

**Kansas Legislature**  
**Senate Committee on Utilities**

**EPA's Response to Questions Raised at the January 22, 2004, Hearing**

**Question:** What can EPA do to address the concerns of the Kansas utility companies about having to pay twice for the disposal of the same regulated materials?

**Response:** EPA promulgated regulations and required approval conditions which include financial assurances from commercial storers, but it still remains the responsibility of the utilities to investigate individuals they are planning to do business with, and to assure themselves that these individuals are following the regulations in such a manner as to assure the utilities that the disposal of their waste will be handled in an appropriate manner.

These regulations were published on December 21, 1989, EPA as Polychlorinated Biphenyls (PCB); Notification and Manifesting for PCB Waste Activities; Final Rule. This rule prohibits facilities subject to the PCB storage facility standards of §761.65, who engage in storage activities involving PCB waste generated by others, or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal, from storing more than 500 gallons of PCBs unless they have submitted an application for final storage approval. The final approval to engage in the commercial storage of PCB waste is based on the decision that the following criteria have been met by the applicant:

1. The applicant, its principals, and its key employees responsible for the establishment or operation of the commercial storage facility are qualified to engage in the business of commercial storage of PCB waste
2. The facility possesses the capacity to handle the quantity of PCB waste which the owner or operator of the facility has estimated will be the maximum quantity of PCB waste that will be handled at any one time at the facility
3. The owner or operator of the unit has certified compliance with the storage facility standards in paragraphs (b) and (c)(7) of the regulations
4. The owner or operator has developed a written closure plan for the facility that is deemed acceptable by the Regional Administrator under the closure standards of paragraph (e) of the regulations
5. The owner or operator has included in the application for final approval a demonstration of financial responsibility for closure that meets the financial responsibility standards of paragraph (g) of the regulations

6. The operation of the storage facility will not pose an unreasonable risk of injury to health or the environment, and
7. The environmental compliance history of the applicant, its principals, and its key employees may be deemed to constitute a sufficient basis for denial of approval whenever in the judgement of the Regional Administrator that history of environmental civil violations or criminal convictions evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the regulations.

The regulations also require:

1. a commercial storer of PCB waste shall have a written closure plan that identifies the steps that the owner or operator of the facility shall take to close the PCB waste storage facility in a manner that eliminates the potential for post-closure releases of PCBs which may present an unreasonable risk to human health or the environment
2. a commercial storer of PCB wastes shall have a detailed estimate, in current dollars, of the cost of closing the facility in accordance with its approved closure plan. The closure cost estimate shall be in writing, be certified by the person preparing it, and
3. a commercial storer of PCB waste shall establish financial assurance for closure of each PCB storage facility that he owns or operates. In establishing financial assurance for closure, the commercial storer of PCB waste may choose from the following financial assurance mechanisms:
  - Closure trust fund
  - surety bond guaranteeing payment into a closure trust fund
  - surety bond guaranteeing performance of closure
  - closure letter of credit
  - closure insurance
  - financial test
  - corporate guarantee
  - multiple financial mechanisms
  - modifications to approval if capacity changes or closure cost changes

**Question:** How does EPA respond to Kansas utility companies concern about checking compliance history of facility with whom they wish to conduct business?

**Response:** The EPA has provided the following options for any facility wishing to conduct investigations into the compliance history of potential suppliers:

- EPA has supplied specific regulations that each facility must follow to conduct business in a manner to protect health and the environment

- EPA encourages facilities to conduct their own third party audit to ensure that potential suppliers are conducting business in a manner that is protective of public health and the environment
- EPA supplies compliance history of any facility upon request by telephone, fax, email, letter, or in person.
- EPA supplies compliance history in response to Freedom of Information Act (FOIA) requests
- EPA is developing the Integrated Compliance Information System(ICIS), plans are that in the future this system will be available to allow the general public to check the compliance history of facilities on-line.
- Other public services such as Lexus Nexus and Westlaw are available to check court decisions and decisions by the Administrative Law Judges.

EPA has also issued guidance to the enforcement staff to encourage facilities to set up Environmental Management Systems (EMS) as part of a Supplemental Environmental Project (SEP) in response to an enforcement action by the agency. An EMS will require facilities to hire third party auditors to review their systems on a regular basis. The audit would include checking for compliance with all local, state, and federal regulations and industry standards, and continual improvement of their process.

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