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May 4, 2010

**VIA FAX**

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

***Re: Advance notice of proposed rulemaking on PCB use authorizations***

Dear Administrator Jackson:

This firm has for two years been involved in community efforts to rid schools of polychlorinated biphenyls (PCBs) and in particular of the PCBs found in caulk. Our office has partnered with a Bronx coalition of concerned parents and with elected officials, consulted with parents across the metro area, filed litigation over PCBs in a New York City (NYC) school, and worked closely with some of your colleagues at the Environmental Protection Agency (EPA) on this emerging public health threat. We are deeply troubled by EPA's recent proposal to revise its PCB regulations, as explained below, and we ask that you withdraw the proposal insofar as it relates to PCBs in caulk.

As you know, PCBs, in addition to their more familiar use in electrical equipment, were added to window- and door-frame caulking to make it more durable and elastic. PCBs persist in the environment, migrate into mortar, brick, and soil, and spontaneously volatilize into air; thus, wherever PCB-contaminated caulk remains in place exposure pathways continue to exist despite the 1978 ban on PCBs in the Toxic Substances Control Act, 15 USC §§2601, *et seq.* (TSCA). Because PCBs are powerfully neurotoxic, immunotoxic, developmentally toxic, and endocrine disrupting, with potential health effects even at low doses, these persistent exposure pathways have caused parents and community members a great deal of concern.

EPA has responded to this concern, and to the underlying science that validates it, by issuing new guidances on PCBs in caulk, revamping and greatly expanding website coverage of the issue, and undertaking two research initiatives to gather information about the extent of the problem and generate potential solutions to it. Additionally, EPA Region 2 recently reached a landmark agreement with the NYC Department of Education pursuant to which the Department will carry out a pilot study designed to produce a citywide plan for addressing the risks associated with PCBs in its schools. While we have expressed reservations about specific aspects of EPA's recent activity on PCBs, in overall terms it can only be regarded as substantial and positive.

But now EPA has placed these gains for children's environmental health in jeopardy. The agency recently issued an advance notice of proposed rulemaking (ANPRM) on PCB use and distribution authorizations and various other PCB regulations issued by EPA under TSCA. Among numerous provisions, the notice briefly addresses (1) the possible authorization of the use of some non-liquid PCB-containing products and (2) the reconsideration of the 50 parts per million (ppm) threshold for excluded PCB products. In other words, the notice proposes to relax or even eliminate restrictions on PCBs in caulk.

I write to ask that you withdraw these caulk-related provisions from the ANPRM for several reasons: they conflict with the rest of the ANPRM; the justification given for them is unconvincing at best; there is no support for them in science; and they are exceptionally ill-timed in light of EPA's recently launched efforts on PCBs as sketched above.

First, the ANPRM's approach to the caulk issue conflicts with the rest of the notice in a manner that shows how rash it is. The basic impetus of the notice is to reevaluate the regulations that govern equipment containing PCBs in light of the relatively old age of both the rules, which were promulgated shortly after TSCA was passed, and the extant equipment itself, all of which, given TSCA's ban on new PCBs, is now more than 30 years old. Because this equipment may be starting to fail and to leak, and because understanding of the severe toxicity of PCBs has advanced, EPA rightly seeks to evaluate the regulations in order to ensure they are sufficiently protective:

The objective of this ANPRM is to announce the Agency's intent to reassess the current use authorizations for certain PCB uses to determine whether they may now pose an unreasonable risk to human health and the environment. Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations, 75 Fed. Reg. 17,650 (Apr. 7, 2010)

Accordingly, the substantial majority of the notice goes through various PCB uses with an eye toward imposing greater restrictions on them. Tellingly, the very threshold of 50 ppm that is called into question for the *unenclosed* use of caulk is continually reinforced throughout the rest of the notice as a valid regulatory threshold *for enclosed uses*. For

example, EPA proposes to consider compelling the owners of equipment containing enclosed PCBs at concentrations above 50 ppm either to dispose of the equipment or to reclassify it, (i.e., to replace some or all of its fluid in order to dilute the concentration of PCBs to a level below 50 ppm). 75 Fed. Reg.17,653. As another example among many, EPA expresses concern over information it has received indicating that PCBs can be found at levels over 50 ppm in natural gas pipelines, and states that it is considering requiring extensive sampling whenever PCBs are found at levels above 1 ppm in a pipeline system. 75 Fed. Reg.17,657).

The plain contradiction between these and other proposals in the ANPRM, on one hand, and the caulk proposals, on the other, undermines the coherence of the document and causes skepticism about the legitimacy of the caulk provisions. If 50 ppm is presumed to be valid as a threshold level for regulation inside a capacitor, it is hard to imagine the scientific or public-health basis for calling it into question for unenclosed substances in a school classroom. Similarly, if it is a level that EPA believes to cause legitimate concern inside a pipeline, then it should cause even more concern when identified in classroom caulk, from which PCBs are known to volatilize spontaneously.

More generally, reading the lengthy, elaborated notice, and encountering at the end of various sections the anomalously short and technically undetailed subsections on caulk, one is left with a strong impression the caulk subsections were hastily and carelessly tacked on to the ANPRM without regard to their potential impact on human health and the environment.

That these proposed changes are not driven by emerging scientific or public health considerations is confirmed by one of EPA's two stated reasons for them: "EPA is seeking comment...on whether the number 50 ppm should be changed given the recent realization that the use of PCBs in caulk may be widespread and may be an undue burden for schools if the exclusion continues at 50 ppm." 75 Fed. Reg. 17,658. To dismantle regulations that restrict the presence in schools of a potent toxin and endocrine disruptor on the sole basis of the projected cost of remediation is rigorously incompatible with EPA's mission: "to protect human health and to safeguard the natural environment—air, water and land—upon which life depends."

Ironically, the other reason provided for the reconsideration is that the original adoption of the 50 ppm level was itself "based almost entirely on economic considerations." 75 Fed. Reg. 17,658. As an initial matter, EPA cannot credibly disparage the strictly economic character of a rationale to justify a claimed lack of confidence in existing regulations while simultaneously offering up another strictly economic rationale as the central basis for revisiting them. More importantly, EPA's current claim is flatly belied by what it said in adopting the 50 ppm standard in 1979:

[T]he manufacture, processing, and distribution in commerce of PCBs at concentrations of 50 [parts per million (ppm)] or greater present an *unreasonable risk of injury to health...* This finding is based on the well-documented human

*health and environmental hazard of PCB exposure... 40 CFR §761.20 (emphases added).*

Science supported the adoption of a low threshold for PCBs in 1979 and the scientific basis for such a threshold has only strengthened since that time. Peer-reviewed studies have shown associations between children's exposure to low levels of PCBs and leukemia, changed gender expression, and disturbance of immune function (Ward, *et al.*, 2008; Weisglas-Kuperus, 2002; Karmaus, *et al.*, 2005); such studies have also linked low exposure levels in adults with attentional deficiencies, cardiovascular disease, diabetes, and hypertension (Peper, *et al.*, 2005; Sergeev, *et al.*, 2005; Kouznetsove, *et al.*, 2007)). In most cases, these studies focused on environmental exposure alone rather than environmental and dietary exposure combined. The findings represent a small fraction of the growing body of research establishing the significant, detrimental impacts of minimal PCB exposure on human health.

While this developing research has only begun to define the harms associated with low levels of PCB exposure, one thing is clear: the more the scientific inquiry advances, the more toxic PCBs are understood to be. As the ANPRM notes, in a section apparently drafted before the caulk-related provisions were appended, "[p]reliminary indications from the 2003 Draft Dioxin Reassessment are that the toxicity of PCBs in general is higher than the toxicity values that EPA used in developing previous TSCA PCB regulations." 75 Fed. Reg. 17,651. It is presumably for this reason that the notice contemplates loosening the TSCA regulations with respect to *no* other source of potential environmental exposure. On the contrary, as discussed above, it only invites comment on the prospect of tightening controls except in relation to PCBs in caulk (and other non-liquid PCBs).

In short, the notice provisions relating to caulk constitute an unacceptable departure from EPA's articulated norm of basing policy on science. Not only is there no scientific basis for relaxing the regulations, there is none for contemplating such a relaxation. The available research strongly points in the opposite direction. Because the caulk-related provisions in the ANPRM combine this disregard for science with a resounding silence on health and the environment, and because of their blatant contradictions with the rest of the document, they discredit EPA; we hope you will withdraw them.

At an absolute minimum, reconsideration of the regulations governing caulking should be postponed until the completion of EPA's recently announced initiatives on the issue: the NYC pilot study supervised by Region 2 and the two national scientific inquiries. To undertake the regulatory revision now seriously undermines substantive work EPA has only just begun to carry out and threatens to damage the public's perception of a degree of responsiveness on EPA's part to parental and community concerns about children's health in schools. Above and beyond the problems with the content of the notice identified above, its exquisitely poor timing does both the agency and the public a disservice.

We would welcome the opportunity to discuss these matters with you at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'MSM', followed by a horizontal line extending to the right.

Miranda K.S. Massie

cc: Bronx Borough President Ruben Diaz, Jr.  
EPA Region 2 Administrator Judith Enck  
Congressman José Serrano  
Assemblymember Linda Rosenthal