

April 28, 2009

VIA FAX

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: EPA Region 2 policy on PCBs in NYC schools

Dear Administrator Jackson:

I write to express surprise and concern over the new stated policy of Environmental Protection Agency (EPA) Region 2 Acting Administrator George Pavlou not to investigate identified violations of the Toxic Substances Control Act (TSCA) with respect to polychlorinated biphenyls (PCBs) in the caulk at New York City (NYC) schools.

As you know, a month ago this office filed a notice of intent to sue the NYC Department of Education and School Construction Authority (DOE and SCA) on behalf of Naomi Gonzalez, the Bronx mother of two young children who attend a school in which the window caulk is severely contaminated with PCBs.

PCBs have long been known to be highly toxic; Congress banned them outright in 1978 in TSCA. They continue to pose risks to health because they persist in the environment rather than breaking down. PCBs volatilize into air and penetrate many solids, including mortar, soil, and skin. They are damaging to the immune and hormonal systems and the brain.

Prior to the 1978 ban, as has recently emerged, PCBs were added to caulk to make it more elastic. The risks associated with PCB exposure are far more severe for children, and accordingly the presence of PCBs in the caulk around window and door frames in schools has come to be recognized as a significant public health problem. Last April, analysis commissioned by the New York *Daily News* and carried out by a New York State-certified laboratory identified elevated levels of PCBs in the caulk at six of nine NYC schools tested, including the school attended by Ms. Gonzalez's children.

In the year since the test results were published, their accuracy has never been challenged by the EPA, the DOE, the SCA, or any other entity.

Late last week, however, we learned that Acting Administrator Pavlou has taken the position that the tests would be disregarded by the EPA because they had not been carried out either by the EPA itself or by the owner/operator of the buildings, i.e., the DOE. Our attempts to discuss this position with Mr. Pavlou and other Region 2 officials have been unsuccessful.

The Region 2 position suffers three serious problems:

- First, and most important, it represents an unacceptable abdication of the EPA's responsibility to seek out information—not to willfully ignore it—in order to protect children from known health risks, especially here, where those risks are caused by a toxin that is heavily regulated by the EPA.
- Second, it is incompatible with the EPA's general policy, articulated on its website, that caulk containing more than 50 parts per million (ppm) PCBs "must be removed." See epa.gov/osw/hazard/tsd/pcbs/pubs/caulkremoval.htm.

(Please note that the caulk sample at the school attended by Ms. Gonzalez's children contained more than 100,000 ppm (i.e., was more than 10%) PCBs—2,000 times the EPA's stated enforcement level.)

- Finally, because the EPA routinely relies on the work of third parties to identify potential environmental threats, the policy would appear to be an *ad hoc*, disingenuous attempt to avoid involving the agency in this enforcement effort.

In the weeks since you became EPA Administrator, you have spoken repeatedly and compellingly about several key EPA priority areas with immediate bearing here: the need to improve the EPA's management of risks posed by chemicals; the importance of meaningfully addressing the accumulated environmental harms that are often present in low-income and/or minority communities; and the urgency of implementing environmental health safeguards for children, especially in and around schools.

We agree with these imperatives and respectfully assert that the head-in-the-sand policy adopted by Acting Regional Administrator Pavlou cannot be reconciled with them. The DOE has now identified 19 additional schools with elevated levels of PCBs—but it has no plans to clean those schools up, underlining the compelling and immediate need for the EPA to act to enforce the Toxic Substances Control Act.

On behalf of Ms. Gonzalez and other NYC parents, we would greatly appreciate your reassurance that the EPA will engage in responsible and energetic efforts to investigate and address the health risks posed to children by PCBs in caulk.

Sincerely,



Miranda Massie