TOXIC SUBSTANCES CONTROL ACT

PCB MARKING AND DISPOSAL REGULATION

INTERIM INSPECTION GUIDANCE

MONS 008315

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LEGAL REQUIREMENTS OF INSPECTOR'S PROCEDURES

A. INTRODUCTION

1. GENERAL AUTHORITY TO CONDUCT INSPECTIONS

Section 11 of the Toxic Substances Control Act (15 U.S.C. 2601) provides the basic authority for inspection of establishments and conveyances. It authorizes an inspector to enter, at reasonable times, any establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance used to transport chemical substances, mixtures, or such articles in connection with distribution in commerce.

Inspections may be made only upon the presentation of appropriate credentials and written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. Section 11 provides that a separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection.

2. SCOPE OF TSCA SECTION 11 INSPECTIONS

Inspections conducted under Section 11 extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing upon whether the requirements of TSCA applicable to the chemical substances or mixtures within the premises or conveyance have been complied with. However, inspections shall not extend to the following types of data unless the nature and extent of such data are described with reasonable specificity in the written notice presented to the owner, operator, or agent in charge of the premises or conveyance:

a. financial data
b. sales data (other than shipment data)
c. pricing data
d. research data (other than research data required by the provisions of TSCA or under a rule promulgated thereunder)
e. personnel data

3. PENALTIES FOR FAILURE TO ALLOW INSPECTION

Section 15 of TSCA makes it unlawful for any person to fail or refuse to permit entry or inspection as required by Section 11 or to fail or refuse to permit access to or copying of records. Section 16 provides for both civil and criminal penalties for violations of Section 15. Section 17 authorizes specific enforcement, including the obtaining of an injunction to restrain any violations of Section 15, or to compel taking of any action required under TSCA.

B. Pre Inspection Considerations

1. General Preparation for Inspections

Certain Documents and data should be obtained and reviewed prior to performing on site inspections. Whenever practicable the inspectors should obtain relevant Federal State and Local permits and authorizations which have been obtained by the facility for the purpose of operating the facility. These permits should be reviewed to determine whether PCBs have been at issue with other regulatory programs. In addition, where possible the record for compliance with other relevant regulatory programs should be investigated by obtaining pertinent data.

The inspector should at all times obtain all PCB related approval documents, authorizations, exemption documents prior to arriving at an inspection site.

Where these documents contain operating conditions and requirements these conditions and requirements should be noted and serve as the basis for specific inquiries during the inspection. The inspector should then verify that the facility is complying with these conditions and requirements.

After review of the above documents and any available PCB records the inspector should prepare the Notice of Inspection. The scope of the Notice whould, at a minimum, cover the specific areas that the office review indicated may be potential problems.

2. Records Review

Prior to conducting a physical inspection the PCB records for the subject facility should be examined. In some instances the records inspection may be conducted prior to the physical inspection by requesting the facility to send the records to the Regional Office. Conducting the records inspections early might make the conduct of the physical inspection less difficult.

The arithmetic related to records inspections is fairly simple: PCBs removed from service should equal the PCBs stored plus the PCBs disposed. In addition to striking an appropriate balance, the records should adequately describe the disposition of all of the PCB items connected with the particular facility. The inspector should be able to determine the name and location of all storage and disposal facilities used, including the final disposal site.

The value of the records inspection lies in forcing the PCb facility to account for their PCB items in a fairly accurate manner. An inspector, by using the recorded information, should be better able to conduct physical inspections. Where records are kept properly, the inspector's observations of facility processes should serve to uncover sources of imbalance in the PCB equation. In addition to forming the basis of a violation in itself, inadequate or inaccurate record keeping serves as a flag to areas of concern in inspecting facilities.

3. Written Notice of Inspection

You must present the appropriate person at the facility to be inspected (preferably the Plant Manager or other similar official) with written notice of your intent to inspect the facility. Present the written notice at the time you appear at the facility to conduct the inspection. As a general rule advance notice of an inspection should not be given. However, a general notice to a company or an industry that it may be subject to inspection in the next several months is permissible. There may even be instances where specific advance notice of inspection would be warranted. The giving of any such specific advance should first be cleared through the haedquarters Regional Coordination Unit. Presentation of this notice will allow you to inspect most things in operation in the facilities. However, if you wish to inspect any of the following:

(1) Financial data;
(2) Sales data (other than shipment data);
(3) Pricing data;
(4) Personnel data, or
(5) Kost research data

The written notice of inspection which you present to the appropriate official at the facility to be inspected must also contain a description of the nature and extent of the data in the above categories which is to be inspected. As a general rule, you will know in advance if you are going to inspect such data at the facility, in which case you should ensure that the notice of inspection describes the nature and extent of that data. An example of a written notice of inspection is shown in Appendix II.

4. Credentials

You must bring with you and present to the appropriate person at the inspection site (Plant Manager or similar official having responsibility for operations at plant) credentials which indicate that you are a lawful representative of the Administrator of the Environmental Protection Agency and that you are authorized to perform the inspection which you are to undertake. Sample credentials for making inspections of facilities under TSCA are shown in Appendix I.

5. Confidentiality

During the inspection of a facility, you may come across information which should be treated as confidential by the Environmental Protection Agency. To help protect bona fide business trade secrets from public disclosure, you must adhere to the following procedure at the time you present your credentials and notice of inspection to the appropriate official at the facility you are about to inspect.

At the time you present the facility official with the Notice of Inspection, also present such official with one copy of the TSCA

Inspection Confidentiality Notice, shown in Appendix III. You will have four copies of the TSCA Inspection Confidentiality Notice. At the time you present a copy of this Notice to the facility official, place a copy in an envelope addressed to the Chief Officer of the business whose facility you are inspecting. You should determine the name of such Chief Officer before your arrival at the inspection site. Mail the envelope at your earliest opportunity via certified mail. The envelope should be mailed no later than two days after your inspection of the facility.

As indicated in the Enforcement Proceedings Manual, when you submit your Inspection Report to the person indicated in the Enforcement Proceedings Manual, also submit one copy of the TSCA Inspection Confidentiality Notice. Retain one copy for your own records.

6. Opportunity to Accompany Inspector During Inspection

At the time you present the appropriate facility official with the Notice of Inspection, tell him that company representatives may accompany the inspector during the inspection for the purpose of:

(a) indicating to the inspector which processes, facilities, operations, records, etc. of the facility should be treated as confidential, and
(b) any other reasonable purpose.

7. Opportunity to Obtain Duplicate Samples

At the time you present the appropriate facility official with the Notice of Inspection tell him that you may be taking samples during your inspection and inform the official that he has the right to request and receive duplicate samples.

C. What To Do If You Are Denied Entry

1. If you are denied entry, first make sure that you have provided the appropriate facility official with all of the material which must be presented prior to inspection. If you have not presented this official with such material, do so.

2. If you have followed all the appropriate procedural steps prescribed above and you are still denied entry, ask the person who denied you entry his or her reason for denying you entry into the facility. If the response indicates that you failed to adequately show your credentials show the person your credentials again.

3. If the person adamantly refuses to admit an inspector, make no further attempt to enter.

Upon leaving the premises make appropriate notes concerning any relevant observations which may have been noted concerning the refusal. If there are any reasonable bases for suspecting that refusal was based upon a desire to cover up regulatory violations note the bases

for such conclusions. Also note such observations about the appearance of the facility as are possible. If there is a belief that an immediate inspection of the facility is imperative, call the Headquarters Regional Coordination Unit at 202-755-1212. Where immediate inspection is desired, a search warrant may be required by law. The Regional Coordination Unit will aid the inspector in obtaining a warrant where appropriate.

D. Inspection Procedures

1. Conduct During Inspection

Inspector's Instructions, Violation Worksheet and Maintenance of Diaries and Field Notes

The Inspection Manual for the PCB Marking and Disposal Regulation is divided into several sections. In addition to the sections dealing with Legal Requirements for Inspections and the Enforcement Proceedings Manual, the Inspection Manual contains instructions on how to conduct inspections at the various categories of facilities subject to the regulations. For each category of facilities, there are separate instructions. Thus, for example, if you are inspecting an electric utility company facility, turn to the Electric Utility Company portion of the Inspector's Manual and follow the instructions provided there. While conducting an inspection of a particular facility, the inspector should closely follow the instructions in the Inspection Manual for inspecting facilities of that type to the extent that they apply to the circumstances of the particular facility.

Each inspector must maintain legible and detailed Field Notes providing an accurate and inclusive documentation of inspection activity. Entries in an Inspector's Field Notes should should include, but not be limited to, the following:

(i) Name and location of facility inspected

(ii) Explanation of what parts of the facility were inspected

(iii) Summary of inspection related conversations with facility employees, along with names of employees with whom the conversations occured

(iv) Place in the facility where samples were taken, along with explanation of the sampling technique employed, including, but not limited to:

- (1) Number of samples collected
- (2) Description of origin of sample — (transformer, PCB container, etc.)
- (3) Detailed analysis of method of obtaining the samples, including description of sample container.

(v) Nature of suspected violation, including place and time of discovery, and including explanation of why you think your discovery is a violation.

reports, they must contain only facts and observations. Language should be objective, factual and free from personal feelings or terminology which might prove inappropriate. The Field Notes are part of EPA's files and should not be considered the inspector's personal property.

The government's case in a formal hearing or criminal prosecution hinges on the evidence gathered by the inspector. It is likely that inspectors will be called to testify in enforcement hearings. Therefore, it is imperative that each inspector keep detailed records of inspections in his Field Notes. This data will serve as an aid in giving testimony, in determining the conduct of the prosecution of the alleged violator, and in helping the inspector prepare his Inspection Report.

Personal Demeanor During Inspection

An inspector must conduct an inspection with the highest degree of honesty and is expected to perform his duties in a professional and responsible manner. At the very least, the inspector must conduct himself at all times in accordance with the regulations prescribing Environmental Protection Agency Employee Responsibilities and conduct which were published in the Federal Register (Vol. 38, No. 73) on April 17, 1973, codified at 40 CFR Part 3, and reissued in the EPA handbook "Responsibilities and Conduct for EPA Employees". In addition, the inspector must:

A. Develop and report facts of inspections completely, accurately and objectively.

B. Inspectors should at all times wear such safety equipment as is customary in the facility being inspected. Inspectors should wear a hard hat, safety glasses or gloves if the owner or his agent so advises.

C. Know the limits of your inspection authority. If you have presented the appropriate credentials and written notice of inspection, your inspection of the facility may extend to all things within the premises being inspected (including records, files, papers, processes, controls and facilities) bearing on whether the requirements of the PCB Marking and Disposal Regulation have been complied with. Although you may not on your own authority take anything belonging to the facility other than a sample out of the facility, you may copy any relevant records and take the copies with you as part of your inspection report. You should remember that if you want to inspect financial data, sales data (other than shipment data), or most research data you need to describe the nature and extent of such data you wish to inspect in the written notice of inspection. If at any time during the inspection you are prohibited from inspecting particular things or processes which you believe are within

the allowable scope of your inspection, remind the person that such prohibition is unlawful but do not argue with the person who prohibits your inspection. Simply ask the person why you are not being allowed to inspect the particular thing or process and note all the particulars in your Inspection Diary, along with the name of the person who refused to let you inspect. Then, continue the remainder of your inspection of the facility. Following the inspection, contact the designated TSCA Enforcement Attorney for the regions for instructions concerning the area where you were not allowed to inspect.

D. If an authorized representative of the facility being inspected wishes to accompany you during the inspection allow him to do so.

E. Be alert for any statements made by employees of the facility being inspected which may be construed to be admissions of acts of violation of the regulation.

Prohibited Activities

The following activities may not be engaged in by an EPA inspector before, during or after an inspection of a facility under the PCB Marking and Disposal Regulation. These prohibitions are based upon and derived from material in the EPA Pesticides Inspections Manual.

A. Never discriminate by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for yourself or anyone else, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of your government duties. The EPA handbook entitled "Responsibilities and Conduct for EPA Employees" specifies that an employee shall not accept anything of value from the trade, public or consumers for or because of any official act he has performed or will perform. Each inspector should refer to the above referenced handbook for amplification of this policy.

In this regard one area of concern to inspection personnel which generates more questions than any other is the matter of handling a situation where, during a facility inspection, you have lunch with plant officials and/or personnel and find your lunch paid for by them, or there is no way you can pay for your portion of the luncheon. EPA regulations cover this by providing an exemption whereby you can accept food and refreshments of nominal value on infrequent occasions in the ordinary course of an luncheon or dinner meeting or other meeting or on an inspection tour where you may be properly in attendance.

Under no circumstances shall you interpret this to allow acceptance of meals or refreshments when it is proper and feasible for you to pay for your own. You must avoid such situations when possible and must make every effort to pay your part,

unless the situation is such that it is impossible for you to do so or to force the issue would provoke a scene creating embarrassment to or bring discredit on the government.

B. Make no private promises of any kind which may be construed as binding upon the Agency since a Government employee by his private word cannot bind the Government.

C. Never use any information coming to you confidentially in the performance of governmental duties as a means for making private profit.

D. During an inspection do not speak of any product, process, facility or person in a derogatory manner.

Taking Samples

1. Responsibility

Samples should be collected and prepared in accordance with procedures outlined in this Manual. Keep in mind that you may have to testify in court regarding a sample you have taken. You may be required to identify the sample collected and to explain that you followed the sampling procedures provided in this Manual. Mistakes or deficiencies in procedures may damage the Government's case in this regard. However, if you make a mistake in sampling, do not, under any circumstances, attempt to cover up the mistake. Record the mistake in your Field Notes and re-take the sample as appropriate.

2. When to Sample

Take a sample only under the circumstances indicated in this Manual and only during the course of an inspection of a facility covered by this Manual.

3. How to Sample

A. Taking Samples

When taking a sample during an inspection of any facility covered by this Inspector's Manual you should follow the specific sampling techniques appropriate for each type of facility you inspect. Deviation from the Standard Methods and procedures for a sample might cause problems in introducing your sample into evidence during an enforcement proceeding. If there is any deviation from established procedures, explain the deviation in your Field Notes.

B. Duplicate Samples

If a responsible agent of the facility being inspected requests a duplicate sample, it should be collected and marked in the same manner the official samples, with an indication on the extreme left hand corner of the Sample Tag to be attached thereto that the sample

is a "Duplicate Sample". Of course, the fact of having prepared a duplicate sample should be reflected in the Inspector's Field Notes. If you provide a duplicate sample, make the appropriate notation on the chain of custody record, described below.

C. Special Category of Samples - Photographs

During an inspection, you may want to photograph various parts of the facility, certain operations in the facility or locations where a sample was taken. In all cases where you take a photograph during an inspection, write the following in your Field Notes for each photograph taken.

1. Nature of object or process photographed
2. The sequential number of that photograph for the inspection.
3. Inspector's Number
4. Inspector's Name
5. Time, date and place of taking photograph.

When the photographs are developed, transpose the information recorded in your fields notes onto the back of the photograph at your first opportunity.

4. Post - Sampling Procedure

A. Identification of Samples

Each unit of the sample is to be tagged in the Inspector's handwriting in ballpoint (waterproof) ink. The tag (See Attachment IV) shall contain, at a minimum, the following information: Inspector's Name, type of sample, sample number, name of person taking sample, and the type of analysis required. This tag should be completely filled out by the inspector and attached to the sample container.

B. Receipt of Samples

After taking a sample, prepare a Receipt for Samples Form in triplicate (See Appendix V). Give one copy to the Plant Manager or similar official at the facility, include one copy in your Inspection Report and retain one copy for your own records. You may record all the samples taken during the inspection of a facility on one Receipt for Samples Form.

E. Chain of Custody Procedures

1. Inspector to Laboratory

The inspector who collects samples is responsible for the care and custody of the samples until properly dispatched to the receiving laboratory or turned over to an assigned custodian. You must assure that each container is:

a. In your physical possession, or
b. In your view, after being in your physical possession, or
c. After being in your physical possession was locked by you in a manner so that no one could tamper with it.

The following procedures should be followed:

(1). Samples will be accompanied by a Chain of Custody Record (Appendix VI) which includes, the name of person taking the sample; inspector's number; type of sample taken; analysis required. If the person who takes the sample is required to transfer possession of the sample prior to dispatching it to the appropriate laboratory for analysis, the transferor and transferee will sign, date and time the sheet.

(2). The inspector taking the sample, or the person who rightfully receives possession of the sample directly or through a chain originating with the inspector who took the sample, has the responsibility of properly packaging and dispatching samples to the proper laboratory for analysis. As a matter of policy, the inspector taking the sample should not relinquish possession of the sample prior to dispatch to the appropriate laboratory except in circumstances where to do so would be highly impractical. In any event, the person who dispatches the sample to the appropriate laboratory for analysis should fill in the "Dispatch" portion of the Chain of Custody Record.

(3). Samples will be properly packed in shipment containers such as ice chests to avoid breakage. The shipping containers will be padlocked for transfer to the receiving laboratory.

(4). All packages will be accompanied by the Chain of Custody Record showing identification of the contents. The original will accompany the shipment (inside the locked shipment container) and will remain on record in the laboratory performing the analysis.

(5). If sent by mail, the person who dispatches the sample to the laboratory must send the package certified mail with return receipt requested. If sent by common carrier, a government bill of leding should be obtained. Receipts from post offices and bills of lading will be retained as part of the permanent Chain of Custody documentation.

2. Laboratory Custody Procedures

a. The laboratory shall designate a "Sample Custodian". An alternate will be designated in his absence. In addition, the laboratory shall set aside a "sample storage security area". This should be a clean, dry, isolated room which can be securely locked from the outside.

b. All samples should be handled by the minimum possible number of persons.

c. All incoming samples shall be received only by the custodian who will indicate receipt by signing the Chain of Custody Record Sheet accompanying the samples and retaining the sheet as permanent records.

Couriers picking up samples at the airport, post office, etc. shall sign jointly with the laboratory custodian. If samples are delivered to the laboratory when appropriate personnel are not there to receive them, the samples must be locked in a designated area within the laboratory in a manner so that no one can tamper with them. The same person must then return to the laboratory and unlock the samples and deliver custody to the appropriate custodian.

d. Immediately upon receipt, the custodian will place the sample in the sample room, which will be locked at all times except when samples are removed or replaced by the custodian. To the maximum extent possible, only the custodian should be permitted in the sample room.

e. The custodian shall ensure that heat-sensitive or light-sensitive samples, or other sample materials having unusual physical characteristics, or requiring special handling, are properly stored and maintained.

f. Only the custodian will distribute samples to personnel who are to perform tests.

g. The sample analyst will record, in his laboratory notebook or analytical worksheet, identifying information describing the sample, the procedures performed and the results of the testing. The notes shall be dated and indicate who performed the tests and they should note any abnormalities which occured during the testing procedure. In the event that the person who performed the tests is not available as a witness at time of trial, the government may be able to introduce the notes in evidence under the Federal Business Records Act.

h. Standard methods of laboratory analyses shall be used as described in the "Guidelines Establishing Test Procedures for Analysis of Pollutants", 38 F.R. 28758, October 16, 1973. If laboratory personnel deviate from standard procedures, they should prepare the justification for the deviation in the laboratory notebook.

i. Once the sample testing is completed, the unused portion of the sample, together with all identifying tags and laboratory records, should be returned to the custodian. The returned tagged sample will be retained in the sample room until it is required for trial. Strip charts and other documentation of work will also be turned over to the custodian.

j. Upon completion of laboratory PCB sample analysis, the custodian shall send a copy of all laboratory records and a copy of the appropriate chain of custody record to the Regional PCB Violation Coordinator. The laboratory should retain the originals as permanent records.

k. Alterations in or deviation from this chain of custody procedure must be approved, by the Regional Office of General Counsel and/or the Headquarters Enforcement Office, prior to implementation.

Appendix I

TSCA Inspection Credentials

UNITED STATES OF AMERICA

ENVIRONMENTAL PROTECTION AGENCY

This is to certify that

_____

whose signature and photo appear below is an authorized representative of the Administrator of the U.S. Environmental Protection Agency.

Date issued: Expiration Date:

(Photo)

Name:

Title: Inspector

This Inspector is authorized under the Toxic Substances Control Act to conduct inspections (including taking samples, photographs and other inspection activities) of establishments, facilities, or other premises in which chemical substances or mixtures or any articles containing same are manufactured, processed, stored or held before or after their distribution in commerce, and any conveyance being used to transport chemical substances, mixtures or such articles in connection with distribution in commerce.

_____

Signature of Inspector

_____

Signature of the Administrator

No._____

Appendix II

U.S. Environmental Protection Agency
NOTICE OF INSPECTION
UNDER THE TOXIC SUBSTANCES CONTROL ACT

Name of Firm:
Firm Address:

Date Inspection Commenced:
Hour:
EPA Regional Office Address: (type)

Reason for Inspection:

☐ For the purpose of inspecting (including taking samples, photographs and other inspection activities) an establishment, facility, or other premises in which chemical substances or mixtures or articles containing same are manufactured, processed or stored, or held before or after their distribution in commerce (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of the Act applicable to the chemical substances, mixtures or articles within or associated with such premises have been complied with.

☐ For the purpose of inspecting (including taking samples, photographs and other inspection activities) a conveyance being used to transport chemical substances, mixtures, or articles containing same in connection with their distribution in commerce (including records, files, papers, processes, controls and facilities) bearing on whether the requirements of the Act applicable to the chemical substances, mixtures or articles within or associated with the conveyance have been complied with.

☐ In addition, this inspection extends to (circle appropriate letters):

A) Financial data
B) Sales data
C) Pricing data
D) Personnel data
E) Research data

The nature and extent of inspection of such data specified in A through E above is as follows:

Name of Person to Whom Notice of Inspection Was Given:

Signature of EPA Employee:

_____ _____ DATE_____

TITLE TITLE

Distribution: one copy Plant Manager
one copy PCB Violation Coordinator
one copy Inspector's Files

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Reverse Side- Notice of Inspection

TSCA Notice of Inspection

Authority to Conduct Inspections

By authority of Section 11 of the Toxic Substances Control Act (15 USC 2601) an authorized representative of the Administrator of the United States Environmental Protection Agency may enter and inspect, at reasonable times, any establishment facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance used to transport chemical substances, mixtures, or such articles in connection with distribution in commerce.

Scope of Inspections

Inspections conducted under Section 11 of the Toxic Substances Control Act (15 USC 2601) extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing upon whether the requirements of the Toxic Substances Control Act applicable to the chemical substances or mixtures within the premises or conveyance have been complied with.

However, inspections shall not extend to the following types of data unless the nature and extent of such data are described with reasonable specificity in the written notice presented to the owner, operator, or agent in charge of the premises or conveyance:

1. financial data
2. sales data (other than shipment data)
3. pricing data
4. research data (other than research data required by the provisions of the Toxic Substances Control Act or under a rule promulgated thereunder)
5. personnel data.

Penalties for Failure to Allow Inspection

Section 15 of the Toxic Substances Control Act makes it unlawful for any person to fail or refuse to permit entry or inspection as required by Section 11 or to fail or refuse to permit access to or copying of records. Section 16 provides for both civil and criminal penalties for violations of Section 15. Section 17 authorizes specific enforcement, including the obtaining of an injunction to restrain any violations of Section 15.

2. Failure to request a hearing shall result in issuance of a default order by the Regional Administrator (depending on the final form of the Consolidated Rules of Procedure). A sample Default Order follows.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION __

IN THE MATTER OF	
B. G. POWER INDUSTRIES, INC.,	TSCA-V-001
Respondent.	DEFAULT ORDER

PRELIMINARY STATEMENT

1. This civil proceeding for the assessment of a penalty was initiated pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq. The action was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing to the Respondent, charging violations of 15 U.S.C. 2605 and 2614. It is hereby determined that an appropriate Default Order shall be issued based on the Finding of Fact and Conclusions of Law as set out below.

FINDINGS OF FACT

1. B. G. Power Industries, Inc., is a corporation organized pursuant to the laws of the State of Michigan.
2. Respondent operates a facility at Alton, Michigan, which houses 86 large high-voltage capacitors, each containing PCB dielectric fluid.
3. On or about March 31, 1981, Respondent was unable to produce the records of monitoring data required under Section 6 of TSCA, 15 U.S.C. 2605, and 40 CFR 761.45, or produce the identity of the central records location.
4. On or about March 31, 1981, there were stored in Respondent's above cited facility PCB's that were clearly marked for disposal.
5. On or about March 31, 1981, Respondent failed to provide the flooring required by TSCA and regulations promulgated thereunder in that no curbing has been installed in the area of the above-referenced facility wherein PCB's marked for disposal were stored.
6. On or about March 31, 1981, Respondent failed to provide the flooring required by TSCA and regulations promulgated thereunder in that the floor installed in the above-referenced facility wherein PCB's marked for disposal were stored consisted of linoleum tiles.
7. On June 1, 1981, the Enforcement Division, EPA, Region ("the Complainant") issued a Complaint and Notice of Opportunity to Respondent pursuant to 15 U.S.C. 2615(a) and the then applicable

Rules of Practice, alleging that Respondent has violated TSCA by failing to maintain records on the disposition of PCB's and by failing to comply with certain construction specifications for a facility that stores PCBs designated for disposal by not installing a curb of a minimum height of six inches and by not installing a floor composed of smooth and impervious materials.

8. In the instant Complaint, a civil penalty of $24,500.00 was proposed against the Respondent. Said penalty was proposed based on the nature, circumstances, extent and gravity of the violations, and, with respect to the Respondent, ability to pay, effect on Respondent's ability to continue to do business, Respondent's history of prior such violations, and the Respondent's degree of culpability. For purposes of assessing the said penalty, Respondent's gross annual revenues were determined to be in excess of $5,000,000.00 during the previous year. Based on a comparison of Respondent's gross annual revenues with the amount of the proposed penalty, it was determined that said penalty would have no substantial effect on Respondent's ability to continue in business.

9. The Complaint in the instant case set forth Respondent's right to request a hearing within fifteen (15) days of receipt of the Complaint, the requirement of a written Answer to the Complaint within fifteen (15) days of receipt of the Complaint if said hearing was desired, and the consequences of failure to do either. Furthermore, a copy of the interim Rules of Practice was enclosed with the Complaint.

10. Said Complaint was mailed to Respondent on June 1, 1981, by certified mail. Receipt No. 202684 was returned to Complainant stamped June 5, 1981, and bearing the signature "Betty Wilson" as signor for the addressee. (A copy of certified mail receipt No. 202684 is attached to and made a part of this Order.)

11. As of this date Respondent has failed to either request a formal hearing, or file an Answer to the Complaint pursuant to the Rules of Practice.

CONCLUSIONS OF LAW

1. By reason of the facts as set out in the Findings of Fact, Respondent has violated TSCA by failing to develop and maintain records on the disposition of PCB's in violation of 15 U.S.C. 2614(3) and 40 CFR 761.45 and by failing to comply with certain construction specifications in violation of 15 U.S.C. 2614(1)(c) and 40 CFR 761.42(b).

2. By failing to file a timely Answer to the Complaint and/or to request a formal hearing, Respondent has admitted the facts alleged in the Complaint and has waived its right to a hearing. Accordingly, Respondent is in default and the proposed civil penalty is therefore due and payable.

3. It is further concluded that by reason of the facts set out in (Finding 8) the Findings of Fact the amount of the proposed penalty is appropriate pursuant to 15 U.S.C. 2615(c)(2)(B).

ORDER

Respondent shall immediately upon receipt of this Order pay by cashier's or certified check a civil penalty in the amount of Twenty-Four Thousand Five Hundred Dollars ($24,500.00) payable to the Treasurer of the United States of America. Such remittance shall be delivered to the Regional Hearing Clerk, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604. In the event of failure of Respondent to make such payment the matter shall be referred to the Attorney General pursuant to 15 U.S.C. 2615(a)(4) for collection of said amount by an appropriate action in United States District Court.

AND NOW, THIS DAY OF July 10, 1981, the foregoing Order is hereby issued under the authority of the Toxic Substances Control Act and the Rules of Practice adopted pursuant thereto, 15 U.S.C. 2601 et seq.

_____

Regional Administrator
United States Environmental
Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Date: _____

3. Settlement will often be reached prior to hearing on a civil penalty assessment. A sample Consent Agreement and Final Order follows (it is not necessary for the Director of the Enforcement Division to sign the agreement, as long as one of his attorneys signs).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF	TSCA-V-002
B. G. DISPOSERS, INC.,	CONSENT AGREEMENT AND FINAL ORDER
Respondent.	

PRELIMINARY STATEMENT

1. This civil proceeding for the assessment of a civil penalty was initiated pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2615. The action was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing served upon the Respondent, charging violations of 15 U.S.C. 2605 and 2614.

2. Respondent admits the factual allegations contained in the Complaint.

3. Respondent has agreed to cooperate fully with the Environmental Protection Agency to conciliate this matter without the necessity of a formal hearing and, therefore, consents to the issuance of the Order hereinafter recited with the Findings of Fact and Conclusions of Law. Respondent consents to the payment of the penalty in the amount hereinafter stipulated as full settlement of any and all civil penalties or liabilities which mgith have attached as a result of this proceeding.

4. Respondent waives its right to request a hearing on any issue consented to herein.

STIPULATIONS OF FACTS

1. B. G. Disposers, Inc. is a corporation organized pursuant to the laws of the State of Michigan.

2. Respondent operates an incinerator for the purposes of destroying and disposing of liquid PCB mixtures at its facility located in Alton, Michigan.

3. On or about March 31, 1981, Respondent incinerated liquid PCB mixtures at its above-referenced facility with an incinerator temperature of 950 degrees C.

4. On or about March 31, 1981, the above referenced incinerator failed to shut off automatically when the combustion temperature dropped below 1200 degrees C during the incineration of PCB's.

5. On or about March 31, 1981, Respondent maintained records, noting the rate and quantities of liquid PCB mixtures introduced into the combustion system recorded at irregular intervals varying in length from ten to twenty-eight minutes.

CONCLUSIONS OF LAW

1. By reason of the facts set out in the stipulations of Fact, above, it is concluded that Respondent has violated 15 U.S.C. 2614 (1), and 40 CFR 761.40(a)(1) by failing to maintain an incinerator temperature of 1200 degrees C. with a two-second dwell time at three percent excess oxygen in the stack gas during the incineration and destruction of liquid PCB mixtures.

2. By reason of the facts set out in the stipulations of Fact, above, it is concluded that Respondent has violated 15 U.S.C. 2614(1), and 40 CFR 761.40(a)(5) by operating an incinerator for the incineration and destruction of liquid PCB mixtures where the incinerator does not shut off automatically when the combustion temperature drops below 1200 degrees C.

3. By reason of the facts set out in the Findings of Fact, above, it is concluded that Respondent has violated 15 U.S.C. 2614(1)(3), and 40 CFR 761.40(a)(3), 761.45(c)(1)(A), by failing to maintain records that measure and record the rate and quantity of PCB's which are fed into the incinerator combustion system at intervals of no more than fifteen minutes.

ORDER

Respondent shall within twenty days of receipt of this Consent Agreement and Final Order pay by cashier's check or certified check the amount of Thirty-Five Thousand Dollars ($35,000.00) payable to the United States of America. Such remittance shall be delivered to the United States Environmental Protection Agency, Regional Hearing Clerk, 230 South Dearborn Street, Chicago, Illinois 60604.

Respondent:

_____

Date: _____

_____

James O. McDonald
Director, Enforcement Division
United States Environmental
Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Date: _____

It is so ordered. This Order shall become effective immediately.

_____

Regional Administrator
United States Environmental
Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Date: _____

MONS 008437

4. The following is a model pleading in rem for seizure and condemnation of PCBs stored or disposed in violation of the PCB Marking and Disposal Regulation. Following the pleadings are the Verification and Warrant for Arrest of Property.

United States Attorney

_____
_____
_____

Attorney for the Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE _____

UNITED STATES OF AMERICA, Plaintiff, vs. _____ _____ _____, Defendant.	CIVIL NO._____ COMPLAINT IN REM

The United States of America alleges that:

I

This is an action in rem instituted pursuant to Section 17(b) of the Toxic Substances Control Act (15 U.S.C. 2616(b)), for the seizure and condemnation of chemical substances or mixtures manufactured, processed, or distributed in commerce which are _____ and in violation of Section _____ of the Toxic Substances Control Act, 15 U.S.C._____. Authority to bring this action is vested in the United States Attorney by 28 U.S.C. §547(a).

II

This Court has jurisdiction of the subject matter of this action pursuant to 15 U.S.C. 2616(b).

III

The property to be seized is located at _____ _____, which is within this District, and is on land. The location is _____.

MONS 008439

IV

is a chemical substance or mixture manufactured, processed, or distributed in commerce by _____.

V

_____

_____

_____

_____

WHEREFORE, plaintiff, United States of America, prays:

(1) That the chemical substance or mixture be seized and condemned, and that they be disposed of as the court may direct in accordance with the provisions of Section 17(b) of the Toxic Substances Control Act (15 U.S.C. 2616(b)) and in conformity with the practice of this Court.

(2) That the party specified in Paragraph ____ of this Complaint and any and all other persons having, or pretending to have, any right, title or interest in and to the chemical substances or mixtures be notified to appear in order that they may answer the allegations set forth in this Complaint.

(3) That the Court enter all such orders, decrees, and judgments as may be necessary in order to grant further relief to the plaintiff for the costs of this proceeding.

(4) For such other and further relief as the Court may deem just and proper.

Dated:

_____

United States Attorney

Attorney for the Plaintiff

MONS 008440

United States Attorney

_____
_____
_____

Attorney for the Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE _____

UNITED STATES OF AMERICA, Plaintiff, vs. _____ _____ _____, Defendant.	CIVIL NO._____ VERIFICATION

I, _____, being first duly sworn, state that:

1. I am _____;

2. I am reliably informed of the facts set forth in the foregoing Complaint in Rem which I have prepared accordingly; and

3. All of the facts set forth in the foregoing Complaint in Rem are true to the best of my knowledge, information and belief.

_____
_____
_____

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF_____.

_____

MONS 008441

Notary Public

United States Attorney

Attorney for the Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Defendant.

CIVIL NO.

WARRANT FOR ARREST OR PROPERTY

TO: UNITED STATES MARSHAL

YOU ARE HEREBY COMMANDED to arrest and take into custody under further order of the Court the following described property:

Claims of persons entitled to possession of the foregoing property shall be filed with the Clerk of the Court and a copy served upon the United States Attorney, , within ten (10) days after date of publication of notice of arrest of the foregoing property, or within such additional time as may be allowed by the Court, and answers to the complaint shall be filed and served within twenty (20) days after date of publication of notice of arrest.

Dated:

MONS 008442

5. The following is a model Complaint for Injunction, followed by a Motion for Temporary Restraining Order and a Proposed Preliminary Injunction.

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, V. BAD POLLUTER, TSCA, _____ Defendant	No._____ COMPLAINT FOR INJUNCTION Section 17(a) of the Toxic Substances Control Act, 15 USC 2617

The United States of America, by its undersigned attorneys, by authority of the Attorney General of the United States, and acting on the request of the United States Environmental Protection Agency, alleges that:

I

1. This is a civil injunction to enjoin the above named defendants from the continued storage of transformers containing the chemical substance polychlorinated biphenyls (PCB's) in violation of regulations promulgated by the Administrator of the Environmental Protection Agency (EPA), at Title 40 Parts 761.10, 761.42, Vol. 43, 34 FR 7150 et seq on February 17, 1978, as provided by Section 6(e)(1) of the Toxic Substances Control Act, 15 USC 2605.

2. This Court has jurisdiction of the subject matter of this action pursuant to 15 USC 2616.

3. Defendant is a corporation doing business in Los Angeles, California and such act has occurred and is continuing to occur at its facility located at _____ Street, Los Angeles, California, within the Central District of California.

4. The continued storage of such transformers contrary to the above cited regulations threatens to cause an immediate and irreparable injury to the employees working at said facility and the general public living nearby unless defendants are immediately restrained as prayed, as more fully appears in the affidavits submitted with plaintiff's motion for Preliminary Injunction filed herewith. Plaintiff has attempted to give oral notice of this motion to defendants attorney.

Defendants will not be unduly prejudiced by issuance of a temporary restraining order pending hearing and determination of plaintiff's motion for Preliminary Injunction.

There is a substantial likelihood that plaintiff will suceed on the merits of this case.

Wherefore, plaintiff prays:

1. That the defendants, their officers, directors, agents, servants, employees, successors and assigns and each of them cease the storage of transformers containing PCB's contrary to the requirements of Title 40 Part 761.10 CFR, and be immediately required to comply with such regulations.

2. That costs and disbursements of this action be awarded to the plaintiff.

3. That this court grant such other and further relief as it may deem just and proper.

MONS 008445

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, V. BAD POLLUTER, TSCA Defendant.	No._____ MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Upon the Complaint herein and upon the papers submitted in support of this motion, plaintiff, by its attorneys, respectfully moves the Court for a temporary restraining order restraining defendants as set forth below, and for an order that defendatns appear and show cause, as follows:

1. That defendants their officer, agents, servants, employees, and all persons in active concert with them or any of them be restrained and enjoined from the continued storage of transformers containing the chemical substance polychlorinated biphenyls (PCB's) in violation of regulations promulgated by the Administration of the Environmental Protection Agency (EPA) at Title 40, Part 761.10, 761.42 CFR, Vol. 43, 34 FR 7150 et. seq. on February 17, 1978.

2. Immediate and irreparable injury to the employees working at said facility and to the general public will occur unless defendants are immediately restrained as prayed, as more fully appears in the complaint herein and the affidavits submitted with plaintiff's Motion for Preliminary Injunction filed herewith. Plaintiff has attempted to give oral notice of this motion to defendants' attorneys. Notice should not be required herein as a temporary restraining order is necessary to preserve the status quo in this action, pending the determination of plaintiff's motion for a preliminary injunction. Plaintiff's remedies at law are inadequate. Defendants will not be unduly prejudiced by issuance of a temporary restraining order pending hearing and determination of plaintiff's Motion for Preliminary Injunction.

There is a substantial likelihood that plaintiff will suceed on the merits of this case.

WHEREFORE: Plaintiff asks that this Court issue a Temporary Restraining Order and Order to Show Cause, as prayed.

Dated:

Respectfully Submitted,

_____

MONS 008446

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

V.

BAD POLLUTER, TSCA,

Defendant.

No._____

PRELIMINARY INJUNCTION

This matter came on to be heard on the _____ day of _____ 1978, for preliminary injunction. Upon consideration of the evidence adduced at the hearing, the pleadings and papers on file herein, and the arguments of counsel:

It appears to the court that the defendants, personally or through their agents, are engaged in the continued storage of transformers containing the chemical substances polychlorinated biphenyls (PCB's) in violation of regulations promulgated by the Administrator of the Environmental Protection Agency (EPA), at Title 40, Part 761.10, 761.42 CFR, Vol. 43, 34 FR 7150 et. seq. on February 17, 1978, as provided by Section 6(e)(1) of the Toxic Substances Control Act, 15 USC 2605.

It further appears to the Court that the defendants will, if not enjoined by order of this Court, continue to store such transformers contrary to the above cited regulations, and thereby cause an immediate and irreparable injury to the employees working at said facility and the general public and that plaintiff's remedies at law are inadequate.

It further appears that defendants will not be unduly prejudiced by issuance of a preliminary injunction pending hearing and determination of the merits.

It further appears to the Court that there exists a substantial likelihood that plaintiff will suceed on the merits of its case.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that defendants, their officers, agents, servants, employers, and all persons in active concert with them, or any of them, be enjoined from:

The continued storage of transformers containing the chemical substance polychlorinated biphenyls (PCB's) in violation of regulations promulgated by the Administrator of the Environmental Protection Agency (EPA) at Title 40 CFR Parts 761.10, 761.42.

IT IS FURTHER ORDERED that this injunction shall remain in effect until final determination of the merits, or until further order of this Court.

Dated:

Judge, United States District Court
Central District of California

Appendix III
TSCA INSPECTION CONFIDENTIALITY NOTICE

United States Environmental Protection Agency

Regional Address:

Facility Inspected:

Date Inspected:

Address of Facility:

Name of person at the facility to whom this notice given:

_____

_____
TITLE

Name of chief officer of business:

Date mailed to chief officer:

Name of EPA Inspector:

Address:

It is possible that EPA will receive public requests for release of the information obtained by inspectors during inspection of the facility indicated above. Such requests will be handled by EPA in accordance with provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, EPA regulations issued thereunder, 40 CFR Part 2, and the Toxic Substances Control Act Section 14. EPA is required to make inspection data available in response to FOIA requests unless the Administrator of the agency determines that the data contains information entitled to confidential treatment.

In order to facilitate the Agency's timely response to any public inquiries, while giving due consideration to your company's right to request confidentiality, please provide us with a statement specifying any information which our inspection of the above indicated facility may reveal which you believe should be entitled to confidential treatment.

Your statement should be addressed to _____ (RESPONSIBLE EPA OFFICIAL) and should reach this address no later than 30 days after your receipt of this notice. Failure by your firm to submit, within the 30 day time period, a written request that information be characterized as confidential or privileged will be treated by EPA as a waiver by your company of any claims for confidentiality regarding the inspection data and the data will be made available to the public without further notice to you.

_____
date received by owner/operator

_____
signature of Plant Manager

Distribution: one copy Plant Manager
one copy Chief Officer of Business
one copy PCB Violation Coordinator
one copy Inspector's Files

MONS 008332

Appendix IV

SAMPLE TAG

USEPA, TSCA PCB Marking and Disposal Regulation Field Sample

Inspector's Name	Type of Samples	Date Taken

Time Taken	Place Taken	Name of Person Taking Sample (written & signed)

Analysis Required:
(Determination of PCB Content)

Sample Number:

MONS 008333

Appendix V

U.S. Environmental Protection Agency

Receipt for Samples

Regional Address:

Name of Plant Manager or Similar Official:

Firm Name:

Firm Address:

Sample Numbers:

Samples Collected: (Describe fully the time, place, date and type of sample, number of containers for each type of sample)

Acknowledgement of Plant Manager or Similar Official

The undersigned acknowledges that the samples described above have been collected:

Signature: Title:

Duplicate Samples for each Type of Sample Taken:

Sample #	Requested and provided	Not requested

Name of person who collected samples:

Title of Collector:

Signature of Collector:

Distribution: one copy to Facility Plant Manager
original to PCB Violation Coordinator
one copy for Inspector's Records

MONS 008334

Appendix VI

Environmental Protection Agency
Toxic Substances Control Act
PCB Marking and Disposal Regulation

CHAIN OF CUSTODY RECORD

Name of Person Taking Sample: Signature:

Inspector's Number:

Type of Sample	Date Taken	Time Taken	Place Taken	Required Analysis

Relinquished by: Received by: Date: Time:

Relinquished by: Received by: Date: Time:

Relinquished by: Received by: Date: Time:

Dispatched by: Date: Time:

Received for Laboratory by: Date: Time:

Method of Shipment:

Distribution: Original to Accompany Shipment (inside locked shipment container). One copy from laboratory to Regional PCB Violation Coordinator upon completion of analysis.

MONS 008335

INSPECTION PROCEDURES

FOR

INCINERATION FACILITIES

MONS 008336

Introduction to Disposal Site Inspections

When inspecting PCB disposal facilities there are at least three investigations which should be pursued. 1) are the PCB disposal processess functioning properly. 2) are all of the PCBs sent to an approved disposal process, and 3) are the PCB records properly kept.

The first concern in inspecting a disposal facility is whether the facility effectively disposes of PCBs in a manner which is permitted in the site's approval document. For incinerators and chemical waste landfill facilities there are specific minimal performance criteria which are incorporated as part of their facility approval documents (see requirements detailed below). Additionally the site approval document may apply further resitrictions, requirements or waivers to the operation of the facility.

Whenever an alternative method of disposal is authorized under the regulations the authorization will usually also specify performance standards for the alternative method to meet. The inspector should collect the performance standards from the various approval and authorization documents and use them for comparison with the facility's operating data.

Many of the performance requirements in the regulation are supported by requirements for related monitoring equipment. A necessary first part of the inspection process is to determine whether all of the required monitoring equipment for the facility is in place and is operating properly. In addition to determining whether all of the equipment is measuring their required parameters properly, some equipment, measuring vital criteria, may be required to incorporate automatic shut off mechanisms. The inspector should establish that these mechanisms work as required.

Another priority during an inspection is to determine if the facility properly receives and sends all of the PCBs that it receives to an approved disposal process. The basic issues are whether the facility is diligent in identifying the types of PCBs being received, and whether the facility is sending these PCBs to a disposal process which is in accordance with its approval document. A simple example of this would occur when liquid PCBs are received at a chemical waste landfill transformers or containers and the landfill fails to remove the liquid PCBs from the items before disposal. The liquids would then have to be either properly stored or directed to an approved incinerator. This situation will occur where transformers, containers, or equipment are sent to landfills by users who have failed to drain the PCBs. Another example would occur where incinerators receive PCB equipment or articles for disposal and their approval document does not permit them to dispose of those particular items. Landfills receiving liquid PCBs should have observable procedures for recognizing liquid PCBs when they are received and for sending them on to an appropriate disposal facility. Incinerators should have similar procedurer for identifying PCB items which may not be disposed of under their approval document. The procedures must

also provide for sending the PCB items to incinerators which are approved to incinerate them. An assessment of the facilities general procedures for receiving and disposing of the PCBs received can often provide significant clues as to whether the facility is careful in disposing of items in accordance with its approval document.

A portion of the inspection should consider whether the facility is fastidious in disposing of all its PCBs. Many items such as rags old containers and even sweepings from floors may be disregarded as insignificant trash or waste. The inspector should explore the facilities diligence in PCB housecleaning and assure that such contamination is not left unaddressed.

A third but not necessarily final area of concern is the information in the facilities PCB records. The list of parties transporting PCBs to the a disposal facility should be copied. This may provide new information concerning PCB users. The inspector should also assess whether the facility is keeping all of the data which is required under Annex VI and their approval or waiver doucments. In addition, the monitoring records for the facility should be reviewed to determine whether the facility is operating within its prescribed limits and whether these limits have been properly monitored. Some of the monitoring requirements in the regulations require continous monitoring. Some require intermittent monitoring. These monitoring methods should be reflected in the monitoring records which have been retained by the facility. The data should conform to the requiremnts of annexes I or II and VI as well as any requirements imposed by approval waiver documents.

UNAPPROVED SITES

The above discussion conerned only approved PCB disposal facilities. Inspections of suspected illegal or unapproved disposal facilities present two problems: First of all the inspector must establish the presence of PCBs at the facility. Second it must be established that the act of disposal occurred after April 18, 1978.

Establishing the presence of PCBs may be accomplished by locating PCB labels or PCB items by sampling or by other methods such as comparing serial numbers to manufacturers records. Determining that disposal occured after April 18, 1978 presents a more difficult problem. This may require direct observation of acts of disposal; unless other approaches are available. In the instance of PCBs which have at one time been in a proper storage facility, the items should be dated. Many other PCB items may be dated for one purpose or another. Where the operation of an unapproved site is suspected the inspector should make every effort to gather all relevant evidence to ensure complete enforcement against the facility.

A. Incineration

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(1) §761.10 Disposal of Liquid PCBs		
(a) Failure to comply with any conditions and/or limitations stated in the written approval document.	Compare operation to conditions and/or limitations specified in the approval documents.	Obtain copies of record and charts that show that that operation exceeds specific limits. Photograph if possible. Document in field book.
(b) For each operation of an incinerator or alternative to incinerator, failure to give the following written notices to the State and local governments within whose jurisdiction the disposal facility is located.		
(i) Notice at least 30 days before facility is first used for incineration of PCBs. in an approved incinerator.	Check records of PCB disposal operation. Ask to see copies of notices.	Obtain copies of records written notices. Note discrepancies.
(ii) At the request of any State or local government, annual notice during the time the facility is used for disposal of PCBs or disposed of during the year, not more than 30 days after the end of the year covered. (§761.10(g)(1)(i),(ii))		

MONS 0083339

REGULATORY REQUIREMENTS	INSPECTION PROCEDURE	DOCUMENTATION
(c) For any person who disposes of PCBs under an exemption from incineration, failure to give at least 30 days prior written notice of such disposal to the State and local governments, within whose jurisdiction the disposal is to take place. (§761.10(g)(2)).	Determine whether exemption is required, i.e. whether disposal other than by incineration takes place. Verify notice.	Obtain copies of notice letters. Verify by phone or letter that letters were sent or received by agencies.
(d) For any person who is required to incinerate any PCB and who contends that there is available a means of destroying PCBs which is as efficient as the incineration procedure provided in Annex I, failure to obtain written approval of the Regional Administrator before employing any method of disposal of any PCB other than incineration with Annex I. (§761.10(f)).	Ask to see approval documentation determine whether disposal methods require approval beyond customary site approval.	Inspector should note in field book that PCBs are being handled in a manner such that all PCBs are not incinerated. Verify by examining approval document.
(2) Sec. 761.10 Disposal Of Non-liquid PCBs		
(a) Failure to properly dispose of non-liquid PCBs in the form of contaminated soil, rags, or other debris (761.10(b)(2)), soiled or contaminated with PCBs as a result of a spill or as a result of placement of PCBs in a disposal site prior to February 17, 1978 (761.10 (b)(3)).	In areas where PCB items are used, processed, transported, stored or decontaminated, or otherwise handled, check for likelihood of PCB contamination. Observe for oily residues, discoloration etc.	Sample, if necessary. Investigate source of contamination. Note observations in field book. Photograph obvious contamination and sources of contamination.
(b) Failure to properly dispose of PCB articles. (761.10(c)).	Assess whether facility procedures assure incineration of all PCBs or sending them to proper disposal.	Photograph PCB items which are not incinerated or sent to disposal.

MDNS 008340

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(c) Unless decontaminated in accordance with Annex IV, failure to dispose of PCB containers in an incinerator that complies with Annex I or in a chemical waste landfill that complies with Annex II. (§761.10(d)(1)).	Determine procedure for disposition of of used PCB containers, articles, and equipment. Look for containers which have residues. Look for marked and or dated containers which have not been disposed but are contaminated.	Note in field book source of statement on improper procedures. Photograph marked containers which are improperly disposed.
(d) Failure to drain the PCB container of liquid and flush it if necessary so that remaining PCB chemical substances are removed.	Same as above.	Same as above.
(3) Sec. 761.20 Marking of PCBs		
(a) Failure to mark as specified with Mark M_L as described in Annex V each of the following items in existence on or after July 1, 1978: (i) PCB Containers (ii) PCB article containers (iii) Such storage area used to store PCBs	Check PCB containers, article containers and storage areas for appropriate marking.	Photograph items that are unmarked. Obtain sample from unmarked containers. Note discrepancies in field book.
(4) Sec. 761.40 Incineration		
(a) Continuously monitor and record the combustion products whenever PCBs are being incinerated. At a minimum 0_2, CO_2 and CO are monitored. (§761.40(a)(7)). Failure to monitor results in automatic suspension of incinerator operations. (§761.40(a)(9)(L)).	Check the incinerator records and the combustion products monitoring records. Make sure that 0_2, CO_2, and CO were monitored at all times during the PCB incineration period. Hold data on CO_2, CO for use in combustion efficiency determination.	No combustion products monitoring records are available for periods of PCB incineration. Inspector must note this in field book.

HQNS 008341

REGULATORY REQUIREMENTS	INSPECTION PROCEDURE	DOCUMENTATION
(b) PCB feed rate and quantity of PCBs fed into combustion systems must be measured and recorded at least every 15 minutes.(§761.40(a)(3)). Failure to comply results in immediate suspension of incinator operations. (§761.40(a)(ii)).	Check the PCB feed rate and quantity records. Look for differences in the recording intervals of greater than 15 minutes during PCB incineration. Hold data on rate and quantity for use in dwell time determination.	Monitoring intervals greater than 15 minutes during PCB incineration Inspector must note this in field book.
(c) The temperature of the incineration process shall be continuously recorded. (§761.40(a)(8)(ii)).	Check the PCB incineration and temperature records making sure that the temperature was continuously monitored throughout the PCB incineration process.	No temperature recorded for periods of PCB incineration. Inspector must note this in his field book.
(d) Depending on the selected combustion criteria, the temperature must be maintained at 1200° (+ 100°C) or 1600° (+100°C) (761.40(a)(1)(i)&(ii)). Failure to comply results in immediate suspension of incineration operations.	Check the temperature records against the selected combustion criteria temperature. Make sure that the temperature is maintained within the 100° range throughout the PCB incineration process.	Temperature falls below above the specified limits Inspector must note this in his field book.
(e) Depending on the selected combustion criteria, the oxygen concentration must be maintained at 2% or 3% excess oxygen. (§761.40(a)(1)). Failure to maintain excess oxygen at the level specified causesc automatic suspension of incinerator operations. (§761.40(a)(8)(iii)).	Check the combustion products, monitoring results. Make sure that oxygen concentration was maintained at the appropriate level during PCB incineration. Verify automatic cut-off.	Oxygen concentration fall below specified excess oxygen level. Inspector must obtain a copy of the monitoring records that show this violaton. If not possible, note the suspected violation in field book.
(f) Depending on the selected combustion criteria, the dwell time must be maintained for at least 1-1/2 or 2 seconds.	Obtain feed rate data from step 2. Have the operator provide the calculations he used to determine dwell time of the	Dwell time is less than time specified in the selected combustion criteria. Inspector must obtain record of dwell time.

MONS 008342

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION FOR VIOLATION
(§761.40(a)(8)(iii)). Failure to maintain at least this dwell time causes automatic suspension of incinerator operations.	Material in the combustion chamber during PCB incineration. Calculate the maximum flow rate possible that would stay within the limits of the dwell time.	tain copies of the records showing the times when the flow rates or the chamber velocity exceeded the rates that correspond to minimum dwell time. The inspector should also show the appropriate dwell time calculations. If not possible, note suspected violation field book.
(g) The flow of PCBs into the incinerator must stop automatically if the combustion temperature drops below the value in the selected combustion criteria.	Have the operator show the temperature limit detection mechanism and the linkage to the automatic shut-off valve controlling PCB input. If possible, have the operator test the unit using off-line testing mechanisms incorporated in the devices. Review records of flow rate and combustion temperatures and locate any periods in which the temperature fell below the specified limit.	No shut-off mechanism exists, or no actuation of the shut-off mechanism occured during a period in which the time fell below the specified limit. Inspector must obtain copies of records showing the temp erature drop and no corresponding cessation of flow. If no mechanism exists, the inspector should take photographs of the feed mechanism that attests to the absence of such a shut-off mechanism, and record nature of component parts and model numbers. If not possible, note the suspected violation in field book.
(h) Water scrubbers shall be used for HCL control during PCB incineration.	Check the approval letter for the performance requirements for the water scrubber, and verify compliance requirements. ments.	No water srubber is being used. The Inspector must take photographs of the emission control system that attest to the absence

MONS 008343

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
Water scrubbers shall meet any performance requirements specified by the Regional Administrator. (§761.40(a)(9)).		of the water scrubber. inspector must obtain copies of records showing non-compliance with scrubber requirements. If not possible, note the suspected violation in field book.
(i) Combustion efficiency shall be at least 99 per cent computed as follows: Combustion eff = $\frac{Cco_2 - Cco \times 100}{Cco_2}$ Where Cco_2 = Conc. of carbon dioxide Cco = Conc. of carbon monoxide Section 761.40(a)(2)	Obtain concentration data from step 1. Calculate the combustion	Combustion efficiency less than 99 per cent. Inspector must obtain a copy of appropriate records show combustion products concentrations. Show calculations in field book.
(j) Additional requirements that the Regional Administrator finds necessary must be met. (761.40(d)(4)).	Check the approval document for additional requirements.	
(5) Particular Record Keeping Requirements for Incineration Facilities		
(a) Failure to prepare and maintain all documents required by Annex VI. (§761.45(b)).	Request opportunity to inspect PCB records.	Note failure to produce, or production of inadequate records in field book

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MONS 008344

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(b) In addition to the records and monitoring requirements specified in Annex VI, (See §761.45(b)) failure of each owner of a PCB Incineration facility to collect and maintain the following information.		
(i) When PCBs are being incinerated, the following continuous and short-interval data shall be collected and maintained for a period of 5 years from the date of collection. o Rate and quantity of PCBs fed to the combustion system, as provided in Annex I. (§761.40(a)(3)). o Stack emission products including O2 CO2, and CO, as provided in Annex I. (§761.40 (a)(7)).	Check records.	Note discrepancies in field book. Obtain copies of any data or records available over the interval in question.
(ii) When PCBs are being incinerated, data and records resulting from the monitoring of stack emissions as required in Annex I - (§761.40(d)(8)), shall be collected and maintained for 5 years.		

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Liquid PCBs - Incineration

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(c) Total weight in kilograms of any solid residues generated by the incineration of PCBs during the calendar year, the total weight in kilograms of any solid residues disposed of by such facility in chemical waste landfills, and the total weight in kilograms of any solid residues remaining on the facility site shall be retained for 5 years.		
(d) When PCBs are being incinerated, additional periodic data shall be collected and maintained as specified by the Regional Administrator pursuant to Annex I. (§761.40(d)(4)).		
(e) A document shall be prepared on any suspension of the operation of any incinator by the owner or operator thereof, as required in Annex I - (§761.40(a)(3)). The document shall, at a minimum, include the date and time of the suspension and an explanation of the circumstances causing the suspension of operation. The document shall be sent to the appropriate Regional Administrator.		

MONS 008346

INSPECTION PROCEDURES

FOR

CHEMICAL WASTE LANDFILLS

MONS 008347

B. Chemical Waste Landfills

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
1. Sec. 761.10 Disposal of PCBs		
(a) Failure to properly dispose of liquid PCB Chemical Substance and PCB Mixtures in an incinerator that complies with Annex I. (761.10(a)(b)).	Observe for liquid PCB wastes designated for disposal, and for improper disposal of liquid PCB.	Photograph and sample suspected areas of illegal disposal.
(b) Failure to properly dispose of non-liquid PCBs in the form of a) contaminated soil, rags or other debris (permitted until July 1, 1980), b) soils and debris contaminated with PCB as a result of a spill or of placement of PCBs in a disposal site prior to February 17, 1978, and c) sewage treatment sludges that are PCB mixtures. (761.10(b)(2)(3)(4)).	Determine whether PCB items are placed in areas of the site which are approved for PCB disposal. Look for peculiarly placed items.	Note or copy records which indicate items are improperly place. Photograph items or sample areas suspected of being contaminated.
(c) Failure to properly dispose of PCB articles. (§761.10(c)).	Look for anomolous discarded and improperly placed items.	Photograph improperly placed item. Locate on map
(d) Failure to, prior to disposal in a chemical waste landfill, drain each transformer of all free flowing liquid, fill the transformer with solvent, and allow 18 hours before solvent is drained. See (§761.10(c)(ii)).	Check on procedures for handling transformers at the landfill. Observe transformer handling operation. Check transformer draining areas, solvent filling areas. Check landfill notes for undrained transformers.	Photographic documentation of improper procedures. Record detailed observations in field book.

MONS 008348

Chemical Waste Landfills

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(e) Failure to properly dispose of PCB chemical substances and PCB mixtures, which are removed from transformers. (§761.10(c)(ii)).	Check on procedures for handling drained mixtures from transformers. Observe transformer drainage operation.	Photographic documentation of improper procedures. Record detailed observations in field notebook.
(f) Unless decontaminated in accordance with Annex IV, failure to properly dispose of PCB containers. (§761.10(d)(1)).	See incineration, chemical, and waste landfill procedures.	See incineration and chemical waste landfill procedures.
(g) Failure to drain the PCB container of liquid and flush it if necessary so that remaining PCB chemical substances and PCB mixtures consitute no more than 0.5 per cent of the total volume of the container, prior to disposal in a chemical waste landfill that complies with Annex II. (§761.10(d)(1)).	Check landfill site for PCB containers that contain noticeable amounts of residual materials. Obtain samples of material. Measure the size of the container and the total volume of residual.	Calculate volume of residual as percent of volumne of container. Document samples. Determine if residual volume exceeds 0.5 per cent of total container volume.
(h) For all PCB articles other than transformers, and capacitors; if incineration is thought to be technologically infeasible, failure to obtain written permission (and failure to comply with any limitations specified therein) from the R.A. to use a chemical waste landfill for disposal. (§761.10(c)(3)).	Check landfill site for PCB articles other than tranformers or capacitors. Ask to see R.A.'s written permission to use chemical waste landfills.	Obtain photographs of PCB articles disposed in land fill. Obtain copies of records. Record observations in detail in field book.

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(i) Failure to store, prior to disposal, any PCB liquids or non-liquids described above, in a storage facility that complies with Annex III. (§761.10(a)(2), (b)(5),(c)(4)).	See storage procedures.	See storage procedures.
(j) Failure to store and dispose of liquid PCBs resulting from spill incidents in accordance with 1-5 above. (§761.10(e)).	See storage and disposal procedures.	See storage and disposal procedures.
(k) For each operator of a chemical waste landfill or alternative to incineration approved under (6) above, failure to give the following written notices to the State and local governments within those jurisdiction the disposal facility is located: (i) Notice at least 30 days before a facility is first used for disposal of PCBs, and (ii) At the request of any State or local government, annual notice during the time the facility is used for disposal of PCBs of disposed of during the year, not more than 30 days after the end of the year covered. (§761.10 (g)(1)(i)(ii)).	Check records of PCB disposal, ask to see copies of written notices.	Obtain copies of records written notices. Note discrepancies in field book.

MONS 008350

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(1) For any person who disposes of PCBs under an exemption from chemical waste landfilling, failure to give at least 30 days prior written notice of such disposal to the State and local governments within whose jurisdiction the disposal is to take place. (§761.10(g)(2)).	Request copies of notice. Verify receipt if necessary.	Note absence of actual notice in field notes.
(2) Sec. 761.41 Operation Requirments for Chemical Waste Landfills		
(a)(i) Soils meet certain parameters (parts i through vi). Liners shall be compatible with PCBs and liner integrity maintained. Soil underlining shall be provided as well as soil cover. (761.41(b)(1)).	Check to see if cover has been put on completed burial areas or does not cover entire area used to bury PCBs to an adequate depth, or if soil cover has been eroded, damaged, or removed. Photographs of incomplete cover should be taken. Note in field book.	Photograph inadequate cover. Note in field book details of cover appearance.
(ii) Hydrology. There shall be no hydraulic connection between site and standing or flowing surface water. Site shall have monitoring wells and leachate collection (§761.41 (b)(2)).	Inspect site for flowing or standing surface water and for existence of useable monitoring wells and leachate collection systems.	Photographic documentation that flowing or standing surface water exists. Make detailed notes in field book show that monitoring wells or leachate system is not workable.
(iii) Flood Protection if landfill is below 100 year floodwater elevation; operator shall provide division dikes around landfill a minimum height of 2' above 100 year flood elev. §761.41 (b)(2)(i).	Inspect for 100 year floodwater elevation and dike requirements. Inspect integrity of dikes if appropriate, and determine height.	Photographic documentation and field book note stating that dike maintenance is poor, or that dike has been eroded or damaged by operations so that gaps, cracks, or height loss has resulted.

MONS 00835

Chemical Waste Landfills

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(iv) If landfill is above the 100-year floodwater elevation; the operators shall provide diversion structures capable of diverting all surface water runoff from a 24-hr, 25-yr storm. (§761.41(b)(3)(iii)).	Examine permit for 100 year floodwater elev. and diversion requirements. Inspect diversion structures if appropriate.	Photographs showing that structure does not meet requirements of permit, maintenance is poor, or structures have been damaged, or erosion has occured. Make detailed notes in field book.
(v) Monitoring Systems. Monitor wells shall be cased and the annual or space between zons of saturation and surface shall be completely backfilled or plugged with cement to prevent intrusion of surface water into well zone. The well shall have removable cap. (§761.41(5)(ii)(5)).	Check general integrity of wells. Check for cover. Insure that well is not plugged or filled with soil or debris. Take samples from wells.	Annual space is not completely backfilled or concrete in space is cracked or crumbling. Well is plugged, buried, damaged flooded, or otherwise unuseable. Samples cannot be retrieved from well. Analysis of well indicating excess PCBs content. Obtain photos. Make detailed notes in field book.
(vi) Leachate Collection must be monitored monthly for quality of leachate produced. (§761.41(b)(6)).	Check permit to determine leachate collection requirements. Check general integrity of leachate collection system.	Leachate system is not properly maintained. There is visible evidence that system is plugged, or damaged. Samples cannot be retrieved from system Analysis of sytem sample show excess PCBs content Take samples from system Photo as appropriate. Make detailed field note

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Chemical Waste Landfills - Section 761.41

REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(vii) Chemical Waste Landfill Operations o PCBs shall be placed in the landfill in a manner that will prevent damage to containers and articles. Other wastes, incompatible with PCBs and PCB containers, shall be segregated from PCBs throughout the waste handling and disposal process.(§761.41 (b)(7)(i)).	Visually observe handling operations. Check for broken or ruptured containers in holding and disposal areas.	Operations observed that could damage containers is observed (e.g. dropping them, pushing them, pushing them with bulldozer, inappropriate stacking unless transferring, malfunctioning handling equipment), actual damaged containers seen. Pud dles of PCBs seen in areas. Analysis of surface soil shows excessive PCB content. Incom patible wastes identified in PCB areas. Take soil samples in areas or leaks from containers. Identif other wastes in handling and disposal areas. Make detailed notes in field book.
viii) Supporting Facilities		
o A six-foot woven mesh fence, wall, or similar device shall be provided around the site.	Inspect the fence or barrier for integrity.	Fence or barrier is in disrepair or is damaged. Photographs and detailed field book notes as approp priate.
o Roads shall be maintained to and on the site adequate to operate and maintain the site without causing nuisance, or hazards. (§761.41(b)(8)). so as to minimize dust control.	Inspect road visually for ruts, bumps. Road surface is inadequate so that it is too muddy in raining weather. It is not properly cleaned of snow. It is properly surfaced	Photograph conditions of roads. Make detailed notes in field book.

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
o Site shall be operated and maintained in a manner to prevent safety problems or hazardous conditions resulting from spilled materials or wind blown materials.	Inspect operations for general good housekeeping as specified in the operational plan	Observe and photograph violations and make detailed field notes.
(3) Particular Record Keeping Requirements for Chemical Waste Landfills		
(a) Owners or operators maintain annual records, effective July 2, 1978.	Inspect records and determine compliance with Annex VI.	Document non-compliance in field book or obtain copy of records.
(i) Date when PCBs removed from service and placed into storage. Quantities indicated as follows:		
o Total weight in kilograms of PCBs in containers including identification of containers contents such as liquids or capacitors.	Inspect records and determine compliance with Annex VI.	Document non-compliance field book or obtain cop of records.
o Total number of transformers and weight in kilograms of any PCB mixture contained in transformers.		
o Total number of PCB large high, or low voltage capacitors.		

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(ii) PCBs removed from service, location of initial disposal or storage facility and name of owner or operator.		
(iii) Total quantities of PCBs remaining in service at end of calendar year. o Total weight in kilograms of PCBs in containers including identification of container contents such as liquids or capacitors. o Total number of transformers and weight in kilograms of PCB contained in the transformer. o Total number of PCB large high, or low voltage capacitors.		
(b) Owners or operators document on PCB handling at facility for previous calendar year. Effective date of regulation May 1, 1979. Document must be available July 1 of each year and include:	Request copy of report or inspect report at site. Documents must be retained at site for 5 years after facility no longer used for storage.	Document non-compliance.
(i) Date PCBs received and identification of person and facility from whom PCBs were received.		

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(ii) Date PCBs disposed of or transported to another disposal or storage facility, including identification of types of PCBs in containers and those not in containers.		
(iii) Weight of PCB containers, and weight of PCB chemical substance or mixture contained in transformers received, transported or diposed of. Identify PCB container contents such as liquids, capacitors, etc. Identification of facilities to which PCB containers or PCB chemical substances or mixtures in transformers are transported.		
(iv) Number of PCB articles or equipment not in PCB containers received transported to other storage or disposal facility, and remaining on facility site at end of calendar year. Identification of specific type PCB article and equipment and identification of facility transferred to shall be included.		
(c) Special Records Retention	Examine Facility records.	Document non-compliance.
(i) All documents, correspondance and data provided by facility to State or local government agency pertaining to disposal are retained at the site for appropriate length of time.		

MONS 008356

MARKING REQUIREMENTS

C arking Requirements

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(1) Items to be marked ML as of July 1, 1978 (a) all PCB containers (b) PCB Transformers (a) at the time of manufacture (b) at the time of distribution in commerce (c) when removed from service (c) PCB High Voltage Capacitors (a) at the time of manufacture (b) at the time of distribution in commerce (c) when removed from service. (d) Equipment containing a PCB transformer or large high voltage capacitor (a) at the time of manufacture (b) at the time of distribution in commerce and (c) when removed from service. (e) PCB large low voltage capacitors when removed from use. (f) PCB motors. (g) PCB Hydraulic systems. (h) PCB Heat Transfer Systems. (i) PCB Article containers containing marked PCB items. (j) PCB Storage Areas.	Look for unmarked PCB items. Obtain legal justification for failing to mark any PCB item Where requirement exists, and item is not marked, document violation. Many PCB items must be marked upon removal from service but need not be marked while in service until January 1, 1978. Between July 1, 1978.	Photograph, to document lack of label. Sample or otherwise establish that item is a PCB item. Note in field book reasons why items should be marked, and status of item which imposes marking requirement.

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(2) Items which must be marked as of January 1, 1970. (a) All PCB Transformers (b) All PCB large high voltage capacitors (c) All PCB equipment containing small PCB capacitors must be marked according to §761.20(a)(4).	All PCB items shall be checked for required label.	Photograph unmarked item explain why mark is required in field notes.
(3) As of Oct. 1, 1978 all vehicles for transporting PCBs must be marked.	All vehicles includes fork lifts etc. used at facilities	Photographs of vehicles used in transport of PC
(4) Certain non PCB equipment (see §761.20(a)(b)) must be marked "No PCB's."	Not expected to arise at presently projected inspections.	
(5) Improper use of Mark M$_S$		

MONS 008359

INSPECTION PROCEDURES

FOR

ELECTRIC UTILITIES

MONS 008360

D. Introduction to Electric Utility Operations

Electric utility operations consist of four primary activities: (1) generation of power, (2) distribution of bulk, high voltage power, (3) distribution and sale of electricity to direct users, and (4) construction, maintenance, and repair acitivities.

Power Generation

Electric power can be generated using a variety of methods, including as hydroelectric units, nuclear reactors, and coal or oil fired generators. Generating methods have little bearing on PCB use except for coal fired generating facilities that use electrostatic precipitators for air pollution control. Precipitators frequently use PCB transformers for voltage control because of the location of the transformers on the roofs of buildings, (fire codes may require non-flammable PCB transformers and large capacitors may be used for other applicat within the generating facilities, but such uses are analogous with those in any other large industrial facility.

Bulk Power Distribution

Bulk power distribution occurs when large electric utilities such as the Tennessee Valley Authority provide power to smaller electric utilities such as Rural electric co-operatives or municipally owned electric utilities. These smaller electric utilities directly distribute and sell power to final consumers. Bulk distributors will probably own fewer PCB transformers, and large capacitors, as they are less involved in providing lower voltage or power factor correction for final customers. Large high voltage capacitors, however, are frequently used in substations that distribute power to small utilities.

Distribution and Direct Sale to Customers

Electric utilities involved in the direct distribution and sale to end users will be the most common type of electric utility. These utilities may generate their own power, but the most important factor is the design of the distribution system. Substations used for voltage changes or other distribution corrections will contain racks of large high voltage capacitors (all will be PCB units except for recent replacements). Small transformers used for will also be found in some substations. Larger PCB transformers are seldom found at substations unless special fire code considerations or unusual space constraints dictate the use of PCB transformer fluids. Power poles within the distribution system will have both large capacitors and transformers. These should contain mineral oil and not PCBs unless special fire requirements or other factors, such as personal preference, dictated PCBs.

In some cases, the utility may own large capacitors or transformers that are located within buildings or other facilities owned or operated by final users. The capacitors will probably be PCB units and the transformers may also be PCB units because of fire codes. It should be noted that fire codes do not require PCBs in transformers, but rather require fire protection in the event of an electrical failure that could ingnite the transformer coolant. A fire proof vault could serve the purpose, but the use of non-flammable coolants has been the simplest solution. Silicon based coolants, other newly developed coolants, or even air cooled transformers (usually much larger than oil cooled units) are alternatives that may be used to meet fire code requirements.

Construction, Maintenance, Repair

Construction, maintenance, and repair activities performed by utilities will be the primary activities involving both direct contact with PCBs and opportunities to comply with the marking and disposal requirements for PCBs. Construction operations will probably not involve the installation of new PCB transformers or capacitors, but the removal or relocation of existing PCB units may occur. PCB disposal may result from these construction activities.

Capacitor Maintenance

PCB capacitor repair and maintenance operations will take place either at the location where the PCB units are used, or at a remote repair facility where the PCB units are delivered for repair or maintenance. Maintenance of large capacitors is relatively straightforward. They either function properly, or they are replaced. When capacitors fail to function properly it is usually because of a short circuit within the unit. This condition may cause the capacitor casing to bulge because of internal pressures due to the short circuit and the casing may rupture, in which case some of the PCB liquid may leak out. Short circuited or damaged capacitors are never repaired, just replaced. The old units are usually disposed.

Transformer Maintenance

Maintenance or repair of PCB transformers is more varied. On-site or in-place maintenance can include the following:

(a) Removing a sample (one pint to one quart) of PCBs to test dielectric strength (the presence of water, carbon, or other contaminants lowers dielectric strength);

(b) Adding a small amount of PCBs to bring the PCB level up to the full-line (topping off);

(c) Replacement or resealing of bushings, insulators, or gaskets (the PCB level of the transformer is lowered below the affected part and then refilled to the full-line after repairs have been made);

(d) Removal, filtering (clay filter or paper cartridge), and return of PCB liquids into the transformer (filter media and any waste PCB liquids will require special disposal);

(e) Removal of PCB liquids into the transformer and refilling with another batch of PCB liquids (unusable PCB liquids will require special disposal)

PCB transformer repair and maintenance operations that are performed off site will usually be conducted at a transformer repair facility operated by the electric utility or by a separate transformer service company under contract.

Special Electric Utility Operations Related to PCBs

In addition to the above activities related to the actual use of PCBs, the PCB marking and disposal regulation will probably require electric utilities to perform several ancillary activities. Most utilities will establish long term, ($761.42) and temporary PCB storage for disposal sites ($761.42(c)(1). Special markings will be required for PCB transformers and large capacitors in use or in storage, for containers of PCBs in use or in storage sites, and for vehicles used to transport PCB transformers and containers to storage.

Special records will have to be kept by utilities on PCB activities. These records will permit the utility to keep track of PCBs to storage for disposal or final disposal. The records will identify locations of storage areas and disposal sites and will enable PCBs to be traced to determine if final disposal is performed in accordance with the regulation.

II. Recommended Approaches for Conducting Electric Utility Inspections

Inspection Priority and Records Review

Before initiating an inspection of an electric utility the following factors should be investigated and evaluated:

(1) The relative size of the utility in terms of the number of kilowatt hours sold annually should be determined along with scope of activities (as descibed in the preceding sections) conducted by the utility.

(2) Previous inspection histories (TSCA as well as other environmental health statutes) which may indicate corporate attitude toward compliance with environmental regulations.

(3) Utilities for which a third party report or "tip-off" has been made relating to illegal disposal or storage. These reports can come from competitors, environmental "watchdogs", transporters, or the general public. These potential sources of information can be effectively used only if the sources are aware of the general requirements of the regulation and the potential harm that can result from non-compliance. (Note: all third party reports should be converted into permanent evidence via signed statements, or, preferably, affidavits).

Utility Compliancies: Potential Violations,
Inspection Procedures and Documentation

A. General Inspection Procedures

For those utilities selected for inspection, an investigator should (1) go to the central location for PCB records, (2) conduct a records examination as outlined in Appendix D (Annex VI), and (3) based on the findings of this examination, determine the need for physical inspection of utility facilities. If the records are legally sufficient, and do not indicate that the utility has a violation, no further inspection should be perfo med at the site. If records either do exist or do not meet the minimal legal requirements of the regulation, o indicate that the utility has violated the regulation, a full inspection should ensue.

The records review may indicate specific facilities where violations might be expected, but in the absenc of specific leads, inspections should be directed in the following priority.

(1) Transformer repair and maintenance facilities located at the utility
(2) Long term PCB storage for disposal facilities
(3) In use facilities such as major substations and coal fired power generation facilities
(4) Storage areas for serviceable PCB articles
(5) Temporary storage for disposal facilities
(6) PCB transport vehicles

B. Specific Inspection Procedures and Documentation

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(1) §761.10 Disposal of PCBs		
(a) Failure to dispose of liquid PCBs in an incinerator that complies with Annex I. (761.10(a)(b)).	Direct observations of illegal disposal when it occurs would be the most convincing evidence, but it is unlikely this will possible. Direct observation and sampling of residues from an illegal disposal activity can be acheived in some cases, and such evidence should be obtained whenever possible.	Direct evidence (soils etc.) of illegal PCB dis posal should be sampled to determine if any residual concentrations are below 500 ppm. Special samples and notes should be obtained when there is suspicion that watercourses are being contaminated.

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
		shorelines have been contaminated. Photographs should be taken whenever possible and sample locations should be precisely referenced and located on maps or plots.
(b) Failure to dispose of non-liquid PCBs in the form of (a) contaminated soil, rags or other debris, and (b) soils and debris contaminated with PCBs as a result of a spill or as a result of placement of PCBs in a disposal site prior to February 17, 1978, in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II (for items specified in (a), disposal in a chemical waste landfill is permitted until July 1, 1980. After that date, these items must be incinerated) (761.10(b)(2)(3)).	Inspect and sample wastes to determine if non-liquid (does not flow freely or is not readily pumpable) and contains 500 ppm or greater PCBs.	Properly identify sample and analytical results Field notes on physical nature of waste (liquid vs. non-liquid).
(c) Failure to dispose of PCB transformers and other PCB articles in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II. (761.10(c)).	Determine if articles contain PCB mixtures or chemical substances. For transformers, use direct sampling. For capacitors, manufacturers reports can be used.	Properly identify sample and analytical results in field book. Copy any manufacturer's reports.

MDNS 008366

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(d) Failure to, prior to disposal in a chemical waste landfill, drain each transformer of all free flowing liquid, fill the transformer with solvent and allow 18 hours before solvent is drained. (761.10(c)(ii)).	Open drain valves on tranformers and collect any free flowing liquid. If liquid volume collected is greater than 5% of the transformer volume, then adequate draining did not occur. This may apply more to disposal sites. If a utility has not completed adequate draining, they could claim that the disposal site is responsible for that operation. Follow up may be necessary.	
(e) Failure to dispose of PCB chemical substances and PCB mixtures which are removed from the transformer, (including solvent), in an incinerator or that complies with Annex I, or in a chemical waste landfill that complies with Annex II (§761.10(c)(ii)).	Interviews with personnel to determine familiarity with power draining procedures as indicators of proper draining.	Field notes and statements from workers. Obtain serial numbers or other direct identity of trans former.
(f) For any large high or voltage capacitor owned by any person, failure to dispose in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II, unless it is known from label information manufacturer's literature or chemical analysis that the capacitor does not contain PCB chemial substances or PCB mixtures. (§761.10(c)(2)(i),(ii)).	Similar to A,3. except that burden is on owner to furnish other evidence if he contends PCBs are not present. This requirement is intended to force manufacturers of new large capacitors to mark their products "non-PCBs" if no PCBs are used.	Similar to A,3.
(g) Unless decontaminated in accordance with Annex IV, failure to dispose of PCB containers in an incinerator that complies with Annex I, or a chemical waste landfill that complies with Annex II. (§761.10(d)(1)).	Determine that containers PCBs by direct samples of residuals or from records review or third party statements.	Field notes, photographs analytical results, copies of records, and statements from employees or third party observers.

MONS 008367

REGULATORY REQUIREMENTS	INSPECTOR PROCEDURES	DOCUMENTATION
(h) Failure to drain the PCB container of liquid prior to disposal in a chemical waste landfill that complies with Annex II. (§761.10(d)(2)).	Observe to determine if any physical evidence of PCBs is present inside or outside of container. If PCBs are observed or if other information suggesting inadequate decontamination obtained, investigate decontamination process. See	Field notes, photographs statements from employee or third party observers
(i) For PCB articles other than transformers and capacitors, if incineration is thought to be technogically infeasible, failure to obtain written permission (and to comply with any limitations specified therein) from the R.A. granting permission to use a chemical waste landfill for disposal. (§761.10(a)).	Examine documents from R.A. granting permission. Continue investigation to determine if special conditions accompanying R.A. permission are being complied with.	Copies of documents. Other documentation based on special conditions in R.A. permission.
(j) Failure to dispose of Liquid PCBs resulting from spill incidents in accordance with 1-9 above, (§761.10(e)).	Follow up spill reports. Direct inspection or contacts with spill officials will indicate degree of compliance. Non-compliance will require procedures similar to 1 and 2, except for records review.	Samples of contamination zones and removed material Third party reports or direct observation of field disposal.
(k) Failure to properly store, prior to disposal, any PCB liquids or non-liquids described in 1-10 above, in a storage area that complies with Annex III. (§761.10(a) (2),(b),(5),(c)(4)-(d)(2)).		
(l) For any person who is required to incinerate any PCB and who contends that there is available a means of destroying PCBs which is as efficient as the incinerprocedures provided in Annex I,	See 9 above.	See 9 above.

MONS 008368

REGULATORY REQUIREMENTS	INSPECTION PROCEDURE	DOCUMENTATION
failure to obtain written permission (and failure to comply with any limitations specified therein) from the P.A. before employing any method of disposal of any PCB other than incineration in a facility which complies with Annex I. (§761.10(f)).		

MONS 000369

INSPECTION PROCEDURES

FOR

TRANSFORMER MAINTENANCE AND REPAIR FACILITIES
AND RAIL SYSTEMS

MONS 008370

E. Introduction to Transformer Maintenance and Repair Facilities and Railroad and Subway Systems.

One of the major sources of PCB exposure for the environment and to workers occurs during transformer repair and maintenance activities, as these operations often involve handling large volumes of highly concentrated liquid PCB's. The internal windings and other electrical apparatus within the transformer can hold significant residuals of PCB's, and major transformer disassembly often results in repeated leakage and drainage of PCB's. As with electrical utility companies, electrified railroads and, to lesser extent, subway systems, perform significant PCB transformer repair and maintenance operations that may be performed by a facility-owned operation or by a contracted outside firm.

Electric railroad locomotives and self propelled commuters receive their electric power from overhead high voltage A.C. current distribution lines. This high voltage current is then reduced to a lower, working voltage by transformers on the locomotives for use by the electric motors that power the locomotives or cars. These transformers are subjected to severe working conditions in that the cramped space available on the locomotives and the heavy electrical load, result in high maintenance requirements when compared to other PCB transformer installations. In addition, many of the railway transformers are located on the undercarriage of the locomotive and are subject to damage from objects thrown up from the track roadbed. This damage may cause a leak of PCBs which will require transferral of the locomotive to a repair facility.

Subway systems are also electrically powered, but receive their power through a third rail which delivers direct current at a working voltage for the electric motors on the subway cars. Transformers are used in the electric distribution system which regulates the voltage to the proper level, and since much of the electrical system is underground, the transformers are often PCB units. The transformers are basically standard distribution system units and are reasonably reliable. The subway systems do not usually have special repair organizations for transformers, but instead contract with transformer repair firms.

Transformer Repair and Maintenance Facility Functions

Transformer repair and maintenance fuctions are often split between on-site and off-site activities. Since PCB transformers are heavy, bulky units and the transporation of them does pose some risks, many service operations are performed on-site. Some examples of these on-site operations are:

(a) Removing a sample (one pint to one quart of PCBs) for testing dielectric strength (the presence of water, carbon, or other contaminants lowers dielectric strength);

(b) Adding a small amount of PCBs to bring the level up to the full line (topping off);

(c) Replacement or resealing of bushings, insulators, or gaskets (the PCB level of the transformer is lowered below the affected part and then refilled to the full line after repairs have been made);

(d) Removal, filtering (clay filter or paper cartridge) and return of PCB liquids into the transformer (filter media and any waste PCB liquids will require special disposal);

(e) Removal of PCB liquids from a transformer and refilling with new or reclaimed PCB liquids (unusable PCB liquids will require special disposal).

Off-site operations are conducted at the transformer repair facility and include an operations sequence like the one below.

1. The tranformer is delivered to the shop, probably containing PCB liquids;

2. If minor repairs are all that are required, then a series of steps similar to the on-site operations above are performed;

3. For major repairs, the PCB liquids are drained and probably retained for re-use after filtering, unless the liquids are grossly contaminated, particularly with carbon particles from an electrical failure. These contaminated liquids would go to PCB disposal;

4. Before opening the transformer for major repairs, the unit may be flushed with solvent to lower the residual PCB content. The spent solvent should go to PCB disposal;

5. After the top is opened, the internal coils and other electrical apparatus are probably removed for examination and/or repair. These devices may contain significant quantities of residual PCBs;

6. Depending on the condition of the coil, rewinding with new wire may be performed. The scrapwire should be disposed of as a PCB solid. PCB contamination from such transformer salvage operations is considered to be a serious problem;

7. The internal workings are replaced, the transformer resealed, and PCBs (either new or reclaimed) are added to the unit;

8. The transformer is tested and, if satisfactory, returned to service.

The risks these operations pose come from three activities:

1. Newly arriving transformers may be leaking and contaminating transport vehicles, storage areas or building;

2. Significant quantities of waste PCBs will be generated, and adequate storage and disposal must be provided for;

3. Since dismantling and repair operations occur in a number of locations within the facility, housekeeping problems can be serious. If widespread contamination occurs within the facility, drainage systems can readily become contaminated with PCBs.

Railroad Maintenance Operations

These operations are similar to the transformer repair facilities with two major exceptions:

1. The transformers must be removed from the locomotives or serviced on the locomotives in the same work pits that are used for other locomotive maintenance operations. This often results in very cramped working conditions and an intermixing of PCB operations with other operations.

2. The railroad shops almost never open a transformer for repairs to internal apparatus. For these services, the transformers are sent to outside transformer repair facilities.

Railroad repairs are usually similar to the on-site repair and maintenance operations discussed above. Repair oporations unique to the railroad units include repair or replacement of PCB motors used to re-circulate PCBs for cooling, and repair or replacement of cooling radiators that may be damaged by stones or other roadbed projectiles.

The most significant risks at these railroad maintenance facilities are as follows:

1. General housekeeping contamination, paritcularly in work pits. Drainage to sanitary or storm sewers from the pits could be a significant contamination pathway;

2. Although some quantities of waste PCBs will be generated, increased filtering and reclamation may reduce this.

II. Recommended Approaches for Conducting Transformer Maintenance Repair and Railroad and Subway Facility Inspections.

Inspection Priority

Headquarters is providing a basic list of transformer repair facilities and railroad and subway systems that may handle PCB units. The facilities should be contacted to determine if they are engaged in PCB activities. If there is any possibility or suspicion that PCB maintenance is being

performed, the facility should be physically inspected. Any facilities for which a third party report or "tip-off" has been made relating to illegal disposal or storage should receive priority. These reports can come from competitors, environmental "watchdogs," transporters, or the general public. These potential sources of information can be effectively used only when these sources are aware of the general requirements of the regulation and the potential harm that can result from non-compliance. Third party reports should be converted into permanent evidence via signed statements or, preferably, affidavits.

Railroad and Subway Systems

III. Transformer Repair and Maintenance Facilities: Potential Violations, Inspection Procedures and Documentation

A. General Inspection Procedures

I. Transformer repair and maintenance facilities

For those transformer maintenance and repair facilities selected for inspection, a thorough physical inspection should be performed with records review, as outlined in Chapter 5, Appendix D, as a secondary priority. The following facility areas or activities should be inspected:

1. Storage lot or area where incoming transformers are placed. Inspector should look for leaking units and evidence of significant ground contamination. If storm runoff of PCBs into storm drains or steams is suspected, samples of contaminated soil and stream or storm drain bottom deposits should be taken.

2. Storage for disposal area(s) should be inspected for compliance with 761.42 (see Chapter 5, Appendix A).

3. Scrap metal areas should be inspected for PCB contaminated wiring or other internal parts. No dismantled or intact PCB transformer casing should be here. They must be in storage for disposal areas.

4. General housekeeping conditions should be observed. PCB contaminated rags and other debris must be placed in proper containers for disposal. Poor housekeeping is indicated by PCB contamination of drainage systems and the general facility environment. Drainage systems samples should be taken.

5. PCB storage and handling areas within the facility should be carefully inspected. Although the regulation provisions apply only to storage for disposal, serious hazards can be addressed under emergency powers.

6. The degree of worker knowledge about occupational hazards of PCBs should be determined. The availability of protective clothing should also be determined. These factors are not potential violations per se, but are good indicators of the degree of knowledge that exists regarding environmental concerns.

7. Determine the amount of activity in retrofilling PCB transformers with substitute fluids. If this is a major activity at this facility, then expect large quantities of waste PCBs to be generated.

8. Records as required by Annex III (see Chapter 5, Appendix D), should be reviewed to determine the names and locations of all storage for disposal and final disposal site locations. If outside transformer repair firms are acting as middlemen in the transformer disposal chain from original user to final disposal, adequate records should be available indicating the origin of the transformers or waste PCB fluids.

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9. After July 1, 1978, all PCB transformers at a transformer repair facility will have to be properly marked in accordance with Annex V (see Chapter 5, Appendix C). This also applies to PCB containers storage for disposal areas.

II. Railroad and Subway Systems: All of the above and locomotive and self-propelled car maintenance facilities

B. Specific Inspection Procedures and Documentation

Transformer Repair Facilities

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(1) 761.10 Disposal of PCBs		
(a) Failure to dispose of liquid PCBs in an incinerator that complies with Annex 1, (761.10(a), (b)).	Direct observation of illegal disposal when it occurs would be the most convincing evidence, but is unlikely that this will be possible. Direct obserr-vation and sampling of residues from an illegal disposal activity can be achieved in some cases, and such evidence should be obtained whenever possible.	Direct evidence (soils, etc.) of illegal PCB disposal should be sampled to determine if there are any residual concentrations below 500ppm. Special samples and notes should be obtained whenever possible and sample locations should be precisely referenced or located on maps or plots.

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Transformer Repair Facilities

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(b) Failure to dispose of non-liquid PCBs in the form of contaminated soil, rags or other debris contaminated with PCBs as a result of a spill or as a result of placement of PCBs in a disposal site prior to February 17, 1978, in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II (for items specified in (a), disposal in a chemical waste landfill is permitted until July 1, 1980. After that date, these items must be incinerated). (§761.10(b)(3)).	Inspect and sample wastes to determine if non-liquid (does not flow freely or is not readily pumpable) and contains 500 ppm or greater.	Properly identify sample and analytical results Field notes on physical nature of waste (liquid) vs. non-liquid).
(c) Failure to dispose of PCB transformers and other PCB articles in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II. (§761.1)(c)).	Determine if articles contain mixtures or chemical substances. For transformers, use direct sampling. For capacitors, manufacturers reports can be used.	Sample and analytical results and copies of manufacturers reports.
(d) Failue to, prior to disposal in a chemical waste landfill, drain each transformer of all free flowing liquid, fill the transformer with solvent and allow 18 hours before solvent is drained. (761.10(c)(ii)).	Open drain valves on transformers and collect any free flowing liquid. If liquid volume collected is greater than 5% of the transformer volume, then adequate draining did not occur. If no solvents are present in the liquid, then a solvent flush did not occur. Since transformer facilities can either serve as agents for final disposal or decide to dispose of a transformer after testing or examining it, proper draining of transformers will be an important activity.	

MDNS 008377

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(e) Failure to dispose of PCB chemical substances or mixtures which are removed from the transformer, (inluding solvent), in an incinerator that complies with Annex I, or in a chemical waste.	Interviews with personnel to determine familiarity with proper draining procedures as indicators of proper draining.	Field notes and statements from workers. Obtain serial numbers or other direct identity of transformers.
(f) Unless decontaminated in accordance with Annex IV, failure to dispose of PCB containers in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II. (§761.19(d)(1)).	Determine that containers contained PCBs by direct samples of residuals or from records review or third party reports.	Field notes, photographs analytical results, copies of records, and statements from employees or third party observers.
(g) Failure to drain the PCB container or liquid prior to disposal in a chemical waste landfill that complies with Annex II. (§761.10(d)(a)).	Observer to determien if any physical evidence of PCBs is present inside or outside of container. If PCBs are observed or if other information suggesting inadequate decontamination is obtained, investigate decontamination process. See	Field notes, photographs statements from employees or third party observers
(h) For PCB articles other then transformers and capacitors, if incineration is thought to be technologically infeasible, failure to obtain written permission (and comply with any limitations specified) to use a chemical waste landfill for disposal. (§761.10(c)(3)).	Examine documents from R.A. granting permission. Continue investigation to determine if special conditions accompanying R.A. permission are being complied with. Will seldom apply to transformer repair facilities.	Copies of documents and other documents based on special conditions in the R.A. approval.
(i) Failure to properly store, prior to disposal, any liquids or non-liquid described in 1-8 above, in a storage area that complies with Annex III. (§761.10(a)(2)(b)(5), (c)(4),(d)(2)).	See Chapters on storage for procedures.	See Chapters on storage for procedures.

MDNS 008378

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(j) Failure to properly store and dispose of liquid PCBs resulting from spill incidents.	Follow up spill reports. Direct inspection or contacts with spill officials will indicate degree of compliance. Non-compliance will require procedures similar to 1 and 2, except for records review.	Samples of contamination zones and removed materials, third party reports or direct observation of final disposal.
(k) For any person who is required to incinerate any PCB and who contends that there is available a means of destroying PCBs which is as efficient as the incineration procedures provided in Annex I, failure to obtain written permission (and failure to comply with any limitations specified therein) from the R.A. before other than incineration in a facility which complies with Annex I. (§761.10(f)).	See 8 above.	See 8 above.

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Railroad and Subway Systems: Specific Inspection Procedures and Documentation

Note: PCBs will generally be found in locomotive and self propelled car maintanence facilitites.

REGULATORY REQUIRMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(1) § 761.10 Disposal of PCBs		
(a) Failure to dispose of liquid PCBs in an incinerator that complies with Annex I (761.10(a),(b)).	Direct observations of illegal disposal when it occurs would be the most convincing evidence, but it is unlikely that this will be possible. Direct observation and sampling of residues from an illegal disposal activity can be achieved in some cases and such evidence should be obtained whenever possible.	Direct evidence (soils, etc.) of illegal PCB disposal should be sampled to determine if any residual concentrations of dilution was used to get concentrations below 500 ppm. Special samples and notes should be obtained whenever there is suspicion that watercourses have been contaminated. Photographs should be taken whenever possible and sample locations should be precisely referenced and located on maps or plots
(b) Failure to dispose of non-liquid PCBs in the form of a) contaminated soil, rags or other debris, and b) soils and debris contaminated with PCBs as a result of a spill or as a result of placement of PCBs in a disposal site prior to February 17, 1978, in an incinerator that complies with Annex I, or in a chemical wastes landfill that complies with Annex II (for items specified in a), disposal in a chemical waste landfill is permitted until July 1, 1980. After that date, these items must be incinerated (761.10(b)(20(3)).	Inspect and sample wastes to determine if non-liquid (does not flow freely or is not readily pumpable) and contains 500 ppm or greater.	Properly identify sample and analytical results. Field notes on physical nature of waste (liquid non-liquid).

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(c) Failure to dispose of PCB transformers and other PCB articles in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II. (761.10(c)).	Determine if articles contain PCB mixtures or chemical substances. For transformers, use direct sampling. For capacitors, manufacturers reports can be used.	Sample and analytical results should be noted in field book. Copies of manufacturers reports should be included if possible.
(d) Failure to, prior to disposal in a chemical waste landfill, drain each transformer of all free flowing liquid, fill the transformer with solvent and allow 18 hours before solvent is drained. (761.10(c)(iii)).	Open drain valves on transformers and collect any free flowing liquid. If liquid volume collected is greater than 5% of the transformer volume, then adequate draining did not occur. If no solvents are present in the liquid, then a solvent flush did not occur. If the facility has not completed adequate draining, they could claim that the disposal site is responsible. Follow up may be necessary.	
(e) Failure to dispose of PCB chemical substances and PCB mixtures which are removed from the transformer, (including solvent), in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II (§761.10(c)(ii)).	Interviews with personnel to determine familiarity with proper draining procedures as indicators of proper draining.	Field notes and statements from workers. Obtain serial numbers or other direct identity of transformer.
(f) For any large high or low voltage capacitor owned by any person, failure to dispose in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II, unless it is known from label information, manufacturer's literature or chemical analysis used that the capacitor does not contain PCB chemical substances or PCB mixture. (§761.10(c)(2)(i)(ii)).	Similar to A,3. except that burden is on owner to furnish other evidence if he contends PCBs are not present. This requirement is intended to force manufacturers of new large capacitors to mark their products "Non-PCBs" if no PCBs are used. Capacitors may be found on some new motors and in building electrical systems. Subway systems may have them for power factor correction.	Simmilar to A,3.

MONS 008381

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(g) Unless decontaminated in accordance with Annex IV, failure to dispose of PCB containers in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II. (§761.10(d)(1)).	Determine that containers contained PCBs by direct samples of residuals or from records review or third party statements.	Field notes, photographs analytical results, copies of records, and statements from employees or third party observers.
(h) Failure to drain the PCB container of liquid prior to disposal in a chemical waste lanfill that complies with Annex II. (761.10(d)(1)).	Observe to determine if any physical evidence of PCBs is present inside or outside of container. IF PCBs are observed or if other information suggesting inadequate decontamination is obtained, investigate decontamination process. See	Filed notes, photographs statements from employees or third party observers
(i) For PCB articles other than transformers and capacitors, if incineration is thought to be technologically infeasible failure to obtain written permission (and to comply with an limitations specified therein) from the R.A. granting permission to use a chemical waste landfill for disposal. (§761.10(c)(3)).	Examine documents from R.A. granting permission. Continue investigation to determine if special conditions accompanying R.A. permission are being complied with.	Copies of documents or other documents based on special conditions in R.A. permission.
(j). Failure to dispose of liquid PCBs resulting from spill incidents in accordance with 1-9 above. (§761.10(c)(3)).	Follow up spill reports. Direct inspection or contacts with spill officials will indicate degree of compliance. Non-compliance will require procedures similar to 1 and 2, except for records review.	Samples of contamination zones and removed materials. Third party report or direct observation of final disposal.

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(k) Failure to properly store, prior to disposal, any PCB liquids or non-liquids described in 1-10 above, in a storage area that complies with Annex III. (§761.10(a)(5),(c)(4)(1)(2)).	See Chapter on storage for procedures.	See Chapter on storage for documentation.
(l) For any person who is required to incinerate any PCB and who contends that there is available a means of destroying PCBs which is as efficient as the incineration procedures provided in Annex I, failure to obtain written permission (and failure to comply with any limitations specified therein) from the R.A. before employing any method of disposal of any PCB other than incineration in a facility which complies with Annex I. (§761.10(f)).	See 9 above.	See 9 above.

MDNS 008383

INSPECTION PROCEDURES

FOR

TRANSFORMER AND CAPACITOR MANUFACTURERS

I. Introduction to PCB Capacitor and PCB Transformer Manufacturing

Manufacturers of PCB capacitors and PCB transformers have been identified as major discharges of PCBs to U.S. waters: the contamination resulting from such discharges has forced the closing of a number of major rivers to fishing. Due to environmentalist pressure and new laws and regulations, the manufacture of PCB capacitors in the U.S. is expected to terminate by mid-1978. As far as EPA is aware, PCB transformer manufacturing has already ceased.

Nevertheless, PCB discharges resulting from complex materials handling systems, poorly constructed drainage systems, and general poor housekeeping practices will probably continue to contaminate U.S. waterways for some time after all PCB transformer and capacitor manufacturing has ceased. Significant volumes of PCB solid wastes, in the form of defective small capacitors, have been disposed of improperly in dumps, and PCB discharges from such dumps continue to contaminate both water systems and municipal sewage sludge.

II. Recommended Approach for Conducting PCB Capacitor and PCB Transformer Manufacturing Facility Inspections

Inspection Priority

The highest inspection priority should be those few capacitor manufacturers who still use PCBs. They will have large amounts of highly concentrated liquid PCBs on hand, and thus have the greatest potential for PCB contamination. Storage and handling of PCB wastes from the manufacturing process will also be a major problem.

The second priority should be former PCB capacitor manufacturers. Transformer manufacturers should be the third priority. All facilities should be physically inspected. Note: Those facilities for which third party reports on illegal disposal or storage have been made should receive priority. Those reports can come from competitors, environmental "watchdogs", transporters, or the general public. These potential sources of information can be effectively used only if the sources are aware of the general requirements of the regulation and the potential harm that can result from non-compliance. Third party reports should be convereted into permanent evidence via signed statements or, preferably, affidavits.

Capacitor Manufacturers: Inspection Procedures and Documentation

A. General: The following facility areas or activities should be inspected.

1. Storage for disposal areas containing any waste PCB liquids or solid wastes generated by manufacturing operations. This applies to most current manufacturers.

2. Materials handling systems used for PCBs. Residual PCBs in the systems could contaminate other substances. Such contaminated substances must be handled as PCB mixtures.

3. Dumps, landfills, or pits used in the past for disposal of manufacturing wastes. Leachate and other indicators of contamination should be samples.

4. Facility drainage systems should be inspected and sampled for PCB contamination. NPDES or other EPA or state programs may already be examining this problem.

5. Records should be reviewed. (Note: former manufacturers may not be required to keep records).

6. Any small PCB capacitors owned by manufacturers, past or present, will have to be disposed of in accordance with Annex II(761.10(c)(2)(iv). These are the only disposal requirements for small capacitors.

B. Specific Procedures

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(1) §761.10 Disposal of PCBs		
(a) Failure to dispose of liquid PCBs in an incinerator that complies with Annex I. (761.10(a),(b)).	Direct observations of illegal disposal when it occurs would be the most convincing evidence, but it is unlikely this will be possible. Direct observation and sampling of residues from an illegal disposal activity can be acheived in some cases, and such evidence should be obtained whenever possible.	Direct evidence (soils etc.) of illegal P posal should be to determine if any resi- dual concentrations of 500 ppm. or greater are present, or if dilution was used to get concentrations below 500 ppm.

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REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
		should be taken whenever there is suspicion that U.S. waters or adjoining shorelines have been contaminated. Photographs should be taken whenever possible and sample locations should be precisel referenced and located on maps or plots.
(b) Failure to dispose of non-liquid PCBs in the form of a) contaminated soil, rags or other debris, and b) soils and debris contaminated with PCBs as a result of a placement of PCBs in a disposal site prior to February 17, 1978, in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II. (For items specified in a), disposal in a chemical waste landfill is permitted until July 1, 1980. After that date, these items must be incinerated. (761.10(b)(2),(3)).	Inspect and sample waters to determine if non-liquid, (does not flow freely or is not readily pumpable) and contains 500 ppm or greater.	Properly identify sample and analytical results. Field notes on physical nature of waste (liquid) vs. non-liquid).
(c) Failure to dispose of PCB articles in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II (761.10(c)(3)).	Determine if articles contain PCB mixtures or chemical substances. For transformers, use direct sampling. For capacitors, manufacturers reports can be used.	Properly identify sample and anlaytical results. Copy manufacturers report.

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Capacitor Manufacturers

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION OF VIOLATIONS
(d) For any large high or low voltage capacitor owned by any person, failure to dispose in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II, unless it is known from label information, manufacturer's literature or chemical analysis that the capacitor does not contain PCB chemical substances or PCB mixtures. (761.10(c)(2)(i),(ii)).	Similar to A3, except that burden is on owner to furnish other evidence if he contends PCBs are not present. This requirement is intended to force manufacturers of new large capacitors to mark their products "Non PCBs" if no PCBs are used.	Similar to A,3.
(e) Unless decontaminated in accordance with Annex IV, failure to dispose of PCB containers in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II. (761.10(d)(1)).	Determine that containers contained PCBs by direct samples of residuals or from records review or third party statements.	Field notes, photographs, analytical results, copies of records and statements from employees or third party observers.
(f) Failure to drain the PCB container of liquid prior to disposal in a chemical waste landfill that complies with Annex II. (761.10(d)(1)).	Observe to determine if any physical evidence of PCBs is present inside or outside of container. If PCBs are observed or if other information suggesting inadequate decontamination is obtained, investigate decontamination process.	Field notes, photographs, statements from employees or third party observers
(g) For PCB articles other than transformer and capacitors, if incineration is thought to be technologically infeasible, failure to obtain written permission (and to comply with any limitations specified therein) from the R.A. granting permission to use a chemical waste landfill for disposal. (761.10(c)(3)).	Examine documents from R.A. granting permission. Countinue investigation to determine if special conditions accompanying R.A. permission are being complied with.	Copies of documents, documentation based on special conditions in R.A. permission.

MDNS 008388

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION OF VIOLATION
(h) Failure to dispose of liquid PCBs resulting from spill incidents in accordance with §761.10(e). (761.10(e)).	Follow up spill reports. Direct inspection or contacts with spill official will indicate degree of compliance. Non-compliance will require procedures similar to 1 and 2 except for records review.	Samples of contamination zones and removed materials. Third party report or direct observation of final disposal.
(i) Failure to properly store, prior to disposal, PCB liquid or non-liquids described in 1-10 above, in storage area that complies with Annex III. (761.10(a)(2),(b)(5), (c)(4)(d)(2)).		
(j) For any person who is required to incinerate any PCB and who contends that there is available a means of destroying PCBs which is as efficient as the incineration procedures provided in Annex I, failue to obtain written permission (and failure to comply with any limitations specified therein) from the R.A. before employing any method of disposal of any PCB other than incineration in a facility which complies with Annex I. (761.10(1)).	See 9 above.	See 9 above.

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Transformer Manufacturers: Inspection Procedures

A. General Procedures: the following facility areas or activities should be inspected.

1. Storage for disposal areas containing any waste PCB lquids or solid wastes generated by manufacturing operations This applies to most current wastes generated by manufacturers.

2. Materials handling systems used for PCBs. Residual PCBs in the systems could contaminate other substances. Such contamnated substances must be handled as PCB mixtures.

3. Dumps, landfills, or pits used in the past for disposal of manufacuring wastes. Leachate and other indicators of contamination should be sampled.

4. Facility drainage systems should be inspected and sampled for PCB contamination. NPDES or other EPA or state programs may already be examining this problem.

5. Records should be reviewed in accordance with the methods outlined in Chapter 5, Appendix D. (Note: Former manufacturers may not be required to keep records).

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(1) §761.10 Disposal of PCBs		
(a) Failure to dispose of liquid PCBs in an incinerator that complies with Annex I. (761.10(a),(b)).	Direct observations of illegal disposal when it occurs would be the most convincing evidence, but is is unlikely this will be possible. Direct observation and sampling of residues from an illegal disposal activity can be acheived in some cases, and such evidence should be obtained whenever possible.	Direct evidence (soils etc.) of illegal PCB disposal should be sampled to determine if dilution was used to get concentrations below 500 ppm. Special samples and notes should be obtained whenever there is suspicion that U.S. waters or adjoining shorelines have been contaminated. Photographs should be taken whenever possible and locations should be precisely referenced and located on maps or plots.

MONS 008390

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(b) Failure to dispose of non-liquid PCBs in the form of a) contaminated soil, rags or other debris, and b) soils and debris contaminated with PCBs as a result of a spill or as a result of placement of PCBs in a disposal site prior to February 17, 1978, in an incinerator that complies with Annex I, or in chemical waste landfill that complies with Annex II (for items specified in a), disposal in a chemical waste landfill is permitted until July 1, 1980. After that date, these items must be incinerated (761.10(b)(2),(3)).	Inspect and sample wastes to determine if non-liquid, (does nto flow freely or is not readily pumpable) and contains 500 ppm or greater.	Properly identify sample and analytical results. Field notes on physical nature of wastes (liquid vs. non-liquid).
(c) Failure to dispose of PCB transformers and other PCB articles in an incinerator that complies with Annex I, or in a chemical waste landfill that complies with Annex II.	Determine if articles contain PCB mixtures chemical substances. For transformers use direct sampling.	Properly identify sample and analyze results.

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STORAGE REQUIREMENTS

STORAGE REQUIREMENTS

INTRODUCTION TO STORAGE INSPECTIONS

Storage areas play a key role in preventing PCBS from reaching the environment prior to their disposal. The function of the storage requirements in the regualtions is to assure effective containment of PCBS until they are sent on to a disposal facility. To assure environmental protection, the regulations provide for the construction of protective structures for the storage of PCBs.

The essential concerns of the regulation are that storage facilities avoid potential migration of PCBs into watercourses and that they be able to contain possible spills. These concerns do not necessarily require construction of an elaborate structure. The principle requirements, an adequate roof and walls, impervious flooring and adequate containment capacity, may be met with fairly simple structures and some ingenuity. A steel tub for instance could suffice for meeting the floor and curbing requirements if it were of sufficient capacity. The tub then could be placed in any building for weather protection, and the storage facility requirements would be satisfied.

The operations of the storage facility should comply with the requirements of the §761.20 marking regulation as well as Annex III and Annex IV. With respect to marking, all PCBs which are required to be placed in a storage facility should be marked and dated. In addition, once marked and dated, the PCBs in storage must be carefully organized according to the regulation so as to permit easy access.

At all facilities, PCBs in storage should be accurately recorded in the PCB records for the facility. The quantity of PCBs in storage should relate directly to the quantity of PCBs removed from service or received from other facilities.

As a vital part of each Storage facility inspection the inspector should assess, as a guide to the likelihood of serious violations, the general housekeeping of the facility operation. Poor or non-existent records and sloppy operations are good indicators of breaches of other significant requirments and should be carefully noted in the inspector's field book.

Every facility which owns or uses PCBS should either have an Annex III storage facility or be capable of sending its PCBs directly to a remote storage or disposal site. This suggests that inquiries as to the existence and location of storage facilities should be a part of nearly every PCB inspection.

G. Storage (ANnex III)

REGULATORY REQUIRMENTS	INSPECTION PROCEDURES	DOCUMENTATION OF VIOLATIONS
(1) Period of Storage: §761.42(a) PCB article or container stored before January 1, 1973 shall be removed from storage and disposed of before January 1, 1984. PCB article or container stored after January 1, 1983 must be disposed of within one year from date placed into storage.	Check records for date of storage. Confirm that disposal occured by inspection of storage area.	PCB article or container still in storage area. Record observations in field book, obtain photo graph (if possible) of stored material; list quantities of material, type of containers, etc.
(2) Storage Facility: §761.42(a)	Visual inspection for leaks and general condition of structure.	Record observation in detail in field book, provide exact location by measurement from stationary object such as floor, wall, or ceiling where leak occurs, objects water contacts, and drainage path of water. Photographs (if possible
(a) Adequate shelter to prevent rain reaching PCBs.		
(b) Adequate floor with 6 inch high continuous curbing. Containment must provide 2 time internal volume of largest PCB article or container or 25% of total internal volume of all PCB equipment or containers stored therein, whichever is greater.	Determine volume of all stored equipment or containers and volume of largest container by direct measurement or from records. Measure surface dimensions and curb height.	Calculate total volume of containers, largest container, and storage area If in violation verify all measurements. Obtain photocopies of all records describing container dimensions and volumes.

MDNS 0083955

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Storage (Annex III)

Inspection Procedures

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION OF VIOLATIONS
(c) No drains, valves, expansion joints, or other openings within curbed area.	Visual inspection of containment area. Review all piping and sewer blueprints.	Provide exact locations detail in field book with measuresments to station objects. Determine drainage path and ultimate disposal location. Obtain photocopies of blueprint showing openings of area, Verify blueprints by visual inspection. Photograph (if possible).
(d) Floors and curbing constructed of continuous smooth and impervious materials.	Visual inspection material usually concrete or metal (metal storage bins)	Describe material used, exact location of cracks or expansion joints which permit penetration of PCBs. Photograph (if po sible).
(e) Storage prohibited at site below 100 year flood water elevation.	Determine from geological records elevation of storage facility.	Obtain of 100 year flood elevation and topographic maps of storage area. Determne accurate elevation of storage area above ground level.
§761.42(c)		
(a) Temporary storage of non-leaking PCB articles and equipment permitted for up to 30 days from date of removal from service in area not complying with §761.42(b) (Not containers)	Determine date when equipment or articles removed from service. Inspect all equipment or articles for leaks.	Obtain records when equipment removed from service. Describe leaks, number of containers, condition of equipment, drainage path and ultimate dispositon. Photograph (if possible) Collect sample of leaked material.

MDNS 008396

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION OF VIOLATIONS
(b) Storage of non-leaking and structurally undamaged PCB large high voltage capacitors on pallets is permitted next to storage facility meating the requirements of 761.42b until January 1, 1973. Capacitors checked for leaks weekly.	Determine if storage facility has immediate available unfilled storage space equal to 10% of volume of capacitors stored outside of facility. Check all capacitors for leaks.	Calculate volume of unfilled storage space and volume of capacitors. Document all leaks if leaking capacitor can be placed in unfilled storage space.
(c) Storage areas are marked.	Verify marking to comply with §761.20(a)(6).	Document non-compliance regulation. Photograph (if possible).
(d) Movable equipment handling PCBs which contact PCB chemical substances or mixtures shall not be removed from storage facility unless it has been decontaminated.	Prepare or obtain list of all movable equipment used in storage facility. Inspect for contamination. Verify decontamination procedures.	Document where decontamination procedures deviate from method described in Annex IV. May need to collect samples of solvents.
(e) All PCB containers and articles must be checked for leaks once every 30 days. All such leaking containers and articles and their contents shall be transferred immediately to properly marked non-leaking containers. Any spilled or leaked material shall be immediately cleaned up and disposed of as per the regulation.	Check inspection records. Determine if leaking containers are placed in properly marked non-leaking containers and if spilled or leaked materials are properly disposed or.	Document in field book note compliance of markings, leaking containers, and improper disposal of leak material and absorbents. Collect samples.
(f) PCB containers shall comply with DOT specifications 49CFR173.346 revised Dec. 31, 1976.	Check specification numbers where available. Measure guage. Compare to DOT specs.	Document non-compliance field notebook. Obtain container equivalent to in non-compliance. Photograph (if possible).
(g) PCB articles and containers must be dated when placed in storage. Storage area must be managed to locate items by date.	Inspect records and storage area.	Document in field book quantity of articles and containers not dated. Obtain photocopies of records

MONS 008397

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION OF VIOLATIONS
(g) Owners or operators maintain annual records, effective July 2, 1978. (i) Dates when PCBs removed from service and placed into storage. Quantities indicated as follows: o Total weight, in kilogram, in containers and identification of PCB such as liquid or capacitor. o Total number of tranformers and weight, in kilograms, of any PCB mixture contained in transformers. o Total number of PCB large high or low voltage capacitors (ii) PCBs removed from service, location of initial disposal or storage facility and name of owner or operator. (iii) Total quantities of PCBs remaining in service at and of calendar year. o Total weight, in kilograms, of PCBs in contaners including identification of container contents such as liquids or capacitors. o Total number of transformers and weight, in kilograms, of any PCB contained in the transformers.	Inspect records and determine compliance with Annex VI.	Documentation of non-compliance in field book or obtian copy of record

MONS 008398

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTAION OF VIOLATIONS
o Total number of PCB large high or low voltage capacitors.		
(i) Owners or operators document on PCB handling at facility for previous calendar year. Effective date of regulation May 1, 1979. Documentation must be available July 1 of each year.	Request copy of report or inspect report at site. Documents must be retained at site for 5 years after facility no longer used for storage.	Obtain copy of records. Document non-compliance in field book.
(i) Date PCBs received and identification of person and facility from whom PCBs were received.		
(ii) Date PCBs disposed of or transported to another disposal or storage facility, including identification of types of PCBs in containers and not in containers.		
(iii) Weight of PCB containers, and weight of PCB chemical substance or mixture contained in transformers received, transported or disposed Identify PCB containers contents such as liquids, capacitors, etc. Identification of facilities to which PCB containers or PCB chemical substances or mixtures in transformers are transported.		

MDNS 008399

REGULATORY REQUIREMENTS	INSPECTION PROCEDURE	DOCUMENTATION OF VIOLATIONS
(iv) Number of PCB articles or equipment not in PCB container received, transported to other storage or disposal facility, and remaining on facility aite at end of calendar year. Identifiction of facility transferred to shall be included.		
(j) Special Records Retention	Examine facility records.	Document non-compliance by noting lack of, or inadequate records in Field Book.
(i) All documents, correspondence and data provided by State or local government agency pertaining to storage.		
(ii) All documents, correspondence, and data provided by facility to State or local government agency pertaining to storage.		

MONS 008400

DECONTAMINATION

Annex IV: Decontamination (§761.43)

The decontamination requirements are designed to bring the level of PCBs remaining in a container or on equipment after use down to a minimal level, in order to prevent other liquids or articles placed in the container or put in contact with equipment, from becoming contaminated with PCBs.

As decontamination is usually performed when fresh containers or equipment are needed, not at regular intervals, it is unlikely that the inspector will be able to observe decontamination procedures directly. However, it is possible to get a general idea of whether decontamination procedures are conducted in compliance with the regulation by asking "leading" questions such as:

-Are containers and equipment decontaminated after they have been in contact with PCBs?

-What is the normal decontamination procedure?

If the facility representative outlines the procedures listed under "Regulatory Requirements", it can be assumed that he/she is at least familiar with the decontamination requirements of the regulation.

If the representative does not outline the decontamination requirements of the regulation, it is unlikely that he/she is aware of proper decontamination procedures. In this case, the inspector should leave written instructions (based on the "Regulatory Requirements" column) describing proper methods of decontamination.

If, however, decontamination procedures can be observed directly, an inspection should be conducted as outlined below.

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION OF VIOLATIONS
(1) Containers (§761.43(a))		
(a) Was the container flushed three times with a solvent containing less than 0.05 percent PCB chemial substance in which the solubility of PCBs was five percent or more (by weight)?	Observe procedures to vertify compliance.	Document non-compliance in field book.
(b) Was the rinse volume of the dilutent equal to approximately ten percent of the container's capacity?	Observe the filling or emptying of solvent into/out of the container. Measure amount of solvent used and determine internal volume of container. Compute to determine whether volume of solvent is equal to 10 percent of container's capacity.	Document non-compliance in field book.

MONS 0004402

Annex IV: Decontamination (§761.43)

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION OF VIOLATIONS
(c) Was the solvent properly disposed of as a PCB mixture (§761.10(b)(2)), when the level of PCBs in the solvent reached 0.5 percent?	Observe procedures to verify compliance.	Document non-compliance in field book. Take sample.
(d) Were all materials used in the decontamination procedures properly disposed of as PCB mixtures (§761.10(b)(2))?	Check to insure that all liquids and solids used in decontamination are placed in a properly marked container and transferred to a storage area that complies with Annex III.	Document non-compliance in field book.
(2) Equipment (§761.43(b))		
(a) Was all moveable equipment used in storage areas decontaminated by swabbing surfaces exposed to PCBs with a solvent meeting the criteria of paragraph (a) above.	Observe procedures to verify compliance.	Document non-compliance in field book.

MDNS 008403

RECORDS AND MONITORING

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(i) The dates when PCBs are removed from service, are placed in storage for disposal, and are placed into transport for disposal.		Obtain copies or make note of locations and names of all storage sites and final disposal sites.
(ii) Total quantities of PCBs remaining in service at the end of the calendar year. The quantities of such PCBs in 2(a) and (b) shall be indicated using the following: o Total weight, in kilograms, of any PCB substances or mixtures in PCB containers, including the identification of container contents, such as liquids or capacitors; o total number of PCB transformer and total weight, in kilograms, of PCB substances and mixtures contained in the transformers; and o total number of PCB large high or low voltage capacitors. ((§761.45(a)(1) & (3)).		
(iii) For PCBs removed from service, the location of the initial disposal or storage facility and the name of the owner or operator of the facility (§761.45(a)(2)).		
(c) Failure to maintain records and documents for at least 5 years after the facility ceases containing PCBs in the prescribed quanitaties (#1)(§761.45(a)).	If facility has ceased operations, ask former owner or operator where the document is located, and inspect for presence of all information required.	Document non-compliance field book. When data has been omitted, photograph and copy document if possible.

MDNS 008405

I. Records and Monitoring §761.45 Annex VI:

The general purpose of records and monitoring requirements is to (1) enable EPA to keep track of the types, amount, and location of PCBs and (2) to provide further impetus for stores and disposers to keep track of PCBs handled at the particular facility.

Records and Monitoring: PCBs in service or projected for disposal (§761.45(a))

Records and monitoring requirements for PCBs in service projected for disposal are designed to (1) identify the type, amount, and location of PCBs currently in service at a particular location and (2) enable EPA to trace PCBs through storage, transportation and disposal, in order to identify those people/facilities who receive PCBs when they are removed from service. Once receivers are identified, EPA may (a) compare records for the purpose of detecting discrepancies, (which may indicate violations), and (b) discover any storage and disposal facilities that had previously escaped EPA notice.

REGULATORY REQUIREMENT	INSPECTION PROCEDURES	DOCUMENTATION
(1) §761.45(a) PCBs in Service		
(a) Begining July 2, 1978, for any owner or operator of a facility containing any of the following: (i) 45kg (99.4 lbs) or more PCB chemial substances or PCB mixtures, (ii) one or more PCB transformers, (iii) 50 or more PCB large high or low voltage capacitor, failure to develop and maintain records on the dispositon of PCBs. (§761.45(a)).	Determine amounts of PCB chemical substances, mixtures transformers and large high or low voltage capecitors by inquiry and direct observation. If numbers equal or exceed regulatory requirements, check for the presence of records on the disposition of PCBs.	Document non-compliance field book.
(b) Failure to prepare an annual document, based on the above records of disposition, by July 1, covering the previous calendar year, which includes the following information:	Check for (1) presence of document, and (2) the inclusion of all data specified in (a) and (b). Copy or photograph document for later comparison of records.	Document non-compliance field book. When data has been omitted, photograph or copy document if possible.

MONS 008406

Annex VI: Records and Monitoring

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(d) For owners and operators with more than one facility which contains PCBs in the quantities prescribed in #1, and maintaining the records and documents at a single location, failure to insure that the identity of this location is available at each facility containing PCBs that is normally manned for 8 hours a day. (§761.45(a)).	Call all facilities manned for 8 hours a day and ask where records and documents for the facility are kept. This requirement is designed to eliminate the need for EPA to go on "wild goose chases" looking for records. If we know the location of records for a firm, we do not need to determine if all facilities of the firm know the location. If we encounter facilities that do not know the records location and we need to know it , then it should be considered a possible violation.	Document non-compliance in field book.

MDNS 0084O7

Annex VI: Records and Monitoring: Disposal and Storage Facilities (§761.45(b) & (d))

Records and monitoring requirements for storage and disposal facilities are designed to 1) identify the type, amount, and location of PCBs in various storage and disposal facilities, 2) enable EPA to compare storage and disposal records with those of facilities with PCBs in service, for the purpose of detecting discrepancies (which may indicate violations), and 3) to enable EPA to trace back to original user, so that any "in service" facilities that had previously escaped EPA notice may be identified.

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
Beginning July 1, 1979, failure of any owner or operator of a facility used for the storage or disposal of PCBs to prepare and maintain, by July 1 of each year, a document which summarizes PCB activities at the facility during the previous calendar year, and to make such documents available at the facility for inspection by EPA. (§761.45(b)).	Check for presence of document. Copy or photograph document for later comparison of records.	Document non-compliance field book.
Failure to retain such documents at each facility for at least 5 years after the facility is no longer used for the storage or disposal of PCBs, except in the case of chemical waste landfills, where such documents shall be maintained for at least 20 years after the landfill is no longer used for disposal of PCBs (761.45(b)).	Check for presence of document	Document non-compliance in field book.
Failure of the owner or operator of the facility to notify the Agency R.A. of the Region in which the facility is located when the facility ceases storage or disposal operations. (§761.45(b)).	If the facility has ceased operations, check EPA records for presence of the notification and the specification of where all documents are located.	Document non-compliance in field book.

MONS 008408

VI: Records and Monitoring

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(2) Failure to include in the annual document:	Check for the inclusion of all information required.	Document non-complaince in field book.
(a) The date when any PCBs are received by the facility during the previous calendar year for storage or disposal, and the identification of the person and facility from whom such PCBs were received (§761.45 (b)(1)).		
(b) The date when any PCBs are 1) disposed of at the disposal facility, or 2) transferred to another disposal or storage facility, including the identification of the specific types of PCB substances, mixtures, or articles in containers, PCB transformers, and PCB equipment or PCB articles not in containers which were stored or disposed of (§761.45(b)(2)).		
(c) The total weight, in kilograms, of any PCB containers kilograms of any PCB substances or mixtures contained in any PCB transformers, 1) receiving during the calendar year, 2) transferred to other storage or disposal facilities during the calendar year, and 3) remaining on the storage or disposal facility site at the end of the calendar year respectively, including, where applicable, the identification of PCB container contents such as liquids, capacitors, etc.		

MDNS 008409

REGULATORY REQUIREMENTS	INSPECTION PROCEDURES	DOCUMENTATION
(d) when PCB conainers or PCB substances or mixture contained in a transformer, are transferred to other storage or disposal facilities, failure to include the identification of the facility to which such PCBs were transferred (§761.45(b)(3)).	Check for the inclusion of all information required.	Document non-compliance in field book.
(i) The total number of any PCB articles or equipment, not in PCB containers, 1) received during the calendar year, and 2) remaining on the facility year, respectively, including the identification of the specific types of PCB articles and equipment received, transferred, or remaining on the facility site.		
o When PCB articles and equipment are transferred to other storage or disposal facilities, failure to include the identifiation of the facility to which such PCB articles and equipment were transferred. (§761.45(b)(4)).		
761.45(d):		
In additon to the information required to be maintained by §761.45(b) above, each owner or operator of a PCB disposal or storage site collect and maintain, for the period described in #2 above, the following information:	Prior to a records inspection, the site approval file located at the EPA Regional Office should be reviewed for the presence of any documents listed under "regulatory requirements". If the EPA file contains any correspondence or permits not found in the records at the site, a violation exists.	Document non-complaince field book.

MONS 008410

ENFORCEMENT PROCEEDINGS MANUAL

A. Wrap-up Activities of the Inspector.

After each inspection the inspector shall write an Inspection Report based upon information on the Violation Worksheet and his Field Notes. The Inspection Report shall detail all violations which the inspector believes he found during the inspection and shall describe all relevant supporting evidence. After completing the Inspection Report, he shall submit that document, a copy of his applicable Field Notes and other relevant supporting documents, in accordance with Regional procedures, to the designated Regional PCB Marking and Disposal Regulation Violation Coordinator. The inspector shall keep the original Field Notes in his files and shall make and keep on file copies of all other material sent to the Violation Coordinator.

B. Wrap-up Activities of the Laboratory.

After the laboratory performs its analysis on the PCB samples collected at the disposal site, the appropriate laboratory personnel shall send a copy of all laboratory records relevant to such sample analysis, along with a copy of the relevant Chain of Custody Record, to the Regional PCB Violation Coordinator. All originals of the above documents shall be maintained by the laboratory as permanent records until required in an enforcement action.

C. Decision Making by the Regional PCB Marking and Disposal Regulation Violation Coordinator.

Each Regional Administrator shall appoint a PCB Marking and Disposal Regulation Violation Coordinator. All PCB Marking and Disposal Regulation Inspection Reports shall be sent to such Violation Coordinator, in accordance with Regional procedures, by the inspector who made the inspection pursuant to the PCB Marking and Disposal Regulation. It should be emphasized that the Violation Coordinator may be any person whom the Region designates for such position. It is anticipated that the Regions shall integrate the function of the PCB Violation Coordinator into existing decision making structures.

The Violation Coordinator shall examine each Inspection Report and determine the answers to the following questions:

1. Is there a probable violation?
2. If yes, what type of action, if any, should be brought against the alleged violator?
3. If the action is one for administrative civil penalty assessment, how much should the proposed civil penalty be?

Criteria and guidelines for decision making in each of the above three areas are provided below.

1. Is there a probable violation?

To determine whether or not there is a probable violation the Violation Coordinator must examine all the evidence provided in the Inspector's Report. In addition, the Violation Coordinator should take all other reasonable steps (such as speaking with the Inspector, personnel of the laboratory performing any relevant sample analysis, and appropriate Regional attorneys) which he deems necessary for a determination of the existence and extent of a violation. If the Violation Coordinator determines that there is insufficient evidence to indicate a violation he shall take reasonable steps to gather sufficient evidence if he believes that:

1. such evidence may be obtained without unreasonably intensive resource efforts, and
2. the violation, if substantiated, is not an insignificant one.

If the Violation Coordinator determines that there is sufficient evidence to indicate a violation, he shall determine in accordance with the following criteria, what action, if any, should be brought against the alleged violator.

2. What action, if any, should be brought against the alleged violator?

There are several types of actions which may be brought against the alleged violator. These are:

1. notice of non-compliance
2. administrative civil penalty
3. civil court action
4. criminal court action.

The starting point for the Violation Coordinator should be that most violations will be handled via administrative civil penalty. Thus, when the Violation Coordinator determines, based upon review of an Inspection Report and other review, that there is a violation he should assume at the outset that an administrative civil penalty should be assessed against the violator. After making this initial assumption he should comply with the following guidelines in determining whether another enforcement action should be taken in lieu of, or in addition to, administrative assessment of a civil penalty.

Notice of Non-Compliance

Notice of non-compliance may be issued in lieu of a civil Penalty, where:

a. the violation does not constitute a significant threat to health or the environment;
b. the violation is the first such violation of the PCB Marking and Disposal Regulation on the part of the particular violator;
c. the violation is not a by a disposal facility, whether approved or unapproved, of any of the regulatory requirements governing such facilities under the PCB Marking and Disposal Regulation;
d. the violation does not involve the illegal actual disposal of PCBs on the part of the violator (this does not include insignificant leaks); and
e. the alleged violation does not appear to have been a willful one.

However, even though the violation satisfies the above tests, the administrative penalty remedy should not be summarily dismissed unless the violation coordinator determines the issuance of a notice of non-compliance will be sufficient to induce the violator to cease violation of the Regulation. The lesser remedy of issuance of a notice of non-compliance should be employed only where the Violation Coordinator determines, in his discretion, that the violation "passes" the above tests and that issuance of a notice of non-compliance will be sufficient to induce the violator to cease violation of the regulation in those respects stated in the notice of non-compliance.

Civil Court Action

A civil court action pursuant to §17 may be brought against an alleged violator, in addition to or in lieu of assessment of administrative civil penalty, where it is determined that the mere issuance of a civil penalty will be insufficient to obtain compliance with the regulation. Section 17 allows the Agency to seek injunctive relief, both to restrain violations of the Act and to compel a person to actually follow the Act. Since this injunctive type remedy is not available under §16 civil penalty actions, a civil court action under §17 will allow the Agency to enforce the regulation against the violator who is willing to pay civil penalties but refuses to continue to comply with the PCB Marking and Disposal Regulation. Thus, a civil court action may be appropriate in the following instances:

1. there is a PCB spill or leak which poses a risk of injury to health or the environment, and our immediate concern is the cleaning up of the spill or leak rather than the assessment of civil penalties (of course, such an action may also be commenced under the Act's imminent hazard provisions (§7)); or
2. we have reason to believe in the case of a particular violator, based on prior actions or other information, that abatement of his violative practices can only be accomplished by a court order; or
3. the relief desired is that certain PCBs be seized and condemned.

Where the violation coordinator determines that a civil court action is necessary, he must inform the Headquarters Regional Coordination Unit. No such action may be taken without approval from Headquarters.

Criminal Court Action

A criminal court action may be brought pursuant to §16(b), where the alleged violation was a knowing or willful one. These actions will most often be brought where the circumstances of the violation indicates a flagarent disregard for the PCB Regulations. Any contempled criminal proceeding should be brought to the attention of Headquarters through the Regional Coordinator. Headquarters approval is necessary before a U. S. Attorney is contacted to initiate criminal proceedings.

3. If the Action taken Against the Alleged Violator is Assessment of the Administrative Civil Penalty, How Much Should the Proposed Civil Penalty Be?

This section provides some guidance and sets parameters for the assessment of civil penalties, pursuant to TSCA 16(a), for violations of Section 15(a). The only penalty guidelines provided in Section 16(a) are that penalties of up to $25,000 may be assessed for each day of each violation, and that in assessing the penalty "the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect or ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require." The following guidelines are intended to assure nationwide consistency in penalty assessment, and to assure that violation of TSCA should not only bring no economic benefit to the violator, but should be the cause of some financial loss, i.e., there should be a strong economic disincentive to violate the Act.

This section describes how to compute a penalty for the purpose of serving a written notice of proposed assessment of civil penalty under Section 16(a)(2).

MONS 008415

To make penalty assessment reasonably uncomplicated and consistent, while leaving some discretionary judgment in the Regional Administrator, this system requires an initial assignment of a violation to one of four levels of gravity. The initial penalty assessment will be at a fixed amount for each level of gravity. Following the initial assessment several adjustment factors, as specified in the statute, are utilized to raise or lower the initial penalty.

The four gravity levels are as follows:

Level I - This violation is of the type which could cause only localized harm, such as failure to promptly dispose of PCB contaminated rags, minor leaks in stored transformers, etc. The initial assessment for a Level I violation will be $1000/day/violation. Where such a violation meets the criteria discussed on page E3 for issuance of a Notice of Non-compliance, the penalty may be waived.

Level II - These violations are generally serious in nature. This level may include general recordkeeping and marking violations, and storage violations where exposure is more hazardous than at Level I. The initial assessment for a Level II violation is $5000/day/violation.

Level III - This level applies to violations of a very serious nature. Such violations may include failure of incinerators to maintain proper temperatures for sufficient periods of time, and leakage from a chemical waste landfill not resulting in permanent environmental damage. In many cases, the differences between Levels II, III and IV violations are largely only ones of degree, depending on such factors as the extent of possible harm. The initial assessment for a level III violation is $15000/day/violation.

Level IV - These violations are the most egregious, both in terms of blatant disregard for the requirements of the standard and damage caused. Such violations would include significant spilling and dumping of PCBs resulting in large scale contamination and operating an unapproved disposal facility. The initial assessment for Level IV is $25,000/day/violation.

In determining the gravity level for a violation, the Violation Coordinator, in accordance with regional procedures, should incorporate the statutory factors of nature, circumstances and extent of the violation, i.e., rather than computing separately for nature, circumstances, extent and gravity, all four factors should be considered in the initial level assignment which is termed "gravity". In arriving at this determination, the Coordinator should consider factors such as the extent of exposure, both in terms of numbers, (i.e., number of people, volume of water) and possible severity and permanence of harm. It must be kept in line that the examples of levels of gravity as used above and in the attached Appendix I should not be rigidly applied, since the circumstances behind an otherwise minor violation could render it a more major violation e.g., minor leaks in stored transformers where the leak could degrade

a waterway could very well make the violation attain a higher level of gravity. Upon making the level of gravity determination, the indicated penalty should be used as a base from which adjustments should be made according to the following additional statutory criteria:

1. Violator's ability to pay. This factor may be difficult to consider at the time of penalty assessment, since the inspector ordinarily will not examine violators' financial records (See Section 11(b)(2)(A)). Thus, the inability of a violator to pay probably would not be fully considered until raised by the violator after issuance of the complaint. However, several factors can be evaluated at the initial stages of penalty determination. The inspector should inquire of the person-in-charge the size of the business being inspected. Gross annual revenue is probably the best indication. In addition, the inspector or violation coordinator can consult Dun & Bradstreet, even prior to the inspection, to determine gross annual revenue. In determining a violator's ability to pay, the fact that a company is a subsidiary of a parent corporation should be considered, i.e., it is appropriate to look at the resources of the parent. A reduction of penalty amount of up to 20% may be allowed where gross annual revenues are below $250,000 and up to 10% where gross annual revenues are between $250,000 and $1,000,000. No reduction will be allowed for larger companies.

2. Inability of a violator to continue in business. This category is intertwined with "ability to pay". A substantiated claim of inability to continue in business if a large penalty is sustained may require negotiation of the penalty to an amount lower than would otherwise be assessed under these guidelines. Since such a claim will not normally be raised until after the initial penalty assessment, it is discussed below.

3. History of prior such violations. Where a violator has no prior history of violation of EPA regulations or statutes, penalties may be reduced up to 20%. A violator with a prior history of EPA violations, but with no prior violations of TSCA receives no penalty adjustment. If a violator has any previous TSCA violations his penalty should be increased 10%, for each prior TSCA violation. If a violator has violated the same standard previously, the repeated nature of this violation requires that the penalty be raised 25% for Levels I and II; and 50% for Levels III and IV (up to $25,000 total) - these figures should be doubled in cases where the same standard is violated for the third time. For the purpose of this "repeat" policy, a company with more than one facility can be assessed for a repeat violation if the second violation takes place at a different facility than did the initial violation.

4. Degree of culpability. The degree of culpability of a violator should also be considered in the penalty assessment. A reduction of up to 20% may be allowed where the violation was substantially contributed to by persons outside the violator's company, or where the violator has made a good faith effort to comply with the regulation.

Conversely, a person who negligently and/or willfully violates the Act suffers an upward penalty adjustment. Thus, a negligent violator can be assessed up to an additional 20% penalty, depending on his degree of negligence. A willful violator should be assessed an additional 25% penalty. The maximum adjustments for culpability are down 20% or up 25% - i.e., if a violator is willful and negligent the willful 25% upward adjustment only is assessed. Of course, such a violator may be the subject of criminal proceedings.

Computation of Penalties - In calculating the adjusted initial penalty, the adjustments should be added together prior to being applied to the initial level of gravity figure. For example, with a level II violation the penalty based on that level alone is $5000 if the violation was for one day. If the company's revenues are between $250,000 and $1,000,000 it is entitled to a 10% reduction; if the company has a previous TSCA violation 10% is added on; and if the violation occurred in spite of some good faith efforts by the company it may be entitled to a reduction of, say, 10%. The adjustment factors are, -10, +10, and -10, for a net reduction of 10%, which when applied to the $5000 initial penalty, results in a $4500 proposed penalty assessment sent to the violator. Do not compute the penalty piecemeal, i.e., do not deduct 10% of $5000 for size, then add 10% of the remainder for history, and than subtract 10% of the remainder for culpability.

In computing duration of a violation generally only count the days on which the violation was actually observed. Thus if a violation is observed during an inspection, and the complaint is not served for a month, compute the penalty as if the violation lasted one day, not a full month. However, if reliable evidence exists that the violation was present before the inspection, an assessment for multiple days of violation may be appropriate.

D. Disclosure of Information - Confidentiality

TSCA Section 14 addresses the protection of trade secrets and confidential information. Section 14 provides that any information reported to or otherwise obtained by EPA under this Act, which is exempt from disclosure pursuant to subsection (a) of Section 552 of Title 5, United States Code, by reason of subsection (b)(4) shall not be disclosed by the Administrator or by any officer or employee of the United States.

Exceptions from this prohibition are also provided. Disclosure of information described in Section 552(b)(4) of Title 5 may be made in the following situations:

1. to officers or employees of the United States in connection with their official duties to protect health or the environment, and for specific law enforcement purposes.
2. to contractors with the United States when the Administrator determines it to be necessary for the satisfactory performance of their duties in connection with this Act and under such conditions as may be necessary to preserve confidentiality as the Administrator may specify.

3. if the Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment.
4. when relevant under a proceeding under TSCA, except that disclosure under such proceeding under this Act shall be made in such a manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

Disclosure of any health or safety study, or any information obtained from such study, on any substance or mixture which is already being distributed, or for which testing is required under Section 4, or for which notification is required under Section 5, is not prohibited. Data in such a study, however, which discloses manufacturing processes or the proportions of a mixture may not be disclosed if such processes or proportions would otherwise be entitled to protection from disclosure.

Section 14(c) of TSCA provides that a manufacturer, processor or distributor in commerce of a toxic substance may:

A. designate the data which such person believes is entitled to confidential treatment under subsection (a) of the same section, and
B. submit such designated data separately from other data submitted under this Act.

Designation by a manufacturer, processor, or distributor that certain information is entitled to confidential treatment must be made in writing.

Section 14(c)(2)(A) states that where the Administrator proposes to release for inspection data which has been designated by the manufacturer, processor, or distributor as being entitled to confidential treatment, the Administrator shall notify in writing and by certified mail, the manufacturer, processor, or distributor who submitted such data, of the intent to release such data and that if release of such data is to be made pursuant to a request made under the Freedom of Information Act, such notice shall be given immediately upon approval of such request by the Administrator. The Administrator may not release the data before the expiration of 30 days after the manufacturer, processor, or distributor submitting such data has received the notice of the Administrator's intent to release such data.

Section 14(c)(2)(B) states an additional requirement that where disclosure of data is warranted by a determination by the Administrator that such disclosure is necessary to protect the health or the environment against an unreasonable risk of injury to health or the environment, the Administrator must notify each manufacturer, processor, and distributor who submitted such data of such release. Such notice shall be made in writing by certified mail at least 15 days before the release of such data, except that if the Administrator determines that the release of such data is necessary to protect against an imminent, unreasonable risk of injury to health or the environment, such notice may be made by such means as the Administrator determines will provide notice at least 24 hours before such release is made.

EPA regulations dealing with confidentiality of business information appear in 40 CFR Part 2, Subpart B.

Handling Inspection Data

For the purposes of: (1) assuring Agency compliance with Section 14 of the Toxic Substances Control Act; (2) limiting the likelihood of inadvertent disclosure of confidential business information; (3) affording businesses a fair opportunity both to assert a confidentiality claim and to substantiate the claim prior to an EPA ruling on the claim; (4) protecting the interests of members of the public who request disclosure of business information under the Freedom of Information Act, 5 U.S.C. 552; and (5) furnishing assistance to those EPA officers and employees who must deal with confidentiality claims and requests for information obtained by the Agency pursuant to its inspection authority, the following procedures will be employed in handling inspection data:

A. At the time an inspector presents the TSCA Notice of Inspection (see Appendix II) to the appropriate official at a facility which is about to be inspected, he shall also present one copy of the TSCA Inspection Confidentiality Notice (See Appendix III). At the time the inspector presents a copy of said TSCA Inspection Confidentiality Notice to the facility official, he shall place a second copy in an envelope addressed to the chief officer of the business whose facility he is inspecting. The inspector should determine the name and address of such chief officer before his arrival at the inspection site. The inspector shall mail the envelope at his earliest opportunity, via certified mail return receipt requested. In any event, the envelope should be mailed no later than 2 days after completion of the inspection of the facility.

B. When an inspector submits his Inspection Report, via Regional procedures, to the PCB Violation Coordinator, the inspector shall include a third copy of the TSCA Inspection Confidentiality Notice along with his Inspection Report and shall keep a fourth copy for his own records.

C. The business concern which receives the TSCA Inspection Confidentiality Notice must make its confidentiality claim within 30 days after the chief officer receives the Notice.

D. When a business concern asserts a timely claim of confidentiality for inspection data, the inspection data for which confidentiality was claimed shall be removed, in accordance with Regional procedures, from the main file of the Inspection Report. Such data shall be placed in a locked file cabinet and shall be accessible only to EPA employees and contractors in the exercise of their official duties and responsibilities. If such a claim is received before the PCB Violation Coordinator receives the Inspection Report on the facility for which the claim is made, the appropriate Inspector shall remove such data and keep it in a locked file. He shall turn over such data (marked as "Claimed TSCA Inspection Confidential Data") to the PCB Violation Coordinator with his Inspection Report. If the confidential-

ity claim is received after the PCB Violation Coordinator has possession of the Inspection Report he shall be responsible for separating such data, for maintaining it in a locked file, and for marking it "Claimed TSCA Inspection Confidential Date".

E. If a formal or informal request for data claimed as confidential is made by any person other than an EPA employee or contractor the person in possession of the data claimed as confidential shall forward such data, in accordance with Regional procedures, to the person designated in the Region to handle such requests. Such person shall follow established procedures for granting or denying the request for information.

F. If a person other than an EPA employee or contractor requests data obtained during an inspection and no claim of confidentiality has been asserted with respect to such data, the following procedures shall be followed:

1. If the request for information is received by EPA before the expiration of 30 days from the date when the chief officer of the business concern whose facility was inspected received the TSCA Inspection Confidentiality Notice, it shall be presumed that a claim of confidentiality will be made within the thirty day period. The information request shall be initially denied and the chief officer of the business whose data was requested shall be notified and required to substantiate any claims of confidentiality which he may make, in accordance with procedures stated in 40 CFR Section 2.204.

2. If the request for information is received by EPA after expiration of such 30 day period, the requested data shall be treated, in accordance with procedures stated in 40 CFR Part II, Subpart B, like any data for which no claim of business confidentiality has been made.

SAMPLE PLEADINGS

1. Sample letter for Civil Penalty Action
2. Complaint for Civil Penalty Action
3. Default Order for failure to request hearing
4. Consent Agreement-Final Order
5. Condemnation and seizure pleading
6. Complaint for Injunction
7. Motion for Temporary Restraining Order
8. Preliminary Injunction Order

Complaints, Pleadings and Related Documents

This section gives examples of the complaints, affidavits, verifications, pleadings and other documents that may be used to initiate actions under TSCA Sections 16 and 17 for violations of the PCB Marking and Disposal Regulation.

1. Section 16 provides for the assessment of civil penalties for TSCA violations. As indicated in Section III of this Enforcement Proceedings Manual. It is anticipated that most TSCA enforcement actions will be prosecuted under Section 16 and that an administrative civil penalty will be assessed. Such an action is initiated under Section 16(a)(2) by the issuance of a Complaint and Notice of Opportunity for Hearing. The following is a sample of such a document, with cover letter. Please note that the question of who issues Default Judgements has not been finally determined pending development of the Consolidated Rules of Practice.

MONS 008423

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. X
Chief Corporate Officer
(When not in Region -
Registered Agent)
25 River Drive
Alton, Michigan

RE: TSCA Complaint and Notice
of Opportunity for Hearing
Docket No.
B.G. Power Industries, Inc.
Alton, Michigan

Dear Mr. X:

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act, 15 U.S.C. §2601, discovered by EPA inspectors at the above-captioned facility.

It is recommended that the enclosed Complaint and Rules of Practice, 40 C.F.R. § , be carefully read and analyzed to determine the alternatives available in responding to the alleged violations, proposed penalties, and opportunity for a hearing. Please note that each day the violations cited herein continue constitutes a new violation for which additional penalties may be imposed.

Regardless of whether you choose to request a hearing within the prescribed time limit of fifteen (15) days following service of this Complaint, you are extended an opportunity to request an informal settlement conference To request a conference, please write to Mr. Attorney, Enforcement Division United States Environmental Protection Agency, etc., or telephone him at

Failure to respond to this Complaint and Notice of Opportunity to Hearing by specific answer within 15 days of your receipt of this Complaint constitutes your admission of the allegations made in the Complaint. Such failure shall result in the issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Very Truly Yours,

Enforcement Division Director

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

IN RE	TSCA - V - 001
B. G. DISPOSERS, INC., Respondent	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

1.

COMPLAINT

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615(a). The complainant is the Director, Enforcement Division, Region __, United States Environmental Protection Agency (U.S. EPA). The Respondent is B.G. Disposers, Inc., which is and at all times hereinafter referred to was a corporation incorporated under the laws of the State of Michigan, and has a place of business at 100 North Nowhere, Alton, Michigan.

This Complaint serves as notice of the Director's preliminary determination that Respondent has violated Section 6 and Section 15 of TSCA, 15 U.S.C. §§2605 and 2614, as follows:

Count 1

1. The above-referred facility of B.G. Disposers, Inc., operates an incinerator (as defined at 40 C.F.R §761.2(j)) intended to destroy and dispose of liquid PCB.
2. 40 C.F.R. §761.40(a)(1) of Annex I, incineration, requires that liquid PCB introduced into an incinerator for a 2-second dwell time at three percent excess oxygen in the stack gas be maintained at 1200 degree C (+ 100 degrees C) for destruction.
3. On March 31, 1981, a temperature of 950 degrees C was being maintained in the incinerator at B. G. Disposers, Inc., during the attempted disposal of liquid PCB, in violation of Section 6 of TSCA and regulations promulgated thereunder. 15 U.S.C. §2605; 40 C.F.R. §761.40(a)(1)(i).

Count 2

1. 40 C.F.R. §761.40(a)(5) of Annex I, Incineration, requires that the introduction of PCB into an incinerator must stop automatically whenever combustion temperatures fall below 1200 degrees C (± 100 degree C) when a two-second dwell time is employed.
2. On March 31, 1981, the incinerator at the above-cited facility failed to shut off automatically when the combustion temperature consistently fell below 1200 degrees C, in violation of Section 6 of TSCA and regulations promulgated thereunder. 15 U.S.C. §2605, 40 C.F.R. §761.40(a)(5).

Count 3

1. 40 C.F.R. §761.40(a)(3) of Annex I, Incineration, requires that, for every incinerator used to dispose of liquid PCB, the rate and quantity of PCB fed to the combustion system must be measured, and recorded regularly at intervals of no more than 15 minutes.
2. 40 C.F.R. §761.45(c)(1)(A) also requires that the owner or operator of PCB incinerators compile records on the rate and quantity of PCB supplied to the combustion system, under the terms specified at 40 C.F.R. §761.40(a)(3).
3. On March 31, 1981, records maintained at the above-captioned facility noting the rates and quantities of PCB introduced into the combustion system reflected a recording at irregular intervals (varying in length from ten to 28 minutes) of the rates and quantities of PCB introduced into the combustion system, in violation of Section 6 of TSCA and regulations promulgated thereunder. 15 U.S.C. §2605; 40 C.F.R. §§761.40(a)(3), 761.45(c)(1)(A).

II

PROPOSED CIVIL PENALTY

Section 16 of TSCA, 15 U.S.C. §2615 and the regulations promulgated thereunder, 40 C.F.R. §§ [for the Section 16 civil penalty regulations when promulgated] authorize a civil penalty of up to $25,000 per day for each violation of the Act. Based on the facts given in I above, and on the nature, circumstances, extent and gravity of the above-cited violations, as well as the Respondent's ability to pay, effect on ability to continue to do business, history of prior violations and degree of culpability, the following proposed penalties are hereby proposed for the subject violations:

Count 1

15 U.S.C. §2614(1)
40 C.F.R. §761.40(a)(1)
Failure to maintain proper incineration temperature — $15,000

Count 2

15 U.S.C. §2614(1)
40 C.F.R. §761.45(a)(5)
Failure to automatically cease operation — $15,000

Count 3

15 U.S.C. §§2614(1),(3)
40 C.F.R. §§761.40(a)(3)
761.45(c)(1)(A)
Failure to record regularly rate and quantity of PCB — $15,000

$45,000 TOTAL

Payment of this penalty may be made by certified or cashier's check, payable to the United States of America, and remitted to:

Regional Hearing Clerk
Region __ etc.

III

OPPORTUNITY TO REQUEST A HEARING

As provided at TSCA Section 16(a), and in accordance with Section 554 of Title 5, United States Code, you have the right to request a hearing regarding the proposed Order to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. If you wish to avoid being found in default, you must request a hearing of the Region __ Hearing Clerk, EPA Region __, etc., within fifteen (15) days of this Complaint. A receipt of written answer must be made, which answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge; or which shall clearly state that respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

1. The circumstances or arguments which are alleged to constitute the grounds of defense;

2. The facts which Respondent intends to place at issue.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations.

Any hearing that you request will be held in the county, parish, or incorporated city of your residence. Hearings held in the assessment of these civil penalties will be conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 552 et seq.) and the "Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties or the Revocation or Suspension of Permits" (40 C.F.R. §), a copy of which accompanies this complaint.

If you fail to file a written answer and request for a hearing within fifteen (15) days of service of this Complaint, such failure constitutes a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing under TSCA. A Default Order may thereafter be issued by the Regional Administrator [Administrator], and the civil penalty proposed herein shall become due and payable without further proceedings. Such Default Order is not subject to review in any court.

V

SETTLEMENT CONFERENCE

Whether or not you request a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, please write to Mr. Attorney, Region __, etc., or telephone him at _____.

Please note that a request for an informal settlement conference does not extend the fifteen (15) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order by the Regional Administrator [Administrator], U.S. EPA Region __. The issuance of such Consent Agreement shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference nor requested a hearing within the 15-day time period allowed by this Notice, the above penalties will be assessed without further proceedings, and you will be notified that the penalties have become due and payable.

To explore the possibility of settlement in this matter by informal conference, contact Mr. , at telephone .

Sincerely yours,

Enforcement Division Director