



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 21 1998

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Mr. Keith R. Reed
President & CEO
Environmental Protection Services
4 Industrial Park Drive
P.O. Box 710
Wheeling, West Virginia 26003-0091

Dear Mr. Reed:

This in response to your letter dated October 26, in which you related concerns in relation to the PCB Disposal Amendments. In particular, you had a question regarding utility companies disposing of PCB contaminated electrical equipment and non-PCB electrical equipment. Your questions and our responses are noted below.

1. ***By the fact that the utility is paid for their equipment, does the ownership and "Cradle to Grave" liability transfer from the utility company to the disposal facility at the time of shipment? At any point in time?***

It is not the exchange of currency or other compensation that determines who is liable and who is not, but who first makes the decision that the material in question needs to be or should be disposed of. Section 761.3 defines a generator of PCB waste as one "whose act first causes PCBs or PCB Items to become subject to the disposal requirements of Subpart D of this part". Therefore the utility is the generator and is still liable for the material until final disposal.

2. ***At the time of shipment: Can oil filled contaminated electrical equipment be shipped on a "Bill of Lading" or is a "Hazardous Waste Manifest" required? Can drained contaminated electrical equipment be shipped on a "Bill of Lading" or is a "Hazardous Waste Manifest" required? If a "Hazardous Waste Manifest" is required, is it a violation for the disposal facility to receive the equipment on a bill of lading? Is it a violation for the utility company to ship on a Bill of Lading?***

Under the current regulations at Subpart K of 40 CFR 761, both of these waste streams must be shipped on a manifest since their PCB concentration exceeds 50 ppm. The

disposal facility may receive improperly manifested waste (on a bill of lading instead of a manifest) but must comply with the procedures outlined in §761.211 (Unmanifested waste reports). If they do not comply within the specified time period, the facility will be in violation. The generator is in violation for improperly manifesting waste under 40 CFR 761, Subpart K.

3. *Does the disposal firm become the generator and/or "owner" of the waste oil when removing the oil from the units? Or, if the removed generated waste is still owned by the original contractor, does this qualify the disposal facility as a commercial storer?*

Since the original contractor first caused the waste to be come subject to the disposal requirements of 40 CFR Subpart D, they are the generator of the waste and will retain that status even after the disposal facility removes the fluid from the electrical units. The disposal facility is a commercial storer because it has received waste from a source other than a related company or itself (per §761.3) regardless of whether or not the fluid has been removed.

4. *Does the fact that the disposal firm pays the utility for the equipment remove them from the status of being a commercial storer?*

Section 761.3 defines a commercial storer of PCB waste as one "who engages in storage activities involving PCB waste generated by others or that was removed while servicing the equipment owned by others and brokered for disposal." Unless the disposal facility is a "related company" as described in the definition of "commercial storer of PCB waste" or is storing only their own waste, then they are a commercial storer of PCB waste regardless of whether currency or compensation was exchanged.

5. *Does simply the receipt of oil filled contaminated equipment or drained contaminated equipment make a disposal facility a "Commercial Storer"?*

Yes, as long as the materials received was from a source other than the storage facility itself or a "related company" as described in the definition of "commercial storer of PCB waste" (§761.3).

6. *If a shipment of oil filled contaminated units is received at a disposal facility containing more than 500 gallons of fluid prior to removal from the units, is an EPA approval required?, or does the 500 gallons limit pertain to oil removed from the electrical equipment?*

A storage approval is not needed if storage of PCB waste generated by others at no time exceeds 500 gallons of liquid and/or non-liquid material contaminated with PCBs at regulated levels. In this case, if the oil filled units contain greater than 500 gallons of regulated fluid, then an EPA approval is needed. The 500 gallon limit applies to all liquid and/or non-liquid materials regardless of whether it is in electrical equipment or in any other type of container(s).

7. ***If a facility is considered a "commercial storer" of PCB, either storing less than or greater than 500 gallons of fluid, can the facility be located on a piece of land as dictated by the National Flood Insurance Program (FEMA) that is below the 100 year flood plan, and is classified as special Flood Hazard Areas inundated by 100 year floods?***

Section 761.65(b)(1)(v) clearly states that a commercial storage facility may not be located in at a site below a 100 year flood water level.

8. ***CFR 761.72 and 761.79, newly adopted regulations have changed the requirements for disposal of contaminated electrical equipment. Transformers whether padmount, polemount, substation or power include an electrical winding (coil) composed of insulating Kraft paper with a conductor of aluminum or copper, an enclosure, silicon steel forming the core of the transformer, structural frame steel, porcelain bushings, switches, etc. Do the new regulations pertain to just the electrical coil or are all components required to undergo the same form of treatment and standards?***

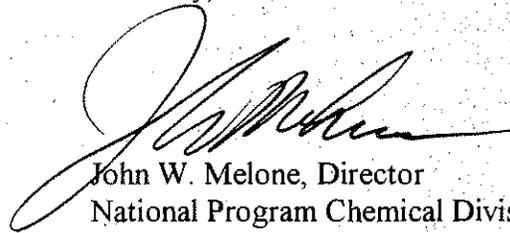
Section 761.79 provides for the decontamination of non-porous materials only. Section 761.79(b)(3)(i)(A) provides a decontamination standard for unrestricted use and §761.79(b)(3)(ii)(A) provides a decontamination standard for disposal by a smelter operating in accordance with §761.72. Any porous materials such as paper and porcelain cannot be decontaminated and must be disposed of.

9. ***If the disposal firm after receiving equipment designated for disposal decides it is more advantageous economically to export the equipment, is there any violation for exporting oil filled contaminated electrical equipment or drained contaminated electrical equipment designated by the original owner for disposal? If so, is the utility company, the disposal firm, or both in violation?***

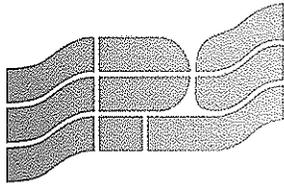
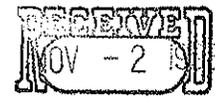
Section 761.97 states that no PCBs or PCB Items may be exported without an exemption under TSCA Section 6(e)(3) unless they are < 50 ppm (or <10 ug/cm² if no free flowing liquids are present), therefore it is a violation to export this material. The party that makes the decision to export the prohibited materials will be in violation.

We hope this letter has cleared up any uncertainty you may have had concerning the PCB Disposal Amendments. If you have any further questions, please call Laura Casey at (202) 260-1346.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Melone", written in a cursive style.

John W. Melone, Director
National Program Chemical Division



ENVIRONMENTAL PROTECTION SERVICES

October 26, 1998

US Environmental Protection Agency
401 M. St. Southwest
Washington, DC 20460

Attn: Tony Baney
Ref: 40 CFR 76 and the new "Mega Rule"

Dear Mr. Baney:

Consider the following scenario which is utilized by the vast majority of utility companies when disposing of PCB contaminated electrical equipment and NON-PCB electrical equipment, could you please provide responses to various questions relating to this scenario.

A utility company awards an annual contract to a disposal facility, which requires the disposal company to pay the utility a credit based on the KVA rating of the equipment tied to the price per pound of copper indexed to the American Metal Market. The utility contract includes a clause that states that all equipment must be disposed of in accordance to applicable state and federal regulations. The utility also has a clause requiring that they receive a "Certificate of Disposal" for all electrical equipment shipped to the disposal facility. In some cases the contracts include a clause stating at the time of pickup, the disposal firm acquires ownership of the equipment and then holds harmless the utility of any wrong doing or consequential liabilities that may come as a result of improper disposal by the disposal firm. The equipment shipped to the disposal facility company falls into the following categories:

- A. Drained Equipment with known PCB levels.
- B. Drained Equipment with unknown PCB levels.
- C. Oil filled Equipment with known PCB levels.
- D. Oil filled equipment with unknown PCB levels.

With the assumption that oil filled or non-oil filled equipment containing less than 50 PPM PCB's is non-regulated for disposal, the following questions pertain for the most part to equipment in the range of 50 to 499 PPM PCB's.

Question 1. By the fact that the utility is paid for their equipment, does the ownership and

“Cradle to Grave” liability transfer from the utility company to the disposal facility at the time of shipment? At any point in time?

Question 2. At the time of shipment: Can oil filled contaminated electrical equipment be shipped on a “Bill of Lading” or is a “Hazardous Waste Manifest” required? Can drained contaminated electrical equipment be shipped on a “Bill of Lading” or is a “Hazardous Waste Manifest” required? If a “Hazardous Waste Manifest” is required, is it a violation for the disposal facility to receive the equipment on a bill of lading? Is it a violation for the utility company to ship on a Bill of Lading?

On Page 35437 Vol. 63, No. 124 dated June 29, 1998 of the Federal Register, the definition of “Commercial Storer of PCB Waste” has been modified from the previous definition. At some time after receipt at the disposal facility, oil is removed from both oil filled and drained units (residual oil) and pumped into a tank for ultimate disposal. This oil being greater than 50 PPM PCB’s is a regulated waste. Based on this new definition, please respond to the following questions:

Question 3: Does the disposal firm become the generator and/or “owner” of the waste oil when removing the oil from the units? Or, if the removed generated waste is still owned by the original contractor, does this qualify the disposal facility as a commercial storer?

Question 4: Does the fact that the disposal firm pays the utility for the equipment remove them from the status of being a commercial storer?

Question 5: Does simply the receipt of oil filled contaminated equipment or drained contaminated equipment make a disposal facility a “Commercial Storer”?

Question 6: If a shipment of oil filled contaminated units is received at a disposal facility containing more than 500 gallons of fluid prior to removal from the units, is an EPA approval required?, or does the 500 gallons limit pertain to oil removed from the electrical equipment?

Question 7: If a facility is considered a “commercial storer” of PCB, either storing less than or greater than 500 gallons of fluid, can the facility be located on a piece of land as dictated by the National Flood Insurance Program (FEMA) that is below the 100 year flood plan, and is classified as special Flood Hazard Areas inundated by 100 year floods?

Question 8: CFR 761.72 and 761.79, newly adopted regulations have changed the requirements for disposal of contaminated electrical equipment. Transformers whether padmount, polemount, substation or power include an electrical winding (coil) composed of insulating Kraft paper with a conductor of aluminum or copper, an enclosure, silicon steel forming the core of the transformer, structural frame steel, porcelain bushings, switches, etc. Do the new regulations pertain to just the electrical coil or are all components required to undergo the same form of treatment and standards?

Question 9: If the disposal firm after receiving equipment designated for disposal decides it is more advantageous economically to export the equipment, is there any violation for exporting oil filled contaminated electrical equipment or drained contaminated electrical equipment designated by the original owner for disposal? If so, is the utility company, the disposal firm or both in violation?

Thanking you in advance for your prompt response.

Sincerely yours,

*Tracy L. Laudermitl for
Keith R. Reed*

Keith R. Reed
President & CEO