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Evolving EPA Guidance on Non-Liquid PCBs and the Upcoming Proposal to Reassess the PCB Use Authorizations

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PCBs in Building Materials

EPA's Evolving Policy; Related Compliance and Enforcement Considerations

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PCBs in Building Materials – Background

- Non-liquid PCBs used in manufacture of certain building materials – *e.g.*:
  - Plastics/plastic insulation (wire, cable)
  - Paints, waxes, varnishes, other sealants
  - Caulk
  - Adhesives
  - Potting material of fluorescent light ballasts
- Can deteriorate/crumble/become detached
- Can penetrate substrate/underlying building material

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Terminology

- **PCB-Contaminated**: ≥ 50 ppm and < 500 ppm PCB
  - **"PCB Containing"**: not defined term; generally referring to PCBs at any regulated levels (i.e., ≥50 ppm)
- **Excluded PCB Products**
  - Broad exclusion for materials containing **< 50 ppm PCB**, if legally manufactured, processed and distributed in commerce prior to October 1, 1984
- **PCB Bulk Product Waste**
  - Waste derived from manufactured products containing PCBs in non-liquid state, where PCBs ≥ 50 ppm at time of disposal

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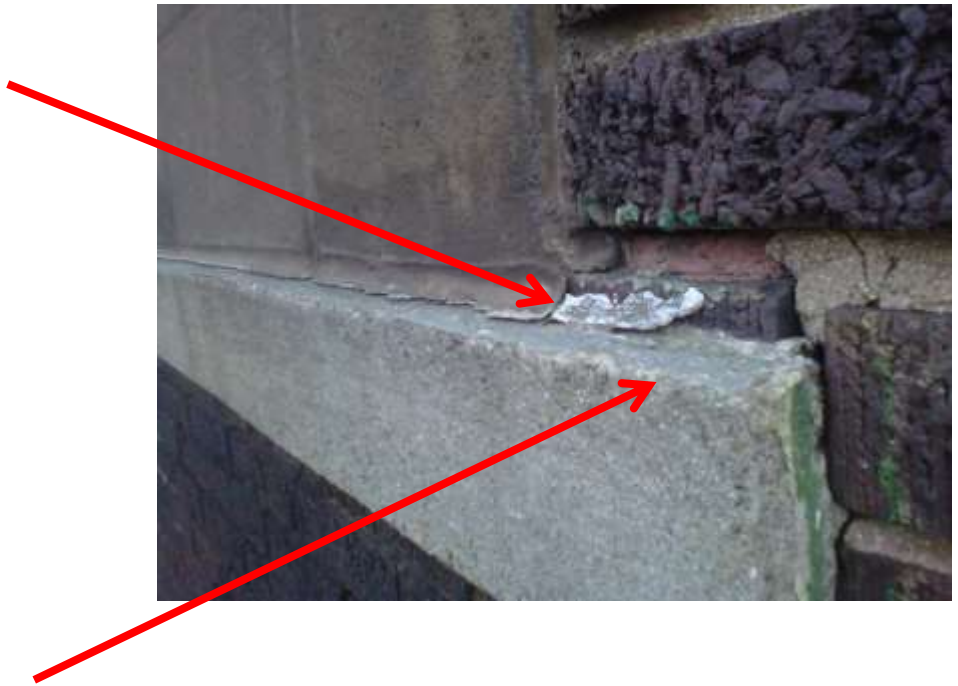
PCB Bulk Product Waste vs. PCB Remediation Waste

- **PCB Bulk Product Waste (§ 761.62)** – waste derived from a manufactured product containing PCBs in a **non-liquid** state where the concentration at disposal is **≥ 50 ppm**
  - PCB-containing **liquid** products are **not** PCB bulk product wastes; dispose of per 40 C.F.R. §761.60(a)
- **PCB Remediation Waste (§ 761.61)** – waste containing PCBs as result of a spill, release, or other unauthorized disposal, from ≥50 ppm source or unauthorized use
  - Historically: Substrate impacted by the PCB bulk product waste would be PCB Remediation Waste



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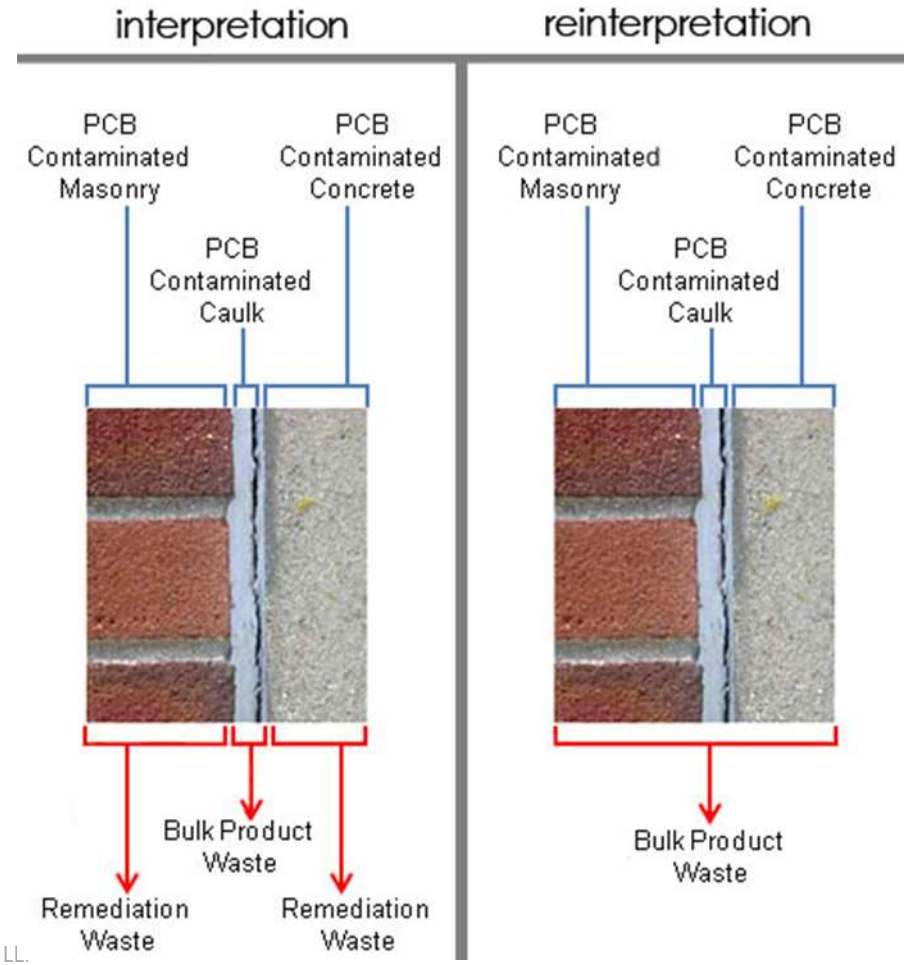
PCB Bulk Product Waste –
EPA's October 2012 Reinterpretation



- EPA's reinterpretation of definition of "PCB bulk product waste"
- Includes within definition **building materials** (i.e., substrate) "**coated or serviced**" with PCB bulk product waste (e.g., caulk, paint, sealants)
  - → ***Provided*** the PCB bulk product waste is **attached** to the substrate ***at the time of designation for disposal***
- Prior to reinterpretation, would have had to dispose of PCB-contaminated building material as PCB remediation waste

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PCBs in Building and Lighting Materials: Regulatory Status

- No use authorization for PCBs in non-liquid uses, including building materials (*e.g.*, caulk, paint) or lighting materials
- PCB Mega-Rule:
  - EPA floated idea of use authorization in 1994
  - In Mega-Rule, declined to proceed
    - … but stated that "owners and operators will not be required to remove fluorescent light ballasts prior to the end of their useful life"
- EPA has issued guidance over the years addressing PCBs in non-liquid uses and in lighting materials

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PCBs in Fluorescent Light Ballasts (FLBs)

- If PCBs in FLB only in an **intact and non-leaking** PCB Small Capacitor → may be disposed of in MSWLF
  - Storage, manifesting and notification requirements **do not apply**

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PCBs in Fluorescent Light Ballasts (cont'd)

- If PCBs in **potting material** ≥ 50 ppm PCB → **PCB bulk product waste** (§761.62)
  - … or decontaminated per §761.79
- No regulatory requirement to test potting material prior to disposal
  - But, as always … have to be right

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PCBs in Fluorescent Light Ballasts – Labeling

- FLBs manufactured between July 1, 1978 and July 1, 1998 must be labeled **"No PCBs"** if they do not contain PCBs
  - Of similar durability & readability as other electrical information marking
  - FLBs manufactured after 1998 not required to be labeled
- EPA: If not labeled and date of manufacture not known to be after 1979, assume to contain PCBs

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FLB Labeling

A typical pre-1979 PCB-containing fluorescent light ballast (FLB)

A typical Non-PCB containing fluorescent light ballast. The ballast has a "No PCBs" marking on the top of the ballast and the text "electronic ballast". Only magnetic fluorescent light ballasts contained PCBs.

Image taken from EPA's online guidance compendium:

http://www.epa.gov/wastes/hazard/tsd/pcbs/pu/ballasts.htm

Storage of FLBs

- FLBs with ≥ 50 ppm PCB in potting material (BPW) subject to storage for disposal requirements of §761.65
  - *i.e.*, storage up to one year in storage unit meeting §761.65 requirements (or up to 30 days in temporary storage facility)
- But note: FLBs may be stored **at the point of generation** for up to **180 days** in units not meeting §761.65 standards

  →Comply with conditions at §761.65(c)(9)
- Commercial storage: Facilities storing FLBs with regulated levels of PCBs from **non-related entities** subject to "commercial storer" regulation

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EPA Guidance – Coal Tar Wrap

EPA letter to KeySpan (now National Grid) re: regulatory status of coal tar wrap (June 22, 2006):

- "The use of PCBs in coal tar wrap to prevent corrosion on the exterior of the piping has never been authorized by [EPA] …
- "Because its use is unauthorized and there is a potential for exposure, PCB-containing coal tar wrap **must be removed and replaced upon discovery**.
- "Disposal of this material is covered by the current PCB regulations as **PCB bulk product waste** …"

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EPA Compendium of Guidance:
PCBs in Caulk and Building Materials

EPA Guidance on Caulk and Other Building Materials

→www.epa.gov/pcbsincaulk

- Much of this information developed in response to discovery of PCBs in caulk, FLBs in school buildings
- Geared towards school administrators and contractors

→… But most information/guidance is of broad applicability

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EPA's "PCB in Building Materials Diagram"

Actions for Reducing Exposures to PCBs in Indoor Building Environments

1950 to 1979

EPA believes that there was potentially widespread use of PCB-containing building materials in schools and other buildings built or renovated between about 1950 and 1979.

Recommended Actions

- Remove all PCB-containing Fluorescent Light Ballasts and any PCB-stained fixtures
- Implement best management practices: proper ventilation, cleaning, and hygiene.

Renovation and Repair

Remove other PCB sources (e.g., PCB-containing caulk) during planned renovation and repairs.

EPA Q&A re: PCBs in Building Materials (July 2015)

- Agency acknowledges compliance predicament presented by PCBs in building materials
- Emphasis on reducing PCB exposures

→ "Although the presence of PCBs in schools and other buildings may be a concern, the presence of PCBs alone **is not necessarily a cause for immediate alarm**"

→ "If PCBs are present or suspected of being present, **EPA recommends** the actions outlined in this document be taken by … building owners and building managers to **reduce PCB exposures**"

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EPA Q&A re: PCBs in Building Materials (cont'd)

- Agency acknowledges that TSCA prohibits the use of ≥50 ppm PCBs in caulk/other building materials …
- EPA "does have enforcement tools" to be used "where the PCB concentration in the caulk or other materials is above the regulatory limit," but …

→ *"EPA is most interested in ensuring that school districts and other building owners* ***undertake the recommended actions to limit exposures to PCBs…***

→ *"EPA believes that* ***enforcement may not be the most effective tool to reduce health risks*** *when schools and other building owners follow these recommendations."*

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Limitations of EPA Guidance

- Guidance only; does not change regulations; **not a use authorization**
- EPA re July 2015 guidance: intended as "informal reference" and "not a summary of applicable PCB requirements"

  →Q&A "does not replace nor supplant the requirements of the [TSCA] PCB regulations"

  →EPA "will not hesitate to act in situations where … significant risks to public health" not being addressed

  →Refers users to 40 C.F.R. Part 761

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EPA's Rulemaking to Reassess the PCB Use Authorizations

Recent Developments

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Regulatory Developments: Timeline

- **April 2010:** 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
- **~March 2016 – July 2016:** Current target date for proposal
  - Public comment period
  - EPA will consider and respond to comments prior to issuing final rule

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EPA's PCB Rulemaking

- 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.

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PCB Rulemaking – Advanced Notice of Proposed Rulemaking

- ANPRM – broad in scope
  - *Not a proposal*. EPA solicited feedback on various issues.
  - Posed hundreds of questions regarding use, inventory, storage disposal of PCB-containing equipment
  - Framed in terms of **mandated phase-out dates** for PCB-containing equipment
  - Suggested various **interim use conditions** prior to phase-out deadlines
- Generally, did not distinguish between "known" vs. "unknown" PCB-contaminated/PCB equipment

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2010 ANPRM (cont'd)

- 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

→ *Bottom line*: *ANPRM signaled EPA's attempt to develop administrative record to* ***support reversal*** *of its original "no unreasonable risk" determination for PCBs*

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PCB ANPRM (cont'd)

- Specific issues raised in ANPRM included:
  - Reclassification/servicing procedures
  - Marking all ≥50 ppm PCB equipment
  - Increased inspection frequency
  - 761.30(p)
  - Potential broadening of PCB Article to include all equipment with >0.05 liters (~1.7 oz) of ≥ 50 ppm PCB dielectric fluid
  - Potential registration requirement for Large PCB Capacitors

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

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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**

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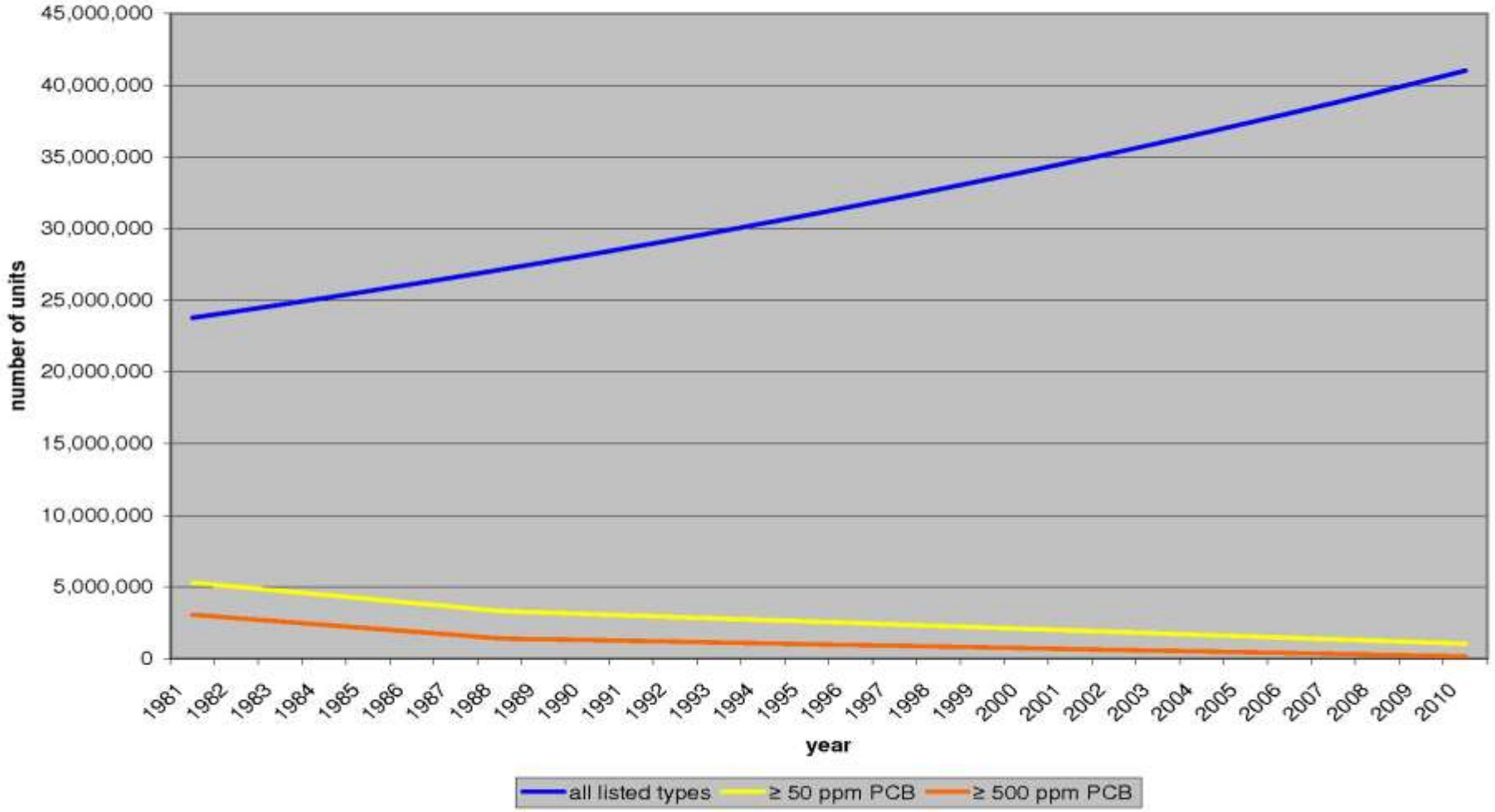
ENVIRON, Inc. Estimate:
PCB Phase-Down Progress Since 1981

FIGURE 1: CHANGES IN EQUIPMENT INVENTORIES SINCE 1981



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

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PCB Rulemaking:
(Expected) Scope, Post-SBAR Panel

- Scope of rulemaking appears to be **significantly narrower** than in 2010
- Four key areas:
  (1) PCBs in electrical equipment
  (2) PCBs in fluorescent light ballasts
  (3) Continued use of PCB-contaminated porous surfaces
  (4) PCBs in natural gas pipelines
- *Note – While this is subject to change, EPA appears to have moved away from at least some of the troubling suggestions in the ANPRM*

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Anticipated Rulemaking – PCB-Containing Electrical Equipment

- Possible phase-out of **PCB Transformers** and **PCB-Contaminated transformers**
  - Initially, would have applied to all transformers falling within either category
  - Wouldn't have been 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***

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Anticipated Rulemaking – PCB-Containing Electrical Equipment

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

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Anticipated Rulemaking – PCB-Containing Electrical Equipment

- PCB-Contaminated transformers – Possible date for **termination of use authorization**:
  - 2020, 2025, 2030 (i.e., 5, 10, 15 years after rule)

  →EPA's cost projections based on assumptions: **dispose of 95%** of PCB-contaminated transformers, **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

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Anticipated Rulemaking – PCB-Containing Electrical Equipment

- 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

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Anticipated Rulemaking – Fluorescent Light Ballasts

- Fluorescent Light Ballasts:
  - Potentially 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*

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Anticipated Rulemaking – Continued Use of 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

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Anticipated Rulemaking – Natural Gas Pipelines

- EPA concerned about instances where PCBs reached residential meter "and beyond"
- October 2011 – Data submission request to natural gas pipeline owners
  - Received 21 responses
  - 150 reported instances of discovery of PCBs ≥50 ppm
- Regulatory options under consideration:
  - Require reporting to EPA regions and/or affected customers where PCBs ≥ 50 ppm released to customer meters
  - Require reporting to EPA regions of all discoveries PCBs ≥50 ppm
  - Considering "prove out" option for "dry" systems (until any PCB hit)

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A note about the EPRI Predictive PCB Database

- Intended as tool to guide proactive/voluntary ID and removal efforts
  - Provides additional information to better inform decision-making regarding equipment that is difficult to sample (due to, *e.g.*, accessibility, cost, safety considerations)
- Does not change regulatory status of equipment

→ **Does not relieve anyone of any regulatory obligation** (e.g., use conkinditions/disposal requirements)

→Existence of database **does not change use assumptions** or render equipment PCB-Contaminated / PCB Transformer

→*Significance in "known" vs. unknown context?*

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PCB Rulemaking – Next Steps

- OPPT completes drafting
- Proposal goes to OMB
- Publication in Federal Register
  - EPA's Online Rulemaking Portal: March 2016
  - More likely: June-July 2016
- Following proposal:
  - Public comment period; may be extended
  - May be additional public hearings
  - EPA will review, respond to comments before issuing final rule

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