

where the effect of an EPA permit objection was to deny the issuance of the permit, review should be in the courts of appeals under section 509(b)(1)(F) in part to avoid allowing review of similar actions in different courts depending on whether EPA or the state is the permit-issuing authority. A similar result should be reached regarding EPA's decisions under section 304(1). If, for example, review of EPA action were allowed under section 509(b)(1)(G) only if EPA disapproved an ICS and issued the underlying permit, then jurisdiction of the courts of appeals would be dependent "on the fortuitous circumstance of whether the State in which the case arose" issues the permit. *Crown Simpson*, 445 U.S. at 197-98. Similarly, if approvals could be challenged in district court and disapprovals in the courts of appeals, then an approval that was remanded by the district court could be re-litigated in a court of appeals if it subsequently became a disapproval. EPA does not believe that Congress intended to create such a system.

### III. Finality and Reviewability of Listing Decisions

Unlike decisions related to ICSs, decisions regarding lists do not fall within the ambit of section 509(b)(1). Nonetheless, because of the amount of interest that has been expressed in these lists, the Agency is announcing its position on the reviewability of EPA approvals of state listing decisions, and EPA's decisions to list water segments on the lists required by section 304(1)(1)(B) ("B lists") and dischargers on the section 304(1)(1)(C) lists ("C lists"). Initial listing decisions were, for the most part, made in June of 1989. These decisions included both approvals and disapprovals of state listings as well as the identification of the waters EPA expected to add to or delete from the lists. (Referred to below as "listing decisions.") At that time EPA requested comments on most of its listing decisions.

EPA will provide notice of its responses to comments, along with any revisions to the B and C lists, in most cases, by June of 1990. Although these lists will represent EPA's decisions regarding listing (and may be called "final lists" or "final agency actions" in some contexts, see e.g. 54 FR 23894), EPA does not believe that decisions to include waters or dischargers on lists are reviewable final agency actions within the meaning of the

Administrative Procedure Act or are otherwise ripe for review.<sup>4</sup>

The listing of a water segment or a point source identifies that segment or point source as one that EPA or the state expects will need additional controls in order to attain and maintain water quality standards. It is not until the permit process is completed, however, that a definitive determination is made regarding what limitations, if any, will be necessary, and it is only through permit limitations that dischargers are obliged to act. Therefore, listing a facility has no concrete impact on the facility; only the modification of permit limitations does.

Accordingly, EPA believes that the basis for a determination to list a water segment or discharger is not ripe for review until EPA changes a permit on that basis. When the state issues the modified permit, the finding that additional limitations are necessary would only be reviewable in a state forum. In addition, because limitations are only imposed through permits, where EPA does not issue the permit, a discharger would not have standing to challenge EPA's decision because any harm suffered would not be traceable to EPA nor could a court reviewing the listing remedy limitations that a discharger claimed were unnecessarily stringent. Finally, EPA believes the statute's specific allowance for review of the promulgation of ICSs, but not of the lists, indicates that the intermediate steps leading to permit modifications, including the listing or approval of listing, were only intended for review at the end of the process—when the permit is finalized.

The section 304(1) listing process is an important step in the development of water quality-based limitations in permits and thus in ensuring that water quality standards for toxic pollutants are met. The inclusion of a water segment or a facility on a list does not, however, impose obligations on dischargers and is therefore not reviewable.

### IV. Effect of Today's Notice

Today's notice is not a legislative rule binding on particular parties; instead, it simply provides persons affected by EPA's actions a clarification of the Agency's position regarding when and where EPA's actions under section 304(1) of the CWA may be judicially reviewable. Accordingly, this notice is an interpretative rule which is exempt from the notice and comment

<sup>4</sup> The discussion below does not address challenges to EPA's actions based on EPA's failure to list specific waters.

requirements of the Administrative Procedure Act, 5 U.S.C. 553(b) and from the requirement that publication of the rule occur not less than 30 days before its effective date, 5 U.S.C. 553(d).

Dated: June 15, 1990.

F. Henry Habicht,

Deputy Administrator.

[FR Doc. 90-14903 Filed 6-26-90; 8:45 am]

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### 40 CFR Part 180

[PP 8F3579/R1081; FRL-3766-2]

### *Pseudomonas Fluorescens* EG-1053; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This document establishes a permanent exemption from the requirement for a tolerance for residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on cottonseed and cotton forage. This exemption was requested by Ecogen, Inc.

**DATES:** This regulation becomes effective June 27, 1990.

**ADDRESSES:** Written objections, identified by the document control number, [PP 8F3579/R1081], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., Sw., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan T. Lewis, Product Manager (PM) 21, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 25, 1990 (55 FR 17460), EPA issued a proposed rule that gave notice that Ecogen, Inc., 2005 Cabot Blvd. West, Langhorne, PA 19047-1810, had submitted pesticide petition (PP) 8F3579 to EPA proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on the raw agricultural commodity cotton. In the Federal Register of February 24, 1988 (53 FR 5458), it was announced that Ecogen, Inc., had amended PP 8F3579 to replace cotton specifically with cottonseed and cotton forage for exemption from the requirement of a tolerance. Ecogen's strain of the bacterium *Pseudomonas*

*fluorescens* was isolated from soil in Mississippi and has not been genetically altered. This microorganism is a natural soil isolate and has not been altered or improved. Microorganisms known as *pseudomonas fluorescens* constitute a rather diverse complement of bacteria that occur in both soil and aquatic habitats. They can be isolated from these sources using enrichment with appropriate media. The use of the biofungicide is for control of the *Pythium/Rhizoctonia* seedling disease complex of cotton.

A rule was published in the *Federal Register* of March 10, 1988 (53 FR 7739), that established an exemption from the requirement for a tolerance for a period of 2 years after the date of signature. The Agency required various studies to be submitted prior to determining whether the issuance of a permanent exemption would be appropriate. These studies were discussed in the proposed rule of April 25, 1990 (55 FR 17460).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 801-812), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (48 FR 24950).

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 11, 1990.

Douglas D. Camp, Jr.

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

#### § 180.1088 [Amended]

2. In § 180.1088 *Pseudomonas fluorescens* EG-1053; exemption from the requirement of a tolerance, by removing the last sentence, which reads as follows: "This rule will expire on March 2, 1990."

[FR Doc. 90-14899 Filed 6-26-90; 8:45 am]

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#### 40 CFR Part 761

[OPTS-62059C; FRL 3770-1]

#### Polychlorinated Biphenyls; Notification and Manifesting for PCB Wastes Activities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

**SUMMARY:** EPA issued final amendments to its PCB disposal and storage regulations in the *Federal Register* of December 21, 1989 (54 FR 52716). EPA has discovered several technical errors in these amendments. This document corrects those errors.

**EFFECTIVE DATES:** These corrections are effective June 27, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The Environmental Protection Agency promulgated amendments to its disposal and storage requirements for PCBs under section 6(e)(1) of the Toxic Substances and Control Act in the December 21, 1989 issue of the *Federal Register* (54 FR 52716). These amendments contained several inadvertent errors which are being corrected in this document. Also, for purposes of clarification, two technical

amendments are included in this document.

The corrections and technical amendments are discussed below.

The definitions section (§ 761.3) is being corrected by amending the definition for "Commercial storer of PCB waste" to clarify the meaning of the phrase "exceeds 500 gallons of PCBs." The word "liquid" is being inserted into the phrase such that the phrase will now read "exceeds 500 liquid gallons of PCBs."

A technical amendment is being made to § 761.65, storage for disposal, by changing the references in paragraph (i)(3) from "paragraph (d)(2)(i) and (d)(2)(ii)," to correctly read "paragraph (i)(2)(i) and (i)(2)(ii)."

Section 761.180 is being corrected to bring the regulation in line with EPA's intent and meaning as stated in the preamble to the notification and manifesting rule (54 FR 52729, December 21, 1989) as follows:

1. In paragraph (a)(2)(ii)(C), the phrase "the first date material was placed in each PCB Container for disposal," is being corrected to read "the first date material placed in each PCB Container was removed from service for disposal."

2. In paragraph (a)(2)(ii)(D), the phrase "the first date a PCB Article was placed into each PCB Article Container for disposal," is being corrected to read "the first date a PCB Article placed in each PCB Article Container was removed from service for disposal." The phrase "the total weight of the PCB Articles in kilograms in each PCB Article Container," is being removed because it is a duplication.

3. In paragraph (b)(2)(ii)(A), the phrase "the first date PCB waste was placed in the tanker or truck for disposal," is being corrected to read "the first date PCB waste placed in the tanker or truck was removed from service for disposal."

4. In paragraph (b)(2)(ii)(C), the phrase "the first date PCB waste was placed in each PCB Container for disposal," is being corrected to read "the first date PCB waste placed in each PCB Container was removed from service for disposal." The phrase "the date it was received at the facility," is being added. This phrase was inadvertently omitted from paragraph (b)(2)(ii)(C).

5. In paragraph (b)(2)(ii)(D), the phrase "the first date a PCB Article was placed in each PCB Article Container for disposal," is being corrected to read "the first date a PCB Article placed in each PCB Article Container was removed from service for disposal." The phrase "the date it was received at the facility," is being added. This phrase

was inadvertently omitted from paragraph (b)(2)(ii)(D).

6. Paragraph (b)(2)(iii) is corrected by changing the phrase "paragraph (b)(2)(ii)(A) through (B)(2)(ii)(E)," to read "paragraph (b)(2)(ii)(A) through (b)(2)(ii)(E)."

Finally, § 761.215 is being corrected in paragraph (d)(1) to change the phrase "date more than 9 months," to read "date within 9 months." The phrase "date more than 9 months" is clearly in error. EPA indicated in the preamble to the manifesting rule that a generator or commercial storer would be presumed to be in compliance with the 1-year storage limitation if it could demonstrate that the storage period prior to delivery for disposal did not exceed 9 months (54 FR 52732, December 21, 1989).

This document contains corrections and technical amendments only and does not require notice and comment, 5 U.S.C. 553.

Dated: June 20, 1990.

Charles L. Elkins,  
Director, Office of Toxic Substances.

Accordingly, 40 CFR part 761 appearing in the Federal Register issue of December 21, 1989 (54 FR 52716) is corrected as follows:

**PART 761—[AMENDED]**

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.3, on page 52745, the definition for the "Commercial storer of PCB waste" is correctly added to read as follows:

**§ 761.3 Definitions.**

*Commercial storer of PCB waste* means the owner or operator of each facility which is subject to the PCB storage facility standards of § 761.65, and who engages in storage activities involving PCB waste generated by others, or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal. The receipt of a fee or any form of compensation for storage services is not necessary to qualify as a commercial storer of PCB waste. It is sufficient under this definition that the facility stores PCB waste generated by others or the facility removed the PCB waste while servicing equipment owned by others. A generator who stores only the generator's own waste is subject to the storage requirements of § 761.65, but is not required to seek approval as a commercial storer. If a facility's storage of PCB waste at no time exceeds 500

liquid gallons of PCBs, the owner or operator is not required to seek approval as a commercial storer of PCB waste.

3. In § 761.65, on page 52749, paragraph (i)(3) introductory text is correctly added to read as follows:

**§ 761.65 Storage for disposal.**

(i) \* \* \*  
(3) In order to qualify for the exemption in paragraph (i)(2)(i) and (i)(2)(ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

4. In § 761.180, on page 52750, paragraphs (a)(2)(ii)(C), (a)(2)(ii)(D), the introductory text of paragraph (b)(2)(ii), paragraph (b)(2)(ii)(A), (b)(2)(ii)(C), (b)(2)(ii)(D), and (b)(2)(iii), are correctly revised to read as follows:

**§ 761.180 Records and monitoring.**

(a) \* \* \*  
(2) \* \* \*  
(ii) \* \* \*  
(C) A unique number identifying each PCB Container, a description of the contents of each PCB Container, such as liquid, soil, cleanup debris, etc., including the total weight of the material in kilograms in each PCB Container, the first date material placed in each PCB Container was removed from service for disposal, and the date each PCB Container was placed in transport for off-site storage or disposal, and the date of disposal (if known).

(D) A unique number identifying each PCB Article Container, a description of the contents of each PCB Article Container, such as pipes, capacitors, electric motors, pumps, etc., including the total weight in kilograms of the content of each PCB Article Container, the first date a PCB Article placed in each PCB Article Container was removed from service for disposal, and the date the PCB Article Container was placed in transport for off-site storage or disposal, and the date of disposal (if known).

(b) \* \* \*  
(2) \* \* \*  
(ii) For each manifest generated or received by the facility during the calendar year, the unique manifest number and the name and address of the facility that generated the manifest and the following information:

(A) For bulk PCB waste (e.g., in a tanker or truck), its weight in kilograms, the first date PCB waste placed in the

tanker or truck was removed from service for disposal, the date it was received at the facility, the date it was placed in transport for off-site disposal (if applicable), and the date of disposal (if known).

(C) The unique number assigned by the generator identifying each PCB Container, a description of the contents of each PCB Container, such as liquid, soil, cleanup debris, etc., including the total weight of the PCB waste in kilograms in each PCB Container, the first date PCB waste placed in each PCB Container was removed from service for disposal, the date it was received at the facility, the date each PCB Container was placed in transport for off-site storage or disposal (as applicable), and the date the PCB Container was disposed of (if known).

(D) The unique number assigned by the generator identifying each PCB Article Container, a description of the contents of each PCB Article Container, such as pipes, capacitors, electric motors, pumps, etc., including the total weight in kilograms of the PCB waste in each PCB Article Container, the first date a PCB Article placed in each PCB Article Container was removed from service for disposal, the date it was received at the facility, the date each PCB Article Container was placed in transport for off-site storage or disposal (as applicable), and the date the PCB Container was disposed (if known).

(iii) For any PCB waste disposed at a facility that generated the PCB waste or any PCB waste that was not manifested to the facility, the information required under paragraph (b)(2)(ii)(A) through (b)(2)(ii)(E) of this section.

5. In § 761.215, on page 52756, paragraph (d)(1) is correctly added to read as follows:

**§ 761.215 Unmanifested waste report.**

(d) \* \* \*  
(1) The generator or commercial storer transferred the PCBs or PCB Items to the disposer of PCB waste on a date within 9 months from the date of removal from service for disposal of the affected PCBs or PCB Items, as indicated on the manifest or continuation sheet; and

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