



**Committee on Education
New York City Council**

**Hearing on Proposed Int. No. 563-A
and Proposed Int. No. 566-A
November 18, 2011**

re:

**Polychlorinated Biphenyls (PCBs)
in New York City Schools**

Testimony of:

**New York Committee for
Occupational Safety and Health
(NYCOSH)**

submitted by:

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NYCOSH Testimony

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1. Who NYCOSH is

The New York Committee for Occupational Safety and Health (NYCOSH) is an independent, non-profit, union-based health and safety organization based in Manhattan. Over 200 local unions and other labor and community organizations in the metropolitan area are members of NYCOSH, as are several hundred individual workplace safety and health activists, public health professionals and advocates, and concerned citizens. NYCOSH has been providing technical assistance and comprehensive training in occupational safety and health to unions, employers, community-based organizations, and government agencies for over 30 years.

NYCOSH appreciates the opportunity to provide testimony concerning Proposed Int. No. 563-A and Proposed Int. No. 566-A and to urge their enactment into law.

2. NYCOSH's expertise and connection to PCB hazards

NYCOSH is particularly interested in the issue of PCB-containing ballasts and PCB-containing building materials as we work closely on environmental and occupational safety and health issues with unions that represent teachers, school maintenance workers, and contractors, all of whom are potentially impacted by exposure to PCB-containing materials in schools.

NYCOSH is well-situated to provide comments regarding PCB hazards and remedies. Through our grant relationships with the Occupational Safety and Health Administration (OSHA), the National Institute of Environmental Health Sciences (NIEHS), the New York State Department of Labor, the Consortium for Worker Education, Red Cross, United Church of Christ Disaster Response Ministries, and other government and private agencies, we have provided training and technical assistance in a wide variety of occupational safety and health areas, including chemical safety, respiratory protection and personal protective equipment, engineering controls (including dilution and local exhaust ventilation), disaster response (including 29 CFR 1910.120, “Hazwoper”), and permit-required confined space operations.

NYCOSH has conducted hazardous waste training for New York City Transit for approximately 20 years. We have provided technical assistance to the New York City Department of Environmental Protection regarding hazard assessment and remediation of multiple contaminants, including PCB caulk and transformer PCBs, at a New York City wastewater treatment plant. We have worked closely with a major New York City hospital to provide training for hospital-based first receivers of victims of mass casualty incidents that involve the release of hazardous substances and to provide technical assistance with decontamination of personnel, facilities, and equipment.

3. NYCOSH supports proposed Intros. No. 563-A and 566-A

NYCOSH supports the concept of parental and worker “right to know” about exposure or potential exposure to confirmed or presumed PCB contamination in New York City public schools (Intro. 563-A). Absent this information, parents cannot make informed decisions pertaining to the safety and well-being of their children and workers may lack the basic information necessary to avoid unnecessary and harmful exposures. In addition, we support quarterly reporting by the New York City Department of Education on the progress of PCB removal from public schools (Intro. 566-A). These measures together constitute an appropriate and necessary first step in establishing a systematic

and transparent protocol for identifying, assessing, monitoring, and controlling PCB hazards in schools.

Proposed Intro. 563-A might be strengthened by clarification as to what constitutes notification of “any polychlorinated biphenyl contamination.” NYCOSH suggests that parents and employees should be notified of all test results, regardless of whether contamination is found. Notification should consist of any “environmental monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained”¹ and/or “a chemical inventory or any other record”² which reveals where PCBs are present.

4. Additional precautionary and protective steps are necessary

With regard to establishing a comprehensive program for effectively addressing the widespread presence of a highly toxic substance in multiple indoor environments, the prior regulatory experience with asbestos demonstrates that limiting requirements to inspection, notification, and reporting its presence in schools, while essential, was not be sufficient to result in the implementation of appropriate protective measures. Similar requirements for PCBs that are limited to reporting are also not likely to result in effective protection of the school community, broadly defined.

In the early 1980s, as concern mounted nationally about the unregulated presence of asbestos-containing materials (ACM) in public schools, EPA promulgated requirements that schools inspect for ACM and report findings to parent-teacher associations. Agency officials anticipated that notification would spur parents to demand corrective action and encourage schools districts to be responsive. However, an EPA investigation found that

¹ 1910.1020(c)(5)(i)

² 1910.1020(c)(5)(iv)

school districts in most cases failed to take any actions to protect students or staff. The EPA investigation determined that the chief reason for inaction was the lack of a legal requirement that ACM be removed or safely maintained in place.³

Promulgation of inspection and reporting requirements for ACM in schools, in the absence of mandatory removal or safe management in place, did not result in precautionary and protective measures to protect students and staff. Mandatory inspection and notification requirements for PCBs in schools today are likely to be similarly unsuccessful at provoking implementation of additional appropriate precautionary and protective measures.

5. A template for a comprehensive PCB program already exists

It is not necessary to reinvent the wheel. The same comprehensive approach that EPA ultimately implemented to address asbestos in schools can serve as a model for effectively addressing PCBs in schools.

On October 26, 1986, President Reagan signed into law the Asbestos Hazard Emergency Response Act (AHERA) of 1986, 15 U.S.C. 2601, which became Title II of the Toxic Substances Control Act (TSCA). AHERA required EPA to develop regulations that established a comprehensive framework for addressing asbestos problems in public and non-profit private elementary and secondary school buildings. The Asbestos-Containing Materials in Schools Rule (the "AHERA Schools Rule," 40 CFR Part 763, Subpart E) became effective on December 14, 1987.

In general, the AHERA Schools Rule establishes a detailed process that ensures the identification and safe management of all asbestos-containing building materials

³ P.Shabecoff. "Study Cites Lack of E.P.A. Action on Asbestos Peril in U.S. Schools", *New York Times*. February 1, 1984, <http://www.nytimes.com/1984/02/01/us/study-cites-lack-of-epa-action-on-asbestos-peril-in-us-schools.html?scp=1&sq=&st=nyt>.

(ACBM). It requires that Local Education Agencies (LEAs) fulfill many responsibilities, including designating a person (Designated Person) to ensure that the requirements of the AHERA Schools Rule are properly implemented [§763.84(g)]; conducting inspections for friable⁴ and nonfriable asbestos in each school building that the LEA leases, owns, or otherwise uses as a school building [§763.85(a)]; developing a maintenance and operations (management) plan for each school [§763.93]; and selecting and implementing response actions in a timely manner [§763.90]. The LEA must ensure that such activities are carried out in accordance with the provisions of the AHERA Schools Rule [§763.84(a)].

The LEA also must ensure that any person who performs inspections, develops management plans, or designs or conducts response actions must be accredited [§763.84] by either an EPA-approved training provider or equivalent. Provisions of the AHERA Schools Rule also apply to contractors who perform inspections and/or re-inspections, prepare management plans, and design and/or conduct response actions, agencies that collect bulk or air samples, and laboratories that analyze samples.

AHERA requires schools to “ensure that workers and building occupants, or their legal guardians, are informed at least once each school year about inspections, response actions, and post-response action activities, including periodic re-inspection and surveillance activities that are planned or in progress” [§763.84(c)]. Such notification must be done in writing and a copy placed in the management plan. Suggested notification methods may include publication of an article in a school district newsletter or via a separate written notice distributed to staff and sent home to a student's parent or legal guardian.

In addition, schools "shall make management plans available for inspection to

⁴ “Friable” means asbestos-containing material that can be easily crumbled with hand pressure. In this condition it is likely to emit asbestos fibers which are available for inhalation, with the potential to cause significant harm to human health.

representatives of EPA and the State, the public, including parents, teachers, and other school personnel within 5 working days after receiving a request for inspection" [§763.93(g)(3)]. Furthermore, "the local education agency shall notify in writing parent, teacher, and employee organizations of the availability of management plans and shall include in the management plan a description of steps to notify such organizations, and a dated copy of the notification. In the absence of any such organizations for parents, teachers, or employees, the local education agency shall provide written notice to that relevant group of the availability of management plans and shall include in the management plan a description of the steps taken to notify such groups and a dated copy of the notification" [§763.93(g)(4)].

NYCOSH urges the New York City Council to enact Intros. No. 563-A and 566-A.

We also urge the Education Committee and the Council to adopt and enact additional requirements for comprehensive, written PCB Operations and Maintenance (O&M) Programs. These requirements should be modeled on EPA's guidance for asbestos O&M programs⁵ and should include, but not be limited to:

1. Bulk sampling and analysis to identify in-place PCB building materials and ballasts and PCB-contaminated materials and to determine concentrations.
2. Labeling of in-place PCB building materials and ballasts and establishment of building inventories of PCB-containing or PCB-contaminated building materials.
3. Establishment of clear and specific science-based criteria, action levels, and timely procedures for removal and disposal of PCB-containing and PCB-contaminated building materials, and a significantly accelerated program to

⁵ U.S. Environmental Protection Agency, Office of Waste and Chemical Management. "How to Manage Asbestos in School Buildings", EPA 910-B-96-001, January 1996, <http://www.epa.gov/region2/ahera/e23.pdf>.

replace all PCB-containing ballasts, including proactive identification and immediate removal of leaking ballasts.

4. Regular area and personal sampling to monitor changes in air concentrations in order to provide early warnings of deterioration or disturbance of PCB materials and inform decisions concerning worker protection.
5. Regular visual inspection of PCB-containing and PCB-contaminated building materials and ballasts by competent, qualified persons to ascertain their condition and the potential for exposure.
6. Recordkeeping of inventory, sampling, and inspection results, and of work activities that disturb or have the potential to disturb PCB-containing materials and devices and could thus accelerate the release of PCBs into the indoor or outdoor environment..
7. Training of building maintenance workers and contractors in engineering and administrative controls, safe work practices, and appropriate use of personal protective equipment (PPE).
8. If and where appropriate, training in and provision of proper NIOSH-approved respirators as per the OSHA Respiratory Protection Standard, 29 CFR 1910.134. Prohibition of the use of paper dust masks.
9. A program to inform workers, contractors, other adult building occupants, and parents where PCB materials are located and to notify them of planned or ongoing disturbance activities.

None of these suggested measures for PCBs in schools is currently in place or is proposed by City authorities.

6. School maintenance workers are the “canaries” for the school community

The school population likely to have the highest exposures and the highest risks are the school maintenance workers and contractors who maintain and replace PCB caulk, ballasts, and other PCB materials. These disturbance activities can release PCBs into the air where they are available for inhalation and dispersion into the indoor school environment. Anecdotal information indicates that the employers of these worker populations (i.e., the Department of Education and many of the contracted vendors) do not conduct PCB-focused job hazard assessments and do not provide training on PCB hazards, safe work practices, use of appropriate personal protective equipment, and prevention of additional contamination of the school environment.

These school maintenance workers are the proverbial canaries in the coal mine for the school community. The best way to protect students, teachers, and staff against PCB exposure is to protect school maintenance workers at the source.

NYCOSH thanks the Council Committee on Education for initiating Intros. No. 563-A and 566-A and for this opportunity to comment on them.