



**Public Employees for
Environmental Responsibility**

2000 P Street, NW, Suite 240 • Washington, DC 20036
Phone: (202) 265-PEER • Fax: (202) 265-4192
Email: info@peer.org • Web: <http://www.peer.org>



**America Unites
for Kids**

January 12, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
COURTESY COPIES BY EMAIL

SANDRA LYON, SUPERINTENDENT

Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
slyon@smmusd.org

JAN MAEZ, ASSOCIATE SUPERINTENDENT, CHIEF FINANCIAL OFFICER

Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
jmaez@smmusd.org

LAURIE LIEBERMAN, BOARD PRESIDENT

Board of Education, Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
llieberman@smmusd.org

DR. JOSE ESCARCE, MEMBER

Board of Education, Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
jescarce@smmusd.org

CRAIG FOSTER, MEMBER

Board of Education, Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
cfooster@smmusd.org

MARIA LEON-VAZQUEZ, MEMBER

Board of Education, Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
mlvazquez@smmusd.org

RICHARD TAHVILDARAN-JESSWEIN, MEMBER

Board of Education, Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
rtahvildaranjesswein@smmusd.org

OSCAR DE LA TORRE, MEMBER

Board of Education, Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
odelatorre@smmusd.org

GINA MCCARTHY, ADMINISTRATOR

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Room 1101A
Washington, DC 20460

JARED BLUMENFELD, ADMINISTRATOR

U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

ATTORNEY GENERAL OF THE UNITED STATES

10th and Constitution Ave. N.W.
Washington, D.C. 20530

RE: NOTICE OF INTENT TO FILE SUIT – 40 CFR §702.61

Dear Ms. Lyon, Ms. Maez, Ms. Lieberman, Mr. Escarce, Mr. Foster, Ms. Leon-Vasquez, Mr. Tahvildara-Jesswein, Mr. De La Torre, Ms. McCarthy, Mr. Blumenfeld and Attorney General:

Please take notice that pursuant to Section 20 of the Toxic Substances Control Act (“TSCA”), America Unites for Kids (formally known as Malibu Unites) and Public Employees for Environmental Responsibility (“PEER”), intend to file suit against Sandra Lyon, Superintendent of the Santa Monica-Malibu Unified School District (“SMMUSD” or “the District”); Jan Maez, Associate Superintendent and Chief Financial Officer of the SMMUSD; Laurie Lieberman, President of the Board of Education of the SMMUSD; and Jose Escarce, Craig Foster, Maria Leon-Vazquez, Richard Tahvildaran-Jesswein, and Oscar De La Torre, Members of the Board of Education of the SMMUSD, as well as the seventh member of the Board of Education, soon to be selected to fill the vacant seat on the Board; to restrain a violation of TSCA and the PCB Regulations at the Juan Cabrillo Elementary School, 30237 Morning View Drive, Malibu California, and the Malibu Middle and High School, 30215 Morning View Drive, Malibu, California. (“PCB Regulations” refers to the rules set forth in 40 CFR Section 704 et seq. promulgated by the Environmental Protection Agency in accordance with TSCA).

America Unites for Kids is a non-profit 501(c)(3) organization with members and supporters who are parents, teachers and community members at the Malibu Middle and High School and Juan Cabrillo Elementary School. PEER is a non-profit 501(c)(3) educational and advocacy organization, which advocates for public employees concerned with environmental issues, including the “Concerned Malibu/Cabrillo Teachers,” a group of 30 teachers and staff at Malibu Middle and High School and Juan Cabrillo Elementary School.

FACTUAL BACKGROUND

PCBs and Human Health

Polychlorinated biphenyls (“PCBs”) were used in various industrial applications until 1979 when the manufacture of PCBs was banned in the United States (See TSCA §6(e)). Based on both animal and epidemiological studies, the EPA has classified PCBs as probable human carcinogens. In promulgating the PCB Regulations under the authority of TSCA, the Administrator of the EPA found “that the manufacture, processing and distribution in commerce of PCBs at concentrations of 50 ppm or greater... present an unreasonable risk of injury to health within the United States. This finding is based upon the well-documented human health and environmental hazard of PCB exposure, the high probability of human and environmental exposure to PCBs and PCB Items from manufacturing, processing, or distribution activities In addition, the Administrator hereby finds... that any exposure of human beings or the environment to PCBs may be significant... [S]ince exposure to such Items may be significant, the Administrator further finds that a totally enclosed manner [which is exempted from the prohibition of PCBs in TSCA] is a manner **which results in no exposure** to humans or the environment to PCBs.” 40 CFR §761.20 (emphasis added).

From around 1950 through the late 1970s, PCBs were used as a plasticizer in caulk in some buildings, including schools. As explained by the EPA’s Office of Research and Development, “PCBs are semi-volatile organic chemicals and can be transported in and around buildings through vaporization into the air and through absorption into dust and materials. PCBs may be present in the air, dust, soil and on surfaces in and around school buildings leading to the potential of occupant exposure through multiple routes... Materials such as paints, dust, masonry, floor and ceiling tiles, and mastics may become secondary sources after years of exposure to PCBs emitted from primary sources”, such as caulk. (“PCBs in School Buildings: Sources, Environmental Levels, and Exposures,” EPA, September 2012). As to the routes of exposure, “in addition to inhalation from PCBs in the air or dust, exposure may occur when a person comes in contact with the caulk and any surrounding materials into which the PCBs may have been released... Exposure may also occur through contact with PCB-contaminated soil adjacent to buildings.” (“Preventing Exposure to PCBs in Caulking Material,” EPA, August 2012). As to the efficacy of encapsulation, the EPA reported that **none of the tested coatings are truly impenetrable to PCB molecules**. (“Laboratory Study of Polychlorinated Biphenyl (PCB) Contamination in Buildings – Part 3. Evaluation of the Encapsulation Method” (EPA, April 2012)) (emphasis added). The EPA concluded that “**encapsulation was not found to be effective** in reducing emissions from sources that have a high PCB content (for example caulk) for more than a short period of time.” (“Preventing Exposure to PCBs in Caulking Material” (EPA, August 2012)) (emphasis added))

The International Agency for Research on Cancer (IARC) recently reassessed the carcinogenicity of PCBs. The Working Group, composed of 26 experts from 12 countries, considered more than 70 independent epidemiological studies. The Working Group classified PCBs as “carcinogenic to humans” on the basis of sufficient evidence of carcinogenicity to humans and experimental animals. This assessment will be published as Volume 107 of the IARC Monographs.

In addition, EPA studies show that PCBs are associated with serious non-cancer health effects, including effects on the immune system, the reproductive system, the nervous system, and the endocrine system. Exposure can cause liver toxicity, immunotoxicity, neurotoxicity, reproductive toxicity, developmental toxicity, endocrine disruption, disrupted insulin function, and changes in thyroid and steroid hormones. PCB exposure has been linked to attention deficit hyperactivity disorder (ADHD) and autism.

Discovery and Testing for PCBs at Malibu Middle
and High School and Juan Cabrillo Elementary School

In 2009, the SMMUSD ordered an Environmental Impact Report as required for the approval of the proposed remodel of the Malibu Middle and High School campus. As part of such investigation, ARCADIS (the District’s environmental consultant) reported to the District that soil in the Middle School Quad was contaminated with PCBs at over 11 times the California Human Health Screening Levels established by the California Environmental Protection Agency, as well as with pesticides and other toxins. ARCADIS determined that these contaminants posed an “unacceptable health risk.”

During the summer of 2011, the District removed 48 truckloads (over 1000 tons) of soil from the Middle School Quad which, unbeknownst to parents and teachers, was contaminated with PCBs and pesticides, while summer school was in session. In the two year period following the soil removal, three teachers then working at Malibu Middle and High School were diagnosed with thyroid cancer - a disease with an expected annual incidence of 1.29 per 10,000 Americans. Since that time, as of today, two former teachers, as well as at three alumni students, have also been diagnosed with thyroid cancer. There are at least 16 known cases of thyroid disease among teachers and alumni, as well as other serious health concerns.

Following the public revelation of these medical issues and the 2011 soil removal, in October 2013 a group of Malibu parents hired a local environmental scientist to advocate for immediate testing of all of the school rooms as well comprehensive soil testing. Although no comprehensive soil testing was performed at that time, at the parents’ insistence some of the schoolrooms were tested. Such tests revealed that PCBs in four of ten tested Middle School classrooms exceeded the federal regulatory limit of 50 parts per million PCBs. Significantly, the caulk in each of these four rooms contained PCB 126 (a dioxin-like substance with a cancer risk some one million times greater than that of certain other PCB congeners). In addition, all four classrooms with toxic illegal levels of PCB in caulk, as well as one additional classroom, had wipe samples at levels deemed “PCB Contaminated” under the PCB Regulations. The three current and two former teachers with thyroid cancer all taught in classrooms with illegal toxic levels of PCBs or with dust levels considered “PCB Contaminated” under the PCB Regulations.

Following the District's refusal to administer any further testing of the caulk at Malibu Middle and High School and Juan Cabrillo Elementary School, in July 2014 Malibu community members received laboratory results from independent testing of additional soil and caulk samples from both Malibu Middle and High School and Juan Cabrillo Elementary School. These samples were analyzed by the same laboratory used by the District, using EPA-certified methods. On July 17, 2014, Malibu Unites and PEER reported the results to both the District and the EPA. Out of four rooms where caulk was tested, three exceeded the 50 ppm regulatory limit, and two of them were above 300,000 ppm:

- window caulking from Room 19 on the Juan Cabrillo campus contained 340,000 parts per million of PCBs
- interior door caulking from room 506 on the Malibu Middle and High School campus contained 370,000 parts per million of PCBs
- caulking from the interior of a window in the physical education faculty office on the Malibu Middle and High School campus contained 190 parts per million of PCBs
- in addition, dirt samples from three classrooms (Rooms 1, 2 and 5) in building E on the Malibu Middle and High School Campus contained PCBs in excess of 11 times the EPA's residential screening limits. The dirt found on the floor of rooms 1 and 5 contained higher levels of PCBs than the highest level found by ARCADIS in 2009 in outdoor soil. ARCADIS found this soil to pose an "unacceptable health risk," leading to the 2011 soil removal action.

In September 2014, additional independent test results from an EPA-certified laboratory were submitted to the EPA and the District. Additional rooms on the Middle and High School campus where caulk had not been previously tested were evaluated. Four rooms exceeded regulatory limits, with two of these in the hundreds of thousands of ppm PCBs.

- Room 401 in the Leopard Building had 146,000 ppm PCBs in the caulk in the interior of an office window
- Room 505 in the Angel Building had 231,000 ppm PCBs in the caulk of an interior door frame
- Room 205 in the Mako Building had 200 ppm PCBs in the caulk of an interior door frame
- Room 7 in Building E (Blue Building) had 190 ppm PCBs in the caulk in the interior of a window frame.

The September 2014 testing also included a piece of caulk which was retrieved from a walkway on the Malibu Middle and High School campus after it fell out of a trash bag being hauled by a worker towards the High School parking lot to a car labeled "air duct cleaning." This was apparently part of a surreptitious caulk removal effort which was not reported to the community or to EPA to ensure compliance with protective practices and disposal regulations. This caulk also tested above the legal limit at 58 ppm.

In October 2014, Malibu Unites asked the laboratory to re-run the caulk from the two rooms with the highest PCB concentrations (Juan Cabrillo Room 19 and the High School woodshop room)

using EPA Method 1668c for all of the individual PCB congeners, and specifically for congener 126, the most toxic of all of the PCB congeners. The samples had previously been analyzed only for total PCBs using EPA Method 8082. These new tests found the presence of congener 126 at 122 ppm in Juan Cabrillo Room 19 and 57 ppm in the woodshop – up to more than three million times more toxic than the EPA health-based Regional Screening Level.

Also in October 2014, additional independent tests analyzed by an EPA–certified laboratory were received by Malibu Unites showing regulatory exceedances for two rooms in the Middle and High School and four rooms in Juan Cabrillo Elementary School. All of these six rooms had caulk with PCBs in excess of the 50 ppm regulatory limit. These results are being submitted to EPA and the District contemporaneously with this Notice.

- Malibu Middle and High School Room 704 had 4,700 ppm PCBs in caulk in a door frame in a hallway
- Malibu Middle and High School Room 3 had PCBs in caulk at 330 ppm
- Juan Cabrillo Elementary School Room 22 had 74,000 ppm PCBs in interior window caulk
- Juan Cabrillo Elementary School Room 18 had 110,000 ppm PCBs in interior window caulk
- Juan Cabrillo Elementary School office had 710 ppm PCBs in interior window caulk
- Juan Cabrillo Elementary School Room 23 had 85,000 ppm PCBs in interior window caulk

The District’s environmental consultant, Environ International, created remediation plans which first proposed leaving in place caulk testing above the 50 ppm regulatory limit for PCBs, and only removing such caulk in connection with a renovation or demolition of the building in question. At present there are no concrete plans or timetables for renovation or demolition of the buildings which contain caulk above the regulatory limits. After its first plan was rejected by EPA, Environ produced a second plan which proposed removing illegal caulk within 15 years (with the possibility of requesting an extension) if renovation or demolition did not occur earlier.

EPA has reported that on August 14, 2014, the District submitted a non-public revision to the Environ plan, which anticipates removing the caulk from only four windows (presumably in the four classrooms that the District’s testing found to contain caulk with more than 50 ppm PCBs) by June 30, 2015. There is no plan to remove the caulk from the other windows in those four classrooms, or from the many windows and doors where caulk was independently tested and found to be far in excess of 50 ppm, or to identify the extent of the PCB caulk contamination in buildings built before 1980, or to test other building materials to which PCBs may have migrated. In addition, Environ proposes to test air and dust only, two tests that do not trigger the TSCA, and avoid testing the caulking in the remaining rooms which were constructed prior to 1980, even including those they know have PCBs over 50ppm based on independent tests. The District has threatened teachers with firing and students with truancy if they do not occupy classrooms in buildings containing toxic illegal levels of PCBs in caulk, rather than provide PCB-free portable classrooms to be placed on the empty adjacent fields as requested by teachers and parents since January 2014.

Section 702.62 Disclosures

In accordance with 40 CFR Section 702.62, please be advised as follows:

(1) The suit will allege a violation, among other things, of Section 6(e)(2) of TSCA (15 USC §2605(e)(2)), Section 15(1) of TSCA (15 USC §2614(1)) and 40 CFR §761.20(a).

(2) The activity alleged to constitute a violation of Section 6(e)(2) of TSCA and 40 CFR §761.20(a) is the continued use at Malibu Middle and High School and Juan Cabrillo Elementary School of PCBs in caulking materials at concentrations of greater than 50 parts per million other than in a totally enclosed manner, as well as “PCB-Contaminated” materials. A violation of these Sections is also a violation of Section 15(1) of TSCA.

(3) The person or persons responsible for the alleged violations are Sandra Lyon and Jan Maez, officials of the Santa Monica Malibu Unified School District; Ben Allen, Oscar de la Torre, Joe Escarce, Maria Leon-Vazquez, Laurie Liebermann, Ralph Mechur, Nimish Patel, Craig Foster, and Richard Tahvildaran-Jesswein, current and former members of the SMMUSD Board of Education.

(4) The locations of the alleged violations are the Juan Cabrillo Elementary School and the Malibu Middle and High School, located at 30237 Morning View Drive and 30215 Morning View Drive in Malibu, California 90265.

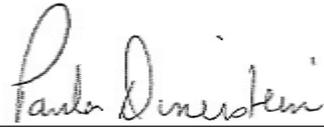
(5) The date or dates of the alleged violation are from the discovery of the toxic illegal levels of PCB in the caulking material on or about November 20, 2013 until the present, and the violation is continuing.

(6) The full name, address and telephone number of the citizens giving notice, and such citizens’ legal counsel, are set forth below:

PEER’s address is 2000 P Street, NW, Ste. 240, Washington, DC 20036. PEER’s phone number is 202-265-7337.

The address for America Unites for Kids is 22741 Pacific Coast Highway, Malibu, CA 90265. It is represented by Charles Avrith, Nagler and Associates, 2300 S. Sepulveda Blvd., Los Angeles, CA 90064, telephone 310-473-1200.

Very truly yours,



Paula Dinerstein
Public Employees for Environmental Responsibility
2000 P Street NW, Ste. 240
Washington, DC 20036
Tel: 202-265-7337
Email: pdinerstein@peer.org

Attorneys for PEER

Charles Avrith
Nagler and Associates
2300 S. Sepulveda Blvd.
Los Angeles, CA 90064
Tel: 310-473-1200
Email: cavrith@nagler.com

Attorneys for America Unites for Kids