

PCB-Containing Caulk: EPA Mixes Its Messages

Posted on September 22, 2010 by [Ralph Child](#)

EPA has issued an [Advanced Notice of Proposed Rulemaking](#) that broadly re-opens the question whether to authorize PCBs in caulk and under what conditions. EPA did not propose any new rules on the issue, but sought comments on what to do. This balance of this post reviews EPA's regulatory efforts on this issue and the [comments](#) on the ANPRM, and then summarizes some options for building owners while the agency ponders.

Last year EPA announced that in "recent years" it had learned that many 1950 to 1978 buildings may contain caulking with PCB concentrations higher than 50 ppm, indeed often quite a bit higher. [Linda Bochert's post](#) of November 3, 2009 linked to the EPA's [PCBs-in-caulk website](#), which the agency established to provide guidance for preventing exposures and conducting safe building renovations.

Last year's guidance conspicuously avoided a central issue: EPA's position on the legal status of PCB-containing caulk. EPA's position actually is clear: PCBs at levels above 50 ppm in caulking are not authorized, hence are illegal to maintain. Yet EPA has never mounted a program to identify and remedy PCB-containing caulk, and last year's guidance tacitly condones leaving PCBs in place indefinitely. So EPA de-emphasizes its legal interpretation. Quite possibly that is because EPA managers have not viewed PCB-containing caulking as causing actual health impacts whereas remediation certainly poses high costs and raises its own health risks.

The bottom line? Clear-cut and sensible regulatory answers remain far in the future. Meanwhile EPA is sending mixed messages – PCBs in caulk are unauthorized but don't overreact while we ponder. Building owners, prospective purchasers and contractors must sort out their own answers about what to do or not do.

Regulatory Background

In truth, EPA long has had general awareness of PCBs in old caulk. If the concentrations are below 50 ppm, the caulk qualifies as an **excluded PCB product** and is not regulated by EPA. If the concentrations are higher, EPA considers the use to be illegal to maintain because EPA has never issued a **use authorization** for PCBs in building materials.

When over-50 ppm PCBs in caulk are reported to EPA, generally EPA has required remediation under TSCA's rules. EPA New England (Region 1) has had a number of such matters. The Region also insists that cleanups must meet the requirements of the PCB spill regulations, which generally require cleanup in occupied buildings to levels well below 50 ppm.

Yet there is no obligation under TSCA for building owners to test for PCBs in caulk or to report exceedances to EPA. Many building owners ignore the issue, even if they are aware of the general possibility. So unauthorized caulk persists in many buildings, or goes away during renovations or demolition, awaiting potential discovery in unplanned circumstances.

That has led to a number of mini-crises, particularly for public school systems facing growing parental and school staff awareness. [PCBs in schools](#) have been much discussed in New York and

evaluate school buildings and study ways to encapsulate or treat PCBs over a period of several years.

In practice then, EPA has sent mixed messages. It has commendably - albeit tacitly - recognized that immediate and costly removal of unauthorized PCBs in caulk usually is not warranted. Yet the use remains unauthorized. Given the strictures of **TSCA** and the ill repute of PCBs, that remains unsettling for many building owners and prospective purchasers.

Efforts to authorize PCBs in caulk: the 1994 NOPR

The mixed messages from EPA and the issues of cost and health risks call out for clear cut regulatory answers, but also hamper EPA from issuing definitive regulations. It has already tried and retreated before.

Specifically, in 1994 as part of unrelated PCB rule changes, EPA proposed to authorize PCBs in pre-TSCA building materials, with conditions, similarly to intact asbestos containing materials. The NOPR included EPA's conclusion that continued use at concentrations above 50 ppm did not pose a significant risk as long as the materials were in good condition. 59 Fed. Reg. 62788, 62810 (12/6/94).

The proposed conditions had many downsides from a building owner's perspective, because leaving the materials in place, once discovered, would have then required:

- Notice within 30 days to EPA and potentially exposed individuals;
- Marking in a prominent location;
- Quarterly air monitoring and wipe sampling for one year and annually thereafter until removal of the material;
- Removal or containment (by encapsulation with a sealant) if wipe sampling or air monitoring showed exceedances of workplace standards;
- 24-hour notice to EPA of such exceedances;
- Record-keeping.

EPA's final rule issued deferred the issue while indicating EPA intended to issue a supplemental notice of proposed rulemaking and asking for further information on how much of a problem this is or not. 63 Fed. Reg. 35383, 35386 (6/29/98)

The 2010 ANPRM and Comments

Over a decade later, EPA has issued an **ANRPM** on unrelated PCB rule changes, and used it to request comments on whether EPA should reconsider the 50 ppm level for excluded PCB products. That request also specifically called for comment on whether EPA should issue a use authorization for PCBs in caulk. **ANRPM**, 75 Fed. Reg. 17645, 17664 (April 7, 2010). The ANPRM did not, however, describe any revised levels or conditions that EPA might propose for PCBs in caulk.

Many of the **comments on the ANPRM** on this issue call for more study, but otherwise reflect an unsurprising range of recommendations. **Comments from the Children's Environmental Health Network** urged EPA to cease any thought of authorizing an increase in the 50 ppm level. **Comments from the American Federation of Teachers** recommended a "suspension" of the allowance of PCB-containing caulk below 50 ppm while research is done. **Massachusetts DPH comments** tracked EPA's position of 1994 by recommending leaving intact caulk alone, and included its own recent guidance to that effect. **MIT's comments** proposed a facility-specific and detailed risk management approach. **Comments from the**

authorization for intact materials, perhaps conditioned on an I&M program.

Overall, the ANPRM attracted relatively few comments on this issue, by contrast with voluminous comments from the utility sector on other issues. The paucity of attention may mean that PCBs in caulk still have not reached a widespread awareness in the commercial real estate community, which provided exactly no comments. Or building owners just may prefer the status quo.

Continued Regulatory Uncertainty: Working Out Own Answers

It seems likely that EPA will not be providing any new rules on this issue in the foreseeable future. That leaves the regulated community to work out its own answers as best it can.

It appears that many building owners have determined not to look for PCBs in caulk, even in buildings where they might be expected. There is no requirement to do so and there have been no reports of actual health impacts due to PCBs in caulk.

Other building owners have chosen to test for PCBs in caulk in order to reduce regulatory risk, but only when renovations or demolition are undertaken for other reasons. Only if unauthorized PCBs are found then do they conduct remediation under the health and safety and disposal restrictions under the PCB rules.

Some prospective purchasers are including this issue in their due diligence, particularly if renovations are planned, and building attendant costs into the pricing. But some do not, relying on the absence to date of regulatory requirements, regulatory pressure or health impacts.

Some owners are writing requirements into construction contracts to make sure that contractors identify and handle any such caulking appropriately, similarly to contractual provisions for asbestos-containing materials.

Given EPA's mixed message – PCBs in caulk are unauthorized but don't overreact – each of those practices may be sensible. Building owners and prospective purchasers must choose their own paths based on their own policies and risk tolerance.

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