

Toxic Substances Control Act (TSCA) prohibition against the dilution of PCB concentrations below regulatory thresholds (40 CFR 761.1(b)(5)) applies to the dilution of PCB-containing used oil. Used oil, therefore, that contains, or contained prior to dilution, 50 ppm or greater of PCBs is not subject to regulation under the RCRA used oil management standards, because the TSCA regulations at 40 CFR Part 761 provide comprehensive management of such used oil.

For used oil that contains PCB concentrations of 2 ppm or greater, but

less than 50 ppm (other than those diluted to below 50 ppm), TSCA regulates the burning of used oil for energy recovery at 40 CFR 761.20(e). Such used oil is also regulated under the RCRA used oil management standards at 40 CFR Part 279. Table 1 shows the applicability of the RCRA and TSCA regulations as they pertain to used oil containing PCBs that is to be burned for energy recovery. Please note, under the TSCA regulations at 40 CFR 761.20(e)(2), used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs

unless shown otherwise by testing or other information. Used oil that is to be burned for energy recovery and has been shown to contain less than 2 ppm PCBs (if it has not been diluted) is subject to record keeping and retention requirements under TSCA (40 CFR 761.20(e)(2), (e)(4)) and is regulated under the RCRA used oil management standards. TSCA regulations prohibit the burning for energy recovery of used oil that contains (or contained prior to dilution) PCB concentrations of 50 ppm or greater (40 CFR 761.20(a)).

TABLE 1.—REGULATION OF USED OIL CONTAINING PCBs THAT IS TO BE BURNED FOR ENERGY RECOVERY UNDER 40 CFR PART 279 (RCRA REGULATIONS) AND 40 CFR PART 761 (TSCA REGULATIONS).

Range of PCB contamination levels in used oil (ppm)	Does RCRA regulate this used oil if it is to be burned for energy recovery? ^b	Does TSCA regulate this used oil if it is to be burned for energy recovery? ^b
Demonstrated to contain less than 2	Yes (part 279)	Yes (761.20(e)(2), (e)(4)). ^a
2 to less than 50	Yes (part 279)	Yes (761.20(e)).
50 and greater	No (part 279)	Yes (prohibited) (761.60).

^a Used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information. TSCA imposes record keeping and retention requirements.

^b Assumes no dilution. No person may avoid any provision under TSCA specifying a PCB concentration by diluting the PCBs, unless otherwise provided. See 40 CFR 761.1(b)(5).

Used oil containing less than 50 ppm PCBs that is recycled in a manner other than being burned for energy recovery is generally excluded from TSCA requirements except where: (1) Used oil was diluted to below 50 ppm PCBs, or (2) the PCB containing used oil or source of the PCB-containing used oil to be recycled was not legally manufactured, processed, distributed in commerce or used under TSCA. See 40 CFR 761.3 (definition of “excluded PCB products”); 761.20(a)(1); and 761.20(c). However, 40 CFR 761.20(d) of the TSCA regulations prohibits the use of used oil that contains any detectable concentration of PCBs as a sealant, coating, or dust control agent. This prohibition specifically includes road oiling and general dust control. Use of used oil as a dust suppressant is also prohibited under RCRA except in a state that has received authorization from EPA to allow use of used oil as a dust suppressant. Currently no states have received such authorization. In the event that a state were authorized to use used oil as a dust suppressant pursuant to 40 CFR 279.82, the prohibition in 40 CFR 761.20(d) would still apply, however.

Dilution of PCB-Containing Used Oil

The Agency received comment on the May 6, 1998 proposal (63 FR 24963) related to the applicability of the dilution prohibition of 40 CFR 761.1(b)(5) to used oil that contains

PCBs. One commenter raised a concern that the May 6, 1998 proposal was unclear as to how PCB-contaminated used oils that have been diluted (below either the 50 ppm or 2 ppm TSCA PCB regulatory thresholds) are regulated.

Used oil that contains PCBs may not be diluted under TSCA to avoid a particular regulatory requirement unless otherwise specifically provided by the TSCA regulations. The TSCA PCB regulations at 40 CFR 761.1(b)(5) prohibit the dilution of PCBs to avoid regulatory requirements. This prohibition is repeated in the definition of “excluded PCB products” in 40 CFR 761.3. Accordingly, used oil that contained PCB concentrations greater than or equal to 50 ppm and that was subsequently diluted to a concentration of less than 50 ppm PCBs, is still regulated under TSCA as used oil that contains a PCB concentration of 50 ppm or greater. This diluted used oil is subject to comprehensive management under TSCA and, therefore, is not regulated under the RCRA used oil management standards. Likewise, used oil that contained a maximum PCB concentration of 2 ppm or greater, but less than 50 ppm, which is subsequently diluted to a concentration of less than 2 ppm, is still regulated under TSCA as used oil that contains a concentration greater than 2 ppm PCBs. (Note, however, that used oils of unknown concentration can be mixed with other such used oils in a common container

and subsequently tested to determine if it is less than 2 ppm PCB. See 40 CFR 761.20(e)(2) and 761.60(g)(2)).

The TSCA regulations do allow, however, for the decontamination of used oil at PCB concentrations of 50 ppm or greater to a concentration below 2 ppm if specified decontamination methods (e.g., filtering) are used. Such decontaminated used oil is exempt from most TSCA management standards (other than 40 CFR 761.20(e)(2), (e)(4) and 761.79(f)) and is regulated under the RCRA used oil management standards. See 40 CFR 761.79(a)(3) and 761.79(b).

Applicability of the Used Oil Fuel Specification to PCB-Containing Used Oil

There has been confusion in the regulated community that the presence of PCBs in used oil is one of the criteria for determining whether a used oil fuel subject to the RCRA used oil management standards meets the fuel specification standard such that it may be burned for energy recovery without further regulation under RCRA. In fact, one of the comments received in response to the May 6, 1998 proposal implied that used oil that contains PCB concentrations of 2 ppm or greater, but less than 50 ppm is off-specification used oil due to its PCB content. This is incorrect. As described above, the concentration of PCBs in used oil is relevant to determining whether a used