

July 16, 2010

Mr. Daniel J. Kraft  
Acting Chief, Pesticides and Toxic Substances Branch  
United States Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue  
Edison, NJ 08837-3679

**Re: CAFO Docket Number TSCA-02-2010-9210  
New York City PCBs pilot study  
School Construction Authority's proposed Citizens Participation Plan**

Dear Mr. Kraft,

I write on behalf of parents and community advocates in the New York City PCB-Free Schools Coalition to provide comments on the proposed Citizens Participation Plan (CPP) submitted on June 16, 2010 by the New York City School Construction Authority (SCA) in the matter captioned above.

As an initial matter, we note that some community stakeholders in this matter are not citizens. We therefore recommend that the CPP be given a non-restrictive name such as "Public Participation Plan".

Turning to the substance of the proposed CPP, in overall terms it suffers from defects that can only be described as fundamental:

- it wholly fails to meet its own stated objectives of providing (1) "[o]pportunities for citizen involvement that will be sought as early as possible in the decision making process prior to the selection of a course of action" and (2) "[f]ull, timely, and accessible disclosure and sharing of information" (Prop'd CPP 1);
- it runs afoul of the directive in the Consent Agreement and Final Order (CAFO) in this matter that it "outline[e] steps to inform and obtain input from the public concerning the Pilot Study and its progress" (CAFO Work Plan 2); and
- it violates the basic principle of the 2003 Public Involvement Policy of the US Environmental Protection Agency (EPA): "that EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input." (EPA PIP 1.)

As logic dictates and EPA policy recognizes, meaningful public participation in the decision-making of public agencies demands at a minimum two things: pertinent information must be conveyed to the public with sufficient advance to enable substantive comment, and the public's input must be sought before the decisions in question are made. (EPA PIP 2-3.) Despite its purported objectives, the proposed CPP envisions neither reasonable advance notice nor the opportunity for stakeholders to provide feedback before EPA approves or disapproves SCA proposals. Instead, the current proposal would deny parents and other community members the time required to form considered, independent opinions—and then allow them to comment only after EPA had made its determination. For example, a fact sheet summarizing the outcome of the pilot study and the *already-approved* remedy would be distributed a mere week before the public meeting to discuss the outcome and the remedy. (Prop'd CPP 7, 12.) At the risk of understatement, the utility and purpose of such public participation are difficult to discern.

If it is to have any substance, therefore, the CPP must be amended to provide for a clear timeline including, in sequence, reasonable notice of SCA's proposals to EPA, a period of solicited public comment, public meetings, and responses by both agencies to comments received, *prior* to EPA's decisionmaking. If adopted, these changes would apply to the events surrounding the Pilot Preferred Remedy in the proposed CPP Implementation Schedule. It is critically important that the public be afforded a meaningful opportunity to engage with the Remedial Investigation Report, Feasibility Study, and Preferred Remedy, to obtain independent scientific and technical advice about them, and to detail community perspectives to EPA.<sup>1</sup>

The other events identified in the Implementation Schedule, those surrounding the Pilot Study Plan, have largely already occurred. Indeed, they occurred in a manner that very clearly demonstrates the emptiness of the proposed CPP. On Wednesday, June 16, the SCA announced meetings about the Remedial Investigation Work Plan (RIWP) for the following Monday, Wednesday, and Thursday. It is our understanding that the RIWP had then been provisionally approved by your office, with several details still under discussion between EPA and the SCA.<sup>2</sup> It was released, presumably as finally approved, on Monday, June 21—the same day as the first meetings to discuss it. Thus, not only did community members not have the opportunity to comment prior to approval, they did not even have the opportunity to develop substantive, thoughtful post-approval comments.

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<sup>1</sup> We note one of several internal contradictions in the proposed CPP. In the narrative summary of the pilot study process, the SCA states that "USEPA will review the Pilot Preferred Remedy...and following its consultation with the DOE and SCA with consideration of public comment determine whether to accept or reject the Pilot Preferred Remedy." (Prop'd CPP 6.) However, the CPP Implementation Schedule makes clear that no such consideration of public comment would be possible, since the public meeting about the Pilot Preferred Remedy would only occur "[a]fter EPA approval of the Remedial Investigation/Feasibility Study (including Pilot Preferred Remedy)". (Prop'd CPP 12.)

<sup>2</sup> This was the second version of the RIWP. As you know, the New York City PCB-Free Schools Coalition met with EPA and submitted comments on the SCA's first proposed RIWP. We appreciated those opportunities. Needless to say, they were no substitute for input from the community as a whole.

Further, because the meetings were announced so close to when they occurred, and because they took place during the last week of school/graduation week, most interested parties were unable to attend them. We were informed that at least one meeting was cancelled because no members of the school community were able to attend.

In short, the RIWP was adopted and is being implemented fully without meaningful community input. It is very important that this violation of the CAFO and EPA's Public Involvement Policy not be repeated with respect to the Remedial Investigation Report, Feasibility Study, and Preferred Remedy.

In addition to the overarching concerns outlined above, we have the following specific suggestions:

- The document repositories should include the five schools selected for the Pilot Study and EPA Region 2.
- Additional borough and neighborhood papers should be included for media notification. We would be happy to help generate a list of local print media. In addition, meetings should be announced in the community calendars for local cable news stations (Bronx News 12, Brooklyn News 12, Manhattan Neighborhood Network, QPTV in Queens, Staten Island Community Television) as well as on local radio stations.
- Community Education Councils for each school should be included in the contact lists.
- A member of the NYC PCB-free Schools Coalition should be included in the contact list, as well as New York Lawyers for the Public Interest. The addresses are as follows:

New York Lawyers for the Public Interest  
151 West 30<sup>th</sup> Street, 11<sup>th</sup> Floor  
New York, NY 10001  
Attn: Genevieve Gazon

NYC PCB-Free Schools Coalition  
c/o Anjali Kochar  
2227 Eastchester Road  
Bronx, NY 10469

- Online outreach should include several additional elements:
  - 1) An email address that EPA can access to which members of the public can send comments;

- 2) A central website repository for all documents created as part of the Pilot Study, not just those currently listed;
- 3) Announcement of all public information sessions, hearings or meetings; and
- 4) Summaries of comments and questions presented during public meetings and information sessions.

As always, we would welcome discussion on any of these points. Thank you for your continuing attention to this matter.

Sincerely,

Sincerely,



Miranda Massie