

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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MAY 3 1989

Barbara J. Van Arsdale
 Harter, Secrest & Emery
 700 Midtown Tower
 Rochester, NY 14604-2070

Dear Ms. Van Arsdale:

This is in response to your letter of March 30, 1989 requesting written confirmation of an answer given to you over the phone by Tom Simons of my staff in regards to the PCB regulations at 40 CFR Part 761. Specifically the question was whether an industrial building which gives tours to the public on a regular basis would thereby be rendered a commercial building within the meaning of 40 CFR 761.3. The specific industrial setting in this case is a brewery or other manufacturer of beverages for human consumption.

In 40 CFR 761.3, EPA defines both industrial and commercial buildings. An industrial building is one which is directly used in manufacturing or technically productive enterprises. They are not generally or typically readily accessible to other than workers. Commercial buildings, on the other hand, are defined as non-industrial (non-substation) buildings which are generally or typically accessible to both members of the general public and employees.

Many, but not all industrial transformers are located in production areas, near motors, machinery and other equipment. These transformers are typically unvaulted and readily visible to facility workers during the routine conduct of their work. This is in contrast to the typical commercial PCB transformer installation, which is generally inaccessible and less visible to employees. PCB transformers in industrial settings are typically monitored by trained personnel, inspected on a routine basis, and provided maintenance on a routine basis in order to avoid equipment failure. For this reason, PCB transformers in industrial buildings typically have a lower likelihood of failure and/or fire and are regulated less stringently by the Environmental Protection Agency (EPA) than PCB transformers in or near commercial buildings.

		CONCURRENCES					
SYMBOL	T5-798	T5-798	<i>[Handwritten initials]</i>				
SURNAME	Simons	Lisher	<i>[Handwritten initials]</i>				
DATE	4/14/89	4/14/89	4/25/89				

Your letter does not specify whether the tours are guided by a facility representative, but one would assume that those participating in the tour are escorted in a manner that ensures only a limited and supervised access to the facility. One would also assume that there is a great deal of concern for the safety of those touring the facility, so that high risk areas, i.e., PCB transformer locations are avoided. If the above mentioned controls are exercised while the tours are conducted, this facility and others like it still fall within the definition of "Industrial building" at 40 CFR 761.3. Industrial building owners or operators that provide access to the general public must ensure that this access is controlled or supervised by facility representatives in order to avoid risks to the public and still be classified as an industrial building. The "industrial building" classification is not lost, as long as the general public's access is controlled and supervised in this manner.

While not specifically addressed in your letter, EPA also has regulations at 40 CFR 761 which pertain to PCB transformers and other PCB items that pose an exposure risk to human food or animal feed. Food and feed covered by this definition include items regulated by USDA and FDA as food and feed including additives. This includes beverages intended for human consumption. The regulation at 40 CFR 761.30(a)(1) prohibits the use and storage for reuse, after October 1, 1985, of PCB transformers that pose an exposure risk to food and feed. PCB transformers and other PCB items pose an exposure risk to food and feed when there exists a potential pathway for PCBs discharged from the item to contaminate food or feed. It would be prudent on the part of this facility's management or owner of the PCB equipment to determine whether this exposure risk exists and take appropriate action to rectify the situation.

If you have further questions or comments feel free to contact me at 202-382-3933 or Tom Simons of my staff at 202-382-3788.

Sincerely,

Denise M. Keehner, Chief
Chemical Regulation Branch

cc: PCB Coordinator
USEPA Region II