N Y L P I

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June 9, 2010

VIA FAX

Eric Schaaf
Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

Re: ***New York City PCBs pilot study: response to School Construction Authority's proposed Remedial Investigation Work Plan***

Dear Mr. Schaaf:

On behalf of the New York City Coalition for PCB-Free Schools, thank you for arranging the June 7, 2010 meeting between concerned members of the public and Environmental Protection Agency (EPA) Region 2 staff involved in addressing the problem of PCBs in schools, and specifically in overseeing the planned pilot study of PCBs in New York City (NYC) schools that will be carried out by the NYC School Construction Authority (SCA) pursuant to the January 2010 Consent Agreement and Final Order in EPA Docket Number TSCA-02-2010-9201 (CAFO). As you are no doubt aware, the meeting included parents from Staten Island, Manhattan, and the Bronx as well as representatives of the United Federation of Teachers, the New York Committee for Occupational Safety and Health, and the offices of Bronx Borough President Ruben Diaz, Jr. and Congressman Jose Serrano. Discussion was largely limited to the SCA's proposed Remedial Investigation Work Plan (RIWP), as EPA hopes to finalize an approvable RIWP soon; it was agreed that the group would reconvene at a later date to address other aspects of the pilot study, including the SCA's proposed Citizen Participation Plan.

In lieu of offering detailed technical commentary on either the RIWP or EPA's May 27, 2010 response withholding approval of it (EPA Response), this letter will state in broad terms what we believe is minimally necessary if the pilot study is to meet the goals mandated by the CAFO: "to identify, prioritize, and respond to the presence of PCBs in buildings housing public schools [in NYC]". CAFO Work Plan 1. As will be clear, if implicit, in what follows, even bearing in mind the limitations inherent in a small pilot study, we believe the RIWP's inadequacy is fundamental. It is a plan incapable of generating useful data. In fact, we do not understand how it could be construed to express a good-faith effort to comply with the CAFO. Finally, while we appreciate the

EPA Response, we believe it must go substantially further in both critique and supplementation if the NYC PCBs pilot study is to meet the purposes identified in the CAFO.

First, at the center of the final plan must be a comprehensive inventory of potentially PCB-containing materials and objects throughout the schools under study, together with comprehensive sampling of air, dust, and soil, to investigate whether the former have contaminated the latter. Both of these self-evidently necessary components of a meaningful study are currently absent.

An initial list of potentially PCB-containing materials and objects would include, without limitation, paint, floor and ceiling tiles, ventilation systems, light ballasts, and caulk. (Given the context that gave rise to the CAFO, it is particularly troubling that the SCA has excluded from the RIWP any sampling of caulk in the first instance.) Further avenues of indoor contamination with support in the literature, such as the movement of PCB-laden air from the exterior to the interior of buildings and the tracking of contaminated soil inside, should also be examined. More generally, because PCBs volatilize into air, which circulates, the study should not assume that a contaminated medium will always be close to the source of its contamination.

Second, any evaluation of potential remedies other than removal must include consideration of the risks of fire, which could result in a release of dioxins. All potential remedies must also incorporate long-term surveillance and monitoring, given the known ability and tendency of PCBs to penetrate and migrate through solids, which can result in recontamination even where removal has occurred, unless the removal has encompassed a sufficient margin of adjacent material.

At base, the RIWP's proposals regarding remedies seem to us under-theorized to the point of being random. Setting aside our skepticism that any remedy short of removal is likely to be appropriate, other potential remedies should be devised and tested in a manner that reflects the seriousness of the need to minimize exposure to PCBs, particularly for children.

Third, while we recognize that EPA has already approved the number and identity of the schools in the RIWP, we urge you to consider requiring the study of additional schools to ensure that adequately representative data can be collected. At a minimum, we believe it would be helpful to include a presumptively PCB-free school, i.e. one built after the ban on PCBs was thoroughly in effect, as a control. The study must also make some attempt to understand the relationship between the construction (and/or remediation) history of a building and the data gathered there.

Finally, we agree with EPA that there is no legitimate basis for postponing the study of two of the schools until summer 2011, especially since such a postponement would equally postpone any analysis of the data as a whole.

Again, we view these comments as sketching a minimal starting-point for a legitimate pilot study. In particular, without a substantially higher quantity of representative data and without better conceptualization of the remedies phase, the results of the study will not be seen as reliable. Rather, since SCA's own tests on window-frame caulking preparatory to renovations have shown a high rate of PCB contamination, the study, if not significantly improved, will be perceived as an attempt to obscure this emerging public health concern rather than to shed light on it. In our view, and we believe EPA's as well, the NYC pilot study is a critical, hard-won, valuable opportunity to advance understanding of PCBs in the built environment. Given the known toxicity of low levels of PCB exposure, we believe that advancement is urgently needed, and we hope you will insist on a final RIWP that realizes the potential of the opportunity presented here.

In order to focus on the points we see as truly indispensable, we have left aside a number of other important, contentious issues such as EPA's benchmark air levels of PCBs, the proper degree of sensitivity that should be required of air tests, and the failure to carry out any component of the study when the schools are in use. We would welcome the opportunity to discuss these additional matters in the future.

Some of the proposals we have made extend beyond the strict terms of the CAFO. It therefore seems worthwhile to note, echoing Section XI, *Effect of Settlement and Reservation of Rights*, that nothing in the CAFO precludes EPA from exercising its general enforcement authority in response to numerous known and suspected violations, however inadvertent, of the PCB regulations by NYC.

Because we see a number of potential points of connection between the subject of this letter and the recent suggestion by EPA headquarters that the PCB regulations could be essentially eliminated insofar as caulk is concerned, we have sent a copy of the letter to EPA Administrator Jackson.

Again, we very much appreciated the opportunity to meet with your colleagues earlier this week and, more broadly, are grateful for the time and energy that you and many others at EPA have devoted to this issue. We look forward to a continuing dialogue moving forward.

Sincerely,

Miranda Massie

cc: USEPA Administrator Lisa Jackson