

Revisions to 40 CFR 761: What You Need to Know

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Objectives

- Introduction
- Brief history and rationale of regulatory changes
- Who is impacted?
- Summary of changes to 40 CFR 761

Introduction

- What you need to know...not all you need to know!
- According to the EPA, “All of the changes described today to part 761 are already being implemented by PCB waste handlers and generators”.
- This statement applied to the 2012 direct rule
- However...

Recent Violations/Settlements with EPA

- A waste oil transporter and recycler, paid \$20,000 to settle an EPA claim that it failed to properly prepare a hazardous waste manifest for waste containing PCBs when transporting waste that included PCBs
- Oil Recycler fined \$210,000 for improperly shipping used oil containing PCBs
- EPA fined a company \$61,000 for mishandling of PCB waste from laboratory

Focus of Presentation

- It is clear that there are still companies who are not in full compliance with 761
- Not intended to provide background on RCRA or TSCA programs
- Focus will be on recent updates to 761 from a high level
- <https://www.regulations.gov/#!documentDetail;D=EPA-HQ-RCRA-2011-0524-0002>

History of Recent Changes to Part 761

- EPA has published two direct rules that apply to Part 761 in the last three years
- September 2012 – contains the most significant changes (both in number and implication)
- July 2015 – minor revision
- Action applies to generators, transporters and designated facilities managing PCB wastes

History of Recent Changes to Part 761 (cont)

- Existing PCB manifest regulations in 40 CFR part 761. RCRA manifest regulations in 40 CFR 262, 263 and 264
- Since PCB manifest regs put in place there have been several updates to the RCRA manifest regs
- PCB wastes are manifested using the RCRA Uniform Hazardous Waste Manifests and waste handlers are generators need to adhere to the RCRA while accounting for PCB specific waste manifest requirements

Summary of Changes to Part 761

- Manifest Requirements
- Retention of Manifest Records
- Manifest Discrepancies

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 262.20\(a\)\(2\)](#)—*compliance date*: Part 761 does not contain a provision similar to § 262.20(a)(2). Section 262.20(a)(2) specifies the compliance date of manifest form revisions being September 5, 2006. This compliance date was relevant to PCB manifests; however, there should not be any more of the out-dated forms being used. Accordingly, language from § 262.20(a)(2) is not included in the updated PCB regulations. Section 262.20(a)(2) will be addressed in a separate RCRA rulemaking.

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 761.207\(b\)](#)—*obtaining manifests*: Section 761.207(b) briefly describes how to obtain manifests. [40 CFR 262.21\(g\)](#) not only includes a brief description in § 761.207(b), but also includes the most current details on obtaining manifests. Because § 761.207(b) lacks these details, § 761.208, codified through this rule, uses language from § 262.21(g). The language regarding certification of manifest printers from the remainder of § 262.21 will not be included in § 761.208, because EPA does not intend to certify printers solely for PCB manifests, when a certification process already exists under the RCRA regulation and certified printers distribute the same manifest form for both PCB and RCRA waste.

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 761.207\(c\), \(d\), \(e\), and \(f\)](#)—*State specific manifest requirements for generators*: Sections 761.207(c), (d), (e), and (f) are requirements for State specific manifests, which are no longer applicable to either the PCB or RCRA manifest requirements, because, under the revised RCRA manifest regulations promulgated on March 4, 2005 ([70 FR 10815](#)), all of the States must use the same uniform manifest for both PCB waste and RCRA hazardous waste (EPA form 8700-22). Sections 761.207(c), (d), (e), and (f) are obsolete and will be deleted from the CFR.

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 761.207](#)(g) and (h)—*general manifest requirements for generators and transporters*:
The intent of the language in §§ 761.207(g) and (h) matches that of §§ 262.20(b) and (d), respectively. To harmonize the regulatory sections, the § 761.207(b) and(d), codified through this rule, will contain the language from §§ 262.20(b) and (d), and §§ 761.207(g) and (h) will be removed from the CFR.

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 262.20\(c\)](#)—*designating an alternate facility*: Section 262.20(c) contains the details for designating an alternate facility on the manifest. This information is relevant to completing a manifest for PCB waste; however, this information does not currently exist under part 761. Section 761.207(c), codified through this rule, will contain the language from § 262.20(c).

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 262.20\(f\)](#)—*exceptions for public or private right-of-way*: Part 761 does not contain a provision similar to § 262.20(f). Section 262.20(f) contains manifesting exceptions when transporting hazardous wastes on a public or private right-of-way within or along the border of contiguous property (codified under [62 FR 6651](#), Feb. 12, 1997).

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 761.207\(i\)](#)—*number of copies*: The intent of the language in § 761.207(i) matches that of § 262.22. Both sections describe the required number of copies of the manifest, but § 262.22 contains more streamlined language. Section 262.22 does not specify that the copy be returned to the generator 'by the owner or operator of the first designated commercial storage or disposal facility'; however, this language is included in this rulemaking under new § 761.213(a)(2)(iv), codified through this rule. The updated § 761.209, also codified through this rule, will contain language from § 262.22, and § 761.207(i) will be removed from the CFR.

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 761.208\(a\)\(1\), \(a\)\(2\), and \(a\)\(3\)](#)—*generator requirements for completing a manifest*: The intent of the language in §§ 761.208(a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2), (a)(3), (a)(3)(i), and (a)(3)(ii) matches that of §§ 262.23(a), (a)(1), (a)(2), (a)(3), (b), (c), (d), (d)(1), and (d)(2), respectively. All sections describe a portion of the generator requirements for completing a manifest. A portion of § 262.23(c) contains the requirements for exporting bulk shipments of waste by water. This information could be relevant to completing a manifest for PCB waste; however, because PCB waste has unique import and export restrictions found in part 761 subpart F, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking. Sections 761.208(a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2), (a)(3), (a)(3)(i), and (a)(3)(ii) will be re-written to include language from §§ 262.23(a), (a)(1), (a)(2), (a)(3), (b), (c), (d), (d)(1), and (d)(2), and § 761.208(a) and will be renumbered under § 761.210.

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 262.23\(f\)](#)—*rejected shipments*: Part 761 does not contain a provision similar to § 262.23(f), even though the substance of § 262.23(f) is relevant to rejected loads of PCB waste with the exception of the reference to § 265.72(f). Section 262.23(f) describes generator requirements for rejected shipments of hazardous waste that are returned to the generator by the designated facility (following the procedures of §§ 264.72(f) or 265.72(f)). Section 761.210(e), codified through this rule, includes language from § 262.23(f) and all the sections under § 262.23(f), except for language on residues. The empty container residue language from RCRA is not relevant to PCB waste, because there is no equivalent section under the PCB regulations for § 261.7 *Residues of hazardous waste in empty containers* (i.e. PCB residues are regulated differently than residues of RCRA hazardous waste). PCB residues will not be addressed in this action.

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 761.208\(b\)\(2\), \(b\)\(4\), and \(b\)\(5\)](#)—*transporter requirements for completing a manifest*: The intent of the language in §§ 761.208(b)(2), (b)(4), (b)(4)(i), (b)(4)(ii), (b)(4)(iii), (b)(5), (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), and (b)(5)(v) matches that of §§ 263.20(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5). All sections detail a portion of the transporter requirements for completing a manifest. Sections 761.211(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5), codified through this rule, will contain language from §§ 263.20(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5). Sections 761.208(b)(2), (b)(4), (b)(4)(i), (b)(4)(ii), (b)(4)(iii), (b)(5), (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), and (b)(5)(v) will be removed from the CFR.

Summary of Changes to Part 761 – Manifest Requirements

- [40 CFR 264.71\(a\)\(1\)](#)—*receiving facility requirements for completing a manifest*: Section 264.71(a)(1) contains requirements for the receiving facility signing the manifest. Even though the substance of § 264.71(a)(1) is relevant to receiving PCB waste, part 761 does not currently have a provision similar to § 264.71(a)(1). Section 761.213(a)(1), codified through this rule, will contain language from § 264.71(a)(1).

Summary of Changes to Part 761 – Manifest Requirements

- 2015 Update
- This technical amendment is being issued to correct the item number reference for the Special Handling Instructions Box in 40 CFR part 761.207(a)(1), (2), and (3). EPA published a document in the Federal Register on September 6, 2012 (77 FR 54818), revising Agency regulations. That document incorrectly referenced Item 15 to identify the Special Handling Instructions box on EPA Form 8700-22. This technical amendment is being issued to amend the final rule by revising § 761.207(a)(1), (2), and (3) to correctly identify the item number as 14



Retention of Manifest Records

Summary of Changes to Part 761 – Retention of Manifest Records

- [40 CFR 761.209\(a\)](#)—*retention requirements for generators*: The language in § 761.209(a) closely matches that of § 262.40(a). Both sections contain manifest retention requirements for generators, but the language in § 262.40(a) is more streamlined. However, Section 761.209(a) references retention requirements in 761.180(a), which states that annual records, including manifests, must be maintained for three years after the facility ceases using or storing PCBs and PCB Items. Section 761.214(a)(1), codified through this rule, will contain language from § 262.40(a), as well as a reference to Section 761.180. Section 761.209(a) will be removed from the CFR.

Summary of Changes to Part 761 – Retention of Manifest Records

- [40 CFR 761.209\(b\)\(1\), \(b\)\(2\), and \(b\)\(3\)](#)—*retention requirements for transporters*: The intent of the language in §§ 761.209(b)(1), (b)(2), (b)(3), (b)(3)(i), and (b)(3)(ii) matches that of §§ 263.22(a), (b), (c), (c)(1), and (c)(2). All sections contain manifest retention requirements for transporters. Sections 761.214(a)(2), (b), (c), (c)(1), and (c)(2), codified through this rule, will contain the language from §§ 263.22(a), (b), (c), (c)(1), and (c)(2) to maintain consistency with the RCRA regulations. Sections 761.209(b)(1), (b)(2), (b)(3), (b)(3)(i), and (b)(3)(ii) will be removed from the CFR

Summary of Changes to Part 761 – Retention of Manifest Records

- [40 CFR 262.40\(b\)](#)—*exception report retention requirement for generators*: Part 761 does not have a provision similar to § 262.40(b). Section 262.40(b) contains the 3-year exception report retention requirement for generators. The content of § 262.40(b) pertaining to the exception report is relevant to PCB exception reports. Thus, § 761.214(d), codified through this rule, will contain language from § 262.40(b).

Summary of Changes to Part 761 – Retention of Manifest Records

- [40 CFR 761.209\(d\)](#)—*retention period for enforcement actions*: The intent of the language in § 761.209(d) matches that of § 263.22(e). Both sections refer to extending the retention period for enforcement actions. Section 761.214(e), codified through this rule, will contain language from § 263.22(e) to maintain consistency with the RCRA regulations. Section 761.209(d) will be removed from the CFR.



Manifest Discrepancies

Summary of Changes to Part 761 – Manifest Discrepancies

- [40 CFR 761.210\(a\), \(a\)\(1\), and \(a\)\(2\)](#)—*definition of manifest discrepancies and significant discrepancies*: The intent of the language in §§ 761.210(a), (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(2) matches §§ 264.72(a), (a)(1), and (b). Also, section 761.210(a)(2) matches the second sentence in § 264.72(b). All sections contain the definition of significant discrepancies. Sections 761.215(a), (a)(1), and (b), codified through this rule, will contain language from §§ 264.72(a), (a)(1), and (b) to maintain consistency with the RCRA regulations, as well as language from §§ 761.210(a)(1)(i), (a)(1)(ii), and (a)(2) for the specific PCB examples used to illustrate significant discrepancies. Sections 761.210(a), (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(2) will be removed from the CFR

Summary of Changes to Part 761 – Manifest Discrepancies

- [40 CFR 761.211\(c\)](#)—*unmanifested waste report*:
The procedure described in § 761.211(c) is similar to that of § 264.76(a). Both sections contain instructions on when and how to complete an unmanifested waste report. The language from § 264.76(a) is included in § 761.216(a), which is codified through this rule, and § 761.211(c) will be removed from the CFR.

Summary of Changes to Part 761 – Manifest Discrepancies

- [40 CFR 761.211](#)(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5)—*details included on the unmanifested waste report*: The intent of the language in §§ 761.211(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) matches that of §§ 264.76(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7). All sections contain details of what information needs to be included with the unmanifested waste report. Sections 761.216(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7), codified through this rule, will contain language from §§ 264.76(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7) to maintain consistency with the RCRA regulations. Sections 761.211(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) will be removed from the CFR.

Summary of Changes to Part 761 – Manifest Discrepancies

- [40 CFR 264.76\(a\)\(6\)](#)—*certification of the unmanifested waste report*: Part 761 does not contain a provision similar to § 264.76(a)(6). Section 264.76(a)(6) contains instructions on including a “certification signed by the owner or operator of the facility or his authorized representative” with the unmanifested waste report. Section 761.216(a)(6), codified through this rule, will therefore contain language from § 264.76(a)(6).

Summary of Changes to Part 761 – Manifest Discrepancies

- [40 CFR 761.215\(b\)\(1\) and \(b\)\(2\)](#)—*details included in the exception report*: The language in §§ 761.215(b)(1) and (b)(2) matches that of §§ 262.42(a)(2)(i) and (a)(2)(ii). All sections contain details of what information needs to be included with the exception report. Sections 761.217(a)(2)(i) and (a)(2)(ii), codified through this rule, will contain language from §§ 262.42(a)(2)(i) and (a)(2)(ii) to maintain consistency with the RCRA regulations. Sections 761.215(b)(1) and (b)(2) will be removed from the CFR.

Summary of Changes to Part 761 – Manifest Discrepancies

- [40 CFR 262.42](#)(c), (c)(1), and (c)(2)—*rejected shipments forwarded to an alternate facility*: Sections 262.42(c), (c)(1), and (c)(2) contain information on exception reporting for rejected shipments forwarded to an alternate facility. Even though the substance of §§ 262.42(c), (c)(1), and (c)(2) is relevant to PCB waste, part 761 does not currently have provisions similar to §§ 262.42(c), (c)(1), and (c)(2). Sections 761.217(b), (b)(1), and (b)(2), codified through this rule, will therefore contain language from §§ 262.42(c), (c)(1), and (c)(2), except for the residue language

Summary

- Two direct Rules have been published that apply to 40 CFR Part 761
- 2012 Rule was meant to standardize PCB and RCRA regulations language
- 2015 was a minor amendment specific to the Uniform Hazardous Waste Manifest
- Important to understand and be aware changes and updates in order to properly handle PCB waste

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