



To: Legislative Committee on Administrative Rules
From: Matt Chapman, Director, Waste Management and Prevention. Environmental Conservation
Date: January 29, 2024
Re: Supplemental Economic Impact Statement for Rule 23-P42 (Investigation and Remediation of Contaminated Properties Rule)

This supplemental economic impact statement is in response to the letter requesting LCAR object to Rule 23-P42 and to provide the committee with supplemental information with respect to Questions 4 (Impact on Schools) and 5 (Alternatives).

4. Impact on Schools.

Secretary of Natural Resources Moore (Secretary) has testified before the House and Senate Committees on Appropriations and Education describing the retooling of the PCB in schools program. As a part of that program, the Secretary testified on how work at schools would be prioritized and provided a cost estimate for the program through FY25. In addition, the program will place more work onto Agency of Natural Resources (ANR) staff and ANR contracts – reducing indirect impacts on school administrators.

Assuming that the General Assembly agrees to transfer \$3.5 million from the Solid Waste Management Assistance Fund to the Environmental Contingency Fund to support the PCB in Schools program, and does not otherwise adjust the existing reserve within the Education Fund, there will not be direct costs to schools for Fiscal Years 2024 or 2025. A detailed description of the retooling and cost estimates can be found here:

<https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Education/PCB%20Testing/W~Julie%20Moore~Proposed%20School%20Sampling%20and%20Funding%20Approach%20through%20June%2030,%202025~1-11-2024.pdf>

It is anticipated that these resources will be sufficient to support sampling and clean up costs necessary to protect student health and the environment through the end of FY25 at which point approximately half of the 324 Vermont public and recognized independent schools constructed or renovated before 1980.

Beyond that, ANR has used our experience with schools to this point to develop the following cost estimate to respond (work after FY25) to the remaining Vermont schools requiring testing:

Building inventory and indoor air sampling costs	\$ 5.8 million
Building material sampling and indoor air monitoring	\$ 9.5 million
Cleanup alternatives (ECAA) analysis and cleanup planning (CAP)	\$1.3 million
Cleanup costs	\$12 million - \$50 million
Total Estimated Costs	\$ 28.6 million - \$66.6 million

Actual costs may be lower than what is presented in this table because the ANR prioritized schools with the highest risk of PCB contamination to be first in the testing program. As a result, our model may be conservative when estimating the total program costs.

The Administration has committed to work with the General Assembly to identify funding sources to offset or absorb these costs to schools. At this time, there is no funding for work beyond FY25.

5. Alternatives.

The House Education objection letter focuses on the “program.” The “program” was established by the General Assembly. The legislature required schools to test indoor air for PCBs (Sec. E.709.1 of Act 74 of 2021, as amended), defined the emission of PCBs from building materials in a school as a release (Sec. E.709.2 of Act 74 of 2021, as amended), and defined the process by which responsible persons, including schools, respond to a release of a hazardous material (10 V.S.A. § 6615b). The alternatives reviewed under this section do not address alternatives to legislatively required elements of the PCB program.

The Agency evaluated several alternatives prior to the adoption of the school action levels (SAL) and immediate action levels (IAL) as an interim standard pursuant to 3 V.S.A. § 2810. The ANR evaluated the following:

- the Department of Health (Health) indoor air screening value for PCBs of 15 ng/m³ using their customary derivation procedure.
- the ANR regulatory action level (RAL) of 22.5 ng/m³ that was adopted for non-school sites based on a literature review of ambient levels of PCBs in building materials where no known source exists.

The SALs and IALs were the selected environmental media standards because both ANR and Health concluded that risks were appropriately managed and the standards would provide operational flexibility to schools to minimize disruption on students.

In the case of a “no rule” alternative, § 35-401 of the Rule requires that when there are not standards in the Investigation and Remediation of Contaminated Properties Rule or other environmental media rules (i.e. the Groundwater Protection Rule and Strategy or Water Quality Standards) the ANR is required to use the United States Environmental Protection Agency Regional Screening Levels (RSLs) as the standard. The RSL for PCBs in indoor air is 5 ng/m³. This value is at or below the reporting limit of the tests being used to measure PCBs in indoor air in schools. It is also below what ANR calculated as the ambient level of PCBs in buildings without a known source. It would result in a significant number of schools undertaking additional work with minimal corresponding health benefits. It would also not provide ANR or Health with the flexibility we currently have to limit impacts on schools, resulting in disruptions to student’s education.