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R. Condray/k
J. Craddock

Part III

Environmental Protection Agency

**Polychlorinated Biphenyls (PCBs); Use in
Electrical Equipment; Court Order on
Inspection and Maintenance**

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[TS FRL 1773-3, OPTS 62014]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment; Court Order on Inspection and Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related court order and enforcement notice.

SUMMARY: On October 30, 1980, the U.S. Court of Appeals for the District of Columbia Circuit ruled, in relevant part, that regulations issued by EPA which characterized intact, non-leaking transformers, capacitors, and electromagnets containing polychlorinated biphenyls (PCBs) as "totally enclosed" for purposes of section 6(e) of the Toxic Substances Control Act (TSCA) were unsupported by the rulemaking record and remanded the regulations to EPA for further consideration. In response to a motion by EPA and certain other parties to the case, the Court issued an Order on February 12, 1981 requiring EPA to undertake rulemaking concerning the use of PCBs in electrical equipment and staying issuance of the Court's mandate for a period of eighteen months. During the period of the stay, the existing PCB regulations will remain in effect with the additional requirement that certain owners and users of transformers containing 50 parts per million (ppm) of PCBs or greater must undertake certain inspection and maintenance procedures known as the Interim Measures Program.

DATES: The Interim Measures Program for inspection and maintenance of PCB Transformers and PCB Contaminated Transformers goes into effect on May 11, 1981.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. Toll free: (800-424-9065), In Washington, D.C. (554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 6(e) of the Toxic Substances Control Act (TSCA) prohibits all manufacture, processing, distribution in commerce, and use of PCBs after July 1,

1979. The statute sets forth only limited exceptions to this broad prohibition. Section 6(e)(2) provides that EPA may allow the continued use of PCBs in a "totally enclosed manner". A "totally enclosed manner" is defined to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." Section 6(e)(2) also allows EPA to authorize, by rule, the continued use of PCBs in a manner other than in a "totally enclosed manner" if EPA finds such use "will not present an unreasonable risk of injury to health or the environment."

EPA promulgated regulations under 40 CFR Part 761, published in the Federal Register of May 31, 1979 (44 FR 31514), to implement section 6(e) of TSCA. The regulations designated all intact, non-leaking, electrical capacitors, electromagnets, and non-railroad transformers as "totally enclosed", thus permitting their continued use. The regulations also defined "PCB" for purposes of section 6(e) as PCBs in concentrations of 50 ppm or greater, thus excluding manufacturing, processing, distribution in commerce, and use of PCBs in concentrations below 50 ppm from regulation.

The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review three aspects of these PCB regulations, including the determination that intact, non-leaking transformers, capacitors, and electromagnets are "totally enclosed" and the 50 ppm cutoff for applicability of the regulations (*Environmental Defense Fund, Inc. v. Environmental Protection Agency*, No. 79-1580). On October 30, 1980 the Court rendered its decision. The Court found that the Agency did not have an adequate rulemaking record to support the determination that the use of PCB-containing transformers, capacitors, and electromagnets are "totally enclosed" uses of PCBs or to support the 50 ppm regulatory cutoff. The Court remanded these parts of the regulations to EPA for further action.

The effect of the Court's October 30, 1980 decision, once the mandate issues, would be to make the continued use of PCB-containing transformers, capacitors, and electromagnets and the continued manufacture, processing, distribution in commerce, and use of PCBs below 50 ppm a violation of section 6(e) of TSCA subjecting the persons involved in these activities to possible EPA enforcement actions or citizen suits under section 20 of TSCA.

Certain industry representatives had intervened in the *EDF v. EPA* case. They filed petitions for rehearing which were denied on December 15, 1980. On December 19, 1980, EPA, EDF, and certain intervenors asked the Court to stay its mandate until January 21, 1981 to allow the parties and others to reach agreement on such further rulemaking by EPA as might be necessary. The Court granted this request. During the period of this stay, EPA, EDF, the intervenors, and other interested persons from industry held extensive discussions to mutually develop a Joint Motion to submit to the Court.

On January 21, 1981, EPA, EDF, and certain intervenors from industry filed the Joint Motion with the Court asking for an eighteen-month stay of the Court's mandate with respect to the part of the decision which set aside the classification of transformers, capacitors, and electromagnets as totally enclosed. During the period of the stay, EPA would undertake a rulemaking relating to the use of PCBs in electrical equipment beginning with an Advance Notice of Proposed Rulemaking (ANPR). In addition, the Edison Electric Institute (EEI), through the Utility Solid Waste Activities Group (USWAG), agreed to undertake the development of some of the factual material necessary for further rulemaking. The movants agreed on certain interim, risk-reduction measures that could be taken with respect to transformers containing PCBs at 50 ppm or greater and suggested that the Court make these measures a condition of the eighteen-month stay. The movants indicated to the Court that the stay would be necessary in order to avoid the adverse impacts of the decision. If the mandate issued, persons who had been adhering to the PCB regulations would have found themselves in violation of section 6(e) of TSCA. Transformers and capacitors are widely used by electric utilities and industry for efficient energy transmission. Sudden cessation of their use would cause substantial dislocation. On February 12, 1981, the Court granted the requests of the Joint Motion and entered an Order.

The January 21, 1981 Joint Motion also requested a stay of that portion of the decision which set aside the 50 ppm regulatory cutoff. For the use of transformers, capacitors, and electromagnets with PCBs in concentrations below 50 ppm, the stay would be eighteen months. For all other manufacturing, processing, distribution in commerce, and use of PCBs below 50 ppm the Joint Motion requested a stay of only thirty days. This was because, as of

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the time of the January 21, 1981 Joint Motion, a program for further action by EPA in response to the 50 ppm issue had not been developed. The Court granted this 30-day stay in its February 12, 1981 Order, and during the period of the stay, EPA, EDF, and industry representatives developed a plan which was submitted to the Court in another Joint Motion on February 20, 1981. The Court has not yet acted on the February 20, 1981 Joint Motion. If the Court grants the February 20, 1981 Joint Motion, EPA will publish further notices in the Federal Register discussing the 50 ppm problem. As of the present time, the stay with respect to the 50 ppm cutoff is still in effect.

II. The Court's February 12, 1981 Order

The text of the Court's Order of February 12, 1981 is set forth at the end of this Notice. The Order has a number of requirements as follows:

A. Stay of the Mandate

The Court's Order stays the mandate of the Court insofar as it set aside the classification of transformers, capacitors, and electromagnets containing PCBs in concentrations of 50 ppm or greater as totally enclosed uses of PCBs for a period of eighteen months. In other words, the Court does not allow the effect of its decision to take place for eighteen months. This means that the PCB regulations promulgated on May 31, 1979 regarding this classification (40 CFR 761.30) remain in effect for the duration of the stay. Thus, those persons who use such transformers, capacitors, and electromagnets may continue their use during the period of the stay as long as they comply with the May 31, 1979, PCB regulations and with the Interim Measures Program, detailed in the Court's Order. In addition, the use of transformers, capacitors, and electromagnets containing PCBs in concentrations below 50 ppm may continue during the stay because the stay also retains the 50 ppm regulatory cutoff for such equipment. During the stay EPA will be considering what action to take with respect to all PCBs in electrical equipment, including equipment with PCBs in concentrations below 50 ppm.

B. The EEI/USWAG Study

The Court's Order directs EEI, through USWAG, to undertake a factual study of the usage of PCBs in equipment used by the electric utility industry, the propensity of such equipment to leak or rupture, and an analysis of the feasibility of various measures to reduce or eliminate the risk of PCB contamination from such equipment. The details of the study are set forth in

Appendix A to the Court's Order and are discussed more fully in the related ANPR which follows this Notice.

C. EPA Rulemaking for PCBs in Electrical Equipment

The Court's Order requires EPA to publish an ANPR relating to the use of PCBs in electrical equipment. The ANPR appears in today's Federal Register following this Notice. The Order also requires EPA to promulgate a final rule within six months of receipt of the EEI/USWAG study. This rulemaking activity is discussed more fully in the ANPR. Each person potentially affected by the Court's decision is encouraged to read and comment upon the ANPR.

D. Further Action by the Court

The Order provides that, if EEI or EPA fails to comply with the Order, any party may apply to the Court for appropriate relief, including immediate issuance of the Court's mandate. Immediate issuance of the mandate would place most users of PCB-containing transformers, capacitors, and electromagnets in violation of section 6(e) of TSCA. EPA does not anticipate that this circumstance will occur. However, if the EEI study and the request for information in the ANPR do not produce information sufficient to enable EPA to pursue rulemaking for PCB-containing electrical equipment, it is possible that EPA or another party would return to the Court seeking a change in the stay and possibly the issuance of the mandate.

III. The Interim Measures Program

Section 6(e)(2) of TSCA prohibits the use of any PCBs unless the use has been authorized by EPA or determined by rule to be "totally enclosed". As noted above, the Court set aside EPA's determination that transformers, capacitors, and electromagnets are totally enclosed. Since EPA has not authorized the use of PCBs in such units, section 6(e)(2) would prohibit the use of any transformer, capacitor, or electromagnet containing any PCBs in the absence of the Court's stay.

The Court stayed for a period of eighteen months the effectiveness of that portion of its decision which set aside EPA's designation of intact, non-leaking transformers, capacitors, and electromagnets as totally enclosed uses of PCBs. However, that stay was granted only for those persons who institute the risk reducing activities of the Interim Measures Program. The full text of the Interim Measures Program appears as Appendix B to the Court's Order. The major requirements of the program are as follows:

1. PCB Transformers (those that contain 500 ppm PCBs or greater) and PCB-Contaminated Transformers (those that contain between 50 ppm and 500 ppm PCBs) posing an exposure risk to food and feed products must be inspected for leaks once every week.
 2. All other PCB Transformers must be inspected for leaks at least once every three months.
 3. Any "moderate leak" discovered by the inspection must be repaired and cleaned or the transformer replaced beginning within 2 days from the time the leak is observed. Moderate leaks from transformers posing an exposure risk to food or feed products must be reported to EPA within 5 days from the date the leak is observed.
 4. Records must be kept of the following:
 - (a) The location of each transformer subject to the Program.
 - (b) The date of each inspection and the name of the inspector.
 - (c) All leaks observed.
 - (d) A description of all servicing on the transformer after the date of the first inspection.
- These requirements go into effect on May 11, 1981. This means that the first inspection of transformers posing an exposure risk to food or feed products must be completed by May 18, 1981, and the first inspection of other transformers subject to this Program must be completed by August 10, 1981.

A. Applicability

1. Which transformers are subject to these requirements? The requirements of the Interim Measures Program apply to all transformers containing PCBs in concentrations of 500 ppm or greater and to those transformers containing PCBs in concentrations of 50 ppm or greater which pose an exposure risk to food or feed products. Anyone complying with all applicable requirements of the Interim Measures Program may continue to use capacitors, electromagnets, and other transformers containing PCBs in compliance with the existing PCB regulations. EPA encourages owners and users of any PCB-containing equipment to perform voluntary inspections or institute other appropriate risk reduction measures to avoid exposure of humans or the environment to PCBs.

The weekly inspection requirement applies to any transformers containing PCBs in concentrations of 50 ppm or greater and "posing a risk of exposure to food and feed products." Included in this category is any transformer used in a facility manufacturing, processing, packaging or holding human food or

animal feed, or in any federally inspected meat, poultry product, and egg product establishment. The weekly inspection requirement applies to transformers in a location such that a discharge of the dielectric fluid could contaminate the food or feed products or processes. It does not apply to transformers in retail establishments such as grocery stores and restaurants. Because of the peculiar risks presented by the ingestion of PCBs, EPA intends to interpret the phrase "posing an exposure risk to food and feed products" very broadly. Although it does not include establishments such as paperboard manufacturers whose products may be sold to food packagers, or facilities manufacturing, processing or storing agricultural chemicals or fertilizers, it does include any establishment whose product(s) will be ingested by humans or animals, including additives. If there is any doubt whether or not a transformer poses an exposure risk to food and feed products, the weekly inspection and maintenance should be performed.

2. Who is responsible for these requirements? The owner of the PCB-containing transformer has the obligation to comply with the Interim Measures Program. There is one exception to this obligation. A user, who is not the owner, of a PCB Transformer or PCB-Contaminated Transformer which poses an exposure risk to food or feed products, has the obligation to comply with the Interim Measures Program until the user has informed the owner that the transformer poses an exposure risk to food or feed products.

B. Effect on Existing Agency PCB Regulations

The Interim Measures Program supplements, but does not replace, existing Agency regulations and policies regarding PCBs, including the marking and disposal regulations in 40 CFR Part 761. Thus, existing Agency rules and policies regarding PCBs are not changed by the Program. For example, under the regulations, transformers, capacitors, and electromagnets that are leaking or otherwise not intact are not totally enclosed and cannot lawfully be used. Compliance with the Interim Measures Program does not change this restriction. The existing regulation provides that any uncontrolled discharge of PCBs constitutes disposal. The requirement in the Interim Measures Program to begin servicing any leak within two days does not change the fact that the leak, while occurring, is an illegal disposal of PCBs. Of course, the Agency will take into account compliance with the Interim Measures Program, including prompt servicing and reporting, when

determining the appropriate enforcement response. Additionally, under the existing regulations, intact, non-leaking transformers, capacitors, and electromagnets sold for purposes other than resale before July 1, 1979 can be distributed in commerce under 40 CFR 761.30. This exception will continue to be available for owners of equipment used pursuant to the Interim Measures Program.

C. Enforcement

EPA intends to enforce the Interim Measures Program and the PCB regulations vigorously. Compliance will be monitored by all means legally available to the Agency. This includes inspections pursuant to section 11 of TSCA. Persons who are not in strict compliance with the Interim Measures Program cannot claim the benefits of the Court's stay. The use of PCBs in transformers, capacitors, and electromagnets by persons not complying with both the Interim Measures Program and the regulations is a violation of section 6(e) of TSCA. Thus, continued use of PCB-containing transformers, capacitors, and electromagnets in violation of either the Interim Measures Program or the regulations in 40 CFR Part 761 is a violation of section 15 of TSCA for which the Agency can seek civil or criminal penalties under section 16 of TSCA. The Office of Enforcement is currently formulating guidelines for the assessment of civil penalties for violations of the Interim Measures Program.

D. Reporting

There is no required form for notices to the Agency required by the Interim Measures Program. The required information may be reported in letter form. Although it is not required by the Interim Measures Program, EPA requests that all notices to the EPA concerning transformer leaks contain the following information:

1. The cause of the leak and the total amount of dielectric fluid spilled.
2. The proximity of the transformer to areas where food or feed products are handled.
3. A brief description of the possible pathways for dielectric fluid from the transformer to reach food or feed products.
4. The type and amount of food or feed products contaminated, if any.
5. The steps taken to repair and clean up the leak and to assure proper disposal of all contaminated materials. Notices must be sent to the appropriate EPA Regional Office as follows:

Region 1

(Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)
Chief, General Enforcement Branch, Enforcement Division, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203

Region 2

(New Jersey, New York)

Chief, Toxic Substances Inspection Section, Surveillance and Analysis Division, Environmental Protection Agency, Raritan Depot, Woodbridge Avenue, Edison, New Jersey 08817.

Region 3

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Chief, Environmental Emergency Branch, Surveillance and Analysis Division, Environmental Protection Agency, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106

Region 4

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Chief, Toxic Substances Section, Air and Hazardous Materials Division, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Region 5

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Toxic Substances Coordinator, Air and Hazardous Materials Division, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Region 6

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Deputy Director, Surveillance and Analysis Division, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270

Region 7

(Iowa, Kansas, Missouri, Nebraska)

Chief, Toxics and Pesticides Enforcement Section, Air & Hazardous Materials Division, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106

Region 8

(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Chief, Field Operations Section, Pesticides and Toxic Substances Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 1800 Lincoln Street, Denver, Colorado 80295

Region 9

(Arizona, California, Hawaii, Nevada)
 Chief, Hazardous Materials Section,
 Enforcement Division, Environmental
 Protection Agency, 215 Fremont Street, San
 Francisco, California 94105

Region 10

(Alaska, Idaho, Oregon, Washington)
 Chief, Pesticides and Toxic Substances
 Branch, Air and Hazardous Materials
 Division, Environmental Protection Agency,
 1200 6th Avenue, Seattle, Washington,
 98101.

E. Recordkeeping

There is no specified format for records required by the Interim Measures Program. The information may be kept in any form as long as all the required information is available.

IV. Text of the Court's February 12, 1981 Order

Upon consideration of the joint motion filed by respondent, petitioner, and certain intervenors on January 21, 1981, to stay further the issuance of the mandate in this case, it is

Ordered: By the Court, that the mandate of the Court is stayed for a period of eighteen months insofar as the decision of the Court set aside the regulation promulgated by the Environmental Protection Agency (classifying the use of intact, non-leaking, PCB-containing transformers, capacitors, and electromagnets as uses of PCBs in a "totally enclosed manner;") 40 CFR 761.30 (44 FR 31530, 31531, 31548-9); this stay shall apply only where those claiming the benefit of the stay comply with any applicable requirements of the Interim Measures Program attached as Appendix B to this Order.

Further Ordered: That the mandate of the Court, insofar as the decision of the Court set aside the regulation promulgated by the Environmental Protection Agency defining "PCBs" (for purposes of the statutory prohibition on further manufacture, processing, distribution in commerce, and use of PCBs) as PCBs in concentrations of 50 parts per million or greater, 40 CFR 761.2(x) (44 FR 31444), is stayed for the following periods:

With respect to use of PCBs in transformers, capacitors, and electromagnets, for a period of eighteen months;

With respect to all other manufacture, processing, distribution in commerce and use of PCBs, for a period of thirty days.

Further Ordered: That Intervenor Edison Electric Institute undertake the actions set out in Appendix A to this Order.

Further Ordered: That Respondent Environmental Protection Agency publish in the Federal Register within three weeks after the date of this Order, an Advanced Notice of Proposed Rulemaking relating to the use of PCBs in electrical equipment.

Further Ordered: That Respondent Environmental Protection Agency promulgate a final rule with respect to the use of electrical equipment containing PCBs within six months of receipt of the material set out in Appendix A.

Further Ordered: That if the Edison Electric Institute or the Environmental Protection Agency fails to comply with the orders of this Court set out above, any party may apply to the Court for appropriate relief, including the immediate issuance of the Court's mandate.

Further Ordered: That the parties submit to the Court a status report on October 1, 1981.

Per Curiam

For the Court:

George A. Fisher,
 Clerk.

Appendix A—Proposal To Supply EPA With Information for Rulemaking on Uses of PCBs by the Electric Utility Industry

Intent to Provide Information

To assist EPA in the development of an adequate rulemaking record for the regulation of PCBs, USWAG will retain independent contractor(s), acceptable to EPA and EDF,¹ to conduct a study on current PCB usage in utility equipment.² This study will address the effects of the use of PCB-containing equipment on human health and the environment. It is expected that data will be supplied on: types of electrical equipment; leakage phenomena, including the incidence and magnitude of leaks; feasibility of containment, inspection and maintenance; and feasibility of transformer and capacitor phase out. Additionally, several other areas of inquiry will be included, such as the impact of a regulatory cutoff above or below 50 ppm; the health effects of PCBs; a pathway analysis for PCBs that may be released into the environment from electrical systems; nonelectrical materials potentially containing PCBs;

¹ To insure the timely commencement of the study, EPA and EDF will promptly respond as to the acceptability of the contractor(s) proposed.

² Other uses of similar equipment by other industries may vary and for this reason will not be covered. In addition, other equipment containing PCBs, such as small capacitors, that is used more broadly throughout the industrial, commercial and residential sectors will not be included.

and viable substitutes for PCBs. Finally, an overall economic analysis would be developed to reflect both costs incurred to date to comply with the TSCA-PCB regulations as well as the incremental costs of new regulatory approaches.³

It is contemplated that the study will be completed within nine months and portions of it will be submitted to EPA prior to that time.⁴ If it appears that USWAG will be unable to complete Tasks 1 through 4 below within nine months despite good faith efforts to do so, it may request of EPA and EDF an additional period of up to three months for its work. EPA and EDF will not unreasonably withhold their consent to such extension, after considering USWAG's efforts to date and the circumstances which USWAG believes necessitate the extension.

Scope of the Information Gathering Effort

The scope of information gathering will be divided into several discrete tasks, as set forth below.

1. **Compilation of a complete listing of all types of electrical equipment that contain mineral oil or other fluid containing PCBs.** The first task will be to list and quantify such equipment, describe its use, geographical location,⁵ and distribution of ranges of PCB concentrations. Descriptions of equipment maintenance procedures and of measures taken for worker protection also will be provided. The inventory of equipment will include: transformers, capacitors, electromagnets, electrical switches, voltage regulators, and underground cable systems as well as any other utility equipment identified as containing PCBs. A complete narrative on each category of equipment will be provided covering its function, configuration and chemical content.
2. **Frequency of leaks or ruptures.** For purposes of the study, "leak" will be

³ In addition to the information contained in the study, USWAG reserves the right to submit to EPA such other studies, information, and data (e.g., problems of testing and development of testing protocols) as USWAG believes are necessary or appropriate to further rulemaking.

⁴ Since some brief period of time will be necessary to engage consultants and develop sampling protocols following acceptance of the scope of work by the parties, the study period should commence no later than two months following the issuance of a stay of mandate by the Court. It is contemplated that Task 1 would be completed within three months of the commencement of the study and Task 2, with respect to PCB Capacitors and PCB Transformers, would be completed within six months of the commencement of the study.

⁵ Geographical location shall include not only various geographical regions of the United States but also various types of terrain (e.g., deserts, swamps, near or over waterways).

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defined quantitatively. Leaks may be described as small, as moderate or as ruptures.⁶ Small leaks include all instances in which a PCB Article has any PCBs on any portion of its external surface, but no PCBs have run off the surface of the PCB Article.⁷ Moderate leaks include instances in which a leak results in any quantity of PCBs running off the surface of the PCB Article. Initially, ruptures will mean leaks causing immediate cessation of equipment function, although other definitions may be applied. For each type of electrical equipment, an attempt will be made to determine the frequency of leak or rupture, the volume of liquid lost, equipment type, and geographical location. These leaks may conform to a frequency distribution of magnitude according to different variables. Equipment type, geographic location, age and electrical loading (to the extent data are available) are factors to be evaluated. The relationship between equipment failure and subsequent leaking will be studied.

3. *Feasibility of a program to contain, inspect and maintain different electrical equipment items.* This task will be to identify a number of inspection and maintenance programs and to provide costs estimates and technological feasibility evaluations with respect to each program. Variables to be considered may include electrical equipment type, geographical location, and potential for exposure to different concentrations and quantities of PCBs. At a minimum, the following programs shall be evaluated:

(a) A program to provide complete containment of any PCBs which might leak from each category of electrical equipment identified in Task 1.

(b) A program to inspect visually, at various frequencies ranging from weekly to annually, all items within each category of electrical equipment for leakage and to correct all moderate leaks detected.⁸

4. *Feasibility of a phase-out program for transformers and capacitors.* The approach to this effort will be similar to the feasibility of inspection, maintenance and containment as described above.⁹ Alternative approaches will be assessed, including the following:

(a) 2, 5, 10 and 20-year phase outs of PCB Transformers.

(b) 2, 5, 10 & 20-year phase outs of PCB-Contaminated Transformers.

⁶Further differentiations of leaks may be necessary.

⁷"PCB Article" is defined at 40 CFR 761.2(f).

⁸The evaluation will also reflect the viability of substitutes.

(c) 2, 5, 10 & 20-year phase outs of PCB Capacitors.⁹

In this aspect of the study, the availability of replacement equipment and liquids will be examined, as well as their suitability,¹⁰ the availability of storage and disposal facilities, and the feasibility of reducing or eliminating PCB concentrations by retrofitting.¹¹ An attempt also will be made to analyze the effect an increased demand for replacement equipment may have on prices.

5. *Literature Search.* A comprehensive literature search and review of the health effects of PCBs will be undertaken and an attempt will be made to assess the risks posed by phenomena such as small leaks and ruptures.

6. *Pathway analysis.* An attempt will be made to examine the environmental pathways that PCBs could take if they escape from electrical equipment. Conditions reflecting normal operation of transformers and capacitors will be evaluated, as well as those involving equipment that has exploded or otherwise suddenly released PCB-containing fluid into the environment. For example, volatility and transport mechanisms (such as surface water drainage, groundwater infiltration and ground cover embodiment and/or release) will be considered.

7. *Non-electrical system sources of PCBs.* The study will also seek to determine the risks and benefits of permitting the continuation of certain non-enclosed uses of PCBs, such as burning of fuel oil.

Sampling Procedures

The study must reflect a statistical approach that assures a high degree of confidence in the validity of the results.

EPA and EDF Review

It is contemplated that EPA, EDF, USWAG and the contractor performing the study will meet for progress reports periodically and with sufficient frequency to keep EPA and EDF abreast of the progress of the study. EPA and EDF, at their own expense, will have the right to review all underlying data generated in connection with the study. It is understood that identification of particular companies, facilities and locations may be masked. While it is not

⁹The time frames will be measured from January 1982.

¹⁰For example, it may be necessary to assess the toxicity and flammability of substitute fluids, in addition to developing data on the availability of equipment and raw materials.

¹¹In evaluating substitutes for PCBs, including retrofitting, the contractor performing the study shall seek and consider information from manufacturers of substitutes and independent servicing companies.

anticipated, review of the ongoing study may result in the need for additional information or for the refocusing of certain portions of this study. Such revisions may result in an extension of the completion date as set forth above.

Appendix B—Interim Measures Program

This document describes the interim measures required for all owners and users of PCB Transformers and certain owners and users of PCB-Contaminated Transformers who wish to continue to use, or store for reuse, transformers containing PCBs while EPA conducts further rulemaking with respect to PCB uses which the Agency previously had designated as "totally enclosed." To continue to use transformers containing PCBs during this interim period, owners and users of this equipment must comply with the requirements set forth in this document within sixty days after the publication by EPA of the Federal Register Notice announcing the Interim Measures Program or within ninety days after January 21, 1981 (the date of filing the Joint Motion for Further Stay of the Issuance of the Mandate), whichever is later.

I. Definitions

The following definitions apply to this document. The definitions which are part of EPA's PCB Ban Rule, 40 CFR Part 761, also apply to this document unless they are inconsistent with the definitions set forth below.

A. "leak" means any instance in which a PCB Unit has any PCBs on any portion of its external surface.

B. "moderate leak" means any leak which results in any quantity of PCBs running off or about to run off the external surface of the PCB Unit.

C. "PCB Unit" means any PCB Transformer or PCB-Contaminated Transformer in use or stored for reuse.

D. "posing an exposure risk to food and feed products" means any potential exposure of food and feed products to PCBs as defined below. PCB Units used by federally inspected meat, poultry product, and egg product establishments, as well as facilities manufacturing, processing, packaging or holding human food or animal feed, but excluding retail establishments such as grocery stores and restaurants, are considered to pose an exposure risk to food and feed products, unless the PCB Unit is in a location such that a discharge of the dielectric fluid cannot contaminate the food and feed products or processes.

E. "servicing" means repairing and cleaning or replacing the PCB Unit to eliminate the source of the leak.

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Cleaning of the PCB Unit means removing any unsolidified dielectric fluid on its external surface.

F. "visual inspection" means to investigate for any leak of dielectric fluid on or around the PCB Unit. A visual inspection should not require an electrical shutdown of the PCB Unit being inspected. The extent of the visual inspection will depend on the physical constraints of each PCB Unit installation.

II. The Following Procedures Must Be Followed With Respect to All PCB Units Posing an Exposure Risk to Food and Feed Products

A user of a PCB Unit posing an exposure risk to food and feed products shall notify the owner of the PCB Unit that the Unit poses an exposure risk to food and feed products. If the user fails to notify the owner, the user is responsible for the inspection, recordkeeping, reporting and servicing of the PCB Unit as set forth below.

The Owner of a PCB unit posing an exposure risk to food and feed products shall perform the following activities:¹²

A. A visual inspection of each PCB Unit posing an exposure risk to food and feed products shall be performed at least once every week.

B. All leaks shall be recorded. All moderate leaks shall be reported to the appropriate EPA regional office within five business days from the date the

leak is observed. If a PCB Unit is found to have a moderate leak, servicing is required and must commence within two business days from the date the leak is observed.

C. Records, containing inspection/servicing history, with respect to all PCB Units posing an exposure risk to food and feed products shall be maintained for a period of three years and shall be made available for inspection, upon request, by EPA. Such records shall contain the following information for each PCB Unit:

(1) Its location.

(2) The date of each visual inspection made of the Unit, together with an identification of the person performing the inspection.

(3) All leaks observed in the Unit, together with the date observed, and whether the leak was a moderate leak.

(4) A description of all servicing performed on the Unit commencing as of the date the Unit is first inspected pursuant to these Interim Measures, together with the date of such servicing.

D. Reports to EPA regional offices shall be in writing and shall contain the location of the PCB Unit involved, the date the moderate leak was observed, an estimate of the extent of the leak and a description of the servicing performed, including the date(s) of the servicing performed.

III. The Following Procedures Must Be Followed With Respect to All PCB Transformers in Use or Stored for Reuse Posing No Exposure Risk to Food and Feed Products

(All PCB Transformers Not Covered In Section II)

Owners of PCB Transformers in use or stored for reuse posing no exposure risk to food and feed facilities shall perform the following activities:

A. A visual inspection of each PCB Transformer posing no exposure risk to

food and feed products shall be performed at least once every three months.

B. All leaks shall be recorded. If a PCB Transformer is found to have a moderate leak, servicing is required and must commence within two business days from the date the leak is observed.

C. Records, containing inspection/servicing history, with respect to all PCB Transformers in use or stored for reuse shall be maintained for a period of three years and shall be made available for inspection, upon request, by EPA. Such records shall contain the following information for each PCB Transformer:

(1) Its location.

(2) The date of each visual inspection made of the PCB Transformer, together with an identification of the person performing the inspection.

(3) All leaks observed in the PCB Transformer, together with the date observed, and whether the leak is a moderate leak.

(4) A description of all servicing performed on the PCB Transformer commencing as of the date the PCB Transformer is first inspected pursuant to these Interim Measures, together with the date of such servicing.

IV. Related Rulemaking

Appearing immediately after this Notice is the Advance Notice of Proposed Rulemaking required by the Court's February 12, 1981 Order. Persons reading this Notice are encouraged to read the Advance Notice of Proposed Rulemaking which discusses EPA's future rulemaking regarding the use of PCBs in electrical equipment.

Dated: March 8, 1981.

Edwin H. Clark II,
Acting Assistant Administrator for Pesticides and Toxic Substances.

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BILLING CODE 5560-31-M

¹² If the owner of the PCB Unit is not the owner of the food and feed establishment, the owner of the PCB Unit shall have no obligation to perform the inspections required in this section, until the owner is notified by the establishment that the establishment is a food and feed facility or until the owner of the PCB Unit has other knowledge that the establishment is a food and feed facility. To inform food and feed establishments of the necessity of notifying owners of PCB Units used at their establishments, utilities undertake to mail to their commercial and industrial customers an announcement requesting food and feed establishments to contact the utility or other owner of the PCB Unit.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[TS FRL 1773-2; OPTS-82015]

Polychlorinated Biphenyls (PCBs); Use in Electrical Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: On October 30, 1980, the U.S. Court of Appeals for the District of Columbia Circuit ruled, in relevant part, that regulations issued by EPA which characterized intact, non-leaking transformers, capacitors, and electromagnets containing polychlorinated biphenyls (PCBs) as "totally enclosed" for purposes of section 6(e) of the Toxic Substances Control Act were unsupported by the rulemaking record and remanded the regulations to EPA for further consideration. In response to a motion by EPA and certain other parties to the case, the Court issued an Order on February 12, 1981 requiring EPA to undertake rulemaking concerning the use of PCBs in electrical equipment, beginning with this Advance Notice of Proposed Rulemaking, and staying issuance of the Court's mandate for a period of eighteen months during which time EPA will implement rulemaking activities.

DATES: Comments upon the issues raised in this Notice must be submitted by December 7, 1981.

ADDRESSES: All comments should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, D.C. 20460. Comments, preferably in triplicate, should include the docket number OPTS-82015. Comments received on this Notice will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Room 107 East Tower, EPA Headquarters, 401 M St. SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, Toll free: (800-424-8065), in Washington, D.C. (554-1404).

SUPPLEMENTARY INFORMATION: Appearing in today's Federal Register, immediately preceding this document is a Notice entitled "Polychlorinated Biphenyls; Use in Electrical Equipment;

Court Order on Inspection and Maintenance" which discusses the impact of an Order issued by the U.S. Court of Appeals for the District of Columbia Circuit in the case *Environmental Defense Fund, Inc. v. Environmental Protection Agency*, No. 79-1580. That Notice should be read before reading this Advance Notice of Proposed Rulemaking (ANPR) in order to better understand the issues discussed in this ANPR as well as the interim requirements placed upon persons who own or use PCB-containing transformers, capacitors, and electromagnets.

I. Background

As discussed in the "Court Order on Inspection and Maintenance," section 6(e) of TSCA prohibits all manufacture, processing, distribution in commerce, and use of PCBs after July 1, 1979. This statute sets forth only limited exceptions to this broad prohibition. Section 6(e)(2) provides that EPA may allow the continued use of PCBs in a "totally enclosed manner." A "totally enclosed manner" is defined to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." Section 6(e)(2) also allows EPA to authorize by rule the continued use of PCBs in a manner other than in a "totally enclosed manner" if EPA finds such use "will not present an unreasonable risk of injury to health or the environment." EPA promulgated regulations under 40 CFR Part 761, published in the Federal Register of May 31, 1979 (44 FR 31514), to implement section 6(e) of TSCA. The regulations designated all intact, non-leaking electrical capacitors, electromagnets, and transformers as "totally enclosed", thus permitting their continued use without regulation. The regulations also defined "PCB" for purposes of section 6(e) as PCBs in concentrations of 50 parts per million (ppm) or greater, thus excluding manufacturing, processing, distribution in commerce, and use of PCBs in concentrations below 50 ppm from regulation.

The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review three aspects of the PCB regulations, including the determination that intact, non-leaking transformers, capacitors, and electromagnets are "totally enclosed" and the 50 ppm cutoff for applicability of the regulations (*Environmental Defense Fund, Inc. v. Environmental Protection Agency*, No. 79-1580). In an October 30, 1980 decision in the case the Court

found that there was "no substantial evidence in the record to support" the Agency's classification of transformers, capacitors, and electromagnets as totally enclosed or the Agency's decision "to establish a regulatory cutoff at fifty ppm." The Court remanded these portions of the regulations to EPA for further action. The effect of the Court's decision would be to make the continued use of PCB-containing transformers, capacitors, and electromagnets and the continued manufacture, processing, distribution in commerce, and use of PCBs below 50 ppm a violation of section 6(e) of TSCA subjecting the persons involved in these activities to possible EPA enforcement actions or citizen suits under section 20 of TSCA.

On January 21, 1981, EPA, EDF, and certain industry intervenors in *EDF v. EPA* filed a Joint Motion with the Court asking for an eighteen-month stay of the Court's mandate with respect to the part of the decision which set aside the classification of transformers, capacitors, and electromagnets as totally enclosed. During the period of the stay, EPA would undertake a rulemaking relating to the use of PCBs in electrical equipment beginning with an ANPR. In addition, the Edison Electric Institute (EEI) through the Utility Solid Waste Activities Group (USWAG) would undertake the development of some of the factual material necessary for further rulemaking. In addition, the movants agreed on certain interim, risk-reduction measures that could be taken with respect to transformers containing PCBs at 50 ppm or greater and suggested that the Court make these measures a condition of the eighteen-month stay. The movants indicated to the Court that the stay would be necessary in order to avoid the adverse impacts of the decision. If the mandate issued, persons who had been adhering to the PCB regulations would have found themselves in violation of section 6(e) of TSCA. Transformers and capacitors are widely used by electric utilities and industry for efficient energy transmission. Sudden cessation of their use would cause substantial dislocation. On February 12, 1981, the Court granted the requests of the Joint Motion and entered an Order.

The January 21, 1981 Joint Motion also requested a stay of that portion of the decision which set aside the 50 ppm regulatory cutoff. For the use of transformers, capacitors, and electromagnets with PCBs below 50 ppm, the stay would be eighteen months. For all other manufacturing, processing, distribution in commerce, and use of

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PCBs below 50 ppm the January 21, 1981 Joint Motion requested a stay of only thirty days. This was because, as of the time of the Joint Motion, a program for further action by EPA in response to the 50 ppm issue had not been developed. The Court granted this 30-day stay in its February 12, 1981 Order, and during the period of the stay, EPA, EDF, and industry representatives developed a plan which was submitted to the Court in another Joint Motion on February 20, 1981. The Court has not yet acted on the February 20, 1981 Joint Motion. If the Court grants the February 20, 1981 Joint Motion, EPA will publish further notices in the Federal Register discussing the 50 ppm issue. As of the present time, the stay with respect to the 50 ppm cutoff is still in effect.

II. The Court's February 12, 1981, Order

The text of the Court's Order of February 12, 1981 is set forth at the end of the "Court Order on Inspection and Maintenance" appearing in today's Federal Register. The Order has a number of requirements as follows:

A. Stay of the Mandate

The Court Order stays the mandate of the Court insofar as it set aside the classification of transformers, capacitors, and electromagnets containing PCBs in concentrations of 50 ppm or greater as totally enclosed uses of PCBs. This means that the PCB regulations promulgated on May 31, 1979 regarding this classification (40 CFR 761.30) remain in effect for the duration of the stay. The terms of the stay and the Interim Measures Program are set forth in the "Court Order on Inspection and Maintenance". Interested persons should read that document for a complete discussion.

B. The EEI/USWAG Study

The Court's Order directs EEI, through USWAG, to undertake a factual study of the usage of PCBs in equipment used by the electric utility industry, the propensity of such equipment to leak or rupture, and an analysis of the feasibility of various measures to reduce or eliminate the risk of PCB contamination from such equipment. The details of the study are set forth in Appendix A to the Court's Order appearing at the end of the "Court Order on Inspection and Maintenance" Notice.

The study will begin within two months after February 12, 1981, the date of the Order. The study will be completed within nine months after it commences. However, EPA and EDF can agree to an extension of up to three months if necessary for completion of the work. Certain portions of the study

will be delivered before the end of the nine months as set forth in Appendix A to the Court's Order.

C. EPA Rulemaking for PCBs in Electrical Equipment

The Court's Order requires EPA to publish an ANPR relating to the use of PCBs in electrical equipment. This publication meets that requirement. The Order also requires EPA to promulgate a final rule within six months of receipt of the EEI/USWAG study. The schedule for further rulemaking, includes publication of a proposed rule within sixty days after receipt of the EEI/USWAG study. The proposal will have a sixty-day comment period. At or near the end of the comment period a public hearing would be held, if necessary. The final rule would be promulgated within sixty days after the end of the comment period. The Order does not require EPA to await completion of the EEI/USWAG study in order to proceed with rulemaking. If EPA believes circumstances warrant, it can proceed with rulemaking as to some or all of the matter relating to PCBs in electrical equipment at any time.

D. Further Action by the Court

The Order provides that, if EEI or EPA fails to comply with the Order, any party may apply to the Court for appropriate relief, including immediate issuance of the court's mandate. Immediate issuance of the mandate would place most owners and users of PCB-containing transformers, capacitors and electromagnets in violation of section 6(e) of TSCA. EPA does not anticipate that this circumstance will occur. However, if the EEI study and the request for information in this ANPR do not produce information sufficient to enable EPA to pursue rulemaking for PCB-containing electrical equipment, it is possible that EPA or another party would return to the Court seeking a change in the stay and possibly the issuance of the mandate. Accordingly, it is important that persons having an interest in the outcome of this rulemaking provide their comments and the requested technical information in order to support further rulemaking.

III. Further Rulemaking by EPA

A. Effects of the Court's Decision

In light of the Court's decision in *EDF v. EPA*, EPA will be compiling a factual record to support further rulemaking with respect to transformers, capacitors, electromagnets and other electrical equipment containing PCBs. Information gathered during the rulemaking could lead EPA to conclude that some or all of

these uses of PCBs are "totally enclosed". This information could also lead EPA to conclude that these PCB uses are non-totally enclosed uses which EPA should authorize pursuant to section 6(e)(2)(B) of TSCA. Detailed factual information will be necessary to support EPA decisions to make exceptions to section 6(e)'s prohibition with respect to the continued use of PCBs, whether the exceptions are based on a conclusion that certain uses are "totally enclosed" or on a conclusion that they should be authorized. Without a convincing factual record to support one of these exceptions, EPA would implement the statutory ban of section 6(e) of TSCA.

Use authorizations for electrical equipment determined not to be "totally enclosed" can be implemented by promulgating rules under section 6(e)(2)(B) of TSCA. To promulgate such rules, EPA would have to determine that the use of PCBs in such equipment "will not present an unreasonable risk of injury to health or the environment." To make this determination, EPA would need to balance the risks against the benefits presented by these uses of PCBs. Thus, EPA is seeking to develop factual information on the use of such electrical equipment, the propensity of the equipment to rupture or leak, the nature of human or environmental exposure that might result from such leaks or rupture, and the costs of measures to reduce exposure or eliminate the use of PCBs in such equipment. Some necessary information will result from the EEI/USWAG study. However, a great deal more will be necessary, especially in those areas where the EEI/USWAG study will not be producing any information, such as non-utility use of electrical equipment containing PCBs.

B. Information Development

As set forth in Appendix A to the Order, EEI/USWAG is conducting a study to provide information on the use and other characteristics of PCB-containing electrical equipment in the utility industry. EPA hopes that this will provide a broad, useful data base. The EEI/USWAG study is required to supply data on the:

1. Types of utility electrical equipment which contain PCBs.
2. Frequency and magnitude of equipment leaks and ruptures.
3. Feasibility of various programs of containment, inspection, and maintenance of utility electrical equipment which contain PCBs.
4. Feasibility of phase out for electric utility transformers and capacitors.

The study will also provide information on:

1. The impact of compliance with current PCB regulations.
2. The impact of compliance with new regulatory approaches.
3. The health effects of PCBs.
4. The environmental pathways for PCBs released from utility electrical equipment.
5. Viable substitute dielectric fluids for PCBs.
6. Non-electrical systems which contain PCBs.

A more detailed outline of this proposed study appears as Appendix A to the Court's Order in the "Court Order on Inspection and Maintenance" Notice.

C. Request for Comments and Further Information to Support Rulemaking

Before developing new regulations which might permit the continued use of PCBs in electrical equipment, EPA must build a substantial factual rulemaking record. This record must document the facts concerning PCB use in electrical equipment, including transformers, capacitors, and electromagnets. Development of a rulemaking record will begin with pertinent material contained in the records of previous PCB rulemakings. Additional information for the rulemaking record must come from public comments regarding transformers, capacitors, electromagnets, and other electrical equipment containing PCBs, as well as from the EEI/USWAG study regarding electric utility equipment which contain PCBs. Without such information the Agency cannot sustain granting exceptions to the prohibitions of section 6(e) of TSCA.

EPA invites public comments and data relevant to determinations as to whether or not transformers, capacitors, and electromagnets are "totally

enclosed" uses of PCBs. EPA also requests comments relevant to determinations as to whether or not these uses of PCBs present an unreasonable risk of injury to health or the environment. Comments should include a discussion of the risks from using such equipment and possible means of limiting those risks.

The information obtained from the EEI/USWAG study of electric utility equipment will not represent all uses of PCBs in electrical equipment. The study is not expected to contain information regarding non-utility industry applications of transformers and capacitors. The industry study will not specifically address uses of electromagnets and small capacitors (those containing less than 1.36 kg (3 lbs) of dielectric fluid), which are normally found in electronic circuitry, fluorescent light ballasts, high intensity discharge lighting fixtures, and motor control circuitry throughout industrial, commercial, and residential sectors.

Therefore, persons who believe the EEI/USWAG study of utility electrical equipment will not reflect their specific uses of PCBs in electrical equipment should submit information relating to the risks and benefits of the use of PCBs in applications not covered by the EEI/USWAG study. If possible, these comments should supply information similar to the data outlined for the EEI/USWAG study. Information about types of electrical equipment which contain PCBs; leakage rates and magnitudes; containment, inspection, and maintenance alternatives; and phase out feasibility are especially important, including recommendations or suggestions for regulating PCBs in various equipment and applications.

D. Comment Period and Further Rulemaking

The comment period for this ANPR is 270 days. This comment period closes shortly before the completion of the EEI/USWAG study. EPA has chosen this time period in order to receive and analyze the information concerning use of PCBs in electrical equipment in an orderly manner. The EEI/USWAG study is scheduled to deliver portions of the study during the comment period. EPA hopes that public comments will be received throughout the comment period so that, if those comments contain matters that EPA feels would be of interest to other submitters of comment, EPA would have time to inform comment submitters of those developments. In addition, timely submission of the comments will facilitate EPA meeting the Court-Ordered, eighteen-month deadline for final rules.

EPA will consider the need for public meetings during the rulemaking process and will entertain requests for such meetings from interested persons.

E. Importance of Participation in This Rulemaking

If EPA does not develop a factual record which indicates convincingly that the use of PCB-containing electrical equipment should be permitted, EPA will permit the Court's stay of mandate to expire without issuing new rules. Consequently, the prohibitions of section 6(e) of TSCA would be in effect, and the uses of PCBs that are now permitted under the eighteen-month stay would become unlawful.

Dated: March 5, 1981.

Edwin H. Clark, II,
Acting Assistant Administrator for Pesticides
and Toxic Substances.

(FR Doc. 81-2708 Filed 3-9-81; 8-45 am)
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