



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
PREVENTION, PESTICIDES  
AND TOXIC SUBSTANCES

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Re: Central and South West Services, Inc., v. EPA  
No. 98-60495 (5th Cir.)

Dear Ms. Allen:

This is in response to your letters of August 12, 1998, and August 20, 1998, requesting a stay of four provisions of the PCB Disposal Amendments published June 29, 1998 (63 Fed. Reg. 35384). These amendments will take effect on August 28, 1998. Your August 12 letter refers to an agency's authority under section 705 of the Administrative Procedure Act to postpone the effective date of an administrative action.

Storage for reuse

First, you have asked that EPA stay the recordkeeping requirement at 40 CFR 761.35(a) for PCB articles stored for reuse outside an approved storage area. Your August 12, 1998, letter states that complete compilation of inventory records on all PCB Articles stored for reuse by August 28, 1998, would be an "overwhelming, if not impossible task", and asks that EPA stay the effective date of this provision for the electric utility industry.

Rather than agree to stay this provision, EPA offers the following clarification. Records maintained under §761.35(a) may be treated in the same manner as is the annual document log maintained under §761.180, i.e., the records would have to be available for EPA inspection by July 1 for the previous calendar year. Thus, facilities storing PCB Articles for reuse that are subject to the recordkeeping requirements in §761.35(a)(2) (whether or not these facilities are also required to compile an annual document log under §761.180) would have approximately 10 months to compile the necessary records.

In addition, in follow-up discussions on this issue, you asked EPA to clarify whether inventory records must be kept for PCB Articles stored in a facility listed in §761.35(c), i.e., a storage unit in compliance with 40 CFR 761.65(b), a unit permitted under section 3004 of RCRA to manage hazardous wastes in containers, or a unit permitted by a State authorized under section 3006 of RCRA to manage hazardous waste. EPA hereby clarifies that the recordkeeping requirements do not apply to PCB Articles stored for reuse in a facility listed in §761.35(c).

#### Assumption rule for small transformers

The second regulatory provision you have asked EPA to stay is the requirement at §761.2(a)(3) that a transformer manufactured prior to July 2, 1979, that contains 1.3 kg (three pounds) or more of fluid other than mineral oil, and whose PCB concentration is not established, must be assumed to be a PCB Transformer (i.e., >500 ppm). Your August 12 letter states that compliance with this provision will be problematic as to current, ignition, instrument and similar transformers that are contained in energized substations, cabinets and vaults and consequently are difficult to access to determine date of manufacture or type and amount of fluid they contain. Without this information, these transformers would have to be assumed to be PCB Transformers.

As you know, the rulemaking process for this provision began with an Advanced Notice of Proposed Rulemaking (ANPR) published June 10, 1991 (56 Fed. Reg. 26738). The ANPR stated EPA's intention to codify its interpretation of the definition of "PCB Transformer", as set out in the 1979 PCB Ban Rule (44 Fed. Reg. 31517), to specify that transformers that do not have a nameplate, have not been tested to determine PCB concentration, and for which no information on PCB concentration is otherwise available, must be assumed to be PCB Transformers. 56 Fed. Reg. at 26741. The ANPR also restated EPA's interpretation of the definition of "PCB-Contaminated Electrical Equipment", explaining that oil-filled equipment may be assumed to be PCB contaminated (i.e., >50 and <500 ppm) only if it contains mineral oil as a dielectric fluid. Thus, the regulated community has had notice for several years that all transformers not containing mineral oil and of unknown PCB concentration must be assumed to contain PCBs at >500 ppm.

After carefully considering the many comments to the proposed rule published on December 6, 1994 (59 Fed. Reg. 62788), EPA established several categories of exclusions from the assumption rule for PCB Transformers. Under §761.2, a

transformer manufactured on or after July 1, 1979, a transformer that contains less than three pounds of fluid, a mineral oil-filled transformer, or a transformer whose concentration is established are not subject to the assumption that their PCB concentration is  $\geq 500$  ppm. Thus, §761.2 is in many ways deregulatory. A stay of this provision would leave in effect the long-standing requirement that all transformers not containing mineral oil and of unknown PCB concentration must be assumed to contain PCBs at  $\geq 500$  ppm. Therefore, staying this provision would not provide your industry with the relief you have requested.

Nonetheless, to assist you in complying with the regulatory requirements that apply to transformers containing PCBs, EPA offers the following clarification. For any period during which it is not possible to physically inspect or test a small transformer (as described at 63 FR 35388) without compromising the integrity of the equipment or where such inspection or testing would pose a safety hazard to personnel without an electrical shutdown of the transformer, the owner or operator of the equipment may rely upon the exercise of best engineering judgment to evaluate the regulatory status of the equipment under the criteria set out in §761.2(a)(3) (e.g., whether the equipment is dry, non-liquid, contains less than 3 pounds of fluid, or contains mineral oil). "Best engineering judgment" means, in this context, that for a particular system or location, a qualified person, such as an engineer or field representative, who is familiar with the operation of the system and its equipment, can assess the regulatory status of the equipment under the criteria set out in §761.2(a)(3) based on information such as the following: knowledge of characteristics of similar equipment at that location or similar equipment within the company's operating system; testing of similar equipment at the time of disposal; or knowledge of past equipment purchases. The owner or operator must be able to document the basis on which these conclusions were made for so long as the equipment remains in use. Such documentation must be available for EPA inspection by July 1 of the subsequent calendar year. Once such a conclusion has been documented, no further documentation is necessary in later years unless new information becomes available which affects the validity of the conclusion. For example, if a qualified person knows that the company has disposed of similar transformers from a particular system or location with identifiable common characteristics, such as size, electrical rating, or name plate information, the qualified person may conclude that another transformer still in use that shares these characteristics will have the same PCB status. Please note that this clarification only applies so long as the equipment in

question cannot be physically inspected for one of the reasons listed above. If at any time after such a conclusion is made it becomes possible to physically inspect the equipment to determine its status, the company must do so and modify any previous conclusions as necessary. Similarly, if at any time new information becomes available which would affect the conclusions of a qualified person with respect to any particular equipment, the owner or operator must revise any previous conclusions as necessary.

#### Use of contaminated porous surfaces

The third issue raised in your August 12 letter involves the conditions at §761.30(p) for continued use of porous surfaces contaminated by spills of liquid PCBs at concentrations  $>10 \mu\text{g}/100 \text{ cm}^2$ . Your letter requests a stay of this provision, stating that "because of the potentially large number of porous surfaces potentially contaminated from past spills", it will be impossible for the electric utility industry to comply fully with the use conditions by August 28, 1998.

First, let me point out that spills of regulated PCBs are a form of disposal and are subject to the disposal requirements of 40 CFR Part 761. This is clearly stated in the existing PCB regulations at §761.60(d), and is carried forward into the Disposal Amendments at §761.50(a)(4). Uncleaned spills constitute improper disposal and are subject to enforcement action. The new use authorization at §761.30(p) does not change this in any way. However, because porous surfaces contaminated by spills were required to be disposed of under the regulations, in response to comments EPA added §761.30(p) to allow those surfaces to continue to be used, rather than disposed of, without presenting an unreasonable risk of injury to health or the environment. Therefore, granting a stay of the requirements of §761.30(p), would not relieve the regulated community of the requirement to clean PCB spills, as you seem to believe. Rather, it would deprive them of an option for avoiding disposal of materials that can safely be used as long as certain precautions are taken.

In follow-up discussions on this issue, you asked EPA to clarify whether porous surfaces that were decontaminated prior to August 28, 1998, are subject to the use conditions at §761.30(p). Porous surfaces that have been decontaminated in accordance with §761.30(u) are authorized for continued use, rather than required to be disposed of. Under §761.30(u), materials that were contaminated with PCBs, including porous surfaces contaminated by spills, are authorized for use without further conditions if the

materials were decontaminated in accordance with methods specified at §761.30(u)(1)(i)(A) through (C), or if the materials now meet an applicable decontamination standard in §761.79(b), or were decontaminated in accordance with an approval issued under §761.79(h). Therefore, porous surfaces meeting the conditions of §761.30(u) are authorized for use and there is no need to meet the additional use conditions of §761.30(p). Porous surfaces contaminated by spills of liquid PCBs at concentrations  $>10 \mu\text{g}/100 \text{ cm}^2$  that have not been decontaminated, or that have been decontaminated using a method not specified at §761.30(u)(1)(i)(A) through (C), must either meet the use conditions of §761.30(p) or be disposed of by August 28, 1998.

### Industrial furnaces

Finally, your August 20 letter asks EPA to stay the technical operating requirements for scrap metal recovery ovens at §761.72(a). Your letter states that a stay is needed because some companies need more time to come into compliance with the new requirements, while others will not be able to meet these requirements and will need time to seek variances. You assert that without a stay, "a major disposal option that has been historically used for drained carcasses from PCB contaminated electrical equipment will not be available" after August 28, 1998.

Based on the information presented in your letter, I am not convinced that a stay of §761.72(a) is necessary to ensure that adequate disposal options are available for PCB-Contaminated Electrical Equipment. First, this section of the Disposal Amendments was added based on comments from the disposal industry indicating that facilities meeting these operating requirements were already in operation and were available to dispose of this equipment. The disposal industry did not at that time request EPA to establish a schedule that would enable them to comply with the operating parameters. Moreover, while a scrap metal recovery oven is one of the disposal options for this equipment under §761.60(b)(4), other options include certain municipal solid waste landfills and TSCA-approved landfills, incinerators, or an alternate disposal technique. Even in the unlikely event that none of these options is readily available on August 28, §761.60(b)(4)(iii) provides that storage for disposal of PCB-Contaminated Electrical Equipment containing no free-flowing liquid is not regulated under 40 CFR Part 761. Thus, once the liquids are removed, this equipment can be stored until disposal options become available.

I hope this information is helpful to you in complying with the PCB regulations.

Sincerely,

*Susan H. Wayland*  
for Lynn R. Goldman, M.D.  
Assistant Administrator