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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

AMERICAN UNITES FOR KIDS, and PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY,

Plaintiffs,

vs.

SANDRA LYON, IN HER OFFICIAL CAPACITY AS SUPERINTENDENT OF THE SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT, JAN MAEZ, IN HER OFFICIAL CAPACITY AS ASSOCIATE SUPERINTENDENT AND CHIEF FINANCIAL OFFICER OF THE SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT, AND, LAURIE LIEBERMAN, DR. JOSE ESCARCE, CRAIG FOSTER, MARIA LEON-VAZQUEZ, RICHARD TAHVILDARAN-JESSWEIN, OSCAR DE LA TORRE, AND RALPH MECHUR, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION,

Defendants.

No. 2:15-CV-02124-PA-AJW

Judge Percy Anderson
Courtroom 15

DECLARATION OF DOUG DAUGHERTY IN SUPPORT OF DEFENDANTS' OPPOSITION TO APPLICATION FOR EXPEDITED DISCOVERY

Complaint filed: March 23, 2015

DECLARATION OF DOUGLAS DAUGHERTY

I, DOUGLAS DAUGHERTY, hereby declare as follows:

1. This declaration is submitted in support of Defendants' Opposition to Plaintiffs' Ex Parte Application for Expedited Discovery. Unless otherwise stated, I have personal knowledge of the facts set forth herein and, if called to testify, I could and would testify competently thereto.

2. I am a California registered professional (chemical) engineer (PE), a certified industrial hygienist (CIH) with the American Board of Industrial Hygiene, and a Managing Principal with ENVIRON International Corporation (ENVIRON). Prior to joining ENVIRON, I received a doctorate in Chemical Engineering from Princeton University and a bachelor of science in Chemical Engineering from Johns Hopkins University.

3. ENVIRON is a scientific consulting firm that specializes in environmental matters, with offices throughout the United States (U.S.) and overseas. ENVIRON has been retained by Santa Monica-Malibu Unified School District (SMMUSD or District) to conduct as-needed environmental services at the District's 17 schools including services related to polychlorinated biphenyls (PCBs) in building materials present or potentially present in its schools built prior to 1980. Given my experience in air quality, exposure assessment, and environmental, health and safety issues, I am the Principal-in-charge for the assessments at Malibu High School ("MHS") and Juan Cabrillo Elementary School ("JCES") related to potential PCBs in building materials.

I. ENVIRON Qualifications.

1. ENVIRON is recognized as a leader in the areas of environmental strategic analysis, hazardous materials assessment and management, regulatory compliance, environmental and public health risk assessment, and

risk management. ENVIRON's wide array of public and private sector clients includes federal regulatory agencies and policy arms, state and local governments throughout the US, as well as some of the nation's largest public and private companies, leading law firms, educational institutions, and industrial trade associations. Through the successful completion of thousands of assignments throughout the world, ENVIRON has earned an international reputation as a technically excellent, objective, and astute consulting firm and as a leader in developing creative solutions to our clients' most challenging problems.

2. ENVIRON's health and safety practitioners have expertise in industrial hygiene, environmental health and safety compliance assistance and auditing, health risk assessment, toxicology, indoor air quality evaluation and complaint investigation, and building related hazardous materials (such as asbestos, lead-based paint, and PCBs) survey and abatement oversight.

3. Over the past 31 years, ENVIRON has provided technical consulting services, litigation support and expert testimony to clients engaged in projects related to PCBs in the environment, in buildings, in products, and in the workplace. ENVIRON's team of building science specialists—including forensic architects, Certified Industrial Hygienists (CIHs), environmental health specialists and engineers—routinely conduct contamination assessment of PCB-containing materials in buildings, oversee remediation, and conduct environmental and health risk assessments. ENVIRON's Site Solution Practice Group has broad experience in identifying and delineating a broad range of contaminants including PCBs, preparing and implementing remedial plans, and achieving closure status for our clients. ENVIRON maintains an extensive library related to historical PCB usage, applications, and the development of toxicological and regulatory standards. Much of our forensic

work focuses on the detailed evaluation of analytical information that often contains complex data on congeners, homologues, and aroclors.

II. PCBS In Schools.

1. Dr. Rosenfeld's March 31, 2015 declaration in this case regarding the presence of PCBs in caulking and other building materials schools in schools constructed prior to 1980 tends to imply that this problem is somewhat unique to MHS and JCES. That is not the case. The federal Environmental Protection Agency (EPA), the environmental agency with exclusive jurisdiction under the Toxic Substances Control Act ("TSCA") to regulate the use of PCBs, has been addressing this issue for many years. (*See*, 15 U.S.C. § 2605(e)(1)(A) and (e)(2)(B) regarding Congress's express direction to EPA to regulate the manufacture and disposal of PCBs and items containing PCBs.) Based upon the authority invested in it by Congress, EPA promulgated regulations specifically relating to the disposal methods for PCB wastes, including building materials such as those at issue in this case. (*See* 49 C.F.R. §§ 761.120-135.) Relying upon this statutory authority, the EPA has been regulating the investigation, management and disposal of PCBs contained in caulk and other building materials in schools since approximately 2009.

2. On September 25, 2009, EPA announced new guidance for school administrators and building managers with "important information about managing PCBs in caulk and tools to help minimize possible exposure" by school and building occupants. *See* http://www.epa.gov/pcbsincaulk/. In conjunction with adopting this policy, EPA undertook to conduct scientific studies to better understand and assess the magnitude of the problem presented by PCBs in caulk and identify the best long-term solutions to the problem. EPA has done, and continues to do, significant research to determine the sources and levels of PCBs in schools and to evaluate different strategies to

reduce exposures. (*See*, http://www.epa.gov/pcbsincaulk/caulkresearch.htm.) EPA utilized this research to provide further guidance to schools and building owners as they develop and implement long-term solutions.

3. In particular, EPA has released a significant amount of information to provide guidance for school and other building owners. An example of this guidance is the PCBs in Caulk Fact Sheet published by EPA. A true and correct copy of the Fact Sheet is attached hereto as Exhibit A. Given the widespread nature of the issue, EPA has advocated a risk-based approach to management of PCBs in caulk, emphasizing initial evaluation to determine whether exposures to PCBs in caulk are occurring and a stepwise process to reduce the risk of exposure where necessary. EPA does not require investigation of caulk and other building materials where air levels of PCBs will not cause harm. Instead, the agency directs parties to test the air for PCBs, follow "best practices" to minimize potential exposures, and remove of PCB-contaminated caulk during "Renovations and Repairs. (*See* Exhibit A.) As to this latter point, EPA states that:

> "Where schools or other buildings were constructed or renovated between 1950 and 1979, EPA recommends that PCB-containing caulk be removed during planned renovations and repairs (when replacing windows, doors, roofs, ventilation, etc.)" *See, Id*.

4. In order to determine whether air exposures are acceptable, and thus do not necessitate further investigation, EPA calculated "prudent public health levels that maintain PCB exposures below the 'reference dose' – the amount of PCB exposure that EPA does not believe will cause harm." (*See* http://www.epa.gov/pcbsincaulk/.) A true and correct copy of the EPA Public Health Levels for PCBs in Indoor School Air is attached hereto as Exhibit B.

5. EPA's election under TSCA to manage PCBs in place in school building materials is consistent with other directives from Congress in relation

to lead paint and asbestos in schools and other buildings. Under TSCA's Asbestos Hazard Emergency Response Act, asbestos, a banned chemical under TSCA, is managed in place until renovation or demolition of a building. Similarly, the Residential Lead-Based Paint Hazard Reduction Act, again regulating a federally banned chemical substance in products, permits schools to leave lead paint in place, subject to certain best management practices, pending renovations. EPA is the lead federal agency for both of these regulatory programs.

6. It is my experience that EPA continues to adhere to its PCB in schools guidance for schools dealing with this issue across the United States. I am not aware of EPA directing any school to undertake sampling and investigation of caulk and other building materials where the level of PCBs in air or dust samples do not exceed the published Public Health Levels for PCBs in Indoor School Air. Rather, EPA has followed its guidance regarding the removal of PCB-containing materials during renovations or demolition. The only situation where EPA anticipates the removal of PCBs is when documented sampling reveals in exceedance of the 50 part per million (ppm) limitation present in TSCA. With full realization that unknown levels of PCBs may exist in caulking, EPA directs parties to follow a risk-based management program to ensure that the health of the students, teachers and staff are not at risk, and then remove the contaminated buildings materials in the future.

III. Exposure Evaluation and Relevant Health Protective Benchmarks for Schools.

1. Exposure to PCBs can cause a variety of health effects. That is why EPA focuses on potential human exposure to air and dust. According to EPA, "EPA research studies show that primary health concerns from PCBs in

building materials derive from inhalation of contaminated air; and secondarily from contact with PCBs in dust and subsequent incidental ingestion." *See*, Jared Blumenfeld, EPA Regional Administrator, letter of October 31, 2104, a true and correct copy of which is attached hereto as Exhibit C.

2. To determine whether air samples collected at the schools are safe, ENVIRON compared the sample results to health-based benchmarks developed by EPA for use in schools in the US. EPA recommended, and ENVIRON is using the Public Health Levels for PCBs in Indoor School Air derived by EPA that account for exposure to PCBs in school as well as exposure to PCBs in other sources in background (http://www.epa.gov/pcbsincaulk/maxconcentrations.htm), Exhibit B. Concentrations at or below these Public Health Levels represent the amount of PCB average exposure over the school year that "EPA does not believe will cause harm".

3. To determine whether dust (wipe) samples at the schools are safe, ENVIRON compared the sample results to the EPA Region 9 benchmark for dust wipes of 1 ug/100 cm2. EPA Region 9 has identified this level as protective of cancer and non-cancer effects associated with exposure to PCBs on surfaces in schools. The wipe benchmark of 1 ug/100 cm2 is more health protective than the TSCA wipe sample standard of 10 ug/100 cm2 that is still being used by some schools.

4. According to EPA, "Overall, the sampling data from the two schools demonstrate that these PCB exposure pathways are currently being addressed by the District's BMPs in a manner that protects public health. Thus, the District's undertaking of Best Management Practices (BMPs), as verified by pre- and post-BMP sampling data, demonstrate that the TSCA

standard for no unreasonable risk is currently being met at MHS and JCES". (USEPA Letter 10/31/14), Exhibit C.

IV. The District Has Plans Prepared in Accordance with EPA's School Policy and TSCA regulations and EPA has Concurred and Approved, respectively, with Them.

1. To address the potential presence of PCB materials in all the schools within the SMMUSD, ENVIRON prepared a Comprehensive PCB-Related Building Materials Inspection, Management, and Removal Plan ("General Plan") (ENVIRON 2014). A true and correct copy of the General Plan is attached hereto as Exhibit D. The General Plan was designed to be applicable to any of the District schools with buildings built before 1981 that are located within the District. The General Plan describes how suspect building materials will be identified and inventoried, what BMPs will be implemented to minimize exposure of students, teachers, and employees to these suspect materials, and when/how the suspect PCB-containing materials will be removed. The overall approach outlined in the General Plan is to conduct comprehensive building inspections and implement BMPs to manage materials in place, if deemed safe and appropriate, until a scheduled demolition or renovation when PCB-containing materials will be removed.

2. Contrary to the assertions made by Dr. Rosenfeld in his declaration, EPA did not reject ENVIRON's General Plan. EPA's June 4, 2014 comment letter to the District (USEPA 2014) on the General Plan does not use the word "reject" anywhere in their letter nor has EPA used that word in ENVIRON's discussions with them. A true and correct copy of the EPA's June 4, 2014 letter is attached hereto as Exhibit E. In fact, EPA asked the District and ENVIRON to move ahead with our plans for building inspections,

implementation of BMPs and sampling at MHS and JCES, including in the following EPA statements:

a. EPA's June 4th comment letter specifically recommended that the District move forward with the Building Material Inspection Plan and PCB Best Management Practices (BMPs) part of ENVIRON's Comprehensive Plan when EPA stated: "The "Building Material Inspection Plan" and the "PCB Best Management Practices" contained in the General Plan do not require EPA approval, and we recommend that the District move forward with these activities at MHS before the MHS plan is finalized."

b. This was further confirmed in an email from EPA to ENVIRON on June 13, 2014, which stated "EPA concurs with your approach to testing as described in the plan forwarded…" by ENVIRON and said "I also want to confirm that we [EPA] do support the District conducting inspections and BMPs as stated in our June 4, 2014 letter".

c. Furthermore, EPA expressed appreciation of the expedited implementation of the building inspection plan and BMPs part of ENVIRON's plan. As stated in an email from EPA to ENVIRON on June 11, 2014, "We understand that ENVIRON and the SMMUSD will begin to implement the Testing Plan at the Malibu High School (MHS) and Juan Cabrillo on June 16, 2014. We appreciate ENVIRON and SMMUSD's expedited implementation of Section 2 (Inspection) and Section 3 (Best Management Practices) of the General Plan."

3. From the statements made by EPA, it is clear that they support the implementation of ENVIRON's building inspection, BMP, and samplings plans at MHS, which have also been implemented at JCES, and have not "rejected" these plans.

4. In June 2014, EPA approved the sampling plan for the study being conducted at MHS and JCES. The study consists of two primary parts. The first part of the study, which was accomplished by comparing air and wipe sampling results collected during summer 2014 to air and wipe sampling results collected in December 2013, was to evaluate whether air or wipe concentrations change significantly between thorough cleanings, which aids in evaluating cleaning frequency and practices. The second part of the study, which is still ongoing, is to conduct air and wipe sampling both before (pre-BMP) and after the annual BMP cleaning (post-BMP), to evaluate the effectiveness of the cleaning procedures.

a. A memorandum titled "Additional Information on the Selection of Representative Rooms for Air/Wipe Testing – Revision 2" was provided by ENVIRON to EPA on June 18, 2014 describing proposed pre-BMP and post-BMP air and wipe sampling procedures associated with this study. This memorandum, which also outlines the rationale for selecting rooms in MHS included in the study, achieved EPA concurrence on June 13, 2014.

5. EPA reiterated their concurrence of this sampling plan in a letter to SMMUSD on August 14, 2014: "The District followed EPA's recommendation to conduct inspections and initiated best management cleaning practices at Malibu High School, and your District elected to include Juan Cabrillo Elementary School in this work. The District also proposed collecting air and wipe samples at both schools. On June 9, 2014, your

contractor, ENVIRON, sent EPA an air and wipe testing plan. EPA provided comment and concurred on the revised plan dated June 13, 2014. In addition, EPA staff were on the site in June at Malibu High School to observe the inspection and testing work. Based on EPA's evaluation of the work conducted this summer, the Agency has determined that the work was consistent with EPA's national guidelines." A true and correct copy of EPA's letter of August 14, 2014 is attached hereto as Exhibit F.

6. To address building materials which contain ≥50 ppm PCBs in exceedance of EPA standards—which at the time had been identified in the Library and Building E Rooms 1, 5, and 8—ENVIRON prepared a Site-Specific PCB-Related Building Materials Management, Characterization and Remediation Plan for the Library and Building E Rooms 1, 5, and 8 at Malibu High School ("Site-Specific Plan") (ENVIRON 2014b). A true and correct copy of the Site-Specific Plan is attached hereto as Exhibit G. The Site-Specific Plan describes procedures for management, characterization and remediation of building materials in which PCBs have been identified above 50 ppm in accordance with guidance from USEPA Region IX, and the Toxic Substances Control Act (TSCA) 40 Code of Federal Regulations (CFR) 761.

7. Although the MHS-Specific Plan called for building materials identified with ≥50 ppm PCBs to be removed during planned and funded building renovations within 15 years, on August 15, 2014, SMMUSD agreed to remediate the TSCA violations identified at four window areas at MHS within the next 10 months, no later than June 30, 2015. The four window areas correspond to tested window units located in the MHS Library and Building E (also called the Blue Building) - Rooms 1, 5, and 8. In addition, based on sampling and analytical results from the2014 summer break in which > 10 micrograms per 100 square centimeters (µg/100cm2) total PCBs were

reported for surface wipe samples taken on caulking around interior doorframes in Building G Room 506 (woodshop) at MHS even after repairs and additional cleaning, SMMUSD volunteered to implement a similar remedy for interior door caulking in this room.

8. In September 2014, at EPA's request, ENVIRON then prepared a Supplemental Removal Information ("Supplement") for MHS, which was intended to further supplement and modify as appropriate the MHS-Specific Plan. A true and correct copy of the relevant portion of the Supplement is attached hereto as Exhibit H. The Supplement provided information on the removal of building materials in which PCBs had been identified and verified at concentrations above 50 ppm in accordance with guidance from EPA Region IX and TSCA. It is anticipated that remediation of the areas identified in the Supplement will be completed by June 30, 2015.

9. On October 31, 2014 (Exhibit C), EPA approved the Supplement. As quoted below, EPA granted approval for identified rooms and future areas with identified and verified results exceeding 50 ppm:

a. "Pursuant to 40 C.F.R. § 761.61(c), the U.S. Environmental Protection Agency, Region 9 (EPA) is approving certain provisions, as described below, from the 'Site Specific PCB-Related Building Materials Management, Characterization and Remediation Plan for the Library and Building E Rooms 1, 5, and 8 at Malibu High School' dated July 2014 as subsequently amended ('the Application'), which is an attachment to this approval."

b. "These provisions equally apply to substrate in contact with presently identified PCB-contaminated caulk as well as such areas identified in the future."

10. EPA concurs that the District is taking the correct approach and the data collected indicates the schools are safe. As indicated by EPA in their August 14, 2014 letter to SMMUSD, the District is following EPA's national guidelines: "In summary, the District is meeting EPA national guidelines to protect public health from PCBs in schools by addressing the human exposure pathways of greatest concern, namely air, dust and soil." Exhibit F.

11. In their October 31, 2014 letter to SMMUSD (Exhibit C), EPA reiterated that the District is taking the correct approach and that the data does not indicate a public health concern:

a. "An approval under TSCA regulations in 40 CFR 761.61(c) requires EPA to make a finding that PCB remediation wastes remaining in place at the two schools will not pose an unreasonable risk of injury to health or the environment. EPA is hereby making a finding that the District meets this TSCA standard for Malibu High School and Juan Cabrillo Elementary School as discussed in the enclosure. The District will continue to take air and surface wipe sample data to monitor conditions at the schools and this data will be provided to the public."

b. "EPA research studies show that primary health concerns from PCBs in building materials derive from inhalation of contaminated air; and secondarily from contact with PCBs in dust and subsequent incidental ingestion. Overall, the sampling data from the two schools demonstrate that these PCB exposure pathways are currently being addressed by the District's BMPs in a manner that protects public health. Thus, the District's undertaking of the BMPs, as verified by pre- and post-BMP

sampling data, demonstrates that the TSCA standard for no unreasonable risk is currently being met at MHS and JCES."

c. "Based on the continuous implementation of the BMP program in conjunction with the District's planned removal of PCB-containing caulk and the measures in this approval, EPA has determined that conditions at the school will continue to protect public health and meet the TSCA standard until the building components covered by this approval are removed during school renovation or demolition. Among others, the BMP program includes continuous cleaning of the schools. Moreover, the ongoing efficacy of the BMPs and other approved measures will be verified through the periodic air and surface wipe sampling required by this approval."

12. The data collected to date at MHS and JCES indicate that PCB exposures are acceptable. Based on the 250 air samples and 765 surface wipe samples collected to date at both schools, results are below EPA Region IX's no-further-action benchmarks, including rooms reportedly tested by third parties. A large percentage of the air and surface wipes samples were not detected. During the 2014 summer break sampling, 73% of the air samples and 85% of the wipe samples and were not detected. During the 2014/2015 winter break sampling, 100% of the air samples and 88% of the wipe samples and were not detected. In addition, a majority of the buildings had acceptable exposure levels prior to the annual BMP cleaning. Potential sources of PCBs in the schools are not contributing to unacceptable exposure levels. *See*, Slides, true and correct copies of which are attached hereto as Exhibit I.

V. Dr. Rosenfeld's Declaration Makes Conclusions Based on an Incomplete Evaluation of All Testing Done By ENVIRON.

1. Dr. Rosenfeld incorrectly stated in his declaration that ENVIRON only did air and surface wipe testing. However, ENVIRON conducted caulk testing as documented in our March 20, 2105 notification to EPA. A true and correct copy of pertinent portions of the March 20, 2015 letter are attached hereto as Exhibit J. This information was not cited or utilized in Dr. Rosenfeld's analysis even though it was available on the District's website before the date of his signed declaration.

2. Based on documents on the PEER and AU websites[1], [2], and on information available to ENVIRON, the following third party sampling activities by PEER/AU have been identified:

- On May 10 and 12, 2014, 27 bulk samples reportedly were collected at MHS and JCES. Although the chain of custodies for these samples do not contain a date that the samples were relinquished by field personnel, the samples arrived at Frontier Analytical Laboratory in El Dorado Hills, California on May 13, 2014; however, AU asked that the samples be placed on hold before they were analyzed. Of the original 27 bulk samples listed on the AU chains of custodies, only 26 were received by Frontier Analytical Laboratory. On June 9, 2014, AU requested that Frontier Analytical Laboratory send six samples (3 caulk and 3 dirt or vent soil) to BC Laboratories Inc. in Bakersfield, California for analysis per EPA Method 8082 for PCBs. The six

[1] Public Employees for Environmental Responsibility (PEER). Available online at http://www.peer.org/

[2] AmericaUnites for Kids (AU). Available online at http://americaunites.com/

samples were received by BC Laboratories on June 13, 2014. In August 2014, Frontier analyzed the remaining 20 samples for PCBs and two had additional congener analyses conducted. Analyses included Modified EPA Method 1668C for PCB congeners as well as analysis for PCB-126. Not all sample results have been reported in information available to ENVIRON.

- On August 15, 2014, six bulk samples reportedly were collected from MHS and JCES. Although the chain of custody for these samples does not contain a date that the samples were relinquished by field personnel, the samples were received by Eurofins CalScience, Inc. in Garden Grove, California on August 20, 2014. The samples were analyzed per EPA Method 8082 for PCBs.
- On September 23 and November 20, 2014, six bulk samples reportedly were collected from MHS and JCES. Although the chain of custody for these samples does not contain a date that the samples were relinquished by field personnel, the samples were received by Eurofins CalScience, Inc. in Garden Grove, California on September 30 and November 28, 2014. The samples were analyzed per EPA Method 8082 for PCBs.

3. Of the samples taken by AU/PEE, only 14 of these samples are of building materials that have a reported PCB concentration greater than 50 ppm.

- Of the 39 samples reported on the AU chain of custodies cited above, results for only 24 were provided based on information available to ENVIRON and not all were samples of interior

building materials. The total reported PCB concentrations for all Aroclors ranged from 1.6 to 370,000 ppm.

- The methodology used to collect the samples, the sample location selection, what decontamination procedures were used between samples collected, or the reason why some samples were selectively submitted for analysis or results not released is not provided so these identified areas greater than 50 ppm could not all be scientifically verified in accordance with the Districts approved plan for MHS/JCES (Exhibit H).[3]

4. ENVIRON performed an inspection on presumed sample locations of this third party testing with PCB concentrations identified as greater than 50 ppm in order to scientifically identify and verify them in accordance with the District approved plan for MHS/JCES (Exhibit H) if possible:

- On January 31, 2015, ENVIRON conducted a visual inspection of select accessible areas at MHS and JCES to attempt to identify the locations where third party tests showed reported results greater than 50 ppm PCBs.
- However, there are uncertainties regarding the third party sampling locations in these rooms as ENVIRON observed multiple areas of missing (or gaps in the) caulking in most cases. Therefore, the specific area where a third party sample was taken cannot be verified without the additional information previously requested of AU/PEER on September 22 and 24, 2014 but not yet

[3] Information requests to AU/PEER to provide additional information needed to verify sample locations and results were made on the behalf of SMMUSD on July 23, 2014 and September 22, 2014. All the requested information has yet to be provided to SMMUSD or ENVIRON.

provided by them. This previously requested material included the following:

- The date and time the samples were collected;
- The school, building and placarded room number where the samples were collected;
- The location within each room at the Malibu Campus where the samples were taken;
- The party who collected the samples;
- A complete chain of custody of the samples from the time that they were collected to when they were received by the laboratory and how they were stored from the time of collection until time of laboratory analysis;
- The methodology used to collect such samples;
- Any photos and/or field notes taken while the samples were collected; and
- Any third party data validation report.

ENVIRON would need the information above to identify if one of the gaps identified by ENVIRON was the actual location of a sample result reported by AU/PEER.

5. ENVIRON identified and verified total PCB concentrations in all bulk caulk samples it collected on February 28, 2015 that exceeded 50 ppm, which included MHS Building E, Rooms 3 and 7; MHS Building G, Room 505; MHS Building I, Room 401; MHS Building J, Room 704; and JCES Building F Rooms 18, 19, 22, and 23:

- Included gaps identified as most likely removed intentionally.
- No intentionally removed caulk was identified in MHS room 205 and the exact location of JCES office (ID JC OFFICE) was not

identified sufficiently by AU/PEER as there are several offices in JCES as well as an entire office building, Building A. Therefore, these areas were not tested as no identified location was determined.

6. ENVIRON identified and verified total PCB concentrations in all bulk caulk samples collected on February 28, 2015 that exceeded 50 ppm in MHS Building E, Rooms 3 and 7; MHS Building G, Room 505; MHS Building I, Room 401; MHS Building J, Room 704; and JCES Building F Rooms 18, 19, 22, and 23 and notified EPA in accordance with the October 2014 EPA TSCA Approval (Exhibit C). These areas will be addressed using the methods described in the October 2014 EPA TSCA Approval. Pursuant to the October 2014 EPA TSCA Approval, these areas will be addressed within one year of validation of the sampling results."[4]

VI. There is No Need for Immediate Comprehensive Testing and Removal of Contaminated Caulk Based on Data Collected to Date and EPA's Guidance and Regulations.

1. EPA doesn't require testing of caulk. According to EPA, "The Toxic Substances Control Act (TSCA) does not require schools or building owners to test caulk for PCBs". *See* Exhibit F.

2. Areas with scientifically identified and verified sample results with PCBs exceeding the TSCA regulatory threshold of 50 ppm are covered by the EPA approved plan for MHS and JCES.

a. The Supplemental (Exhibit H) to the MHS-Specific Plan (Exhibit G) covers the MHS Library, Building E Rooms 1, 5, and 8 and Building G – Room 506.

[4] In the event that the procedure described in this Supplement cannot be implemented within one year following identification and verification, SMMUSD will submit a request for an extension of time to USEPA.

b. The March 2015 notification letter (Exhibit J) covers identified and verified total PCB concentrations in all bulk caulk samples collected by ENVIRON on February 28, 2015 that exceeded 50 ppm including MHS Building E Rooms 3 and 7, Building G Room 505, Building I Room 401, Building J Rooms 704 and 704 Hall and JCES Building F Rooms 18, 19, 22, and 23 (based on sample locations listed by AU/PEER). None of these rooms had air or wipe sample results above the EPA health-based benchmarks.

c. These areas will be addressed using the methods described in EPA's October 2014 TSCA Approval (Exhibit C).

d. Pursuant to the October 2014 Approval, these areas will be addressed within one year of validation of the sampling results."[5]

e. No intentionally removed caulk was identified in MHS Room 205 and the exact location of JCES office (ID JC OFFICE) was not identified sufficiently by AU/PEER as there are several offices in JCES as well as an entire office building, Building A. Thus, these areas were not tested as no identified location was determined by ENVIRON'S investigation.

3. EPA does not recommend testing caulk but recommends evaluating potential exposure pathways. According to EPA Region 9, in their letter dated August 14, 2014 (Exhibit F):

a. "The Toxic Substances Control Act (TSCA) does not require schools or building owners to test caulk for PCBs".

[5] In the event that the procedures described in this Supplement cannot be implemented within one year following identification and verification, SMMUSD will submit a request for an extension of time to EPA.

b. "EPA does not recommend additional testing of caulk unless dust or air samples persistently fail to meet EPA's health-based guidelines". This is not the case at MHS or JCES.

c. "The work undertaken by the District focused on the human exposure pathways of greatest concern for school environments, specifically air, dust and soil, to make sure that those pathways have been effectively addressed".

d. "The air and dust sampling results serve as the basis for appropriate decisions by the District as the school opens for the Fall semester next week, including allowing staff and students access to those classrooms that have been shown to meet EPA's health-based guidelines".

In addition, in their letter dated October 31, 2014 (Exhibit C), EPA stated:

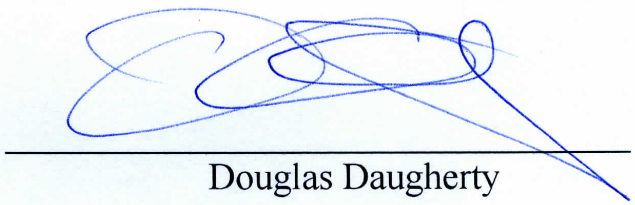
a. "An approval under TSCA regulations in 40 CFR 761.61(c) requires EPA to make a finding that PCB remediation wastes remaining in place at the two schools will not pose an unreasonable risk of injury to health or the environment. EPA is hereby making a finding that the District meets this TSCA standard for Malibu High School and Juan Cabrillo Elementary School as discussed in the enclosure. The District will continue to take air and surface wipe sample data to monitor conditions at the schools and this data will be provided to the public".

4. There is no need for caulk testing when concentrations in air and dust are below levels of concern. According to EPA Region 9, "EPA does not recommend additional testing of caulk unless dust or air samples persistently fail to meet EPA's health-based guidelines" (USEPA Letter 08/14/14, Exhibit F). This is not the case at MHS or JCES. The primary concern is protecting

the health of teachers and students. SMMUSD is employing the best management practices that have been shown to be the best way to reduce concentrations and exposure. The SMMUSD went much further than BMPs recommended by EPA and voluntarily conducted substantial air and wipe samples. These data indicate that air concentrations are well within acceptable levels. Additional sampling of caulk will not reduce exposures or risk. The District will be removing the caulk during planned renovations or repairs consistent with EPA recommendations. It needs to be managed in place safely until that time. This is similar to approaches used for lead paint and asbestos at school.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 2nd day of April, 2015, at San Francisco, California.



Douglas Daugherty