

Environment - USA

New EPA interpretation on status of contaminated debris

Contributed by **Sidley Austin LLP**

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Introduction

On November 16 2012 the Environmental Protection Agency (EPA) posted the PCB Bulk Product Waste Reinterpretation on the its website.⁽¹⁾ The reinterpretation addresses the regulatory status of building debris that has been in contact with non-liquid polychlorinated biphenyls (PCBs), such as PCB-containing caulk and paint. The reinterpretation was published in the context of increased awareness of the presence of PCB-containing caulk, sealants, paint and other materials in public and commercial buildings that were constructed between World War II and the mid-1970s. The EPA asserts that the presence of PCB-containing material in or on a building is an "unauthorized use" of PCBs.

PCB bulk product waste

If PCBs have leached from caulk, sealants or paint containing equal to or more than 50 parts per million (ppm) of PCBs into a 'substrate' (eg, brick, mortar or concrete), and the PCB-containing material is still attached to the substrate when the structure is 'designated for disposal', the substrate can be disposed of as PCB bulk product waste. PCB bulk product waste qualifies for more flexible disposal options pursuant to 40 CFR Section 761.62 (eg, much PCB bulk product waste can be disposed of in permitted industrial or solid waste landfills, even if it contains more than 50ppm of PCBs).

This reinterpretation applies only if the substrate has been contaminated by non-liquid PCBs. If the source of the contamination includes spills or releases of equal to or more than 50ppm of liquid PCBs (eg, from hydraulic or transformer fluids), then the EPA would conclude that the substrate is PCB remediation waste, regardless of the PCB concentration. The date of any such disposal may be relevant to this analysis (see 40 CFR Section 761.50(b)(3)).

PCB remediation waste

If, at the time of the designation for disposal, the caulk, sealant or paint containing equal to or more than 50ppm of PCBs has been separated from the substrate into which PCBs have leached, the PCB-contaminated substrate must be managed as PCB remediation waste, subject to the more restrictive disposal requirements of 40 CFR Section 761.61, regardless of the concentration of the PCBs in the substrate (ie, even if the PCB concentration in the substrate is less than 50ppm). For example, if one removes an amount that is equal to or more than 50ppm of PCB-containing caulk or sealant from a building, and subsequently discovers that brick or mortar was contaminated with PCBs from that caulk or sealant, the brick or mortar would have to be managed as PCB remediation waste.

Implementation issues

The EPA recognises that the PCB-containing material might be separated from the substrate in the time between designation for disposal and ultimate physical disposal. In these situations – as long as the PCB-containing material was still attached to the substrate at the time of designation for disposal – the debris can be managed as PCB bulk product waste even if the debris and caulk are subsequently separated. The EPA recommends the creation and implementation of an abatement plan that would document the time of the designation for disposal (and thus the presence and condition of the PCB-containing material at that time).

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This reinterpretation should be taken into account in planning building maintenance (eg, projects involving replacement of caulking or sealants) or demolition projects. For example, in order to benefit from the reinterpretation, a party may have to designate a particular structure for disposal before demolition (ie, before the PCB-containing material is separated from the substrate), rather than sample the debris after the structure has been demolished (assuming that demolition would separate some or all of the substrate from any PCB-containing caulk or paint).

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Endnotes

(1) www.epa.gov/epawaste/hazard/tsd/pCBS/pubs/caulk/reinterpret.htm.

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