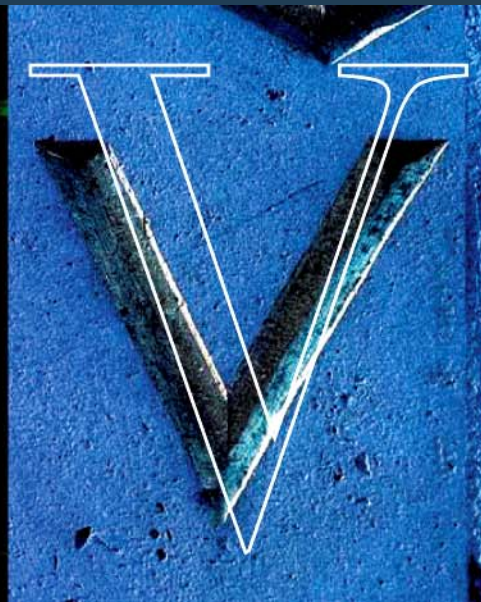
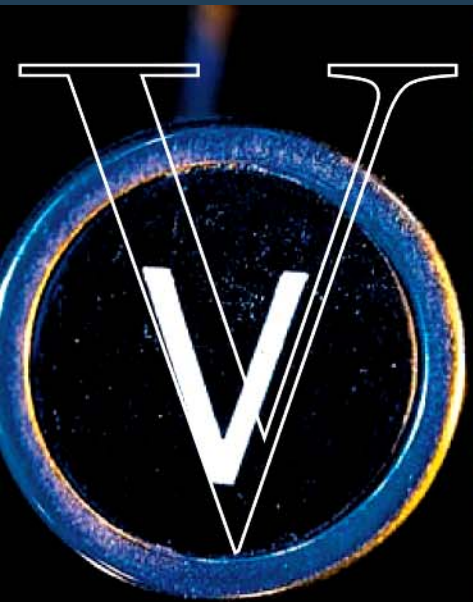




The PCB Use Authorizations and Related Regulatory and Legislative Developments

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OCEAN CITY, MD



Welcome

- Douglas H. Green (dhgreen@venable.com)
- Counsel for Utility Solid Waste Activities Group (USWAG)
- Advise USWAG and its members on regulatory compliance issues, including PCB management and disposal
- On behalf of USWAG, engaged with EPA over past three decades regarding PCB regulations



Agenda

- Background: The PCB Use Authorizations
- Regulatory Developments
 - PCB ANPRM
 - Related information-gathering efforts
- Prospects for Legislative Reform
 - International Developments
 - Pending Legislation
 - ECOS Resolution
- Next Steps



Terminology

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



Background: TSCA and the PCB Use Authorizations

- Toxic Substances Control Act (TSCA) passed in 1979
- TSCA Section 6(e) prohibits the manufacture, processing, distribution in commerce and use of PCBs unless the PCBs are “totally enclosed,” but
- 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 are set forth at 40 C.F.R. Part 761



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 use authorizations for PCBs, EPA considered:
 - impacts on economy;
 - impacts on electric energy availability; and
 - all other health, environmental, or social impacts that could be expected.



Regulatory Developments



Advance Notice of Proposed Rulemaking (ANPRM):

Reassessment of the PCB Use Authorizations

- 75 Fed. Reg. 17645 (April 7, 2010)
- Comment period extended to August 20, 2010
- EPA solicited information to help the Agency:
 - Reassess the efficacy and protectiveness of the thirty-year-old use authorizations
 - Consider costs related to management and disposal of PCBs under current use authorizations
 - Weigh benefits and costs of phase-out
- Not a request for information (RFI) requiring a response



What does EPA hope to achieve with the ANPRM?

- Stated purpose:

Over the past 30 years, EPA has had the opportunity to evaluate and draw conclusions about the effectiveness of the PCB regulations in preventing an unreasonable risk to human health from exposure to PCBs, as well as their economic impact. *This [ANPRM] details EPA's observations as to why there is reason to make changes in the regulations. At the present time, EPA is investigating whether some authorized uses of PCBs should be eliminated or phased-out and whether more stringent use and servicing conditions would be appropriate.*

75 Fed. Reg. at 17650 (emphasis added).



Purpose of the ANPRM

- EPA may be attempting to develop an administrative record to support a reversal of its original “no unreasonable risk” determination for PCBs
- To do this, EPA is 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
- EPA likely would need to show greater risk and/or lower costs in order to show that the **risks** from PCBs are now **unreasonable** and should be eliminated



Phase-Out Dates Contemplated in ANPRM

- EPA identified possible timeframes for eventual phase-out of all PCB-containing equipment:
 - **By 2015:** Elimination of all use of askarel equipment ($\geq 10,000$ ppm PCBs), beginning with highest potential exposure areas, and with allowances for case-by-case exceptions
 - **By 2020:** Elimination of all use of oil-filled PCB equipment (≥ 500 ppm) and elimination of use of PCBs at concentrations ≥ 50 ppm in pipeline systems
 - **By 2025:** Elimination of all use of any PCB-contaminated equipment still authorized for use



Initial Phase-Out Requirements Considered in ANPRM

- Testing of equipment stored for reuse or removed from service which is assumed to contain PCBs at concentrations ≥ 50 ppm, and
 - Mandated reclassification or designation for disposal of items found to contain ≥ 50 ppm PCBs within 30 days of that determination;
- Elimination of all currently authorized PCB equipment servicing except for reclassification;



Initial Phase-Out Requirements Considered in ANPRM – *continued*

- Marking of all equipment known or assumed to contain ≥ 50 ppm PCBs;
- Increased inspection frequency to at least once a month for all in-use known or assumed PCB equipment (≥ 500 ppm PCB);
- Broadened the prohibition on use of PCBs in transformers posing an exposure risk to food or feed to include PCB-contaminated transformers;



Initial Phase-Out Requirements Considered in ANPRM – *continued*

- Broaden definition of “PCB Article” to include all equipment containing > 0.05 liters (approx. 1.7 fluid ounces) of dielectric fluid with ≥ 50 ppm PCBs;
 - (Note: current definition regulates transformers and capacitors containing ≥ 3 **pounds** of dielectric fluid)
- Require registration of PCB large capacitors containing a specified volume of dielectric fluid or having a specified external volume/dimensions;



Initial Phase-Out Requirements Considered in ANPRM – *continued*

- Eliminate the storage for reuse authorizations;
- Eliminate the “totally enclosed” determination for distribution in commerce; and
- Require reporting/notification to EPA Regional Administrators when PCBs are found in any pipeline system, regardless of the source of PCBs or the owner of the pipeline.



Industry Response to ANPRM

- Main themes of USWAG comments:
 - Existing regulations have proven effective in ensuring adequate protection of human health and the environment
 - Reversal of the original “no unreasonable risk” finding is not justified by risk or cost
 - Risk:
 - Current data demonstrate that PCBs are **less toxic** than was thought in 1979
 - Far **less exposure** today than in 1979 as there are far fewer PCBs in use
 - Cost: Cost of phase-out, including necessary identification, far greater today (> \$20 billion for utility industry)
 - Identification required for phase-out would present serious safety risks and necessitate widespread outages/service disruptions



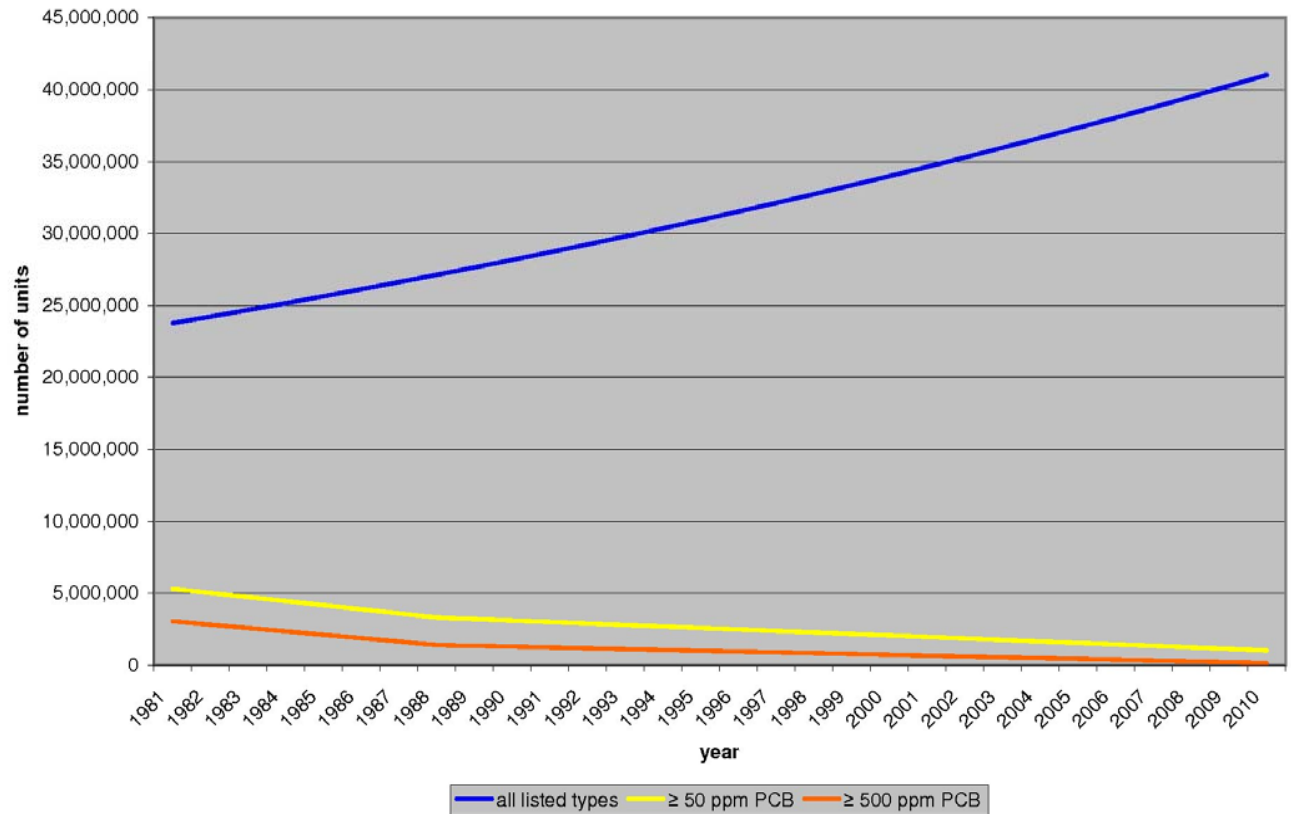
Industry Response to ANPRM – *continued*

- Conducted survey of USWAG member companies to compile data on current inventories, equipment management practices, and costs associated with accelerated disposal/ultimate phase-out of PCB-containing equipment
- Worked with consultant at ENVIRON, Inc. to establish industry-wide inventory estimates, track phase-down progress, and project phase-out dates for PCB-containing equipment based on current disposal rates
 - PCB Large Capacitors down from estimated 2.8 million in 1982 to 120,000 today (**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



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

<u>Equipment Category</u>	<u>1981-82</u>	<u>2009-10</u>
➤ 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
➤ <i>Percentage of total universe of equipment with 50-499 ppm PCBs:</i>		
	9.43%	2.3%
➤ <i>Percentage of total universe of equipment with ≥ 500 ppm PCBs:</i>		
	12.9%	0.54%



Legislative Developments



Prospects for TSCA Reform

- The PCB rulemaking that is underway may prove moot if TSCA reform efforts are successful
- High-profile initiatives in both houses of Congress to reform TSCA
- TSCA reform is backed by key industry and environmental groups, though their positions on the degree of appropriate reform differ
- Advocates for TSCA reform include American Chemistry Council (ACC), Dow Chemical, and many environmental groups



The Safe Chemicals Act of 2010

- Introduced by Senator Frank Lautenberg (D-NJ), with companion legislation introduced in the House by Representatives Bobby Rush (D-IL) and Henry Waxman (D-CA).
- Key provisions:
 - Promote the use of safer alternatives;
 - Shift the burden of demonstrating chemical safety to manufacturers, processors, and importers of chemical substances; and
 - Would incorporate Stockholm Convention's goals and timelines for phase-out of PCB-containing electrical equipment into federal law



Stockholm Convention on Persistent Organic Pollutants (POPs)

- United States is signatory but has not ratified
- Stockholm Convention obligates parties to, by the year 2025:
 - Make “determined efforts” to identify and remove from use PCB equipment (≥ 500 ppm);
 - “Endeavour to” remove from use PCB-contaminated equipment (≥ 50 ppm and < 500 ppm)
- Note: The Stockholm Convention does *not* require successful, absolute phase-out by these dates; its obligations are focused on the efforts to achieve phase-out rather than the actual phase-out numbers



Pressure to Implement Stockholm Convention Measures in Federal Law

- It appears unlikely that any comprehensive TSCA reform bill will be passed this year, though it is possible that a bill may be pushed through during the lame duck session
- TSCA reform will be on the table in 2011 and possibly into 2012
- In the meantime, public pressure is mounting to pass legislation that will, at a minimum, implement key provisions of treaties such as the Stockholm Convention



ECOS Resolution: TSCA, RCRA, and CERCLA

- Environmental Council of the States (ECOS) recently adopted a resolution calling for consolidation of the PCB waste management and disposal regulations under RCRA and CERCLA
- Unclear what form this would take:
 - Inclusion of PCBs as a listed or characteristic waste, subject to existing RCRA regulations?
 - Creation of a new RCRA subtitle incorporating all or most of the existing PCB regulations?



ECOS Resolution – *continued*

- *Discussion:*

- What would be the pros and cons of regulating PCB wastes under RCRA?



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