PCB Megarule: Current and Future Issues for Utilities

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Issues to be Addressed

- Current regulatory structure: Legal requirements and practical issues (megarule plus recent amendments)
- Future changes and implications: Process interrupted
- Enforcement: Understanding EPA inspection and compliance assessment process

Current Regulatory Structure
40 C.F.R. Part 761

- Electric and Gas Utilities
  - Impact of 1998 Megarule and amendments
    - Modified many aspects of existing regulatory structure for electric utilities but created entirely new regulatory system for gas utilities
  - Use authorizations and assumptions, storage, decontamination and disposal options
- Unanticipated Issues
  - Sale of gas pipeline assets prohibited by TSCA 6(e)?
  - Sale of PCB-contaminated property

Assumptions and Use Authorization

- Electrical Equipment – codified "assumption policy" for use authorization purposes (761.2) plus new registration requirement for PCB Transformers
  - Transformers < 3 lbs. fluid, circuit breakers, reclosers, oil-filled cable and rectifiers: assumed < 50 ppm
  - Transformers > 3 lbs. fluid and manufactured before 7/2/79
    - Mineral oil: $\geq$ 50 < 500 ppm
    - Non-mineral oil: $\geq$ 500 ppm
  - All other mineral oil filled equipment manufactured before 7/2/79: $\geq$ 50 < 500 ppm
  - Capacitors manufactured before 7/2/79: $\geq$ 500 ppm
  - Equipment manufactured after 7/2/79: non-PCB

Assumptions and Use Authorization

- Natural Gas Pipeline Systems (NGPS)
  - Eliminated presumption of PCB contamination created after transmission companies reported PCBs and entered into 1981 Compliance Monitoring Program
- Authorized use even where > 50 ppm PCBs (761.30(i))
  - EPA notification (if requested)
  - Characterization
  - Sampling potential sources
  - Reduce/remove potential sources
  - Annual sampling
  - Mark above ground sources
  - **DOCUMENT EVERYTHING**

Decontamination of PCB Contaminated Equipment

- Decontamination without EPA Approval: Equipment unregulated for disposal, authorized use/reuse as prescribed in 761.30(u), authorized for distribution in commerce
- Self-implementing procedures for non-porous surfaces (761.79(c)(3) and (4))
  - MODEF < 10,000 ppm
    - Drain 15^{+} hours + soak in PODF 15^{+} hours @ $\geq$ 20°C
  - MODEF >10,000 ppm
    - Drain 15^{+} hours + two rounds of PODF soak
  - PODF: Kerosene, diesel fuel, terpene hydrocarbons, terpene hydrocarbon/terpene alcohol mix
  - No confirmatory sampling required

Decontamination of PCB Contaminated Equipment

> "Pre-approved decontamination methods and standards" – 761.79(b)

- Chopping, distilling, filtering, oil/water separation, spraying, soaking, wiping, scraping, scarification, use or abrasives/solvents: No EPA approval or permit required
- Decontamination standards
  - Organic liquids: 2 ppm
  - Non-Porous Surface: 10 μg/100 cm^2 (unrestricted use); 100 μg/100 cm^2 (disposal in smelter)
    - Confirmatory sampling required

Storage for Reuse – 761.35

- Can be stored up to 5 years, provided
  - All use and marking requirements are met
  - Documentation of date removed from service and projected location and future use
- Can seek extension from EPA Regional Office
- Can be stored indefinitely in storage area meeting 761.65(b) criteria for PCB storage facilities
  - Also in areas permitted under RCRA or state-equivalent programs
- "Disconnected" electrical equipment

Storage for Disposal (761.65)

- Must dispose within 1 year of removal from service
  - Store in area meeting 761.65(b) criteria
  - Can seek 1 year extension : Notice to EPA and document disposal efforts
  - Additional extension available but high standard
- Temporary 30-day storage in facility not meeting 761.65(b) criteria
  - Non-leaking plus documentation
  - Rejected calls for 90-day storage

Disposal – 761.60

- Same disposal options for Electrical Equipment
  - PCB (> 500 ppm): Incinerator, EPA-approved chemical waste landfill (drained)
    - Special provisions for capacitors (761.60(b)(2)
- Drained PCB-Contaminated Electrical Equipment (between 50 and 500 ppm)
  - MSW landfill
  - Scrap metal recovery oven/smelter meeting performance requirements
  - EPA-approved PCB Disposal Facility

Disposal – NGPS

- NGPS: Entirely new regulatory scheme
  - Authorize abandonment in place and removal with subsequent action
  - A-I-P: Conditions depend on size of pipe and level of contamination
    - Must always be sealed at both ends; other requirements include grouting, including in one-call system, and/or decontamination
  - Removal: < 500 ppm -- drain and dispose of in non-RCRA landfill, scrap metal recovery oven/smelter, or EPA-permitted PCB disposal facility

Disposal of NGPS – Continued

- Removal: > 500 ppm – 761.70 incinerator, 761.75 PCB landfill, PCB remediation waste, or decontaminate
- Alternate Decontamination Procedures: 761.79(d) approval
  - http://www.millerenv.com/new_technologies.htm
- Characterization of NGPS
  - Organic liquids – if none then wipe sampling of pipe
    - Not available for <4" pipe without EPA approval of alternative method

Spill Cleanup

- Dichotomy between pre- and post-1978 spills
  - Pre-1978: Presumption that nothing further required
    - RA can rebut presumption if "unreasonable risk" finding
  - Post-1978
    - Can use either Spill Policy (Subpart G) or Self-Implementing Cleanup (761.61(a)) to address
      - Can only use Spill Policy if spill is less than 72 hours old

Spill Cleanup Policy vs. 761.61(a)

Issue	Spill Cleanup Policy	Self-Implementing Cleanup and Disposal
Time Restrictions	Spill less than 72 hours old	None
Cleanup Must Begin	Within 48 hours of spill	No requirement
Size Restrictions	Approx. 20' in diameter	Less than one acre
Notification to EPA Required?	Only if trigger CERCLA (1 lb.) or TSCA (10 lb.)	At least 30 days before cleanup begins
Cleanup Levels	Specified in regs; depends on location and media	Specified in regs; depends on location and media
Disposal of Cleanup Wastes	Determined based on concentration of original spill	Determination based on concentration as found
Penalty for Spill?	Presumption against, if follow Spill Policy	No presumption

Current Status

- Electric Side: Megarule provided some flexibility; companies used to dealing with Part 761 regulations
- Gas Side: A whole new world – characterization plus use authorization plus decontamination plus disposal (abandonment in place)
  - Most companies now have procedures in place to characterize, sample and apply engineering controls to potential sources
- **Documentation is the Key**

EPA Efforts to Amend Part 761

- Five final rules since 1998 megarule was published
  - Includes 2001 amendment to reclassification requirements
- EPA looking for further substantive amendments
  - USWAG and AGA involved over past three years
- Effort put on "permanent hold" until EPA completes its dioxin assessment
  - EPA's Fibers and Organics Branch estimates at least 15 months before finalization
- 8/14/03 General Counsel "Interpretive Statement" reversing EPA policy on sale of property contaminated with PCBs
  - TSCA 6(e) does not prohibit sale provided no movement or change in status or treatment of PCBs

Issues from EPA- USWAG/AGA Dialog

- Gas Side
  - Methods for characterizing <4” pipe
  - “Distribution in commerce” via sale of buried pipe
  - Use of historical wipe samples for characterization
  - Plastic pipe sleeving as “continued use”

Issues from EPA- USWAG/AGA Dialog

> Electric Side

- Allow batch testing of fluids to determine disposal options
- Allow Best Engineering Judgment to determine regulatory status
- Forced phaseout of PCB-Contaminated electrical equipment
  - Inventory 2015/2020; use prohibited 12/2024
- Modify storage for reuse to allow for indefinite storage of onsite backup equipment (is “connected but not energized” equipment “in use”?)
- Increase public notice requirements for certain disposal options for PCB remediation waste

Compliance and Enforcement

- Enforcement exposure: inspections or incidents involving release of PCBs
  - 2001 NSTAR Company – Region I -- leak from transformer discovered during Region I inspection
  - Transco: 2002 settlement with DOJ for PCB contamination at compressor stations in 12 states
- EPA surprisingly quiet since 1998 – not in "gotcha" mode
  - Compliance with megarule has not been an enforcement priority at HQ
  - Watch state and regional priorities

Enforcement – PCB Inspections

- EPA commitment to increase inspections of facilities subject to PCB regulatory requirements
- Inspection Targets?
  - Citizen complaints
  - Random inspection scheme
  - As element of multi-media inspection
- New Approach: Identify one piece of equipment and track through the inventory (out of service? -- where is it now ? – records)

EPA PCB Inspections

- Record Review
  - Inspection, storage, maintenance and disposal records
  - PCB Equipment inventory
  - Sampling results
  - Manifests/CODs
  - Communications with regulatory agencies, including inspection reports
  - SPCC Plan
- **KNOW WHERE YOUR RECORDS ARE**

Enforcement – PCB Inspections

- Physical Inspection of Facility
  - PCB storage areas (long-term and temporary)
    - Leaking/spills, marking
    - Records documenting length of storage, leak inspection logs
    - Compliance with 761.65(b) criteria
  - In-Use Equipment on Site
    - Marking, inventory records
  - Substations, capacitor banks

Enforcement

- Most frequently cited violations
  - Inadequate marking (both in-use and storage) – visibility of label
  - Recordkeeping (failure to record, maintain records, backup documentation)
  - Improper disposal – includes any current leak or spill
  - Improper disposal – disposal facility not permitted to accept PCB wastes

Important EPA References

- Questions about regulations
  - Question and Answer Document -- http://www.epa.gov/opptintr/pcb/qacombined.pdf
  - Response to Comments Document from Megarule – http//www.epa.gov/opptintr/pcb/response.pdf
- Compliance and Auditing
  - EPA “Protocol for Conducting Environmental Compliance Audits of Facilities with PCBs, Asbestos and Lead-Based Paint regulated under TSCA”
    - http://www.epa.gov/compliance/resources/policies/incentives/auditing/tsca.pdf