UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DEC 3 1998

Mr. John J. Taylor, CHMM
Corporate Compliance Auditor
1301 Gervais Street, Suite 300
Columbia, SC 29201

Dear Mr. Taylor:

This is in response to you letter of October 16, 1998, regarding the relationship between a generator and a commercial storage facility of PCB waste and the one year storage for disposal requirement.

In your letter you state "Commercial Storer of PCB waste is merely an extension of the generator in terms of the one year disposal deadline. That is, the generator remains liable if the disposal "broker" fails to deliver the PCB waste to the disposal site in time for the waste to be disposed of within the 1-year deadline," and ask if this is correct.

Yes. The Agency has always interpreted the Toxic Substance Control Act to be a strict liability statute where the generator of the PCB waste is responsible for its disposal. Liability for failure to have PCB waste disposed of within the one year storage for disposal time frame rests with the generator. A PCB commercial storer's activities occur within the generator's one year storage for disposal requirement.

You also state "The generator of PCB waste whose act or process produced or first caused PCBs or PCB Items to become subject to the disposal requirements, or who has physical control over the PCBs when the decision is made to dispose of the PCBs is responsible for the one year disposal deadline." This is correct as well.

As indicated in the answer to your first item, the generator is required to assure that PCBs or PCB Items removed from service for disposal are disposed of within one year from the date of removal from service for disposal.

Finally, you state that "The EPA will allocate enforcement liability for failure to dispose of PCB waste with one year after it is placed into storage between the generator and the ultimate disposal facility, not the commercial storer or broker of the PCB waste."

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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File:FOB;CHRON-READING;AUTHOR:/Ltr. to John Taylor, SafetyKleen (Laidlaw), Columbia, SC
/RE: One year for Storage, TSCA Enforcement Policy 6-PCB-6, Generator, Removal from Service, DORFSFD

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You also ask "The generator of PCB waste whose act or process produced or first caused PCBs or PCB Items to become subject to the disposal requirements, or who has physical control over the PCBs when the decision is made to dispose of the PCBs is responsible for the one year disposal deadline" is correct as well.

As indicated in the answer to your first item, the generator is required to assure that PCBs or PCB Items removed from service for disposal are disposed of within one year from the date of removal from service for disposal.

Finally, you ask "The EPA will allocate enforcement liability for failure to dispose of PCB waste with one year after it is placed into storage between the generator and the ultimate disposal facility, not the commercial storer or broker of the PCB waste.

CONCURRENCES

SYMBOL	7404	7404						
SURNAME	Hannemann	Bay						
DATE	24 Nov 98	12/3/98						

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This question refers to the Toxic Substance Control Act (TSCA) Compliance Program Policy No. 6-PCB-6 issued on August 16, 1983 by what is now the Office of Enforcement and Compliance Monitoring. Since this question relates to an enforcement policy interpretation, I have referred it to Mr. Jesse Baskerville, Director, Toxics and Pesticides Enforcement Division, Office of Regulatory Enforcement (202-564-2325).

If you have any questions regarding this response, please contact David Hannemann of my staff at (202) 260-3961.

Sincerely,

John W. Melone, Director
National Program Chemicals Division (7404)

safety-kleen®

October 16, 1998

David Hannemann (7404)
Fibers and Organics Branch
National Program Chemicals Division
Office of Pollution Prevention and Toxics
U.S. EPA
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Hannemann:

This letter seeks clarification of the regulatory definition of Commercial Storer of PCB Waste as it applies to 40 CFR 761.65(a). This definition is of concern to me and I have outlined below regulatory sections, agency interpretations and agency policy which I believe fully clarify this definition. Please advise me if the agency concurs with the interpretation.

US EPA TSCA Regulation 40 CFR 761.65:

> (a) .....Any PCB Article or PCB Container stored for disposal after January 1, 1983, shall be removed from storage and disposed of as required by subpart D of this part within one year from the date when it was first placed into storage.

US EPA TSCA References:

1. **40 CFR 761.3 Definitions.**

   Commercial Storer of PCB waste means the owner or operator of each facility that is subject to the PCB storage unit standards of §761.65(b)(1) or (c)(1) or meets the alternate storage criteria of §761.65(b)(2), and who engages in storage activities involving either PCB waste generated by others or that was removed while servicing the equipment owned by others and brokered for disposal.

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803/933-4200 FAX 803/933-4340

Generator of PCB waste means any person whose act or process produces PCBs that are regulated for disposal under subpart D of this part, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of subpart D of this part. Unless another provision of this part specifically requires a site-specific meaning, "generator of PCB waste" includes all of the sites of PCB waste generation owned or operated by the person who generates PCB waste.

2. **US EPA TSCA - PCB Q & A MANUAL - 1994 EDITION** - An EPA TSCA assistance document designed to provide the regulated community with Agency interpretations to frequently posed questions.

Chapter XII - PCB STORAGE REQUIREMENTS - page XII-10

Q11: The regulations indicate that PCBs must be disposed of within 1 year. How long can PCBs be stored for disposal prior to shipment to the final disposal site?

A11: The PCB regulations require the disposal of PCBs within the 1-year disposal deadline. EPA has adopted a written policy (TSCA Compliance Program Policy No. 6-PCB-6) which provides that a generator delivering PCB waste to a disposal facility later than 90 days before the end of 1-year disposal deadline will be held liable if the disposal facility cannot dispose of the waste in time.....In sum, the generator has 9 months of the 1-year disposal time frame to store PCBs and transport those PCBs to the final disposition site,

Q12: As a generator of PCB waste, our facility regularly contacts a disposal "broker" to pick up and transport our PCB waste to a disposal site. Normally, these "brokers" will transport our PCB waste to their facility for storage and consolidation with PCB waste from other generators, How long can our PCB waste be stored by a broker?

A12: A disposal "broker" is merely an extension of the generator in terms of the 1-year disposal deadline. That is, the generator remains liable if the disposal "broker" fails to deliver the PCB waste to the disposal site in time for the waste to be disposed of within the 1-year deadline. In sum, EPA places the responsibility for delivering PCB waste to a disposal facility at least 90 days before the 1-year deadline on the generator of the waste and does not allow additional time for PCB waste to be processed and/or stored by disposal brokers or commercial storage facilities.

3. **TSCA COMPLIANCE PROGRAM POLICY No. 6-PCB-6 - Allocation of Enforcement Liability for Violation of the One-Year Disposal Deadline for PCB Articles or PCB Containers.**

Policy:

EPA will allocate enforcement liability for a failure to dispose of PCB waste within one year after it is placed into storage between the generator and the ultimate disposal facility based on the contribution by either party to the violation.....

Key Words:

PCBs, ultimate disposal facility, disposal deadline.

Conclusions:

It appears clear from the referenced regulations, agency interpretations and agency policy for enforcement liability that the following is true:

1./ Commercial Storer of PCB waste is merely an extension of the generator in terms of the one year disposal deadline. That is, the generator remains liable if the disposal "broker" fails to deliver the PCB waste to the disposal site in time for the waste to be disposed of within the 1-year deadline.

2./ The generator of PCB waste whose act or process produced or first caused PCBs or PCB Items to become subject to the disposal requirements, or who has physical control over the PCBs when the decision is made to dispose of the PCBs is responsible for the one year disposal deadline.

3./ The US EPA will allocate enforcement liability for failure to dispose of PCB waste within one year after it is placed into storage between the generator and the ultimate disposal facility, not the commercial storer or broker of the PCB waste.

If this interpretation is correct please so advise me. Of course if there are other considerations that must be taken into account then please feel free to so advise. If you would like to discuss the issues further, please contact me at (803) 781-5608.

Sincerely,

John J. Taylor, CHMM
Corporate Compliance Auditor

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

DEC 3 1998

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

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