



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 26 2007

Honorable Charles E Schumer
United States Senate
Washington, DC 20510

Dear Senator Schumer:

Administrator Stephen Johnson has asked me to respond to your letters dated May 15 and July 19, 2007, concerning your constituent, Dr. Ralph Napolitano and the regulation of PCB-containing caulk. Dr. Napolitano, the Superintendent of Schools for the Yorktown Central School District, has expressed concerns about EPA's response to the presence of polychlorinated biphenyl (PCB) contaminated caulk and soil at the French Hill Elementary School.

The Agency has issued standards for the removal of PCB-containing caulk and for the adjacent building material contaminated with PCBs. EPA Region 2 has primary responsibility for ensuring the proper use and management of PCBs in New York State. In this case our response has been primarily focused on reducing or eliminating the potential health risks to the children and personnel of French Hill as a result of the presence of PCBs. PCBs are persistent organic chemicals that are probable human carcinogens and are known to have significant toxic effects on the immune system, the reproductive system, the nervous system, and the endocrine system. The presence of PCBs in schools is of particular concern because PCBs are considered developmental toxins.

On June 21, 2005, EPA Region 2 staff met with representatives of the school district, the school district's consultant, the Westchester County Health Department and the New York State Department of Environmental Conservation to discuss the cleanup of PCB-contaminated soil at French Hill. This soil was located adjacent to the foundation of the school where windows and caulk had been replaced. My staff briefed the school district on the various regulatory options available for cleaning up the contamination, and the school district chose to clean up and dispose of the PCB-contaminated soil in accordance with the self-implementing provisions under the Agency's PCB regulations at 40 CFR section 761.61(a).

In its plan, the school specified that it would dispose of the soil in an authorized facility. However, through its actions of sending contaminated soil to a facility not authorized to receive PCB material, the school district violated the PCB regulations under 40 CFR section 761.61. This section of the regulations is very clear in defining the type

of facilities at which disposal of soil contaminated with PCBs is authorized. See 40 CFR section 761.61(a)(5)(v)(A).

The continued presence or use of caulk, which at French Hill is contaminated with PCBs as high as 60,000 parts per million (ppm), is prohibited by the Toxics Substances Control Act (TSCA) and the Agency's PCB regulations at 40 CFR section 761.20(a), except to the extent authorized by EPA rule. The federal PCB regulations at 40 CFR section 761.30 specifically list the authorized uses of PCBs for "non-totally enclosed" activities; i.e., activities that may expose human beings or the environment to PCBs. Any non-totally enclosed use not specifically authorized under 40 CFR section 761.30 is prohibited. See 40 CFR section 761.20 (a). The use of PCBs in caulk is not an authorized use and thus is a violation of section 6 (e) of TSCA.

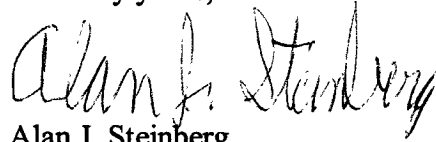
At French Hill, caulk that contains PCBs was applied to the building to seal the spaces surrounding windows and to act as a cushion in expansion joints. The caulk continues to be present around the windows and in expansion joints. This is a non-totally enclosed use because children and others can potentially be exposed to the PCB-containing caulk. Even though this caulk was applied before the regulations were developed, the caulk continues to serve its originally-intended purpose as a sealer and cushion. Thus, the school is continuing to make use of the PCB-containing caulk. This is not one of the types of non-totally enclosed uses allowed in the regulations. Therefore, the school's continued use of PCB-containing caulk is prohibited by TSCA and the PCB regulations. While we cannot comment on the specifics of enforcement matters, EPA will continue to work with the French Hill Elementary School to assure appropriate protection of the health of students and compliance with regulatory requirements.

With regard to Dr. Napolitano's assertion that the school district is being "singled out" in this matter, please be assured that EPA, both in past and present situations, is involved in discussions with other entities where PCB-contaminated caulk has been found. When EPA has become aware of PCB-contaminated materials in other school buildings, the subsequent discussions with those schools have resulted in the reduction of PCB-contaminated substances from the building or structure in accordance with the federal PCB regulations, including the removal of PCB-containing caulking and paint from window frames and the reduction of PCBs in contaminated porous masonry material.

EPA will continue to assess the issues related to exposure and remediation of PCB-containing caulking material to assure national consistency in protecting health and the well being of students.

I hope that this clarifies EPA's concerns and actions with regard to French Hill and PCB-containing caulk. If you have any questions, please feel free to call me or have your staff contact David Kluesner, Acting Chief of the Intergovernmental and Community Affairs Branch, at (212) 637-3657.

Sincerely yours,

A handwritten signature in cursive script that reads "Alan J. Steinberg". The signature is written in black ink and is positioned above the printed name.

Alan J. Steinberg
Regional Administrator