

Dated: June 12, 2003.

**James W. Newsom,**

*Acting Regional Administrator, EPA Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 761

[OPPT-2003-0029; FRL-7314-2]

RIN 2070-AC01

### Polychlorinated Biphenyls; Use of Porous Surfaces; Amendment in Response to Court Decision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is revising the language of the regulations affecting the use of polychlorinated biphenyls (PCBs) in the Code of Federal Regulations (CFR) to conform to a court decision vacating an amendment to these regulations. EPA's 1998 amendments to the PCB disposal regulations added a use authorization for porous materials contaminated by spills of liquid PCBs. Due to an editing error, the regulation referred to a unit of measurement inapplicable to the concentration of PCBs in liquids. In 1999, EPA issued a final rule correcting a number of errors in the 1998 action, including the porous surfaces use authorization. On January 30, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the portion of the 1999 amendment which pertained to the porous materials use authorization. This document revises the CFR to conform to the court decision, and requires no notice and public comment.

**DATES:** This final rule is effective on June 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Sara McGurk, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:

(202) 566-0480; e-mail address: [mcgurk.sara@epa.gov](mailto:mcgurk.sara@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, distribute in commerce, use, or dispose of PCBs or materials containing PCBs. Potentially affected entities may include, but are not limited to:

- Oil and Gas Extraction (NAICS 21111), e.g., Facilities with surfaces contaminated by PCBs
- Electric Power Generation, Transmission and Distribution (NAICS 2211), e.g., Facilities with surfaces contaminated by PCBs
- Construction (NAICS 23), e.g., Facilities with surfaces contaminated by PCBs
- Food Manufacturing (NAICS 311), e.g., Facilities with surfaces contaminated by PCBs
- Paper Manufacturing (NAICS 322), e.g., Facilities with surfaces contaminated by PCBs
- Petroleum and Coal Products Manufacturing (NAICS 324), e.g., Facilities with surfaces contaminated by PCBs
- Chemical Manufacturing (NAICS 325), e.g., Facilities with surfaces contaminated by PCBs
- Primary Metal Manufacturing (NAICS 331), e.g., Facilities with surfaces contaminated by PCBs
- Rail Transportation (NAICS 48211), e.g., Facilities with surfaces contaminated by PCBs
- Lessors of Real Estate (NAICS 5311), e.g., Facilities with surfaces contaminated by PCBs
- Waste Treatment and Disposal (NAICS 5622), e.g., Facilities with surfaces contaminated by PCBs
- Public Administration (NAICS 92), e.g., Facilities with surfaces contaminated by PCBs

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2003-0029. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 761 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title\\_40/40cfr761\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_40/40cfr761_00.html), a beta site currently under development.

To access information about PCBs, go directly to the PCB Home Page for the Office of Pollution Prevention and Toxics at <http://www.epa.gov/pcb>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. Background

### A. What Action is the Agency Taking?

EPA is amending the regulation at 40 CFR 761.30(p) that governs the continued use of porous surfaces contaminated by spills of liquid PCBs to reflect a decision from the Court in