

Attachment to 2007 PCB ICR:

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- II. Written Comments of the Utility Solid Waste Activities Group, et.al. (USWAG) on the ICR Public Notice (72 FR 32644)**
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Summary of Comments and EPA's Response to Comments on 2007 PCB ICR Supporting Statement

A. Written Public Comments

One set of written comments was received from the public in response to the public notice (72 FR 32644; June 13, 2007). These comments were submitted by the Utilities Solid Waste Activities Group (USWAG), and are attached to this summary for reference. EPA's response to these comments is as follows; italicized text indicates what changes, if any, EPA made to the ICR supporting statement in response to the individual comment.

1. USWAG:

"Discussion"

Response: The annual meetings with representatives from more than 50 utilities and electric cooperatives referenced in the ICR are the meetings conducted by Mark Pennell, Regulatory Compliance Services, Inc., 6045 S. Bluff Ridge Road, Ozark, MO 65721, (415) 886-4580, *RCSINC@aol.com*. The most recent meeting was the 2007 National Convention held in October, 2007, in Springfield, Missouri, and attended by Dr. John H. Smith of EPA's National Program Chemicals Division, as well as staff from EPA's Office of Solid Waste. Many USWAG member companies attended; see attached attendee list.

Action: Section 3(c) language revised for clarity.

I. EPA fails to include burdens associated with storage for reuse variances at 40 CFR §761.35(b).

Response: EPA doubled this burden estimate in 2004 to address concerns expressed by USWAG about the need to address Regional requests for supporting documentation, and EPA believes this revised estimate remains accurate. Regarding approval conditions, any conditions in a storage variance granted by a Regional Administrator are included at his or her discretion if deemed necessary to protect human health or the environment. The regulations do not impose these conditions and EPA believes they are outside the scope of the ICR supporting statement. Furthermore, while EPA has not conducted a detailed analysis of these extra conditions, it is EPA's belief that Regional storage variance letters do not impose any substantive burden beyond what is already required by the existing regulations at 40 CFR Part 761.

Action: No Change.

II. EPA should be required to update its PCB Transformer database.

Response: This comment is asking EPA to take action outside the scope of the ICR exercise. EPA notes that the database was intended to be a one-time reporting

requirement, not an ongoing reporting burden on the regulated community. However, because of its usefulness to both EPA and the public, as Agency resources permit, the database is updated to include additional information voluntarily submitted by PCB Transformer owners on the current status of PCB Transformers previously registered. This data submission is not required or solicited by EPA, and at this time EPA does not plan to amend the regulations to require additional public reporting.

Action: No Change.

III. EPA inaccurately identifies the types of entities that own PCB-containing equipment.

Response: Commenter's reference to Section 5(a) should be to Section 5(c)(i). EPA believes its summary is accurate and requires no correction. This section discusses *small entities* affected by the PCB regulations. The definition of small entities includes small governments, defined as governmental jurisdictions, such as cities, towns, counties, or school districts, with a population less than 50,000. Federal and State facilities do not fall under this definition and are properly excluded from this section. This section does not imply that small government entities only have to fluorescent light ballasts for PCB equipment. Under electric utility industry category, EPA notes that: "Included in this category are publicly owned entities such as municipal and county electric systems as well as other public power systems such as irrigation districts." Under the non-utility entities with privately owned electrical equipment category, EPA notes that this category include not-for profit entities such as colleges, universities and hospitals, as well as public-sector operations such as prisons.

Action: No Change.

IV. EPA should estimate burdens associated with compliance with the issuance of guidance documents.

Response: Due to the extensive nature of the regulatory changes associated with the June 29, 1998, Final PCB Disposal Rule (61 FR 35384), EPA included extra costs for reading the rule, providing training, and updating procedures in the 2000 ICR renewal. These costs were eliminated during the subsequent ICR renewal in 2004 because no new regulations had been promulgated since the 2000 renewal involving any paperwork burdens. EPA disagrees with the commenter's contention that by responding to inquiries or issuing clarifications and guidance through letters, question and answer documents or other formats, that EPA is imposing a significant new burden that needs to be reincorporated into the ICR supporting statement. The PCB Site Revitalization Guidance referenced is intended to provide assistance in navigating the TSCA PCB regulations and it does not replace or supplant the requirements of the PCB regulations. The Office of Research and Development's draft Dioxin Reassessment does not address 40 CFR Part 761. As the regulations have not been substantially modified since 1998 and are therefore relatively mature, it is unlikely that any new interpretive issue would arise during the period of the current ICR renewal that would appreciably affect respondents' burdens. Moreover, given the highly speculative nature of attempting to predict what

interpretive issues might arise in the future and what respondent resources would be required to address them, preparation of a useful burden calculation to address these future guidance issues would be very problematic exercise.

Action: No Change.

V. EPA underestimates the time required to conduct a self-implementing cleanup pursuant to 40 CFR §761.61(a).

Response: EPA believes the 100 hour estimate adequately characterizes the burden associated with preparing the a notification of self-implementing cleanup under §761.61(a)(3)(i)-(ii). This recordkeeping burden is not meant to capture the time and costs associated with conducting a site characterization under §761.60(a)(2), as cited by the commenter, nor any other activities under §761.61 not associated with actual recordkeeping and reporting.

Action: No Change.

VI. EPA should identify the number of samples sent to laboratories for analysis to estimate the reporting burden.

Response: EPA agrees with the commenter to the extent that it would be desirable if this data gap in the ICR supporting statement could be filled. However, EPA disagrees with the commenter's opinion that this is a serious burden. The relevant regulation, §761.65(i)(3), specifies only that a sample sent to a laboratory be accompanied by the following information; sender's name, address and phone number; lab's name, address and phone number; shipment date; quantity and description of sample. This is little more than what is necessary to fill out a shipping label itself, and as it is absolutely necessary information for the sender or laboratory to track what is sent and received, much less maintain a chain-of-custody and to report results of analysis, EPA does not believe that this requirement imposes any significant burden whatsoever. Moreover, for EPA to conduct a survey as suggested by USWAG would, to have any statistical validity, impose its own paperwork burden. For instance, if EPA itself had contacted the 17 USWAG members surveyed by USWAG, EPA would have to prepare a separate ICR for that survey to avoid violating that Paperwork Reduction Act.

Action: No Change.

VII. EPA inaccurately estimates the number of facilities required to keep annual document logs.

Response: EPA appreciates the cause for reader confusion here, but as an accounting artifact carried over from previous ICR supporting statements, tabulations for recordkeeping requirements under §761.180 are made for commercial storers under line item #88 and for generators, including generators who have on site storage units, under

line item #99 in the ICR calculations. The recordkeeping burden noted by the commenter is therefore already included and no adjustment is necessary.

Action: Table 6-4 revised for clarity.

VIII. Other Issues.

Response: In section 5(c), EPA's characterization of the overall regulatory cost to small entities as remaining very small, is supported by a 1993 EPA economic assessment that indicates that less than 1/20th of one percent of revenues for small utilities were required for compliance with the PCB regulations. (The relevant excerpts from this draft study, *Analysis of the Cost of Impacts of Potential Amendments to the PCB Regulations at 40 CFR Part 761 (September 2003)*, were appended to the 2004 ICR renewal.) Regarding the association of PCB Transformers with high voltage applications, EPA will clarify that this reference is in regard to Askarel transformers intended to contain PCBs, not mineral oil transformers unintentionally contaminated with ≥ 500 ppm PCBs.

Action: Section 5(c) language revised for clarity.

B. Consultative Comments

Several individuals were contacted as part of the consultative process, by both telephone and email (sample attached). Written comments were not received in response to these inquiries beyond the public comments from USWAG summarized above in Section A. A summary of the comments received over the telephone and EPA's response is as follows.

1. Doug Green

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Washington, DC 20004
202-334-4483
dhgreen@venable.com

Comment: Mr. Green indicated that USWAG would solicit comments from its members and submit a consolidated set of written comments to the docket in response to the FR notice. Mr. Green provided no additional oral comments.

Response: As discussed in section A.

Action: As discussed in section A.

2. Scott Slesinger

Environmental Technology Council
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Washington, DC 20005

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sslesinger@etc.org

Comment: Mr. Slesinger reiterated the comments that ETC made in 2004, regarding the advantages to EPA and the regulated community if the Agency would transition to the use of electronic manifesting, in particular a reduction of burden costs associated with electronic manifesting and recordkeeping. He did not have additional comments to make beyond that, noting there had been no overall change in issues since 2004. ETC represents many PCB waste disposal companies in the United States.

Response: EPA agrees with the commenter that a move toward electronic manifesting as soon as feasible would be beneficial to both the Agency and the public. However, as EPA noted in 2004, the lead on this initiative needs to be taken under RCRA for the uniform hazardous waste manifest, as the use of the manifest for PCBs in 40 CFR part 761 is modeled on the RCRA regulations. EPA further notes that since 2004 the Agency is much closer to implementation of electronic manifesting under RCRA and that legislation to fund this program is under consideration in Congress. Once electronic manifesting for hazardous waste has been implemented, it will be possible to implement compatible electronic manifesting requirements for PCBs. This process will be made facilitated by the recent consolidation of RCRA and PCB waste management activities within the Office of Solid Waste.

Action: No Change

3. Pam Lacey

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placey@aga.org

Comment: No comment was received from Ms. Lacey. The AGA is a member of USWAG, and if it made any comments those would be reflected in the consolidated written submitted by USWAG.

Response: None.

Action: No Change.

4. Melissa Mathews

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Andalusia, AL 36420
334-427-3485
melissa.mathews@powersouth.com

Comment: Ms. Mathews characterizes AEC as a small electric cooperative. According to her, they are now mostly a non-PCB shop, so they don't have paperwork burdens associated with PCB Transformer in-service inspection records, etc., but PCBs still turn up in bushing, circuit breakers and other miscellaneous equipment in power stations. Recordkeeping, annual logs have not been a problem to produce or maintain. Most manifesting paperwork is prepared by disposers AEC contracts with, so Ms. Mathews does not find it burdensome to comply with and did not have an opinion on switching to electronic manifesting.

Response: No issues were identified by the commenter that require a response. EPA is glad that a small electrical utility can comply with the PCB regulations without feeling unduly burdened by recordkeeping and reporting requirements.

Action: No Change.

5. Mark Pennell

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(415) 886-4580
RCSINC@aol.com.

Comment: Mr. Pennell advises and does paperwork for small companies exclusively for PCB compliance. He noted that the paperwork requirements are somewhat confusing at first but once you understand it they are not so bad. He did not have comments on the specific burden estimates in the ICR. The disposal recordkeeping requirements under §761.180(a) were the most burdensome for generators, as opposed to in-service requirements for monthly inspections, etc. He felt inspections were no big deal. He noted a couple of places in the regulatory language where there was conflicting language (e.g., recording total vs. net article container weight) or where items are recorded twice (items removed from service and in article containers). He indicated that generators had little interest in electronic reporting, as most of their burden involved the initial data collection and recording, (not subsequent manipulation). He noted the biggest paperwork burden by far for generators was keeping track of multiple manifests and CDs generated by the waste disposal industry as the equipment generators send off for disposal gets passed through multiple hands for processing and consolidation prior to final disposal. He noted this was not a problem that the Agency could solve through his regulations.

Response: EPA will attempt to rectify the regulatory discrepancies noted by Mr. Pennell when the next opportunity to amend the regulations occurs. Some of these issues have been addressed through guidance in the interim. Changes to the ICR statement are not required.

Action: No Change.

**Comments Of
The Utility Solid Waste Activities Group,
The Edison Electric Institute, The American Public Power Association,
the American Gas Association and the National Rural Electric
Cooperative Association
On
“Polychlorinated Biphenyls, Consolidated Reporting and
Recordkeeping Requirements; Comment Request on Agency
Information Collection Activities**

**NOTICE
72 Fed. Reg. 32644 (June 13, 2007)**

Docket No. EPA-HQ-OPPT-2007-0273

**submitted to
The United States
Environmental Protection Agency
August 13, 2007**

**Of Counsel:
Venable LLP
575 7th St, N.W.
Washington, D.C. 20004**

Comments Of The Utility Solid Waste Activities Group, The Edison Electric Institute, The American Public Power Association, the American Gas Association, and the National Rural Electric Cooperative Association On: Polychlorinated Biphenyls, Consolidated Reporting and Recordkeeping Requirements; Comment Request on Agency Information Collection Activities; 72 Fed. Reg. 32644 (June 13, 2007): Docket No. EPA-HQ-OPPT-2007-0273

INTRODUCTION

The following comments in response to EPA's Notice, "Polychlorinated Biphenyls, Consolidated Reporting and Recordkeeping Requirements," (72 Fed. Reg. 32644 (June 13, 2007)) are submitted on behalf of the Utility Solid Waste Activities Group ("USWAG"), the Edison Electric Institute ("EEI"), the American Public Power Association ("APPA"), the American Gas Association ("AGA"), and the National Rural Electric Cooperative Association ("NRECA") (collectively referred to herein as "USWAG"). In preparing these comments, USWAG compiled information from several of its individual members. These comments reflect the views of these individual utilities.¹

Because of the unnecessary or inaccurately defined burdens associated with certain recordkeeping and reporting requirements in EPA's PCB program, USWAG

¹ USWAG was formed in 1978, and is an association dedicated to assisting members in the management of wastes and the beneficial use of materials associated with the generation, transmission, or sale of electricity and natural gas including the management of PCB-containing gas and electrical equipment. USWAG is comprised of approximately 80 energy industry operating companies and associations, including EEI, NRECA, AGA, and APPA. EEI is the principal national association of investor-owned electric power and light companies. NRECA is the national association of rural electric cooperatives. AGA is the national association of natural gas utilities. APPA is the national association of publicly owned electric utilities. Together, USWAG members represent more than 85% of the total electric generating capacity of the U.S., and service more than 95% of the nation's consumers of electricity and over 93% of the nation's consumers of natural gas.

submitted comments on the last renewal of the Information Collection Request ("ICR") for the PCB program in 2004 and reiterates many of the same concerns in this set of comments. See USWAG comments dated June 29, 2004 (attached). USWAG's comments below detail specific portions and/or burden estimates in the ICR renewal request that are either inaccurate or incomplete. We urge EPA and OMB to revise descriptions in the request to correct inaccuracies and include USWAG's comments in analyzing whether to renew certain recordkeeping and reporting requirements in the PCB program.

DISCUSSION

As an initial matter, USWAG notes that EPA mentions that it "meets annually with representatives from more than 50 utilities and electric cooperatives who have verified the burden estimates related to inspection recordkeeping requirements for PCB Transformers." See Section 3(c) of the ICR Renewal Request. In preparation of the submission of these comments, USWAG queried its members to determine whether any member company met with EPA to discuss these estimates. No members confirmed that they were present at such meetings. Since the recordkeeping requirements for PCB Transformers are a critical component of the PCB program and USWAG represents a vast number of electric utilities, we would like to be advised of the next such meeting so that we can help ensure the involvement of individual USWAG members in this process. We believe that the expertise of USWAG members on the practical application of the PCB regulatory program could be helpful to EPA in estimating the recordkeeping and reporting burdens contained in the ICR.

I. EPA Fails to Include Burdens Associated with Storage for Reuse Variances at 40 C.F.R. § 761.35(b)

As we identified in our comments on the 2004 ICR renewal request, EPA has again failed to account for many recordkeeping and reporting burdens associated with obtaining approval pursuant to 40 C.F.R. § 761.35(b) to store PCB Articles for longer than 5 years in a facility that does not meet the design requirements at 40 C.F.R. § 761.65(b). While EPA does estimate (in Table 6-2, Reference #7) that submitting the request takes an average of 10 minutes per piece of equipment, this estimate does not account for the time it took many USWAG members to respond to EPA's often repeated requests for confirmatory and supplemental information.

Additionally, nowhere in the ICR renewal request does EPA identify or quantify the burdens associated with complying with conditions attached to storage for reuse extensions under this provision (these extensions are granted on a case-by-case basis by the EPA Regions; see 40 C.F.R. §761.35(b)). Many USWAG members obtained such extension approvals, though the approvals often contain additional conditions. For example, under its extension approval, USWAG member American Electric Power ("AEP") is required to keep certain additional records on these storage areas. These records can include such requirements as conducting a quarterly inspection for leaks of articles in the storage area and inventorying all materials on an annual basis to determine whether there is a need to continue storage. EPA's request does not identify or estimate the burdens associated with the unnecessary conditions on approvals that at least double the burden associated with this provision or properly estimate the time required to obtain such approvals.

II. EPA Should Be Required to Update its PCB Transformer Database

In Section 4(b)(i)(A)(3) of the ICR request, EPA notes that owners of PCB Transformers are required to register these transformers with EPA to provide State officials and emergency response personnel with information to provide "a significantly higher degree of protection in emergency situations" as well as to "address requirements of international environmental programs to identify sources and reduce or eliminate the reliance on PCBs." As an initial matter, USWAG is not aware of any international program that requires utilities to identify sources of PCBs and/or reduce or eliminate PCBs in the United States. While Congress is still evaluating legislation to implement the United States' obligations under the Stockholm Convention with respect to persistent organic pollutants, including PCBs, even that Convention speaks of "phase-down" goals and not the mandatory elimination of PCB-containing equipment.

Furthermore, as USWAG and its many members have discussed with EPA, the Agency's PCB Transformer database suffers from serious deficiencies making the current database of questionable use for emergency response situations. Various entries in the database are inaccurate, duplicative, and incomplete. USWAG members have found their company-specific information in the database to double-count transformers on-site, include the presence of transformers that have been taken out of service, retro-filled or disposed of, or misidentify the number or volume of on-site PCB Transformers.

Due to the importance of the database in properly identifying the number of PCB Transformers currently in service, USWAG has hired a contractor to identify errors in member company information in the database and compile this information for USWAG. USWAG urges EPA to update information in the database to provide an accurate

picture of the number of PCB Transformers in the U.S. EPA should establish a method to update the database on a regular basis to accurately reflect information provided to the Agency on the number of PCB Transformers in service.

III. EPA Inaccurately Identifies the Types of Entities that Own PCB-Containing Equipment

As USWAG pointed out in our 2004 comments, EPA inaccurately identifies in Section 5(a) the types of entities generating PCB wastes by failing to include all types of PCB wastes generated by federal, state and municipal facilities, which may represent one of the largest sources of PCB-containing equipment and PCB waste. EPA's comments suggest that PCB waste generation of these entities is limited to ballasts from fluorescent light fixtures. However, many government entities own/operate various forms of PCB-containing equipment which the ICR renewal request does not identify or capture the burden imposed on these entities by the PCB regulatory program. EPA should correct this error in its summary of entities generating PCB wastes and include these entities in estimating the burdens associated with this program.

IV. EPA Should Estimate Burdens Associated with Compliance with the Issuance of Guidance Documents

As USWAG described in its previous set of comments, EPA continues to maintain in the current ICR renewal in Section 6(b) that:

There are no new training costs anticipated to the affected industries or the Federal government associated with responding to the information collections that are subject to renewal, nor have there been any Federal costs associated with printing or mailing. Costs associated with reading the rules, providing training, and updating procedures to comply with the reporting and recordkeeping requirements are not included in this renewal as no new regulations have been promulgated that involve paperwork burdens.

This statement and position fails to consider the numerous and wide-ranging costs imposed on the regulated community that are associated with guidance documents and related PCB interpretive documents issued by EPA.

While not "regulations" in the strict sense, these additional documents do set forth important Agency pronouncements and require close review by the regulated community. They can also have real world consequences. For example, EPA has recently issued, among other things, a draft Dioxin Reassessment which some regulating agencies have relied on to adopt more stringent cleanup standards, and a PCB Site Revitalization Guidance that while summarizing the regulations, also contains compliance interpretations not otherwise codified in the rules. The Agency has also issued a Supplemental Response to Comments Document on the Proposed Rule on the Storage of PCB Articles for Reuse and has issued numerous interpretive letters that directly affect compliance with the PCB program and a comprehensive Question and Answer document that are, at the very least, required reading for any entity complying with the program. Understanding and training employees on each of these agency actions is necessary for any entity complying with the program. EPA's failure to again update training costs in this ICR renewal because no new regulations have been issued is seriously misleading and mischaracterizes the reality of complying with the Federal PCB program.

V. EPA Underestimates the Time Required to Conduct a Self-Implementing Cleanup Pursuant to 40 C.F.R. § 761.61(a)

Table 6-2, Reference #12 describes the reporting required for entities engaging in PCB cleanup pursuant to the "self-implementing" procedure at 40 C.F.R. § 761.61(a). EPA estimates that it takes an average of 100 hours to "notify EPA (as well as State,

Tribal, and local) officials of self-implementing remediation activity, including a summary of the procedures used to sample contaminated areas and sample collection and analysis data; submit additional information as requested; and certify that records of remediation activity are on file at the location designated in the certificate." One hundred hours is a drastic underestimation of the time it takes to perform this notification. For example, USWAG member AEP has reported that it can take more than 12 full days and over 360 samples to just complete the characterization sampling required by this procedure. We urge EPA to gather more data and recalculate this burden or limit the unnecessary recordkeeping and reporting requirements associated with this provision.

VI. EPA Should Identify the Number of Samples Sent to Laboratories for Analysis to Estimate the Reporting Burden

On Table 6-3, Reference #66, EPA does not attempt to provide an estimated burden associated with identifying the sample collector, the lab, date of shipment, quantity, and description of sample for each PCB sample sent to a laboratory for analysis because the Agency "has no way of estimating the number of samples that would be sent off-site annually for testing, or the frequency with which the samples are sent to an off-site lab." The Agency can in fact request this data either formally or informally from entities that are likely to maintain this information. To assist EPA, in our preparation of these comments we queried USWAG members on the number of PCB samples taken by their respective companies. Only 17 members had this information readily available, but among these members a total of 106,469 samples were obtained and sent to labs in 2006. This limited survey demonstrates a significant burden imposed on regulated entities and EPA should attempt to acquire similar data to

develop a reasonable estimate for this burden and determine whether the existing burden is appropriate.

VII. EPA Inaccurately Estimates the Number of Facilities Required to Keep Annual Document Logs

EPA makes a mistake in estimating the number of facilities required to keep annual document logs pursuant to §§ 761.65(c)(10) & 761.180. In Table 6-4, Reference #88, EPA uses the number of “commercial storers” as the number of facilities required to keep annual document logs of PCB materials in storage for disposal facilities. However, these requirements apply both to “commercial storers” and other entities that engage in the storage for disposal of PCBs under § 761.65. The flaw in the ICR is that other storage for disposal facilities that meet the requirements of § 761.65(b) are not included in the number of facilities required to keep annual documents logs. EPA limits its estimate to the 73 commercial storers of PCBs. However, we obtained information from 16 USWAG members who collectively maintained an additional 42 sites that are subject to the annual document log requirements pursuant to the above provisions. EPA should consider these storage for disposal facilities in reassessing the recordkeeping burden associated with the annual document log requirements.

VIII. Other Issues

In Section 5(c) of the ICR renewal, EPA estimates that for small entities "the overall regulatory cost remains small" because the number of PCB Transformers used by such entities is limited. However, in a draft case study project prepared for U.S. EPA Region 5 comparing the costs and benefits of replacing PCB Transformers, the draft estimates that the non-recurring cost to keep a PCB Transformer in service through its service life is \$47,080. This estimate does not include removing and/or replacing such

transformer or responding to a spill/remediation event. Therefore, the regulatory costs associated with maintaining even a single PCB Transformer can be exceedingly high for small entities.

Also in Section 5(c), EPA's statement that PCB Transformers are "associated with high voltage applications" is inaccurate. In fact, the regulatory definition of "PCB Transformer" at 40 C.F.R. § 761.3 includes "distribution type mineral oil transformers containing \geq 500 ppm which operate at low voltage." Many residential low voltage transformers were contaminated with PCBs (at or above 500 ppm) during manufacture.

* * * * *

USWAG appreciates the opportunity to submit documents on this important review of the recordkeeping and reporting burdens of the PCB program and urges EPA to reconsider the ICR renewal request in light of these comments. Please contact USWAG Executive Director Jim Roewer (jim.roewer@uswag.org; 202-508-5645) or USWAG counsel Doug Green (dhgreen@venable.com; 202-344-4483) if you have questions regarding these comments.

**Comments Of
The Utility Solid Waste Activities Group,
The Edison Electric Institute, The American Public Power Association,
and the National Rural Electric Cooperative Association
On
“PCBs, CONSOLIDATED REPORTING AND RECORDKEEPING
REQUIREMENTS; REQUEST FOR COMMENT ON RENEWAL
OF INFORMATION COLLECTION ACTIVITIES”**

**NOTICE
69 Fed. Reg. 23747 (April 30, 2004)**

Docket No. OPPT-2004-0087

**submitted to
The United States
Environmental Protection Agency
June 29, 2004**

**Of Counsel:
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**Comments Of The Utility Solid Waste Activities Group,
The Edison Electric Institute, The American Public Power Association,
and the National Rural Electric Cooperative Association
On “PCBs, CONSOLIDATED REPORTING AND RECORDKEEPING
REQUIREMENTS; REQUEST FOR COMMENT ON RENEWAL
OF INFORMATION COLLECTION ACTIVITIES”
Notice - 69 Fed. Reg. 23747 (April 30, 2004)
Docket No. OPPT-2004-0087**

INTRODUCTION

The following comments in response to EPA’s Notice, “PCBs, Consolidated Reporting and Recordkeeping Requirements,” (66 Fed. Reg. 23747 (April 30, 2004)) are submitted on behalf of the Utility Solid Waste Activities Group (“USWAG”), the Edison Electric Institute (“EEI”), the American Public Power Association (“APPA”), and the National Rural Electric Cooperative Association (“NRECA”) (collectively referred to herein as “USWAG”). USWAG was formed in 1978, and is an association primarily dedicated to assisting members in the management of wastes and the beneficial use of materials associated with the generation, transmission, or sale of electricity and natural gas. USWAG is comprised of approximately 80 energy industry operating companies and associations, including EEI, the NRECA, and the APPA. EEI is the principal national association of investor-owned electric power and light companies. NRECA is the national association of rural electric cooperatives. APPA is the national association of publicly owned electric utilities. AGA is the national association of natural gas utilities. Together, USWAG members represent more than 85% of the total electric generating capacity of the U.S., and service more than 95% of the nation's consumers of electricity and over 93% of the nation’s consumers of natural gas.

DISCUSSION

1. **Reference No. 77 on Table 2-3 Concerning The Obligation to Keep Records of PCB Articles Stored for Reuse (40 C.F.R. § 761.35(a)(2))**. The Agency explains that the use of this information is to ensure the proper handling of the equipment stored for reuse. In assessing the impact of this obligation, EPA fails to take into account the additional recordkeeping and inspection requirements that have been imposed on electric utilities and other entities that obtained variances from EPA to store PCB articles for reuse for longer than five years in areas that do not meet the storage standards under 40 C.F.R. 761.65(b). These site-specific variances granted by the EPA Regions impose additional inspection and recordkeeping requirements that go beyond those specified in 40 C.F.R. 761.35(a)(2). EPA should factor these additional regulatory burdens into the ICR in order to accurately assess the true burden of this particular obligation.

2. **Confirmatory Records When Using Independent PCB Transporters** – Item 46 in Section 4(b) of the ICR package sets forth the requirements for the filing of an exception report when a generator uses an independent transporter, including the requirement for the generator to confirm by telephone or other convenient means that the commercial storer or disposer actually received the manifested waste. Generators must keep records of these follow-up confirmation procedures. See 40 C.F.R. § 761.208(a)(4). This follow-up confirmation requirement, and the associated record keeping requirement, is unique to the PCB program. The RCRA hazardous waste generator and manifest requirements – which have worked well for over twenty five years (and after which the PCB manifest rules were patterned) -- do not include these additional confirmation and record keeping requirements. Accordingly, USWAG

believes that this confirmation obligation is unnecessary and has little, if any, practical utility for EPA or the regulated community. Therefore, this particular regulation is an ideal candidate for elimination to minimize the burden of the PCB record keeping requirements on the regulated community.

3. **SPCC Requirements for 30-Day PCB Temporary Storage** – Item 65 in section 4(b) identifies the obligation under the storage for disposal requirements for all entities storing PCB waste pursuant to 30-day temporary storage provision to implement a spill prevention, control and counter measure plan (“SPCC”). See 40 C.F.R. § 761.65(c)(1)(iv). The obligation to implement an SPCC plan (and all associated record keeping and reporting requirements) under this provision is triggered without regard to the volume or characteristics of the PCB wastes in question. In other words, even though the SPCC requirements are normally triggered only when a specified threshold of regulated substances is stored, this particular PCB obligation applies to *any* volume of PCB wastes, including non-liquid PCBs. USWAG believes that this particular obligation, and the associated record keeping and reporting requirements, should be triggered only for liquid PCB waste and where the applicable SPCC threshold is otherwise triggered.

4. **PCB Transformer Registration Database** – Section 5 of the ICR package addresses “Information Collection – Agency Activity, Collection Methodology and Information Management.” Section 5(a) of that section discusses the PCB Transformer data base created by EPA. The discussion details how the database is used to provide information to environmental and emergency response officials on an as requested basis.

It is apparent that the PCB Transformer database is used as an important tool for a variety of reasons, including by various organizations, including EPA, for purposes of developing future PCB regulatory policies and strategies. In this regard, USWAG believes that it is absolutely critical for EPA to ensure that the database is updated and kept as current as possible. This includes amending the database to remove those PCB Transformers that have either been disposed or reclassified. The ICR does not address how this type of information – specifically, the disposal or reclassification of previously registered PCB Transformers – is incorporated into the database. This is a potentially serious flaw in the database that requires immediate attention.

5. **Burden on Small Entities** – Section 5(c) of the ICR package, entitled “Small Entity Flexibility,” discusses the general burden of the PCB record keeping and reporting requirements on small entities. USWAG disagrees with the statement in the first paragraph of that section that “the reporting and recordkeeping requirements [for small businesses] are no more burdensome than standard business procedures currently in place.” This statement fails to appreciate the burden of the PCB record keeping and reporting requirements on many small businesses. The National Rural Electric Cooperative Association (“NRECA”) is a USWAG member and represents rural electric cooperatives across the country. These are small businesses that are subject to the full gamut of PCB substantive, record keeping and reporting obligations. Many of these PCB record keeping and reporting requirements are anything but “standard business procedures,” including, for example, the storage for reuse record keeping requirements, annual document log requirements, and certain of the associated PCB manifest record keeping requirements. Therefore, EPA is incorrect in its assumption

that the PCB record keeping and reporting obligations imposed on small entities are “no more burdensome than standard business procedures currently in place.” The failure of the ICR to accurately reflect these additional burdens on small businesses is a potentially serious flaw in the ICR.

Also incorrect is the statement that very few small businesses are likely to own PCB Transformers because of the initial cost associated with the purchase of this equipment and long-term expense for their operation and maintenance. The ICR fails to recognize that many small transformers – such as potential and current transformers – must be *assumed* to be “PCB Transformers” under the Agency’s PCB Transformer assumption rule (see 40 C.F.R. § 761.2(a)(3) (if the date of manufacture and the type of dielectric fluid in a transformer are unknown, the transformer must be assumed to be a PCB Transformer). Therefore the costs associated with PCB Transformer record keeping and reporting requirements often are borne by small entities. Again, the failure of the ICR to recognize these PCB Transformer costs incurred by small businesses results in under-estimating the true costs of the PCB record keeping and reporting obligations on regulated entities.

6. **Federal Facilities as a Source of PCB Wastes** – Section 5(c)(i) of the “Small Entity Flexibility” discussion identifies six general categories/circumstances where PCB waste can be generated. These include: electric utilities, non-utility entities, entities with PCB ballast and lighting fixtures, natural gas pipelines, electrical components, and Superfund sites. A significant omission in this list is the large universe of PCB wastes generated by federal, state and municipal facilities. Indeed, this grouping of governmental facilities may represent one of the largest sources of PCB-

containing equipment and PCB waste. In attempting to characterize the sources of PCB-containing equipment and PCB wastes, EPA should not overlook the potentially significant contributions of federal, state and local governments.

7. **Continuing Burdens Associated With Storage For Reuse Variance**

Request – Table 6-1 in the ICR sets forth the reporting burdens under TSCA Section 6(e). An error in this table is reflected in item 7 with respect to requirements to obtain approvals under 40 C.F.R. § 761.35(b) for PCB Articles stored for reuse for greater than five years in a facility that does not comply with the storage for disposal standard under 40 C.F.R. § 761.65(b). The ICR states that the time period for preparing storage for reuse variance requests takes five minutes for a piece of equipment. Based on the experience of the many USWAG members who prepared variance requests in 2003, EPA's estimate of five minutes for a piece of equipment is far too low. Virtually all USWAG members who submitted storage for reuse variance requests were asked for additional information after the initial variance request was submitted. In some cases, EPA came back a third time and asked for additional and detailed site- and equipment-specific data. Many of these variance requests took many hours to complete and covered only several pieces of equipment. Therefore, the estimate of only 5 minutes per piece of equipment is at odds with reality and should be adjusted upward by at least an order of magnitude to more accurately reflect the real world burden of obtaining storage for reuse variances.

8. **Burdens with New Regulatory Guidance and Variances** – Section 6(b) of the ICR addresses “Estimating Respondent and Costs.” That section states, in part, that no new rule has been promulgated since the PCB disposal amendments in 1998

that involved paperwork burdens. Based on this assertion, the ICR does not take into account any costs associated with updating procedures and reading regulations to comply with new record keeping requirements. This assumption, however, fails to take into account that, since the 1998 PCB disposal rule, EPA has issued scores of interpretative letters and a PCB Question and Answer (“Q&A”) document that provide interpretive guidance on the scope and obligations set forth in the 1998 disposal rule. Reviewing, interpreting, and adjusting operations to comply with this new guidance and the related interpretive letters has involved a substantial investment of resources by regulated entities. In other words, the fact that no new regulations have been promulgated since 1998 does not mean that there are not continuing burdens and costs associated with interpreting and updating procedures to comply with the existing rules.

Further, the ICR fails to take into account the cost and burdens associated with the additional record keeping and reporting obligations imposed by EPA on regulated entities through various approvals, such as risk-based disposal and decontamination variances, and storage for disposal and storage for reuse variances, to name just a few categories. Complying with the record keeping and reporting obligations in these variances impose real and substantial burdens on the regulated community. These burdens should be captured in the ICR.

* * * * *

USWAG appreciates the opportunity to submit these comments on the PCB ICR.

(Sample consultation email)

Peter Gimlin/DC/USEPA/US
07/26/2007 02:08 PM

To: sslesinger@etc.org
cc
bcc
Subject: Request for comments on PCB Information Collection Request

Dear Scott:

Per my phone call, I hope you will be available again to review the PCB Information Collection Request on behalf of the Environmental Technology Council and its members.

EPA is currently seeking to renew the consolidated Information Collection Request (ICR) for the Polychlorinated Biphenyl (PCB) regulations at 40 CFR Part 761, which establishes prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage and marking of PCBs and PCB Items. To supplement our notice in the Federal Register, published on June 13, 2007 (72 FR 32644), we are seeking comments on specific aspects of the data collection relating to the PCB regulations from individual members of the affected community.

In particular, we are interested in your response to the following questions:

1. Are the data collection and record keeping requirements clear and concise?
2. Are you aware of other sources the Agency could go to for the requested data?
3. Would you make electronic submissions?
4. Are estimated burdens and costs accurate?
5. If we spoke to you before about this ICR, are your positions accurately reflected?

Attached is a copy of the Federal Register notice and ICR supporting statement for your reference. These documents, as well as the attachments to the ICR supporting statement are also available at: <http://www.regulations.gov/fdmspublic/component/main>.



ICR Notice 6-13-07 72-FR-32644.pdf

The ICR supporting statement consists of three separate files:



EPA-HQ-OPPT-2007-0273-0002.pdf



EPA-HQ-OPPT-2007-0273-0003.pdf



EPA-HQ-OPPT-2007-0273-0004.pdf

You may submit your comments to the docket as public comments per the instructions in the Federal Register notice, or if you prefer, directly to me in response to this message at gimlin.peter@epa.gov, or by calling 202-566-0515. Public comments are due by Monday, August 13th, and I would request that any comments sent to me directly be submitted by that date, if possible.

Please contact me if you have any particular questions about the document, the recordkeeping and reporting requirements or how to access any materials.

Thanks again for your input on this matter; I look forward to seeing your comments.

Sincerely,
Peter Gimlin
Environmental Protection Specialist
National Program Chemicals Division
U.S. Environmental Protection Agency
tel. 202-566-0515, fax 202-566-0473
email: gimlin.peter@epa.gov

Regulatory Compliance Services, Inc.

--- 2007 NATIONAL CONVENTION ---

Attendees List

ABERCROMBIE, Danny	Blue Ridge Electric Coop.	Pickens, SC
ADCOCK, Philip	Osceola Municipal Light & Power	Osceola, AR
ANDREATTA, David	San Isabel Electric	Pueblo, CO-
ANSBACH, Corey	Dawson Public Power District	Lexington, NE
BABCOCK, Rod	Northern Light Inc.	Sagle, ID
BAILES, Joe	South Carolina Electric & Gas	Columbia, SC
BAKER, Harold	Platte Clay Electric Coop.	Kearney, NE
BATES, Bob	City of Covington	Covington, GA
BEARD, Hal	Entergy Corporation	Little Rock, AR
BENNETT, Jim	Jaco Construction	Ephrata, WA
BLACK, Jimmie	Western Area Power Administration	Huron, SD
BODINE, James, Jr.	Garland Power & Light	Garland, TX
BOHNET, Ken	JACO	Ephrata, WA
BOURNE, Rodney	Rolla Municipal Utilities	Rolla, MO
CARPENTER, Glenn	CoServ Electric	Corinth, TX
CARTER, Tina	San Diego Gas & Electric	San Diego, CA
CASON, Vicki	Rolla Municipal Utilities	Rolla, MO
CLEGG, Andrea	City of Rupert	Rupert, ID
COMBS, Jason	Carroll Electric Coop.	Berryville, AR
COOPER, Deb	RCS, Inc.	Springfield, MO
COOPER, Steve	RCS, Inc.	Springfield, MO
CRITES, Todd	City of Sturgis	Sturgis, MI
DAY, Ron	Jackson Energy	McKee, KY
DITCH, Jim	Powder River Energy	Sundance, WY
DUCKER, Brad	Niobrara Valley EMC	O'Neill, NE
DUFFEY, Larry	Central Georgia EMC	Jackson, GA
ELLIOTT, Harry	Gibson Electric Membership Corp.	Trenton, TN
ELROD, Jason	Rolla Municipal Utilities	Rolla, MO
ENGLISH, Jeff	Garland Power & Light	Garland, TX
ERNST, Larry	Canadian Valley Electric Coop.	Seminole, OK
FARR, Sarah	Caddo Electric Cooperative	Binger, OK
FLANAGAN, Bob	Sheffield Utilities	Sheffield, AL
FOGLE, Laura	RCS, Inc.	Springfield, MO
FRAKER, Terry	Pella Cooperative Electric	Pella, IA
FRICK, Bryan	City of Ottawa	Ottawa, IA
GRIFFIN, Chris	West Memphis Utility Commission	West Memphis, AR
HAINLINE, Brad	Access Energy Cooperative	Mt. Pleasant, IA
HAMMANS, Wendell "Al"	City of Chanute, KS	Chanute, KS
HAUNER, John	Lincoln Electric System	Lincoln, NE-
HENSLEY, Amy	U.S.E.P.A. Headquarters	Washington, DC
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HOOTEN, Randy	Carroll Electric Cooperative	Berryville, AR
HUTT, David	Norris Public Power District	Beatrice, NE

— Attendees List —
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IMLER, Chuck	City of Niles Utilities	Niles, MI
IVERSON, Odean	Willmar Municipal Utilities	Willmar, MN
JACKSON, George	Trans-Cycle Industries, Inc.	Atlanta, GA
JEARDOE, Pat	Norris Public Power District	Beatrice, NE
KARAPINAR, Sam	S.M.U.D.	Sacramento, CA
KLEIN III, George	Cit of Lebanon	Lebanon, MO
KRENEK, Terri	City Public Service	San Antonio, TX
KUNZ, Patrick	Black River Electric Cooperative	Fredericktown, MO
LANGONI, Sheila	San Isabel Electric	Pueblo, CO
LEMONS, Dan	CoServ Electric	Corinth, TX
LEONHARDT, Lin	San Diego Gas & Electric	San Diego, CA
LEWIS, Roy	San Isabel Electric	Pueblo, CO
LISENBERY, Charles	Caddo Electric Cooperative	Binger, OK
LOWE, Todd	Hope Water & Light	Hope, AR
MARTIN, Michael	CLECO Power	Pineville, LA
MILLS, Jim	Access Energy Cooperative	Mt. Pleasant, IA
MOORES, Kenny	Harrison County Rural Electric	Woodbine, IA
MORGAN, Jerry	Regulatory Software Services, Inc.	Springfield, MO
MORRISON, Mike	West Memphis Utility Commission	West Memphis, AR
MORROW, James	City of Madisonville	Madisonville, KY
MURRAY, Chad	City of Metropolis	Metropolis, IL
MYERS, Vernon	U.S.E.P.A. Headquarters	Washington, DC
NULL, Dave	Consolidated Electric Coop.	Mexico, MO
ORNDORFF, Howard	Nebraska City Utilities	Nebraska City, NE
OROZCO, Jaime	San Diego Gas & Electric	San Diego, CA
PAUL, John	Elkhorn RPPD	Battle Creek, NE
PENNELL, Anita	Supplemental Services, Inc.	Nixa, MO
PENNELL, Julie	RCS, Inc.	Springfield, MO
PENNELL, John	Supplemental Services, Inc.	Nixa, MO
PENNELL, Mark	RCS, Inc.	Springfield, MO
PETERSON, Kevin	Bangor Hydro Electric	Bangor, ME
PIEHL, David	East River Electric	Madison, WS
PINKERTON, David	Huntsville Utilities	Huntsville, AL
PINKLEY, Donald	Ozarks Electric Coop.	Fayetteville, AR
RAY, Aaron	City of Columbia Water & Light	Columbia, MO
RAY, Bob	City of Manassas	Manassas, VA
RAYMOND, Jeff	Nebraska Public Power District	York, NE
REAGAN, Wendy	Farmers Electric Cooperative	Greenville, TX
REHMAN, Roger	Steele Waseca Coop Electric	Owatonna, MN
REICHEL, Brian	Regulatory Software Services, Inc.	Springfield, MO
RIDDER, Jim	Elkhorn RPPD	Battle Creek, NE
RONNING, Tedd	Xcel Energy	Minneapolis, MN
SALYARDS, Wayne	Highline Electric Association	Holyoke, CO
SAPP, Danny	Tennessee Valley Authority	Murfreesboro, TN
SAVAGE, David	Baker Botts LLP	Austin, TX
SCHALK, Travis	N.W. Electric Power Coop.	Cameron, MO
SCHEIDT, Leonard	Warren RECC	Bowling Green, KY

— Attendees List —

(Continued)

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SIXKILLER, Greg
SMITH, Dr. John
SPEARS, Christopher
SPRADLING, Dean
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STULL, Kavan
STURM, Tamara
TAYLOR, Pete
TINNEY, Ron
TOMIELLO, Mark
VIGIL, Frank
WAINSCOTT, Darin
WALLER, Don
WALTERSCHEID, John
WASHINGTON, Marvin
WATANABE, Allison
WEST, Jeff
WHITE, Jerry
WILSON, Cheryl
WISE, Gary
WOLKEN, Terry
ZEPEDA, Mary

Midwest Electric
City of Blackwell
U.S.E.P.A. Headquarters
Osceola Electric Cooperative
Greenville Light & Power
City of Metropolis
Carroll Electric Coop.
Empire District Electric
City of Manassas
City of New Madrid
Garland Power & Light
Carroll Electric Coop.
San Isabel Electric
Osage Valley Electric Cooperative
San Diego Gas & Electric
Cooke County Electric
City of Manassas
U.S.E.P.A. Headquarters
Xcel Energy
Wayne White Electric
Laclede Electric Cooperative
Paragould Light & Water
Laclede Electric Cooperative
Southern California Edison

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