPPTS	Division Director	Solely related to use.*
		OSWER	Division Director	Solely related to disposal.**
40 CFR 761.180(g)	Records and reports: reclassification	OPPTS	Division Director	

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
40 CFR 761.185 – 761.193	Records and reports: excluded manufacturing processes, manufacturing, monitoring	OPPTS	Division Director	
40 CFR 761 Subpart K §761.202-761.218	Waste Disposal Records and Reports	OSWER	Division Director	
40 CFR 761 Subpart M §761.240-761.257 (except 761.243(b))	Pipeline Sampling	OSWER	Division Director	
40 CFR 761.243(b)	Alternate sampling approval	RA	Branch Chief	Limited to granting and denying approvals and those authorities necessary to make such decisions; where the surface area is less than 100 square centimeters.
40 CFR 761 Subpart N §761.260-761.274	Characterization Sampling	OSWER	Division Director	
40 CFR 761 Subpart O §761.280-761.298	Verification Sampling	OSWER	Division Director	
40 CFR 761 Subpart P §761.300-761.316	Characterization Sampling	OSWER	Division Director	
40 CFR 761 Subpart Q §761.320-761.326	Alternative Extraction and Analysis for Remediation Waste	OSWER	Division Director	
40 CFR 761 Subpart R §761.340-761.359	Characterization Studies for storage or disposal of waste	OSWER	Division Director	
40 CFR 761 Subpart S §761.360-761.378	Double wash/rinse for Decontamination	OSWER	Division Director	

Statutory or Regulatory Reference	Subject area (abbreviated)	To Whom Delegated	Redelegation Authority †	Limitations
40 CFR 761 Subpart T §761.380-761.398	Comparison studies for Decontamination Solvents	OSWER	Division Director	

† The positions identified in the redelegation authorities incorporate the term “or equivalent,” and authority may not be re-delegated below such positions.

* Solely related to use includes activities solely related to use, as well as storage for use or reuse, manufacture, processing related to manufacture and use, and distribution in commerce related to use or processing for use.

** Solely related to disposal includes activities solely related to disposal, as well as cleanup, storage for disposal, processing related to disposal, distribution in commerce related to disposal or processing for disposal, and decontamination.

*** Includes activities related to both use (and/or related activities) and disposal (and/or related activities).

If you have any questions, please contact Sara McGurk (OPPTS) at 202-566-0480 or Vernon Myers (OSWER) at 703-308-8660.