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January 2, 2014

Sandra Lyon, Superintendent of Schools
Santa Monica-Malibu Unified School District
1651 16th St.
Santa Monica, CA 90404

By postal mail and email to slyon@smmusd.org

Dear Superintendent Lyon,

We are writing to you concerning developments since our November 25, 2013 letter on behalf of the group “Concerned Malibu/Cabrillo Teachers,” which consists of many of the teachers and staff at Malibu Middle and High School and Juan Cabrillo Elementary School. In that letter we asked for comprehensive testing, including soil testing, of all of the school campuses for toxic substances previously found in the soil of the Middle School/High School campus, including PCBs, organochlorine pesticides, lead, arsenic, cadmium, benzene and toluene. We stated that while we appreciated the fact that the school district was working with EPA to remediate PCBs found in several classrooms, this did not address the potential presence of all of these other toxic substances in the majority of the campus areas which had not previously been tested. Nor did it provide a means to investigate the source of these contaminants to better define the scope of the problem and the appropriate remedial steps. We also expressed a concern about the transparency of the process because misleading statements had been made and raw test result data was not being released.

Since then there have been some positive steps in that raw test data has been publically released, and the school district has posted a “Request for Qualifications” that includes a “DTSC School Property Evaluation” encompassing identification and elimination of “potential human health hazards in indoor and outdoor settings on the property,” including “all potential sources of environmental contaminants, including but not limited to PCBs in caulk, as well as anticipated contaminants in soil such as pesticides, VOCs, heavy metals, and other typical materials.”¹ However, serious concerns remain about the conduct of an interim PCB clean-up now taking place and the vagueness

¹ “Request for Qualifications to Provide Services Related to Environmental Concerns at District Facilities,” Santa Monica-Malibu Unified School District, Due Date 12/20/13, hereinafter “RFQ,” pp. 4-5.

of the plans for full site testing and remediation, as well as the lack of the promised honesty, transparency and community involvement concerning these matters.

1. Lack of Transparency Regarding Interim Clean-up

On November 21, 2013, Mr. Steve Armann, Region 9 EPA, wrote to you concerning the PCBs which had been detected above regulatory levels, stating that the district would need to submit a clean-up plan for PCBs compliant with the Toxic Substances Control Act (TSCA) and the requirements in 40 CFR 761.61(c). Mr. Armann also suggested that in the interim before implementation of such a plan, the District should use “Best Management Practices” (BMPs) such as having children wash their hands, cleaning, and ventilation as “interim actions to reduce risk.”² Over the following month no information was provided to teachers, parents or the public concerning any planned actions to institute BMPs.

Then suddenly on the morning of December 19, 2013, you informed the Environmental Task Force of an already completed plan to do testing and clean-up over winter break, which you claimed had already been approved by EPA. In fact, you did not even send the plan to EPA until the next day, December 20. Also the next day, but before EPA’s concurrence in the plan (with required revisions and oversight), you sent and posted on the District website a letter to the school staff and parents informing them of the plan, supposedly made in response to a desire expressed by some teachers and parents to return instruction to the classrooms that had been vacated due to contamination concerns. You stated in the letter that testing and cleaning would begin the very next day.³ You claimed that the testing and cleaning protocol had been approved by EPA, but left it to the teachers to decide when to return to their classrooms.⁴

Your letter directed readers to contact Mr. Armann with any questions, and claimed that he would “personally oversee the review and approval of our testing and cleaning protocols, as well as the verification sampling results.” However, in contacting EPA as you suggested, we discovered that Mr. Armann had left on a two week vacation the day of your letter, and therefore could neither answer questions nor oversee the testing protocol and sampling.

Community members, as well as PEER counsel, persisted despite Mr. Armann’s unavailability, and spoke with a colleague of Mr. Armann’s, Mr. Patrick Wilson. We discovered that in fact the plan had not been approved by EPA at the time of your meeting with the Task Force or your letter to staff and parents. You were forced to issue a correction later on December 20 stating that the plan had not previously been approved,

² Email from Steve Armann, Manager, RCRA Corrective Action Office, USEPA Region 9, to Sandra Lyons, et al, “PCB’s in Malibu High School,” November 21, 2013.

³ Letter from Sandra Lyon, Superintendent to: All Malibu Middle/High and Juan Cabrillo Elementary School Staff Members and Parents, December 20, 2013.

⁴ *Ibid.*

but had now been “reviewed and accepted,” as long as testing was done with the windows closed. It was only from Mr. Wilson that PEER and other community members obtained the testing and cleaning plan and EPA’s concurrence letter. From these documents we learned that the testing and clean-up plan had been prepared – without any Task Force or community involvement or knowledge – by Mark Katchen and his Phylmar Group, who as you well know, community members have ample cause to distrust.

We also learned that Mr. Katchen had recommended testing with windows open, a plan which EPA specifically disapproved. As Dr. Paul Rosenfeld, the parents’ group consultant, has stated, “air testing for indoor air quality is meaningless unless the windows are closed,” and if any of the previous testing was done with windows open, it must be repeated after doors and windows have been closed for 24 hours.⁵

In sum, the plan was completed without any community notice or involvement until literally the day before implementation, and the false claim was made that it was approved by EPA before it actually was approved only with the critical requirements of closing the windows and EPA oversight of sample validation. This certainly creates the impression of an effort to ram through a plan that would avoid community scrutiny. This impression is greatly enhanced by the fact that there was an effort to keep students, parents and members of the media away during the testing and clean-up, and the campus has been subject to round-the-clock security. This clearly was not done to protect people from potential exposures during the clean-up, since the campus has been heavily used by the public at times during the clean-up for swimming, sports practices and beach access.

That the initial plan called for testing with windows open creates a further appearance that the District was complicit in an effort by Mr. Katchen and the Phylmar Group to obtain false results by diluting the air samples, while keeping that fact from the public. Your initial claim that EPA had approved the plan made no reference to any additional requirements, obscuring EPA’s correction of the Phylmar Group’s faulty testing plan. The fact that the Phylmar group had proposed testing with windows open, and that EPA had required correction of that plan, only came out when members of the community obtained the Phylmar Group plan and the concurrence letter from EPA – not the District. Even more disturbing, we have heard several reports that despite EPA’s clear direction, in fact testing has been done with doors and windows open.

2. Additional Problems with the Interim Clean-up

First, because the testing is only for PCBs, this hastily and surreptitiously produced clean-up plan may actually destroy the evidence of past exposures to other toxic chemicals of teachers and students who have or may develop health problems. There is apparently no plan to test air, soil (portions of some of these classrooms were

⁵ Email from Paul Rosenfeld, PhD to Hugh Kaufman and Ken Miller, Dec. 23, 2013.

dug up over the summer for installation of communications cables) or dust for contaminants other than PCBs, or to retain samples to do so in the future.

Second, and perhaps most important, it is completely unclear whether this testing and clean-up will make these classrooms safe to re-occupy. The most obvious reason is that the rooms are being tested only for PCBs, and not for the other contaminants previously found in school soils. In fact, as we emphasized in our previous letter, no one currently knows whether any indoor or outdoor spaces at the schools are safe to occupy.

Even as to PCBs alone, the efficacy of this interim clean-up to make these rooms safe to occupy is unknown. The District has been inconsistent in its statements and actions, first claiming that the level of PCBs found did not pose a health hazard at all, even before cleaning, and keeping open some of the areas which tested in excess of EPA standards, such as the library. Now, however, the District claims that it is this interim clean-up which will somehow render safe rooms which were vacated due to concerns about toxic contaminants and occupant health problems. Air is being tested in the selected rooms both before and after cleaning, and post-remediation wipe samples taken on surfaces previously identified as having PCB levels exceeding ten (10) micrograms per one hundred (100) square centimeters. There is an implication that some level of improvement in these air and wipe samples may occur and will mean something, although we don't know what (or why, given the claim that there was no health threat in the first place). There is no information as to what level of improvement would be considered adequate to make the rooms safe to occupy, or what the conclusion would be if levels of PCBs do not improve. In this light, your direction that it is up to teachers to decide when to re-occupy these vacated classrooms rings particularly hollow.

Third, it is unclear which rooms will be tested and cleaned and to which rooms EPA's requirements and oversight will apply. In your letter to the staff and parents of December 20, 2013, you state that air samples will be taken from Blue Building rooms 3, 4, 6, 7 10, 14, 16, a gym office, music rooms 302 and 303, and a storage closet adjacent to room 1. You state that the cleaning will occur in the "vacated Blue Building, Library, gym office adjacent to the girls' locker room, and the three music rooms."⁶ Yet, the actual "Limited PCB Remediation, Verification Sampling Work Plan for Malibu High School/Middle School" ("Work Plan"), which is what EPA reviewed, only calls for air sampling and cleaning of the library and rooms 1, 5, 8 and 301.⁷ EPA's letter of concurrence in the Work Plan refers only to "certain rooms in building E, the library and music rooms."⁸ This major discrepancy and confusion regarding what parts of the school will actually be tested and cleaned serves to undermine the credibility of the Work Plan.

⁶ Letter from Sandra Lyon, Superintendent to: All Malibu Middle/High and Juan Cabrillo Elementary School Staff Members and Parents, December 20, 2013, p.1.

⁷ Work Plan, pp. 1 and 4.

⁸ Email from Steve Armann to Sandra Lyon, Subject: "Malibu High School Interim Cleanup Plan," Dec. 20, 2013.

Then in a December 28 update,⁹ you indicate that “best management practices cleaning” will be completed for all the rooms you earlier referenced. This update uses the term “best management practices” a total of eight times in one page but never explains what best practices have been applied. We still don’t know which of the descriptions of the rooms to be tested and cleaned is accurate.

In sum, this clean-up, with unknown benefits even in relation to PCBs, much less other contaminants, can easily be seen as an effort to create an appearance of a genuine and productive effort to address school contamination, while actually providing questionable, if any, benefit, especially in relation to its likely (undisclosed) cost. The community should have been given the opportunity to fully understand the costs and potential benefits of this plan, ideally with the help of the experts the District intends to hire, and to weigh in on whether it, or something else, is the best use of the District’s resources at this point.

3. Inadequacies of the Request for Qualifications

The District put forward another hastily produced document, the RFQ for the long-term testing and remediation of the Malibu Schools, providing only a few days to submit proposals. While we certainly appreciate a sense of urgency in addressing the contamination problems at the Malibu Schools, a hasty but ill-conceived, incomplete or inadequate plan, or an inadequate opportunity for qualified firms to bid, will serve no one. In addition, enough information must be provided to the community, as well as the bidders, so that they can appraise what will actually be involved, and the adequacy of the plan to address the potential presence of hazardous substances at the schools. Although the RFQ refers vaguely to addressing all potential human health hazards from all potential contaminants, it provides absolutely no detail as to what protocols or testing or remediation methods will be used, especially for contaminants other than PCBs.

The RFQ does not reference federal standards, except those for PCBs under TSCA, such as testing and remediation requirements under the Resource Conservation and Recovery Act (RCRA) or the federal Superfund program (CERCLA). Instead, there is only a general reference to oversight of the DTSC’s School Property Evaluation and Cleanup Division.

One must assume that the responses to this vague proposal will be equally vague. Especially given the history of lack of transparency and inadequate plans detailed above, the teachers and other community members, possibly with the help of other experts, need the opportunity to review a detailed plan for long-term testing and remediation, in order to insure that these functions will be carried out not just quickly, but successfully.

To meet these goals, we make these specific requests of the District:

⁹ Update on Environmental Issues: Week ending Saturday, December 28, 2013 from Sandra Lyon.

1. That Mark Katchen and the Phylmar Group be immediately relieved of any further duties, contracts or assignments concerning contamination of the Malibu schools.
2. Supply a written report explaining all past testing and analysis (including whether tests were done with windows or doors open), and a written work plan explaining how the future investigation and remediation are to take place.
3. Make public all contracts with Mark Katchen and the Phylmar Group, the Pillsbury law firm, and any other contractor or consultant hired to perform testing or remediation or otherwise assist the District with matters surrounding the contamination issues at the Malibu schools, including legal and public relations assistance.
4. Make public for review by community members before they are entered all new contract or consultant proposals regarding testing or remediation or other assistance to the District, including legal and public relations assistance, concerning the contamination issues at the Malibu schools.
5. Re-issue the RFQ with full detail as to the testing and remediation sought in accordance with the requirements of TSCA, RCRA and CERCLA.
6. Report on the amount of money paid by the District and to whom (and periodically update this information) for testing, remediation, and legal and public relations services concerning contamination issues at the Malibu schools.

We would appreciate a response to this letter and to our specific requests.

Sincerely,

Jeff Ruch, Executive Director

Paula Dinerstein, Senior Counsel
Public Employees for Environmental Responsibility

cc: Jared Blumenfeld, EPA Region IX Administrator
Patrick Wilson, Region IX, EPA
Steve Armann, Region IX, EPA
Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. EPA
Deborah Raphael, Director, California Department of Toxic Substances Control
Senator Barbara Boxer

Congressman Henry Waxman

State Senator Fran Pavley

SMMUSD Board Members Ben Allen, Oscar de la Torre, José Escarce, Maria Leon

Vazquez, Laurie Lieberman, Ralph Mechur and Nimish Patel