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August 19, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sandra Lyon, Superintendent

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

1651 16th Street

Santa Monica, California 90404

Article No: 7013 2630 0000 9323 445

Gina McCarthy, Administrator

U.S. ENVIRONMENTAL PROTECTION AGENCY

1200 Pennsylvania Avenue N.W., Room 1101A

Washington, DC 20460

Article No: 7013 2630 0000 9323 4476

Jared Blumenfeld, Regional Administrator

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9

75 Hawthorne St.

San Francisco, CA 94105

Article No: 7013 2630 0000 9323 4469

ATTORNEY GENERAL OF THE UNITED STATES

10th and Constitution Ave. N.W.

Washington, D.C. 20530

Article No: 7013 2630 0000 9323 4452

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

Dear Ms. Lyon, Ms. McCarthy, Mr. Blumenfeld and Attorney General:

Please take notice that pursuant to Section 20 of the Toxic Substances Control Act (“TSCA”), Malibu Unites and Public Employees for Environmental Responsibility (PEER) represented by Vititoe Law Group and PEER, intend to file suit against the Santa Monica Malibu Unified School District (the “District”) to restrain a violation of TSCA and the PCB Regulations at the Juan Cabrillo Elementary School, 30237 Morning View Drive, Malibu (“Juan Cabrillo Campus”), California and the Malibu Middle and High School Campus, 30215 Morning View Drive, Malibu, California (“Malibu High School Campus”). (“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).

In addition, this notice states the intent to file suit against the Administrator of the U.S. Environmental Protection Agency (“EPA”) for failure to perform a non-discretionary duty to enforce TSCA to require the District to promptly identify and remove caulk in buildings containing known levels of PCBs which violate TSCA and the PCB Regulations.

Malibu Unites is a non-profit organization with members and supporters who are parents, teachers and community members at the Malibu High School and Juan Cabrillo Campuses. Public Employees for Environmental Responsibility (PEER) is a non-profit 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 the Malibu High School and Juan Cabrillo Campuses.

FACTUAL BACKGROUND

PCBs and Human Health

Polychlorinated byphenyls (“PCBs”) were used in various industrial applications until 1979 when the manufacture of PCB 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... In addition, the Administrator hereby finds... that any exposure of human beings or the environment to PCBs may be significant... Since 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.” (Emphasis added. 40 CFR §761.20)

From 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.** (Emphasis added. “Laboratory Study of Polychlorinated Biphenyl (PCB) Contamination in Buildings – Part 3. Evaluation of the Encapsulation Method” (EPA, April 2012)) 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.” (Emphasis added. “Preventing Exposure to PCBs in Caulking Material” (EPA, August 2012))

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.

Discovery and Testing for PCB at the Malibu High School Campus
and the Juan Cabrillo Campus

In 2010, the District ordered an Environmental Impact Report as required for the approval of the proposed remodel of the Malibu High School Campus. As part of such investigation, ARCADIS (the District's environmental consultant) reported to the District that the soil next to the buildings in the Middle School Quad (located on the Malibu High School Campus) 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.

During the summer of 2011, the District removed 48 truckloads 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 the Malibu High School Campus were diagnosed with thyroid cancer - a disease with an expected annual incidence of 1.29 per 10,000 Americans. As of today, a fourth teacher who had since left the school was also diagnosed with thyroid cancer. There are also at least 10 known cases of thyroid disease among teachers 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 school rooms were tested. Such tests revealed that PCBs in 4 of 10 tested middle school classrooms exceeded the federal regulatory limit of 50 parts per million. In addition, several additional classrooms had wipe samples at levels deemed "PCB Contaminated" under the PCB Regulations. The three teachers with thyroid cancer all taught in classrooms with toxic illegal levels of PCB or with dust levels considered "PCB Contaminated" under the PCB Regulations.

Following the District's refusal to administer any further testing of the caulk in the Malibu High School Campus, in July 2014 Malibu parents received laboratory results from additional soil and caulk samples from both the Malibu High School Campus and the Juan Cabrillo Campus. These samples were tested by the same laboratory used by the District. On July 17, 2014, Malibu Unites and PEER reported the results to both the District and the EPA as follows:

- 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 High School Campus contained 370,000 parts per million of PCBs
- caulking from the physical education faculty office in the Malibu High School Campus contained 190 parts per million of PCBs

- three dirt samples from classrooms in building E on the Malibu High School Campus contained PCBs in excess of 11 times the EPA's residential screening limits
- significantly, the caulk in these rooms had a particular type of PCB, PCB 126, a dioxin-like substance with a cancer risk some one million times greater than that of certain other PCB congeners, at levels orders of magnitude greater than EPA's Regional Screening Levels (health guidelines) for this substance.

Despite these test results, the District's environmental consultant, Environ International, proposed leaving in place for 15 years or more caulk which has tested above the 50 parts per million 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.

EPA has reported that on August 14, 2014, the District submitted a non-public revision to the Environ plan, which anticipates removing the caulk only from 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 window and door caulk found to be far in excess of 50 ppm by independent testing, or to test or remediate other building materials to which PCBs may have migrated. In addition, Environ proposes to test air and dust only, not caulk, in the remaining rooms which were constructed prior to 1980. The District has publicly stated its intention to require teachers and students to occupy classrooms in buildings containing toxic illegal levels of PCBs in caulk.

On August 14, 2014, Jared Blumenfeld, Administrator, Region 9 EPA, sent a letter to Sandra Lyon, District Superintendent, concurring in the District's plan to remove toxic illegal caulk only in four windows and only by June 30, 2015 (after an entire additional school year) and to immediately re-occupy all rooms, including those with caulk exceeding legal limits as tested by the District and those tested independently, with the exception of three room where the air and/or dust tested above EPA's health guidelines. Those rooms are merely to be re-cleaned until they meet EPA health guidelines for air and dust, and then may also be re-occupied without testing the caulk. The EPA is not requiring the District to determine the source of the PCB's (i.e. test the caulk and other building materials) unless air and dust samples "persistently" fail to meet EPA's health-based guidelines.

EPA's so-called health-based guidelines have no statutory or regulatory authority and cannot override the statutory and regulatory direction that all materials containing PCBs in excess of 50 ppm "present an unreasonable risk of injury to health" and must be removed.

In addition, by stating in its August 14, 2014 letter that the "the District is meeting EPA national guidelines to protect health from PCBs in schools by addressing the human exposure pathways

of greatest concern, namely air, dust and soil,” EPA has evidenced that it is abdicating its responsibility on a nation-wide level to enforce the requirements of TSCA and its own regulations that materials which contain PCBs in excess of 50 ppm are illegal and must be removed, regardless of results or air, dust and soil testing.

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 the Malibu High School Campus and the Juan Cabrillo Campus 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.

The EPA is required to enforce these Sections pursuant to, among other sections, Section 16 of TSCA. The EPA has failed to require the prompt removal and remediation of the contaminated caulk and other building materials.

(3) The person or persons responsible for the alleged violation are Santa Monica Malibu Unified School District, and Sandra Lyon, Ben Allen, Oscar de la Torre, Joe Escarce, Maria Leon-Vazquez, Laurie Liberman, Ralph Mechur, and Nimish Patel of the Santa Monica Malibu Unified School District and the U.S. Environmental Protection Agency and its Administrator, and the U.S. Environmental Protection Agency Region 9 Administrator.

(4) The locations of the alleged violations are the Juan Cabrillo Campus and the Malibu High School Campus, 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 citizen giving notice, and such citizen’s legal counsel, are set forth below:

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

Malibu Unites' address is 22741 PCH Suite 401, Malibu, CA 90265. Malibu Unites' telephone numbers is 310-929-8460.

Malibu Unites is represented by Vititoe Law Group, LLC. Vititoe Law Group's address is 5707 Corsa Ave., Second Floor, Westlake Village, California 91362. Vititoe Law Group's telephone number is 818-991-8900.

Very truly yours,



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