



Environmental site assessments - Don't ignore the building materials that could contain PCBs



Jim Okun, O'Reilly,
Talbot & Okun
Associates, Inc.

Identifying the environmental liabilities embedded in real property is the goal of environmental site assessments. For obvious reasons, the purchaser (and their lender) would prefer to have this settled before any transaction takes place. With environmental remediation often coming at such a high price, ignorance of environmental liabilities can easily make the difference between a mutually beneficial deal and a financial disaster for one party. While these assessments typically evaluate contamination of soil and groundwater and the presence of leaking drums and underground tanks, they often ignore building materials that could contain polychlorinated biphenyls (also known as PCBs). Is this an oversight? And if it is, how serious is it?

Got PCBs?

PCBs were used in a wide variety of building materials prior to their ban in the 1970s. While this is hard for us to fully comprehend today, PCBs were one of the "miracle chemicals" of their day, as a result they were added to many, many products; this was the era of "better living through chemistry".

The best known uses of PCBs in building materials were in caulk and paint, but PCBs are just as likely to be found in adhesives, floor finishes and concrete form release oils - to name a just a few applications. There aren't any good statistics on this, but odds are that a building built before 1980 has a 50% chance of containing PCBs; whether its use is institutional, commercial or residential.

There's only one way to know for sure whether a building has PCBs, and that's to collect samples and test them. But there's a big problem with this simple approach, testing a building for PCBs is opening Pandora's Box; an innocent act that risks lots of unintended consequences. While there's no requirement to test building materials for PCBs, this often well intentioned act can trigger a cascade of PCB liabilities. Testing building materials for PCBs is often compared to playing Russian roulette.

What's the Downside?

Until the last decade, the question of PCBs in buildings was largely academic, but that's changing fast as experience shows PCB remediation costs are too high to ignore. The change is due to USEPA's shifting policy towards PCB enforcement.

When the first PCB regulations were issued in 1978-79, they contained a provision known as the "in-service rule" that permitted the continued use of existing PCBs in building materials; no new PCB building materials could be added, but the existing stock was grandfathered-in. But, when EPA rewrote the PCB regulations in 1998, they quietly eliminated the in-service rule. The result was that all the PCB caulk, paint and window glazing in hundreds of thousands of buildings was suddenly outlawed. This change was not made because EPA determined that PCBs in building materials were dangerous, in fact it was made for reasons completely unrelated to PCBs in buildings.

Although there is no requirement for testing, once an owner determines that a building contains PCBs the only lawful option is to remove them. But taking PCBs out of a building is no easy task; over decades PCBs slowly move out of the caulk or paint where they started and into abutting concrete, brick or wall board. Removing PCBs from these abutting materials has proven to be much more expensive than removing the caulk or paint itself.

On top of the direct PCB removal costs it would be wise to also consider EPA's extra-regulatory requirements, such as the confirmation of cleanup effectiveness through air testing; total project costs quickly become unpredictable.

What might have started as an expensive but manageable \$100,000 cleanup can readily grow to an unmanageable multimillion dollar cleanup, with no end to the costs in sight. Abandoning otherwise useful buildings can become the only option.

Location, Location, Location

As the old saying goes, when it comes to real estate, nothing is more important than location; as it turns out this is true of the PCB regulations too. At least for now, EPA's PCB enforcement program is not implemented consistently across the country. Program implementation is in the hands of the 10 EPA Regional Offices, and each of these sets its own priorities. So while PCBs in building materials are a hot topic with EPA in New England, they are rarely discussed in the Southeast (just one example).

What to do?

If you own or are responsible for a building that may contain PCBs, at some point you will need guidance on what your options are. If the only advice you are receiving is from people telling you that you need to test the materials, consider whether it's time to find a new adviser. There are other alternatives besides testing. And even if testing is your best (or only) option, you should go into it with your eyes open, aware of the potential risks and possible strategies to reduce those risks.

Jim Okun is LSP and principal at O'Reilly, Talbot & Okun Associates, Inc., Springfield, Mass.

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