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PCBs in Caulk and Light Ballasts: A Thorny Regulatory Issue for Schools and Others

Polychlorinated biphenyls ("PCBs") are back in the news again. Though there is significant debate regarding the level of toxicity of PCBs, the U.S. Environmental Protection Agency (EPA) has labeled PCBs a "probable carcinogen;" this determination is hotly contested by many segments of both industry and academia who counter that the most recent science suggests otherwise. Nonetheless, EPA is currently pursuing an aggressive regulatory and enforcement agenda to eliminate certain uses of PCBs.

PCBs drew widespread attention in the mid-1970s when Hudson River sediments were found to contain elevated levels of PCBs. Due to concerns about consuming PCB-contaminated fish, the state of New York banned all fishing on the Upper Hudson in 1976. The issue caught the attention of Congress, leading to a 1978 federal ban on the further production of PCBs. In 1983, EPA declared a 200-mile stretch of the Hudson River to be a Superfund site and ordered certain parties to remove or otherwise address the sediment. The costly cleanup effort continues to this day.

PCBs were historically used in a variety of products, including some plastics, paints, caulks, lubricating oils, insulation, and electrical equipment; many PCB-containing products manufactured prior to 1978 are still in use today. Recently, there has been growing concern among parents' groups, teachers' unions, and EPA over potential sources of PCBs in many of our nation's older schools. In September of 2009, EPA undertook a [nationwide campaign](#) to educate schools about testing for and removing PCB-contaminated caulk.

The concern is that caulk containing PCBs may potentially elevate PCB levels in a building's air, especially if the caulk is cracking or flaking. Since launching the campaign, EPA's attention has been focused on PCBs in New York City public schools. For some time, New York City had been embroiled in a lawsuit filed by a parents' group concerned about PCB levels in schools. Largely in response to the lawsuit, but in concert with EPA's campaign, the city entered into an [agreement](#) with EPA to study the risk of PCB contamination in the city's schools and to work cooperatively towards a plan to mitigate any risks. The agreement initially called for pilot testing at five schools. So far, testing has been completed at three of the schools; all showed unanticipated high levels of PCBs in the air. However, the primary source was identified as old fluorescent light ballasts, not caulk.

As a result of this preliminary study, EPA quickly shifted its focus from caulk to light ballasts. At a meeting held on November 1, 2010, EPA requested that the city promptly replace all of its at-risk light ballasts installed prior to 1979 (the year the PCB "ban" rules took effect). It is EPA's position that continued exposure to airborne PCBs in the city's schools could increase the risk of long-term adverse health effects for students and school staff, and that therefore the exposure should cease as soon as possible. EPA also believes that failure of old light ballasts in classrooms – a relatively common occurrence – could result in an increase of airborne PCB levels, which in turn could have immediate health consequences for students and teachers in the vicinity.

City officials balked at EPA's request to replace all pre-1979 light ballasts. The city prefers to follow the terms of the original agreement, which created a timeline for studying the issue and developing a city-wide plan to the remediate any PCB contamination found in schools. City officials estimate that compliance with EPA's request would entail replacing light ballasts at between 750 and 850 buildings, at a total cost of approximately \$1 billion. The city claims that this enormous cost – equivalent to the salary of 15,000 teachers – during a time of great financial hardship is unnecessary, because the main source of PCB accumulation in humans is PCB-contaminated food, rather than airborne PCBs. Thus, the city claims that delaying the replacement of old light ballasts would not create additional health risks for persons working or learning in New York City public schools.

EPA quickly made known its unhappiness with the city's unwillingness to replace the schools' older light ballasts. Last December, EPA announced that it would immediately begin inspecting light fixtures in New York City classrooms. The inspections will continue indefinitely into 2011 and it is unclear what actions EPA may require as a result.

Powerful interests are beginning to line up behind EPA in its dispute with New York City. Every member of New York City's delegation to Congress has come out in support of EPA's efforts to address PCBs in the city's schools. In December, several members of New York's Congressional delegation introduced a [bill](#) to provide federal funding for PCB cleanup in schools. New York City's main teachers' union, the United

Federation of Teachers, has taken up the issue, calling for immediate action by EPA.

What should your school do?

EPA appears to be preoccupied with New York City schools at the moment, but it is only a matter of time before other schools (and potentially other building owners as well) become subject to greater scrutiny. Moreover, as awareness about PCBs in schools increases, there is greater likelihood that schools will face pressure to act – and possibly lawsuits – from parents' organizations, teachers' unions, and other interested parties.

It is important to appreciate that certain potential sources of PCBs, such as the presence of PCBs in electric equipment, are fully legal and have been found by EPA to pose no unreasonable risk to human health or the environment. However, other potential sources of PCBs, including elevated levels of non-liquid PCBs potentially found in older light ballasts, grout, caulk, and paint, may not be authorized for use and are currently the focus of EPA's concerns. Therefore, it is important to evaluate whether your school has potential PCB-containing sources and, if so, to adequately assess the potential legal liabilities associated with these sources. Professional testing services may be required to determine if PCBs are present in your school. The presence of fluorescent light fixtures installed prior to 1980 and/or old, cracking, and flaking caulk may be an appropriate basis to retain environmental consultants to conduct proper testing.

If you suspect that certain unauthorized uses of PCBs may be present at your facilities, there are a number of practical actions [EPA recommends](#) you take to minimize the risk of exposure. If PCBs are potentially present in your school, it is advisable that you seek necessary legal and professional assistance in addressing the problem.

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