

BRELLA, PCBs, and Indoor Air – 2022 DRAFT

Effective July 1, 2021, changes were made to multiple statutes relating to the investigation and remediation of releases of hazardous materials. Specifically, both 10 V.S.A. § 1283(g)(3) and 10 V.S.A. § 6602(17) were amended to change the definition of a release such that “‘Release’ means any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwater, or on the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the public health, lands, waters, or natural resources within the jurisdiction of the State. ‘Release’ also means the intentional or unintentional action or omission resulting in the spilling, leaking, emission, or disposal of polychlorinated biphenyls (PCBs) from building materials in a building or structure.” This has resulted in questions pertaining to the management of projects enrolled in the BRELLA program; if you are enrolled in BRELLA and Statutes or standards change, what does it mean for you and your project?

If you already have your COC: Pursuant to 10 V.S.A. § 6653, you are not obligated to comply with the changes in standards, address any newly regulated contaminants, or respond to new findings that were not discovered or reasonably known at the time of the Phase II ESA or CAP implementation.

If you’re in the process of having a Phase I conducted: ASTM defines a REC as “the presence or likely presence of any hazardous substances or petroleum in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. However, releases to indoor air quality are listed as a non-scope consideration in the ASTM Phase I Environmental Site Assessment standard, except in cases where indoor air quality has been impacted as a result of a release to soil or groundwater. PCBs may be present in building materials in structures that were built or renovated prior to 1980; those PCBs may be impacting indoor air above standards. As such, the presence or possible presence of PCBs in buildings materials should be defined as a Business Environmental Risk and accounted for when considering your redevelopment plans for a building. If the building was constructed prior to 1980, and your redevelopment plan includes the redevelopment or reuse of the building, and if the possible presence of PCBs is identified through the Phase I ESA process, your consultant will eventually need to complete an investigation to determine if the presence of possible PCB containing building materials has resulted in a release of PCBs to indoor air

If you’re preparing to do a site investigation or have a completed site investigation: If part of the project includes the redevelopment or reuse of a building that was constructed or renovated before 1980, your consultant must complete an [inventory](#) to determine if the presence of PCB containing building materials has resulted in a release of PCBs to indoor air. This should include an [inventory](#) of possible PCB containing building materials, as well as indoor air sampling. Sampling results may be submitted as part of the Phase II ESA, or as a supplemental site investigation, as applicable. VT DEC recommends that this sampling be completed PRIOR to building redevelopment; if a release is discovered, this allows you the



opportunity to account for the issue through the redevelopment process. If you opt to sample following redevelopment, you risk the possibility of needing to mitigate PCB building materials retroactively.

If you have submitted a Corrective Action Plan (CAP) that has not yet been approved: If part of the project includes the redevelopment or reuse of a building that was constructed or renovated before 1980, your consultant must complete an investigation to determine if the presence of PCB containing building materials has resulted in a release of PCBs to indoor air. This should include an [inventory](#) of possible PCB containing building materials, as well as indoor air sampling. Sampling results should be submitted as a supplemental site investigation. Note that if PCBs are detected above the standard, additional assessment work will need to be conducted to determine the source of the PCBs. Removal and/or mitigation of PCB sources will need to be included in the final CAP for approval; this may mean that your CAP will need to undergo revisions before it is approved. Alternately, you may opt to take a phased approach to CAP development and implementation.

If your CAP has already been approved: If part of the project includes the redevelopment or reuse of a building that was constructed or renovated before 1980, your consultant must complete an investigation to determine if the presence of PCB containing building materials has resulted in a release of PCBs to indoor air. Sampling results should be submitted as a supplemental site investigation. Note that if PCBs are detected above the standard, additional work will need to be conducted to determine the source of the PCBs. Once this work has been completed, and if (per 10 V.S.A. § 6649(a)) it is determined that additional actions are necessary to protect public health and the environment, a CAP amendment will be required; generally speaking, this will constitute a “major amendment” as defined in §35-607(e) of the IRule and will necessitate an additional 30 day public comment period. If you enrolled in BRELLA as a prospective purchaser, and a cost estimate was included in the previously approved CAP, 10 V.S.A. § 6649(b) includes a provision that stipulates that an approved corrective action plan “may be amended only at the Secretary’s discretion, provided the amendments to the corrective action plan do not increase the costs of completion by more than 30 percent of the estimates costs of the original corrective action plan.”

How does the 30% cost cap work? Per the IRule, all CAPs prepared for a site enrolled in the BRELLA program should include a CAP implementation cost estimate. If your estimated CAP implementation costs were \$100,000, and your CAP was approved per § 35-607(c) of the IRule, VTDEC cannot hold the BRELLA applicant responsible for additional CAP implementation costs in excess of \$30,000. Therefore, if it will cost an additional \$100,000 to mitigate the release of PCBs to indoor air, we will work with the applicant to seek other funding sources for the remaining \$70,000. This may include through past property owners/responsible parties, as well as other available brownfield funding sources, including the one-time CAP implementation funding currently available through the Agency of Commerce and Community Development.

What if my CAP didn’t include a cost estimate? Occasionally, a CAP may have been approved by VTDEC without a cost estimate. Typically, this happens when a CAP was approved prior to the promulgation of the IRule, or when a CAP was submitted and approved prior to a prospective purchaser enrolling the property in BRELLA. If this is the case, VT DEC may ask you to provide a copy of the cost estimate included in the contract with the environmental consultant who implemented the CAP. If this is available, VT DEC will work with you to determine whether the 30% cost cap can be applied.

What if my project had more than one CAP, or CAP amendments? If your project had more than one CAP, either because an interim CAP was necessary to mitigate immediate risk to human health and/or the environment, or because your redevelopment was completed in stages, you should work with your assigned SMS project manager to determine how the 30% cost cap should be applied to your project. In most cases, costs relating to any CAPs that were developed to address releases of hazardous materials on a site will be combined to determine the 30% cost cap. Similarly, costs associated with any CAP amendments



that were developed to address portions of a site that are also impacted by a release of PCBs to indoor air will be applied toward the 30%, as well.

