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May 12, 2017

Via Email

Samantha Dravis
Senior Counsel and Associate Administrator for Policy
Regulatory Reform Officer for Executive Order 13777
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: Identification of Regulations for Repeal, Modification or Replacement Under Executive Order 13777 (Docket ID No. EPA-HQ-OA-2017-0190)

Dear Ms. Dravis:

The Utility Solid Waste Activities Group ("USWAG")[1] submits these comments in response to Executive Order 13777 ("EO 13777") on "Enforcing the Regulatory Agenda,"[2] which furthers the policy goal of alleviating unnecessary regulatory burdens on the American people. EO 13777 directs the heads of federal agencies to establish Regulatory Reform Task Forces ("RRTF"), under the direction of an agency Regulatory Reform Officer ("RRO"), to oversee the implementation of reform activities and policies to ensure the effective carrying out of regulatory reforms including, among others, Executive Order 13771 ("EO 13771") on "Reducing Regulations and Controlling Regulatory Costs."

One of the key directives in EO 13777 is for RRTFs to "evaluate existing regulations[3] and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."[4] In undertaking this task, EO 13777 directs that the RRTF shall attempt to identify regulations that, among other things:

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[1] USWAG, formed in 1978, is an association of over one hundred and ten electric utilities, power producers, utility operating companies, and utility service companies located throughout the United States, including the Edison Electric Institute ("EEI"), the American Gas Association ("AGA"), the American Public Power Association ("APPA"), and the National Rural Electric Cooperative Association ("NRECA"). Together, USWAG members represent more than 73% of the total electric generating capacity of the United States, and service more than 95% of the nation's consumers of electricity and 92% of the nation's consumers of natural gas.

[2] Executive Order 13777 (Feb. 24, 2017) ("EO 13777"); *see* 82 Fed. Reg. 12285 (March 1, 2017).

[3] EO 13777 refers to the definition of "regulation" or "rule" as defined in EO 13771, which includes, in pertinent part, "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency … ."

[4] EO 13771 § 4.

(i) eliminate jobs or inhibit job creation;
(ii) are outdated, unnecessary, or ineffective;
(iii) impose costs that exceed benefits; or
(iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.[5]

In performing this evaluation, the RRTF is to seek input from entities significantly affected by Federal regulations including, among others, trade associations. USWAG is a trade association representing over one hundred and twenty power companies and four major utility trade associations significantly affected by hundreds of federal regulations arising under the Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act ("TSCA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and provisions of the Clean Air Act ("CAA"). In particular, USWAG has represented the electric and natural gas industries for over 35 years on federal regulations involving the management of solid and hazardous waste under RCRA; hazardous substances under CERCLA, the combustion of solid wastes under section 129 of the CAA; and the management of chemical substances under TSCA. USWAG is therefore well positioned to identify regulations arising under the above-referenced federal statutes impacting the power industry that meet EO 13777's criteria for repeal, replacement, or modification.

Below we identify those regulations falling under the various EPA offices. These regulations relate to: both the Office of Resource Conservation and Recovery ("ORCR") and the Office of Emergency Management ("OEM") within EPA's Office of Land and Emergency Response ("OLEM"); the Office of Pollution Prevention and Toxics ("OPPT") within EPA's Office of Chemical Safety and Pollution Prevention ("OCSPP"); and the Office of Air Quality Planning and Standards ("OAQPS") within EPA's Office of Air and Radiation ("OAR").

I. OLEM Regulations Warranting Repeal, Replacement or Modification

A. Coal Combustion Residuals Rule

One of the most significant rulemakings within OLEM in need of immediate modification and, in the case of some provisions, repeal, is the coal combustion residuals ("CCR") rule under 40 C.F.R. Part 257. As EPA itself recognized upon promulgation of the CCR rule, the rule imposes costs on the regulated community that far exceed its benefits.[6] As discussed below, the recent enactment of the Water Infrastructure Improvement for the Nation ("WIIN") Act, which establishes procedures for states and EPA to implement the CCR rule through state or EPA permit programs, further warrants the modification of many provisions in the CCR rule to reflect its implementation through permit programs, as opposed to the rule's original self-implementing regime.

[5] EO 13777 § 3(d)(i)-(iv).
[6] *See* 80 Fed. Reg. 21302, 21460 (April 17, 2015).

In particular, EPA removed certain provisions from the final CCR rule—which were contained in the 2010 CCR proposal[7] and drawn from EPA's Part 258 municipal solid waste landfills ("MSWLF") program—that would have allowed for tailoring of the rule's groundwater monitoring and corrective action programs based on site-specific conditions. EPA did this because, under the existing CCR rule and in contrast to the MSWLF program, there is no regulatory body overseeing implementation of the CCR rule through an enforceable permit program. EPA explained, "[i]n particular, the possibility that a state may lack a permit program for CCR units made it impossible to include some of the alternatives available in 40 CFR Part 258 [the MSWLF program], which establish alternative standards that allow a state, as part of its permit program to tailor the default requirements to account for site specific conditions at the individual facility."[8]

With the enactment of the WIIN Act, however, the states and EPA may now implement the CCR Rule through a permit program or other system of "prior approval" (collectively "state CCR permit programs"). Therefore, EPA's rationale for not including these risk-based provisions in the final rule no longer exists. The rule should be modified to include these common sense, risk-based management options. Given the time necessary to transition to CCR permit programs as contemplated under the WIIN Act and make the substantive risk-based revisions to the CCR rule, it also is necessary for EPA to immediately extend upcoming deadlines in the CCR rule to avoid large capital expenditures by the regulated community for elements of rule that may be implemented differently under future CCR permits.

These modifications to the CCR rule and additional recommended changes to the CCR rule identified below find further support in the President's recent Executive Order on "Promoting Energy Independence and Economic Growth." ("EO 13783").[9] EO 13783 directs, among other things, that heads of federal agencies immediately "review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, *coal*, and nuclear energy resources."[10] The CCR rule is an "agency action" that directly burdens the use of coal as an energy resource by imposing unduly stringent and extremely costly regulations on the management of CCR—the byproduct from the use of coal as an energy source. Indeed, the CCR rule can be as problematic as the Clean Water Act Effluent Limitations Guidelines Rule for the Steam Electric Power Generating Point Source Category ("ELG Rule") on coal-fired power generation. Put simply, the use of coal as an energy source is significantly frustrated, and in some cases rendered untenable because the costs of managing residuals from this energy source (*i.e.*, CCR) are unduly burdensome and/or force the premature closure of CCR disposal units. Therefore, repeal and/or modification of the provisions of the CCR rule identified below are warranted under both EO 13777 and EO 13783.

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[7] 75 Fed. Reg. 35128 (June 21, 2010).
[8] 80 Fed. Reg. at 21396-97.
[9] Executive Order 13783 (Mar. 28, 2017) ("EO 13783"); *see* 82 Fed. Reg. 16093 (Mar. 31, 2017).
[10] *Id* at § 2 (emphasis added).

1. Extensions of Compliance Deadlines: It is critical that EPA extend compliance dates established in the CCR rule to provide time for implementation of state permit programs. This will avoid capital expenditures for elements of the rule that may be implemented differently by a state permit program (*e.g.*, the use of risk-based standards that are equally protective). Extension of the deadlines also is necessary to ensure alignment of the CCR Rule's requirements with EPA's recent postponement of the compliance dates for implementation of the ELG Rule. Coordination of the CCR and ELG Rules' compliance time frames has been one of the overarching objectives of the Agency to ensure that owners/operators of CCR units are not forced to make decisions affecting these units under the CCR Rule without first understanding the ELG requirements. Such extensions should include the time schedules in 40 C.F.R. § 257.90(b) and § 257.90(e) for initiating groundwater monitoring, as well as the time schedules in 40 C.F.R. §§ 257.60-.64 for assessing compliance with the CCR rule's location restrictions.

2. Alternative Risk-Based Groundwater Protection Standards: The Agency should incorporate into the CCR rule the option set forth in the proposal allowing for the use of alternative risk-based standards in establishing groundwater protection standards for Appendix IV constituents that do not have an MCL.[11] This provision should be added to the final CCR rule at 40 C.F.R. § 257.95(h).

3. Selection of Corrective Action Remedy: The rule's corrective action remedy provision needs to be amended to allow for the consideration of "the desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives." And, as set forth in the proposed rule and allowed for under the MSWLF program, the final rule should be amended to allow for a determination that corrective action is not necessary as it would not result in any meaningful environmental benefit (*e.g.*, where the groundwater is not a source of drinking water and there is a low likelihood of contamination migrating off-site). These provisions should be added to 40 C.F.R. § 257.97.

4. Alternative Points of Compliance & Site-Specific Groundwater Monitoring Constituents: EPA should incorporate into the rule provisions already in the MSWLF program providing a permitting authority (1) the option to determine the appropriate point of compliance for the groundwater monitoring system based on site-specific conditions, and (2) the ability to tailor the constituents subject to groundwater monitoring based on site-specific conditions. These provisions should be added to 40 C.F.R. § 257.91 and § 257.94, respectively.

[11] *See* Proposed 40 C.F.R. § 257.95(h); 75 Fed. Reg. at 35249-50.

5. Adjustments to Post-Closure Care Period: EPA should incorporate into the final CCR rule a provision (as is available under RCRA's MSWLF and Subtitle C hazardous waste programs) allowing for a determination that a decreased period of post-closure care, as opposed to the mandatory 30-year period, is sufficient to protect human health and the environment. This provision should be added to 40 C.F.R. § 257.104(c).

6. Alternative Closure: EPA should modify the CCR rule at 40 C.F.R. § 257.103 to allow for the consideration of alternative disposal capacity for non-CCR wastewaters for purposes of qualifying for extended closure and avoiding premature closure of the facility. The goal of § 257.103 is to prevent the premature closure of power plants in circumstances where a surface impoundment otherwise required to close is authorized to continue operating for a limited period of time if there is no alternative disposal capacity to dispose of CCR.[12]

   The rule currently only allows for the consideration of the lack of available disposal capacity for CCR in determining eligibility for continued operation. In developing the rule, however, EPA was well aware of, and the rule in fact fully contemplates, surface impoundments ceasing the receipt of CCR but continuing to receive non-CCR wastewaters and continuing to operate under the rule.[13] Therefore, this provision needs to be amended to allow for the continued operation of surface impoundments otherwise required to close, if there is no available disposal capacity for non-CCR wastewater managed in the impoundment.[14]

7. Regulation of Inactive Units: For the first time in its 35-year implementation of the RCRA program, EPA made the unprecedented decision in the CCR rule to regulate "inactive units"—that is, impoundments that had ceased receiving CCR before the effective date of the CCR rule. EPA does *not* regulate "inactive" units under its Subtitle C hazardous waste program but rather relies on its statutory "imminent and substantial endangerment" authorities under RCRA and CERCLA to address any potential risks from inactive hazardous waste surface impoundments. EPA's asserted jurisdiction over inactive CCR surface impoundments is not mandated by the statute, but rather was a policy decision by the former EPA administration.[15]

   This provision is imposing hundreds of millions of dollars of inflexible, one-size-fits-all remediation costs on the power industry, overriding state risk-based cleanup programs. It is also one of the reasons why the rule's costs far exceed its benefits.

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[12] This issue is currently the subject of litigation brought by USWAG and other industry petitioners challenging aspects of the CCR rule. *See USWAG et al. v. EPA*. No. 15-1219 (D.C. Cir.).
[13] *See* 40 C.F.R. §§ 257.102(e)(1)(i), 257.102(e)(2)(i).
[14] EPA has already agreed to re-evaluate this issue, and issue a proposed rule as appropriate, pursuant to a settlement agreement entered into with USWAG as a result of the CCR litigation referenced above in n. 12.
[15] This issue also is the subject of litigation brought by USWAG and other industry petitioners challenging aspects of the CCR rule. *See USWAG et al. v. EPA*. No. 15-1219 (D.C. Cir.).

Therefore, EPA should repeal the provisions at 40 C.F.R. § 257.50(c) and § 257.100 subjecting inactive surface impoundments (*i.e.*, impoundments that did not receive CCR after the rule's effective date) to regulation under the rule. EPA and the states can address any risks from these units in a more cost-effective manner under pre-existing RCRA and CERCLA imminent hazard provisions.

8. CCR Beneficial Use for Closure: The CCR rule does not apply to the beneficial use of CCR provided such use meets the definition of "beneficial use" as set forth in 40 C.F.R. § 257.53. There are no prohibitions in the rule on beneficially using CCR for closure of CCR units. Indeed, the rule's preamble specifically identifies the beneficial use of CCR for waste stabilization/solidification, which occurs as part of closing a CCR unit.[16] Nonetheless, subsequent to enactment of the CCR rule, EPA has been ambiguous regarding the appropriateness of beneficially using CCR for closing CCR units. There should be no ambiguity with respect to the environmentally sound and cost-effective use of CCR in lieu of virgin materials for the closure of CCR units. Therefore, EPA should eliminate any ambiguity regarding this issue and confirm that the exclusion for CCR beneficial use includes beneficially using CCR to close CCR landfills and surface impoundments.

9. CCR Beneficial Use at Clay Mine Sites: The plain language of the CCR rule's definition of "beneficial use" places no limitations on what activities can constitute beneficial use, with the only exception being the placement of CCR in a "sand and gravel pit or quarry." The phrase "sand and gravel pit or quarry," in turn, is defined as "an excavation for the extraction of aggregate, minerals or metals." Based on this language, EPA has taken a position prohibiting the environmentally sound and beneficial practice of using CCR to reclaim clay mines on the grounds that the placement of CCR in a clay mine cannot be a beneficial use, irrespective of purpose or function, because a clay mine is or was a site used for the extraction of minerals—*i.e.*, clay. This interpretation is needlessly prohibiting a cost-effective and environmentally sound CCR beneficial use practice and is imposing unnecessary disposal costs on CCR when the CCR can otherwise be beneficially used to reclaim clay mines in lieu of using virgin materials.

   EPA should therefore clarify that the definition of "sand and gravel pit or quarry" does not include clay mines and that owners/operators of such sites be provided the opportunity, as is the case with other CCR beneficial use structural fill activities, to demonstrate that the use of CCR to reclaim such sites meets the CCR rule's beneficial use criteria.

10. State-Approved Liner Systems: In promulgating the CCR rule, EPA established liner design criteria that failed to include liner systems that state regulatory bodies have found to be acceptable for CCR units. This means, for example, some CCR units that

[16] *See* 80 Fed. Reg. at 21353.

are considered to be "lined" under applicable state CCR requirements are nonetheless classified as "unlined" under the CCR rule, subjecting those CCR units to extremely burdensome requirements not imposed on lined units and, in some circumstances, including mandatory closure requirements.[17] Given that the WIIN Act now allows the CCR rule to be imposed through enforceable state permit programs, this disregard for acceptable state liner requirements is at odds with the Administration's principles of federalism. Therefore, EPA should modify the rule at 40 C.F.R. § 257.71 to allow for a determination that a CCR unit with an existing state-approved liner system qualifies as a lined CCR unit under the rule.

11. Definition of Beneficial Use: In promulgating the definition of "beneficial use" at 40 C.F.R. § 257.3, EPA mistakenly relied on a mathematical error in calculating the volume of CCR beneficially used in an unencapsulated manner that triggers the need to make an environmental safety demonstration. While the rulemaking record shows that the volume threshold triggering this requirement should have been 75,000 tons, EPA mistakenly calculated the number to be 12,400 tons. The Agency's refusal to correct this figure despite its awareness of the error unnecessarily burdens power companies attempting to beneficially use CCR. EPA should therefore amend the definition of "beneficial use of CCR" at 40 C.F.R. § 257.53 such that the fourth condition applies only to unencapsulated uses exceeding 75,000 tons of CCR.[18]

12. Aquifer Location Restrictions as Applied to Existing Impoundments: In the final Rule, EPA subjected all existing impoundments to a location restriction requiring that the base of the unit be five feet above the uppermost aquifer. *See* 40 C.F.R. § 257.60(a).[19] Failure to meet this requirement mandates closure of the unit. Because this mandatory closure requirement does not allow for the consideration of site-specific considerations, this requirement should be modified to provide the permitting authority with the ability to provide an alternative compliance option other than mandatory unit closure.

B. Federal CERCLA Financial Responsibility Standards

Another rulemaking with potentially severe impacts on our industry in the ORCR within OLEM is the pending rulemaking to establish and impose financial assurance standards pursuant to CERCLA § 108(b) on the electric power generation, transmission and distribution industry.[20] EPA's rulemaking is intended to protect the federal government from having to pay for cleanups caused by an insolvent company. The Agency insisted on moving forward with the regulatory

[17] *See id.* at 21370 (finding that the State of Florida's criteria for a liner system does not qualify as a "liner" under the federal CCR rule).
[18] This issue also is the subject of litigation brought by USWAG and other industry petitioners challenging aspects of the CCR rule. *See USWAG et al. v. EPA*. No. 15-1219 (D.C. Cir.).
[19] This issue also is part of the CCR litigation. *See USWAG et al. v. EPA*. No. 15-1219 (D.C. Cir.).
[20] 82 Fed. Reg. 3512 (Jan. 11, 2017).

process to determine whether to impose these requirements on the electric utility industry (along with the chemical manufacturing and petroleum and coal products manufacturing industries) even though USWAG and others submitted comments on an earlier Advance Notice of Proposed Rulemaking ("ANPRM") indicating that utilities pose little to no risk of defaulting on their financial responsibilities due to the nature of their business.

Electric utilities are stable companies, have strong balance sheets, an extremely low rate of insolvency and have not historically shifted cleanup costs to federal or state programs. The utility industry does not have a history of failing to cover remediation costs, health assessments and natural resource damages. As such, the risk that the federal government would need to cover costs associated with the release of hazardous substances at utilities facilities is extremely low.

The imposition of financial assurance requirements on electric utilities would force utilities to spend unnecessary funds, impeding job creation, limiting growth and increasing costs to customers. Additionally, the costs of these regulations will far exceed their benefits; utilities will in all likelihood be forced to pay significant funds for financial responsibility instruments which will far exceed any nominal benefit that this extra protection will provide. EPA should determine that a rulemaking establishing CERCLA financial assurance obligations for the electric utility industry is unnecessary and indicate that it will not impose these requirements on the electric utility industry.

C. Revisions to RCRA Hazardous Waste Generator Requirements

A final rule that imposed numerous stringent changes to a federal regulatory program of broad applicability without commensurate improvements in environmental safety is the hazardous waste generator improvements final rule that also originated in OLEM's ORCR.[21] One of the most problematic aspects of the final rule is that in the preamble of the rule EPA "clarified" that states were not permitted to provide relief for the consolidation of hazardous wastes from remote or unstaffed sites. EPA provided a limited form of relief for this type of consolidation in the final rule and maintained that state programs that had provided other types of commonsense relief for the same concerns were not permitted under the hazardous waste regulations.[22] Specific states have already provided relief allowing the consolidation of unknown wastes by postponing hazardous waste determinations until waste is received at a staffed facility or authorizing the direct transfer of hazardous waste to central locations. A similar problem exists in the preamble discussion of episodic waste generation where EPA suggests that the relief the rule offers is the only relief available for episodic generation events. The discussion ignores the fact that some states have used their enforcement discretion to not penalize those facilities that are out of compliance due to abnormal hazardous waste generation patterns. In both these instances state programs have provided a functional, pragmatic approach that is as environmentally protective as any other regulatory option. EPA's failure to

[21] 81 Fed. Reg. 85732 (Nov. 28, 2016).
[22] *Id.* at 85776.

acknowledge these alternative approaches necessarily undermines RCRA-delegated states and their role as the primary regulator for facilities located within their jurisdictions.

While the statements made in the final rule relating to the consolidation of hazardous waste and the limited relief offered for episodic waste generation, the final rule also contains dozens of other revisions that make a mature regulatory program more stringent without providing environmental benefit. These revisions including imposing (i) onerous re-notification requirements, (ii) drastically increasing the penalties associated with generator compliance, and (iii) expanding and unnecessarily making the preparedness, prevention and emergency response procedures that apply to small and large quantity generators more stringent. EPA should withdraw interpretations in the final rule that eliminate state discretion and should withdraw those components of the rule that make the already functional RCRA program more stringent.

Another issue not included in the recent hazardous waste generator improvements final rule but that directly impacts hazardous waste generators is the unduly limited nature of the trivalent chromium exemption. This is the exemption at 40 C.F.R. § 261.4(b)(6)(i) for potentially hazardous wastes that meet the toxicity characteristic for chromium. The exemption allows specific wastes that contain chromium that is exclusively (or nearly exclusively) trivalent chromium (and meet other specific conditions) to be exempt from hazardous waste regulation. Unfortunately, this exemption is limited to only a few specific waste streams and generators of other wastes including utility boiler chemical cleaning wastes are required to submit a petition to their RCRA regulator in order to obtain the same relief for the same type of chromium. EPA should expand the trivalent chromium exclusion to cover all waste streams that meet the conditions of the exemption.

D. Federal Standards for the Aboveground Storage of Hazardous Substances

Another pending rulemaking originating in EPA's OLEM but within its OEM is the development of regulations to cover the aboveground storage of hazardous substances. While the Agency has provided very few details about how it will proceed with this rulemaking, we are concerned that the developed regulations will be largely redundant and/or inconsistent with the many varieties of state regulatory programs that already effectively protect releases and discharges from the same types of facilities and substances that the federal program will eventually cover. We are also concerned that the upcoming federal regulations will be unnecessarily proscriptive and not allow for performance-based controls that facility owners/operators will be able to tailor to the unique characteristics of their facilities. Duplicative, inconsistent or proscriptive regulations could inhibit job creation, be unnecessary, or have costs that exceed their expected benefits for facilities subject to these pending federal rules.

E. Federal PCB Regulations

Over the course of the past four decades, USWAG has engaged with EPA on the development, implementation, and enforcement of the federal regulations applicable to the use

and disposal of polychlorinated biphenyls ("PCBs"). This work has included commenting over the years on EPA requests for public input in connection with the Agency's periodic retrospective review of rules that may be "outmoded, ineffective, insufficient, or excessively burdensome."[23] In response to such a request in 2015, USWAG submitted written comments identifying several provisions that continue to impose unnecessary administrative and financial burdens on the regulated community far in excess of any environmental benefit. USWAG incorporates those 2015 comments (attached hereto as "Attachment A") by reference herein, and addresses certain of these issues in greater detail below.

Note that all of the PCB-focused regulatory provisions discussed below involve the disposal of PCBs, falling under the purview of ORCR and therefore requiring consideration by OLEM. In some cases as noted below, these issues also relate to the use of PCBs, overseen by OPPT, and therefore warrant consideration by OCSPP and/or coordination between OLEM and OCSPP.

1. Disposal of PCB Remediation Wastes: EPA has found that PCB remediation wastes found at concentrations of < 50 ppm PCB can be disposed of in non-TSCA landfills, including MSWLFs, without presenting an unreasonable risk of injury to health or the environment. The federal PCB disposal regulations, when considered as a whole, implicitly acknowledge and allow for this.[24] However, over the years the Agency has developed policy that restricts the option to dispose of as-found < 50 ppm PCB remediation waste in a non-TSCA landfill—an option that is not only cost effective but which the Agency has found to present no unreasonable risk[25]—to as-found < 50 ppm PCB remediation wastes generated under a particular PCB cleanup option (the "self-implementing clean-up option," 40 C.F.R. § 761.61(a)). That flawed policy illogically requires *identical* < 50 ppm PCB remediation wastes to be disposed of in TSCA landfills, at far greater expense and frequently involving long-distance transport of the PCB remediation wastes, if those wastes are generated under other cleanup options. This disparity in the treatment of different categories of < 50 ppm PCB remediation wastes has no basis in TSCA or the PCB regulations, nor from an environmental or health risk perspective. Nonetheless, compliance with this policy imposes significant and wholly unnecessary costs on the regulated community and can complicate and extend cleanup efforts.

   In light of conflicting EPA policy and in order to provide USWAG members some level of regulatory certainty, and at EPA's suggestion, USWAG applied in 2012 for a risk-based disposal approval expressly authorizing the disposal of certain non-liquid

[23] 80 Fed. Reg. 12372 (Mar. 9, 2015); Docket ID No. EPA-HQ-OA-2011-0156.
[24] *See* 40 C.F.R. § 761.50(b)(3) ("PCB remediation waste … is regulated for cleanup and disposal in accordance with § 761.61"); § 761.61 ("Any person cleaning up and disposing of PCBs under this section shall do so based on the concentration at which PCBs are found").
[25] *See* 68 Fed. Reg. 4934, 4937 (Jan. 31, 2003) (acknowledging that < 50 ppm PCB remediation waste "has little inherent potential to pose an unreasonable risk to health or the environment").

PCB remediation wastes found at concentrations below 50 ppm in MSWLFs and other non-TSCA facilities. The final approval document,[26] issued to USWAG members in June 2014 pursuant to 40 C.F.R. § 761.61(c), is based on EPA's finding that such disposal presents no unreasonable risk to health or the environment. EPA has issued a similar risk-based disposal approval expressly authorizing the disposal of certain as-found < 50 ppm PCB remediation waste to members of the National Rural Electric Cooperative Association ("NRECA").[27] While these approvals have provided members of USWAG and NRECA with some level of comfort in the absence of clarified Agency policy or regulations, the approvals are limited in scope and, in many cases, the problematic policy EPA has articulated in the past still imposes disparate disposal standards on different categories of waste that are identical in terms of PCB content and from a risk perspective.

EPA should therefore clarify the PCB disposal regulations at 40 C.F.R. §§ 761.50 to expressly allow for the disposal of all PCB remediation wastes with as-found concentrations of < 50 ppm PCB in non-TSCA landfills. This clarification should make clear that this non-TSCA disposal option applies equally to PCB remediation wastes generated under the PCB Spill Cleanup Policy as well as PCB remediation wastes generated under the PCB spill cleanup options at 40 C.F.R. § 761.61. This modification would also require the revision of EPA's PCB Question and Answer manual to revise or remove responses that are based on flawed policy regarding the disposal of as-found < 50 ppm PCB remediation waste.[28]

2. Analysis of PCB Remediation Wastes: EPA's PCB disposal regulations specify particular analytical methods that must be employed when extracting samples of PCB wastes for purposes of determining appropriate disposal options and cleanup verification. In particular, the regulations specify the use of a traditional soxhlet extraction procedure (Method 3540) rather than the equally effective, significantly faster and much more cost-effective automated soxhlet extraction method (Method 3541). EPA's own labs acknowledge the advantages of Method 3541, and Method 3541 is routinely used by EPA in other contexts including Superfund cleanups. There is no scientific, environmental, or risk-based rationale for not allowing the regulated community to use the automated soxhlet extraction method to analyze PCB content under the federal PCB program. Accordingly, EPA should modify the PCB analytical rules throughout 40 C.F.R. Part 761 and including 40 C.F.R. §§ 761.61(a)(5)(B)(iv), 761.253, 761.272, 761.292, 761.358 and 761.395 to expressly authorize the use of the most recent EPA-approved extraction method available for the chemical extraction of PCBs from individual and composite samples (currently Method 3541).

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[26] Available online at https://www.epa.gov/pcbs/nationwide-risk-based-pcb-remediation-waste-disposal-approvals-under-title-40-code-federal (current as of May 8, 2017).
[27] *Id.*
[28] *See* EPA PCB Question and Answer Manual (June 2014) at 48.

3. Satellite Accumulation of PCBs: There is a need to amend EPA's PCB regulations to accommodate the on-site accumulation of small amounts of PCB wastes to facilitate the cost-effective management and off-site disposal of these materials. EPA provides this waste management option under the federal hazardous waste program (referred to as "satellite accumulation"), but the Agency has never promulgated a similar common sense accumulation provision under the federal PCB program. The absence of this regulatory option imposes unnecessary costs and operating challenges for the accumulation of small amounts of PCB waste. Therefore, EPA should amend 40 C.F.R. § 761.65 to include a "satellite accumulation" provision patterned after the provision in RCRA's hazardous waste rules that allows for streamlined management of small amounts of PCBs stored for disposal.

4. Amendments to PCB Regulations Applicable to Natural Gas Pipelines (for consideration by OLEM (ORCR) and OCSPP (OPPT)): EPA's PCB rules regulate the presence of PCBs in natural gas pipeline systems, including requiring owners/operators to identify any "potential source" of PCBs in the system.[29] The term "source" of PCBs has long been erroneously and unnecessarily applied to certain types of natural gas equipment. The regulations also impose conditions for characterizing and then controlling the "abandonment" of pipeline systems at the end of their useful lives.[30] These use and abandonment requirements can be extremely burdensome and impractical. Moreover, they are unnecessary when the owner/operator of the pipeline system can otherwise demonstrate that the pipeline system does not contain PCBs. Currently, however, there is no clear method within the regulations for owners/operators to make such a demonstration and bypass the unwarranted use and abandonment requirements.

   EPA should therefore modify the regulations for PCBs in natural gas pipeline systems at 40 C.F.R. §§ 761.30(i) & 761.60(b)(5) to establish a method for owners/operators to demonstrate that the pipeline system does not contain PCBs at regulated levels and to thereafter be excluded from the use and abandonment/disposal requirements for PCBs in natural gas pipelines. In addition, EPA should clarify and limit the scope of the term "potential sources" at 40 C.F.R. § 761.30(i) to eliminate the unnecessary evaluation of components of pipeline systems that do not serve as potential sources of PCBs into the system. Note that, because these issues arise under both the PCB use regulations (administered by OCSPP's OPPT) and the PCB disposal regulations (administered by OLEM's ORCR), these issues require coordination between OLEM and OCSPP.

5. Allow PCB Bulk Product Waste or PCB Bulk Remediation Waste for Storage up to 180 days in a Container: To facilitate the remediation of PCB-contaminated sites, EPA's current PCB regulations at 40 C.F.R. § 761.65(c)(9) allow for the on-site

[29] *See* 40 C.F.R. § 761.30(i)(1)(iii)(A).
[30] *See id.* at § 761.60(b)(5).

storage of PCB bulk remediation wastes or PCB bulk product wastes for up to 180 days if the waste is managed in piles meeting specified performance standards. However, a significant shortcoming in this regulation is that the management option is limited exclusively to the storage of PCB wastes in a "pile," and does not include any other type of unit. As a practical matter, facilities can more readily manage PCB bulk remediation wastes or PCB bulk product wastes (such as dirt and debris, coal tar wrap, or components of pipe removed during natural gas pipeline construction activities) in roll-offs and other similar containers. Management of PCB bull remediation wastes or PCB bulk product wastes in these types of containers is common in the utility industry and, in fact, allows for more secure management with far less potential for releases to the environment. The Agency's unfortunate interpretation of the 180-day storage provision, restricting the availability of this regulatory option to wastes managed in a pile, significantly undermines the utility of this provision and has no basis from a risk perspective. While USWAG members have succeeded in securing individual risk-based storage approvals to store PCB remediation wastes such as contaminated pipe in roll-offs for 180 days, such approval is applied for and granted on a case-by-case and/or company-by-company basis—representing a waste of both company and administrative resources. EPA should correct this deficiency in the rule by amending 40 C.F.R. § 761.65(c)(9) to include the storage of PCB bulk remediation wastes and PCB bulk product wastes in "PCB Containers," as that term is defined in 40 C.F.R. § 761.3.

In addition, there are circumstances where the most practical and environmentally sound option for managing bulk PCB remediation wastes or PCB bulk product wastes generated in the field is to bring the materials back to a company-owned site (that is, not the site of generation) for storage prior to off-site disposal in a qualified TSCA disposal facility. The current regulations (at § 761.65(c)(1)) allow for temporary storage of such materials for only thirty days. This is often insufficient time to allow for the cost-effective storage of PCB bulk remediation wastes or PCB bulk product wastes prior to off-site disposal. This is true, for example, in cases where utilities conduct pipeline related-operations where coal tar wrap or segments of pipe are removed. In fact, EPA Region 2 has recognized the appropriateness of extended storage of these materials, leading it to issue a risk-based disposal approval under 40 C.F.R. § 761.62(c) allowing a USWAG member to store coal tar wrap at a service center for up to 180 days. The approval reflects EPA's conclusion that, provided certain conditions are met, such storage will not pose an unreasonable risk of injury to health or the environment. Because the storage of PCB bulk remediation wastes and PCB bulk product wastes at a site other than the point of generation for greater lengths of time (*i.e.*, up to 180 days) will not present an unreasonable risk of injury to health or the environment, USWAG recommends that EPA amend its storage for disposal regulations at 40 C.F.R. § 761.65 to expressly authorize such storage.

II. OAR Regulations Warranting Repeal, Replacement or Modification

A final rule developed several years ago warranting immediate modification and/or clarification is EPA's final rule establishing operational and emission controls for units identified as commercial and industrial solid waste incineration ("CISWI") units.[31] The rule establishes standards for CISWI units which are identified by statute as those units that "combust[] any solid waste."[32] USWAG has long maintained that several types of materials have been historically introduced into utility boilers, including boiler cleaning waste and refined coal, as a practical way to manage material without increasing emissions and to reduce the emissions of certain contaminants, respectively. Due to the nature of this material, boiler cleaning waste and refined coal are not being combusted as EPA has defined combustion in other contexts[33] and therefore should not trigger CISWI regulation. USWAG sought confirmation on this point through the CISWI rulemaking, and EPA responded to this comment by requesting that we submit this issue directly to the Agency outside the scope of the rulemaking.[34] Accordingly, USWAG submitted a request for an interpretation on these materials on November 4, 2013. EPA has not yet provided a response to this request.

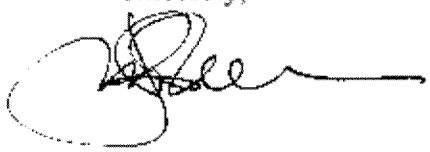
The evaporation of boiler cleaning waste in utility boilers is a practical, cost-effective method for managing materials that are mostly or entirely water-based. Requiring shipments of what can be over a million gallons of this material increases transportation costs and emissions as well as costs associated with more expensive and inefficient downstream management. These inefficiencies inhibit growth for our industry and imposes costs far exceeding benefits. The use of refined coal whereby inorganic materials are added to coal to reduce the resulting air emissions of burning coal provides tremendous benefit given the significant reduction in air emissions from this operation. EPA's failure to provide guidance exempting these practices from CISWI regulation is particularly egregious given that Congress, recognizing the need to provide policy support for the use of refined coal, provides a tax credit for these operations.[35] The Agency should respond to our nearly three-and-a-half-year-old request for an interpretation by clarifying that boiler cleaning waste and refined coal do not trigger CISWI regulation when introduced into utility boilers.

* * * * *

[31] 78 Fed. Reg. 9112 (Feb. 7, 2013).
[32] 42 U.S.C. § 7429(g)(1).
[33] See Keith Barnett, EPA Environmental Engineer, Combustion in A Cement Kiln and Cement Kilns' Use of Tires as Fuel, EPA-HQ-OAR-2002-0051-3582 (April 25, 2011).
[34] See Summary of Public Comments and Responses for Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste, EPA-HQ-OAR-2003-0119-2686, at 320-321.
[35] 26 U.S.C. §§ 45(c)(7)&(e)(8).

USWAG appreciates the opportunity to submit comments on the implementation of EO 13777. If you have questions regarding the above comments, please contact me or USWAG counsel Douglas Green (202-344-4483) at Venable LLP.

Sincerely,



James Roewer
Executive Director
Utility Solid Waste Activities Group

Samantha Dravis
US EPA

Attachment A

USWAG UTILITY SOLID WASTE ACTIVITIES GROUP

c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004-2696
202-508-5645
www.uswag.org

April 8, 2015

VIA ELECTRONIC DELIVERY AT WWW.REGULATIONS.GOV

Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460
Attn: Docket ID No. EPA-HQ-OA-2011-0156

Re: Comments on Improving EPA Regulations;
Docket ID No. EPA-HQ-ORD-2011-0391;
80 Fed. Reg. 12372 (March 9, 2015)

To whom it may concern:

The Utility Solid Waste Activities Group ("USWAG") submits these comments to the Environmental Protection Agency ("EPA" or the "Agency") in response to EPA's request for public input on the Agency's periodic retrospective review of its regulations. 80 Fed. Reg. 12372 (Mar. 9, 2015). USWAG appreciates EPA's effort to undertake a retrospective analysis of rules that may be "outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with what has been learned," in keeping with Executive Orders 13563 and 13610. *Id.* These comments identify certain regulations that EPA has established for polychlorinated biphenyls ("PCBs") under 40 C.F.R. Part 761 that warrant review as part of this effort.

USWAG, formed in 1978, is a consortium of approximately 130 electric utilities, power producers, utility operating companies, and utility service companies located throughout the country, including the Edison Electric Institute ("EEI"), the American Gas Association ("AGA"), the American Public Power Association ("APPA"), and the National Rural Electric Cooperative Association ("NRECA").[1] Together, USWAG members represent more than 73% of the total

[1] EEI is the principal national association of investor-owned electric power and light companies. AGA is the principal national association of investor-owned natural gas utilities. APPA is the national association of publicly-owned electric utilities. NRECA is the national association of rural electric cooperatives. Throughout these comments, we refer to our industry as the "utility" or "electric utility" industry. This term is intended to include those portions of the industry and those USWAG members that generate electricity but do not directly provide electricity to the public and are technically not "utilities."

electric generating capacity of the United States, and service more than 95% of the nation's consumers of electricity and 92% of the nation's consumers of natural gas.

For the past three and a half decades, USWAG has worked with EPA on the development and implementation of the federal PCB regulations applicable to electric and gas company operations. USWAG has raised each of the issues discussed below with EPA on prior occasions and in other contexts; we appreciate the opportunity to comment on these regulations once more in the context of EPA's efforts to review and improve its existing regulations in order to address regulations that may be outdated, inefficient, duplicative, or overly burdensome.

These comments address the following PCB regulatory issues:

- Need for inclusion in regulatory text of all PCB extraction methods approved for use in EPA Method 8082 in connection with PCB gas chromatography analysis;
- PCB waste storage issues arising under § 761.65;
- Need for a regulatory avenue for the deregistration of PCB Transformers from the PCB Transformer Registration Database under § 761.30;
- Batch testing authorizations under § 761.60(g); and
- Need for regulatory relief options for PCB cleanups during and following natural disasters.

These issues are discussed in detail below.

* * * * *

1. Inclusion of EPA SW-846 Method 8082-Approved PCB Extraction Methods in PCB Regulations

EPA's PCB regulations in several places require the use of specific PCB extraction methods for chemical analysis, including EPA Method 3500B/3540C, "or methods validated under subpart Q" of the PCB regulations. *See*, *e.g.*, 40 C.F.R. § 761.61(a)(5)(i)(B)(*iv*); 40 C.F.R. § 761.253(a); 40 C.F.R. § 761.272; 40 C.F.R. § 761.292; 40 C.F.R. § 761.358; and 40 C.F.R. § 761.395(b)(1). As currently written, validation of any non-enumerated extraction method – including methods that EPA has approved for PCB extraction in other contexts – under subpart Q requires a comparison study be conducted as prescribed in 40 C.F.R. § 761.326. This time-consuming (requiring 60-day notice to EPA; *see* 40 C.F.R. § 761.320, 40 C.F.R. § 761.81(i)(1)) and potentially resource-intensive effort is wholly unnecessary for those methods that EPA has already approved for use in other PCB extraction contexts (*e.g.*, Method 3541, automated Soxhlet extraction method).

Each of the regulatory provisions cited above references EPA Method 8082, "Polychlorinated Biphenyls (PCBs) by Capillary Column Gas Chromatography" of SW-846 ("Method 8082"), as a method for gas chromatography ("GC") analysis of PCBs.[2] Method 8082, in turn, provides at section 2.1.2 that "[s]olid samples may be extracted with hexane-acetone (1:1) or methylene chloride-acetone (1:1) using Method 3540 (Soxhlet), Method 3541 (automated Soxhlet), Method 3545 (pressurized fluid extraction, Method 3546 (microwave extraction), Method 3550 (ultrasonic extraction), Method 3562 (supercritical fluid extraction), or other appropriate technique or solvents." Therefore, EPA regulations requiring the use of GC for PCB analysis *already allow* for the use of the methods enumerated in Method 8082 (though not expressly called out in the text of the regulations themselves) in connection with these chemical analyses.

However, as currently written, the regulatory text addressing chemical extraction methods suggests that any extraction methods other than Method 3500B/3540C may only be used after a subpart Q comparison study has been conducted. The result is the waste of time and resources, both on the part of the party undertaking the comparison study and the Agency in reviewing the petition required under subpart Q. This is especially true given that EPA has already evaluated and approved the methods enumerated in Method 8082 as appropriate for PCB extraction in connection with PCB GC analysis.

EPA should therefore amend the existing regulatory text to expressly include among available extraction methods "any extraction method allowed under Method 8082 from SW-846, as that method may be revised." This approach will not only provide clarity under the existing regulatory structure but will also allow for adaptability as other methods may be added to Method 8082 going forward.

In the alternative and at a minimum, if EPA is for some reason unwilling to make this change, EPA should modify each reference to chemical extraction cited above to expressly allow for the use of Method 3541, automated Soxhlet extraction, in connection with GC analysis for purposes of disposal. EPA has acknowledged the comparable effectiveness and increased speed of this method relative to other analytical methods, stating in the summary document for Method 3541 that "[t]he method uses a commercially available, unique, three stage extraction system to achieve analyte recovery comparable to Method 3540, but in a much shorter time," and that "[i]t has been statistically evaluated at 5 and 50 µg/g of Arochlors 1254 and 1260, and found to be equivalent to Method 3540 (Soxhlet Extraction)." EPA, "Method 3541: Automated Soxhlet Extraction,"

[2] Note that the most current version of Method 8082 is Method 8082A (Feb. 2007); references in these comments to Method 8082 include Method 8082A and any subsequent revisions of this method.

summary document at Section 1.1.[3] In another context – approving a petition by the Oak Ridge National Laboratory requesting the use of the SOXTEC extraction system (Method 3541) in place of the conventional Method 3540 for the preparation of PCB samples – EPA stated that "these preparative techniques [Method 3541 and Method 3540] are equivalent, within allowable standard deviation limits," adding that Method 3541 "actually proved to be the superior technique when time constraints were considered, taking only 2 hours for sample preparation vs. 17 hours for [Method 3540]." *See* EPA Letter from D. Friedman, Chief, OSW-Methods Sections, to U.S. EPA Region IV, RCRA Online No. 13187 (May 31, 1988).

If EPA is unwilling to amend all of the regulatory references to PCB extraction methods to include Method 8082-approved methods, the Agency should at a minimum expressly allow the use of Method 3541 (or the most current version of that method) as an available alternative to Methods 3500B/M3540C.

2. PCB Waste Storage Issues (40 C.F.R. § 761.65)

A. Satellite Accumulation

EPA should develop a satellite accumulation provision for PCB wastes under 40 C.F.R. § 761.65 to allow for extended on-site storage of small volumes of PCB wastes, provided certain volume limitations (*e.g.*, a 55-gallon drum) and storage and marking conditions are met. This would prevent the impractical, costly, and inefficient scenario created by the current rules, which require transport off-site of small volumes of PCB wastes (*e.g.*, only two or three articles in a drum) simply because of the short storage for disposal time limits. Further, this approach to efficient waste accumulation has precedent in EPA's existing hazardous waste regulations.

Specifically, a PCB satellite accumulation rule could be patterned after the satellite accumulation provision in EPA's Resource Conservation and Recovery Act ("RCRA") regulations. This RCRA provision allows a generator of hazardous waste to accumulate 55 gallons of hazardous waste at or near the point of generation where such wastes initially accumulate and where such activity is under the control of the generator. *See* 40 C.F.R. § 262.34(c)(1). Further, the RCRA provision requires that the storage containers be (1) in good condition and not leaking; (2) made of or lined with a material that is compatible with the waste so that the ability of the container to hold the waste is not impaired; (3) kept closed, except when it is necessary to add additional wastes to the container; and (4) marked with the words "hazardous waste" (in the PCB context, the container could be marked with the M_L label or the words "PCB Waste"). *See id.* A PCB

[3] Available online at http://www.epa.gov/sam/pdfs/EPA-3541.pdf.

satellite accumulation rule modeled after RCRA's satellite accumulation rule would allow for far more efficient management of PCB waste while remaining protective of human health and the environment.

B. Storage of PCB Bulk Product and Bulk Remediation Wastes

Under the current regulations, qualified PCB wastes may be stored at the clean-up site or site of generation in a pile for up to 180 days, provided the waste meets certain conditions, including wind dispersion controls and liner requirements to prevent runoff and migration from the waste. 40 C.F.R. § 761.65(c)(9). On its face, the regulatory text refers to a "pile" and, as a result, EPA guidance suggests that the management of qualifying PCB wastes in a roll-off or any other type of container is automatically precluded from qualifying for this management option. This has been the case even where such units meet or exceed the performance-based standards referenced above. *See* EPA 2014 PCB Q and A Manual at 114-15. There is no risk-based justification for a blanket prohibition on PCB wastes stored in roll-offs or other types of containers qualifying for this management option, provided of course that the regulation's performance-based standards are met.

Therefore, USWAG recommends that EPA clarify in the regulatory text or in interpretive guidance that the rule is intended to encompass roll-offs, containers, and similar devices meeting the performance standards set forth in 40 C.F.R. § 761.65(c)(9). Alternatively, USWAG recommends that EPA amend the regulatory text to specifically reference such units.

In addition, USWAG urges EPA to extend the 180-day accumulation provision to scenarios where isolated pieces of electrical equipment from off-site, intra-company sources are consolidated at a central collection facility meeting the performance standards in 40 C.F.R. § 761.65(c)(9). EPA should also amend the regulations to allow for 180-day storage in drums and roll-offs of PCB bulk product and remediation wastes generated off-site by intra-company sources. This would allow for the efficient consolidation of isolated PCB-containing electrical equipment in the field while further promoting PCB reduction efforts.

C. Storage of Non-Liquid PCB Wastes

The secondary containment and berm requirements set forth at 40 C.F.R. § 761.65(b)(1) for the storage of PCB wastes are presumably designed to prevent the release of PCB *liquid* wastes from storage areas. However, non-liquid PCB wastes, such as bulk PCB remediation wastes and PCB bulk product wastes, do not present the same run-off concerns as PCB liquid wastes and therefore do no necessitate the secondary containment controls built into the current regulations. EPA should amend 40 C.F.R. § 761.65(b)(1) to expressly provide that the

secondary containment and berm requirements do not apply to non-liquid PCB wastes. This would facilitate establishment of more cost-efficient storage areas that would, in turn, encourage non-liquid PCB waste cleanup and remediation.

D. Clarification of Thirty-Day Temporary Storage Provision for PCB Wastes

The existing regulatory provision regarding 30-day temporary storage for PCB wastes (40 C.F.R. § 761.65(c)(1)) is in need of clarification to make plain that the provision's requirement to prepare an SPCC plan for containers holding liquid PCBs at ≥ 50 ppm applies *only* if such a plan would otherwise be required under the applicable SPCC regulations (*e.g.*, the SPCC threshold volumes are exceeded and releases from the facility could reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines). In the context of other storage for disposal practices, EPA has used explicit language to indicate that the preparation and implementation of an SPCC plan is required. *See* 40 C.F.R. § 761.65(c)(7)(ii). In contrast, the regulatory language in 40 C.F.R. § 761.65(c)(1) directs that an owner/operator of a temporary 30-day storage unit shall prepare an SPCC plan "in accordance" with the SPCC regulations, meaning that the requirements attach *only* when the threshold and location criteria triggering an SPCC plan have been met.

Unfortunately, the regulatory language referenced above ("in accordance with") has created persistent confusion on this issue. Clarification is necessary to increase regulatory certainty and to relieve the regulated community of the inordinate resource burden associated with designing an SPCC program for 30-day temporary storage locations in circumstances that simply do not warrant these types of controls. There is no risk-based or practical reason to apply SPCC protections to the storage of small volumes of PCB wastes that pose no risk to navigable waters of the United States and that would not other trigger the SPCC controls – and so there is no risk-based or practical reason to withhold clarification of the regulatory language that has created regulatory uncertainty. Even if, for some reason, EPA does construe this regulatory language as mandating the creation of an SPCC plan for the 30-day temporary storage of PCB liquids when an SPCC plan would not otherwise be required, then EPA should amend the regulations to explicitly state that such plans are *only* required when the SPCC threshold volume and location criteria are met.

3. Creation of Regulatory Avenue for Deregistration of PCB Transformers from PCB Transformer Registration Database (40 C.F.R. § 761.30)

USWAG has been working with EPA for several years to improve both the accuracy and the clarity of the Agency's PCB Transformer Registration Database. While EPA has undertaken efforts to correct inaccurate records in the Database,

the lack of a regulatory avenue for *deregistration* of PCB Transformers results in unnecessary administrative burden as well as a misleading Database.

To resolve this confusion, we suggest that EPA establish a procedure under 40 C.F.R. § 761.30(a)(1)(vi) to ensure removal from the PCB Transformer Database, at the owner's request, of PCB Transformers removed from service for disposal or reclassified to non-PCB Transformer status. This regulatory avenue for deregistration should be optional, at the election of the PCB Transformer owner, but should require EPA to remove from the PCB Transformer Database all PCB Transformers for which a deregistration request is properly made. This will reduce confusion regarding the current universe of PCB Transformers and make the PCB Transformer Database a more useful tool for regulators, legislators, local response agencies, and the public.

4. Modification of Batch Testing Authorization (40 C.F.R. § 761.60(g))

Also in need of amendment are the batch testing rules set forth at 40 C.F.R. § 761.60(g). These rules require updating to reflect the assumptions incorporated in 40 C.F.R. 40 C.F.R. § 761.2 in the 1998 disposal amendments. Specifically, 40 C.F.R. § 761.60(g) needs to be amended to allow for batch testing of mineral oil from equipment identified in the 1998 disposal amendments as non-PCB (*i.e.*, post-1979 electrical equipment, small transformers, and rectifiers) with mineral oil from equipment that was previously presumed to be non-PCB (*i.e.*, circuit breakers, reclosers, and oil-filled cable).

This change could be accomplished by modifying the last sentence in 40 C.F.R. § 761.60(g)(1)(i) to read, in relevant part: "If dielectric fluid from untested, oil-filled circuit breakers, reclosers, cable, electrical equipment manufactured after July 2, 1979, transformers with less than three pounds of fluid, or rectifiers is collected in a common container with dielectric fluid from other oil-filled electrical equipment, the entire contents of the container …" This revision would update the batch testing rules so that they conform with the 1998 disposal amendments, and would serve to eliminate unnecessary confusion.

5. Provision for PCB Regulatory Relief During Natural Disasters

Ten years ago, in the wake of the devastation wrought by Hurricane Katrina, USWAG worked with EPA to identify ways to provide regulatory relief for PCB cleanups in other circumstances involving natural disasters. In response, EPA issued enforcement discretion guidance (Attachment A) that outlined risk-based relief in the form of cleanup and disposal standards for damaged electrical equipment and related spills resulting from either Hurricane Katrina or Hurricane Rita. This guidance was critical because, as EPA correctly recognized, the traditional method for obtaining such relief – namely, through a risk-based

variance request under 40 C.F.R. § 761.61(c) – would not be practical from a timing or administrative resources perspective in times of natural disasters, where immediate action is required.

While this relief proved helpful to USWAG members responding to those particular hurricanes, it was limited in scope and duration, expiring at the end of 2005 and applying only to events caused by those storms. More recent disasters such as severe snow, ice, and wind storms throughout the country, hurricanes in the Gulf region, and wildfires on the west coast have made clear that the type of emergency situation necessitating prompt and straightforward regulatory relief for facilities attempting post-storm cleanups is bound to recur year after year. As requested in 2008 (Attachment B) and reiterated in comments to this docket in 2011, USWAG urges EPA to develop guidance similar to the temporary relief issued in 2005, but broader in scope and available for use during and immediately after any natural disaster meeting specified conditions, without prior notice to or approval from EPA. This would remove significant barriers to the timely and cost-effective restoration of power following severe natural weather events.

* * * * *

USWAG appreciates the opportunity to provide input as EPA pursues this important effort. Please contact USWAG counsel Allison Foley (202-344-4416) or Douglas Green (202-344-4483) at Venable LLP with questions regarding these comments.

Respectfully submitted,

James R. Roewer
Executive Director

Attachment A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 09 2005

4APT-TS

Mary E. Davis
American Electric Power
501 N. Allen Avenue
Shreveport, LA 71101

Dear Ms. Davis:

The enclosed guidance addresses cleanup of polychlorinated biphenyls (PCBs) spills from electrical equipment damaged by Hurricanes Katrina and Rita, and management of the damaged equipment. This guidance was developed based on input from your organization as well as from others who are engaged in cleanup and recovery efforts in the wake of the hurricanes

We hope that you find this guidance useful. EPA recognizes the challenges faced by those engaged in hurricane-related cleanup and recovery efforts. We believe that this guidance addresses the needs of those dealing with damaged electrical equipment that may contain PCBs, and spills from such equipment. Based on the information we currently have, we do not believe that additional regulatory flexibility or emergency relief is needed.

Please feel free to share this guidance with utilities throughout the hurricane impacted areas. The guidance will remain in effect through the remainder of this calender year.

Should you or any of your utility industry colleagues have questions about the enclosed guidance, please contact your Regional PCB coordinator. Contact information for the Regional PCB coordinators may be found at www.epa.gov/pcb.

Sincerely,

Jesse Baskerville
Acting Director
Air, Pesticides and Toxics
Management Division

Enclosure

bc: Lou Roberts, EPA Region 6
Maria Doa, OPPT

Guidance for Addressing Spills from Electrical Equipment

EPA's is providing the following guidance for addressing spills from electrical equipment damaged by Hurricane Katrina or Hurricane Rita. Areas of primary federal concern include the proper disposal of electrical equipment containing PCBs (i.e., distribution transformers and capacitors). EPA recognizes that individuals, contractors or others involved in removing electrical equipment or utilities restoring electrical service in areas damaged by Hurricane Katrina or Hurricane Rita face difficult circumstances that may impede full compliance. However, in any event, you should take the actions set forth below to the extent feasible.

Efforts to restore the damaged areas to their pre-disaster condition often involve removing or repairing damaged electrical equipment. There may be a natural tendency at this stage to overlook certain hazards, such as those associated with PCBs, that are not immediately life threatening. However, such hazards are serious and may manifest themselves many years from the time of exposure and should be taken into consideration. Given the health hazards associated with PCBs, adequate measures should be taken during emergency situations to minimize exposure.

This guidance remains in effect through December 31, 2005, and applies only to damage and spills resulting from Hurricane Katrina and Hurricane Rita. The guidance in this document supersedes the PCB guidance in EPA's "DEMOLITION GUIDANCE FOR STRUCTURALLY UNSOUND BUILDINGS DAMAGED BY HURRICANE KATRINA."

To the extent feasible, efforts should be made to perform the following steps:

Identifying Downed Electrical Equipment Which May Contain PCBs

Caution! Downed electrical equipment including transformers may still be energized which could cause injury. De-energized capacitors and batteries may still contain a charge.

Downed electrical equipment may contain PCBs

- Generally, transformers that were mounted on utility poles are liquid filled and some may contain PCBs.
- Air cooled or dry type transformers do not contain PCBs.
- In the absence of identifying information, it is best to assume a transformer may contain PCBs. To screen transformers for the presence of PCBs, you can use a field screening test kit. A positive test indicates the potential presence of PCBs. A negative test indicates no presence of PCBs.
- The location of the downed equipment should be identified using e.g., GPS, some kind of visual marker along with a log book with descriptive locations, etc., because this will help you address future clean-up of any spill associated with the downed equipment.

Handling the Electrical Equipment

- If the electrical equipment is intact, it can be stored for reuse, preferably in a clean, dry area.

  If the electrical equipment has a small leak that can be controlled so that no additional liquid leaks from the unit, it can be stored for repair and reuse after controlling the leak, preferably in a clean, dry area.

- Intact electrical equipment and equipment that has small leaks that have been controlled can then be shipped without a manifest to a repair facility for evaluation and repair.

- If the electrical equipment has significant leaks, any remaining liquid should be drained into a non-leaking container. If the field screening test kit indicates the liquid contains PCBs, the container should be labeled with the PCB M_L as containing PCB liquids, and ultimately sent to a chemical or hazardous waste incinerator for disposal. The drained electrical equipment carcass should be disposed properly.

  If containers with drained liquids must be stored temporarily, they should be placed on hard surface areas, such as a concrete or asphalt parking lot for no more than 90 days.

  If the leaking electrical equipment cannot be drained, the electrical equipment should be placed in shipping containers, or covered roll-offs with a poly liner or sorbent material to prevent further spread of the spill, intermodal containers with a poly liner or sorbent material to prevent further spread of the spill, or other weather-tight containers.

  If these containers must be stored temporarily, they should be placed on hard surface areas, such as a concrete or asphalt parking lot, for no more than 90 days

- Electrical equipment from parties unable to manage their equipment may be consolidated at electrical utility-owned locations or other temporary storage or staging areas.

Handling the Spill

- Where possible, temporary measures should be implemented to prevent, treat, or contain further releases or mitigate migration to the environment of PCBs.

- Where possible, the location of the spill should be identified to determine if it correlates with downed equipment. Where possible, the boundaries of the spill area should be identified with paint or flags to facilitate future clean-up. Generally, after the equipment has been sent to the repair facility, the presence and concentration of PCBs in the

equipment is determined. This information can be used to address the spill. If the PCB concentration in the equipment was greater than 50 ppm, you should clean-up the spill.

- All soil with visible traces of the spill should be excavated and placed in weather-tight containers, such as a covered and lined roll-off or intermodal container.

  If these containers must be stored temporarily, they should be placed on hard surface areas, such as a concrete or an asphalt parking lot for no more than 90 days.

- The excavated material should be disposed in a TSCA or hazardous waste landfill.

- If the spill is the result of an empty or leaking piece of equipment which has not been tested, some testing of the soil may be necessary to identify if PCBs are present. If PCBs are present in the excavated material, the waste should be sent to a TSCA or hazardous waste landfill.

For further information, please contact the EPA Regional PCB Coordinator for your area.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 1 2005

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: OECA Concurrence on Guidance for Addressing Spills from Electrical Equipment

FROM: Granta Y. Nakayama
Assistant Administrator

TO: Susan B. Hazen
Principal Deputy Assistant Administrator
Office of Prevention, Pesticides, and Toxics Substances

Thank you for taking the lead in addressing the evolving environmental issues associated with returning electrical service to areas of the Gulf Coast affected by Hurricane Katrina and Hurricane Rita. We have reviewed your supplemental guidance titled "Guidance for Addressing Spills from Electrical Equipment" and I concur with the issuance of the guidance.

The issuance and use of the guidance is clearly necessary to serve the public interest in this wide-spread emergency and no other mechanism can adequately address the situation within the stipulated timeframe. Therefore, I am also granting a no action assurance from the PCB regulations issued pursuant to Section 6(e) of the Toxic Substances Control Act for persons operating under the terms, conditions and limitations of the guidance. This exercise of enforcement discretion is effective immediately and will continue until midnight on December 31, 2005. Any person conducting operations under the guidance would need to be able to demonstrate the applicability of the guidance to their situation and that their actions are consistent with the terms and conditions of the guidance. Persons operating under this guidance also need to take any necessary actions to protect public health and safety.

If any questions arise concerning this exercise of enforcement discretion, they should be referred to Mr. Gerald Stubbs at (202) 564-4178.

Attachment B

Utility Solid Waste Activities Group
c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004-2696
202-508-5645
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USWAG

October 27, 2008

VIA ELECTRONIC AND CERTIFIED MAIL

Mr. Matthew Hale
Director, Office of Solid Waste
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code: 5301P
Washington, DC 20460

RE: PCB Regulatory Relief During Natural Disasters

Dear Mr. Hale:

During your visit with the USWAG PCB Committee in April, we discussed the need for the development of guidance that would provide practical PCB regulatory relief in times of natural disasters. Three years ago, in the wake of the devastation wrought by Hurricane Katrina, USWAG worked with EPA to identify ways to provide similar relief for PCB cleanups in other circumstances involving natural disasters. At the time, we sought relief in the form of risk-based guidance that provided streamlined PCB sampling and storage options that would become effective during a range of natural disasters including, but not limited to, hurricanes, tornadoes, earthquakes, floods, ice storms, and wildfires.

In response, EPA issued enforcement discretion guidance (enclosed) that outlined risk-based relief in the form of cleanup and disposal standards for damaged electrical equipment and related spills resulting from either Hurricane Katrina or Hurricane Rita. This guidance was necessary because EPA appropriately recognized that the traditional method for obtaining such relief – namely, through a risk-based variance request under 40 C.F.R. § 761.61(c) – would not be practical or useful in times of natural disasters where immediate action is required. While this relief proved helpful in our response to those particular hurricanes, it was limited in scope and duration, expiring at the end of 2005, and applying only to events caused by those storms.

As recent storms such as Hurricanes Gustav, Hanna, and Ike have demonstrated, the type of emergency situation, brought on by Katrina and Rita, necessitating regulatory relief for utilities attempting post-storm cleanups, is one that is certain to recur every year. Hurricane Ike alone was responsible for power outages affecting nearly 4 million customers throughout Louisiana, Arkansas, Ohio, Kentucky, and Texas. According to the Department of Energy, nearly one-fourth of both Kentucky and Texas lost power during the storm.[1] Such massive power outages will continue to arise as a result of other natural events as well, as demonstrated by the recent wildfires in California and flooding throughout the Midwest. Given the inevitability and unpredictability of natural disasters and the importance of responding quickly and safely to damage and spills resulting from those disasters, we urge the Office of Solid Waste to issue guidance similar to the temporary relief issued in 2005, but broader in scope and available for use during and immediately after *any* natural disaster meeting specified conditions, without prior notice to or approval from EPA. Enclosed please find the list of conditions we believe would be appropriate for such emergency regulatory relief guidance; this is the same list we submitted to EPA in the Fall of 2005.

USWAG would be pleased to work with EPA in developing this emergency regulatory relief guidance. Issuance of this guidance is crucial, as utilities and municipalities across the country will need this assistance in helping to restore power to millions of customers in an efficient and environmentally sound manner following storms and other natural disasters. Thank you for your attention to this matter. We look forward to speaking with you regarding this important issue.

Sincerely,

James Roewer
Executive Director

Enclosures

cc: David Hockey, Branch Chief
EPA Office of Solid Waste Corrective Actions Programs

[1] See Department of Energy Hurricane Ike Situation Report #3 (Sept. 15, 2008), available online at http://www.oe.netl.doe.gov/docs/2008_SitRep_3_Ike_091508_10AM.pdf.