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EPA Seeks Comment on Minor Reinterpretation of Rules on PCBs in Building Materials

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Last week the Environmental Protection Agency (EPA) [requested public comment on a proposed reinterpretation](#) of its PCB rules, billed as a step to accelerate removal of building materials containing PCBs. Comments are due by March 30.

The proposed reinterpretation would barely dent the costs confronting building owners concerned about the possible or confirmed presence of PCB-containing building materials like paint and caulk. Building owners should consider taking this opportunity to tell EPA that minor tweaks are not enough: instead, EPA should assess the risks actually posed by these building materials and develop more substantial ways of minimizing the costs of managing or disposing of such materials.

Unauthorized PCB-containing Products and PCB Waste Categories

Under the Toxic Substances Control Act (TSCA), distribution and use of PCBs are barred absent an EPA authorization or regulatory exclusion. Where they are known to exist, unauthorized, non-excluded PCB-containing products must be removed to remain in compliance with TSCA. Under 40 CFR Part 761.62, the removal and disposal of non-liquid PCB-containing products with more than 50 ppm PCBs are regulated as PCB bulk product wastes.

Also, when PCBs from unauthorized PCB-containing products contaminate other materials, those also must be removed and disposed as PCB remediation waste pursuant to Part 761.61.

PCBs in Building Materials

PCBs are present in many commercial and institutional buildings built or renovated from the 1940s into the 1970s when PCBs were commonly incorporated as a plasticizing agent in caulks and paints. There is no regulatory duty to test for PCBs in building materials. But once they are discovered at levels above 50 ppm, a building owner is on notice of an illegal condition and removal becomes necessary.

Removal or Encapsulation of PCB-containing Building Materials

Removal of PCB-containing building materials is involved and expensive. Workers must conduct the work under stringent safety standards and use burdensome safety equipment. Disposal of the waste is expensive, partly because some states, such as Massachusetts, generally do not allow it in regular construction debris or solid waste disposal facilities even when it would be allowed by EPA.

EPA can approve keeping PCBs in building materials on a case-specific basis. Obtaining such authorizations generally is time-consuming and expensive, and typically comes with conditions involving encapsulation, periodic monitoring and reporting, and notices on property documents and to building occupants.

EPA's Evolving Approaches to the Issue

EPA has long recognized that removal of PCB-containing building materials would be hugely expensive. In 1994, invoking its authority under TSCA to allow PCBs that do not pose unreasonable risk, EPA proposed regulations that would have allowed such materials to remain in place under certain conditions. EPA did not finalize that proposal, however, and for many years did not develop any program of compliance assistance or enforcement focused on PCBs in building materials.

In 2009 EPA finally issued [guidance documents on PCBs in older buildings](#), sparked chiefly by parental and Congressional voices concerned about PCBs in older school buildings. The associated publicity has put pressure on building owners to evaluate and address PCBs in their buildings. Many institutions have developed long-term plans to do so. The environmental consulting, laboratory analysis, risk assessment, risk communication, cleanup, and waste disposal communities have not been sorry to see the resulting business.

There is no consensus among building owners and health authorities, however, that the expense and difficulties of removing PCBs in building materials are justified by reductions in health risk, enforcement risk, or business risk. For example, an [information booklet from the Massachusetts Department of Public Health](#) indicates that intact caulking does not cause appreciable exposures to PCBs and that health effects would not be expected.

Proposed Reinterpretation

EPA's proposed reinterpretation of its regulations would allow PCB-contaminated building materials such as masonry to be handled as PCB bulk product waste, instead of as PCB remediation waste, if they are removed concurrently with the PCB-containing products that were the source of the contamination and are being removed as PCB bulk product waste.

The notice is clear that contaminated building materials not removed along with the PCB bulk product wastes would still constitute PCB remediation waste. In effect, residual building materials with PCB levels above 1 ppm would still require remediation or EPA approval. Also, the reinterpretation would not apply to contaminated soils.

The notice explains the proposal is intended to "accelerate cleanups by providing a more straightforward path for disposal."

Observations

It is true that a few projects will be simpler if all of the PCB-containing building material can be removed as one category of waste. But it is not clear that even those jobs will be cheaper or faster.

First, many projects also involve contaminated soil, so there will be remediation wastes anyway.

Second, much of the cost and time stems from the need for EPA approval, from EPA's conditions, and from the worker safety requirements, not from disposal requirements. It may be that EPA intends to rely on the reinterpretation to streamline its approval requirements, but EPA's notice does not say so.

Third, PCB remediation wastes sometimes can be disposed of more easily than the more contaminated PCB bulk product wastes, and usually involve a high proportion of the overall waste stream. Including large quantities of materials that could be remediation wastes in with the bulk product wastes may lead to very expensive simplicity.

As a result, the reinterpretation does not appear to offer a significant reduction in the current costs of remediating PCBs in building materials. Certainly it will not allow or induce building owners to treat the

problem just as a matter of ongoing building maintenance.

EPA should consider that TSCA's regulation of PCBs has led to marked reductions in PCB body burdens for upcoming generations not exposed the way older generations were. It should also consider the absence of evidence linking PCBs in building materials to human health consequences, and develop a program that avoids stoking unwarranted fears and allows building owners to manage the issue without undue costs.

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