

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEP 27 1990

Mr. Thomas A. Waite
 Counsel
 Office of the General Counsel
 The Boeing Company
 P.O. Box 3707, MS-13-08
 Seattle, Washington 98124-2207

Dear Mr. Waite:

I am responding to your letter dated September 6, 1990 which requests an interpretation of the PCB regulations. The interpretation desired refers to the use of asphalt pavement containing less than 50 parts per million (ppm) PCBs, which was contaminated during processing by used oil containing less than 50 ppm PCBs.

First, in order to process PCB oil without an exemption, the used oil must not only contain less than 50 ppm but also the PCBs must be unregulated PCBs. Examples of used oil PCBs regulated even though they contain less than 50 ppm PCBs are:

- PCB oil originally containing PCBs at greater than 50 ppm, but diluted to result in oil containing less than 50 ppm;
- PCB oil originally containing PCBs at greater than 50 ppm, but which has been partially treated through an approved or unapproved PCB disposal process, yet which had still contains 2 ppm or greater but less than 50 ppm PCBs;
- PCB oils containing less than 50 ppm which have been used to rinse regulated PCB Containers, PCB Items, PCB Articles, or PCB-Contaminated Electrical Equipment;
- PCB oils which have been used as a flush of a drained PCB transformer prior to disposal of the drained transformer in a PCB landfill, regardless of final concentration; and
- PCB oils which have been removed from PCB-Contaminated Electrical Equipment or a PCB Transformer which is being reclassified, but which has not yet completed the reclassification process (for example, before the end of the ninety day minimum in service use is over).

JSmith:jhs/OTS-EED-CRB/09-27-90/TS-798/382-3964/Rm.NE117C/Disk:OTS-JHS#3 "BOEING"
 Used Oil; Recycling Asphalt; Excluded Products; Use of <50 ppm PCBs

CONCURRENCES

		CONCURRENCES					
SYMBOL	TS-798	TS 798					
SURNAME	<i>JHS</i>	<i>Bay</i>					
DATE	9/27/90	9/27/90					

Examples of used oils containing less than 50 ppm PCBs which are not regulated for use are: excluded products including recycled fluids as defined in 40 CFR 761.3; oil drained from a non-PCB transformer; and oil drained from a PCB or PCB-contaminated transformer which has been successfully reclassified to a non-PCB transformer according to 40 CFR 761.30(a)(2)(v).

In addition, not only must the used oil be unregulated and less than 50 ppm, but also there shall not be any other source of regulated PCBs in any of the other components processed in the making of the asphalt. For example, no gravel removed from a PCB spill, that is subject to the PCB disposal requirements, can be used in processing asphalt if the gravel is regulated for disposal below 50 ppm. As another example, there would also be a prohibition on processing or using "old" asphalt, if there were measurable concentrations of PCBs in the "old" asphalt. "Old" asphalt is defined as having been contaminated after April 17, 1978.

In summation, processed asphalt containing PCBs at less than 50 ppm may be used in an other than totally enclosed manner if the only source of PCBs in the ingredients used to process the asphalt is unregulated PCB used oil.

If you have any further questions on this matter, please refer them to Tom Simons of my staff at (202) 382-3991.

Sincerely,

Tony Baney
Chief, Chemical Regulation Branch

cc: Bill Hedgebeth, Region X

*mailed
10/1/90*