

EPA Announces Guidance Relating to PCBs in Caulk of Buildings Constructed or Renovated Between 1950 and 1978

October 15, 2009

On September 25, the Environmental Protection Agency (EPA) announced new guidance for school administrators and building managers with recommendations for managing polychlorinated biphenyls (PCBs) in caulk and information to help minimize possible exposures. The agency also intends to assist communities in identifying potential problems and, if necessary, developing plans for PCB testing and removal. EPA is also conducting additional research into the issue of PCBs in caulk and the potential for exposure.

PCBs are manmade chemicals that were widely used in construction materials and electrical products prior to 1978. They were used in caulk from 1950 through 1978 to impart flexibility to the caulk. PCBs have been associated with a range of adverse health effects including cancer and negative effects on the immune, reproductive, nervous, and endocrine systems. EPA has evidence that many buildings across the country constructed or renovated between 1950 and 1978 may have PCBs at elevated levels in the caulk around windows and door frames, between masonry columns, and in other masonry building materials. The agency believes exposure may occur as a result of direct contact with the caulk, releases from the caulk into the air, or from contact with dust, surrounding surfaces, and soil in which released PCBs have settled.

EPA recommends that for buildings built or renovated between 1950 and 1978, owners and managers take the following steps to minimize exposure to PCBs from caulk:

- Clean all air ducts.
- Improve ventilation by opening windows and using or installing exhaust fans where possible.
- Clean frequently to reduce dust and residue inside buildings.
- Use a wet or damp cloth or mop to clean surfaces.
- Avoid sweeping with dry brooms, and minimize the use of dusters in areas near potential PCB-containing caulk
- Use vacuums with high efficiency particulate air (HEPA) filters.
- Encourage occupants to wash hands with soap and water often, particularly before eating and drinking.
- Wash children's toys often.

EPA recommends that building owners consider testing to determine whether PCBs are present in the air in levels above EPA's suggested public health levels. If measures to reduce air levels do not sufficiently

reduce exposures, EPA recommends removing the caulk. The agency also recommends that building owners test caulk that appears to have deteriorated (caulk that is cracked, brittle, etc.) and remove the caulk if PCBs are present at significant levels. Finally, EPA recommends that building owners remove PCB-containing caulk during renovations and repairs.

The recommendations in EPA's guidance that building owners and managers inspect and test caulk that contains PCBs in buildings built or renovated between 1950 and 1978 are not enforceable requirements. Nonetheless, the potential implications are important. The recommendations in the guidance may ultimately result in industry standards or best practices and may be relied upon by those in the future who claim injury from PCB exposure. They may also implicate Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cost-recovery issues for historic disposal of building demolition wastes containing caulk. Finally, the testing results may trigger other regulatory mandates.

Morgan Lewis plans to host a webcast in the upcoming weeks to discuss EPA's recommendations and strategies to handle the issues they raise.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Chicago

Nina G. Stillman 312.324.1150 nstillman@morganlewis.com

Los Angeles

Deanne L. Miller 213.612.2536 dlmiller@morganlewis.com

Philadelphia

John J. McAleese, III 215.963.5094 jmcaleese@morganlewis.com
Victoria J. Miller 215.963.5366 vmiller@morganlewis.com
Dennis J. Morikawa 215.963.5513 dmorikawa@morganlewis.com
Eric L. Stern 215.963.5178 estern@morganlewis.com

San Francisco

Michael E. Molland 415.442.1121 mmolland@morganlewis.com

Washington, D.C.

Howard M. Radzely 202.739.5996 hradzely@morganlewis.com
Ronald J. Tenpas 202.739.5435 rtenpas@morganlewis.com

About Morgan, Lewis & Bockius LLP

Morgan Lewis has nearly 1,400 lawyers and 1,500 other professionals, including patent agents, employee benefits advisors, and other specialists, in 22 offices in the United States, Europe, and Asia: Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered Attorney Advertising in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2009 Morgan, Lewis & Bockius LLP. All Rights Reserved.