Treated Wood: Regulatory Pressures and Mitigation Activities
Update on CCR Regulations

MD-DC Utilities Association
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Treated Wood Issues
USWAG’s Treated Wood Goals

- Support members’ use of treated wood
- Work to ensure members have range of options for use
- Work to ensure members have range of options for management of used and out-of-service treated wood
- Ensure out-of-service treated wood is not regulated as a hazardous waste
- USWAG Treated Wood Guidelines
International Issues – Stockholm Convention

- Stockholm Convention on Persistent Organic Pollutants (POPs)
  - Elimination of the production & use of POPs
  - POPs include pesticides and industrial chemicals
  - Most banned or heavily controlled in US
  - Options for listing: Annex A (elimination), Annex B (restriction)

- [www.pops.int](http://www.pops.int)
International Issues – Stockholm Convention

- June 2015 – Penta listed in Annex A with exemption
- Exemption for production and use of penta for utility poles and cross-arms
  - Parties must register for exemption
  - Must take necessary measures to ensure that penta-treated wood identified (e.g., labelling)
  - Penta-treated wood should not be reused for purposes other than those exempted
- US has not ratified Stockholm Convention
Treated Wood Issues - EPA Activities

- Penta, CCA & Creosote RED issued 2008
- Preservative Registration Review
  - Penta – opened December 19, 2014
  - CCA – opened October 2, 2015
- NHSM Rule
  - TWC Petition seeking to allow the use of various types of treated wood as a boiler fuel
  - Few USWAG members send out-of-service treated wood to energy recovery
Treated Wood Issues - Vermont Penta Task Force

- General investigation into use of penta-treated wood
  - Prompted by discovery of penta-contaminated soil at storage yards, utility lines
- Penta Task Force Recommendations
  - Utilities should use BMPs to limit environmental releases
  - Utilities should evaluate alternative pole materials
  - Vermont should monitor and evaluate the use/re-use of penta-treated wood in the state
- Final Draft Report
Appendix 1
Best Management Practices (BMPs) Associated with the Use of Pentachlorophenol-treated Utility Poles in Vermont

**Procurement, Delivery & Storage**
1. Require Traceable ID brand with plant location and year produced, which can be traced to the batch of treated poles.
2. Require all poles used in VT to be treated to AWPA specifications for deterioration zone 2.
3. Require all poles used in VT to be double vacuum treated or extend vacuum cycle to twice the standard length prior to delivery to VT. In some cases, utilities may require immediate delivery of poles for emergency restoration activities, and that such poles may deviate from normal specifications. However, in all cases, reasonable efforts will be made to install poles in accordance with these BMPs.
4. Inspect poles on delivery – Retain the right to reject any pole that exhibits excessive sweating of preservative solution. This is more readily accomplished during the warmer months.

**Permanent Pole Storage Areas**
*Use for design of new construction or substantial reconstruction of existing pole storage areas*
1. Locate 100 feet from drinking water supplies and as far away as possible from residences.
   a. Design considerations should include:
      i. A low permeability surface material (compacted soil or asphalt) with absorbent/organic material; or
      ii. Other containment/migration prevention measures
2. Poles should be elevated off ground surface
3. Ground surface should consist of a low erosion potential substance
4. Maintain a yard slope of less than 10% throughout the pole storage area
5. Pole storage areas should be sited to limit odor impact to the public
6. Pole storage areas should be visually inspected when work is being done at a pole yard for excessively sweating poles, unusual staining, or other evidence of unusual releases of pentachlorophenol.

**Pole Siting & Construction**
1. Onsite utility personnel and contractors should inspect all poles prior to installation to ensure no excessive release of preservative solution is occurring
2. Before installing any new pole, determine if there are any shallow drinking water supplies within 50 feet of the pole location. Wherever feasible poles should be located at least 50 feet away from shallow drinking water supplies; if this is not feasible utilities should, in the following order;
   a. Use an alternative type of treated pole
Treated Wood Issues - Vermont Penta Task Force

- Recommended BMPs
  - Procurement, Delivery & Storage
  - Permanent Pole Storage Areas
  - Pole Siting & Construction
  - Decommissioning, Retirement, and Disposal of Penta Poles
  - Training/Education
Treated Wood Issues - North Hempstead NY

- North Hempstead, NY, L.L. No. 13-2014 (Chapter 64B)
  - Utility poles treated with hazardous chemicals (e.g., penta, creosote, inorganic arsenic) constitute a potential danger to the public & public should be informed
  - Requires warning signs on new and recently installed utility poles treated with hazardous chemicals
  - Hazardous chemicals = “Any chemical compound used as a wood preservative to treat wood utility poles to protect them from fungal decay and wood-destroying pests”
NOTICE

THIS POLE CONTAINS A HAZARDOUS CHEMICAL.

AVOID PROLONGED DIRECT CONTACT WITH THIS POLE.

WASH HANDS OR OTHER EXPOSED AREAS THOROUGHLY
IF CONTACT IS MADE.
Treated Wood Issues - North Hempstead NY

- LIPA & PSEG challenging requirement on “free speech” and other bases
- Utility switching from penta to CCA
- Residents want the poles removed, lines placed underground
Treated Wood Issues - Ecological Rights Foundation (ERF) Lawsuit

- Leaching of penta from poles is violation of NPDES & imminent and substantial endangerment under RCRA
- Ninth Circuit dismissed case
  - Poles are not “point sources”
  - Penta leaching from poles is not “discarded,” cannot be considered a solid waste
- EPA disagreed with Court’s ruling and is looking to challenge in other cases
- ERF Appealed “anti-duplication” ruling; EPA filed amicus
CCR Issues
CCR Rule - Schedule

- Proposed June 22, 2010
- Signed December 19, 2014
- Publication Date: April 17, 2015 (80 Fed. Reg. 21302)
- Effective Date: October 19, 2015
CCR Rule - Structure

- Subtitle D Non-Hazardous Waste Rule (40 C.F.R. Part 257)
- Self-Implementing Rule
- Enforced Through Citizen Suits
- EPA Intends to Revisit & May Issue New “Final” Regulatory Determination in Future
CCR Rule - Overview

- Reducing Risk of Catastrophic Failure
  - Structural Integrity Requirements
- Protecting Groundwater
  - Groundwater Monitoring and Corrective Action
  - Location Restrictions
- Operating Criteria for Active Units
- Extends Regulation to Inactive Units
Impacts of CCR Rule

• Many/Most Impoundments will Close
  – Safety/Structural Standards
  – Location Restrictions
  – Corrective Action
  – ELGs

• Dual State/Federal Regulations

• Citizen Suits Patchwork Interpretations

• Some Continued Regulatory Uncertainty
Impacts of ELG Rule

- Final Rule Signed September 30, 2015
- No Discharge (Closed Loop/Dry Handling)
  - Fly Ash Transport
  - Bottom Ash Transport
  - Flue Gas Hg Control Wastes
- Standards Applied 2018 – 2023 NPDES Permitting
Compliance Deadlines – Surface Impoundments

Implementation Timeline for Existing CCR Surface Impoundments

- **April 17, 2015**
  - Initiate Weekly Inspections (§257.83)
  - Prepare Dust Control Plan (§257.80)
  - Recordkeeping Notifications

- **October 19, 2015**
  - Effective Date

- **October 17, 2015**
  - Prepare Dust Control Plan (§257.80)

- **October 17, 2016**
  - Complete Hazard Potential Assessment, Structural Stability Assessment & Safety Factor Assessment (§257.73)

- **October 17, 2017**
  - Install Groundwater Monitoring System & Initiate Detection Monitoring (§257.90-94)

- **October 17, 2018**
  - Complete demonstration for Location restrictions (Uppermost Aquifer, Wetlands, Fault Areas, Seismic Impact Zones, Unstable Areas) (§257.60-64)

- **April 17, 2017**
  - Prepare Emergency Action Plan (§257.73)

- **October 17, 2018**
  - Install Groundwater Monitoring System & Initiate Detection Monitoring (§257.90-94)

- **April 17, 2018**
  - Inactive Impoundments must have completed closure or are subject to regulation (§257.100)
Compliance Deadlines – Landfills

Implementation Timeline for Existing CCR Landfills

- **April 17, 2015**
  - Effective Date

- **October 19, 2015**
  - Prepare Dust Control Plan (§257.80)
  - Initiate Weekly Inspections (§257.83)
  - Recordkeeping Notifications

- **October 17, 2015**
  - Prepare Run-on & Run-off Control System (§257.81)
  - Prepare Closure & Post-closure Plans (§257.103-104)

- **October 17, 2016**
  - October 17, 2016
  - Complete demonstration for Location restrictions (Unstable Areas) (§257.64)

- **October 17, 2017**
  - Install Groundwater Monitoring System & Initiate Detection Monitoring (§257.90 - 257.92)

- **October 17, 2018**
  - October 17, 2018

- **October 17, 2019**
  - October 17, 2019
Litigation

• Industry & Enviro Challenges
  • USWAG, AES Puerto Rico, Associated Electric Coop, Beneficial Reuse Management, City of Springfield, Lafarge
  • Clean Water Action et al
Litigation

- Potential Issues (Industry Petitioners)
  - Regulation of Inactive Impoundments
  - Safety Factor Assessment Deadlines
  - Regulation of Piles
  - Beneficial Use Criteria (12,400 ton threshold)
  - Alternative Closure Provisions under 257.103
  - 6” Vegetation Limit Requirement
Litigation

- Potential Issues (Environmental Petitioners)
  - Defining Existing Impoundment Liner as 2’ Compacted Soil
  - Regulation of All Inactive Impoundments
  - Inclusion of Boron on Appendix IV (Assessment Monitoring)
  - Lack of Mandatory Retrofit Requirement
  - Exemptsing Inactive Impoundments that Close from Regulation
Litigation

- **Schedule**
  - Challenges Filed July 15
  - Intervention Motions Filed August 15
  - Briefing Schedule – December 2015
  - Oral Argument – Mid 2016
  - Decision – Late 2016

- **Vacatur v Remand**
Preparing for Citizen Suits

- Citizen Suit Resource Page
- Citizen Suit Workshop
Legislation

- H.R. 1734
- Mechanism for Implementation of EPA’s Rule by States
- Passed House July 22 2015
- S. 1803
- Working on Path in Senate
What next?

- Citizen Suit Enforcement
  - Dust Control Plans
  - Inspection Reports
- Follow-on Rulemakings
- Review of Regulations per RCRA 2002(b)
- Reassessment of Bevill Regulatory Determination
Questions?

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