

**Comments Of  
The Utility Solid Waste Activities Group,  
The Edison Electric Institute, The American Public Power Association,  
and the National Rural Electric Cooperative Association  
On  
“PCBs, CONSOLIDATED REPORTING AND RECORDKEEPING  
REQUIREMENTS; REQUEST FOR COMMENT ON RENEWAL  
OF INFORMATION COLLECTION ACTIVITIES”**

**NOTICE  
69 Fed. Reg. 23747 (April 30, 2004)**

**Docket No. OPPT-2004-0087**

**submitted to  
The United States  
Environmental Protection Agency  
June 29, 2004**

**Of Counsel:  
Piper Rudnick LLP  
1200 Nineteenth Street, N.W.  
Washington, D.C. 20036**

**Comments Of The Utility Solid Waste Activities Group,  
The Edison Electric Institute, The American Public Power Association,  
and the National Rural Electric Cooperative Association  
On “PCBs, CONSOLIDATED REPORTING AND RECORDKEEPING  
REQUIREMENTS; REQUEST FOR COMMENT ON RENEWAL  
OF INFORMATION COLLECTION ACTIVITIES”  
Notice - 69 Fed. Reg. 23747 (April 30, 2004)  
Docket No. OPPT-2004-0087**

**INTRODUCTION**

The following comments in response to EPA’s Notice, “PCBs, Consolidated Reporting and Recordkeeping Requirements,” (66 Fed. Reg. 23747 (April 30, 2004)) are submitted on behalf of the Utility Solid Waste Activities Group (“USWAG”), the Edison Electric Institute (“EEI”), the American Public Power Association (“APPA”), and the National Rural Electric Cooperative Association (“NRECA”) (collectively referred to herein as “USWAG”). USWAG was formed in 1978, and is an association primarily dedicated to assisting members in the management of wastes and the beneficial use of materials associated with the generation, transmission, or sale of electricity and natural gas. USWAG is comprised of approximately 80 energy industry operating companies and associations, including EEI, the NRECA, and the APPA. EEI is the principal national association of investor-owned electric power and light companies. NRECA is the national association of rural electric cooperatives. APPA is the national association of publicly owned electric utilities. AGA is the national association of natural gas utilities. Together, USWAG members represent more than 85% of the total electric generating capacity of the U.S., and service more than 95% of the nation's consumers of electricity and over 93% of the nation's consumers of natural gas.

## DISCUSSION

1. **Reference No. 77 on Table 2-3 Concerning The Obligation to Keep Records of PCB Articles Stored for Reuse (40 C.F.R. § 761.35(a)(2))**. The Agency explains that the use of this information is to ensure the proper handling of the equipment stored for reuse. In assessing the impact of this obligation, EPA fails to take into account the additional recordkeeping and inspection requirements that have been imposed on electric utilities and other entities that obtained variances from EPA to store PCB articles for reuse for longer than five years in areas that do not meet the storage standards under 40 C.F.R. 761.65(b). These site-specific variances granted by the EPA Regions impose additional inspection and recordkeeping requirements that go beyond those specified in 40 C.F.R. 761.35(a)(2). EPA should factor these additional regulatory burdens into the ICR in order to accurately assess the true burden of this particular obligation.

2. **Confirmatory Records When Using Independent PCB Transporters** – Item 46 in Section 4(b) of the ICR package sets forth the requirements for the filing of an exception report when a generator uses an independent transporter, including the requirement for the generator to confirm by telephone or other convenient means that the commercial storer or disposer actually received the manifested waste. Generators must keep records of these follow-up confirmation procedures. See 40 C.F.R. § 761.208(a)(4). This follow-up confirmation requirement, and the associated record keeping requirement, is unique to the PCB program. The RCRA hazardous waste generator and manifest requirements – which have worked well for over twenty five years (and after which the PCB manifest rules were patterned) -- do not include these additional confirmation and record keeping requirements. Accordingly, USWAG

believes that this confirmation obligation is unnecessary and has little, if any, practical utility for EPA or the regulated community. Therefore, this particular regulation is an ideal candidate for elimination to minimize the burden of the PCB record keeping requirements on the regulated community.

3. **SPCC Requirements for 30-Day PCB Temporary Storage** – Item 65 in section 4(b) identifies the obligation under the storage for disposal requirements for all entities storing PCB waste pursuant to 30-day temporary storage provision to implement a spill prevention, control and counter measure plan (“SPCC”). See 40 C.F.R. § 761.65(c)(1)(iv). The obligation to implement an SPCC plan (and all associated record keeping and reporting requirements) under this provision is triggered without regard to the volume or characteristics of the PCB wastes in question. In other words, even though the SPCC requirements are normally triggered only when a specified threshold of regulated substances is stored, this particular PCB obligation applies to *any* volume of PCB wastes, including non-liquid PCBs. USWAG believes that this particular obligation, and the associated record keeping and reporting requirements, should be triggered only for liquid PCB waste and where the applicable SPCC threshold is otherwise triggered.

4. **PCB Transformer Registration Database** – Section 5 of the ICR package addresses “Information Collection – Agency Activity, Collection Methodology and Information Management.” Section 5(a) of that section discusses the PCB Transformer data base created by EPA. The discussion details how the database is used to provide information to environmental and emergency response officials on an as requested basis.

It is apparent that the PCB Transformer database is used as an important tool for a variety of reasons, including by various organizations, including EPA, for purposes of developing future PCB regulatory policies and strategies. In this regard, USWAG believes that it is absolutely critical for EPA to ensure that the database is updated and kept as current as possible. This includes amending the database to remove those PCB Transformers that have either been disposed or reclassified. The ICR does not address how this type of information – specifically, the disposal or reclassification of previously registered PCB Transformers – is incorporated into the database. This is a potentially serious flaw in the database that requires immediate attention.

5. **Burden on Small Entities** – Section 5(c) of the ICR package, entitled “Small Entity Flexibility,” discusses the general burden of the PCB record keeping and reporting requirements on small entities. USWAG disagrees with the statement in the first paragraph of that section that “the reporting and recordkeeping requirements [for small businesses] are no more burdensome than standard business procedures currently in place.” This statement fails to appreciate the burden of the PCB record keeping and reporting requirements on many small businesses. The National Rural Electric Cooperative Association (“NRECA”) is a USWAG member and represents rural electric cooperatives across the country. These are small businesses that are subject to the full gamut of PCB substantive, record keeping and reporting obligations. Many of these PCB record keeping and reporting requirements are anything but “standard business procedures,” including, for example, the storage for reuse record keeping requirements, annual document log requirements, and certain of the associated PCB manifest record keeping requirements. Therefore, EPA is incorrect in its assumption

that the PCB record keeping and reporting obligations imposed on small entities are “no more burdensome than standard business procedures currently in place.” The failure of the ICR to accurately reflect these additional burdens on small businesses is a potentially serious flaw in the ICR.

Also incorrect is the statement that very few small businesses are likely to own PCB Transformers because of the initial cost associated with the purchase of this equipment and long-term expense for their operation and maintenance. The ICR fails to recognize that many small transformers – such as potential and current transformers – must be *assumed* to be “PCB Transformers” under the Agency’s PCB Transformer assumption rule (see 40 C.F.R. § 761.2(a)(3) (if the date of manufacture and the type of dielectric fluid in a transformer are unknown, the transformer must be assumed to be a PCB Transformer). Therefore the costs associated with PCB Transformer record keeping and reporting requirements often are borne by small entities. Again, the failure of the ICR to recognize these PCB Transformer costs incurred by small businesses results in under-estimating the true costs of the PCB record keeping and reporting obligations on regulated entities.

6. **Federal Facilities as a Source of PCB Wastes** – Section 5(c)(i) of the “Small Entity Flexibility” discussion identifies six general categories/circumstances where PCB waste can be generated. These include: electric utilities, non-utility entities, entities with PCB ballast and lighting fixtures, natural gas pipelines, electrical components, and Superfund sites. A significant omission in this list is the large universe of PCB wastes generated by federal, state and municipal facilities. Indeed, this grouping of governmental facilities may represent one of the largest sources of PCB-

containing equipment and PCB waste. In attempting to characterize the sources of PCB-containing equipment and PCB wastes, EPA should not overlook the potentially significant contributions of federal, state and local governments.

7. **Continuing Burdens Associated With Storage For Reuse Variance**

**Request** – Table 6-1 in the ICR sets forth the reporting burdens under TSCA Section 6(e). An error in this table is reflected in item 7 with respect to requirements to obtain approvals under 40 C.F.R. § 761.35(b) for PCB Articles stored for reuse for greater than five years in a facility that does not comply with the storage for disposal standard under 40 C.F.R. § 761.65(b). The ICR states that the time period for preparing storage for reuse variance requests takes five minutes for a piece of equipment. Based on the experience of the many USWAG members who prepared variance requests in 2003, EPA's estimate of five minutes for a piece of equipment is far too low. Virtually all USWAG members who submitted storage for reuse variance requests were asked for additional information after the initial variance request was submitted. In some cases, EPA came back a third time and asked for additional and detailed site- and equipment-specific data. Many of these variance requests took many hours to complete and covered only several pieces of equipment. Therefore, the estimate of only 5 minutes per piece of equipment is at odds with reality and should be adjusted upward by at least an order of magnitude to more accurately reflect the real world burden of obtaining storage for reuse variances.

8. **Burdens with New Regulatory Guidance and Variances** – Section 6(b) of the ICR addresses “Estimating Respondent and Costs.” That section states, in part, that no new rule has been promulgated since the PCB disposal amendments in 1998

that involved paperwork burdens. Based on this assertion, the ICR does not take into account any costs associated with updating procedures and reading regulations to comply with new record keeping requirements. This assumption, however, fails to take into account that, since the 1998 PCB disposal rule, EPA has issued scores of interpretative letters and a PCB Question and Answer (“Q&A”) document that provide interpretive guidance on the scope and obligations set forth in the 1998 disposal rule. Reviewing, interpreting, and adjusting operations to comply with this new guidance and the related interpretive letters has involved a substantial investment of resources by regulated entities. In other words, the fact that no new regulations have been promulgated since 1998 does not mean that there are not continuing burdens and costs associated with interpreting and updating procedures to comply with the existing rules.

Further, the ICR fails to take into account the cost and burdens associated with the additional record keeping and reporting obligations imposed by EPA on regulated entities through various approvals, such as risk-based disposal and decontamination variances, and storage for disposal and storage for reuse variances, to name just a few categories. Complying with the record keeping and reporting obligations in these variances impose real and substantial burdens on the regulated community. These burdens should be captured in the ICR.

\* \* \* \* \*

USWAG appreciates the opportunity to submit these comments on the PCB ICR.