



**MEMORANDUM**

TO: Kaley Laleker, Director, Land and Materials Administration

FROM: Edward M. Dexter, P.G., Administrator, Solid Waste Program

CC: Edward Hammerberg, Engineer Supervisor, Solid Waste Program

DATE: September 16, 2022

Subject: Hearing Officer's Recommendation, BGE PCB Storage Facility CHS Permit Renewal

- I. **Purpose and Scope.** This memorandum pertains to a tentative determination by the Maryland Department of the Environment ("MDE", the "Department") to renew Controlled Hazardous Substance ("CHS") permit # A-181 issued under the authority of § 9-232 of the Environment Article, Annotated Code of Maryland (the "Environment Article), to the Baltimore Gas and Electric Company ("BGE"). The renewal of the permit would allow the continued storage of Polychlorinated Biphenyl ("PCB") waste at a BGE maintenance facility located at 7210 Windsor Boulevard, Baltimore, MD, 21244.

A Public Hearing was held as described below for the purposes of obtaining public comment on the Tentative Determination. This memorandum transmits the results of the analysis of the record by the Hearing Officer and provides recommendations to the Director of the Land and Materials Administration concerning the disposition of the application.

II. **The Public Hearing.**

A. **Introduction.** I served as the moderator and Hearing Officer for a Public Informational Meeting and Public Hearing on the proposed tentative determination for permit renewal that was held on June 2, 2022, at the Dogwood Elementary School, 7215 Dogwood Road, Baltimore, MD 21244. Although not specifically required by the statute, on the request of a local resident, MDE also scheduled a second opportunity to provide comment on this permit renewal in a virtual on-line only format on June 7, 2022, at 7 pm. On that occasion, the requestor (and only citizen attendee) decided to enter written rather than verbal comments, so a second hearing on the record was not needed. Oral and written comments received are summarized in Section III below.

B. **Statutory Requirements.** The hearing was held in accordance with the requirements of Subtitle 1-6 of the Environment Article. Specifically, § 1-601(a)(5) includes Controlled Hazardous Substance permits as a type of permit subject to the requirements of the Subtitle; §§ 1-602 and

603 require publication of a notice and specify what the notice must contain, and § 1-604 contains requirements pertaining to the conduct of a public hearing if requested.

C. Notifications. Public notice of the tentative determination to renew the permit, and notice of the public hearing on the tentative determination was provided through newspaper advertisements that appeared in the legal notices section of the Baltimore Sun. The advertisements appeared twice – once per week in successive weeks. The dates of publication of the initial notice of tentative determination to renew the permit were February 11 and February 18, 2022. This notice also included an opportunity to request a public hearing. The dates of publication of the notice for this public hearing were May 2 and May 9, 2022. Announcements of this Public Hearing were also made using radio ads broadcast during the morning drive time and evening drive time of May 25, 2022 on radio station WBAL AM in Baltimore. The notice of tentative determination and the notice for this hearing were also posted on the MDE website contemporaneously with the publication of the newspaper advertisements.

The initial notice of tentative determination and the notice for the hearing that were published in the Baltimore Sun had an error in the address for the BGE facility that MDE only became aware of in mid-May. The published notices identified the BGE facility address as “7210 Windsor Mill Road ... 21226” rather than the correct “7210 Windsor Boulevard ... 21244.” Corrected notices were posted on the MDE website on May 20, 2022. A correction notice was published in the Baltimore Sun on May 31, 2022.

MDE also scheduled an on-line informational session for June 7, 2022 at 7:00 pm that repeated the presentations made during the in-person informational meeting, and provided an additional opportunity for information exchange and to submit comments for the administrative record. The public comment period was held open until the close of business on June 13, 2022.

D. The Public Informational Meeting. The hearing was preceded by a Public Informational Meeting, which began at 5 PM and ran until approximately 7 PM. After an initial statement by the hearing officer concerning the manner in which the meeting would progress, Mr. Ed Hammerberg of MDE’s Solid Waste Program described the activities that would be allowed to continue under the permit, and a synopsis of the requirements of the permit that would govern how they could be performed. Numerous questions from the audience were answered by MDE and BGE staff, until no more questions were asked, at which time after a short recess the Public Hearing commenced.

E. Conduct of the Public Hearing.

1. Attendance. Nineteen persons were signed in for attendance at the meeting and hearing. Attending for MDE were four staff including myself, four from BGE, and 11 from the public. These included Senator Charles Sydnor, Delegate Ben Brooks, County Councilperson D. Risper, and a representative of Senator Delores Kelley.

2. Permit Description. After an initial statement by me concerning the manner in which the meeting would be conducted, Mr. Ed Hammerberg of MDE's Solid Waste Program gave a detailed statement regarding the activities that would be allowed to continue under the permit, and a synopsis of the requirements of the permit that would govern how they could be performed.

In brief, the permit would allow the continuation of the acceptance of PCB-contaminated media, generally transformers containing dielectric oil which may contain PCBs; allow for the characterization of these materials to determine the PCB content; allow the removal and storage of PCB-contaminated materials for over 90 days but generally not longer than a year in certain areas; and establish the parameters under which that storage could occur.

This facility is a central location to which BGE brings transformers and capacitors from throughout their service area that are now out of service, and that may contain PCBs. These may have been brought in for repair, or due to their age; it is noted that PCBs have not been manufactured since the late 1970s, and have not been placed in use since the early 1980s, but that due to their durable construction these units can function acceptably for decades. Therefore, PCB-containing fluids may still be encountered, and BGE constructed this facility to have a safe place to manage them.

The permit would authorize storage in two areas where containers would be stored: the "triage" areas where incoming transformers are examined and sampled to determine whether they contain PCBs, and at what concentration; and a nearby larger container storage area. Also, removed PCB oil would be stored in tanks, one inside the building, and one under cover and in an underground vault accessible from the loading dock. All of the areas where PCBs would be stored have secondary containment and meet the other requirements for the storage of controlled hazardous substances. Other conditions of the permit address personnel training, record-keeping, reporting, contingency plans, and other elements required of a CHS storage facility by Maryland regulations. The permit would have a term of 10 years from the date of issuance.

3. Solicitation of Public Comments. Following the description of the permit requirements, BGE was invited to make a statement, which was declined at that time. The hearing was then thrown open for comment, starting with elected officials, then persons who indicated on the sign-in sheet that they intended to provide comments, and finally anyone who still wished to comment. The hearing continued until no one else offered comments.

**III. Review of the Public Comments Received at the Hearing and In Writing.** The following is a summary of the pertinent comments. As the comments received were generally similar, they are grouped into categories. The actual comments presented can be viewed in the Minutes to the hearing provided by the Court Reporter, and the two attached written comments.

- A. PCBs pose health risks. Several commentors noted that PCBs can cause health risks. It is noted that this is why Maryland regulations require various protections for facilities that manage hazardous waste, to limit risks to the surrounding communities.

- B. Objection to continued operation of the Facility. Two commentors noted that there has been significant development in the area since it was first permitted, and one asserted that the facility does not have adequate protective systems to prevent a risk to humans if there were a release. Another commented that BGE, an Exelon company, makes a lot of money and should spend it to destroy PCBs, not store them where they could hurt Marylanders.
- C. Require a Plan to Eliminate PCBs in Use. Most commentors acknowledged that PCB-containing transformers are still found in use in the community, and that this is the location where BGE brings transformers to characterize them from their whole service area. However, while not objecting to renewal of the permit for that reason, it was requested that the permit require BGE to characterize their remaining stock and eliminate any remaining PCB-containing units within the current permit's span (10 years).

#### IV. Analysis of comments.

- A. PCB Health Risks. Most commentors recognized that PCBs are present in the community in functional transformers and other devices. The mere presence of PCBs at the facility is not something that causes an exposure; a route of exposure must exist for the community to be at risk. The proposed permit, and the design and procedural protocols listed in the permit and its attachments, serve to limit these routes of exposure. These include the impermeable floor of the building; storage of the transformers and the removed PCB-containing fluids in protected environments within the building, with secondary containment around the storage tanks and container storage areas; procedures for spill management and cleanup; and other protocols detailed in the permit attachments. There has been no known release to the environment from the past operation of the facility, which has been ongoing for approximately three decades.

Moreover, it is noted that under the renewed permit, this facility would be used to service transformers that may contain PCBs, and that are in fact currently out in the BGE service area in less protected environments; these items could be subject to releases into the environment from failure, traffic accidents, vandalism, etc. Removing the PCB-containing devices from these dispersed public locations will also serve to reduce the risk to the general public.

- B. Potential for Impact on the Community. It was commented that there has been significant development in the community around the facility since it was first permitted, that the facility is located near dwellings, and that this could pose a risk to neighbors if there were a release of PCBs. One of the documents in the record is a fact sheet prepared by BGE which shows pictures of the areas within their larger facility that are covered by the permit, and of the maintenance facility which surrounds it. The operational areas for PCB management are contained in a total of 8,084 square feet in a warehouse building of 420,870 feet, or 2% of the surrounding building, and the building sits in an industrial complex of approximately 66 acres. The facility layout is such that the PCB storage area is not proximal to dwellings, and is not in an area of public access. Also, these areas have the containments and other

protections required by Maryland regulations, the permit, and the approved plans for the facility.

- C. Plan for Eliminating Remaining PCB-Containing Devices. Several commentors suggested that BGE should have a plan to eliminate those devices that still contain PCBs, preferably during the lifespan of this permit. During the informational meeting that preceded the hearing, although not on the record, representatives of BGE had noted that BGE was desirous of eliminating PCBs as well, as the facility requires some expense and special training to run properly, but that an obstacle was that they had some 24,000 transformers and similar devices and did not have a perfect record of which ones still contained PCBs. This information was referenced by some of the comments that were on the record, in support of the suggestion that BGE survey their equipment and develop a strategy and timeline for removing them.

The removal of PCBs from the units in service throughout BGE's multi-county service area, which would allow for the subsequent mothballing or perhaps elimination of this facility, is laudable. However, this hearing concerned whether the permit for this facility should be renewed, not whether BGE should undertake an extensive survey of its existing equipment located offsite from the facility. That is outside of the scope of this application process. It is, however, a viable topic for BGE to consider.

## V. Conclusions and Recommendations.

### A. Conclusions.

1. Notifications. It is noted that the initial public announcement concerning the hearing contained an incorrect address. The published notices identified the BGE facility address as "7210 Windsor Mill Road ... 21226" rather than the correct "7210 Windsor Boulevard ... 21244." Corrected notices were posted on the MDE website on May 20, 2022. A correction notice was published in the Baltimore Sun on May 31, 2022. Therefore, as the Department published the required corrections in a timely manner, and notice was given to the public as required, this is not considered to present a material problem with the notifications relating to this hearing.
2. Some commentors opposed the renewal of this permit due to the proximity to the surrounding community. However, based on evidence provided by BGE and by review of the conditions in and appendices to the permit, the areas where PCBs are managed are well protected and are removed from public access or proximity to the public – unlike the transformers that are transported there for decommissioning, which have been and are in fact out in communities throughout the BGE service area. The risk to the surrounding community from this facility appears to be very low, and is adequately addressed by the protections required in the permit.
3. The most relevant comment received was to require that BGE develop a plan for the removal of PCBs from the units in service throughout BGE's multi-county service area, which would allow for the subsequent mothballing or perhaps elimination of this facility by the end of this permit cycle. This idea is laudable. However, this hearing was on whether the permit for this facility should be renewed, not whether BGE should undertake an extensive

survey of its existing equipment located elsewhere. That is outside of the scope of this application process. It is, however, an idea that BGE should consider.

4. An MDE engineer responsible for permit reviews testified that the proposed draft permit meets the requirements of Maryland regulations for facilities managing CHS, and provided a description of the requirements of the permit that would serve to protect the environment and the public health.
5. As adverse comments were received, §1-604(b) of the Environment Article, Annotated Code of Maryland, requires that MDE prepare and publish a notice of Final Determination.

**B. Recommendations.** Based on these conclusions, it is recommended that:

1. The permit be renewed as proposed in the Tentative Determination;
2. The Solid Waste Program prepare and publish a notice of Final Determination in accordance with §1-604(b) of the Environment Article; and
3. The cover letter to the renewed permit contain a statement encouraging BGE to prepare a plan and schedule to identify and eliminate aging equipment in its service area that still contains PCB-contaminated fluid within the duration of this permit cycle, and to prepare a closure plan for the facility to be implemented when this is accomplished.

**V. Attachments for the Record.** The following documents are attached to this memorandum as appendices:

- A. Hearing transcript** entitled “PUBLIC HEARING ON THE TENTATIVE DETERMINATION TO RENEW THE CONTROLLED HAZARDOUS SUBSTANCE (CHS) STORAGE FACILITY PERMIT HELD BY BALTIMORE GAS AND ELECTRIC COMPANY (BGE) FOR A FACILITY LOCATED AT 7210 WINDSOR BOULEVARD BALTIMORE, MARYLAND 21244 (WINDSOR MILL AREA OF BALTIMORE COUNTY)”, for the public hearing conducted on June 2, 2022, prepared by Chris Nelson of For The Record, Inc., containing the record of the public hearing and oral comments provided at the hearing, with the agenda that was handed out at the public hearing.
- B. Response to Comments Document**, to be provided to commentors and attendees.
- C. Notices and corrected notices** published as required by law:
  1. Notice of Tentative Determination, Opportunity for Public Comment, and Opportunity to Request a Public Hearing, issued February 11 and 18, 2022.
  2. Corrected Notice of Informational Meeting and Public Hearing, issued May 2 and 9, 2022.
  3. Corrected Notice and Announcement of Supplemental On-Line Meeting, issued May 31, 2022.
- D. Attendance Sheets** for the public informational meeting and hearing on June 2, 2022.
- E. Fact Sheets:**
  1. **Fact Sheet by MDE** entitled “Background Information, Proposed Renewal of Controlled

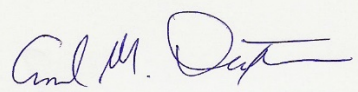
Hazardous Substance (CHS) Permit, CHS Permit No. A-181, Public Informational Meeting, June 2, 2022”.

2. Fact Sheet by BGE entitled “BGE CHS Permit No. A-181 Fact Sheet”.

F. Written Comments:

1. Letter from Patrick Smyth of 19561 Florida Street #1012, Huntington Beach, California, 92648, dated May 18, 2022;
2. Letter from Karen McGullum, Esq. transmitted by email, dated June 13, 2022.

G. Draft Permit as Proposed.



9/16/2022

Edward M. Dexter, P.G., Hearing Officer  
Solid Waste Program  
Land and Materials Administration  
Maryland Department of the Environment