Federal PCB Developments: EPA’s Rulemaking; Update on Cleanup and Disposal Programs

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MD-DC Utilities Association - 2014 Environmental Conference

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Agenda

- Background
  - Overview: Statutory/regulatory framework
  - 2010 PCB ANPRM
- Recent Developments
  - PCB SBAR Panel
  - Anticipated scope of proposal; timeframe
- Cleanup and Disposal Issues
  - USWAG PCB Remediation Waste Approval
  - Regional developments and implications for Region 3/federal PCB program
- Questions?
Background: TSCA and the PCB Use Authorizations

- Statutory ban on PCBs:
  - TSCA Section 6(e) prohibits the manufacture, processing, distribution in commerce, and use of PCBs unless the PCBs are “totally enclosed”

- Section 6(e)(2)(B) allows EPA to authorize the manufacture, processing, distribution in commerce, and use of PCBs in a non-totally enclosed manner
  - Authorizations for use of PCBs in electrical equipment set forth at 40 CFR Part 761
# Terminology

<table>
<thead>
<tr>
<th>PCB-contaminated</th>
<th>≥ 50 ppm and &lt; 500 ppm</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCB equipment, PCB Transformer</td>
<td>≥ 500 ppm</td>
</tr>
<tr>
<td>PCB-containing</td>
<td>≥ 50 ppm</td>
</tr>
</tbody>
</table>
Background: EPA’s “No Unreasonable Risk” Finding

- In order to authorize such use, EPA must first find that it “will not present an unreasonable risk of injury to health or the environment”

- In making this determination prior to promulgating the original use authorizations for PCBs, EPA considered:
  - Impacts on the economy;
  - Impacts on electric energy availability; and
  - All other health, environmental, or social impacts that could be expected.
EPA’s PCB Rulemaking
EPA’s Reassessment of the PCB Use Authorizations

- EPA now looking to **reassess** the existing use authorizations
- In forthcoming proposal, EPA likely to attempt to show that:
  - The **risk** from PCBs in electrical equipment is greater today than in 1979 because either
    - … the **toxicity** of PCBs is greater than previously believed, and/or
    - … there is greater **exposure** to PCBs
  - The **costs** associated with mandatory phase-out are less today than they would have been in 1979.
Regulatory Developments: Timeline

- **April 2010:** EPA issues Advance Notice of Proposed Rulemaking (ANPRM)
- **April – Aug. 2010:**
  - Public comment period
  - Multiple public hearings on ANPRM
- **July 2013:** Announcement of SBAR Panel
- **Dec. 2013:** SBAR Pre-Panel Kick-Off Meeting
- **Feb. 2014:** Convention of SBAR Panel
- **April 2014:** SBAR Panel Report Submitted to EPA
- **Feb. 2015:** Current target date for proposal
  - Public comment period
  - EPA will consider and respond to comments prior to issuing final rule
Advance Notice of Proposed Rulemaking (ANPRM):
Reassessment of the PCB Use Authorizations

- EPA solicited information to help the Agency:
  - Reassess the efficacy and protectiveness of the 30-year-old use authorizations
  - Consider costs related to management and disposal of PCBs under current use authorizations
  - Weigh benefits and costs of phase-out

- Implicit requirement of measures contemplated in ANPRM: system-wide sampling of equipment

→ **Bottom line:** ANPRM signaled EPA’s attempt to develop administrative record to support reversal of its original “no unreasonable risk” determination for PCBs
Industry Response to ANPRM

- Individual utilities and industry trade associations (USWAG, EEI, AGA, NRECA) submitted comments on ANPRM – themes:
  - Existing regulations have proven effective, ensure adequate protection of human health and the environment
  - Reversal of original “no unreasonable risk” finding not justified by risk or cost
  - Identification required for phase-out would present serious safety risks and necessitate widespread outages/service disruptions
Industry Response to ANPRM

- USWAG compiled member company information on current inventories, equipment management practices, and costs associated with accelerated disposal/ultimate phase-out of PCB-containing equipment
  - Estimated cost of sampling associated with phase-out: $21 billion
  - PCB Large Capacitors down from estimated 2.8 million (1982) to 120,000 (2010)
    → Represents a 98% reduction
  - All PCB-containing transformers projected to be removed from service by 2030
ENVIRON, Inc. Estimates of Phase-Down Progress Since 1981

**FIGURE 1: CHANGES IN EQUIPMENT INVENTORIES SINCE 1981**

- **all listed types**
- ≥ 50 ppm PCB
- ≥ 500 ppm PCB
## ENVIRON, Inc. Estimates of Phase-Down Progress Since 1981

<table>
<thead>
<tr>
<th>Equipment Category</th>
<th>1981-82</th>
<th>2009-10</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCB-contaminated transformers</td>
<td>2,166,159</td>
<td>892,458</td>
</tr>
<tr>
<td>PCB Transformers</td>
<td>259,558</td>
<td>97,610</td>
</tr>
<tr>
<td>All types* of PCB-containing equipment (≥ 50 ppm)</td>
<td>5,303,921</td>
<td>1,141,241</td>
</tr>
<tr>
<td>All types* of PCB equipment (≥ 500 ppm)</td>
<td>3,062,645</td>
<td>217,834</td>
</tr>
</tbody>
</table>

- **Percentage of total universe of equipment with 50-499 ppm PCBs:**
  - 1981-82: 9.43%
  - 2009-10: 2.3%

- **Percentage of total universe of equipment with ≥ 500 ppm PCBs:**
  - 1981-82: 12.9%
  - 2009-10: 0.54%
Recent Developments –
Small Business Advocacy Review (SBAR) Panel
for
PCB Rulemaking
Small Business Advocacy Review (SBAR) Panel

- Convened pursuant to the Small Business Regulatory Flexibility Act (SBREFA)
  - Goal: Consider impact of proposed regulatory measures on “small entities,” including electric cooperatives

- Panel comprised of representatives from:
  - EPA (Small Business Office, OPPT)
  - Office of Management & Budget (OMB)
  - Small Business Administration (SBA)

- “Small Entity Representatives” (SERs) invited to listen, provide feedback and written comments to Panel
Small Business Advocacy Review (SBAR) Panel (cont’d)

- Panel held kick-off meeting in late 2013
  - Provided SERs with draft presentation, outlining regulatory measures under consideration
  - SERs invited to submit written comments

- Panel formally convened in February 2014
  - Again provided presentation of measures under consideration
  - Modified in some respects to reflect input received following kick-off meeting
EPA’s presentation focused on restricting and/or otherwise revising use authorizations for:

- PCBs in fluorescent light ballasts
- PCBs in natural gas pipelines
- PCBs in electrical equipment

and

- The continued use of PCB-contaminated porous surfaces (§ 761.30(p))
Small Business Advocacy Review (SBAR) Panel (cont’d)

- Fluorescent Light Ballasts:
  - Potential regulated universe:
    - Daycare centers and primary/secondary schools;
    - Daycare centers, primary/secondary schools, hospitals and public housing; or
    - All public and commercial buildings
  - Regulatory options under consideration:
    - Revoke use authorization for PCBs in small capacitors in FLBs in 1, 3, or 5 years; or
    - Revise use authorization for PCB small capacitors to require identification of leaking PCB FLBs

→ Driven by developments in New York City schools
Small Business Advocacy Review (SBAR) Panel (cont’d)

Natural Gas Pipelines:

- EPA: Agency “is aware of several instances of PCBs being discovered in customers’ meters and beyond”
  - October 2011: data submission request to natural gas pipeline owners
  - Received 21 responses, identifying 150 instances of PCBs above 50 ppm
- Regulatory options under consideration:
  - Require reporting of discovery of releases of PCBs ≥50 ppm to customer meters and apurtenances; or
  - Require **annual reporting** of all discoveries of PCBs ≥50 ppm PCB in natural gas pipeline systems
Possible phase-out of PCB Transformers and PCB-Contaminated transformers

- Initially, would have applied to all transformers falling within either category
- Not limited to “known”
- So, like measures in ANPRM, would require massive sampling effort to ensure compliance
- EPA responded to comments received following SBAR kick-off meeting …
- … In Feb. 2014 presentation, contemplated measures limited to known PCB Transformers/PCB-Contaminated transformers
Small Business Advocacy Review (SBAR) Panel (cont’d)

- PCB Transformers – Possible date for termination of use authorization:
  - 2020 (i.e., 5 years after rule)
  - 2025 (i.e., 10 years after rule)
  - 2030 (i.e., 15 years after rule)
  - EPA also sought input regarding length of “grace period” to dispose of (previously unknown) PCB Transformers following discovery, post-phase-out

- Options for amending Storage for Reuse authorization for PCB Transformers:
  - Revoke after 1 year (i.e., 2016)
  - Revoke after 2 years (i.e., 2017)
  - Revoke after 5 years (i.e., 2020)
  - Revoke after 10 years (i.e., 2025)
Small Business Advocacy Review (SBAR) Panel (cont’d)

- PCB-Contaminated transformers – Possible date for termination of use authorization:
  - 2020 (i.e., 5 years after rule)
  - 2025 (i.e., 10 years after rule)
  - 2030 (i.e., 15 years after rule)
  ➔ EPA’s cost projections based on assumption that utilities would dispose of 95% of PCB-contaminated transformers, and reclassify 5% to <50 ppm

- Only option presented for servicing of PCB-contaminated transformers:
  - Prohibition of all servicing except to reclassify to <50 ppm

- Options for amending Storage for Reuse authorization for PCB Transformers – mirrored those presented for PCB Transformers
Possible phase-out of other types of PCB-containing equipment

- Unfortunately, other measures considered by EPA not limited to “known”
- … In other words, sampling would still be (implicit) requirement of phase-out requirements for voltage regulators, capacitors, cable, etc.

EPA still appears to believe that “little if any of this equipment exists or contains PCBs”

Only option presented:

- Revoke use authorization within 1 year (i.e., 2016) of final rule
Small Business Advocacy Review (SBAR) Panel (cont’d)

- Continued use of PCB-contaminated porous surfaces – Options presented for § 761.30(p):
  - Option 1: No modification
  - Option 2: Require notification
    - 2a) retroactive notification (i.e., including past uses of the authorization)
    - 2b) prospective only
  - Option 3: Require deed restriction
  - Option 4: Restrict to “low occupancy” areas
    - Note: EPA suggested that industry requested this change.
    - Industry has focused on types of locations where this is used, i.e., accessibility to public
Next Steps in the Rulemaking Process

- OPPT working to draft proposal
- Proposal slated for February 2015
- Following publication of proposal:
  - Public comment period
  - Likely will be additional public hearings
  - EPA will review, respond to comments before issuing final rule
  - EPA is still aiming for 2015 effective date
Disposal Approval to USWAG Members for As-Found <50 ppm PCB Remediation Wastes
Disposal of PCB Remediation Wastes – Background

■ “PCB remediation waste”

→ Waste containing PCBs as a result of a spill, release, or other unauthorized disposal from a source ≥ 50 ppm PCBs (or from source of any concentration if source not authorized for use)

→ Examples: Contaminated soil, other contaminated media following transformer leak
Disposal of PCB Remediation Wastes – Background

- Disposal of PCB remediation waste regulated under 40 C.F.R. § 761.61
  - § 761.61(a) – “Self-implementing” cleanup
  - § 761.61(b) – “Performance-based” cleanup
  - § 761.61(c) – Risk-based approval

- For years, EPA’s position:
  - Regulations allow for disposal of as-found <50 ppm PCB remediation wastes in MSWLF only if managed under § 761.61(a)
  - EPA: Other identical wastes must go to TSCA landfill, absent § 761.61(c) approval
Disposal of PCB Remediation Wastes – USWAG’s § 761.61(c) Application

- USWAG unable to get EPA to confirm legal position that all as-found <50 ppm PCB remediation wastes can go to MSWLF

- At EPA’s suggestion, submitted application for risk-based disposal approval in 2009
  - Broad in scope, would apply anywhere
  - EPA took no formal action on the application; concerned that such a broad approval resembled rulemaking

- Second, narrower application submitted in 2012

- Sept. 2013: Draft approval posted for public comment
Disposal of PCB Remediation Wastes – USWAG’s § 761.61(c) Application

- Final approval issued June 10, 2014
  - Structured as “bundle” of approvals issued to individual USWAG member companies
  - Applies to non-liquid PCB remediation waste
  - Limited to wastes generated “at a secure utility asset that is owned or operated by a USWAG Member”

→ What is a “secure utility asset”?
Final Approval for Disposal of PCB Remediation Wastes

“Secure utility asset”

→ A facility that is fenced, locked, guarded/monitored, or otherwise not accessible to the general public,

→ Where PCB response actions are conducted or performed by, or under the supervision of, utility professionals and/or consultants with experience in responding to and remediating PCB releases,

→ Including, for example:
  • Service centers, substations
  • Switch-yards
  • Power generating stations
  • Network vaults
  • Gas utility distribution centers
  • Natural gas metering, regulating, compressor stations
Final Approval for PCB Remediation Wastes (cont’d)

- Notification requirements of final approval:
  - Initial, one-time public notification by each company utilizing the approval (via company website)
  - Each time approval used, notification to ORCR, EPA Regional PCB Coordinator and state/local/tribal regulatory authorities, including, among other things:
    - Location at which PCB remediation waste generated
    - Date of discovery, description of waste
    - Final disposal location for waste
    - Company contact for records regarding the waste
  - Notify landfill of shipment of <50 ppm PCB waste
Final Approval for PCB Remediation Wastes (cont’d)

- Additional requirements of final approval:
  - Waste characterization and analysis requirements
  - Recordkeeping requirements (5 years)
  - Decontaminate/dispose of sampling and waste handling equipment
  - USWAG administrative duties (membership changes)
  - Valid for 5 years
    - Automatic renewal if timely applied for (90 days prior to expiration) and no denial/response from EPA
    - Renewal can be sought by individual utilities to which approval has been issued (or collectively by USWAG)
Regional Developments
Regional PCB Developments: Potential Impacts for MD/DC Utilities

- Regions 1 and 2: Discovery of PCBs in caulk, fluorescent light ballasts in schools
- Region 5: PCB Transformer Database review
- Region 9: “Lean” event focused on PCB cleanup programs

→ Implications for EPA Region 3 and/or the federal PCB regulatory program?
Questions?

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