

JONAS & ASSOCIATES INC.
Environmental Consultants

(925) 933-5360
Walnut Creek, California

FAX / TELECOPY TRANSMITTAL

From: Mark Jonas	of: J&A	FAX #: (925) 933 - 5362
To: Eva Chu	of: Alameda County Health	FAX #: (510) 337 - 9335

Date: 1 / 10 / 2000	Project: Former Paco Pump, Oakland
Time:	Project #: PCO-220

Attachments:
1) July 1, 1999 CFR, Title 40, Volume 23, Part 761, Subpart G
2)
3)
Number of Attached Pages (not including transmittal page): 14


Message:

Dear Eva,

Attached is the July 1, 1999 CFR, Title 40, Volume 23, Part 761, Subpart G - PCB Spill Cleanup Policy.

This is the latest CFR on the PCB Spill Cleanup Policy. Please note that it still uses 50 mg/kg PCB as a threshold concentration.

Sincerely,


Mark Jonas, R.G.
Project Manager

[Code of Federal Regulations]
[Title 40, Volume 23, Parts 700 to 789]
[Revised as of July 1, 1999]
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[Page 591-601]

TITLE 40--PROTECTION OF ENVIRONMENT

CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

PART 761--POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, /

Subpart C--PCB Spill Cleanup Policy

Source: 52 FR 10705, Apr. 2, 1987, unless otherwise noted.

Sec. 761.120 Scope.

(a) General. This policy establishes criteria EPA will use to determine the adequacy of the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. The policy applies to spills which occur after May 4, 1987.

(1) Existing spills (spills which occurred prior to May 4, 1987, are excluded from the scope of this policy for two reasons:

(i) For old spills which have already been discovered, this policy is not intended to require additional cleanup where a party has already cleaned a spill in accordance with requirements imposed by EPA through its regional offices, nor is this policy intended to interfere with ongoing litigation of enforcement actions which bring into issue PCB spills cleanup.

(ii) EPA recognizes that old spills which are discovered after the effective date of this policy will require site-by-site evaluation because of the likelihood that the site involves more pervasive PCB contamination than fresh

[[Page 592]]

spills and because old spills are generally more difficult to clean up than fresh spills (particularly on porous surfaces such as concrete). Therefore, spills which occurred before the effective date of this policy are to be decontaminated to requirements established at the discretion of EPA, usually through its regional offices.

(2) EPA expects most PCB spills subject to the TSCA PCB regulations to conform to the typical spill situations considered in developing this policy. This policy does, however, exclude from application of the final numerical cleanup standards certain spill situations from its scope: Spills directly into surface waters, drinking water, sewers, grazing lands, and vegetable gardens. These types of spills are subject to final cleanup standards to be established at the discretion of the regional office. These spills are, however, subject to the immediate notification requirements and measures to minimize further environmental contamination.

(3) For all other spills, EPA generally expects the decontamination standards of this policy to apply. Occasionally, some small percentage of spills covered by this policy may warrant more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those assumed in developing the final cleanup standards of this policy. While the EPA regional offices have the authority to require additional cleanup in these circumstances, the Regional Administrator must first make a finding based on the specific facts of a spill that additional cleanup must occur to prevent unreasonable risk. In addition, before a final decision is made to require additional cleanup, the Regional Administrator must notify the Director, Office of Pollution Prevention and Toxics at Headquarters of his/her finding and the basis for the finding.

(4) There may also be exceptional spill situations that requires less stringent cleanup or a different approach to cleanup because of factors associated with the particular spill. These factors may mitigate expected exposures and risks or make cleanup to these requirements impracticable.

accordance with this policy.

(v) Spills that contaminate animal grazing lands.

(vi) Spills that contaminate vegetable gardens.

(e) Relationship of policy to other statutes. (1) This policy does not affect cleanup standards or requirements for the reporting of spills imposed, or to be imposed, under other Federal statutory authorities, including but not limited to, the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA). Where more than one requirement applies, the stricter standard must be met.

(2) The Agency recognizes that the existence of this policy will inevitably result in attempts to apply the standards to situations within the scope of other statutory authorities. However, other statutes require the Agency to consider different or alternative factors in determining appropriate corrective actions. In addition, the types and magnitudes of exposures associated with sites requiring corrective action under other statutes often involve important differences from those expected of the typical, electrical equipment-type spills considered in developing this policy. Thus, cleanups under other statutes, such as RCRA corrective actions or remedial and response actions under SARA may result in different outcomes.

Sec. 761.123 Definitions.

For purposes of this policy, certain words and phrases are used to denote specific materials, procedures, or circumstances. The following definitions are provided for purposes of clarity and are not to be taken as exhaustive lists of situations and materials covered by the policy.

[[Page 594]]

Double wash/rinse means a minimum requirement to cleanse solid surfaces (both impervious and nonimpervious) two times with an appropriate solvent or other material in which PCBs are at least 5 percent soluble (by weight). A volume of PCB-free fluid sufficient to cover the contaminated surface completely must be used in each wash/rinse. The wash/rinse requirement does not mean the mere spreading of solvent or other fluid over the surface, nor does the requirement mean a once-over wipe with a soaked cloth. Precautions must be taken to contain any runoff resulting from the cleansing and to dispose properly of wastes generated during the cleansing.

High-concentration PCBs means PCBs that contain 500 ppm or greater PCBs, or those materials which EPA requires to be assumed to contain 500 ppm or greater PCBs in the absence of testing.

High-contact industrial surface means a surface in an industrial setting which is repeatedly touched, often for relatively long periods of time. Manned machinery and control panels are examples of high-contact industrial surfaces. High-contact industrial surfaces are generally of impervious solid material. Examples of low-contact industrial surfaces include ceilings, walls, floors, roofs, roadways and sidewalks in the industrial area, utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components, indoor vaults, and pipes.

High-contact residential/commercial surface means a surface in a residential/commercial area which is repeatedly touched, often for relatively long periods of time. Doors, wall areas below 6 feet in height, uncovered flooring, windowsills, fencing, bannisters, stairs, automobiles, and children's play areas such as outdoor patios and sidewalks are examples of high-contact residential/commercial surfaces. Examples of low-contact residential/commercial surfaces include interior ceilings, interior wall areas above 6 feet in height, roofs, asphalt roadways, concrete roadways, wooden utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components (e.g., aluminum/vinyl siding, cinder block, asphalt tiles), and pipes.

Impervious solid surfaces means solid surfaces which are nonporous and thus unlikely to absorb spilled PCBs within the short period of time required for cleanup of spills under this policy. Impervious solid surfaces include, but are not limited to, metals, glass, aluminum siding, and enameled or laminated surfaces.

Low-concentration PCBs means PCBs that are tested and found to contain less than 500 ppm PCBs, or those PCB-containing materials which

(b) Spills that may require more stringent **cleanup** levels. For spills within the scope of this policy, EPA generally retains, under Sec. 761.135, the authority to require additional **cleanup** upon finding that, despite good faith efforts by the responsible party, the numerical decontamination levels in the policy have not been met. In addition, EPA foresees the possibility of exceptional **spill** situations in which site-specific risk factors may warrant additional **cleanup** to more stringent numerical decontamination levels than are required by the policy. In these situations, the Regional Administrator has the authority to require **cleanup** to levels lower than those included in this policy upon finding that further **cleanup** must occur to prevent unreasonable risk. The Regional Administrator will consult with the Director, Office of Pollution Prevention and Toxics, prior to making such a finding.

(1) For example, site-specific characteristics, such as short depth to ground water, type of soil, or the presence of a shallow well, may pose exceptionally high potential for ground water contamination by PCBs remaining after **cleanup** to the standards specified in this policy. Spills that pose such a high degree of potential for ground water contamination have not been excluded from the policy under paragraph (d) of this section because the presence of such potential may not be readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of **cleanup**--a particularly undesirable outcome if potential ground water contamination is, in fact, a significant concern.

(2) In those situations, the Regional Administrator may require **cleanup** in addition to that required under Sec. 761.125 (b) and (c). However, the Regional Administrator must first make a finding, based on the specific facts of a **spill**, that additional **cleanup** is necessary to prevent unreasonable risk. In addition, before making a final decision on additional **cleanup**, the Regional Administrator must notify the Director of the Office of Pollution Prevention and Toxics of his finding and the basis for the finding.

[[Page 593]]

(c) Flexibility to allow less stringent or alternative requirements. EPA retains the flexibility to allow less stringent or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that **cleanup** to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site, or that site-specific characteristics make the costs of **cleanup** prohibitive. The Regional Administrator will notify the Director of OPPT of any decision and the basis for the decision to allow less stringent **cleanup**. The purpose of this notification is to enable the Director of OPPT to ensure consistency of **spill cleanup** standards under special circumstances across the regions.

(d) Excluded spills. (1) Although the **spill** situations in paragraphs (d)(2) (i) through (vi) of this section are excluded from the automatic application of final decontamination standards under Sec. 761.125 (b) and (c), the general requirements under Sec. 761.125(a) do apply to these spills. In addition, all of these excluded situations require practicable, immediate actions to contain the area of contamination. While these situations may not always require more stringent **cleanup** measures, the Agency is excluding these scenarios because they will always involve significant factors that may not be adequately addressed by **cleanup** standards based upon typical **spill** characteristics.

(2) For the **spill** situations in paragraphs (d)(2)(i) through (vi) of this section, the responsible party shall decontaminate the **spill** in accordance with site-specific requirements established by the EPA regional offices.

(i) Spills that result in the direct contamination of surface waters (surface waters include, but are not limited to, "waters of the United States" as defined in part 122 of this chapter, ponds, lagoons, wetlands, and storage reservoirs).

(ii) Spills that result in the direct contamination of sewers or sewage treatment systems.

(iii) Spills that result in the direct contamination of any private or public drinking water sources or distribution systems.

(iv) Spills which migrate to and contaminate surface waters, sewers, or drinking water supplies before **cleanup** has been completed in

EPA requires to be assumed to be at concentrations below 500 ppm (i.e., untested mineral oil dielectric fluid).

Nonimpervious solid surfaces means solid surfaces which are porous and are more likely to absorb spilled PCBs prior to completion of the cleanup requirements prescribed in this policy. Nonimpervious solid surfaces include, but are not limited to, wood, concrete, asphalt, and plasterboard.

Nonrestricted access areas means any area other than restricted access, outdoor electrical substations, and other restricted access locations, as defined in this section. In addition to residential/commercial areas, these areas include unrestricted access rural areas (areas of low density development and population where access is uncontrolled by either man-made barriers or naturally occurring barriers, such as rough terrain, mountains, or cliffs).

Other restricted access (nonsubstation) locations means areas other than electrical substations that are at least 0.1 kilometer (km) from a residential/commercial area and limited by man-made barriers (e.g., fences and walls) to substantially limited by naturally occurring barriers such as mountains, cliffs, or rough terrain. These areas generally include industrial facilities and extremely remote rural locations. (Areas where access is restricted but are less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.)

Outdoor electrical substations means outdoor, fenced-off, and restricted access areas used in the transmission and/or distribution of electrical power. Outdoor electrical substations restrict public access by being fenced or walled.

[[Page 595]]

off as defined under Sec. 761.30(1)(1)(ii). For purposes of this TSCA policy, outdoor electrical substations are defined as being located at least 0.1 km from a residential/commercial area. Outdoor fenced-off and restricted access areas used in the transmission and/or distribution of electrical power which are located less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.

PCBs means polychlorinated biphenyls as defined under Sec. 761.3. As specified under Sec. 761.1(b), no requirements may be avoided through dilution of the PCB concentration.

Requirements and standards means:

(1) "Requirements" as used in this policy refers to both the procedural responses and numerical decontamination levels set forth in this policy as constituting adequate cleanup of PCBs.

(2) "Standards" refers to the numerical decontamination levels set forth in this policy.

Residential/commercial areas means those areas where people live or reside, or where people work in other than manufacturing or farming industries. Residential areas include housing and the property on which housing is located, as well as playgrounds, roadways, sidewalks, parks, and other similar areas within a residential community. Commercial areas are typically accessible to both members of the general public and employees and include public assembly properties, institutional properties, stores, office buildings, and transportation centers.

Responsible party means the owner of the PCB equipment, facility, or other source of PCBs or his/her designated agent (e.g., a facility manager or foreman).

Soil means all vegetation, soils and other ground media, including but not limited to, sand, grass, gravel, and oyster shells. It does not include concrete and asphalt.

Spill means both intentional and unintentional spills, leaks, and other uncontrolled discharges where the release results in any quantity of PCBs running off or about to run off the external surface of the equipment or other PCB source, as well as the contamination resulting from those releases. This policy applies to spills of 50 ppm or greater PCBs. The concentration of PCBs spilled is determined by the PCB concentration in the material spilled as opposed to the concentration of PCBs in the material onto which the PCBs were spilled. Where a spill of untested mineral oil occurs, the oil is presumed to contain greater than 50 ppm, but less than 500 ppm PCBs and is subject to the relevant requirements of this policy.

Spill area means the area of soil on which visible traces of the spill can be observed plus a buffer zone of 1 foot beyond the visible traces. Any surface or object (e.g., concrete sidewalk or automobile) within the visible traces area or on which visible traces of the spilled

material are observed is included in the spill area. This area represents the minimum area assumed to be contaminated by PCBs in the absence of precleanup sampling data and is thus the minimum area which must be cleaned.

Spill boundaries means the actual area of contamination as determined by postcleanup verification sampling or by precleanup sampling to determine actual spill boundaries. EPA can require additional cleanup when necessary to decontaminate all areas within the spill boundaries to the levels required in this policy (e.g., additional cleanup will be required if postcleanup sampling indicates that the area decontaminated by the responsible party, such as the spill area as defined in this section, did not encompass the actual boundaries of PCB contamination).

Standard wipe test means, for spills of high-concentration PCBs on solid surfaces, a cleanup to numerical surface standards and sampling by a standard wipe test to verify that the numerical standards have been met. This definition constitutes the minimum requirements for an appropriate wipe testing protocol. A standard-size template (10 centimeters (cm) x 10 cm) will be used to delineate the area of cleanup; the wiping medium will be a gauze pad or glass wool of known size which has been saturated with hexane. It is important that the wipe be performed very quickly after the hexane is exposed to air. EPA strongly recommends that the gauze (or glass wool) be prepared with hexane in the laboratory

[[Page 596]]

and that the wiping medium be stored in sealed glass vials until it is used for the wipe test. Further, EPA requires the collection and testing of field blanks and replicates.

[52 FR 10705, Apr. 2, 1987; 52 FR 23397, June 19, 1987]

Sec. 761.125 Requirements for PCB spill cleanup.

(a) General. Unless expressly limited, the reporting, disposal, and precleanup sampling requirements in paragraphs (a) (1) through (3) of this section apply to all spills of PCBs at concentrations of 50 ppm or greater which are subject to decontamination requirements under TSCA, including those spills listed under Sec. 761.120(b) which are excluded from the cleanup standards at paragraphs (b) and (c) of this section.

(1) Reporting requirements. The reporting in paragraphs (a)(1) (i) through (iv) of this section is required in addition to applicable reporting requirements under the Clean Water Act (CWA) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). For example, under the National Contingency Plan all spills involving 1 pound or more by weight of PCBs must currently be reported to the National Response Center (1-800-424-8802). The requirements in paragraphs (a)(1) (i) through (iv) of this section are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on governments as well as the regulated community.

(i) Where a spill directly contaminates surface water, sewers, or drinking water supplies, as discussed under Sec. 761.120(d), the responsible party shall notify the appropriate EPA regional office (the Office of Prevention, Pesticides and Toxic Substances Branch) and obtain guidance for appropriate cleanup measures in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(ii) Where a spill directly contaminates grazing lands or vegetable gardens, as discussed under Sec. 761.120(d), the responsible party shall notify the appropriate EPA regional office (the Office of Prevention, Pesticides and Toxic Substances Branch) and proceed with the immediate requirements specified under paragraph (b) or (c) of this section, depending on the source of the spill, in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(iii) Where a spill exceeds 10 pounds of PCBs by weight and is not addressed in paragraph (a)(1) (i) or (ii) of this section, the responsible party will notify the appropriate EPA regional office (Pesticides and Toxic Substances Branch) and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(iv) Spills of 10 pounds or less, which are not addressed in

paragraph (a)(1) (i) or (ii) of this section, must be cleaned up in accordance with this policy (in order to avoid EPA enforcement liability), but notification of EPA is not required.

(2) Disposal of **cleanup** debris and materials. All concentrated soils, solvents, rags, and other materials resulting from the cleanup of PCBs under this policy shall be properly stored, labeled, and disposed of in accordance with the provisions of subpart D of this part.

(3) Determination of **spill** boundaries in the absence of visible traces. For spills where there are insufficient visible traces yet there is evidence of a leak or **spill**, the boundaries of the **spill** are to be determined by using a statistically based sampling scheme.

(b) Requirements for **cleanup** of low-concentration spills which involve less than 1 pound of PCBs by weight (less than 270 gallons of untested mineral oil)--(1) Decontamination requirements. Spills of less than 270 gallons of untested mineral oil, low-concentration PCBs, as defined under Sec. 761.123, which involve less than 1 pound of PCBs by weight (e.g., less than 270 gallons of untested mineral oil containing less than 500 ppm PCBs) shall be cleaned in the following manner:

(i) Solid surfaces must be double washed/rinsed (as defined under Sec. 761.123); except that all indoor, residential surfaces other than vault areas must be cleaned to 10 micrograms per 100 square centimeters (10 <greek-m> g/100 cm²) by standard commercial wipe tests.

[[Page 597]]

(ii) All soil within the **spill** area (i.e., visible traces of soil and a buffer of 1 lateral foot around the visible traces) must be excavated, and the ground be restored to its original configuration by back-filling with clean soil (i.e., containing less than 1 ppm PCBs).

(iii) Requirements of paragraphs (b)(1) (i) and (ii) of this section must be completed within 48 hours after the responsible party was notified or became aware of the **spill**.

(2) Effect of emergency or adverse weather. Completion of **cleanup** may be delayed beyond 48 hours in case of circumstances including but not limited to, civil emergency, adverse weather conditions, lack of access to the site, and emergency operating conditions. The occurrence of a **spill** on a weekend or overtime costs are not acceptable reasons to delay response. Completion of **cleanup** may be delayed only for the duration of the adverse conditions. If the adverse weather conditions, or time lapse due to other emergency, has left insufficient visible traces, the responsible party must use a statistically based sampling scheme to determine the **spill** boundaries as required under paragraph (a)(3) of this section.

(3) Records and certification. At the completion of **cleanup**, the responsible party shall document the **cleanup** with records and certification of decontamination. The records and certification must be maintained for a period of 5 years. The records and certification shall consist of the following:

(i) Identification of the source of the **spill** (e.g., type of equipment).

(ii) Estimated or actual date and time of the **spill** occurrence.

(iii) The date and time **cleanup** was completed or terminated (if **cleanup** was delayed by emergency or adverse weather: the nature and duration of the delay).

(iv) A brief description of the **spill** location.

(v) Precleanup sampling data used to establish the **spill** boundaries if required because of insufficient visible traces, and a brief description of the sampling methodology used to establish the **spill** boundaries.

(vi) A brief description of the solid surfaces cleaned and of the double wash/rinse method used.

(vii) Approximate depth of soil excavation and the amount of soil removed.

(viii) A certification statement signed by the responsible party stating that the **cleanup** requirements have been met and that the information contained in the record is true to the best of his/her knowledge.

(ix) While not required for compliance with this policy, the following information would be useful if maintained in the records:

(A) Additional pre- or post-**cleanup** sampling.

(B) The estimated cost of the **cleanup** by man-hours, dollars, or both.

(c) Requirements for **cleanup** of high-concentration spills and low-

concentration spills involving 1 pound or more PCBs by weight (270 gallons or more of untested mineral oil). Cleanup of low-concentration spills involving 1 lb or more PCBs by weight and of all spills of materials other than low-concentration materials shall be considered complete if all of the immediate requirements, cleanup standards, sampling, and recordkeeping requirements of paragraphs (c) (1) through (5) of this section are met.

(1) Immediate requirements. The four actions in paragraphs (c) (1) (i) through (iv) of this section must be taken as quickly as possible and within no more than 24 hours (or within 48 hours for PCB Transformers) after the responsible party was notified or became aware of the spill, except that actions described in paragraphs (c) (1) (ii) through (iv) of this section can be delayed beyond 24 hours if circumstances (e.g., civil emergency, hurricane, tornado, or other similar adverse weather conditions, lack of access due to physical impossibility, or emergency operating conditions) so require for the duration of the adverse conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Owners of spilled PCBs who have delayed cleanup because of these types of circumstances must keep records documenting the fact that circumstances precluded rapid response.

(i) The responsible party shall notify the EPA regional office and the NRC as required by Sec. 761.125(a) (1) or by other applicable statutes.

[[Page 598]]

(ii) The responsible party shall effectively cordon off or otherwise delineate and restrict an area encompassing any visible traces plus a 3-foot buffer and place clearly visible signs advising persons to avoid the area to minimize the spread of contamination as well as the potential for human exposure.

(iii) The responsible party shall record and document the area of visible contamination, noting the extent of the visible trace areas and the center of the visible trace area. If there are no visible traces, the responsible party shall record this fact and contact the regional office of the EPA for guidance in completing statistical sampling of the spill area to establish spill boundaries.

(iv) The responsible party shall initiate cleanup of all visible traces of the fluid on hard surfaces and initiate removal of all visible traces of the spill on soil and other media, such as gravel, sand, oyster shells, etc.

(v) If there has been a delay in reaching the site and there are insufficient visible traces of PCBs remaining at the spill site, the responsible party must estimate (based on the amount of material missing from the equipment or container) the area of the spill and immediately cordon off the area of suspect contamination. The responsible party must then utilize a statistically based sampling scheme to identify the boundaries of the spill area as soon as practicable.

(vi) Although this policy requires certain immediate actions, as described in paragraphs (c) (1) (i) through (iv) of this section, EPA is not placing a time limit on completion of the cleanup effort since the time required for completion will vary from case to case. However, EPA expects that decontamination will be achieved promptly in all cases and will consider promptness of completion in determining whether the responsible party made good faith efforts to clean up in accordance with this policy.

(2) Requirements for decontaminating spills in outdoor electrical substations. Spills which occur in outdoor electrical substations, as defined under Sec. 761.123, shall be decontaminated in accordance with paragraphs (c) (2) (i) and (ii) of this section. Conformance to the cleanup standards under paragraphs (c) (2) (i) and (ii) of this section shall be verified by post-cleanup sampling as specified under Sec. 761.130. At such times as outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access requirements under paragraph (c) (4) of this section.

(i) Contaminated solid surfaces (both impervious and non-impervious) shall be cleaned to a PCB concentration of 100 micrograms (<greek-m> g) / 100 square centimeters (cm²) (as measured by standard wipe tests).

(ii) At the option of the responsible party, soil contaminated by the spill will be cleaned either to 25 ppm PCBs by weight, or to 50 ppm PCBs by weight provided that a label or notice is visibly placed in the

area. Upon demonstration by the responsible party that **cleanup** to 25 ppm or 50 ppm will jeopardize the integrity of the electrical equipment at the substation, the EPA regional office may establish an alternative **cleanup** method or level and place the responsible party on a reasonably timely schedule for completion of **cleanup**.

(3) Requirements for decontaminating spills in other restricted access areas. Spills which occur in restricted access locations other than outdoor electrical substations, as defined under Sec. 761.123, shall be decontaminated in accordance with paragraphs (c)(3)(i) through (v) of this section. Conformance to the **cleanup** standards in paragraphs (c)(3)(i) through (v) of this section shall be verified by postcleanup sampling as specified under Sec. 761.130. At such times as restricted access areas other than outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access area requirements of paragraph (c)(4) of this section.

(i) High-contact solid surfaces, as defined under Sec. 761.163 shall be cleaned to 10 $\mu\text{g}/100\text{ cm}^2$ (as measured by standard wipe tests).

(ii) Low-contact, indoor, impervious solid surfaces will be decontaminated to 10 $\mu\text{g}/100\text{ cm}^2$.

(iii) At the option of the responsible party, low-contact, indoor, nonimpervious surfaces will be cleaned either to 10

[[Page 599]]

$\mu\text{g}/100\text{ cm}^2$ or to 100 $\mu\text{g}/100\text{ cm}^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

(iv) Low-contact, outdoor surfaces (both impervious and nonimpervious) shall be cleaned to 100 $\mu\text{g}/100\text{ cm}^2$.

(v) Soil contaminated by the spill will be cleaned to 25 ppm PCBs by weight.

(4) Requirements for decontaminating spills in nonrestricted access areas. Spills which occur in nonrestricted access locations, as defined under Sec. 761.123, shall be decontaminated in accordance with paragraphs (c)(4)(i) through (v) of this section. Conformance to the **cleanup** standards at paragraphs (c)(4)(i) through (v) of this section shall be verified by postcleanup sampling as specified under Sec. 761.130.

(i) Furnishings, toys, and other easily replaceable household items shall be disposed of in accordance with the provisions of subpart D of this part and replaced by the responsible party.

(ii) Indoor solid surfaces and high-contact outdoor solid surfaces, defined as high contact residential/commercial surfaces under Sec. 761.123, shall be cleaned to 10 $\mu\text{g}/100\text{ cm}^2$ (as measured by standard wipe tests).

(iii) Indoor vault areas and low-contact, outdoor, impervious solid surfaces shall be decontaminated to 10 $\mu\text{g}/100\text{ cm}^2$.

(iv) At the option of the responsible party, low-contact, outdoor, nonimpervious solid surfaces shall be either cleaned to 10 $\mu\text{g}/100\text{ cm}^2$ or cleaned to 100 $\mu\text{g}/100\text{ cm}^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

(v) Soil contaminated by the spill will be decontaminated to 10 ppm PCBs by weight provided that soil is excavated to a minimum depth of 10 inches. The excavated soil will be replaced with clean soil, i.e., containing less than 1 ppm PCBs, and the spill site will be restored (e.g., replacement of turf).

(5) Records. The responsible party shall document the **cleanup** with records of decontamination. The records must be maintained for a period of 5 years. The records and certification shall consist of the following:

(i) Identification of the source of the spill, e.g., type of equipment.

(ii) Estimated or actual date and time of the spill occurrence.

(iii) The date and time **cleanup** was completed or terminated (if **cleanup** was delayed by emergency or adverse weather: the nature and duration of the delay).

(iv) A brief description of the **spill** location and the nature of the materials contaminated. This information should include whether the **spill** occurred in an outdoor electrical substation, other restricted access location, or in a nonrestricted access area.

(v) Precleanup sampling data used to establish the **spill** boundaries if required because of insufficient visible traces and a brief description of the sampling methodology used to establish the **spill** boundaries.

(vi) A brief description of the solid surfaces cleaned.

(vii) Approximate depth of soil excavation and the amount of soil removed.

(viii) Postcleanup verification sampling data and, if not otherwise apparent from the documentation, a brief description of the sampling methodology and analytical technique used.

(ix) While not required for compliance with this policy, information on the estimated cost of **cleanup** (by man-hours, dollars, or both) would be useful if maintained in the records.

[52 FR 10705, Apr. 2, 1987, as amended at 53 FR 40884, Oct. 19, 1988; 63 FR 35461, June 29, 1998]

Sec. 761.130 Sampling requirements.

Postcleanup sampling is required to verify the level of **cleanup** under

[[Page 600]]

Sec. 761.125(c) (2) through (4). The responsible party may use any statistically valid, reproducible, sampling scheme (either random samples or grid samples) provided that the requirements of paragraphs (a) and (b) of this section are satisfied.

(a) The sampling area is the greater of (1) an area equal to the area cleaned plus an additional 1-foot boundary, or (2) an area 20 percent larger than the original area of contamination.

(b) The sampling scheme must ensure 95 percent confidence against false positives.

(c) The number of samples must be sufficient to ensure that areas of contamination of a radius of 2 feet or more within the sampling area will be detected, except that the minimum number of samples is 3 and the maximum number of samples is 40.

(d) The sampling scheme must include calculation for expected variability due to analytical error.

(e) EPA recommends the use of a sampling scheme developed by the Midwest Research Institute (MRI) for use in EPA enforcement inspections: "Verification of PCB Spill Cleanup by Sampling and Analysis." Guidance for the use of this sampling scheme is available in the MRI report "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup." Both the MRI sampling scheme and the guidance document are available from the Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Room E-543B, 401 M St., SW., Washington, DC, 20460, Telephone: (202) 554-1404, TDD: (202) 544-0551. The major advantage of this sampling scheme is that it is designed to characterize the degree of contamination within the entire sampling area with a high degree of confidence while using fewer samples than any other grid or random sampling scheme. This sampling scheme also allows some sites to be characterized on the basis of composite samples.

(f) EPA may, at its discretion, take samples from any spill site. If EPA's sampling indicates that the remaining concentration level exceeds the required level, EPA will require further **cleanup**. For this purpose, the numerical level of **cleanup** required for spills cleaned in accordance with Sec. 761.125(b) is deemed to be the equivalent of numerical **cleanup** requirements required for cleanups under Sec. 761.125(c) (2) through (4). Using its best engineering judgment, EPA may sample a statistically valid random or grid sampling technique, or both. When using engineering judgment or random "grab" samples, EPA will take into account that there are limits on the power of a grab sample to dispute statistically based sampling of the type required of the responsible party. EPA headquarters will provide guidance to the EPA regions on the degree of

certainty associated with various grab sample results.

[52 FR 10705, Apr. 2, 1987, as amended at 60 FR 34465, July 3, 1995]

Sec. 761.135 Effect of compliance with this policy and enforcement.

(a) Although a spill of material containing 50 ppm or greater PCBs is considered improper PCB disposal, this policy establishes requirements that EPA considers to be adequate cleanup of the spilled PCBs. Cleanup in accordance with this policy means compliance with the procedural as well as the numerical requirements of this policy. Compliance with this policy creates a presumption against both enforcement action for penalties and the need for further cleanup under TSCA. The Agency reserves the right, however, to initiate appropriate action to compel cleanup where, upon review of the records of cleanup or EPA sampling following cleanup, EPA finds that the decontamination levels in the policy have not been achieved. The Agency also reserves the right to seek penalties where the Agency believes that the responsible party has not made a good faith effort to comply with all provisions of this policy, such as prompt notification of EPA of a spill, recordkeeping, etc.

(b) EPA's exercise of enforcement discretion does not preclude enforcement action under other provisions of TSCA or any other Federal statute. This includes, even in cases where the numerical decontamination levels set forth in this policy have been met, civil or criminal action for penalties where

[[Page 601]]

EPA believes the spill to have been the result of gross negligence or knowing violation.

Subparts H-I [Reserved]