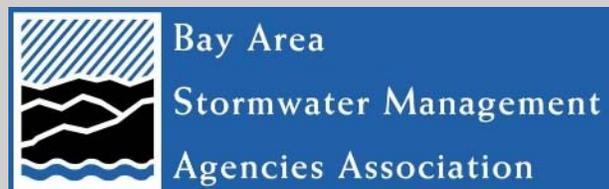


Model Language for Municipal Adoption of Program



Managing PCBs–Containing Building Materials during Demolition: Guidance, Tools, Outreach and Training



August 2018

This document is a deliverable of the Bay Area Stormwater Management Agencies Association (BASMAA) project *Managing PCBs–Containing Building Materials during Demolition: Guidance, Tools, Outreach and Training*. BASMAA developed guidance, tools, and outreach and training materials to assist with San Francisco Bay Area municipal agencies’ efforts to address the requirements of Provision C.12.f. of the Bay Area Municipal Regional Stormwater Permit (referred to as the MRP). Provision C.12.f of the MRP requires Permittees to manage PCBs–containing building materials during demolition.

We gratefully acknowledge the BASMAA Steering Committee for this project, which provided overall project oversight, including during the development of this and other project deliverables:

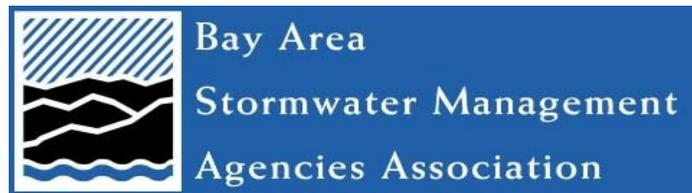
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Stakeholder Group	Representative(s)
Regulatory – stormwater/PCBs	Luisa Valiela and Carmen Santos, U.S. EPA Region 9
Regulatory – stormwater/TMDL	Jan O’Hara, San Francisco Bay Regional Water Quality Control Board
Regulatory – experience with related program (asbestos management)	Ron Carey and Richard Lew, Bay Area Air Quality Management District
Industry – demolition contractors	Avery Brown, Ferma Corporation
Industry – remediation consultants	John Martinelli, Forensic Analytical Consulting John Trenev, Bayview Environmental Services, Inc.
MRP Permittee – large municipality	Patrick Hayes, City of Oakland
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The material presented in this document is intended solely for the implementation of a municipal regulatory program required by the San Francisco Bay Area Regional Water Quality Control Board Municipal Regional Stormwater Permit for the protection of water quality under the Clean Water Act.

BASMAA prepared the tools and guidance herein to assist MRP Permittees' efforts to address the requirements of Provision C.12.f. of the MRP. The project team received input from a variety of stakeholders during development of the tools and guidance, including regulators (San Francisco Bay Regional Water Quality Control Board, U.S. EPA, and Bay Area Air Quality Management District staff), Bay Area municipal agency staff, and industry representatives.

This document does not address other environmental programs or regulations (e.g., PCBs regulations under the Toxic Substances Control Act (TSCA); federal, state, or local regulations for hazardous material handling and hazardous waste disposal; health and safety practices to mitigate human exposure to PCBs or other hazardous materials; recycling mandates; and abatement at sites with PCBs (or other contaminants). The applicant is responsible for knowing and complying with all relevant laws and regulations.

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MEMORANDUM

TO: BASMAA Board of Directors

FROM: BASMAA Project Team: EOA, Inc., Larry Walker Associates, Geosyntec Consultants, Stephanie Hughes, and David J. Powers & Associates, Inc.

DATE: August 8, 2018

SUBJECT: Model Language for Municipal Adoption of Program: Managing PCBs–Containing Building Materials during Demolition - Guidance, Tools, Outreach and Training

This technical memorandum is a deliverable for Task 4 (Model Language for Municipal Adoption of Program and CEQA) of the Bay Area Stormwater Management Agencies Association (BASMAA) project *Managing PCBs–Containing Building Materials during Demolition: Guidance, Tools, Outreach and Training*. BASMAA developed guidance, tools, and outreach and training materials to assist with San Francisco Bay Area municipal agencies’ efforts to address the requirements of Provision C.12.f. of the Bay Area Municipal Regional Stormwater Permit (SFBRWQCB 2015, referred to as the MRP). The MRP is issued by the San Francisco Bay Regional Water Quality Control Board¹ (Regional Water Board). Provision C.12.f requires Permittees to manage PCBs–containing building materials during demolition.

OBJECTIVES OF THIS TECHNICAL MEMORANDUM

Task 4 developed guidance and model materials to assist Bay Area municipalities address MRP Provision C.12.f.ii (1)(a), which requires Permittees to develop a new program by June 30, 2019 that includes: “the necessary authority to ensure that PCBs do not enter MS4s from PCB-containing materials in applicable structures at the time such structures undergo demolition.” Options for establishing municipal authority are discussed in the following sections, and model language for municipal adoption of a new program to manage PCBs materials during building demolition is attached, including a model resolution, a model ordinance, and a model supporting staff report (See Appendices A through C, respectively).

OPTIONS FOR ESTABLISHING MUNICIPAL AUTHORITY

The additional authority required for Permittees to manage PCBs–containing building materials during demolition could be achieved by any of the following suggested methods, or a combination of the methods, providing flexibility for each Permittee to use a process most consistent with its existing procedures and needs. Municipalities may also wish to modify their master fee schedule to accommodate cost recovery for staff time spent reviewing the portions of demolition permit applications related to PCBs management (see Appendix C, Fiscal Impact). Such cost recovery should only be used to compensate specifically for municipal staff time relating to compliance with MRP Provision C.12.f. and not for any other purpose.

¹ The MRP was reissued November 19, 2015, with an effective date of January 1, 2016. There are 77 Phase I municipal stormwater Permittees in five Bay Area counties, which are among the over 90 local agencies represented by BASMAA.

It should be noted that some municipalities may already have sufficient authority in their existing municipal ordinances to administer a new program to manage PCBs—containing building materials during demolition per MRP Provision C.12.f. City attorneys / county counsels should be consulted when determining the best option for establishing the necessary authority.

Regardless of the approach selected, each municipality’s adoption process and program to manage PCBs during demolition should generally include the following core elements:

- A mechanism to establish municipal authority to establish the new program to manage PCBs materials during building demolition (e.g., ordinance, resolution, and/or other mechanisms);
- An Applicant Package for demolition permit applicants (e.g., with forms, instructions and a process flow chart);
- A building survey protocol (Appendix C of the BASMAA model Applicant Package);
- A process to require demolition permit applicants to submit completed data forms from the Applicant Package to BASMAA and/or the countywide stormwater program.
- A cost recovery mechanism to compensate specifically for municipal staff time relating to implementing a new program to manage PCBs—containing building materials during demolition in compliance with MRP Provision C.12.f. (if desired);
- A CEQA Notice of Exemption; and
- A process to train relevant staff to implement the new program.

Ordinance Options

This option entails adoption of an ordinance to manage PCBs—containing building materials during demolition by the Permittee’s governing body (such as a City Council or County Board of Supervisors). The ordinance would add requirements to an existing section of the Permittee’s municipal code (or creates a new section in the code) related to:

- Building demolition permitting.
- Construction and demolition waste recycling.
- Stormwater management.

Appendix A contains a model ordinance.

Resolution Options

This option involves adoption of a program to manage PCBs-containing building materials during demolition through a resolution of the Permittee’s governing body, which would approve the program and grant authority to develop the regulations for the program via:

- An additional standard condition of approval for new development projects similar to an existing one requiring testing and abatement of lead and asbestos.
- Demolition permit language modifications.
- Changes to regulations for the recycling of construction and demolition waste management.

- Changes to the stormwater management regulations and clarification that PCBs are one of the pollutants of concern covered under the Permittee's existing non-stormwater discharge section of the stormwater section of the municipal code.

Appendix B contains a model resolution.

Management Action Options (possibly paired with an information item on the agenda at a regular meeting of the Permittee's governing body)

This option entails adoption of a program to manage PCBs-containing building materials during demolition through actions of the Permittee's managerial staff such as:

- An additional standard condition of approval per the resolution language above.
- Changes to the procedures of systems for processing waste management forms for construction and demolition debris on paper or web-based software (such as the proprietary web applications developed by Green Halo Systems that are used by some Permittees).
- Modifications to the processes for handling demolition permits.
- Directing staff to collect data related to managing PCBs during demolition activities and working with BASMAA to report the data to the Regional Water Board as required by the MRP.

Appendix C contains a model staff report that could be used in coordination with any of the above options.

APPENDIX A

Model Ordinance

MANAGEMENT OF PCBs DURING BUILDING DEMOLITION PROJECTS

- Section 1. Purpose**
- Section 2. Definitions**
- Section 3. Applicability**
- Section 4. Exemptions**
- Section 5. PCBs in Priority Building Materials Screening Assessment**
- Section 6. Agency Notification, Abatement, and Disposal for Identified PCBs**
- Section 7. Compliance with California and Federal PCBs Laws and Regulations**
- Section 8. Information Submission and Applicant Certification**
- Section 9. Recordkeeping**
- Section 10. Obligation to Notify [insert name of municipality] of Changes**
- Section 11. Liability**
- Section 12. Enforcement**
- Section 13. Fees**
- Section 14. [City or County] Projects**
- Section 15. Effective Date**

Section 1. Purpose

(a) The provisions of this Article shall be construed to accomplish the following purposes:

1. Require building demolition permit applicants (Applicants) to conduct a PCBs in Priority Building Materials Screening Assessment and submit information documenting the results of the screening. Such documentation to include (1) the results of a determination whether the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction, and (2) the concentration of PCBs in each Priority Building Material present and, (3) for each Priority Building Material present with a PCBs concentration equal to or greater than 50 ppm, the approximate amount (linear feet or square feet) of that material in the building.
2. Inform Applicants with PCBs present in one or more of the Priority Building Materials (based on the above screening assessment) that they must comply with all related applicable federal and state laws. This may include reporting to the U.S. Environmental Protection Agency (EPA), the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), and/or the California Department of Toxic Substances Control (DTSC). Additional sampling for and abatement of PCBs may be required.

3. Meet the requirements of the Federal Clean Water Act, the California Porter-Cologne Water Quality Control Act, and the Municipal Regional Stormwater Permit Order No. R2-2015-0049.
- (b) The requirements of this ordinance do not replace or supplant the requirements of California or Federal law, including but not limited to the Toxic Substances Control Act, 40 Code of Federal Regulations (CFR) Part 761, and California Code of Regulations (CCR) Title 22.

Section 2. Definitions

In addition to the general definitions applicable to this Code, whenever used in this Article, the following terms shall have the meanings set forth below:

- (a) “Applicable Structure” means buildings constructed or remodeled from January 1, 1950 to December 31, 1980. Remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt.
- (b) “Applicant” means a person applying for a building demolition permit as required by Article [insert applicable article], Sections [insert applicable code for building demolition permits].
- (c) “[Appropriate Authority]” means the [insert name of Appropriate Authority] of [insert name of municipality].
- (d) “Building” means a structure with a roof and walls standing more or less permanently in one place. Buildings are intended for human habitation or occupancy.
- (e) “Demolition” means the wrecking, razing, or tearing down of any structure. This definition is intended to be consistent with the demolition activities undertaken by contractors with a C-21 Building Moving/Demolition Contractor’s License.
- (f) “DTSC” means the State of California Department of Toxic Substances Control.
- (g) “EPA” means The United States Environmental Protection Agency.
- (h) “PCBs” means polychlorinated biphenyls.
- (i) “PCBs in Priority Building Materials Screening Assessment” means the two-step process used to 1) determine whether the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction; and if so 2) determine the concentrations (if any) of PCBs in Priority Building Materials revealed through existing information or representative sampling and chemical analysis of the Priority Building Materials in the building. Directions for this process are provided in the PCBs in the Priority Building Materials Screening Assessment Applicant Package.
- (j) “Priority Building Materials” means the following:
 - a. Caulking: e.g., around windows and doors, at structure/walkway interfaces, and in expansion joints;
 - b. Thermal/Fiberglass Insulation: e.g., around HVAC systems, around heaters, around boilers, around heated transfer piping, and inside walls or crawls spaces;
 - c. Adhesive/Mastic: e.g., below carpet and floor tiles, under roofing materials, and under flashing; and

- d. Rubber Window Gaskets: e.g., used in lieu of caulking to seal around windows in steel-framed buildings.
- (k) “Priority Building Materials Screening Assessment Applicant Package” (Applicant Package) means a document package that includes an overview of the screening process, Applicant instructions, a process flow chart, a screening assessment form, and the *Protocol for Evaluating Priority PCBs-Containing Materials before Building Demolition* (BASMAA 2018, prepared for the Bay Area Stormwater Management Agencies Association, August 2018).
- (l) “Regional Water Board” means the California Regional Water Quality Control Board, San Francisco Bay Region.
- (m) “Remodel” means to make significant finish and/or structural changes that increase utility and appeal through complete replacement and/or expansion. A removed area reflects fundamental changes that include multiple alterations. These alterations may include some or all of the following: replacement of a major component (cabinet(s), bathtub, or bathroom tile), relocation of plumbing/gas fixtures/appliances, significant structural alterations (relocating walls, and/or the addition of square footage).

Section 3. Applicability

This Article applies to Applicants for buildings constructed or remodeled from January 1, 1950 to December 31, 1980.

Section 4. Exemptions

Applications for remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt.

Section 5. PCBs in Priority Building Materials Screening Assessment

Every Applicant for a building demolition permit shall conduct a PCBs in Priority Building Materials Screening Assessment, a two-step process used to

1. determine whether the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction (i.e., whether the building is an *Applicable Structure*); and if so
2. demonstrate the presence or absence and concentration of PCBs in Priority Building Materials through existing information or representative sampling and chemical analysis of the Priority Building Materials in the building.

Applicants shall follow the directions provided in the PCBs in Priority Building Materials Screening Assessment Applicant Package (Applicant Package), which includes an overview of the process, Applicant instructions, a process flow chart, a screening assessment form, and the *Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition*. Per the Applicant Package, for certain types of buildings built within a specified date range, the Applicant must conduct further assessment to determine whether or not PCBs are present at concentrations ≥ 50 ppm. This determination is made via existing data on specific product formulations (if available), or more likely, via conducting representative sampling of the priority building materials and analyzing the samples for PCBs at a certified analytical laboratory. Any representative sampling and analysis must be conducted in accordance with the *Protocol for*

Assessing Priority PCBs-Containing Materials before Building Demolition. The Applicant Package provides additional details.

Section 6. Agency Notification, Abatement, and Disposal for Identified PCBs

When the PCBs in Priority Building Materials Screening Assessment identifies one or more Priority Building Materials with PCBs, the Applicant must comply with all related applicable federal and state laws, including potential notification of the appropriate regulatory agencies, including EPA, the Regional Water Board, and/or the DTSC. Agency contacts are provided in the Applicant Package. Additional sampling for and abatement of PCBs may be required. Depending on the approach for sampling and removing building materials containing PCBs, the Applicant may need to notify or seek advance approval from USEPA before building demolition. Even in circumstances where advance notification to or approval from USEPA is not required before the demolition activity, the disposal of PCBs waste is regulated under Toxic Substances Control Act (TSCA). Additionally, the disposal of PCBs waste is subject to California Code of Regulations (CCR) Title 22 Section 66262. Additional information is provided in the Applicant Package.

Section 7. Compliance with California and Federal PCBs Laws and Regulations

Applicants must comply with all Federal and California laws and regulations, including but not limited to health, safety, and environmental laws and regulations, that relate to management and cleanup of any and all PCBs, including but not limited to PCBs in Priority Building Materials, other PCBs-contaminated materials, PCBs-contaminated liquids, and PCBs waste.

Section 8. Information Submission and Applicant Certification

- (a) The Applicant shall conduct a PCBs in Priority Building Materials Screening Assessment and submit the associated information and results as part of the building demolition permit application, including the following (see Applicant Package for more details):
1. Owner and project information, including location, year building was built, description of building construction type, and anticipated demolition date.
 2. Determination of whether the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction.
 3. If high priority for PCBs-containing building materials based on the structure age, use, and construction, the concentration of PCBs in each Priority Building Material present. If PCBs concentrations are determined via representative sampling and analysis, include a contractor's report documenting the assessment which includes the completed QA/QC checklist from the *Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition* and the analytical laboratory reports.
 4. For each Priority Building Material present with a PCBs concentration equal to or greater than 50 ppm, the approximate amount (linear feet or square feet) of that material in the building (see Applicant Package for more details).
 5. Applicant's certification of the accuracy of the information submitted.

- (b) The [Director of Public Works, Community Development, or Environmental Services, or other Appropriate Authority] may specify a format or guidance for the submission of the information.

Section 9. Recordkeeping

Those Applicants conducting a building demolition project must maintain documentation of the results of the PCBs in Priority Building Materials Screening Assessment for a minimum of five years after submittal.

Section 10. Obligation to Notify [insert name of municipality] of Changes

The Applicant shall submit written notifications documenting any changes in the information submitted in compliance with this Article.

The Applicant shall submit the revised information to [insert name of Appropriate Authority] when changes in project conditions affect the information submitted with the permit application.

Section 11. Liability

The Applicant is responsible for safely and legally complying with the requirements of this Article. Neither the issuance of a permit under the requirements of [insert Building Ordinance Section], nor the compliance with the requirements of this Article or with any condition imposed by the issuing authority, shall relieve any person from responsibility for damage to persons or property resulting there from, or as otherwise imposed by law, nor impose any liability upon the [insert name of municipality] for damages to persons or property.

Section 12. Enforcement

Failure to submit the information required in this Article or submittal of false information will result in enforcement under [insert appropriate code].

Section 13. Fees

In addition to the fees required under Article [insert applicable article], Sections [insert applicable code for building demolition permits], all Applicants subject to this Article shall deposit funds with the [Insert name of municipality], pay a fee of [insert amount, refer to master fee schedule or insert “sufficient to reimburse {insert name of municipality’s} costs for staff time required to implement this Article (i.e., to compensate specifically for municipal staff time related to implementing a new program to manage PCBs—containing building materials during demolition in compliance with MRP Provision C.12.f., and not for any other purpose)”].

Section 14. [City or County] Projects

[City or County] departments shall comply with all the requirements of this Article except they shall not be required to obtain permits and approvals under this Article for work performed within a [City or County] owned properties and areas, such as right-of-ways.

Section 15. Effective Date

This ordinance shall become effective on July 1, 2019 [or earlier date].

APPENDIX B

Model Resolution

RESOLUTION NO. _____

RESOLUTION OF THE [City Council/Board of Supervisors] OF THE [Jurisdiction] ADOPTING A PROGRAM FOR MANAGING PCBs IN BUILDING MATERIALS DURING THE DEMOLITION OF CERTAIN BUILDINGS AND AUTHORIZING THE [City Manager/County Administrator] TO DEVELOP AND PROMULGATE REGULATIONS TO ENACT THE PROGRAM

WHEREAS, polychlorinated biphenyls (PCBs) have been detected in elevated levels in fish and sediment in the San Francisco Bay making fish unsafe to eat; and,

WHEREAS, urban runoff through storm drain systems and other discharges is considered a significant pathway for PCBs into the Bay; and,

WHEREAS, PCBs in caulk and other priority building materials that were used in building construction and remodeling projects between 1950 and 1980 have been found to have particularly high PCBs concentrations; and,

WHEREAS, during demolition these building materials may be released to the environment and transported to receiving waters by stormwater runoff; and

WHEREAS, the San Francisco Bay Regional Water Quality Control Board adopted on November 19, 2015 the reissued Municipal Regional Permit (MRP),¹ a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges of stormwater runoff from municipal separate storm sewers systems (MS4s). The MRP includes provisions that implement the requirements in the PCBs Total Maximum Daily Load (TMDL), a program to address the Bay’s impairment by PCBs; and

WHEREAS, the MRP requires the permittees, including the [Jurisdiction], to reduce discharges of PCBs in stormwater runoff to the San Francisco Bay; and,

WHEREAS, the MRP requires the Permittees, including the [Jurisdiction], to develop and implement new programs to manage PCBs–containing building materials during demolition; and,

WHEREAS, more specifically, the MRP requires the Permittees to require that demolition permits for buildings that were built or remodeled during the period from January 1, 1950 to December 31, 1980 be screened for the presence of PCBs in priority building materials; and

WHEREAS, more specifically, remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt from the screening for the presence of PCBs in priority building materials; and

¹ Order No. R2-2015-0049

WHEREAS, the MRP requires that these new programs are adopted by June 30, 2019 and implemented by July 1, 2019; and

NOW, THEREFORE, BE IT RESOLVED, by the [City Council/Board of Supervisors] of the [Jurisdiction] hereby adopts a program to manage PCBs in building materials during demolition.

BE IT FURTHER RESOLVED, that the [City Council/Board of Supervisors] authorizes the [City Manager/County Administrator] to promulgate regulations and procedures to create and manage the program including conditions of approval, demolition permit requirements and/or construction and demolition waste management forms.

BE IT FURTHER RESOLVED, under the provisions of Section 15308, the program to manage PCBs in building materials during demolition is found to be exempt from the environmental review requirements of Title ___ of the _____ Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Section 15308 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. No unacceptable negative impacts have been identified.

BE IT FURTHER RESOLVED, that the [City Manager/County Administrator] will develop the appropriate permit fees and/or other cost recovery mechanisms as needed for subsequent [City Council/Board of Supervisors] approval and insertion into the [Jurisdiction]'s master fee schedule at a later date.

ADOPTED by the [City Council/Board of Supervisors] of the [Jurisdiction] at a regular meeting held on ____, ____, 20__ by the following vote:

AYES:

NOES:

ABSTAINED:

EXCUSED:

ABSENT:

[To be added by Municipality]

[Appropriate Authority]

[City Manager/County Administrator]

[Appropriate Authority]

[City/County Clerk]

Approved as to form:

[Appropriate Authority]

[City Attorney / County
Counsel]

APPENDIX C

Model Staff Report

REGULATION MANAGING PRIORITY PCBs-CONTAINING MATERIALS DURING BUILDING DEMOLITION PROJECTS

Action Requested

Staff is [requesting that the City Council or County Board of Supervisors adopt the attached ordinance {or} resolution {or} _____ (*other regulatory mechanism*) informing the Council or Board] of a new regulation establishing requirements for applicants for building demolition permits to conduct the following actions to manage building materials that potentially contain polychlorinated biphenyls (PCBs):

- Conduct a PCBs in Priority Building Materials Screening Assessment and submit information documenting the results of the screening.
- When the assessment identifies one or more Priority Building Materials with PCBs, comply with all related applicable federal and state laws, including potential notification of and reporting to appropriate regulatory agencies, including the U.S. Environmental Protection Agency (EPA), the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), and/or the California Department of Toxic Substances Control (DTSC). Additional sampling for and abatement of PCBs may be required.

Background

PCBs have been detected in elevated levels in certain sport fish in San Francisco Bay (Bay). To make the fish safer to eat, PCBs sources to the Bay need to be identified and controlled. Urban stormwater runoff is considered a significant pathway for PCBs into the Bay. Accordingly, regulatory agencies are requiring that Bay Area municipalities address sources of PCBs in stormwater runoff discharged to the Bay from municipal separate storm sewers systems (MS4s). This regulation targets selected priority building materials that may contain relatively high levels of PCBs, especially in buildings constructed or remodeled from January 1, 1950 to December 31, 1980. During demolition, these building materials and associated PCBs may be released to the environment and transported to the Bay by stormwater runoff. The priority building materials are caulking, thermal/fiberglass insulation, adhesive/mastic, and rubber window gaskets (BASMAA 2018).¹ To identify these materials, an initial literature review was conducted to identify the full list of known PCBs-containing building materials and reported PCBs concentrations. The materials were then prioritized by developing six factors that relate to the load or mass of PCBs associated with the materials, the likelihood of the material to get into stormwater during the demolition process, and the relative difficulty to remove the material from the building. A spreadsheet was used to assign a score to each material based on the factors, which were evenly weighted. The materials were then ranked and the highest scoring materials selected (LWA 2017).²

¹ BASMAA 2018. Protocol for Evaluating Priority PCBs-Containing Materials before Building Demolition. Prepared for Bay Area Stormwater Management Agencies Association (BASMAA). August 2018.

² Larry Walker Associates (LWA) 2017. PCBs Building Materials Prioritization, Excel Workbook. October 2017.

Water quality within the San Francisco Bay Region is regulated by the Regional Water Board. The San Francisco Bay Region encompasses portions of Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, San Mateo, Solano, and Sonoma Counties. One way that the Regional Water Board protects water bodies within the San Francisco Bay Region is to develop Total Maximum Daily Loads (TMDLs), which are programs to restore water quality in water bodies impaired by pollutants such as PCBs. Currently there is a TMDL established for PCBs in the Bay. To achieve the goals of the TMDL, a reduction in the amount of inputs of PCBs to the Bay is required. The PCBs TMDL estimates that 20 kilograms per year (kg/year) of PCBs enters the Bay in stormwater runoff, and requires that this input be reduced to 2 kg/year by 2030, a 90% reduction.

In 2015, the Regional Water Board reissued the Municipal Regional Permit (MRP),³ a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges of stormwater runoff from MS4s. The MRP includes provisions that implement the requirements in the PCBs TMDL to reduce discharges of PCBs in stormwater runoff to the Bay. These include Provision C.12.f., which requires Permittees to develop new programs to manage PCBs—containing building materials during demolition. Remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt. The MRP requires that these new programs are adopted and begin implementation by July 1, 2019.

Analysis and Summary of the Regulation

The [insert name of City or County] is required by the MRP to reduce PCBs discharges in stormwater runoff. This regulation targets priority building materials that may contain relatively high levels of PCBs, especially in buildings constructed between 1950 and 1980. The priority building materials are caulking, thermal/fiberglass insulation, adhesive/mastic, and rubber window gaskets. It is recommended that these priority building materials are regulated during demolition to prevent the materials and associated PCBs from potentially being released to the environment and transported to the Bay by stormwater runoff.

This regulation requires an assessment process for PCBs in building materials that is analogous in some ways to the process currently implemented for asbestos-containing materials. It requires that the [insert name of City or County] initially notifies demolition permit applicants about the new requirements to conduct a PCBs in Priority Building Materials Screening Assessment.

The PCBs in Priority Building Materials Screening Assessment is a two-step process used to determine whether 1) determining whether the building proposed for demolition is high priority for PCBs-containing building materials based on the building age, use, and construction type; and if so 2) demonstrating the presence or absence and concentration of PCBs in Priority Building Materials through existing information or representative sampling and chemical analysis of the Priority Building Materials in the building. The first step of the PCBs in Priority Building Materials Screening Assessment determines whether or not the building is an *applicable structure*.⁴ It is anticipated that many projects will not involve the demolition of *applicable structures*. Demolition permit applicants for projects that don't involve *applicable structures* will only need to address the initial screening questions and certify the answers.

³ Order No. R2-2015-0049

⁴ *Applicable structures* are defined as structures built or remodeled from January 1, 1950 to December 1, 1980, with remodeling, partial building, wood framed structure, and single-family residence demolition projects being exempt.

Applicants shall follow the directions provided in the PCBs in Priority Building Materials Screening Assessment Applicant Package (Applicant Package), which includes an overview of the process, Applicant instructions, a process flow chart, a screening assessment form, and the *Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition* (BASMAA 2018). Per the Applicant Package, for certain types of buildings built between 1950 and 1980, the Applicant must conduct further assessment to determine whether or not PCBs are present at concentrations ≥ 50 ppm.⁵ This determination is made via existing data on specific product formulations (if available), or more likely, via conducting representative sampling of the priority building materials and having the samples analyzed for PCBs at a certified analytical laboratory. Any representative sampling and analysis must be conducted in accordance with the *Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition*. The Applicant Package provides additional details.

When the PCBs in Priority Building Materials Screening Assessment identifies one or more Priority Building Materials with PCBs, the Applicant must comply with all related applicable federal and state laws, including potential notification of the appropriate regulatory agencies, including EPA, the Regional Water Board, and/or the DTSC. Agency contacts are provided in the Applicant Package. Additional sampling for and abatement of PCBs may be required. Depending on the approach for sampling and removing building materials containing PCBs, the Applicant may need to notify or seek advance approval from USEPA before building demolition. Even in circumstances where advance notification to or approval from USEPA is not required before the demolition activity, the disposal of PCBs waste is regulated under Toxic Substances Control Act (TSCA). Additionally, the disposal of PCBs waste is subject to California Code of Regulations (CCR) Title 22 Section 66262. Additional information is provided in the Applicant Package.

The focus of this regulation is on PCBs runoff prevention to protect water quality. The regulation does not:

- Ask for municipal oversight or enforcement of human health protection standards.
- Ask for municipal oversight of PCBs abatement or remediation of materials or lands contaminated by PCBs.
- Establish remediation standards.

At all demolition sites, routine construction controls, including erosion and sediment controls, should also be implemented per the requirements of the MRP and the statewide Construction General Permit issued by the California State Water Resources Control Board.

Fiscal Impact

For projects that don't involve *applicable structures*, the fiscal impact to the municipal agency of this regulation could be partially offset by the collection of permit fees or deposits to recover the cost of its implementation. For these projects, the additional amount of municipal staff time

⁵ MRP Provision C.12.f states: "Permittees shall develop and implement or cause to be developed and implemented an effective protocol for managing materials with PCBs concentrations of 50 ppm or greater in applicable structures at the time such structures undergo demolition so that PCBs do not enter MS4s."

needed to process the demolition permit application is expected to be minimal and there should not be the need for cost recovery.

However, each applicant for demolition of an *applicable structure* will be required to screen priority building materials for PCBs and certify the results. For these projects, additional municipal staff hours will be needed to review and process the demolition permit application. Municipal staff should confirm that the applicant has submitted all of the required information and that the information appears to be consistent with the requirements of the program (i.e., review the application for completeness). The review would generally be limited to confirming that the PCBs in Priority Building Materials Screening Assessment was conducted per the instructions in the Applicant Package. Municipal staff should document any shortcomings in the application and make certain that they are addressed by the applicant before the application is approved.

It is estimated that on average two hours of municipal staff time will be required to review and approve the application for projects that involve *applicable structures*. This relatively low level of estimated effort is consistent with the self-certification approach, which requires the applicant to submit limited corroborating information with the application (i.e., contractor's report that includes a completed QA/QC checklist and analytical laboratory reports when the screening includes sampling). Applying \$200/hour as an estimate of the hourly rate for appropriate Bay Area municipal staff, the estimated incremental cost for reviewing demolition permit applications for *applicable structures* would be \$400. For projects that involve *applicable structures*, establishing a new fee in this amount (or increasing an existing fee) may be justified to mitigate the fiscal impacts of reviewing and approving the demolition permit application. Other options could include requiring a cost recovery deposit upfront or charging each applicant based on the actual staff time spent to review that applicant's application. These fees should be used to compensate specifically for municipal staff time related to implementing a new program to manage PCBs-containing building materials during demolition in compliance with MRP Provision C.12.f., and not for any other purpose.

Due to the requirements of this regulation, applicants for demolition permits for *applicable structures*, including municipalities implementing public projects, would incur additional costs. Some applicants would only incur costs for screening priority building materials for PCBs and certifying the results. Other applicants would incur higher costs for conducting additional activities, especially when materials with PCBs concentrations ≥ 50 ppm are identified. Types of activities potentially required of applicants by this regulation and the associated resources to implement the activities are summarized in Table 1. The actual specific activities/resources required and associated costs will vary greatly depending on the project.

Table 1. Types of Activities Potentially Required of Applicants for Demolition Permits by this Regulation and the Associated Resources to Implement the Activities.

Potentially Required Applicant Activity ¹	Resource ¹
Initial screening: building age, use, construction type	Applicant staff time
PCBs in priority building materials screening	
Research material specific formulations	Applicant staff time and/or hire consultant
Develop representative sampling plan	Hire consultant
Sample collection and analysis	Hire consultant and analytical laboratory
Notifications to regulators	Applicant staff time and/or hire consultant
Removal of priority PCBs-containing materials	
Develop removal/disposal plan	Hire consultant
Implement removal plan	Hire consultant and/or abatement contractor
Verification sample collection and analysis	Hire consultant/contractor and analytical laboratory
Any required additional site investigation and cleanup ²	
Work with regulator (e.g., EPA) before and during investigation and cleanup	Applicant staff time and/or hire consultant
Develop site investigation and cleanup plan	Hire consultant
Implement site investigation and cleanup plan	Hire consultant and/or abatement contractor
Verification sample collection and analysis	Hire consultant/contractor and analytical laboratory
Waste transport and disposal	
PCBs waste transport and disposal	Hazardous waste transport and landfill fees
Municipal waste transport and disposal	Municipal waste transport and landfill fees
Reporting, completion of forms, certifications	Applicant staff time, hire consultant
Oversight and management	Applicant staff time, hire consultant

¹ The actual specific activities/resources required and associated costs will vary greatly depending on the project.

² For example, cleanup of substrates adjacent to the PCBs-containing materials, site sediments, and/or site soils.

Environmental Review

Under the provisions of Section 15308 of the State Guidelines for Implementation of the California Environmental Quality Act, which applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of

the environment, adoption of the attached ordinance {or} resolution {or} _____ (other regulatory mechanism) is found to be exempt from the environmental review requirements of Title ___ of the _____ Municipal Code, implementing the California Environmental Quality Act of 1970, as amended (CEQA). No unacceptable negative impacts have been identified.

{or}

Adoption of the attached ordinance {or} resolution {or} _____ (other regulatory mechanism) is exempt from environmental review under California Environmental Quality Act (CEQA) exemption Section 15308, Actions by Regulatory Agencies for Protection of the Environment. This exemption provision applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment as discussed above. No unacceptable negative impacts have been identified.

{or}

The attached ordinance {or} resolution {or} _____ (other regulatory mechanism) being considered is categorically exempt from review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. This exemption provision applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment as discussed above. No unacceptable negative impacts have been identified.

Policy Issues

[To be added by Municipality]

Submitted By:

[Appropriate Authority]

[City Manager/County Administrator]

[Appropriate Authority]

[City/County Clerk]

Approved as to form:

[Appropriate Authority]

[City Attorney / County
Counsel]