

# Environmental Risk Overview



## PCB Removal - Remediation

Polychlorinated Biphenyls (PCBs) are an environmental contaminant regulated by the Toxic Substances Control Act (TSCA). PCBs can be found as a liquid substance in power industry transformers, as well as in soil, building materials, gravel, concrete, paint, window caulking and fluorescent light ballasts. PCB remediation contractors face a number of environmental exposures during assessment, sampling and abatement procedures. During remediation activities, hazardous dusts and gases can be generated which, without proper containment and control measures, can spread throughout the project area and potentially offsite. Transporting and disposing of PCB-contaminated waste or materials can lead to third-party and cleanup liability.

## Environmental Exposures May Include

- The manufacture of PCBs was stopped by the U.S. government in 1977 due to their harmful health effects, and because PCBs are extremely persistent and last for decades in the environment. PCBs still remain in various forms in older buildings, such as PCB oils in school lighting ballast fixtures. There is no such thing as a “safe level” of PCBs. PCBs can accumulate with ease in the soil and penetrate a variety of barriers. PCB exposure can occur by direct contact, volatilization, deterioration or disturbance of PCB-containing materials and cause health hazards through inhalation, ingestion and dermal contact. Exposure has been linked with birth defects and a wide variety of other health problems.
- Inadequate assessment or improper sampling activities could lead to excessive contamination exposure to building occupants. PCB contamination could spread to any area serviced by the HVAC system. PCBs in caulking, paint and other coatings are often absorbed into the building materials they were applied on, so significant levels of PCBs can migrate into adjacent wood, concrete or masonry. PCBs from exterior caulks, sealants and paints can migrate into and contaminate surrounding soil.
- Some PCB removal methods can increase exposure to third parties and require stronger protective and containment measures. The use of mechanical tools or abrasive blasting can generate heat and fugitive dust. If high heat is generated, inhalable PCB gases may be released and exposed to building occupants. Chemical cleaning methods may involve the use of hazardous solvents such as kerosene, diesel and terpene hydrocarbons.
- Some materials, like caulking, may contain other contaminants, such as asbestos, in addition to PCBs. There is also a risk of existing asbestos and lead-based paint, as buildings containing PCBs are older, and inadvertent disturbance during sampling or abatement work can release hazardous inhalable fibers or particulates. Improper containment, handling, transporting and disposing of asbestos or lead-containing materials can lead to third-party and cleanup liability.
- Inadequate containment measures at the worksite can allow airborne dust to spread and contaminate surrounding areas and lead to third-party and environmental cleanup liability. This includes the construction of the containment area, management of HVAC systems, storage of removed PCB-containing materials and cleaning of the worksite and equipment to ensure particle removal.
- Failure to remove PCB contamination and test that fugitive dusts have been properly contained and cleaned can expose contractors to third-party and cleanup liability. This may include the performance of air sampling to test if PCB-contaminated dust escaped the containment area and impacted nearby clean areas, and wiping samples to ensure that the area was fully decontaminated.
- Improper disposal of PCBs can lead to environmental liability. The disposal of PCB-containing materials is regulated and any entity storing, transporting or disposing of PCBs must notify the EPA. PCBs can be released into the environment from poorly maintained hazardous waste sites that contain PCBs, illegal or improper dumping of PCB wastes, leaks or releases from electrical transformers containing PCBs, and the disposal of PCB-containing consumer products into municipal or other landfills not designed to handle hazardous waste.
- Wastes generated from cleanup activities fall under PCB Remediation Wastes and may also be regulated. This includes cleaning materials such as rags, mops, gloves and protective suits, equipment such as HEPA filters and vacuums, and waste water produced from mopping, wet cleaning or misting. Failure to properly decontaminate or dispose of these materials in an appropriate waste facility can lead to cleanup and environmental tort liability.
- Transporting PCB contaminated wastes or soils, and materials or waste water from cleanup activities, to a disposal facility can lead to environmental liability while on the road and during loading and unloading. Accidental spills or leaks, or releases from container breaches, can lead to third party and clean up liability.

## Contractors Pollution Liability Can Provide Coverage For

- Contracting operations done “by or on behalf of” the insured
- Contracting operations performed at a job site
- Third-party claims for bodily injury and property damage
- Third-party claims for cleanup costs
- Abatement contractors may be able to combine Commercial General Liability, Contractors Pollution Liability and Professional Liability into one package policy. Work Comp & Auto may be offered
- Sudden and accidental coverage for owned/leased locations
- Mold, legionella, bacteria, fungi, lead, asbestos and more
- First and third-party transportation pollution liability
- Loading and unloading
- Defense
- Natural Resource Damage
- Non-owned disposal sites
- First-party emergency response cost

# Claims Scenarios & Examples

- A construction company agreed to settle charges with the US EPA for improper handling and disposal of PCBs in soils during a construction project. The contractor was responsible for excavating and disposing of contaminated material from the site, including 2,750 tons of material in an area with elevated PCB concentrations. According to EPA, soils with lower concentrations of PCBs were allegedly mixed with soils containing higher concentrations, in violation of rules that do not allow dilution of contaminated materials. Some of the soil excavated contained PCB concentrations of 191 parts per million, more than seven times the 25-ppm concentration allowed at the disposal site where the mixed soils were sent for disposal. This action was taken under TSCA, which regulates the manufacture, processing, distribution in commerce and use and disposal of PCBs.
- The state and city brought charges against a building contractor alleging that the company used contaminated concrete as fill at several development sites. Court records stated that tests determined the material was contaminated with PCBs, a probable cancer-causing material. As part of a settlement reached in the case, the contractor paid \$300,000 for tort claims.
- Many environmental tort cases for bodily injury due to PCB exposure have come from educational facilities. Contractors working in these facilities should be aware that there is potential widespread use of building materials containing PCBs in schools along with other buildings constructed or renovated between about 1950 and 1979. Exposures are prevalent with the removal of PCB-containing fluorescent light ballasts (FLBs) and the removal of PCB-containing caulk, paint and other PCB-containing building materials during planned renovations and repairs.
- During renovation of the school by contractors, fluids containing PCBs were spilled in and around the generator room and onto the ground outside the building, resulting in soil contamination. Hazardous materials were placed into drums that were moved to various locations on the property, where additional spills reportedly occurred. At the time, classes were in session. Parents of students filed a class action lawsuit for medical monitoring and to establish a fund for future health claims.
- EPA took action against a university and their remediation contractors. The university waste manifest reflects that the contractor disposed of waste containing PCBs during a window replacement project in violation of TSCA. Working with its contractors and an environmental consultant, the University's renovation project led to the removal of soils contaminated with PCBs from the window caulk, which are classified as PCB "remediation waste." PCB remediation waste can be disposed of only at approved facilities, but the transportation manifest did not identify the material as such, and the material consequently was shipped to a facility not licensed for this disposal.
- Owners of a contracting firm plead guilty and were held liable in the clean up of PCBs in a rural area. Instead of properly disposing of PCBs the contractor dumped some of this waste oil far away from the plant. Allegedly two men in a tanker truck sprayed an estimated 30,000 gallons of PCB-laced oil along rural roadsides in 14 counties. Environmental scientists estimated they would handle about 100,000 cubic yards of contaminated soil, but wound up removing four times that much. Workers kept digging as long as they found contamination. The excavation was stopped when they reached bedrock, 29 feet below ground. The cost of cleanup was in the millions.

## Final Consideration

As a contractor you can be faced with the cost to defend yourself against allegations or legal action from pollution related events, regardless if you are at fault or not. Having the proper insurance coverage in place will help fund the expenses incurred to investigate or defend against a claim or suit and provide you with environmental claims handling expertise.

*This environmental risk overview has been developed by Environmental Risk Professionals on behalf of J. Loos & Associates. It is intended to provide the reader with a broad range of potential risks they may encounter and may not reflect all risks associated with their business. To verify available insurance coverage, please consult your insurance representative.*

*© 2020 Environmental Risk Professionals*



J. LOOS & ASSOCIATES  
Daniel Loos  
919-256-6860  
daniel.loos@jloosins.com  
www.jloosins.com