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

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MD-DC Utilities Association - 2014 Environmental Conference

October 23, 2014

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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?

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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

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Terminology

PCB-contaminated	≥ 50 ppm and < 500 ppm
PCB equipment, PCB Transformer	≥ 500 ppm
PCB-containing	≥ 50 ppm

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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.

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EPA's PCB Rulemaking

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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

→ <u>*Bottom line*</u>: *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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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**

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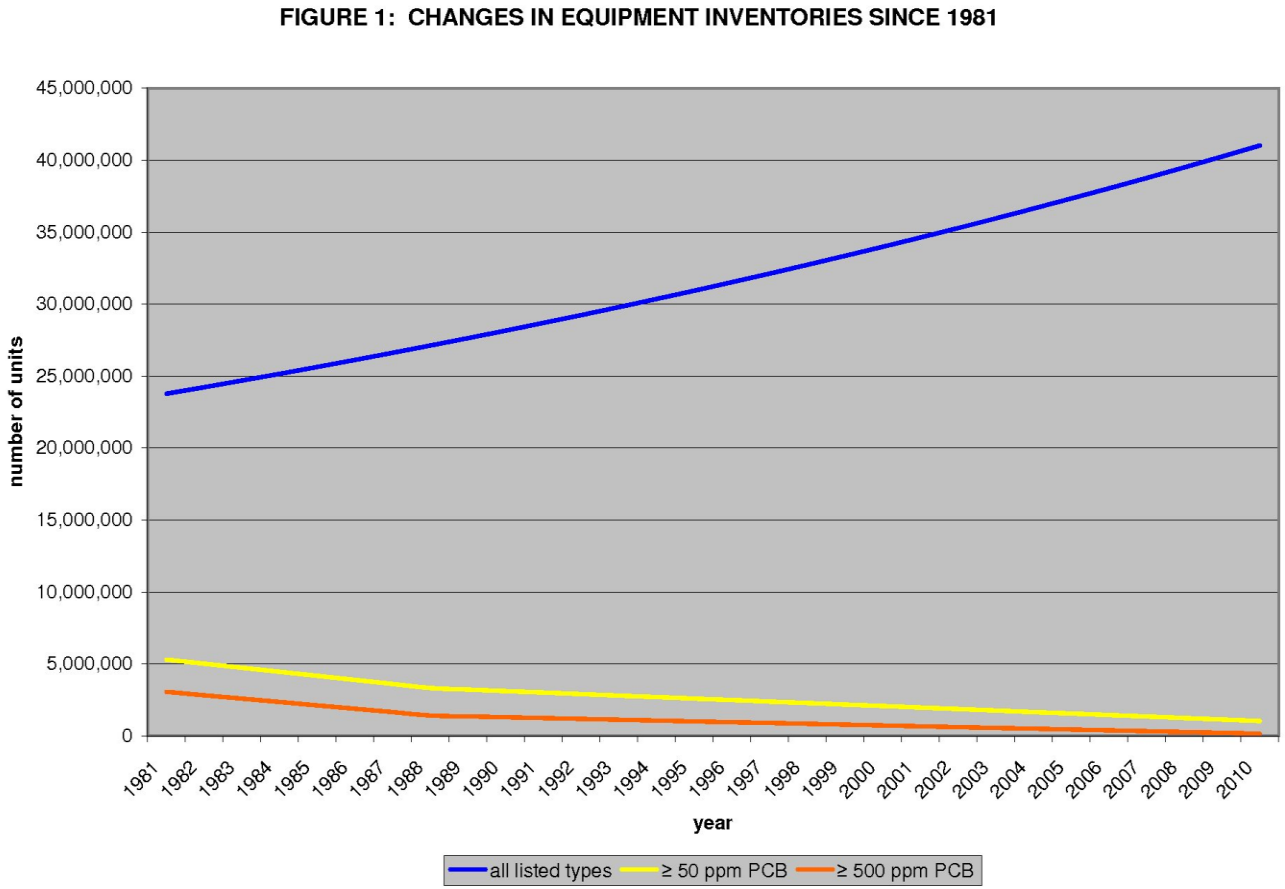
ENVIRON, Inc. Estimates of Phase-Down Progress Since 1981



ENVIRON, Inc. Estimates of Phase-Down Progress Since 1981

Equipment Category	1981-82	2009-10
PCB-contaminated transformers	2,166,159	892,458
PCB Transformers	259,558	97,610
All types* of PCB-containing equipment (≥ 50 ppm)	5,303,921	1,141,241
All types* of PCB equipment (≥ 500 ppm)	3,062,645	217,834
Percentage of total universe of equipment with 50-499 ppm PCBs:	9.43%	2.3%
Percentage of total universe of equipment with ≥ 500 ppm PCBs:	12.9%	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

Small Business Advocacy Review (SBAR) Panel (cont'd)

- 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

Small Business Advocacy Review (SBAR) Panel (cont'd)

- 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**

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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)

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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

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Small Business Advocacy Review (SBAR) Panel (cont'd)

- 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

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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

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Disposal Approval to USWAG Members for As-Found <50 ppm PCB Remediation Wastes

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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

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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"?*

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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*

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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)*

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Regional Developments

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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?*

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Questions?

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